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الدورة الثانية والثلاثون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الفريق العامل المعني بمسألة حقوق الإنسان والشركات عبر الوطنية وغيرها من مؤسسات الأعمال عن بعثتها إلى البرازيل*

مذكرة من الأمانة

يشرف الأمانة أن تحيل إلى مجلس حقوق الإنسان تقرير الفريق العامل المعني بمسألة حقوق الإنسان والشركات عبر الوطنية وغيرها من مؤسسات الأعمال عن زيارته إلى البرازيل في الفترة من ٧ إلى ١٦ كانون الأول/ديسمبر ٢٠١٥.

* قُدِّمت هذه الوثيقة في وقت متأخر إلى دوائر المؤتمر من دون تقديم التفسير المطلوب بموجب الفقرة ٨ من قرار الجمعية العامة ٢٠٨/٥٣ باء.

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Brazil**

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** Circulated in the language of submission only.

I. Introduction

1. Further to Human Rights Council resolutions 17/4 and 26/22, two members of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Pavel Sulyandziga and Dante Pesce, visited Brazil from 7 to 16 December 2015, at the invitation of the Government. The purpose of the visit was to assess the efforts made to prevent and address adverse human rights impacts of business-related activities, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.[1] It was the Working Group's first visit to a country in the Latin America and Caribbean region.[2]

2. During their visit, the experts met with government officials from the Office of the Presidency of the Republic, the Ministry of Women, Racial Equality and Human Rights (Secretariat for Human Rights), the Ministry of External Relations, the Ministry of Labour and Employment, the Ministry of Finance, the Ministry of Justice, the Ministry of Mines, the Ministry of the Environment, the Ministry of Consumer Protection, the Brazilian Institute of Environment and Renewable Natural Resources, the Brazilian National Indian Foundation, the Office of the Attorney General, the Ombudsman Service and the Office of the Comptroller General. They also met with prosecutors from the Federal Public Ministry, the Brazilian Development Bank (BNDES), the São Paulo Stock Exchange, officials and public prosecutors in the States of São Paulo, Rio de Janeiro, Minas Gerais and Pará, and with members of Congress (Chamber of Deputies), representatives of the Commission on Human Rights and Minorities (Chamber of Deputies), the Central Workers Union — the main trade union in Brazil —, the Industry Federation of the State of Rio de Janeiro, Ethos Institute, Global Compact Network Brazil, United Nations agencies and representatives of business enterprises (including Norte Energia, Petrobras, Samarco, Carrefour, BHP Billiton and Vale), civil society organizations and affected communities. They travelled to Brasília, São Paulo, Rio de Janeiro, Belo Horizonte, Mariana, Altamira and Belém.

3. The Working Group thanks the Government for its invitation and for its assistance before, during and after the visit; it appreciated its openness and willingness to engage in discussions. It also thanks the organizations, businesses, communities and individuals with whom it met and who facilitated site visits and meetings with stakeholders. It appreciated the constructive discussions on the progress made and challenges in the protection of human rights in the context of business activities.

4. In the present report, the Working Group outlines its findings and makes recommendations for action that may assist in addressing and remedying the challenges identified.

II. General context

5. Brazil is the largest country in the Latin America and Caribbean region, with a population of 206 million.[3] Brazil is a federal republic comprising 26 states, one Federal District (where the capital, Brasília, is located) and 5,507 municipalities.

6. The Brazilian economy is the world's seventh largest and the largest in Latin America. Brazil is a part of BRICS (Brazil, Russian Federation, India, China and South

[1] See A/HRC/17/31, annex.

[2] The Working Group has now visited States in all United Nations regional groups.

[3] See http://data.worldbank.org/country/brazil.

Africa), an association of five major emerging economies, as well as a member of the New Development Bank, a multilateral development bank operated by BRICS.

7. Brazil recently experienced a period of sustained economic growth. From 2003 to 2013, there was significant economic and social progress, during which, over 26 million people were lifted out of poverty. While household income inequality, measured by the Gini index, decreased from 53.1 per cent in the period 2001-2005 to 52.9 per cent in the period 2011-2015,[4] it still remains high. There are also large differences in social indicators between the richer southern and south-eastern regions and the northern and north-eastern regions.[5]

8. At the time of the visit, the country was going through difficult times. Apart from the economic recession, the Working Group's visit took place against the backdrop of a political crisis, corruption scandals involving major companies and the political establishment and a mining and environmental disaster resulting from the rupture of the Fundão tailings dam, which impacted the States of Minas Gerais and Espíritu Santo.

III. Legislative and policy framework

9. Brazil has signed and ratified, or acceded to, eight of the nine core international human rights treaties.[6] It has signed and, in some cases, ratified all the Optional Protocols, except for two.[7] Brazil has also ratified seven of the eight International Labour Organization (ILO) fundamental conventions that cover four categories of principles and rights, namely, the right to organize and bargain collectively; abolition of forced labour; abolition of child labour; and elimination of discrimination in employment and occupation.[8] It has ratified three of the four ILO governance conventions[9] and 86 of the 177 ILO technical conventions.

10. Power is exercised through the executive, legislative and judicial branches of Government. At the federal level, the executive is headed by the President. The bicameral National Congress, consisting of the Federal Senate and the Chamber of Deputies, exercises legislative power. State governments consist of three branches: the executive, represented by a governor and an appointed cabinet, the legislative, constituted by a unicameral congress, and a judiciary. States are divided into municipalities, which are governed by a mayor.

11. The 1988 Federal Constitution is the main political and legal instrument. It sets out the decentralized governance system: each of the 26 states is autonomous and has its own constitution and the Federal District, as well as each municipality, has its own organic law. State constitutions are subject to and must observe the Federal Constitution and its principles. The organic law of each municipality must observe the Federal Constitution and its principles and the relevant state constitution. The Federal Constitution gives paramount importance to fundamental freedoms and human rights, as well as to social rights and the

[4] See http://data.worldbank.org/indicator/SI.POV.GINI.

[5] See www.worldbank.org/en/country/brazil/overview.

[6] Brazil has not signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

[7] Brazil has not signed or ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights nor the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

[8] Brazil has not ratified the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

[9] Brazil has not ratified the ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129).

rights of workers. For example, it provides for a nationally unified minimum wage, capable of satisfying the basic living needs of workers and their families (art. 7 (4)). The Federal Constitution also sets out the right to the enjoyment of an ecologically balanced environment (art. 225) and provides for an economic order that is intended to ensure everyone a life with dignity, according to the dictates of social justice (art. 170), while the "prevalence of human rights" is one of the principles governing Brazil's international relations (art. 4).

IV. Awareness of business and human rights

12. The Working Group found that, while some companies have specific policies and guidance on human rights in line with the Guiding Principles, it was clear that this was not the case for a majority of business enterprises in Brazil. When asked about pressing business and human rights issues, many interlocutors mentioned efforts to reduce child labour and slavery, or forced labour. While important, these do not comprise all the issues covered by the Guiding Principles. As such, raising awareness of the Guiding Principles and investing in capacity-building efforts should be priority action areas.

13. The Working Group noted that human rights risks were mainly seen as risks to a company's operations, rather than risks faced by vulnerable rights holders. Companies should not just be assessing human rights risk by analysing the risk to the company of the success or failure of projects. If companies focus on human rights risk only in relation to a specific project, then a holistic consideration of human rights risk may be sidelined to the detriment of affected communities. The Working Group recognizes that businesses may be less familiar with human rights than the Government and civil society and that there may be challenges in integrating human rights within corporate systems and decision-making processes. It will therefore be important that the Government provide guidance to companies about the actions they must take in line with the Guiding Principles.

14. The Working Group explored initiatives to promote responsible business practices, including: the Global Compact Network Brazil, which incorporates stakeholders from both business and civil society; the Pro-Equity Programme, which promotes equality in the workplace;[10] sustainability reporting requirements;[11] the sustainability index of the São Paulo Stock Exchange and voluntary corporate social responsibility disclosures;[12] a monthly multi-agency forum on corporate social responsibility; Federal Law 12846/2013, the anti-corruption law that holds companies strictly liable for corrupt acts by their employees, with fines of up to 20 per cent of gross revenue from the previous year, or suspension or dissolution of the company; a partnership between the Fundação Getulio Vargas research institute and the Ministry of Women, Racial Equality and Human Rights regarding a protocol for the protection of the rights of children and adolescents during the licensing and bidding processes for infrastructure projects; and the National Registry of Companies Committed to Ethics and Integrity, an initiative of the Office of the Comptroller

[10] See Programa Pró-Equidade de Gênero e Raça, available at www.spm.gov.br/assuntos/mulher-e-trabalho/programa-pro-equidade-de-genero-e-raca/6a-edicao/leia-mais.

[11] See the Group of Friends of Paragraph 47 initiative, formed by Brazil, Denmark, France and South Africa in recognition of paragraph 47 of the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", to advance corporate sustainability reporting, available at www.unep.org/resourceefficiency/Portals/24147/Business-Ressource%20Efficency/GoF47%20Two-Pager.pdf.

[12] See www.bmfbovespa.com.br/en_us/products/indices/sustainability-indices/corporate-sustainability-index-ise-1.htm.

General and the Ethos Institute, which is aimed at giving visibility to companies investing in ethics, integrity and corruption prevention.[13]

15. The Cooperation and Facilitation Investment Agreements signed by Brazil in 2015 contain corporate social responsibility clauses calling on foreign investors to respect human rights and environmental laws in the host country. However, the Working Group noted criticism that the agreements do not require companies to conduct human rights impact assessments and were not subject to public consultation. The Government stated that civil society was consulted about the model of the Cooperation and Facilitation Investment Agreements. The Brazilian Development Bank (BNDES) — a main source of funding for large-scale development projects in Brazil and abroad, which provides support for exports, technological innovation, sustainable socio-environmental development and the modernization of public administration —, as an entity regulated by the Central Bank of Brazil, is required to have a social and environmental risk policy.[14] While the Brazilian Development Bank (BNDES) requires that the projects it funds adhere to environmental and social standards and claims that human rights issues are taken seriously, the Working Group expected to see a more explicit requirement that projects include safeguards against adverse human rights impacts in line with the Guiding Principles. The Working Group was informed that the Brazilian Development Bank (BNDES) does not disclose information regarding social and environmental impact assessments undertaken in respect of projects in Brazil and abroad as part of its transparency policy. The Working Group expected more transparency with regard to environmental, social and human rights impacts.

16. The Working Group was made aware of concerns regarding access to affordable generic medicines and the impact of patents in that regard. Attention was drawn to challenges to the continued need for the Brazilian Health Surveillance Agency[15] to be involved in the analysis of pharmaceutical patent applications at the "prior consent" stage and to the fact that, without the Agency's involvement, there was the risk of patent monopolies emerging, which would hinder access to medicines.[16]

17. Brazil has a number of State-owned enterprises. Those companies have the responsibility to avoid causing adverse human rights impacts under pillar 2 of the Guiding Principles, while under pillar 1, the State is also expected to take additional steps to ensure that State-owned enterprises respect human rights in their operations.[17] The Working Group was informed that the proposed law on State-owned company responsibility[18] would require such enterprises to prepare a sustainability report in accordance with the Global Reporting Initiative standards. A member of the Federal Senate and some civil society organizations are reportedly advocating for the inclusion of stronger language, such as reference to the

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[13] *Cadastro Nacional de Empresas Comprometidas com a Ética e a Integridade* (*Cadastro Empresa Pró-Ética*), see www.opengovpartnership.org/country/commitment/implementation-pro-ethics-company-registry.

[14] On 28 April 2014, the Central Bank of Brazil enacted resolution No. 4327, which establishes guidelines for financial institutions and other organizations whose operations it authorizes in connection with the creation and implementation of social and environmental responsibility policies. See www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/environmental_policy.html.

[15] *Agência Nacional de Vigilância Sanitária* (ANVISA).

[16] See Brazil, Industrial Property Law No. 9.279 of 1996, art. 229-C.

[17] Guiding Principle 4 clarifies that, as part of their duty to prevent and address adverse human rights impacts arising from business activities, States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

[18] See Senate bill No. 555 of 2015, available at www25.senado.leg.br/web/atividade/materias/-/materia/122838.

Guiding Principles, and key aspects of the corporate responsibility to respect human rights, such as having a human rights policy and a grievance mechanism and undertaking human rights due diligence.[19] In 2013, the Government facilitated a commitment[20] by State-owned enterprises to better comply with the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Corporations, including the chapter on human rights, which is aligned with the Guiding Principles. In addition, the National Confederation of Industry participated in the first annual Global Employers' Summit, in Bahrain in 2015. The outcome document of the Summit, the Bahrain Declaration, calls for the implementation of the Guiding Principles.[21] Although all this is encouraging, increased awareness of the Guiding Principles and of business and human rights issues is needed in addition to accountability mechanisms to track progress in implementing commitments made.

V. Issues related to large-scale development projects

18. The Growth Acceleration Programme has promoted public and private investment in large-scale development projects. Many projects have had significant adverse human rights impacts on local communities, as documented by a special commission of the National Council on Human Rights, which studied seven large-scale development projects, including hydropower plants and mines, over a period of four years.[22]

19. The Working Group heard testimonies from affected communities about cases related to extractive industries, agribusiness and construction, including the Belo Sun gold mining project on the Xingú River in Pará; development projects in Sepetiba Bay, Rio de Janeiro, which reportedly caused industrial pollution, skin and lung disease and destroyed the local fishing economy; intimidation against activists seeking to prevent business-related human rights harm resulting from the Suape Port and industrial complex in Recife, Pernambuco; hydro-electric dams proposed for the Tapajós River in Pará; the Grande Carajás project in Pará, the largest open-pit iron ore mining complex in the world, which reportedly affects 100 communities and is responsible for the railway connecting the mine to the Ponta da Madeira port in Maranhão and which has reportedly brought deforestation, land conflict, pollution and violence to the area, to the detriment of the indigenous peoples; and the Açu logistics industrial port complex, located in São João da Barra, which reportedly affects the water supply and housing of the population in local mining towns. The cases illustrate recurrent concerns such as pollution, lack of consultation, inadequate government oversight, land expropriation, health impacts and destruction of communities.

20. Due to time constraints, it was not possible to study the cases in great depth, however, the Working Group looked closely at a few cases that illustrated the recurrent concerns raised.

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[19] See www.senado.leg.br/atividade/rotinas/materia/getPDF.asp?t=177883&tp=1.

[20] Signed by the Organization for Economic Cooperation and Development (OECD) National Contact Point for Brazil, Banco do Brasil, Caixa Econômica Federal, Eletrobras and Itaipu. See OECD, *Annual Report on the OECD Guidelines for Multinational Enterprises* (2014), p. 25, available at www.oecd.org/daf/inv/mne/MNE-Annual-Report-2014-NCP-Activities.pdf.

[21] See www.employerssummit.com/Bahrain_Declaration_EN.pdf.

[22] See www.sdh.gov.br/sobre/participacao-social/cddph/relatorios/relatorio-c.e-atingidos-por-barragens.

A. Belo Monte

21. The Working Group visited Altamira and Belém in the State of Pará to look into the construction of the Belo Monte hydropower plant,[23] located along the Xingú River. The Belo Monte dam was due to become operational in March 2016 and provide energy for 60 million people in 17 states.[24] Located in an area comprising 11 indigenous lands and 2 indigenous areas (although the Government emphasized that the dam itself was not located on indigenous lands), Belo Monte is being constructed by Norte Energia, a consortium of 10 Brazilian public and private energy companies and investment funds. Its major shareholder is Eletrobras, a State-owned enterprise. Although construction had almost been completed, in 2015, both the Federal Public Ministry and the Brazilian National Indian Foundation advised against granting the operating licence as Norte Energia had not met the licence conditions to mitigate adverse social and environmental impacts. In response to human rights concerns and at the request of the Federal Public Ministry, an interministerial fact-finding mission was carried out in June 2015. It formulated 55 specific observations concerning the lack of implementation of mitigation measures to protect against adverse human rights impacts.[25] Despite this, the Brazilian Institute of Environment and Renewable Natural Resources granted the operational licence on 24 November 2015.

22. A court filing made on 7 December 2015 with the Federal Court in Altamira, Pará, by the Federal Public Ministry accused the Federal Government and Norte Energia of ethnocide owing to the destruction of indigenous society and culture during the construction of the dam.[26] The impacts of the Belo Monte dam were considered by the Inter-American Commission on Human Rights in April 2011, further to a request for precautionary measures on behalf of indigenous communities of the Xingu River Basin in Pará. The request was granted on the basis that the life and physical integrity of the communities were at risk owing to the impact of the construction of the Belo Monte dam.[27] The Commission requested Brazil to suspend the licensing process and cease construction work until certain conditions were met.[28] The Commission evaluated the precautionary measures in July 2011 and removed the request to suspend construction work, while requesting the State to adopt measures to protect the life and health of the indigenous communities affected by the Belo Monte project. The Commission opened a case against Brazil on 21 December 2015, to which Brazil is required to respond.

23. The Working Group met with officials of Norte Energia, affected communities, indigenous peoples and public prosecutors, in Altamira, and with state authorities in Belém to assess the measures taken to identify and prevent human rights risks and mitigate adverse human rights impacts. Norte Energia informed the Working Group of the socio-environmental actions undertaken in accordance with the licensing conditions, such as a programme to combat malaria and the construction of water, sewage and landfill facilities, health clinics, schools, a hospital in Altamira and a fish market. While these will likely be

[23] The world's third-largest hydroelectric power plant.

[24] See www.pac.gov.br/noticia/6906a06e.

[25] See www.prpa.mpf.mp.br/news/2015/arquivos/Relatorio_inspecao_ribeirinhos_Belo_Monte_junho_2015.pdf/.

[26] See www.prpa.mpf.mp.br/news/2015/arquivos/ACP_Belo_Monte_Componente_Indigena_2.pdf.

[27] The communities concerned are: the Arara of Volta Grande do Xingu; Juruna of Paquiçamba; Juruna of "Kilómetro 17"; Xikrin of Trincheira Bacajá; Asurini of Koatinemo; Kararaô and Kayapó of the Kararaô indigenous lands; Parakanã of Apyterewa; Araweté of the Igarapé Ipixuna; Arara of the Arara indigenous lands; Arara of Cachoeira Seca; and Xingu Basin indigenous communities in voluntary isolation.

[28] See Organization of American States, PM 382/10 (2011), available at www.oas.org/en/iachr/indigenous/protection/precautionary.asp#382-10.

of benefit to the local population, Norte Energia did not seem to have a human rights-based approach. The Working Group heard claims of a lack of engagement and consultation on the part of Norte Energia and a lack of recognition of its responsibility to exercise human rights due diligence and avoid causing human rights harm. State authorities in Belém said that a school built by Norte Energia was just a temporary container that was inadequate for the hot Altamira climate and it was now being used as a warehouse. Riverine people reported that they had been resettled in housing far from the river — their main source of livelihood — with no infrastructure. In both cases, there appeared to have been limited or no consultation with affected communities about effective mitigation measures. In a report on assessments forming part of the technical reports produced by the Brazilian Institute of Environment and Renewable Natural Resources, Instituto Socioambiental emphasized that the Brazilian Institute did not consider whether the homes built to rehouse displaced people were suitable for the local cultural conditions, only whether an adequate number of homes had been built. If true, this would be a weakness in the Brazilian Institute's oversight of compliance with environmental licensing conditions intended to mitigate the loss suffered by affected communities.[29]

24. Reportedly, there was little planning to prepare Altamira for the large influx of construction workers,[30] and the population growth resulting from the commencement of construction work was accompanied by cases of violence, trafficking, sexual exploitation of women and girls and alcohol abuse. The Secretariat of Human Rights highlighted the sexual exploitation of children in the context of displaced populations and the construction of hydroelectric dams.

25. The Working Group visited the Independente II neighbourhood, a poor residential area of 400 houses in Altamira, which is to be flooded when the dam reservoir is filled. Residents reported that Norte Energia had resisted resettling them and they had not received any information nor had they been consulted on their resettlement. Following advocacy by civil society organizations, the Brazilian Institute of Environment and Renewable Natural Resources included a new licensing condition in November 2015, which requires Norte Energia to provide alternative housing for the residents of Independente II before October 2016. Residents were worried this would not happen and they did not have information about relocation plans.

26. Testimonies pointed to a failure to fully consider the social and cultural contexts surrounding the Belo Monte project and to take seriously the duties owed to the members of the affected communities, in accordance with human rights standards. Those responsible for development projects have the duty to prevent disruption to the life of those living in local and indigenous communities and to ensure adequate protection for vulnerable groups. Given the involvement of State-owned enterprises in the project, the Federal Government would also be expected to use its leverage to ensure that effective human rights due diligence is implemented.

27. The Government informed the Working Group that human rights issues were included in environmental licensing rules relating to large development projects and cited, for example, resolution 1/1986 of the National Council on the Environment. It emphasized that, apart from the judiciary and federal prosecutors, many governmental bodies, including the Brazilian National Indian Foundation and the Fundação Cultural Palmares (responsible for people of African descent) participate in the licensing process associated with large

[29] See the technical note on compliance with environmental conditions of the Belo Monte plant (Altamira, 7 March 2013).

[30] Federal prosecutors said that the population of Altamira swelled from 70,000 to 300,000.

development projects. It maintained that local communities were consulted and informed about the Belo Monte project through public hearings.

B. Mining and the Doce River disaster

28. The Working Group met with state authorities, businesses, civil society and community representatives in Minas Gerais, the state with the highest concentration of mines. The Working Group's visit took place following the rupture, on 5 November 2015, of the Fundão tailings dam in the district of Mariana — referred to as the worst environmental disaster in Brazil. The tailings dam operated by the mining company Samarco Mineração SA[31] contained iron ore residue. The dam rupture resulted in the release of 55 million to 60 million cubic metres of mining residue into the Doce River, inundating villages with mud, destroying the towns of Bento Rodrigues and Paracatu de Baixo and causing the death of 18 people (with one person missing)[32] and affecting the lives of the 3.2 million people who live along the Doce River. The mud travelled more than 600 kilometres down river to the ocean, killing fish, fauna and flora, and causing a major social and environmental crisis that affected the livelihood and access to drinking water of the population, including the Krenak indigenous community and thousands of fishermen who depend on the river.

29. The Working Group met with executives of Samarco, Vale and BHP Billiton to discuss the actions taken since the disaster. It also met with people affected from Mariana, Minas Gerais and Espíritu Santo, and state and federal prosecutors involved in the case. Affected communities were concerned about receiving support to rebuild their lives and worried about the health and environmental risks posed by the contaminated river and ocean, and the lack of information in that regard. They did not trust the information provided by Samarco, including assurances that the tailings did not include toxic material and that the water was safe to drink following the installation of provisional water treatment facilities. They were also concerned that more dams could collapse. The Working Group noted that it had taken almost two weeks for Samarco to announce that two other structures[33] were unsafe and that there had been a failure in the company's contingency plan as people had not been alerted about the disaster, despite the 10-hour interval between the dam rupture and the flooding of Barra Longa. Prior warning would have allowed people to save belongings and might have saved lives.

30. While the Working Group considered it positive that it was the Chief Executive Officer who led the company's response and showed willingness to consult with the communities and to provide just compensation to those affected, it encouraged Samarco to pay close attention to critical voices and to be transparent and explain the failings in the early response to the disaster. The Working Group emphasized the need to restore trust by improving consultation and ensuring access to information and essential services. It also advised Samarco to create an environment where people, including its employees, could express concerns without fear of reprisal.

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[31] Owned in equal parts by Vale and BHP Billiton.

[32] The disaster prompted press releases and a communication from special procedure mechanisms. See for example, "Brazilian mine disaster: 'This is not the time for defensive posturing' – UN rights expert", at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16803&LangID=E; "Brazil mine disaster: UN human rights expert calls for urgent access to safe drinking water", at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16855&LangID=E; and BRA 10/2015 of 24/11/2015 in A/HRC/31/79, p. 157.

[33] The Santarém dam and the Selinha dike.

31. Given the scale of the disaster, the Working Group considered that the federal and state authorities could have done more in the aftermath. While the Office of the Presidency informed the Working Group about the relief efforts made, members of affected communities indicated a need for federal and state authorities to provide them with more information about the resettlement process and compensation. Although Samarco is responsible for repairing the damage caused, the Federal Government remains the primary duty bearer required to uphold the human rights of affected communities.

32. The Working Group notes that, in March 2016, Samarco agreed to settle a civil public claim brought by the Brazilian authorities on 30 November 2015,[34] and cautions the importance of thoroughly assessing the level of damages needed to engage in the lengthy remediation work required and to ensure adequate compensation to every affected person, on the basis of full consultation with everyone concerned, bearing in mind that no financial settlement can bring back lives lost or fully compensate for suffering endured.[35]

33. While the exact cause of the collapse of the Fundão dam is still unknown, such events should never occur. The incident underlines the importance of strict licensing rules, proper regulatory oversight and contingency plans. The Working Group is concerned that, with the large number of dams and mining sites in Minas Gerais, in particular, and the country, in general, there is limited capacity, at individual state and federal State levels, to conduct safety inspections in order to ensure that this tragedy will never be repeated.

C. Construction work for the 2016 Olympics

34. The 2014 World Cup and 2016 Olympic Games have led to a construction boom.

35. A human rights concern related to mega sporting events is the need to ensure adequate safeguards for people who are pressured to resettle in order to make way for construction projects. In 2011, the United Nations Special Rapporteur on the right to adequate housing highlighted cases of displacement and evictions in São Paulo, Rio de Janeiro and Belo Horizonte.[36] Similar concerns were raised and a recommendation — which was supported by Brazil — was made in the context of the universal periodic review in 2012.[37]

36. The Working Group visited Vila Autódromo, a neighbourhood of Rio de Janeiro close to the Olympic construction sites, where about 100 people, to whom the state government reportedly issued land titles, were refusing to leave their homes. Many other members of the community had accepted resettlement and compensation.

37. The Working Group was informed that, in June 2015, there was a violent clash with residents as municipal security forces (*Guarda Municipal*) sought to break a human chain that the community had formed around two homes which were going to be demolished. The

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[34] See www.brasil.gov.br/meio-ambiente/2016/03/2018rio-doce-sera-melhor-que-antes-da-tragedia2019-diz-agu-ao-anunciar-acordo.

[35] The Working Group notes that the settlement does not relate to any reported criminal investigation under way, possible legal action in the affected states or reported personal and class action claims.

[36] See “Right to housing at risk as Brazil prepares for World Cup and Olympics – UN expert”, at www.un.org/apps/news/story.asp?NewsID=38189#.VzLlv01f1u3.

[37] See A/HRC/21/11, para. 119.57: Ensure that urban restructuring in advance of the 2014 World Cup and the 2016 Olympics be properly regulated to prevent displacements and forced evictions, and that residents in affected areas are given full and timely information about proposals affecting them; engage in a genuine negotiation with the communities to explore alternatives to eviction; and, where necessary, offer compensation or alternative adequate housing close to the existing communities.

Working Group heard testimonies from residents who had been part of the human chain and saw photographs of the violent treatment that elderly residents were subjected to by the municipal security forces, resulting in bloodied faces and injuries. The community said that the Mayor had stated that people could stay in their homes and that no one would be forced to leave. However, as the Working Group witnessed, life for those who remained in Vila Autódromo was being made physically and psychologically unsafe. Residents were surrounded by construction sites and reported frequent cuts to the electricity and water supply. Destroyed buildings peppered the area and wide trenches of noxious-looking black liquid could be seen along the perimeter of the community.

38. The Working Group subsequently received information about the continuing difficulties faced by residents, including the demolition of homes without warning and the destruction of the community centre in which the Working Group had held meetings.

39. The Working Group also met with the Rio 2016 Committee Head of Sustainability, Accessibility and Legacy, who set out the steps taken in preparation for the Olympic Games, which included requiring suppliers to comply with the Ethical Trading Initiative and register with the Supplier Ethical Data Exchange (Sedex) to complete audits of supply chains and launching a child-protection campaign with 20 organizations, which included working with hotel chains and taxi drivers to prevent the sexual exploitation of children, and with Olympic venues regarding how to deal with lost children and alcohol consumption by children. The Working Group also learned how the Rio 2016 Sustainability Management Plan was designed with the engagement of federal, state and municipal governments and civil society organizations.[38] The Working Group referred to the situation it had observed at Vila Autódromo and, given that the construction around Vila Autódromo is taking place owing to the holding of the Olympics, it encouraged the Rio 2016 Organizing Committee to take an interest and put forward concerns about the situation in its discussions with the Mayor and other municipal authorities. The meeting also focused on how the Organizing Committee had leverage on human rights issues, especially during a bidding stage, and on the importance of incorporating human rights issues into mega sporting events contracts.

D. General observations

40. While Brazil has a well-developed legal framework and regulations and mechanisms to protect human rights against business-related harm, the Working Group considers that regulatory agencies such as the Brazilian Institute of Environment and Renewable Natural Resources and the Brazilian National Indian Foundation should be strengthened to ensure that they are able to act unhindered and independently as a check against adverse human rights impacts in the context of large-scale development projects. Rights holders who may be affected by development projects must be provided with sufficient support to enable them to be in a balanced negotiating position vis-à-vis a company. Effective stakeholder engagement, especially enabling the voice of the most vulnerable, is particularly important. The Working Group observed that, in some cases, without the support of civil society and public prosecutors, affected communities would be virtually powerless.

41. A common theme that was reported to the Working Group in relation to large-scale development projects was concern that measures to mitigate adverse human rights impacts were conceived and implemented without effective and meaningful prior consultation. In this regard, the Working Group underlines the importance of Government and businesses carrying out human rights due diligence and consultation with affected communities, in line with the Guiding Principles, guidance provided by the Committee on Economic, Social and

[38] See www.rio2016.com/en/news/rio-2016-launches-sustainability-management-plan-and-signs-agreement-with-the-un.

Cultural Rights,[39] the Basic Principles and Guidelines of Development-based Evictions and Displacement[40] and the Guiding Principles on Internal Displacement.[41] In the case of indigenous peoples, the Working Group highlights the requirement of free, prior and informed consent regarding relocation, as provided for in the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), which Brazil has ratified, and the United Nations Declaration on the Rights of Indigenous Peoples. Where resettlement is unavoidable, international human rights standards require that the people affected be provided with fair compensation and not be deprived of their sources of livelihood.

42. The Working Group was pleased to learn about efforts under way to better address and mitigate human rights impacts of large-scale development projects. In this regard, it noted that the legislative proposal of the government of Minas Gerais regarding persons affected by dams and other enterprises was submitted on 9 March 2016 to the State Assembly for approval.[42] The proposed law aims to ensure the human rights of populations affected by the planning, implementation and operation of dams and other projects. A similar policy was established by decree in the State of Rio Grande do Sul, in 2014. The Working Group commends these initiatives.

43. At the same time, the Working Group noted with concern the developments that seemed to be going in the opposite direction. It learned that a Senate committee had passed a legislative initiative[43] to fast-track the licensing process — from three steps to one step — to make it simpler and quicker to obtain a licence for infrastructure works considered to be in the strategic national interest. The Working Group also learned that the proposed amendments to the Mining Code[44] included the elimination of some environmental protections in relation to areas to be exploited by mining activity and provisions to assign to the relevant mining company the right to use water for its operation without protecting water for human use.

44. The Working Group is also concerned by the increasing use of the legal mechanism, "safety suspension" (*suspensão de seguranca*), which allows the president of a higher court, at the request of a public entity, to suspend the legal decision of a lower court to block a development project from going forward by justifying that the project is a matter of public interest.[45] The Working Group was informed by prosecutors that this is an atypical instrument that cannot be challenged once the higher court decision is taken and that it operates in favour of the federal State. This appears to be a disproportionate instrument, the use of which could pit the power of the federal State against affected communities.

45. The Working Group also noted concerns about undue corporate influence on regulatory and policymaking processes and that the Government's capability to oversee business operations may, in some cases, be affected by political financing processes and

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[39] See Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions.

[40] A/HRC/4/18, annex 1, paras. 38-39.

[41] E/CN.4/1998/53/Add.2, annex.

[42] See Brazil, Bill No. 3312/2016, available at www.almg.gov.br/atividade_parlamentar/tramitacao_projetos/texto.html?a=2016&n=3312&t=PL.

[43] See Brazil, Senate bill No. 654/2015, available at www25.senado.leg.br/web/atividade/materias/-/materia/123372/pdf.

[44] See Brazil, Bill No. 5807/2013, available at www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=581696.

[45] See www.stf.jus.br/portal/glossario/verVerbete.asp?letra=S&id=218.

corporate lobbying.[46] Such perceptions have been exacerbated by a series of corruption scandals involving major companies and elected politicians. The Working Group encourages the Government to take measures to address such concerns. In this regard, it notes that, in September 2015, the Supreme Court of Brazil ruled that provisions in the electoral law that allowed companies to make donations to the electoral campaign funds of political parties were unconstitutional and that, for future elections, donations could only be received from public electoral funds and made by individuals.[47] The Working Group noted that the anti-corruption law makes companies strictly liable for the corrupt acts of their employees and that the legal system is investigating corruption. In several cases, public officials, politicians and the chief executive officers of large companies have been held to account for such offences.

VI. Specific issues

A. Indigenous peoples

46. Brazil has about 240 tribes, totalling around 900,000 people, or 0.4 per cent of the population. Thirteen per cent of the country, that is, 690 territories, is recognized as indigenous land, nearly all of which (98.5 per cent) lies in the Amazon region.[48] The Working Group repeatedly encountered human rights concerns affecting indigenous peoples and the Quilombolas, people of African origin. Over past decades, indigenous peoples have been subjected to forced displacement owing to the expansion of agribusiness and large-scale development projects. In addition to concerns related to development projects in Amazonas, the Working Group was alarmed to learn from civil society and federal prosecutors about the lack of effective consultation with indigenous peoples and violent social conflict in Mato Grosso do Sul, perpetrated by armed militias and private security companies in the context of the intrusion of agribusiness on indigenous land and ineffective or incomplete demarcation of indigenous land. Information gathered by the Missionary Council for Indigenous Peoples documented the murders of 138 indigenous persons in Brazil in 2014, almost one third of which (41 murders) took place in Mato Grosso do Sul. The registration of 138 murders in 2014, up from 97 murders registered in 2013, reveals a worrying upward trend.[49]

47. The Working Group is concerned about indigenous land that has not yet been demarcated.[50] The indigenous peoples and civil society organizations with whom it met were anxious about a proposed Constitutional amendment, PEC 215/2000, which would

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[46] According to the Superior Electoral Court of Brazil, about 76 per cent of the over R$ 3 billion (approx. US$ 790 million) in donations made during the 2014 election campaigns for the Presidency, the Senate and Congress were made by corporate entities, up from 66 per cent in 2006. See www.tse.jus.br/imprensa/noticias-tse/2015/Janeiro/presidente-do-tse-fala-sobre-financiamento-de-campanha-eleitoral-em-evento-na-republica-dominicana.

[47] See Brazil, Federal Supreme Court, ADI 4650 / DF - Distrito Federal ação direta de inconstitucionalidade, 17 September 2015, available at www.stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=%28%40JULG+%3D+20150917%29&base=baseAcordaos&url=http://tinyurl.com/opfzm6r.

[48] See http://indigenas.ibge.gov.br/.

[49] See Missionary Council for Indigenous Peoples, *Report: Violence against Indigenous Peoples in Brazil - 2014 Data* (2015), p. 73, available at www.cimi.org.br/File/Report%20Violence.pdf. Based on information requested under the Access to Information Act (Law No. 12.527/2011) from the Special Secretariat of Indigenous Health.

[50] See Brazil, Federal Constitution, art. 231.

transfer decisions on the demarcation of indigenous territories from the Brazilian National Indian Foundation and the President (the executive branch) to Congress. The Working Group queries the appropriateness of such a step and underlines the importance of prompt land demarcation and of upholding the rights of indigenous peoples as provided for in ILO Convention No. 169 and the Federal Constitution. In this regard, the Working Group notes the concerns expressed by Supreme Court Justice Luís Roberto Barroso about the constitutionality of amendment PEC 215/2000. On 23 September 2013, on rejecting an application for an injunction (MS 32262) against PEC 215/2000, he stated that it was "not unreasonable for the authors of the injunction to claim that the constitutional protection of indigenous rights could be undermined by assigning to the competence of the legislature the demarcation of the lands they traditionally occupy". He pointed out that, "in a matter of principle, to make the recognition of a fundamental right subject to the decision of a political majority seems to contradict its own reason for being. … These rights are included in the Constitution precisely so that the majority has no power over them".[51]

B. Human rights defenders

48. The Guiding Principles on Business and Human Rights recognize the valuable role played by civil society organizations and human rights defenders. Guiding Principle 18 underlines their essential role in identifying and accessing potential adverse business-related human rights impacts, while the commentary to Guiding Principle 26 underlines how States, in order to ensure access to remedy, should ensure that the legitimate activities of human rights defenders are not obstructed. The Special Rapporteur on the situation of human rights defenders stated that laws and policies that explicitly and implicitly protect business interests, both legal and illegal, at the expense of human rights in the Americas are a challenge for States in the region.[52]

49. Human rights defenders in Brazil increasingly face death threats for raising their voices when their rights are compromised by economic interests, as documented in a 2014 Global Witness report[53] that revealed that, out of 116 killings in 17 countries in 2014, 29 occurred in Brazil and were mainly relating to conflict over land ownership, control and use, and were commonly committed by the police and private security providers. Regarding the latter, following a ruling by the First Civil Court of Cascavel, Paraná, in November 2015, the Swiss transnational agribusiness company, Syngenta, was required to compensate the family of Valmir Mota de Oliveira, who was killed by Syngenta security guards, provided by NF Segurança, in October 2007, during a protest at a Syngenta research site in Santa Tereza do Oeste, Paraná.

50. The Working Group learned about the National Programme for the Protection of Human Rights Defenders, a federal programme that is implemented at the individual state level.[54] In Minas Gerais, it met with five of the 51 human rights defenders currently in the programme and who face difficulties, owing to their work, to uphold the rights of the population against agribusiness, logging and mining companies. They reported a very high level of intimidation, threats, murder and social exclusion and disregard on the part of the police for the issues they contend with. The Working Group learned about the implementation of this programme in Amazonas, where 74 human rights defenders receive assistance. The human rights defenders affected are form indigenous and traditional

[51] See www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=248972.

[52] See A/HRC/31/55/Add.1, para. 108.

[53] See www.globalwitness.org/en/campaigns/environmental-activists/how-many-more/.

[54] Established by Decree No. 6.044 of 12 February 2007. See www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6044.htm.

communities, poor people living in urban suburbs, women and people of African descent, including from the Quilombo community. Although the human rights defenders with whom the Working Group met appreciated the support, they agreed that the programme could not prevent or address all the threats they faced and they have had to move to other regions because of threats to their lives. The Working Group learned that the programme had a limited budget and few staff, and that some donors considered Brazil a developed nation that was not in need of funding for this type of human rights protection work. The Working Group was informed that the Minas Gerais programme is the most advanced in Brazil. Despite good intentions, as the programme cannot achieve all of its goals owing to funding constraints, this poses questions for the adequacy of protection mechanisms in less well-funded parts of Brazil.

C. Labour rights

51. The Working Group heard from prosecutors, the Ministry of Labour and Employment and civil society about the labour issues in Brazil. It learned about federal government policies aimed at eradicating child labour, such as the 1996 Programme to Eradicate Child Labour, led by the Ministry of Social Development and Fight against Hunger, and the 2004 National Plan for Preventing and Eradicating Child Labour and Protecting the Working Youth.

52. The Working Group learned that the definition of slave labour in article 149 of the Brazilian Penal Code is wider than the definition in ILO Forced Labour Convention, 1930 (No. 29), and includes provisions regarding restriction on freedom; servitude by debt; degrading working conditions; and exhaustive working hours. It also learned about a Senate bill[55] that attempted to weaken the definition by removing the provisions on degrading working conditions and exhaustive working hours, and cautioned against weakening the strong labour protections for which Brazil has been recognized.

53. The Working Group was informed that, in 1995, an interministerial body was launched to coordinate action against slave labour and that the Ministry of Labour and Employment had launched a special mobile enforcement group to work with the police and prosecutors to investigate companies suspected of using slave labour. Companies placed on the so-called "dirty list"[56] that effectively named and shamed companies caught using slave labour in their supply chains were banned from government contracts, their access to credit and public financing was limited and other companies were discouraged from doing business with them. The Working Group learned that the list was an effective tool for making labour records transparent and for holding companies accountable for using slave labour. In December 2014, the President of the Supreme Court of Brazil granted an injunction — filed by the Brazilian Association of Real Estate Developers — ordering the suspension of the publication of the dirty list. Human rights organizations are challenging that injunction. Through a freedom of information request,[57] *Repórter Brasil* obtained from the Ministry of Labour and Employment a list of employers found to have used slave labour between 2012 and 2014[58] and a list of 340 Brazilian companies found to have employees

[55] Brazil, Senate bill No. 432/2013, see www25.senado.leg.br/web/atividade/materias/-/materia/114895.

[56] See Emdiscussão, "Lista suja", established by Ministry of Labour and Employment Decree No. 540/2004, available at www.senado.gov.br/noticias/Jornal/emdiscussao/trabalho-escravo/lista-suja.aspx.

[57] Under the Freedom of Information Law No. 12.527/2011.

[58] See list at http://reporterbrasil.org.br/documentos/lista_06_03_2015.pdf.

working in slave-like conditions.[59] The Working Group considers the dirty list to be a useful tool and commends the initiative. It was concerned to learn about the suspension of the publication of the list and noted that the Government has indicated that it would like to reactivate it. While understanding that the legal process must run its course, the Working Group supports lawful actions, like freedom of information requests, to make publicly available information about employers found to be using slave labour. The Working Group hopes that the suspension of the publication of the Dirty List will soon be lifted.

54. The Working Group was also informed about issues relating to health and safety at work, including exposure of agricultural workers to poisonous chemicals that are banned in Europe and that some labour prosecutors would like banned in Brazil. It was also told about problems relating to the increased use of outsourcing, specifically a lack of control and oversight of supply chains, leading to a lack of accountability for abuses suffered by workers in the supply chain. Labour prosecutors reported that, despite the fact that Brazil has ratified ILO Labour Clauses (Public Contracts) Convention, 1949 (No. 94), it was not being adequately implemented or enforced and it should be, particularly in relation to large development projects, as it applies to work carried out by subcontractors or assignees of contracts. The Ministry of Labour and Employment, through investigations undertaken by labour inspectors, oversees compliance with Brazilian labour legislation and ILO standards, and has the power to issue fines in cases where it finds a violation. The Working Group encourages the Ministry of Labour and Employment to ensure that compliance with all ILO standards is effectively monitored.

55. Labour unions are recognized in Brazil and can engage in collective bargaining agreements. The Working Group learned about vaguely worded anti-terrorism legislation that was discussed in Congress (bill 101/2015), which prosecutors feared would be used to quash legitimate protest, including protests by trade unions relating to working and social conditions. The Working Group was informed that the anti-terrorism legislation (Law 13260/2016) was approved by the National Congress in February 2016, and it underlines the importance of protecting the rights of workers to organize and protest.[60] The Government stated that such rights are protected in the legislation. The Working Group encourages the Government to ensure the independence of trade unions so that they can effectively advocate for workers' rights.

VII. Access to remedy

A. State-based judicial mechanisms

56. Ensuring access to effective judicial mechanisms is essential.[61] Accessible and effective judicial remedies are particularly important in the light of the imbalance between alleged victims and perpetrators of business-related human rights abuse. The 2013 Access to Justice Atlas published by the Ministry of Justice enables anyone to find the correct judicial or other body to which they can file a complaint, while the "ABC of Rights" explains legal terms in accessible language.[62] The Working Group was impressed by the competence and dedication of the Federal Public Ministry prosecutors and state-level

[59] See list at http://reporterbrasil.org.br/wp-content/uploads/2016/02/listadetransparencia_fevereiro2016.pdf.

[60] See "Brazil anti-terrorism law too broad, UN experts warn", at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16709&LangID=E.

[61] See Guiding Principles 26 and 27.

[62] See www.acessoajustica.gov.br/.

prosecutors it met who work independently of the three branches of Government to defend judicial order, the democratic regime and social and individual interests. Some 1,000 federal public prosecutors and 12,000 state-level public prosecutors investigate and initiate legal proceedings against state authorities and business enterprises on behalf of private individuals or communities. In many cases of alleged business-related human rights abuses, public prosecutors assist communities in mediating with companies or submitting law suits. For example, public prosecutors are working with the affected communities to ensure compensation following the collapse of the Fundão tailings dam. The Working Group commends the work of the Federal Public Ministry and considers that a strong and resolute body of prosecutors who are able to challenge decisions taken by public bodies and business enterprises is indispensable. The Working Group also learned about the important work of federal and state public defenders who, according to federal legislation, are charged with "the defence of the prevalence and effectiveness of human rights".

B. State-based non-judicial grievance mechanisms

57. In addition to the courts and administrative tribunals, non-judicial mechanisms play an important role in ensuring access to remedy for business-related abuses.[63] While, in many countries, national human rights institutions are empowered to examine complaints of human rights violations, Brazil does not have an independent national human rights institution.[64] However, there is the National Council on Human Rights, comprising representatives from Government, the Federal Public Ministry and civil society, that has prepared reports on business-related human rights issues.[65] Members of the National Council on Human Rights said that their recommendations are rarely implemented by the Government. There is room for more dialogue between the Government and the National Council on Human Rights and for an independent national human rights institution to be developed in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).[66]

58. The Working Group met the OECD National Contact Point in the Ministry of Finance and learned how its work has been reprioritized by the Government. The National Contact Point is an inter-agency body that examines cases related to alleged non-compliance with the OECD Guidelines for Multinational Enterprises,[67] particularly with regard to labour rights and environmental issues. The Working Group was informed that an obstacle to the effectiveness of the National Contact Point is the reluctance of companies to acknowledge responsibility for adverse human rights impacts. While the Working Group was pleased to hear about the commitment signed by the National Contact Point and some State-owned enterprises to better promote and uphold the OECD Guidelines, it underlines the importance of accountability mechanisms to track progress on commitments made. The Working Group also encourages more State-owned enterprises to commit to complying with the OECD Guidelines.

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[63] See Guiding Principle 28.

[64] In 2009, the Committee on Economic, Social and Cultural Rights recommended that Brazil establish an independent national institution for the promotion and protection of human rights, in accordance with the Paris Principles (E/C.12/BRA/CO/2, para. 7); in 2010, the Special Rapporteur on the right to food recommended the same (A/HRC/13/33/Add.6, para 51 (a)): and, in 2012, several States made recommendations to that effect in the context of the first cycle of the universal periodic review (A/HRC/21/11), which Brazil supported (A/HRC/21/11/Add.1).

[65] See www.sdh.gov.br/sobre/participacao-social/cddph.

[66] See General Assembly resolution 48/134, annex.

[67] See OECD, *OECD Guidelines for Multinational Enterprises* (2008). Available at www.oecd.org/corporate/mne/1922428.pdf.

C. Non-State-based grievance mechanisms

59. The Working Group learned about different types of operational grievance mechanisms used by companies and found that the understanding of the value of non-State-based grievance mechanisms was varied. While operational grievance mechanisms are not meant to substitute for judicial mechanisms, in cases of serious human rights abuse they can play an important role in providing access to remedy for individuals or communities who are adversely affected by a business enterprise. The Working Group considers that publicly accessible information about the outcome of operational grievance mechanisms is crucial and is therefore concerned that, in a January 2016 report,[68] it is stated that the ombudsperson of the Brazilian Development Bank (BNDES) provided "no information regarding the content of past or pending complaints, the outcomes of closed cases or the rationale for determinations regarding individual complaints".

VIII. Strengthening the policy framework

60. The Working Group appreciates the initiatives taken by the federal and state governments to promote and protect human rights and recognizes the efforts to strengthen the business and human rights policy framework. It was pleased to hear about the six meetings between 40 representatives of 25 State-owned enterprises and government officials from different ministries, including the Ministry of Women, Racial Equality and Human Rights, the Ministry of Labour and Employment and the Ministry of Culture, to inform an action plan for State-owned enterprises on business and human rights.

61. The Working Group strongly encourages the Government to develop a full national action plan on business and human rights based on the framework of the Guiding Principles on Business and Human Rights, and to use the guidance prepared by the Working Group for the preparation of such action plans. As the guidance document underlines, such plans need to be developed in inclusive and transparent processes. Relevant stakeholders need to be allowed to participate in the development and updating of the national action plan and their views need to be taken into account. Information needs to be shared transparently at all stages of the process.[69]

62. The process of developing a national action plan would help the Government to identify areas of particular risk, decide which laws, regulations, policies and areas of oversight should be prioritized and strengthened, and determine ways to improve the access to remedy for victims of adverse business-related human rights impacts through State-based and non-State-based grievance mechanisms.[70] The Working Group notes that a conference on human rights and business, organized by the Global Compact Network Brazil, Fundação Getulio Vargas and the United Nations country office in Brazil, concluded with the adoption of a statement of support for a national action plan. The statement is to be presented to the upcoming National Conference on Human Rights.[71] The Working Group hopes that its findings and recommendations on opportunities for improvement presented in

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[68] See C. Daniel and others, eds., *Glass Half Full? The State of Accountability in Development Finance* (Amsterdam, SOMO, January 2016), available at http://grievancemechanisms.org/resources/brochures/IAM_DEF_WEB.pdf.

[69] See Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights* (November 2015), available at www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf.

[70] See Guiding Principles 25-31.

[71] See www.pactoglobal.org.br/Noticia/216/Empresas-participam-da-construcao-de-politicas-publicas-em-direitos-humanos.

the present report will be useful to the process of developing a national action plan on business and human rights.

63. During its visit, the Working Group identified the need for improved coordination and dialogue on business and human rights issues. In particular, there is a need to create platforms for multi-stakeholder dialogue, involving the Government, businesses and civil society. It was clear from its meetings that it is difficult to gather representatives of companies, the Government and aggrieved communities around the same table. Relations between business and civil society seemed tense. As was emphasized by the Secretariat for Human Rights, there is also a need for all ministries to engage more closely with civil society.

64. Federal and state authorities mentioned the difficulties encountered in meeting with the management of businesses, which posed problems for the effective oversight and regulation of business activities.

65. A multi-stakeholder approach involving the Government, businesses and civil society would allow for interests to be balanced and the development of well-informed policy that responds more effectively to the needs and concerns of businesses and persons whose rights may be affected by business activities.

66. An independent civil society and media play an important role in promoting transparency and accountability in business operations, particularly where human rights concerns arise. The continued engagement of the active media and civil society will be essential in advocating for progress and monitoring implementation of the Guiding Principles by the Government and businesses.

IX. Conclusions and recommendations

67. **The Working Group welcomes the commitment of the Government of Brazil to the Guiding Principles on Business and Human Rights and its interest in developing a national action plan on business and human rights. As the Government considers how best to advise businesses, including the many State-owned enterprises in Brazil, in relation to their responsibility to respect human rights, the Working Group stands ready to continue the dialogue on how to overcome obstacles on the basis of best international practice.**

68. **A key finding of the visit was the need to further strengthen the support provided to rights holders to enable them to be in a balanced position vis-à-vis companies and public officials. The affected communities with whom the Working Group met conveyed a sense of vulnerability, isolation and rejection by the decision makers and those with power. The Working Group emphasizes the importance of the Government and businesses listening to the voice of the most marginalized. Deeply considering the opinions and experiences of those affected by, for example, large development projects, is essential to ensuring that human rights are not jeopardized in the pursuit of economic growth.**

69. **The Working Group makes the following recommendations to the Government, business enterprises and civil society organizations.**

70. **The Working Group recommends that the Government**:

(a) **Raise awareness and build the capacity of civil servants and lawmakers on the respective obligations and responsibilities of the Government and all business enterprises, including State-owned enterprises, to prevent and address adverse**

business-related human rights impacts, in line with the Guiding Principles on Business and Human Rights;

(b) **Set out clear expectations in relevant policies that all business enterprises in Brazil respect human rights throughout their operations and conduct human rights due diligence in relation to their domestic and international operations;**

(c) **Encourage the Brazilian Development Bank (BNDES) to ensure that bank-funded projects include safeguards against adverse human rights impacts, in line with the Guiding Principles;**

(d) **Develop a national action plan on business and human rights on the basis of multi-stakeholder engagement;**[72]

(e) **Create platforms and strengthen mechanisms for dialogue between Government, businesses and civil society on business and human rights issues;**

(f) **Include human rights considerations in public procurement policies and include the corporate responsibility to protect human rights in procurement contracts;**

(g) **Reinforce the importance of compliance with the Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises in relation to domestic and overseas business activity and highlight the progress made by State-owned enterprises that have already committed to such compliance;**

(h) **Build on the current programmes and policies to combat child and forced labour and avoid weakening safeguards, including the current definition of slave labour;**

(i) **Conduct a review of access to effective remedy with a view to strengthening judicial and non-judicial mechanisms to identify and address business-related human rights abuses;**

(j) **In the context of improving access to remedy, require the ombudsperson of the Brazilian Development Bank (BNDES) to provide information regarding the content of past or pending complaints, the outcomes of closed cases or the rationale for determinations regarding individual complaints;**

(k) **Strengthen the capacity of, the resources allocated to and coordination between the Brazilian Institute of Environment and Renewable Natural Resources and the Brazilian National Indian Foundation in order to strengthen the regulation of large development projects and deliver sustained protection for affected communities;**

(l) **Enhance the technical capacity and the resources of the Brazilian Institute of Environment and Renewable Natural Resources to enable it to better monitor the social and environmental impacts of large development projects and the fulfilment of any conditions imposed in mitigation plans;**

(m) **Strengthen the dam inspection activities undertaken by the National Department of Minerals Research so as to improve governmental oversight and prevent further collapses;**

(n) **Ensure that, where disasters like the collapse of the Fundão tailings dam occur, adequate compensation is provided to all those affected, following full**

[72] See the Working Group's guidance on national action plans.

consultation, and that adequate environmental mitigation and remediation measures are carried out;

(o) **Apply its best efforts to seek to prevent the deletion of key environmental protections from the Mining Code and also apply its best efforts to seek to ensure that infrastructure licensing processes contain thorough social and environmental considerations;**

(p) **Apply its best efforts to seek the appropriate level of resources to enable federal and state prosecutors to continue to challenge the actions of companies and public bodies;**

(q) **Review the current use of the legal mechanism of "safety suspension" with a view to ensuring that it does not amount to an obstacle to access to justice for communities affected by large-scale development projects;**

(r) **Ensure that rights holders and stakeholders (especially the most vulnerable) who may be affected by development projects receive information, including adequate legal advice, in order to be in a balanced negotiating position with a company;**

(s) **Apply its best efforts to provide the Brazilian National Indian Foundation with the resources necessary to properly and promptly carry out indigenous land demarcation and also apply its best efforts to seek to ensure that the demarcation of indigenous land remains the responsibility of the executive branch of Government;**

(t) **Increase resources for the National Programme for the Protection of Human Rights Defenders and place emphasis on alleviating the social, political and economic conditions that place human rights defenders at risk;**

(u) **Provide enhanced human rights training to staff of ministries, officials responsible for environmental licensing and judges so as to ensure that current legal principles, human rights standards and international best practices are known and applied by decision makers.**

71. **The Working Group recommends that all business enterprises, including private enterprises and State-owned enterprises:**

(a) **Comply with their responsibility to respect international human rights by adopting a human rights policy and carrying out human rights due diligence to identify, prevent, mitigate and account for how they address adverse human rights impacts;**

(b) **In assessing actual or potential adverse human rights impacts, ensure meaningful consultation with potentially affected individuals and communities, paying attention to potentially vulnerable or marginalized groups and ensuring that they have timely and complete information about proposed projects or changes that may affect them and the capacity to put forward their opinions;**

(c) **Pay particular attention to how human rights risks affect women, children and men differently, especially regarding construction and infrastructure projects involving access to land and the resettlement of communities;**

(d) **Establish and run operational grievance mechanisms in line with Guiding Principle 31, in order to identify and address adverse impacts;**

(e) **Engage in the development of a national action plan on business and human rights;**

(f) **Engage with the Global Compact Network Brazil and business associations to promote understanding of and to learn from the experiences of implementing the Guiding Principles;**

(g) **Ensure greater focus on safety and contingency plans, particularly companies operating mines and infrastructure development projects, and draw on the United Nations Environment Programme technical report No. 41, "APELL for Mining: Guidance for the Mining Industry in Raising Awareness and Preparedness for Emergencies at Local Level".**[73]

72. **The Working Group recommends that civil society organizations:**

(a) **Continue to raise awareness about the respective obligations and responsibilities of the Government and of business enterprises under international human rights law to prevent and address adverse human rights impacts related to the operations of business enterprises;**

(b) **Consider holding human rights awareness-raising events for government agencies that focus on economic and commercial matters;**

(c) **Continue to champion the rights of affected communities and human rights defenders;**

(d) **Engage in developing a national action plan on business and human rights through multi-stakeholder dialogue, including the voices of affected communities and human rights defenders.**

[73] Available at www.unep.org/pdf/DTIE_PDFS/WEBx0055xPA-APELLminingEN.pdf.