

Thank you, Madam Chair.

I am an attorney working for the Brazilian Human Rights Organization Justiça Global, a member of ESCR-Net and the International Articulation of Affected People by Vale.

We are concerned with voluntary approaches to addressing human rights abuses involving transnational corporations and other business enterprises. We will highlight the limited nature of these approaches through the lens of case involving a joint venture between Vale and BHP Billiton, known as Samarco, operating in Mariana, Minas Gerais, Brazil. In this case a tailings dam collapsed on Nov 5th, 2015,

The purpose of the agreement settled by the companies involved and federal and state government agencies is to end the judicial proceedings and explicitly absolve the companies involved for any responsibility, significantly undermining the rights of affected people to access justice and effective remedies.

The agreement is an example of the gross inadequacy of voluntary approaches to address human rights abuses committed by corporations.

Furthermore, the agreement undermines the rights of affected communities to participation since they were excluded from the negotiations leading to the agreement. Since affected communities included indigenous peoples their rights under the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169 were also violated.

In the agreement, it is established that a Foundation will be created by the corporations to manage the reparation process. It is this Foundation rather than the State that will determine who is affected and who is not. It is like the wolf watching the henhouse.

Neither the Federal Prosecution Office of Brazil, nor the Minas Gerais and Espírito Santo Prosecution Offices, have endorsed the agreement, which led the Brazilian Superior Court of Justice to suspend it in July 2016. Nevertheless one company involved, Vale, has publicly stated to uphold the agreement, regardless of the Superior Court decision.

Agreements like those reached in the Mariana case represent the prevailing voluntary approach to address human rights approaches. We also note similar cases emanating from corporate human rights abuses involving Barrick Gold in Papua New Guinea, and a growing number of counties worldwide.

Therefore, we call on the Intergovernmental Working Group to firstly ensure the future binding instrument guarantees the rights of affected people to participate in all steps of the remedy process, as well as explicitly guarantee that any agreements or non-judicial mechanisms must not interfere with the rights of affected people to seek judicial remedy. Violations of these provision must lead to liability for those involved.

Finally, as this is our last intervention to this session of the Working Group, on behalf of all members of ESCR-Net as well as the wider Treaty Alliance, we congratulate the Chair on another successful Working Group session, and extend our thanks to the Secretariat of OHCHR, who have provided essential support to facilitate our active participation. Thank you.