

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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

REFERENCE: AL Health (2002-7) Toxic waste (1995-14) Water (2008-1) Business enterprises (2011)
BRA 6/2013

9 January 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the human right to safe drinking water and sanitation; and Working Group on the issue of human rights and transnational corporations and other business enterprises pursuant to Human Rights Council resolutions 24/6, 18/11, 24/18 and 17/4.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **alleged on-going contamination and poisoning in Piquiá deBaixo, Açailândia, Maranhão State, Amazon Region, Brazil.**

According to the information received:

Since the arrival of the iron and steel industry in 1987, communities in close proximity to these facilities have been negatively affected with allegations pointing to some 380 families (1,100 people) whose health continues to be adversely impacted. The high levels of pollutant emissions from the industrial facilities have reportedly resulted in increased incidence of respiratory illnesses, eye and skin maladies, and cancer. In particular, it is alleged that deaths of children have occurred as a consequence of the pollution through contact with incandescent slag, a toxic waste product of iron and steel smelting. Allegations also point to a lack of access to health services by the affected communities.

Further information states that in 2008 the community passed a majority resolution at a public consultation to defend against the incessant air pollution,

contamination of water and poor sanitation, which have allegedly impacted their living conditions as well as their lands, which in turn has affected their livelihoods and increased poverty, in violation of their right to health, and to an adequate standard of living. To this end 21 of the affected families have reportedly brought law suits, some as early as 2005, against the multi-national companies operating the facilities before the Brazilian judicial system but all are apparently still pending. The affected communities view the absence of reparation measures and adequate guarantees of non-repetition as demonstrable of a violation of their right to due process and effective remedies.

Reportedly not much progress has been made in the resettlement of the affected communities, despite some advances in March 2013 in identifying new land and an independent technical consultancy regarding the new neighborhood in October 2012, several other necessary measures are allegedly still lacking, namely that no action has been taken by the State in order to control the pollution, provide precautionary alternatives to the residents or make companies accountable for the damages caused to the residents in the last 25 years. At the same time, new industrial projects are allegedly being vigorously implemented in the region, with Brazilian Government permits, tax benefits and generous financial credits by Brazilian National Development Bank without the necessary safeguards to protect the right to health and to a healthy environment.

While we do not wish to prejudge the accuracy of the reports received, we would like to recall the relevant international human rights obligations that your Excellency's Government has undertaken. We wish to draw your attention to Art. 6.1 of the International Covenant on Civil and Political Rights, acceded by your Excellency's Government in 1992; "Every human being has the inherent right to life. This right shall be protected by law...." According to the Human Rights Committee General Comment No. 6 (1982) the expression 'inherent right to life' should not be interpreted in a restrictive manner and the protection of the right to life therefore requires States to adopt positive measures to implement this right, including measures to reduce infant mortality, and increase life expectancy (para. 5). In addition, Art. 6 of the Convention on the Rights of the Child (CRC), which your country ratified in 1990, recognizes that every child has the inherent right to life and States must ensure, to the maximum extent possible, the survival and development of the child including through effective and appropriate measures to diminish infant and child mortality. Furthermore, Art. 4 of the American Convention on human rights ratified in 1992 by your Excellency's government, guarantees the right to life.

With regard to the right to the highest attainable standard of health of the affected communities, we wish to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by your country on 24 January 1992 – which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 24 of the CRC also recognizes the right of the child to health and to facilities for the treatment of illness and rehabilitation.

We also wish to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which notes that health facilities, goods and services have to be accessible to everyone without discrimination, further elaborating that accessibility has four overlapping dimensions, such as non-discrimination, physical accessibility, economic accessibility and information accessibility (para. 12(b)). In paragraph 11 of the General Comment, the Committee interprets the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, and adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions..." States have an obligation to ensure equal access for all to the underlying determinants of health (para.36). Moreover, paragraph 15 of the General Comment refers to the right to healthy natural and workplace environments and observes that the obligations of State parties in relation to this right include preventive measures in respect of occupational accidents and diseases, as well as the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.

Furthermore, the Committee on Economic, Social and Cultural Rights in its General Comment 15 posits that "Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant [ICESCR], encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions. For example, States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes".

With respect to the human right to safe drinking water and sanitation, we would like to remind your Excellency's Government that ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women and the CRC entail human rights obligations attached to access to safe drinking water and sanitation. In 2010, the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9) explicitly recognized the human right to water and sanitation. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation. The human right to sanitation means that everyone, without discrimination, has physical and affordable access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.

We would also like to note that your Excellency's Government guarantees the right to a healthy environment to its people in Art. 225 of the Constitution of Brazil; "All persons are entitled to an ecologically balanced environment, which is an asset for the people's common use and is essential to healthy life, it being the duty of the Government and of the community to defend and preserve it for present and future generations", while Art.23 (VI) creates a positive obligation on the State to protect the environment and fight pollution of any form, with Art. 24 calling for legislation to secure this right, including legislating on liability for environmental damages (VIII).In essence the government of Brazil is compelled to respect the right to a healthy environment by not infringing it through state action and inaction; to protect the right from infringement by third parties

such as multinational corporations including through regulations, and enforcement; and to take actions to fulfill the right including through provision of basic services such as water that is free from toxic substances and wastes.

In addition, all States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. In this context we would like call your attention to the Guiding Principles on Business and Human rights, endorsed by the Human Rights Council in 2011 (A/HRC/17/31) which clarify States' duty "to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises" (Principle 1). As specified in the Guiding Principles, fulfilling this duty requires that States take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication." This requires, inter alia, that States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Principle 3). The duty applies to all internationally recognised human rights as set out in the International Bill of Human Rights. The Guiding Principles also require that States ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur. Linked to this, the Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

The Guiding Principles apply to States and to all business enterprises regardless of their size, sector, location, ownership and structure. Furthermore, the Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights.

As it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful if your Government could provide additional information on the matters referred to and the allegations contained in the present letter, particularly regarding the following issues:

1. Are the alleged facts accurate?
2. What measures have been put in place to prevent a detrimental impact on the health of the children and communities in Piquiá de Baixo, Amazon Region, Brazil as a result of the industrial activities?
3. 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?
4. 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.

5. 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?

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

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

8. 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?

9. 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?

(*Please note the following helpful document: “The Corporate Responsibility to Respect Human Rights: An Interpretive Guide”

<http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>)

10. Are business enterprises participating in or supporting any remedy actions?

11. What preventative 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?

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be submitted in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Anand Grover

Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Marc Pallemerts

Special Rapporteur on the implications for human rights of the
environmentally sound management and disposal of hazardous substances
and wastes

Catarina de Albuquerque

Special Rapporteur on the human right to safe drinking water and
sanitation

Alexandra Guáqueta

Chairperson

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