

**OEIGWG on TNCs and OBEs - 7th session**

**(ITEM 4) Part I - GENERAL STATEMENT (25/10/2021)**

**Brazil**

**Thank you, Chair-rapporteur,**

**Brazil is pleased to, once again, take part in the discussions 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 in organizing this meeting in person, despite the challenges arising from the covid-19 pandemic.**

**2. We thank Ambassador Emilio Rafael Izquierdo Miño for his work as the chair of the Working Group, as well as the delegation of Ecuador, for presenting the third revised draft of a legally binding instrument.**

**3. We welcome the opportunity to engage in direct and substantive intergovernmental negotiations in this session. We believe it can contribute to pave the way for a renewed participation of states in this process.**

**4. Brazil remains engaged in the discussions on a possible binding instrument on business and human rights. We are committed to addressing the gaps in the international normative framework regarding the protection of victims of human rights violations and abuses in the context of business activities.**

**5. We reaffirm our understanding that the UN Guiding Principles on Business and Human Rights, adopted by consensus by the Human Rights Council, constitutes the fundamental reference for our substantive discussions.**

**6. We commend the efforts undertaken by the Chair-Rapporteur to address the various concerns expressed during and after the 6th session of the OEIGWG.**

**7. While acknowledging the progress made, we believe that there are significant challenges to be addressed in the current draft, in order to achieve a balanced and effective text.**

**8. We are disappointed that most of our proposed amendments could not yet be accommodated into the text. We also note that new issues have been included in the third revised draft which will need further detailed consideration.**

**9. As we stated during the last session of the Working Group, we need to find the right balance between the proposed rights and obligations in the**

**draft, if we want an effective and viable instrument that can be adopted by a representative group of countries. We should strive to adopt standards that protect human rights but do not hamper business activities. At the same time, we need to ensure that the new provisions can be effectively implemented on the ground - including avoiding excessive burden upon states, particularly in the case of developing countries.**

**10. During the next few days, we will seek to address our concerns in a constructive and pragmatic manner. We believe it is important to clarify a number of key issues in order to ensure an adequate balance between rights and obligations. To that effect, we need a more concise and less prescriptive text, that sets out principles and standards, but does not impose detailed procedural rules upon states. As the text stands now, it hampers business activities and overburden states, especially in the case of developing countries.**

**11. At this stage, we would like to raise 6 main points:**

**(i) we commend the suggestions that were incorporated in Article 1 in an attempt to increase accuracy in the definitions in the draft, including with regards to the terms "victim" and "human rights abuse". We still think, however, that we need greater clarity and legal certainty, for and effective instrument.**

**(ii) it is crucial to clarify further that the state parties to the instrument would be accountable only to the binding international human rights**

**standards contained in the treaties that they have agreed or to which they have acceded.**

**(iii) we are convinced that the instrument should place its focus on the most serious or substantial human rights abuses that may arise from business activities. This important distinction would help to ensure that the instrument is not misused, becoming a tool for lawfare or other deleterious practices.**

**(iv) as it stands, the draft is overly prescriptive, setting out excessively detailed procedural rules for prevention, mutual assistance and cooperation, among other topics. We share the view that such issues are relevant to the draft, but we must bear in mind the nature of the instrument.**

**(v) we remain concerned with the absence of any reference to the principle of subsidiarity/exhaustion of local remedies as a prerequisite for the application of the jurisdictional rules established in the instrument. The proposed text is largely unworkable, leading to excessive costs and legal uncertainty to business activities.**

**(vi) we advise extreme caution when referring to environmental rights and environmental measures. In our view, the conceptual basis for environmental measures should emanate from the international legal framework that has been developed over the last 30 years to address environmental issues, including climate change.**

**12. Given that this is the first opportunity for states to engage in direct substantive negotiations with one another, Brazil wishes to reserve its position concerning the full text of the third revised draft. In particular, we reserve our position regarding the binding or voluntary nature of the text. Whilst the issue underpins our discussions, a decision can only be taken after assessing the final balance between rights and obligations.**

**13. As we see it today, the draft instrument before us remains 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 need still to be assessed.**

**14. Brazil looks forward to the substantive discussions between states during the current week.**