

Statement by ***Gladice Pickering – Ministry of Justice and Office of the Attorney-General,*** 5th session of the WG on Transnational Corporations and Human Rights, Geneva, 16 October 2018

Thank you Mr. Chair and thanks to the panelists for their respected views and opinions. Our comments on Articles 7, 8 & 9 are as follows:

We welcome the new heading for Article 7 as this reflects the essence of the article, which is aimed at solving jurisdictional obstacles in adjudicating claims involving TNCs and OBEs where a court has jurisdiction.

Article 7 on jurisdiction is critical as it impacts on the avenues available for victims to claim redress for abuse and damages. Complex legal obstacles posed by issues of jurisdiction and applicable law is often the reason why victims often give up on their claims, which perpetuates impunity.

The expansion of this Article as proposed by Dr. Bilchitz is worth considering, especially modifying the “*forum non convenience* rule” to create a presumption in favour of the chosen forum. We also support the application and inclusion of the *forum necessitatis* doctrine, because as States we have a duty to ensure that victims of human rights abuses involving TNCs and OBEs are not denied access to judicial remedies.

Mr. Chair,

The provision of Article 8(2) states that domestic statutes “shall allow a reasonable period of time for the investigation and prosecution of the violation”. We share the concerns expressed by others in the room concerning the determination of “a reasonable period” and we concur with Mr. Meeran that time should not run against children and persons with disabilities. The particularities, which are unique to the cases under consideration, require a greater flexibility when considering the time periods on statutes of limitations.

With regards to Article 9, we would like to know under what conditions would victims be permitted to apply the laws of the domicile of the business entity and how they may exercise the right to choose the most applicable law.

I thank you.