

Oral Statement to the 23rd Session of the UN Human Rights Council

Agenda Item 3: *Interactive Dialogue with the Working Group on the issue of human rights and transnational corporations and other business enterprises*

May 30, 2013

Mr./Madame President,

Franciscans International and VIVAT International, together with our Brazilian partners,¹ thank the Working Group for its recommendations calling on States to address the rights of indigenous people, to review current legal frameworks, and to consult with affected communities and civil society.²

The Working Group received many submissions denouncing the mining sector for a wide range of human-rights violations.³ At the same time, we see States promoting the expansion of the mining industry—expediting changes to legal and regulatory frameworks by circumventing democratic debate and human-rights obligations. We urge the Working Group to dedicate special attention to this troubling trend to ensure the alignment of domestic legislation and decision-making processes with the Guiding Principles and to identify gaps in the protection of human rights in the context of business activities.

The Brazilian government is currently pushing for a new mining regulatory framework, including a reformulation of the 1967 Mining Code and the regulation of mining on indigenous lands.⁴ These proposed changes have serious implications for Brazilian society as a whole, and especially on the rights of indigenous peoples, peasants, and *quilombola* and *ribeirinha* communities. Yet to date the draft laws have not been submitted to democratic debate or released to the public for commentary.⁵ Civil-society participation is especially important in this sector that has been so prone to abuses and violations.

Mr./Madame President, we urge the Government of Brazil to:

- Publicly release the draft Mining Code, hold broad consultations on all bills, and ensure transparency and participation at all stages of debate and approval;
- Invite the Working Group to provide guidance as to the alignment of the mining regulatory framework with the Guiding Principles on Business and Human Rights;
- Ensure that changes are conditional on the approval of the Indigenous Peoples' Statute and respect ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples;
- Guarantee the rights and consider the interests of communities occupying territories subject to mining activity;
- Ensure the mining regulatory framework is in full compliance with international law governing the rights of workers to health and safety; and finally
- Investigate and prosecute those responsible for privacy violations, harassments, threats, and violence against human rights defenders and leaders working on these questions.

Thank you, Mr./Mme. President.

¹ Including the Instituto Brasileiro de Análises Sociais e Econômicas (IBASE); Justiça nos Trilhos; Serviço Inter-Franciscano de Justiça, Paz e Ecologia (SINFRAJUPE).

² Based on the experiences of our organizations, the most urgent recommendations made by the Working Group in this report are:

- (1) for all stakeholders to address the situation of indigenous peoples (para. 70.d.);
- (2) for States to review the current legal and regulatory framework (laws, regulations, policies and practices) in the field of business and human rights and identify gaps in protection (para. 71.b.); and
- (3) for States to consult with external stakeholders, including affected communities and civil society organizations, and to pay special attention to persons at a heightened risk of vulnerability to adverse impacts on human rights from business operations and who may have less recourse to remedies (para. 71.d.).

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/23/32 (14 March 2013).

³ The report cites the right to life, health, food, water, work and adequate housing; conflicts between local communities and business including forced evictions from traditional lands and failure to guarantee free, prior, and informed consent; and harassment and persecution of community members and human rights defenders, including arbitrary detention, threats, violence and killings, targeting by armed groups, disappearances, restrictions of the freedoms of assembly and expression, and other violations of rights (para. 13).

⁴ Draft bill 1610/1996, on “the exploration and use of mineral resources on indigenous lands, those addressed in articles 176, first paragraph, and 231, third paragraph, of the Federal Constitution.”

⁵ For more, see Carlos Bittencourt, IBASE, *The Dilemmas of the New Mining Code*; Carlos Aguilar Sánchez, Revenue Watch, *Brazil: No Easy Miracle - Increasing Transparency and Accountability* (2012).