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

**(ITEM 4) Part III - ARTICLES 3 AND 4 (27/10/2020)**

**Brazil, national capacity**

**Thank you, Chair-rapporteur,**

**Under this agenda item, concerning the articles 3 and 4 of the second revised draft, the Brazilian delegation would like to comment on the following issues:**

**2. We once again thank the chair-rapporteur for keeping the extended definition of business activity to cover activities of transnational companies and other business enterprises. It meets the Brazilian continuous expectation that the scope of the LBI as currently drafted should be retained in all future versions of the draft LBI.**

**3. We commend also the changes in Article 3, paragraph 3, which eliminated the imprecise terminology related to "all human rights". That notwithstanding, we reiterate our understanding that the complete exclusion of this clause would not prejudice the intended purposes of the LBI and, in the case the Parties negotiating understand its presence as essential, it should reflect that only the provisions contained in international instruments ratified by the State Party should apply. Related concerns have also arisen, in a preliminary assessment, concerning the new paragraph 4.1.**

**4. We took note of the positive trend in separating rights of the victim, under article 4, and the responsibilities of the States (which we understand is the main topic of the new article 5, on "protection of the victim"). We take this opportunity to inquire if there is any specific reason for not placing item 4.2-e (on the protection of privacy and the protection against revictimization) under article 5, dedicated to issues on the protection of the victim.**

**5. Even though more clarity was given to item 4.2-g concerning the role of "diplomatic and consular means", by eliminating "access to justice" and concentrating the topic on "access to remedy", it is still unclear what kind of support or legal aid should the diplomatic and consular posts provide to its nationals in this process. Specifically, it should be clarified if such support refers only to the recognition of the role those instances already play, according to their respective national law and circumstances, or if a new standard of consular/diplomatic service is been required to all State Parties as a rule, which would require further analysis on the means that may be necessary to meet this demand.**

**6. We take the opportunity to recall our proposal, during the intersessional consultations, that a provision on the principle of subsidiarity be included in the LBI, using the example of the Interamerican Human Rights system. The majority of the articles in the first revised draft that mentioned "according to national law" have had this expression. deleted. We recognize that new paragraph 4.3, which states that any higher level of recognition and protection of human rights, under national or international law, shall prevail against the provisions of article 4, could represent a starting point. However, it does not seem to address properly and completely the issue of the risk of undue interference or intervention with the domestic legal systems present in many of the provisions in the LBI.**

**Thank you. (482 words)**