Thank you Madam Moderator. 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, impacting three million people, as cited by the UN Working Group on Business and Human Rights in their report following their Brazil country mission.

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 for the egregious human rights abuses emanating directly from the dam burst.

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

The right to access justice and effective remedies is significantly undermined by the agreement, as the state agencies involved have agreed to end any legal claims against the companies.

Furthermore, the agreement undermines the rights of affected communities to participation since they were excluded from the negotiations leading to the agreement. Therefore, they did not have the chance to influence the design of the agreement, although it was their rights at stake. Indigenous peoples were also affected by the dam burst, however they were not consulted, directly undermining their rights under the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169.

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. One company involved, Vale, claims that the suspension of the agreement did not affect the validity of the consensus accomplished by the enterprises and the Brazilian State, meaning that it will continue to implement it regardless of the Superior Court decision.

Agreements like those reached in the Mariana case represent the prevailing voluntary approach to address human rights approaches, which seriously undermine the rights of affected people everywhere to seek justice and obtain an effective remedy. In this light 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 learn the lessons from cases such as that outlined here in Mariana. As such, firstly the future binding instrument must ensure that the rights of affected people to participate in all steps of the remedy process is guaranteed. Secondly, we also call on the Working Group to explicitly guarantee in the future binding instrument that any agreements or non-judicial mechanisms arranged in the wake of corporate-related human rights abuses must not interfere at any stage in the ability of affected people to seek judicial remedy. Any violations of these two elements of the future binding instrument should lead to liability for those involved in order to ensure these rights are fully respected.

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 extends our thanks to the interpreters and the Secretariat of OHCHR, who have provided essential support to facilitate our active participation.

Thank you.