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**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 Working Group on the issue of Human Rights and Transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.**

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)  
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Excellency,

We have the honour to address you in our capacities as Working Group on the issue of Human Rights and Transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 17/4, 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning allegations of surveillance and infiltration of various organizations and social movements, namely the Movimento Xingu Vivo para Sempre (MXVPS), the Landless Workers' Movement (Movimento dos Trabalhadores Rurais Sem Terra (MST) as well as the Rede Justiça nos Trilhos (JnT)..

The Movimento Xingu Vivo para Sempre is a collective of social and environmental movements representing local communities, indigenous peoples, environmental rights and specific groups such as fisherfolk, based in Altamira, Pará. The movement has been active for over 20 years in peaceful social protest opposing a local megaproject, the construction of the Belo Monte hydroelectric power plant and dam. It is allegedly feared that the environmental and social consequences of the construction of this dam would have a severe negative impact on communities and the environment in surrounding areas.

The MXVPS has reportedly come under significant pressure due to its opposition to the project. Two previous allegation letters have been sent to your Excellency's Government with respect to this situation. An allegation letter was sent by the Special Rapporteur on the rights of indigenous peoples on 15 March 2010 concerning the Belo

Monte project. On 19 July 2012, a joint allegation letter was sent by the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders concerning alleged acts of harassment, intimidation and criminalisation of activists and human rights defenders working with the MXVPS. While we thank your Excellency's Government for the detailed response provided to the communication sent in 2010, we regret that the latter remained unanswered at the time the present communication was sent.

The Landless Workers' Movement (Movimento dos Trabalhadores Rurais Sem Terra – MST) and the Rede Justiça nos Trilhos (JnT) are two organizations defending the rights of the communities affected by the operations of the second largest mining company in Brazil.

*According to the new information received regarding the situation of The Movimento Xingu Vivo para Sempre:*

On 24 February 2013, the last day of a series of planning meetings organised by the MXVPS, an employee who had recently joined the organisation was caught recording a meeting attended by several representatives of Brazilian and international NGOs, including members of the organisations involved in the protest movement against the construction of the Belo Monte hydroelectric dam and representatives of the indigenous communities who were granted precautionary measures by the Interamerican Commission on Human Rights in 2011.

When confronted, the assistant reportedly admitted to having been contracted by the Consórcio Constructor de Belo Monte (CCBM) consortium to monitor the organisation's activities, in particular those of its Coordinator, Ms. Antônia Melo da Silva, who was reportedly described as the "complete force" behind the organisation. Furthermore, the assistant was reportedly instructed to report on the movements of the leaders of the Belo Monte construction workers, with the stated goal of facilitating their dismissal and arrest following a strike by the workers in November 2012.

The surveillance reportedly consisted of the assistant taking photographs of MXVPS meetings and sending these and other reports of the organisation's movements and activities to a CCBM employee.

The assistant allegedly claimed that the information he provided was to be analysed by CCBM security services with the assistance of an employee of the Agência Brasileira de Inteligência (ABIN), the national intelligence services.

It is reported that the assistant agreed to publicly denounce CCBM at the time this evidence was taken from him, but that he subsequently changed his mind. Allegedly, an anonymous text message was later sent to a MXVPS member with the text “you [plural] will regret what you did to me”.

*According to the information received regarding the situation of the Landless Workers' Movement (Movimento dos Trabalhadores Rurais Sem Terra – MST) and the Rede Justiça nos Trilhos (JnT)*

The Public Prosecutor has opened an investigation on the basis of a complaint brought on 18 March 2013 by the former intelligence director of the second largest mining company in the country. It is alleged that the complaint reported phone tapping in November 2010 of a private conversation between an officer from that company and a journalist in charge of the daily coverage of the activities of the mining company. Illegal surveillance practices were also allegedly directed against some company's employees, allegedly targeting not only phone calls but also emails and computer files.

It is also reported that the mining company paid a number of individuals to infiltrate the Landless Workers' Movement (Movimento dos Trabalhadores Rurais Sem Terra – MST) as well as the Rede Justiça nos Trilhos (JnT), the latter is a coalition of organisations defending the rights of the communities, and to monitor some trade unionists, environmentalists and journalists. According to the information received, such infiltrations have been taking place since 2008 and are reportedly still ongoing.

According to the same allegations, two agents of the Brazilian Intelligence Agency (Agência Brasileira de Inteligência - ABIN), a State body formerly known as the National Intelligence Service, developed under the dictatorship and essentially composed of ex-military personnel, were reportedly hired by the Vale mining company to conduct these activities.

Through the publication of a written announcement published on April 22, 2013[1], Vale officially admitted having monitored both the MST and JnT movements, claiming that they were harming the interests of the company, but denied the accusations of infiltration[2].

While we take note of the fact that the Public Prosecutor has opened an investigation into some of the above-described allegations, concern is expressed with regard to the ability of the mentioned organizations and social movements to continue operating effectively, and the physical and psychological integrity of their members, in the light of allegations that the movement was infiltrated in order to undermine their legitimate and peaceful activities.

Such allegations are of particular concern in the light of the reported continuous pressure that organisations and social movements has been under for many years due to their activities in defence of local communities and their rights, including environment and land related rights. Further deep concern is expressed at the alleged involvement of State intelligence agency in these cases which, if found to be accurate, could give rise to doubts as to the effectiveness of any State measures adopted to facilitate their work.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international standards that are applicable to the issues brought forth by the situation described above.

We wish to remind your Excellency's Government of article 19 of the International Covenant on Civil and Political Rights, that Brazil acceded to on 24 January 1992, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Similarly, we would like to refer your Excellency's Government to article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In addition, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

Furthermore, regarding allegations indicating that the situation of the mentioned organizations and social movements is directly linked to its activities in the defence and promotion of human rights, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all

conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

In particular, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Furthermore, 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, including the right to freedom of expression. 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. 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.

Since 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 for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the organization mentioned above?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please explain what measures have been taken to guarantee that the mentioned organizations and social movements can continue to carry out their legitimate and peaceful activities to the full extent, and to guarantee the physical and psychological integrity of its members.
5. Please explain what measures have been put in place to ensure that human rights defenders in Brazil, particularly those engaged in peaceful social opposition to large-scale development projects and those who defend the rights of indigenous peoples, and local communities are able to carry out their legitimate activities without fear of harassment or intimidation of any form.
6. Please also explain what measures have been taken to ensure that activists and human rights defenders, including those that wish to exercise their right to freedom of expression, operate in a free and enabling environment for the defence of human rights and fundamental freedoms.
7. What policies and measures have been put in place to ensure that business enterprises respect human rights, including the right to freedom of expression and the right to promote and strive for the protection and realization of human rights and fundamental freedoms?

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available 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 members of the above mentioned organizations and social movements 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.

A handwritten signature in blue ink, appearing to read 'P. Sulyandziga', with a long horizontal flourish extending to the right.

Pavel Sulyandziga  
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corporations and other business enterprises

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