

November 25, 2015

Working Group on the issue of human rights
and transnational corporations and
other business enterprises

Re: Visit to Brazil in December 2015

Dear Members of the Working Group,

The Brazilian organizations, social movements and networks signatories of this letter have actively followed the systematic human rights violations involving Brazilian and foreign companies operating in Brazil and other countries. We consider that the Working Group's visit to our country takes place at a crucial moment when these types of violations have taken on particular importance.

For instance:

- Just over two months ago, Guarani-Kaiowa indigenous communities in the state of Mato Grosso do Sul were attacked by gunmen linked to ranchers who occupied land demarcated for the Guarani-Kaiowa. One of the indigenous leaders was murdered. This highlighted the vulnerability of these peoples in the face of systematic attacks by actors within the agribusiness' supply chain.
- The unprecedented socio-environmental disaster caused by the burst of a tailings dam belonging to the mining company Samarco in the state of Minas Gerais two weeks ago demonstrates the environmental disasters caused by large-scale mining, the lack of protection of local populations in the area and the dismantling of institutional frameworks around environmental licensing.

These examples demonstrate historical problems we face in Brazil.

I. Criteria for Visit: Respect towards Victims

The presence of delegates from the Working Group is an opportunity to highlight the aforementioned conflicts. This visit should **prioritize the perspective of victims and affected populations**, contrary to what seems to be the case to date. These voices should be heard because their testimonies will allow the Group to gain an accurate picture of the dimension of human rights violations by businesses in Brazil. Given the seriousness of these violations, we do not consider appropriate to focus on 'constructive dialogue' or 'best practices' that dilute responsibilities of businesses and states vis-à-vis the violations that will be shared with the Working Group during their visit.

We trust that the Working Group recognizes that we are giving a vote of confidence

when we mobilize affected populations and grassroots organizations to meet its members. In exchange, we expect that the Working Group will take caution during its visit; highlight the perspective of victims and affected populations when issuing its report, rather than serve the interests of economic actors who are responsible for systematic violations; and make visible political and institutional mechanisms that allow human rights violations and impunity to continue.

II. Mandatory Responsibility to Fulfill Rights: The Need for a Treaty

We are engaged in the debate on business and human rights in Brazil, reporting violations and noting the institutional problems within the apparatus of the Brazilian state, which does not provide enough protection to those affected and does not curb human rights violations stemming from, among other factors, development policies implemented in recent years.

In this sense, the institutional deficiencies of mechanisms that should provide access to justice are key to respond to the demands of local populations that are in especially vulnerable situations and have their rights systematically violated. Within this context we would like to report the use of “suspension of security” (*“suspensão de segurança”*) as a judicial mechanism to revert judicial decisions that previously were in favor of populations affected by large infrastructure projects.

Undoubtedly, an additional challenge for protecting vulnerable communities has been the high turnover of Human Rights Secretaries, worsened by the recent ministerial reform that removed the status of ministry from the Human Rights Secretariat (“Secretaria de Direitos Humanos do Governo Federal), now within the new Ministry for Women, Racial Equality and Human Rights (“Ministério das Mulheres, da Igualdade Racial e dos Direitos Humanos”).

Our task in Brazil is to highlight human rights violations, as well as promote action and debate so that public policies overcome the voluntary paradigm of corporate social responsibility. In this sense, civil society demands and expects the state engage in the same efforts. Within the international arena our priority is to move forward on binding commitments on human rights. This process gained momentum through a resolution in June of 2014 which established a process for the intergovernmental Working Group - its second meeting will take place in October 2016 and for which we demand the active and productive engagement of the international community, and disapprove of obstructive actions committed by some states and sectors.

III. Agenda Proposal

Our proposed agenda for the visit of the Working Group includes the following sectors and locations, highlighting the key stakeholders with whom we believe the Working Group should formulate their agenda. We reiterate that meetings with victims should be the priority and at the very least there should be one broader

participatory meeting with organizations (many of which are signatories to this letter) in Brasilia or Rio de Janeiro.

III. a. THEMATIC PRIORITIES:

We understand that the visit should focus on **three critical topics:**

- 1) human rights violations around large-scale mining
- 2) human rights violations around hydroelectric dams/large infrastructure projects
- 3) lack of protection for human rights defenders

III.b. CASES AND PRIORITY TOPICS

Given these three priority topics, we suggest the following cases, locations and key parties to be involved in a dialogue:

1. Mariana (state of Minas Gerais):

On November 5, 2015 the “*Fundão*” dam of tailings operated by the mining company Samarco¹ collapsed in the municipality of Mariana in the state of Minas Gerais. To date, eleven deaths have been confirmed but the total population of residents in the surrounding basin of Rio Doce is of 3.2 million. The toxic mud reached the neighboring state of Espírito Santo and the Atlantic Ocean, causing destruction of entire ecosystems, as well as polluting the water and soil. This has left hundreds of people without homes and without drinking water, destroyed existing crops and made planting and raising livestock unviable. As a result, this is one of the largest socio-environmental tragedies in Brazilian history.

Key Players: International Articulation of People Affected by Vale (*Articulação Internacional dos Atingidos pela Vale*); National Movement for Popular Sovereignty against Mining (*Movimento Nacional pela Soberania Popular Frente à Mineração, MAM*); Movement of those Affected by Dams (*Movimento dos Atingidos por Barragem, MAB*); and the National Committee in Defense of Territories against Mining (*Comitê Nacional em Defesa dos Territórios frente à Mineração*).

2. Altamira (state of Pará):

In Pará, the construction of the hydroelectric dam of Belo Monte has caused many human rights violations against the indigenous and traditional way of life, the right to housing, the right to land and territory, and the right to work. The Movement of those Affected by Dams (*Movimento dos Atingidos por Barragem, MAB*) estimates that 40,000 people have been affected by the building of the dam which is about to become operational, leaving many people without adequate compensation. The

¹ Samarco Mineração S.A is a privately held national company in the market of iron pellets and fine iron ore, as a joint venture (50-50%) of BHP Billiton Brasil Ltda. e Vale S.A. In 2014, Samarco was Brazil’s tenth largest exporter. The company directly employs roughly 3,000 workers and indirectly employ 3,500 workers outsourced. Samarco operates a linked project in Minas Gerais e Espírito Santo comprised of two mines, three processing plants, three pipelines, four factories and one port. It also has 25% stake of in two iron pellet companies in China.

company responsible for the dam is *Norte Energia*, a consortium of public and private investors.

It also would be important to include at a meeting in Altamira those affected by the dams in Teles Pires and São Luiz do Tapajós.

Key Players: National Movement for Popular Sovereignty against Mining (*Movimento Nacional pela Soberania Popular Frente à Mineração, MAM*); Movement of those Affected by Dams (*Movimento dos Atingidos por Barragem, MAB*); Movement Xingu Alive Forever (*Movimento Xingu Vivo para Sempre*); Indigenous leaders Munduruku; Federal Public Ministry of the state of Pará (*Ministério Público Federal PA*).

3. Rio de Janeiro (state of Rio de Janeiro): In the last few years the city has been the focal point of large investments that - with involvement of the municipal, state and federal governments - have led to a strong policy of forced evictions of low-income communities, police violence, institutional racism, among other issues. A few key cases:

- **TKCSA:** The company Thyssen Krupp Steel Mill of the Atlantic (*Thyssen Krupp Companhia Siderúrgica do Atlântico, TKCSA*) - located in the neighborhood of Santa Cruz in Sepetiba Bay of Rio de Janeiro - is the largest steel mill in Latin America operating without a license since 2010 and has caused massive environmental damages. The company is responsible for the increase of CO2 emissions in the city of Rio de Janeiro by 76%, the unviability of local fishing, the increase of skin, respiratory and eye diseases affecting residents in the area, and the flood in the neighborhoods of Santa Cruz.

Key Players: Institute of Alternative Politics for the Southern Cone (*Instituto de Políticas Alternativas para o Cone Sul, PACS*); Global Justice (*Justiça Global*); International Articulation of People Affected by Vale (*Articulação Internacional dos Atingidos pela Vale*); in addition to local associations of fishermen/fisherwomen.

- **COMPERJ:** The Petrochemical Complex of Rio de Janeiro (*Complexo Petroquímico do Rio de Janeiro, COMPERJ*) is a project of the state-owned company Petrobrás. Its operation affects the lives and ecosystems of the Guanabara Bay. Since 2009, seven fishermen related to claims against the Complex were killed in unknown circumstances. Alexandre Anderson, a human rights defender and President of the Association of Men and Women of the Ocean of Guanabara Bay (*Associação dos Homens e Mulheres do Mar da Baía de Guanabara, AHOMAR*) - has been under threat since 2009.

Key Players: Global Justice (*Justiça Global*); and the Association of Men and Women of the Ocean of Guanabara Bay (*Associação dos Homens e Mulheres do Mar da Baía de Guanabara, AHOMAR*).

- **Sporting Mega-events:** Carrying out mega-events in Rio de Janeiro has negatively affected its residents and there are no shortage of examples: forced eviction of entire communities, gentrification, human rights violations of informal workers, and militarization. The companies involved in the civil construction projects are OAS S.A., Delta, Odebrecht, Camargo Corrêa and Andrade Gutierrez.

Key Players: Popular Committee Rio World Cup and Olympic Games (*Comitê Popular Rio Copa e Olimpíadas*).

4. Mato Grosso do Sul – Situation of the Indigenous Guarani-Kaiowá: In the state of Mato Grosso do Sul, the indigenous group Guarani-Kaiowá have reported companies that commercialize cattle, soy, and sugar cane, and that buys its prime materials from territories where communities were evicted. The state has allowed this to happen as it has been negligent in demarking indigenous lands: fewer than 50,000 hectares for 43,000 indigenous people, and in the last ten years 16 Guarani-Kaiowá leaders were killed in their struggle for land; those responsible in most of these cases have yet to be brought to justice.

Key Players: Indigenous Missionary Council (Conselho Indigenista Missionário, CIMI); and Global Justice (*Justiça Global*).

5. Brasília (Federal District), various topics:

In Brasilia, the Working Group should prioritize mechanisms that influence and capture the Brazilian political system, especially private finance of campaigns and lobby in Congress. The following areas should be emphasized:

- **Right to Health, Access to Medication and Intellectual Property:** The right to health in Brazil is threatened by pharmaceutical companies, which have been active in Congress to pressure for the creation of TRIP-plus measures. In the Chamber of Deputies a proposed law that reviews existing legislation about patents has faced intense lobby around a text that would be a step backwards for public health. Moreover, within the judiciary, pharmaceutical companies have questioned the legitimate use of flexibility around TRIPS, as well as sought the implementation of TRIP-plus measures not foreseen in the law. These actions deprive millions of Brazilians of the right to health.

Key Players: Brazilian Interdisciplinary and AIDS Association (*Associação Brasileira Interdisciplinar e AIDS, ABIA*) in name of the Working Group on Intellectual Property and Access to Medication of the Brazilian Network for the Integration of Peoples (*Grupo de Trabalho sobre Propriedade Intelectual e Acesso à Medicamentos, GTPI da Rede Brasileira pela Integração dos Povos/REBRIP*).

- **Bilateral Investment Agreements:** Brazil recently signed investment agreements with several countries, including Mexico, Angola, Mozambique and Colombia. Instead of including language on human rights, these agreements

have used corporate social responsibility speak that has little normative standards, filled with aspirational human rights language such as “encourage”, “foment”, “stimulate” and “support” which create judicial uncertainty. Such language falls short of the highest standards of rights, which clearly establish that businesses must refer to internationally recognized human rights.

Key Players: Conectas Human Rights (Conectas Direitos Humanos); and the Brazilian Network for the Integration of Peoples (*Rede Brasileira pela Integração dos Povos/REBRIP*).

- **Suspension of the Dirty List of Slave Labor.** In December 2014 the President of Brazil’s Supreme Federal Court (*Supremo Tribunal Federal, STF*), Ricardo Lewandowski, granted an injunction to the Brazilian Association of Real Estate Agencies Incorporated (*Associação Brasileira de Incorporadoras Imobiliárias, Abrainc*). This suspended the ‘dirty list’, a list of companies caught red-handed using slave labor. The NGO Reporter Brazil used the Law on Access to Information (*Lei de Acesso de Informação 12.527/2012*) to gather information that would be the closest to the content of the ‘dirty list’ when it was suspended. This new list became known as the “List of Transparency”. Companies, including banks, can use this list to monitor human rights conditions within their client companies and supply chains. In April 2015, the federal government issued a new ordinance detailing the defense procedures for companies and responding to questions posed by the Supreme Federal Court. However, the reissuing of the list under the new ordinance has not taken place yet because the injunction continues and there are concerns that this could be seen as disrespectful to the Supreme Federal Court. At the same time, the NGO Reporter Brazil and its leadership have been the target of judicial accusations (including criminal charges) for having published the List of Transparency.

Key Players: Reporter Brazil (Repórter Brasil); and the Collective of Human Rights Lawyers (*Coletivo de Advogados de Direitos Humanos, CADHU*)

- **Involvement of Businesses in Human Rights Violations during the Military Dictatorship:** The grave human rights violations committed during the civil-military dictatorship (1964 - 1985) had broad support from large companies that to date have not been held responsible. In September 2015, the Federal Public Ministry (*Ministério Público Federal*) accepted representation in a case against Volkswagen for serious human rights violations within the company and in coordination with other companies to harass, survey, torture and create lists of workers followed in factories. This was done in open cooperation with organs of political repression of the civil-military dictatorship. The Forum of Workers for Truth, Justice and Reparation Initiative (*Fórum dos Trabalhadores por Verdade, Justiça e Reparação*) took the initiative to prepare the documentation for the legal case on behalf of all ten main Brazilian trade unions, prominent jurists and members of the Truth Commissions.

Key Players: Forum of Workers for Truth, Justice and Reparation Initiative (*Fórum dos Trabalhadores por Verdade, Justiça e Reparação*)/ IIEP.

- **Lack of protection for human rights defenders, especially those involved in the defense of land and territory:** The situation of these human rights defenders in Brazil is especially fragile given their work against economic projects sponsored by the state, such as mining, construction of megaprojects in the Amazon, and agribusiness which are associated with a political choice around development models. Many of these defenders participate in the National Program of Protection to Human Rights Defenders (*Programa Nacional de Proteção aos Defensores de Direitos Humanos, PPDDH*). While this demonstrates the Brazilian state's recognition of the threats suffered by these defenders, the state still is unable to offer adequate protection for these participants. The only state where the Program is considered to function well is in the state of Minas Gerais; there is not adequate protection by authorities in the states of Pará and Mato Grosso do Sul, where there is a higher number of defenders threatened. The lack of effectiveness of the PPDDH is due to the lack of political weight around human rights within the political agenda of the federal government. This translates into the lack of a legal framework that establishes the Program,² a low budget, and a high-turn over of posts within the Human Rights Secretariat (*Secretaria de Direitos Humanos*), ranging from the position of Secretary to the technical team. The protection of those under the PPDDH is often limited to monitoring over the telephone. The weakness is also reflected in not tackling structural causes of the violence and threats.

Key Players: Global Justice (*Justiça Global*).

In Brasilia it also would be important to address the debate around a reform to the Mining Code and the Forest Code with the following organizations, respectively: National Committee in Defense of the Territories against Mining (*Comitê Nacional em Defesa dos Territórios frente à Mineração*) and Land of Rights (*Terra de Direitos*).

IV. Documentation – Additional Information

The length of the Working Group's visit to Brazil is too short to gain a comprehensive view of these and other cases of human rights violations, many of which the Group will not be able to visit. Therefore we will send you documentation compiled from our work following these processes over many years. These documents will help the Working Group gain a better understanding of the situation of human rights violations.

² The Program currently only exists due to the Decree 6.044 (http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6044.htm).

Again, we are available for a meeting with the Working Group calling other civil society organizations, social movements and groups affected by human rights violations to join.

Sincerely,

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