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Permanent Mission of Brazil to the United Nations in Geneva
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Geneva - Switzerland

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The Permanent Mission of Brazil to the United Nations Office in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to forward in annex the response by the Government of Brazil to the joint allegation letter of 9 January, signed by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the human right to safe drinking water and sanitation; and the Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises, regarding the alleged contamination and poisoning of water streams and pollution of air and soil in Piquiá de Baixo, a neighborhood in the municipality of Açailândia, in the State of Maranhão, Brazil.

The Permanent Mission of Brazil avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, November 5th, 2014

To the Office of the United Nations High Commissioner for Human Rights
Geneva



Permanent Mission of Brazil to the United Nations in Geneva
15, ch. Louis Dunant - 1202
Geneva - Switzerland

This statement answers the joint allegation letter signed by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover; by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marc Pallemmaerts; by the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque; and by the Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Alexandra Guáqueta, regarding the alleged contamination and poisoning of water streams and pollution of air and soil in Piquiá de Baixo, a neighborhood in the municipality of Açailândia, in the State of Maranhão. The Special Rapporteurs asked the Brazilian State the following questions and made the following comments regarding the allegations and facts mentioned in their letter:

Are the alleged facts accurate?

What measures have been put in place to prevent a detrimental impact on the health of children and communities in Piquiá de Baixo, Amazon Region, Brazil, as a result of the industrial activities?

What measures are being taken to ensure the enjoyment of the right to health of children and communities, including provision of health care and access to the underlying determinants of health, in Piquiá de Baixo, Amazon Region, Brazil?

Please provide details on measures taken by the State to control the pollution, and what steps have been taken to provide precautionary alternatives to the residents as well as appropriate remedies, reparation and compensation, including the resettlement of those affected and guarantees of non repetition.

Please provide details of any judicial processes that have been instituted to hold the companies operating near the communities accountable for the damages they are alleged to have caused.

What steps has your Government taken to ensure that new industrial projects comply with statutory requirements aimed at environmental protection?

Can the Government identify which business enterprises (private or public) have been involved in these human rights impacts?

Can the Government identify whether the businesses (private or public) involved in these impacts have used and are using the UN Guiding Principles on Business and Human Rights to incorporate appropriate human rights due diligence as a way to address remaining human rights impacts and strengthen prevention?

Has the Government established the extent to which business enterprises caused, contributed or were linked to the human rights impacts through their operations and business relationships? Has the Government communicated to companies the expected course of action concerning victims?

Are business enterprises participating in or supporting any remedy actions?

What preventive measures is the Government taking with regard to the industry cited above and others in order to avoid or reduce the likelihood of adverse impacts occurring again?

First of all, the Brazilian State appreciates the Special Rapporteurs' and Chairperson's attention regarding the situation of the community of Piquiá de Baixo, in Açailândia, and reasserts its willingness to solve the problems in that locality. Several efforts are being undertaken and may culminate in a model initiative of coordination between public authorities and private actors with a view to remediating and mitigating the damages that businesses enterprises may cause to communities.

Progress has already been achieved in the following areas: resettlement of families; mitigation of the environmental impact; attention to the health care of the affected families; and legal accountability of business enterprises.

Resettlement of the families

According to the information provided by the Public Defender's Office of the State of Maranhão in February 2014, the community of Piquiá de Baixo currently consists of approximately 380 families. Most of them have been living, over the past 20 years, with the problems related to the pollution originated from the mining and steel industry in the municipality. Since 2007, the residents of the locality have organized to advance their demands for resettlement.

After a thorough research which involved crossing five different registration records carried out in the last three years, it was possible to determine, with the

endorsement of the Public Prosecutor's Office of the State of Maranhão, 312 families able to enroll in the resettlement process, taking into account criteria discussed and approved in the General Meeting of the Community Association of Residents of Piquiá. In March 2011, the Public Prosecutor's Office filed, in the district court of Açailândia, the Public Civil Inquiry no. 01/2011 in order to verify occasional damages to the rights of the residents of Piquiá de Baixo and promote accountability.

Two "Terms of Adjustment of Conduct", which were coordinated by the Public Prosecutor's Office of the State of Maranhão and by the State Public Defender's Office, defined the obligations regarding the expropriation of an area that was allocated for resettlement and the respective compensation to its owner. The Terms also set funding clauses for the execution of the urban and residential project developed by the NGO Usina Centro de Trabalho para o Ambiente Habitado (Work Center Plant for the Inhabited Environment).

The Pig Iron Industries Union of the State of Maranhão has undertaken to contribute with the necessary funds, both for paying compensation to the owner of the expropriated property and for hiring the services related to the urban and residential project.

In July 2011, the Municipality of Açailândia declared an area of 38 hectares, denominated "Sítio São João" as "area of social interest", considered by the Public Prosecutor's Office as adequate to receive the resettlement of Piquiá de Baixo after a judicious selection process. In September of that same year, an action of expropriation of the area was filed.

On December 11, 2013, the judge of the District Court of Açailândia, Dr. Ângelo Antônio Alencar dos Santos, delivered a sentence in the action of expropriation for social interest of the land "Sítio São João", according to the provisions of the Term of Adjustment of Conduct. The sentence confirmed the expropriation of the entire area (38 hectares) and determined its compensation value. The sentence also constitutes a title for the transfer of the land's ownership to the Municipality of Açailândia. The Pig Iron Industries Union of the State of Maranhão took responsibility through the Term of Commitment of Conduct for paying the amount established by the sentence of expropriation.

The construction of new household units will be financed by the program "Minha Casa, Minha Vida", which offers highly favorable conditions for low income population in Brazil through Caixa Econômica Federal, a public bank that works with the government towards the implementation of public policies. Program conditions provide that government subsidies may cover up to 95% of the value of the units for families whose monthly income goes up to R\$ 1,395.00. Besides,

mortgage payment is limited to 5% of monthly family income and monthly mortgage can be as low as R\$ 25.00 over a maximum time of 120 months.

Laws No. 11.977 and 12.424, enacted in 2009 and 2011, provide that, whenever families have to be resettled due to emergency situations, in the event of public calamity recognized by the Union, or due to interventions related to the Program of Acceleration of Growth, those families that have to leave their households receive new household units without any payments. Taking this into consideration, Caixa Econômica Federal and the Ministry of Cities are analyzing whether the families of Piquiá de Baixo will be exempt from payments.

On December 3, 2013, the project for the construction of the household units with its respective budget was registered at Caixa Econômica Federal (CEF) in São Luís, and presented before the National Secretariat of Habitation of the Ministry of Cities in Brasília. The project has already been approved by the two bodies, which will now analyze its budget. Both Caixa Econômica Federal and the Ministry of Cities are aware of the particularities of the case, and have undertaken a commitment of disbursing the resources as soon as possible.

With the approval of CEF, approximately 70% of the total expenses (related to the construction of the units themselves) will be funded by Minha Casa, Minha Vida Program, which will provide R\$ 57,000.00 (fifty-seven thousand reais) per residential unit.

The estimated budget for the construction of the neighborhood can be discriminated as follows: (a) Total value of the residential units: R\$ 16,200,000.00; (b) Community equipment foreseen in the project (headquarters of the Residents' Association and Mother's Association): R\$150,000.00; (c) Total infrastructure: R\$ 7,600,000.00; (d) Expenses on work monitoring, social work and fees spent on notary and registration of the units: R\$ 1,938,456.00. Therefore, the estimated value of the total work is R\$ 25,888,456.00 (twenty-five million, eight hundred and eighty-eight thousand, four hundred and fifty-six reais).

The values discriminated for infrastructure are estimated in: preliminary services and earthworks: R\$ 925,000.00; drinking water supply network: R\$ 530,000.00; sanitary sewage network (with biodigesters): R\$ 1,450,000.00; drainage: R\$ 1,190,000.00; paving: R\$ 2,880,000.00; public lighting: R\$ 40,000.00; containment works (retaining walls): R\$ 60,000.00, and landscaping: R\$ 525,000.00.

The Ministry of Cities and Caixa Econômica Federal of Brasília, in close cooperation with the Public Prosecutor's Office and the Public Defender's Office of the State of Maranhão, understand that the construction of this new

neighborhood means much more than the mere delivery of houses; it encompasses compensation for the right to housing, health, and life of the families that are being displaced from their original neighborhood.

Thus, these institutions approve and support the execution of this project, which will ensure respect to the rights of these people and, in particular, to the Minimal Guidelines for the Resettlement of Piquiá de Baixo which were set, still in 2010, by the Public Defender's Office. These guidelines provide that the displaced families will receive an area large enough to allow for small activities of income generation and farming and three different models of houses according to the planning carried out as a joint effort by the local community.

Mitigation of the environmental impact and attention to the health of the affected families

According to information provided by the Public Prosecutor's Office of Açailândia, the steel companies of Açailândia have installed filters in order to reduce the passage of air laden with particles. The State of Maranhão is one of the entities responsible for the inspection of the companies through the Environment and Renewable Natural Resources Secretariat.

The Public Prosecutor's Office of Maranhão states that two healthcare basic units (unidades básicas de saúde-ubs) in Piquiá de Baixo are providing health care to local people.

Accountability of the business enterprises

About 21 residents of the region started legal actions (lawsuits for moral damage) against the steel companies installed in the locality. All the sentences were favorable to the petitioners. Currently, these actions are waiting to be judged by the Court of Appeal.

It is worth noting that The Pig Iron Industries Union of the State of Maranhão has fulfilled all the terms of the agreements celebrated before the Public Prosecutor's Office and has contributed with significant amounts for funding the community's resettlement project.