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

 **(ITEM 4) Part I - GENERAL STATEMENT (26/10/2020)**

**Brazil, national capacity**

**Thank you, Chair-rapporteur,**

**Brazil is pleased to, once again, take part in the discussions on the matter related to the mandate of the Open Ended Working Group on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights. We thank the Office for their efforts to hold the meeting in spite of the difficult circumstances of the COVID-19 pandemic.**

**2. We congratulate [Ambassador Emilio Rafael Izquierdo Miño] for his election as the chair of the Working Group and we thank the delegation of Ecuador for presenting the second revised draft of a legally binding instrument.**

**3. Brazil remains committed to identifying and filling possible existing gaps in the international normative framework regarding the protection of victims of human rights violations and abuses in the context of business activities.**

**4. In the context of business and human rights agenda, we reaffirm our view that UN Guiding Principles on Business and Human Rights, which were adopted by consensus by the Human Rights Council and whose implementation is essentially voluntary, constitutes the fundamental reference for our substantive discussions.**

**5. We commend the efforts undertaken by the Chair-Rapporteur to address the various concerns expressed during and after the 5th session of the Open-Ended IGWG.**

**6. While we recognize some positive developments in the new text, a few of them in line with previous comments made by the Brazilian delegation, we understand that challenges remain.**

**7. Specifically, we took note that some of our concerns could not yet be accommodated into the draft. Also, new concerns have arisen from the textual choices made in some of the articles of the second revised draft of the Legally Binding Instrument.**

**8. We fully understand that sometimes general concerns expressed in principle may be difficult to translate into text, especially considering that the drafting process has not reached its final phase. Efforts should be made in this regard, nevertheless.**

**9. A balanced approach seems to be the key to an effective legally binding instrument. This means seeking, on the one hand, the highest values and standards and, on the other, recognizing and addressing the constraints to their implementation on the ground - including to avoid putting excessive burden upon states.**

**10. Bearing this balanced approach in mind, in the next few days we will try to address the specific concerns in the context of the discussion of the articles to which they are related.**

**11. At this stage, we would like to raise 4 points:**

**(a) we praise the choice to use the term "human rights abuses" systematically, which solved in part our concerns about the improper interchangeability "abuses, violations, impact and harm" in the text.**

**(b) we commend the decision to keep the LBI scope as broad as possible, including both TNCs and OBEs.**

**(c) we reiterate our concern with the expression "in the context of business activities" (used 12 times in the text). The term remains poorly defined, allowing for interpretation that could place responsibility on the business agent for acts of third parties that occur within a business unit, but over which the company has no control; and**

**(d) we advise caution while referring to environmental rights and environmental measures. In our view, the conceptual basis for environmental measures should emanate from international agreements that deal specifically with that issue.**

**12. A large amount of changes have been made to the document, not marked with track changes nor followed, at the time of its release, by explanatory notes to understand the reasons for redrafting and reordering. In this context, the few weeks between the publication of the second revised draft and the start of 6th session of the OEIGWG proved to be too short a time for a thorough analysis of the text and the proper internal consultations with all the competent government agencies and other interested parties. Brazil therefore wishes to reserve its position concerning the full text of the second revised draft.**

**13. As we see it today, the draft LBI is a working document. Its impacts on the ground and its legal implications to countries` international commitments under trade and investment agreements and disciplines at the multilateral, regional and bilateral levels are still to be assessed.**

**14. That notwithstanding, we reaffirm our commitment to engage constructively in the discussions, taking note of the different views expressed by the parties.**

**Thank you. (700 words)**