

OEIGWG – 8th session (24-28 October)

General Statement – Brazil

Brazil is pleased to take part in this 8th session of the Open-Ended Intergovernmental Working Group to discuss a legally binding instrument on business and human rights.

We thank Ambassador Emilio Rafael Izquierdo Miño for his role as the Chair of the Group, including for the informal proposals circulated a few weeks ago. We appreciate his effort to streamline the text and accommodate different views and look forward to direct negotiations with delegations, based on the compilation document of the third revised draft (A/HRC/49/65/ADD.1).

For the next few days, we will have, once again, a valuable opportunity to negotiate provisions to address a key human rights issue: the impacts of the activities of business enterprises. We believe that this should be done in complementarity with the widely-accepted United Nations Guiding Principles.

In our discussions, let us bear in mind that we are negotiating a human rights instrument. This process would be pointless if it was not to strengthen the protection of human rights; if it was not to prevent human rights abuses and to offer legal remedies for victims to find effective and timely justice. Our message to victims should be clear from the start: you are the reason we negotiate this text.

On the other hand, our message to business companies is that respecting human rights is not only a fundamental value everyone has to abide by but also, increasingly, a crucial element of good business. Having strong human rights records helps companies just as it safeguards people whose rights the very business activities depend on: workers, consumers, partners, third parties and affected communities. No company will grow sustainably without taking human rights seriously. And human rights will not be fully protected unless we have companies together in this cause.

Regarding the role of States, let us remember that the primary responsibility to protect human rights and hold businesses accountable lies with us. An international instrument will hardly be effective if States' institutions are not truly committed to tackling business-related human rights abuses. Instead of

being over-prescriptive and taking on the role of States, an international instrument would do better by helping States strengthen their national mechanisms to fulfil the human rights obligations they signed up for.

Therefore, for Brazil, an international legal instrument should apply only to substantial human rights abuses and defer to national jurisdiction wherever possible, provided that victims' rights are protected.

Considering all the stakes involved, we must manage to strike a careful balance between rights and obligations. We have to protect human rights in a way that the norms we devise can be effectively applied by all stakeholders and do not overburden law-abiding companies, especially medium and small ones, which are honestly striving to grow and contribute to their communities by creating jobs and fuelling sustainable development, particularly in developing countries.

To achieve such an instrument, we need precise legal concepts. Legal certainty helps victims, States, and companies set their expectations. Rules of jurisdiction, while broadening access to justice, need to be compatible with the object and purpose of the instrument and avoid future quarrels over competent fora and the applicable law. Excessively detailed prescriptions for due diligence can lead to a rigidity inattentive to diverse national and business contexts. Legal definitions of abuse, victims, and other central concepts must be accurate.

Until we get there, Brazil will reserve its final position on the instrument. We will need time for meaningful internal consultations to assess its overall balance and implications for our legal system and international commitments.

In the meantime, we look forward to participating in the discussions. We hope that more States engage in this exercise and we remain open to the contribution of civil society. We wish everyone a productive week.

Thank you.