

DRAFT BILL PROPOSAL No 572, 2021

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Creates the National Framework on Business and Human Rights that will enact the guidelines for public policies on the matter.

The National Congress decrees:

CHAPTER I GENERAL PROVISIONS

Article 1. This is a bill to enact the national framework on business and human rights, which establishes the guidelines to enforce national and international standards on the protection of Human Rights, and the promotion of public policies on the subject.

Article 2. This bill addresses State agents and institutions, including the justice system, as well as companies and financial institutions operating in the national territory and/or with transnational activity.

Sole paragraph. This bill is to be enforced on business companies, including their subsidiaries, branches, subcontractors, suppliers, and any other entity in their global value chain.

Article 3. Principles and guidelines to enforce this bill:

- I. The universality, indivisibility, inalienability, and interdependence of Human Rights;
- II. The State's duty to respect, protect, guarantee, and ensure the enforcement of the Human Rights legal framework; securing the instruments for their enforcement;
- III. The Human Rights framework will take precedence over any agreement, including those of an economic, trade, services, and investment nature;
- IV. The rights of people and communities affected to full reparation for violations of Human Rights committed by corporations, observing the principle of centrality of the suffering of the victims.
- V. Persons whose Human Rights were violated will be granted free and prior consultation, informed in good faith, with respect to their right to consent;
- VI. In the event of a conflict between human rights regulations, the one most favourable to the affected person must prevail;
- VII. In the event of multiple and heterogeneous interpretations regarding the same Human Rights regulation, the one most favourable to the affected person must prevail;
- VIII. The compliance provisions of this bill must be implemented, monitored, and periodically evaluated;
- IX. Persons and communities who have had their Human Rights somehow violated will not be incriminated nor prosecuted. This provision comprises male and female workers, citizens, grassroots movements, institutionalised and non-institutionalised social movements, their networks, and organisations.

CHAPTER II

ON STATE OBLIGATION AND CORPORATE OBLIGATION

Section I: On obligations which are common to the State (the Union, the States, the Federal District, and Municipalities) and to corporations

Article 4. Business companies and the State partake in the following obligations:

I - To respect and not violate Human Rights;

II – To decline acts of collaboration, complicity, instigation, economic enticement or concealment, for finance or service, with entities, institutions, and persons that violate Human Rights;

III - In case of violations:

a) To act apropos of full compensation;

b) To ensure unlimited access to all documents and information beneficial to the defence of the affected people;

c) To prevent novel violations to the affected people in the course of reparation;

d) To collectively promote acts of prevention, compensation, and the reparation of damages to the affected people;

Section II: On corporate obligation

Article 5. Companies domiciled or economically active in the Brazilian territory are liable for Human Rights violations in the course of their business operation, caused either directly or indirectly.

§ 1 There is joint and several liability which comprehends the extension of the business production chain, including the parent company, the controlled companies, as well as every public and private investor. It also comprises subcontractors, branches, subsidiaries, economic and financial institutions operating overseas, and all national economic and financial entities that invest in or benefit from any given stage of the production process, regardless of any formal contractual relationship.

§ 2 Companies must implement protocols for control, prevention, and compensation that are capable of identifying and preventing Human Rights violations in the course of their operation. Said protocols will not abridge the company's civil, administrative, and criminal liability in case of violation.

Article 6. Companies must promote, respect, and ensure Human Rights in their business activities, considering the following guidelines:

I – To avoid perpetrating or contributing to Human Rights violations by not afflicting any damage in the course of business activity or service provided. In case of damage, the associated activity must be ceased immediately;

II – To decline acts of collaboration, complicity, instigation, economic enticement or concealment, for finance or service, with entities, institutions, and persons that violate Human Rights;

III – To abide by all international and national frameworks that forbid discrimination, in particular on grounds of race, colour, gender, sexual orientation, religion, political view, trade union activity, nationality, social origin, belonging to a specific people

or community, disability, age, migratory or another status that is not related to a job description. Business companies must also initiate positive anti-discrimination actions;

IV – To abide by all international and national frameworks that forbid the exploitation of child labour and labour analogous to slavery in the course of the production chain;

V - Goals are not to be set abusively. Said behaviour typifies both individual and organisational moral harassment;

VI – To foster the appreciation for Human Rights during commercial transactions, whether contractual or not, with associated business partners;

VII – Personnel's private information must be appreciated and protected. The same provision is true for customer data;

VIII - The territorial rights and the self-determination rights of indigenous peoples, *quilombolas*, and traditional communities must be upheld. The same provision is true to their sovereignty over natural resources and local genetic wealth, in compliance with Convention no. 169 of the International Labour Organisation (ILO), particularly their right to consultation.

IX - The right of prior consultation must be upheld. The effective participation of workers, their representatives, and representative Union entities must be ensured during procedures with potential impact on labour rights.

X - The communities living by river banks, along the coast, and in the countryside must have their rights upheld. Bribery and other forms of corruption must be repressed. There must be no intimidation at the access to the land, nor to the access to resources for extractive exploration, aquaculture, agribusiness, tourism, electricity generations, and others;

XI – The collectives, associations, union entities, organisations, movements, and all other structures of labour representation, as well as any community, and Human Rights defender, must be regarded as legitimate advocates of the interest of those who had their Human Rights violated or threatened;

XII - The corporate management structure must be easily accessible to the public, expressing policies for the promotion and defence of Human Rights, and disclosing the personnel information of all decision-makers and their respective roles in the production chain;

XIII – To disseminate information on business activities to affected communities employing appropriate notification, considering that some communities are remote, isolated, often illiterate, and deprived of internet access. To ensure that said notification is not simply delivered, but fully understood in their language or dialect;

XIV - In case of hazardous activities, the affected persons and communities, as well as the workers, must take part in the preparation, management, and inspection of risk prevention plans;

XV – To provide funds to ensure access to independent technical advice on behalf of populations affected by a disaster, supplying all provisions for optimal service, refraining from any interference, including the choice of entities, which must be made democratically by the affected people themselves;

XVI – To implement protocols to facilitate direct community participation, especially the leaderships, in the decision-making process regarding reparation and compensation for damages. Transportation and food supplies during events for popular consultation must be included;

XVII – To contribute to investigations, and enable the collection of evidence by interested parties;

XVIII- Considering all regulations enforced in the various locations where transnational business companies operate, they must abide by the regulation that guarantees greater Human Rights protection, independently of the place where damage has happened;

XIX- In the event of a violation in progress throughout the production chain, to promptly discontinue the activity, or act so that the violation which might influence the chain ceases immediately;

Article 7. Business companies must carry out a due diligence process to prevent, identify, monitor, and compensate for Human Rights violations, including social, labour, and environmental rights. They must, at least:

I - Cover violations the company has caused or supported in the course of their business activities and operation, including products or services provided by commercial relationships;

II - Be unremitting and recognise that risks for Human Rights violations may change over time as the company's activities and operational context develop;

Section III: On the obligations of the Federal Republic of Brazil (the Union, the States, the Federal District, and Municipalities).

Article 8. The Union, the States, the Federal District, and the Municipalities are obliged to implement measures for the prevention, protection, monitoring, and compensation of Human Rights violations in business activities. They must compel companies to implement participatory mechanisms intended to fully compensate the affected party.

Article 9. The Union, the States, the Federal District, and the Municipalities must enforce the provisions of Article 5 through public policies, within the scope and limits of their powers, considering the rules and applicable regulations, including:

I – To ensure full access to justice, on equal terms, for persons and communities affected by Human Rights violations perpetrated by business companies;

II – To work toward the full compensation for violations, prioritising the centrality of the suffering of the victims. The affected individuals and communities must be the protagonists in the development of protocols for the prevention, full compensation, and the appropriate guarantees of non-repetition;

III – To guarantee, subsidiary to corporate liability, independent technical assistance to persons affected by Human Rights violations perpetrated by business companies. The company must provide the technical and logistical structure for adequate participation. Said structure is selected to the satisfaction of the affected persons, and funded by the violating entrepreneur;

IV – To implement additional measures to prevent Human Rights violations perpetrated by enterprises owned by or under the control of business companies, which may or may not have received support and services from State agencies, such as official export credit agencies and official investment insurance agencies;

V - All corporate matters related to multilateral institutions must foresee the appreciation, protection, promotion, and precedence of Human Rights;

VI – To ensure that large undertakings and infrastructure projects respect the Human Rights from their planning stage, in compliance with Convention no. 169 of the International Labour Organisation (ILO), the right to a prior and free consultation, informed in good faith, and the need for consent of indigenous peoples, *Quilombolas*, and traditional persons and communities.

VII – To develop protocols to expand the effectiveness of legal provisions to access useful data for the prevention, investigation, or compensation of Human Rights violations;

VIII – To ensure that all direct and indirect bodies and entities of the Public Administration appreciate, publicise, and promote Human Rights by overhauling their procedures and services, and providing their staff with revised training to implement cooperation and mutual assistance;

IX – To guarantee venues for the contribution of representatives from all communities concerned with the establishment of a new enterprise to oversee the monitoring and prevention of Human Rights violations and any eventual compensation.

X – To ensure that the legislation regulating business activities does not restrict but empower business companies not to violate nor contribute to Human Rights violation;

XI – To establish, maintain, and strengthen early warning systems in addition to a network of channels for reporting Human Rights violations committed to the framework of business activities, which must consider suppliers, workers, and the community itself, considering the entire production chain;

XII – To institute protocols for the protection of persons who had their Human Rights violated by business companies, as well as Human Rights defenders who are threatened for having reported violations;

XIII – To improve protocols for the protection of water resources, ensuring that business companies are liable for supplying drinking water to the population in case of environmental damage. Companies must present a permanent solution within a reasonable time after the incident;

XIV - Any individual, collective, and diffuse damage caused by business operations must be compensated. Restrain from novel Human Rights violations during the compensation process;

XV – Financing expenditures and investments by public authorities must abide by the entirety of Human Rights. Any subsidy policy benefiting violating companies, especially tax exemption, is hereby prohibited;

XVI – To improve actions and public policies to eradicate child labour and work analogous to slavery;

XVII – To implement measures to attend groups in situations of vulnerability and extreme situations;

XVIII- The self-monitoring of business companies must not obsolete the inspection enforced by the State regarding safety measures, disaster prevention, severe work-related injuries, compliance with the Brazilian environmental legislation, and all additional matters related to the fundamental Human Rights guarantees;

XIX – Business companies must support impact studies on social, labour, and environmental matters prior to the permit of any economic operation. Companies must also endorse social participation during the elaboration and selection of indicators and methodologies.

XX - In case of Human Rights violations committed by Brazilian companies operating in other countries, the company must facilitate the victims' access to Brazilian jurisdiction. The institute '*forum non conveniens*' is hereby prohibited.

XXI - The State is obliged to demand full compensation for Human Rights violations that compromise the public treasury.

Article 10. The Union, the States, the Federal District, and the Municipalities, within the limits of their powers, must comply with their obligations in this matter in accordance with all other treaties and agreements of mutual legal assistance or international legal cooperation, and even in their absence, the aforementioned entities must promote the facilitation as committed as possible to domestic and international law.

CHAPTER III

ON THE RIGHTS OF AFFECTED PERSONS, GROUPS, AND COMMUNITIES

Article 11. The rights of affected persons, groups, and communities apropos of Human Rights violations or potential violations are as follow:

I – The admission hereby of the lack of sufficiency of those affected vis-à-vis the business companies, which requires the reversal of the burden of proof because the unfeasibility of its production may hinder the access to justice;

II – The technical support to guarantee a balanced arbitration between business companies and vulnerable groups. Whenever possible, the Public Defender's Office, the Federal District, the States and the Union will assist in the negotiations;

III – The application of the constitutional and conventional principle of reasonable time expected to collective, individual, judicial, or extrajudicial processes, which deal with severance for Human Rights violations perpetrated by business companies, guaranteeing due priority;

IV – The guarantee of the due process of law, in observance of the rights of broad defence and the adversarial nature of proceedings. Persons and groups in situations of vulnerability have their right to extensive legal assistance ensured, free of charge;

V - Business operations must be accessible for external inspection by Union representatives and other class entities, as well as the Public Prosecutor's Office, and the Public Defender's Office;

VI – Prior and free consultation, informed in good faith, of indigenous peoples, *quilombola* communities, and traditional peoples and communities affected by business activities, ensuring the right of vetoing the installations of any enterprise in their territories. The right to informed consent is derived from the consult protocols developed within the communities;

VII – State monitoring and inspection must prevail over the self-monitoring of business companies regarding preventive and compensation measures such as safety protocols, disaster prevention, severe work-related injuries, and compliance with the Brazilian environmental legislation;

VIII – The communities potentially affected by business operations must benefit from ample information, and have the right to contribute to the implementation of all measures to prevent Rights violations;

IX – Any judicial agreement carried out by the Justice system or a State body that exempts business companies from their obligations to fully compensate persons and communities affected by their operations must be annulled.

X – Full compensation for Human Rights violations perpetrated by business activities;

XI - In compliance with the United Nations Office for Disaster Risk Reduction (UNDRR), all legal proceedings involving disasters resulting from business activities must take priority in processing;

XII – The centrality of the suffering of the victims.

XIII – It is hereby prohibited to invoke the lack of absolute scientific certainty as an argument for postponing the implementation of protocols to prevent Human Rights violations, considering the health and safety of workers;

XIV – The guarantee of non-recurrence.

CHAPTER IV

ON MEASURES OF PREVENTION, MONITORING, AND COMPENSATION

Section I - On corporate obligation

Article 12. Business companies must prepare a six-monthly periodic report on Human Rights, which will demonstrate:

I - A summary of actions or projects to be implemented by the corporation in the following semester, provided the qualitative and quantitative analysis of the risk of Human Rights violations. The summary will associate the actions with the preventive measures to be adopted;

II – A summary of actions or ongoing projects, also an evaluation of prevention actions already in place. A report on any Human Rights violation and the consequent plan for compensation for damage, which must be elaborated along with the affected communities;

III - A summary of ongoing reparation and compensation plans, containing an evaluation of results and the detailing of protocol changes in the coming projects with similar features regarding possible Human Rights violations.

IV - The company's political commitment to respect Human Rights, including labour and environmental rights, and its policies on the matter. At least the expectation that all personnel in the production chain should also regard the urgency of Human Rights must be made public.

V – Details of personnel in charge of implementing action plans, as well as their schedule of completion;

VI – A risk analysis on Human Rights comprehending the entire production chain, including labour and environmental risks.

VII – Risk analysis with a scale for risk priority and risk urgency to implement measures and strategies to mitigate identified risks and protocols to monitor ongoing actions and what remains to be implemented.

Paragraph One - The semestral reports on Human Rights must be sent to the Public Prosecutor's Office, at the federal and state level, and the Public Defender's Office, also including federal and state, as well as the National Human Rights Commission (CNDH).

Paragraph Two – Business companies that, due to their operation characteristics, must elaborate a six-monthly periodic report on Human Rights, must also maintain on a website of unrestricted public access all sufficient information to assess the concrete adequacy of the company's performance for the prevention, evaluation, and compensation/reparation for Human Rights violations. Companies must also deliver hard copies to potentially affected communities, in simple and accessible language, with alternatives for the illiterate, blind, and people who do not speak Portuguese.

Paragraph Three - Failure to present the six-monthly periodic report on Human Rights may justify a preventive embargo of operations by the competent authority, as well as the liability of directors and the business company itself.

Paragraph Four. Micro-enterprises and small businesses are hereby exempted from the obligations detailed in this article until a specific law regulates the suitable and specific form, content, and differentiated regularity of said companies.

Article 13. In case of obligation of reparation, the violating company must create a Fund intended to cover the basic needs of the affected persons, groups, and communities until the completion of the process of full reparation of damages.

I - 50% of the Fund will be managed by representatives of the affected communities, 25% by representatives of the State, and 25% by representatives of the Public Defender's Office;

II- The Public Prosecutor's Office will act exclusively as a supervisor of the Fund's execution and management.

III- The Fund will serve as collateral to meet the emergency and reparatory measures for the benefit of the affected communities.

Sole Paragraph -. As the Fund awaits regulation, the money will remain deposited at an official credit institution, in an account with monetary correction, to be managed by the court responsible for assessing damage reparations.

Article 14 – The main objectives of the Fund detailed in Article 13:

I - Provision of resources for emergency financial assistance to the affected population and the guarantee of their sustenance;

II – Tending of priority health demands caused by Human Rights violations;

III - Supplying of drinking water in case of compromised sources used for supplying the communities;

IV - Contracting and supporting an Independent Technical Assistance team for emergency services;

V - Assistance for the elaboration of a compensation matrix for damages;

VI – Internet access, travel arrangements, and food supplies for community leaders during negotiations with companies and the Government;

VII - Other specific demands required by affected persons, communities, and groups.

Section II - On the obligation of the Union, the States, the Federal District, and Municipalities

Article 15. The Union, the States, the Federal District, and the Municipalities, acting within the scope of their competencies, will implement the necessary instruments for an extrajudicial complaint or will apply the effective and appropriate

existing instruments, at the administrative level, to file a complaint on Human Rights violations by business companies. The State entities shall promote the following:

I – A training course for public servants and a dissemination campaign on the matters of human rights and business companies, focusing on public administration liability and corporate operations, in compliance with national and international frameworks, and similar reference documents. The training must be conducted by experts in the field and must be comprehensive, not being limited to conversation circles or seminars;

II – Policies of prevention, treatment and reparation of violations to human rights, particularly in sectors with higher potential for incidents, such as the extractive operations, retail, and consumer goods, infrastructure, the chemical and pharmaceutical sectors, and others;

§1 The provisions detailed in the first paragraph will consider the following principles to guarantee effectiveness:

I – Legitimacy;

II – Accessibility;

III – Predictability;

IV – Equity;

V – Transparency;

VI - Impersonality;

§2 The provisions detailed in the first paragraph must constitute defined and known procedures. Each stage shall present an indicative deadline. It will illustrate each process and possible outcome, including the means to monitor their implementation.

§3 The provisions detailed in the first paragraph demand continuous review and improvement, in compliance with The International Human Rights System, which ensures the broad and effective participation of potentially affected people.

Article 16. In regards to compensation and business liability, the following will be taken into account for sanctions:

I - the degree of the violation;

II - the advantage possibly taken by business companies that perpetrated the violation, either directly or indirectly;

III - the degree of injury or the level of danger;

IV - the effects generated either directly or indirectly by the violation;

V - the economic power of companies that committed the violations or its danger of occurrence, either directly or indirectly.

VI - the number of people affected in their rights or exposed to danger;

Sole paragraph: no legal or conventional time limit for arbitration will be applied to claims for damage reparation resulting from Human Rights violations.

Article 17 – In the event of injunctions in actions regarding the present law, the provisions for ceasing an injunction (as per article 4, §1, Law No. 8,437, from 1992; and article 12, § 1, Law no. 7,347, from 1985) do not apply to the present law.

Article 18. The instruments for accountability. Others may apply:

I - prohibition or suspension of operations of companies that may be related to violations until they implement the necessary damage compensation and preventive measures;

II - loss of assets, rights, and monetary values possibly obtained in activities related to violations;

III – prohibition of receiving incentives and celebrating contracts with public agencies until submitting to the provisions of this Law;

IV - payment of a fine;

V - In case of proved malicious intent, the loss of control over company shares and assets will guarantee the source of funds. The corporate control may be transferred to workers, and the entity itself may have compulsory dissolution;

VI – Judicial rulings will be prejudicial to cases of recurrence regarding Human Rights violations.

VII- Piercing of the corporate veil, as provided in the Consumer Defence Code;

Article 19. All damages perpetrated against the concerned community arouse from business activities. Therefore, whether extrajudicial or in the judicial sphere, negotiations between the Government and the legal entities that have violated Human Rights must seek compensations that will guarantee Human Rights, observing the following items:

I - The development of instruments and procedures to guarantee Human Rights will attend to, establish a dialogue with, and benefit from the participation of workers, union entities, affected persons and communities, their supporters, and technical advisors;

II - The participation of agencies that enforce public policies on Human Rights, including institutions from the Justice System. This partnership will favour the adoption of solutions that promote full compensation for damages;

III – The way of life, culture, practices, beliefs, and traditions of indigenous peoples, *quilombolas*, and traditional communities, must be the priority in the process of compensation for damages, and their social organisation must be respected. They were affected by Human Rights violations resulting from business activities, including their right to a prior and free consultation, informed and good faith;

IV - Particular agreements or Conduct Adjustment Terms (CATs) will not mitigate the legal and constitutionally predicted guarantees and principles that may be applied. Business companies remain fully liable for Human Rights violations resulting from business activities;

V - The right to a prior hearing by The Palmares Cultural Foundation (*Fundação Palmares*) in cases where *quilombola* communities are potentially affected;

VI - The right to a prior hearing by the National Indigenous Foundation (FUNAI), in cases in which indigenous peoples are potentially affected;

VII - Prior hearing by The National Historic and Artistic Heritage Institute (IPHAN) in cases of a potential violation of cultural assets.

VIII - Formal communication to the National Human Rights Council regarding the transpired violations for the monitoring of measures in place;

IX - Public agents are forbidden to represent the private sector in negotiations they have previously been privileged to. They must abide by a 5-year barrier clause.

Article 20. It is incumbent upon the State to create instruments for civil society participation, and include other interested parties in the elaboration, implementation, and execution of public policies related to this Law, considering:

I - holding conferences, promoting public hearings, and fostering the self-organisation of those affected, amongst other instruments;

II - Policies for the recovery of territories affected by business activities, and the monitoring of repairs funded by business companies.

III - Promoting experience exchanges between current judicial and non-judicial instruments and tackling the present hindrances in their actions;

IV - Concrete legislative proposals to improve participation, accessibility, predictability, equity, and transparency in the legislation regulating the relationship between economic players and Human Rights subjects. Particular consideration must be taken to the improvement of inspection instruments and the strengthening of their integrity, in addition to the broadening of the access to information available for those who have been affected;

V – Concrete proposals for monitoring and intervening in production chains in violation of Human Rights, and those with greater potential for violations;

VI – Preparation of research studies or their financial promotion in collaboration with civil society, academic institutions, and other interested parties. Improvement of public policies and legislations, implementation of plans to protect and promote respect for Human Rights in the corporate world;

VII - Preparation of research studies or their financial promotion on the social impacts of business operations, contemplating gender inequalities, sexual diversity, race, and the class system. It is imperative to guarantee the protection of indigenous peoples, *quilombolas*, and traditional communities. The compliance with Human Rights provisions, in all their implications, must be conditional on the implementation of new enterprises;

IX – Preparation of research studies or their financial promotion on the environmental impacts of business activities, including the work environment. The compliance with Human Rights provisions, in all their implications, must be conditional on the implementation of new enterprises;

CHAPTER V - FINAL PROVISIONS

Article 20 - The federal executive administration must regulate the fund detailed in Article 13 within 90 days.

Art. 21 - The allocated budget will cover all resources to implement the instruments of this bill.

Article 22 - This bill enters into force on the date of publication.

Brasilia, March 14, 2022

JUSTIFICATION

In Brazil, there are numerous cases of human rights violations perpetrated by business companies. A few prominent ones are worth mentioning: the silver rain which afflicted residents in the surrounding areas of the steel complex in Baía de Sepetiba, Rio de Janeiro; the compulsory displacement of residents from several neighbourhoods in Maceió, Alagoas, due to the rock salt extraction in the region; the rupture of the mining tailings dam in Mariana, Minas Gerais, Brumadinho, also in Minas Gerais, and Barcarena, Pará; the oil spill on the Northeastern coast; and the case of Santa Cruz, a neighbourhood in the city of Rio de Janeiro, where residents were affected by pollution from the steel mill.

These cases share the same strive to hold business companies accountable for human rights violations, despite the existence of a national legislation intended to protect the environment as well as the human rights. In these occurrences, the Brazilian State eventually bears the burden of social rights, such as social security, social assistance, and public health. Due to the asymmetry of powers, the State is thus unable to compel companies to pay for the violations they have committed. Furthermore, the State often abstains from its role of enforcing the precepts of human rights, and therefore companies grow into a leading role. In an even worse scenario, the State acts in complicity with human rights violations.

A number of these violations are the cause for the constant complaints against Brazil before The International Human Rights System at the United Nations. The country has been denounced for dozens of cases before the inter-American system, which in turn responded with their recommendations in the Annual Periodic Review (2017).

Over the last 40 years, the asymmetry of powers and the culture of corporate impunity have been the subject of intense international debate. In 1972, Salvador Allende, who was then the president of Chile, argued at the United Nations Assembly for the need to regulate transnational companies. Over the following years, several initiatives were created to promote such debate: the United Nations Economic and Social Council established the Commission on Transnational Societies, whose priority was to investigate the activity of transnational companies and elaborate a code of conduct; in 1974, the United Nations created the Commission on Transnational Corporations; In 1976, The Organisation for Economic Co-operation and Development (OECD) published the Guidelines for Multinational Enterprises; in 1977, the International Labour Organization (ILO) published The Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration); In 1998, after the dismantling of both the Commission and the Centre, there was an initiative within the scope of the subcommittee for the Promotion and Protection of Human Rights to create a working group that would develop methods to study transnational business activities in relation to the realisation of economic, social, cultural, and development rights. In its resolution, this subcommittee outlines the obstacle to implementing rights in the face of the concentration of economic and political power detained by large corporations.

After the appointment of John Ruggie as special representative of the General Secretariat in 2005, initiatives were resumed to develop the National Framework on Business and Human Rights, which resulted in the Guiding Principles on Business and Human Rights, approved by the United Nations Human Rights Council in 2011.

The Guiding Principles were a relevant step toward the agenda. However, the Principles are not only voluntary but also lack content. Civil society has constantly drawn attention to their insufficiency.

More recently, the United Nations Human Rights Council itself, through the Intergovernmental body, based on Resolution No. 26/9, from 2014, has been working on the elaboration of the International Treaty on Business and Human Rights. Although still under negotiation, the presented propositions include various instruments for damage compensation, which affirms the urgency of the issue.

In Brazil, the agenda has been discussed among several organisations together with the National Human Rights Plan 3 (PNDH3), which establishes a series of responsibilities to state entities so that human rights are guaranteed in the implementation of projects and undertakings with great socio-environmental impacts. The plan ensures the right to participate and the elaboration of mitigating and compensatory measures.

After a broad process of participatory consultations, The Federal Prosecutor's Office for Citizens' Rights (PFDC), through the Working group on Business and Human Rights, in association with the organised civil society, prepared a technical note on the subject, contemplating issues such as Quasi-universal jurisdiction, full reparation and, once again, free, prior, and informed consent.

In terms of a normative framework, even though it presents sparse legislation on environmental protection, labour, and other fundamental rights, there are significant gaps in the regulation of business activities in Brazilian territory and the compensation for victims, as illustrated in the aforementioned cases. The lack of accountability is mostly due to the non-existence of a unified legal diploma which could address some of these gaps and facilitate the application of the law.

The Universal Periodic Review has addressed the need for a National Framework on Business and Human Rights. The Inter-American Commission on Human Rights has also recommended it in their 2019 thematic report. Homa, The Business and Human Rights Centre, located at the Federal University of Juiz de Fora, Minas Gerais, together with the Friedrich Ebert Foundation in Brazil, prepared a technical work in which they present in detail the reasons for the elaboration of this framework.

Through the Ministry of Women, Family, and Human Rights, the government tried to advance the establishment of a normative framework with Decree No. 9751/2018. However, the text presented a series of misunderstandings on the subject, and was not enough to address the normative gaps. Besides, its formulation was deprived of any popular contribution. Oxfam Brazil states, for example, that the government decree on Business and Human Rights (Decree No 9751/2018) ignored fundamental issues such as the concept of complicity and due diligence, which is within the UN Principles. Other themes were also missing and, although not covered in the principles, are nevertheless essential for the appreciation, protection, and promotion of human rights in business activities, such as the extraterritoriality and the free, prior and informed consent, in addition to laws dealing with the supply chains. Homa also analysed the weakness of the decree and how its composition does not meet the demands of civil society.

In 2020, The National Human Rights Council, which has acted in several of these emblematic cases, employing their working group on Business and Human Rights, has drafted Resolution No. 5, a series of guidelines for public policies, to raise the national debate on the subject, contributing with subsidies comprised in this Bill.

One must not detach the prosperous international debate from the discussion of serious human rights violations in business operations. The Brazilian State has been historically negligent on the matter, and the current administration holds a position of open hostility toward the rights of workers, indigenous peoples, women, the LGBTIQ+ community, along with other oppressed and exploited groups. Through strictly symbolic measures, this administration seeks to silence or contradict the voices denouncing the violations of rights occurring in Brazil.

Considering the entirety of these concerns, and inspired by Resolution No 5, from March 12, 2020, established by the National Human Rights Council, with the “National Guidelines for a Public Policy on Business and Human Rights”, we present this bill to start a discussion on the need to develop precise legislative frameworks and effective public policies for the appreciation, protection, and promotion of human rights in business activities.

Our perception of this project sustains this precise attitude, a step to continue a collective construction that does not begin at this point nor will end with this text.

The session room, _____, 2022.

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