**OEIGWG on TNCs and OBEs - 6th session**

**(ITEM 4) Part IV - ARTICLES 5, 6 AND 7 (27/10/2020)**

**Brazil, national capacity**

**Thank you, Chair-rapporteur,**

**Under this agenda item, concerning the articles 5, 6 and 7 of the second revised draft, the Brazilian delegation would like to comment on the following issues:**

**2. Following-up on our intervention under the previous agenda item, consideration should be given to the possibility of transferring the issues under item 4.2-e to article 5, taking into account their similar nature to the provisions on protection of the victims by the State.**

**3. We understand that Article 5.2, in addition to being redundant (since States are obliged to promote and defend the human rights of all individuals under their jurisdictions), it lacks precision when it does not determine what would amount to a safe and enabling environment.**

**4. We also believe that Article 6.1 could benefit from greater precision. It seems to us that it would be better to change “all necessary legal and policy measures” to appropriate or adequate measures. Furthermore, we reiterate that it should only apply to human rights protected by international instruments ratified by each State Party.**

**5. With regard to Article 6.3, we would like clarifications on what would be expected by human rights assessments, since we do not have this in our national legislation.**

**6. We would like to seek further clarifications on the new paragraph 6.3.b, specifically on what is the added value of such a provision given that "women" is already mentioned in the following paragraph (6.3.c) concerning the list of vulnerable groups that require special attention.**

**7. 4. Items 6.3-c and 6.3-d should be highlighted. The idea of consultations to "individuals or groups" that could only "potentially" be affected, in letter “c”, is vague and seems inappropriate, since no clear criteria is provided to trigger the consultation process or how the definition of relevant stakeholders should take place.**

**8. Concerning letter “d”, time and again we have expressed our reservations to the use of language that significantly differs from what has been agreed under ILO Convention 169 concerning the consultations with indigenous people. This Convention is the only legally binding instrument that deals with such matter and one that 30 years after its adoption has only been ratified by 23 countries. Significant changes to these provisions would have to take place in order to guide the draft LBI closer to a consensual approach on this matter. In our view, the text of 6.3.d oversteps the international norm, as stated under ILO Convention 169. Should this language be maintained in the LBI, Brazil would not be able to sign up to the text.**

**9. Still in Article 6, in item 6.3-g, we ask for clarification on whether the expression “occupied or conflict-affected areas” refers to international occupation and conflicts or to all kinds of occupation and conflicts.**

**10. While establishing general obligations for companies, the second revised draft LBI is still unclear on whether the decisions made by the proposed monitoring and verification mechanisms (judicial and non-judicial) would directly affect the companies or would only oblige the State Parties, which should ensure thenceforth the compliance by companies.**

**11. We are also interested in further information on the issue of delays in court procedures, stated in the article 7.3-c. In the one hand, it seems to fall outside the scope of the article 7.3, dedicated to adequate and effective legal assistance to victims, and on the other hand, it does not provide any guidance on how to assess the connection of public service operations and the harm caused to the victim (which is essential to understand the lack of State compliance to this provision).**

**11. Concerning articles 7.5 (on the principle of "forum non conveniens") and 7.6 (on the reversal of the burden of proof), we reiterate our previous call on the need to clearly recognize the principle of subsidiarity in the LBI. We are not entirely convinced that the provision in 7.6 is really necessary.**

**Thank you. (632 words)**