

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

REFERENCE:
OL BRA 9/2017

30 October 2017

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; and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 35/7 and 24/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Ministerial Order N° 1129 issued on 13 October 2017, as well as broader restrictions on efforts to eradicate contemporary forms of slavery in Brazil.**

According to the information received:

On 13 October 2017, the Government of Brazil approved Ministerial Order No 1129, which has a number of effects on the institutional framework in place to protect individuals from contemporary forms of slavery in Brazil.

The Ministerial Order presents a significantly restricted definition of slavery, which deviates from the 2003 Criminal Code, which defined and criminalized “work analogous to slavery” according to four criteria (i) forced labor, (ii) severe working hours (degree of work exploitation that imposes risks to workers' lives and health); (iii) degrading working conditions (depriving workers from their dignity, also risking their lives and health); and (iv) to restrict workers' movement because of debt bondage. These provisions of the Criminal Code were incorporated into Ministerial Order 1153/2003 regulating the labour inspectorate.

The definition of slavery within Ministerial Order No 1129, which does not have a basis in current legislation, requires the “deprivation of liberty” and “lack of consent” to recognise slavery thus excluding situations that could be defined as contemporary forms of slavery under international law. This narrowed definition is applied within the Ministerial Order both to the functions of the labour inspectorate, as well as the system of unemployment benefits paid to victims of slavery; two important institutional provisions to tackle contemporary forms of slavery in Brazil.

The Ministerial Order also takes steps that could limit the efficacy of the public transparency database of employers who were caught utilising slave-like labour, known as ‘the ‘dirty list’. These changes are characterised by lessened public

accountability over the database, as well as an increase in the degree of discretion that can be used by the Labour Ministry to decide on the inclusion of an employer on the list. The Ministerial Order also eliminates the requirement for minimum commitments related to eliminating the use of slave-like labour.

Such changes are taking place against a backdrop of broader restrictions on efforts to eradicate contemporary forms of slavery. These include budget cuts to the Special Groups on Mobile Inspection, which have played a key role in freeing victims of contemporary forms of slavery. Furthermore, it is reported that Head of the Division to Eradicate Slave Labour within the Labour Ministry, André Esposito Roston, was dismissed without cause on 10 October 2017 following his reporting of a lack of funds to combat slavery in a public hearing held in the Senate.

In light of all of the above, we are concerned that recent developments have the potential to undermine progress towards the full eradication of contemporary forms of slavery in Brazil. In reference to the international law annex below, we would like to draw your Excellency's Government's attention to the fact that no provisions within international law require the "deprivation of liberty" or "lack of consent" to define slavery and slavery-like practices. We would also stress, in light of alleged recent broader restrictions on anti-slavery efforts, that Brazil has an obligation under article 2 of the 1926 Slavery Convention to bring about "progressively and as soon as possible, the complete abolition of slavery in all its forms".

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned information.
2. Please describe how provisions within Ministerial Order No 1129 are in line with Brazil's obligations under international law and national legal provisions transposing these obligations.
3. Please outline how the provision within the Ministerial Order will not constrain but enable business respect for human rights and protect from corporate human rights abuses, in accordance with the United Nations Guiding Principles on Business and Human Rights.
4. Please outline how the application of the revised definition of slave labour contained within the Ministerial Order is expected to impact the detection

of victims of contemporary forms of slavery as a fundamental step in obtaining remedy and restitution of their rights.

5. Please outline how the Ministerial Order corresponds with Brazil's implementation of the judgement of the Inter-American Court of Human Rights in the *Fazenda Brasil Verde Workers v. Brazil*, to which your Excellency's Government recently expressed commitment during the 36th session of the Human Rights Council.
6. Please comment on the alleged broader restrictions on activities to fully eradicate contemporary forms of slavery in Brazil.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Surya Deva
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Annex

Reference to international human rights law

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly on 10 December 1948, contributes to the international standards related to the elimination of all forms of slavery. Article 4 states that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”. Articles 3 & 6 also state: “everyone has the right to life, liberty and security of person” and “everyone has the right to recognition everywhere as a person before the law”.

Article 1 of the 1926 Slavery Convention states:

“For the purpose of the present Convention, the following definitions are agreed upon:

(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Article 2 of the 1926 Slavery Convention places a duty on states to “bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms”.

Article 2 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which expanded the definition of slavery presented in the 1926 Slavery Convention and, states:

“Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

- (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
- (c) Any institution or practice whereby:

- (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person;
- (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour, such as debt bondage, serfdom, child exploitation and slavery practices related to family life, such as forced marriage for money, the inheritance of women after the death of their husband and the transfer of women between men.”

Article 8 of the 1966 International Covenant on Civil and Political Rights (ICCPR) provides protection from slavery and sale in the slave trade. It prohibits all forms of slavery establishes that no one should be held in servitude and specifically prohibits all forms of forced or compulsory labour.

In particular, we would like to bring to your attention the UN Guiding Principles on Business and Human Rights (contained in A/HRC/7/31), which the Human Rights Council unanimously adopted in 2011 following years of consultations with Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standards for all States and businesses with regard to preventing and addressing the risk of business-related human rights impact.

The Guiding Principles clearly outline the State’s duty to protect, against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication (Principle 1). In meeting their duty to protect, States should: (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations; (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts (Principle 3).