Article 7 Statement

This is a joint statement by the Centre for Human Rights, University of Pretoria, and the African Coalition for Corporate Accountability on Article 7 of the 3rd revised draft.

We support and align ourselves with the interventions of South Africa, Egypt and the State of Palestine on the importance of focusing on the 3rd revised draft in thee negotiations and not the informal proposal from the Chair. While we appreciate and commend the strides taken towards enhancing access to remedy in the 3rd revised draft, we note with concern that, there are several areas within the access to remedies framework in the third revised draft that can use some improvement. Access to effective remedy is a core component of the UNGPs and should be as such in the legally binding instrument. We note that a lot of the provisions in the draft are broad and elusive and would thus benefit from more specificity.

We note that one of the greatest practical barrier to access to remedy for affected communities and victims is a lack of access to information which affects their attempts to access remedy and appropriate remedial mechanisms both domestically and internationally.

We believe that insufficient access to information in itself is a form of harm which further exacerbates the violations. Without information provided in a timely and culturally appropriate manner, it can be impossible for indigenous and affected communities to pursue justice at appropriate forums.

Specifically, regarding Article 7.2 we broadly align with the comments made by Palestine during the 7th session, to facilitate access to information in a gender sensitive manner and the deletion of the word ‘appropriate’ in the same provision, noting in this regard that the access to information should be facilitated in **ALL** cases, without distinction between what might be deemed appropriate or otherwise.

We further emphasise the importance of the duty to cooperate in achieving EFFECTIVE remedy, reiterating the need for provisions in Article 7 on the access and exchange of information including with regards to the nature and scope of a transnational business enterprise to accommodate liability for violations.

We also align ourselves with the comments made by South Africa and Palestine on Article 7.3 and should read ‘**State Parties shall provide adequate and effective assistance to victims throughout the legal process, including by…and on the contrary reject suggestions by some States to include clauses in ‘national legislation’** as this has the potential to impose direct responsibility on the State and not on the companies and OBEs.

We reaffirm that Article 7 should ensure the non- prejudicial guaranteeing of the rights of victims to be heard at all Stages of proceedings, as suggested by South Africa, Panama, Peru, Palestine and Mexico to include the clause in Article 7(3) (b) the phrase, ‘avoiding gender and age stereotyping’

The provisions on access to remedy in the third draft, while remaining central to the goal of the instrument need to be revisited. Without radical transformation of the provisions in Article 7 on access to remedy, the legally binding instrument might end up suffering the same fate as the voluntary frameworks that have existed before, like the UNGPs which have demonstrated their ineffectiveness.