



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

PFDC TECHNICAL BRIEF No. 1/2025

Subject: Creating a binding national regulatory framework on human rights and business (House of Representatives Bill n. 572/2022).

1. Importance and urgency of a binding national regulatory framework on human rights and business

The relationship between business activities and human rights has been the topic of intense debate in the international and national arenas, mainly due to the adverse impacts that economic ventures can have on individuals, communities, and the environment. Globalization and the expansion of production chains have significantly increased companies' influence on society, making the need for regulations that impose limits and concrete obligations to prevent and remedy corporate abuses even more evident. However, attempts at regulating the field have relied mainly on voluntary mechanisms, which have proven insufficient to curb systematic violations and ensure companies' accountability.

Therefore, adopting a binding regulatory framework on human rights and business in Brazil is urgent, especially given the increasing international accountability of Governments for failing to protect fundamental rights. The current regulatory gap allows companies to operate with no clear guidelines, resulting in cases of disregard for labor rights, negative socio-environmental impacts, and violation of the rights of vulnerable communities, among other law violations.

Furthermore, Brazil's lack of a robust regulatory framework places it in a fragile position in relation to the Inter-American Human Rights System, exposing the country to the risk of convictions for failing to monitor, prevent, and redress human rights violations committed by companies.

Therefore, implementing mandatory standards that impose concrete due diligence duties on businesses and ensure effective monitoring and accountability mechanisms is essential to align Brazil with the international best practices and strengthen the promotion and protection of human rights, as set out below.



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

1.1. Global and national human rights and business agendas and the insufficiency of voluntary mechanisms

The need for a binding regulatory framework to regulate the relationship between businesses and human rights has deep historical roots. It reflects a history of regulatory attempts and advances at both the international and national levels. Ever since Salvador Allende's speech at the United Nations (UN) General Assembly in 1972, when he reported the abuses committed by transnational corporations against his government and warned the international community of the asymmetrical power between corporations and Governments, the influence of the private sector in the political and economic decision-making process has been evident. At that time, the former President of the Republic of Chile exposed how transnational corporations, through their vast influence networks and economic power, could destabilize democratically elected governments and subvert public policies aimed at social interests, a reality that became even more intense in the following decades and persists today.

In the years that followed Allende's paradigmatic speech, several initiatives attempted to establish standards for corporate conduct and ensure greater control over the actions of transnational corporations. Between 1974 and 1992, the UN negotiated to draft a Code of Conduct for Transnational Corporations, which aimed to establish mandatory guidelines on the behavior of these corporations regarding human rights. However, different opinions among countries in the Global North, which advocated for more market freedom for companies, and countries in the Global South, which demanded stricter control mechanisms, prevented the document's approval. The lack of consensus and intense corporate resistance resulted in the Code not being implemented, highlighting the difficulty of creating mandatory regulations in this field.

In the early 2000s, as previous initiatives had failed and due to the advance of globalization, the Global Compact was created, a UN initiative to encourage companies to voluntarily adopt commitments related to human rights, labor rights, environmental protection, and the fight against corruption. Although it was a milestone for the inclusion of companies in debates on sustainability and responsible corporate governance, the Global Compact lacked – and still lacks – effective mechanisms for monitoring and sanctioning companies that violated its principles, significantly limiting its effectiveness. Despite its essentially voluntary nature, the initiative helped to disseminate fundamental concepts such as the sphere of influence – which establishes the responsibility of companies not only for



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

their direct operations but also for the impacts generated throughout their production chain – and corporate complicity – which defines the responsibility of companies for human rights violations committed by their business partners when there is knowledge of or facilitation of such practices.

Another vital attempt occurred in 2003 when the UN Sub-Commission on Human Rights approved the Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with respect to Human Rights.

Based on international legal instruments such as the United Nations Charter and the Universal Declaration of Human Rights, these norms were intended to establish a binding regulatory framework that would impose direct obligations on companies to prevent abuse and ensure accountability for their actions. The document provided for creating reporting channels and sanctions for companies involved in human rights violations, as well as mandatory full reparation. However, governments and business sectors resisted the proposal, arguing that regulation would hinder free trade and international investment. Intense business lobbying within the UN prevented the standards from evolving into a binding treaty, thus maintaining the primacy of voluntary and self-regulatory mechanisms.

In the current scenario, there is a set of normative instruments that, although non-binding, have contributed to the consolidation of international standards and the progressive accountability of companies in human rights. The OECD Guidelines for Multinational Enterprises, created in 1976 and revised over the years (1979, 1984, 1991, 2000, 2011, and 2023), provide voluntary recommendations for responsible business conduct, addressing topics such as transparency, human rights, labor relations, and the environment. Including human rights in its 2011 revised version represented a significant advance, as it became aligned with the UN Guiding Principles on Business and Human Rights. However, despite its importance in defining international standards, its practical effectiveness remains limited, as the document is a recommendation.

At the same time, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, approved in 1977 and revised in 2000, 2006, and 2017, establishes labor guidelines for relations between companies, governments, and workers. This instrument stands out for its emphasis on protecting workers' rights and for being based on the fundamental principles contained in international labor conventions. The Declaration provides guidance on employment, professional qualifications, working conditions, and labor relations and is an essential reference for regulating business conduct within the ILO. However, like the OECD Guidelines, it is not binding, thus depending on the voluntary participation of companies and the action of States to implement it.



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

The Guiding Principles on Business and Human Rights, developed by Professor John Ruggie and approved by the UN Human Rights Council in 2011, have become the main international normative framework. The document represented an unprecedented consensus within the United Nations and is structured around three fundamental pillars: (i) the State's duty to protect human rights against violations committed by third parties, including companies; (ii) the responsibility of companies to respect human rights in all their operations and production chains, implementing due diligence mechanisms to identify, prevent, mitigate, and repair adverse impacts; and (iii) the need to ensure access to reparation mechanisms for corporate violations victims, either through judicial bodies or effective extrajudicial mechanisms.

In Brazil, several initiatives have sought to include these principles in the legal system. In 2018, Decree No. 9,571 established the National Guidelines on Business and Human Rights based on companies' voluntary adherence and the absence of effective accountability mechanisms. The lack of public consultation or people's participation in drafting these guidelines generated criticism from civil society organizations and experts in the field, who pointed out the need for a more robust and participatory approach to ensure the effectiveness of the adopted principles.

In 2023, Decree No. 11,772 revoked the previous guidelines. It began the construction of a **National Policy on Human Rights and Business**, aiming to correct the weaknesses of the voluntary model and establish a more solid basis for regulating the topic. This new policy seeks to structure corporate responsibility guidelines aligned with international standards, ensuring the involvement of civil society, academia, and experts in drafting standards and control mechanisms. The process of constructing this policy also provides for adopting monitoring and inspection instruments, overcoming the purely declaration-based logic that characterized the previous decree.

In a more democratic and participatory manner, Brazil's National Human Rights Council (CNDH) drafted Resolution No. 5/2020 in 2020, setting Guidelines for a Public Policy on Human Rights and Business. Unlike previous initiatives, this normative act was constructed based on a broad consultation process and involvement of civil society, academia, and social movements, ensuring a more inclusive and plural approach. CNDH Resolution No. 5/2020 adopts the grammar of human rights and places victims of violations at the center of the debate, emphasizing the need to prioritize full reparation for damages and effective accountability of companies. In addition, the document rejects approaches that prioritize the language of business and voluntary mechanisms that systematically fail to ensure the adequate protection of fundamental rights.



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

There is no denying that voluntary regulatory instruments, such as the UN Guiding Principles on Business and Human Rights, have played an essential role in shaping the global agenda on human rights and business by establishing minimum standards for responsible corporate conduct and introducing the concept of human rights due diligence. Their international recognition has contributed to disseminating the idea that companies must respect human rights in all their operations and production chains.

However, empirical experience over the last few decades has shown that these instruments are insufficient for preventing, mitigating, and redressing damages in cases of human rights violations by companies. The lack of binding measures and effective monitoring and sanctioning mechanisms allows, for example, companies to continue operating without being held accountable, even when they are responsible for serious violations. The lack of a regulatory framework that requires companies to adopt concrete measures and establish punishments for non-compliance with these standards highlights the limitations of the voluntary model.

Furthermore, voluntary mechanisms fail to place victims at the center of redressing processes. In many cases, communities affected by the negative impacts of corporate activities face difficulties in accessing the justice system and obtaining adequate compensation. When they exist, companies' internal grievance mechanisms, often promoted as part of corporate governance strategies, are insufficient to ensure the proper reparation. In most cases, they only mitigate corporate reputational risks without addressing the structural causes of violations.

Therefore, despite their historical contribution, voluntary instruments should be seen as a transitional phase and are now outdated in the search for more robust regulation. Consolidating a binding regulatory framework, both at the national and international levels, is essential to ensure effective corporate accountability and the protection of human rights.

At the global level, since 2014, the UN has been discussing the adoption of an international treaty on human rights and business through Resolution No. 26/9 of the Human Rights Council, which established a Working Group to negotiate the drafting of said instrument. The treaty has undergone ten negotiation sessions and is currently in its fourth draft. In 2023, the Office of the Federal Ombudsman for Citizens' Rights (PFDC) published Technical Brief No. 5/2023, supporting the Brazilian State's participation in the negotiations. (March 19).

From a comparative law perspective, there is an increasing movement in Europe towards the creation of mandatory due diligence laws, establishing specific legal obligations for companies to identify, prevent, and mitigate negative impacts on human rights,



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

including the right to a healthy and ecologically balanced environment, in their production chains. The Modern Slavery Act (2015) in the United Kingdom was a pioneer in requiring large companies to publish annual reports detailing their actions to fight slave labor and human trafficking in their operations and supply chains. Subsequently, France's Loi sur le devoir de vigilance (Duty of Vigilance Act, 2017) imposed broader obligations on large companies, requiring them to implement due diligence plans to mitigate risks related to human rights violations and environmental impacts in their global activities.

In the Netherlands, the Wet Zorgplicht Kinderarbeid (Duty of Care against Child Labour Act, 2019) focuses on eradicating child labor in supply chains by requiring companies to identify and address risks. In Germany, the Lieferkettensorgfaltspflichtengesetz (Supply Chain Due Diligence Act, 2021) introduced specific requirements for companies to monitor suppliers and take preventive measures against violations.

At the regional level, the European Union approved the Corporate Sustainability Due Diligence Directive (CSDDD) in 2024. This ambitious regulatory framework imposes strict obligations on large companies headquartered in the EU and foreign companies operating in the European market. The directive requires corporations to conduct detailed analyses of their socio-environmental impacts throughout their production chain and adopt plans to mitigate identified risks. This new regulation will directly impact Brazilian companies operating in Europe or maintaining business relations with European companies, imposing stricter compliance and corporate responsibility standards.

In Brazil, the need for a binding regulatory framework became even more evident with Bill No. 572/2022, the subject of this Technical Brief, whose presentation by parliamentary initiative was preceded by a democratic and participatory drafting process coordinated by Homa – Institute of Human Rights and Business, with the support of the Friedrich Ebert Foundation Brazil, and which counted with the collaboration of several civil society organizations, such as the Central Única dos Trabalhadores (CUT), the Movimento dos Atingidos por Barragens (MAB) and Amigas da Terra Brasil, in addition to social movements.

The Bill aims to consolidate direct obligations for companies and ensure more legal certainty for all stakeholders. It proposes to overcome the inadequacy of voluntary mechanisms by providing clear responsibilities for the business sector and rights for individuals and groups affected by their activities. Therefore, it is an essential instrument for ensuring a balance between economic development and respect for human rights and ensuring that companies are effectively held accountable for their negative social and environmental impacts, as demonstrated below.



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

1.2 State liability for human rights violations caused by companies according to the case law of the Inter-American Court of Human Rights

The Inter-American Human Rights System framework understands that States have an inalienable duty to protect, respect, and ensure human rights, even when non-State actors, including private companies, perpetrate violations. The State's international responsibility may be recognized when it fails to adopt effective measures to prevent violations, implement normative and institutional mechanisms that ensure the protection of these rights, or guarantee due access to justice and full reparation for victims.

This state obligation arises from the theory of indirect State liability, widely applied by the Inter-American Court of Human Rights (IACHR). This theory establishes that States are responsible not only for preventing direct human rights violations by their agents but also for acting diligently to prevent, monitor, and redress violations committed by third parties within their jurisdiction. This responsibility, directly applicable to human rights and business, is related to the three fundamental roles of the State: administrative, legislative, and jurisdictional.

The administrative role imposes on the State the duty to prevent human rights violations in the context of business activities, including the obligation to monitor and ensure the practical application of these rights. For the Inter-American Court, this duty encompasses all legal, political, administrative, and cultural measures necessary to prevent violations and ensure that any abuses are treated as wrongful acts subject to sanctions and reparations for victims.

This understanding is consolidated in established case law, in legal actions such as *Velásquez Rodríguez v. Honduras*, *González y otras - Campo Algodonero - v. Mexico*, and *Pueblos Kaliña y Lokono v. Suriname*. In the case *Brasil Verde Farm Workers v. Brazil*, the Inter-American Court convicted the Brazilian State for failing to ensure the protection of 85 (eighty-five) workers subjected to conditions analogous to slavery on a cattle ranch. The Court considered that the implemented public policies were insufficient and ineffective in preventing such violations.

Furthermore, the Inter-American Court understands that the State must supervise business activities' compliance with human rights, including services provided by private individuals within the scope of legal interests. This understanding was the basis for Brazil's conviction in the case *Ximenes Lopes v. Brazil*, as it recognized that the Brazilian State failed to supervise a private clinic affiliated with the Unified Health System (SUS),



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

where the violent death of psychiatric patient Damião Ximenes Lopes occurred.

On the other hand, the State's legislative role imposes the duty to adopt normative provisions that ensure the protection of human rights in the business context, which means that, in addition to eliminating norms and practices that allow human rights violations, the State must also create effective normative frameworks to ensure their observance.

The Inter-American Court of Human Rights has reaffirmed this duty in cases such as *Castillo Petruzzi et al. v. Peru* and *Mendoza et al. v. Argentina*. In the case of *Sales Pimenta v. Brazil*, the Court found the Brazilian State guilty of serious failures in the investigation into the murder of lawyer Gabriel Sales Pimenta, which occurred in the context of land conflicts in the Legal Amazon. As part of the ruling, the Court ordered Brazil to adopt domestic regulations that strengthen programs to protect human rights advocates, demonstrating that insufficient legislation and inappropriate practices can lead to the State being held accountable before the Inter-American System.

In turn, the State's jurisdictional role requires investigating, sanctioning, and ensuring access to effective redress mechanisms for victims of human rights violations resulting from business activities. The Inter-American Court understands that compliance with this duty involves offering effective judicial remedies that enable the recognition of the violation, redressing the damage, and punishing those responsible.

The Court consolidated this understanding in the cases *Velásquez Rodríguez v. Honduras* and *Maldonado Ordóñez v. Guatemala* and the report of the Inter-American Commission on Human Rights (IACHR) entitled "Access to Justice as a Means to Ensure Economic, Social, and Cultural Rights" reinforces it. In the case *Santo Antônio de Jesus Fireworks Factory Employees and their Families v. Brazil*, the Inter-American Court of Human Rights convicted the Brazilian State due to a lack of a timely legal response to the victims of the explosion of a fireworks factory in Bahia, which resulted in the death of 60 (sixty) people. The Court considered that the State failed to ensure prompt and effective investigations, resulting in the impunity of those responsible and the impossibility of full reparation for the victims and their families.

The Inter-American Court of Human Rights case law demonstrates that if the Brazilian State fails to comply with any of these duties—whether in preventing, regulating, or redressing human rights violations in the context of business activities—it may be held internationally liable. Adopting a binding national regulatory framework on human rights and business becomes essential to ensure Brazil adequately complies with its international obligations.



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

The lack of specific legislation imposing direct obligations on companies and establishing clear mechanisms for monitoring, accountability, and compensation for damages creates a permanent risk of conviction by the Inter-American System. Therefore, the approval of Bill No. 572/2022 will represent a fundamental step not only to strengthen the national regulatory framework, prevent violations, and protect the rights of victims but also to prevent the Brazilian State from being held liable by the international system.

2. Bill no. 572/2022 of the House of Representatives: positive highlights

2.1. Legal certainty

Bill No. 572/2022 represents a significant step toward constructing a solid regulatory framework to regulate Brazil's relationship between companies and human rights. One of the main positive aspects of the proposal is reinforcing legal certainty, which is essential to ensure predictability and coherence in applying corporate liability rules for human rights violations. This step forward is materialized in three main axes, which brings together understandings sparsely incorporated into the Brazilian legal system and which are now expressly provided for in the law: the reaffirmation of the prominence of human rights and pro homine interpretation, the recognition of direct obligations on companies regarding the respect, protection, and promotion of human rights; and ensuring full compensation for damages caused.

2.1.1. The Prominence of Human Rights and Pro Homine Interpretation

The prominence of human rights in the Brazilian legal system is supported by the Federal Constitution and international human rights treaties ratified by Brazil. Bill No. 572/2022 reinforces this prominence by establishing that all rules related to business activities must be interpreted in light of the maximum protection of fundamental rights, a principle known as 'pro homine interpretation.' **This interpretation guideline requires that, in the face of competing rules or potential normative conflicts, the rule that offers a higher level of protection of human rights shall prevail.**

This principle was widely recognized by the Federal Supreme Court (STF) when deciding on the Extraordinary Appeal 466.343/SP¹ and established that international human

¹Synopsis: "CIVIL COMMITMENT. Deposit. Depositary that unjustifiably refuses to return the thing deposited to the depositor. Secured Fiduciary Sale. Ordering of the Coercive Measure. Absolute Inadmissibility. Disregard of constitutional provision and subordinate rules. Interpretation of art. 5, item. LXVII and paragraphs 1, 2, and 3, of the Federal



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

rights treaties ratified by Brazil have supra-legal status and should prevail over conflicting infra-constitutional norms. The STF reinforced this position in the writ of Habeas Corpus 96,772/SP², clearly stating that the interpretation of rules must always consider maximum protection of fundamental rights, ensuring that infra-constitutional norms are disregarded when incompatible with human rights treaties.

At the regional level, the Inter-American Court of Human Rights has reinforced the prominence of human rights and pro homine interpretation in several decisions. In the case of *Almonacid Arellano v. Chile*, the Court ruled that human rights standards must prevail over national laws that prevent accountability for serious violations of fundamental rights, reinforcing that the interpretation of standards must always favor the protection of human dignity. In the case of *Gomes Lund et al. ("The Araguaia Guerrilla War") v. Brazil*, the Inter-American Court reinforced the said understanding as it ruled that the Brazilian Amnesty Law could not prevent the investigation and punishment of crimes against humanity, as this would violate international obligations to protect human rights assumed by Brazil.

In public international law, the International Court of Justice (ICJ) has also adopted the pro homine interpretation several times. In the case of *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, the ICJ reaffirmed that States must ensure individuals the maximum possible protection of their human rights under their jurisdiction, even in the face of domestic legislation that may indicate otherwise. The Court emphasized that international human rights treaties must always be interpreted in favor of recognizing and expanding fundamental protections.

Constitution, in light of art. 7, para. 7 of the American Convention on Human Rights (Pact of San José). Appeal denied. Joint decision of Appeal n. 349,703 and HCs no. 87,585 and n. 92,566. The civil commitment of a depository that unjustifiably refuses to return the thing deposited to the depositor is unlawful, regardless of the type of deposit."

(RE 466343, Reporting Justice: CEZAR PELUSO, Full Court, decided on 03-DEC-2008, GENERAL REPERCUSSION-MERITS DJe-104 DIVULG 04-06-2009 PUBLIC 05-06-2009 EMENT VOL-02363-06 PP-01106 RTJ VOL-00210- 02 PP-00745 RDECTRAB v. 17, n. 186, 2010, p. 29-165). This decision resulted in binding precedent No. 25 of the Federal Supreme Court, which establishes: "The civil commitment of a depository that unjustifiably refuses to return the thing deposited to the depositor is unlawful, regardless of the type of deposit."

² "The primacy of the norm that most favors the human person. Judges and courts, when exercising their interpretative activity, especially within the scope of international human rights treaties, must observe a basic hermeneutical principle (such as the one in art. 29 of the American Convention on Human Rights), consisting of giving primacy to the rule that favors the human person the most and provide them with the most comprehensive legal protection. In this hermeneutical process that honors the criterion of the most favorable rule (which may be either provided for in the international treaty or established in the State's domestic law), the Judicial Branch must extract maximum effectiveness from international declarations and constitutional rules, as a way of enabling individuals and social groups, notably the most vulnerable, to have access to institutionalized systems protecting the fundamental rights of the human person, under penalty of freedom, tolerance, and respect for human otherness becoming empty words. Application, in this case, of art. 7, n. 7, coupled with art. 29, both from the American Convention on Human Rights (Pact of San José, Costa Rica): a typical case of primacy of the rule that most favors the adequate protection of the human being. (HC 96,772, reporting justice Celso de Mello, j. 9-6-2009, 2nd Panel, DJe of 21-Aug-2009).



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

Bill No. 572/2022 contains and expressly mentions the prominence of human rights and pro homine interpretation in several provisions. Article 3, item III³, states that human rights standards supersede any agreements, including those of an economic, commercial, service, and investment nature. This provision reinforces the primacy of human rights over economic interests, ensuring that no contractual or regulatory provision may restrict or mitigate fundamental rights. Likewise, paragraphs VI and VII of Article 3⁴ state that when there is conflict with human rights standards, the one most favorable to the affected person shall prevail. The same applies in the event of multiple interpretations of the same standard: the one that best protects human rights must be adopted. These provisions materialize the pro homine interpretation, ensuring that, in the event of doubts or regulatory gaps, the interpretation adopted will be the one that provides the highest level of protection to victims.

Furthermore, Article 4, item I⁵, determines that the State and companies must respect and not violate human rights, reinforcing that such rights prevail over any economic or business interest. Furthermore, Article 5, paragraph 1⁶, establishes that companies are jointly liable for human rights violations throughout the production chain, regardless of any formal contractual relationship. This provision reflects the principle of the prominence of human rights by ensuring that no corporate structure or contract can exempt a company from its obligations to respect and protect fundamental rights.

Thus, Bill No. 572/2022 aligns with the consolidated case law of the Federal Supreme Court, the Inter-American Court of Human Rights, and the International Court of Justice, reaffirming Brazil's international commitment to ensure the primacy of fundamental rights over purely economic interests.

By adopting pro homine interpretation as a structuring principle for applying business standards, the Bill strengthens legal certainty, dispelling

³ “Article 3. The principles and guidelines which govern the enforcement of this law are: (...)

III. The superimposition of Human Rights standards over any other agreements, including those of economic, commercial, service, and investment nature.”

⁴ “Article 3 The principles and guidelines which govern the enforcement of this law are: (...)

In the event of a conflict between Human Rights standards, the standard most favorable to the affected person shall prevail.;

In the event of multiple interpretations of the same Human Rights standard, the interpretation most favorable to the affected person shall prevail.”

⁵ “Article 4. State and companies are both obliged to:

I – Respect and not violate Human Rights;”

⁶ “Article 5. Companies based in or economically active in Brazilian territory shall be held accountable for human rights violations caused directly or indirectly by their operations.

Paragraph 1 Liability for the violation is joint and several and extends throughout the production chain, including the controlling company, controlled companies, as well as public and private investors, including subcontractors, branches, subsidiaries, economic and financial institutions with activities outside the national territory, and national economic and financial entities that participate by investing in or benefiting from any stage of the production process, including when there is no formal contractual relationship.”



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

doubts concerning protecting human rights as a non-negotiable axis in regulating business activities.

2.1.2. The direct obligations of companies and the horizontal effectiveness of fundamental rights

The Bill takes a step further by expressly recognizing companies' direct obligations in human rights, supported by the principle of the horizontal effectiveness of fundamental rights.

Although the UN Guiding Principles on Business and Human Rights are the reference international normative framework, they assign obligations only to States without providing direct duties to companies. However, in the Brazilian legal context, this gap does not exist since the Brazilian Federal Supreme Court (STF) has consolidated the understanding that fundamental rights are not limited to relations between the State and individuals (vertical effectiveness) but also apply to interactions between private individuals, a concept known as the horizontal effectiveness of fundamental rights. The STF made this stance evident in its Extraordinary Appeal 201.819/RJ⁷ ruling, recognizing that

⁷ Headnote: "NON-PROFIT CIVIL SOCIETY. BRAZILIAN UNION OF COMPOSERS. WITHDRAWAL OF MEMBER WITHOUT FAIR HEARING AND ADVERSARIAL PROCEEDINGS. EFFECTIVENESS OF FUNDAMENTAL RIGHTS IN PRIVATE RELATIONS. APPEAL DISMISSED.

I. EFFECTIVENESS OF FUNDAMENTAL RIGHTS IN PRIVATE RELATIONS. Violations of fundamental rights do not occur only in the context of relations between citizens and the State, but also in relations between individuals and legal entities under private law. Thus, the fundamental rights guaranteed by the Constitution directly bind not only public authorities, but are also aimed at protecting individuals against private authorities.

II. CONSTITUTIONAL PRINCIPLES AS BOUNDARIES FOR THE PRIVATE AUTONOMY OF ASSOCIATIONS. The Brazilian constitutional legal order did not grant any civil association the possibility of acting in disregard for principles enshrined in the laws and, in particular, the guidelines that are directly based on the wordings of the Constitution of the Republic itself, notably on the protection of fundamental freedoms and guarantees. The private autonomy guaranteed by the Constitution to associations is not immune to the constitutional principles that protect the fundamental rights of its members. Private autonomy, which encounters clear limitations of a legal nature, cannot be exercised to the detriment of or with disregard for the rights and guarantees of third parties, especially those established in the Constitution, since the autonomy of will does not grant individuals, in the domain of their action, the power to transgress or ignore the restrictions imposed and defined by the Constitution itself, whose effectiveness and normative force are also imposed on individuals, within the scope of their private relations, on the subject of fundamental freedoms.

III. NON-PROFIT CIVIL SOCIETY. ENTITY INTEGRATING PUBLIC SPACE, EVEN IF NOT STATE-OWNED. OPERATION OF PUBLIC CHARACTER. WITHDRAWAL OF MEMBER WITHOUT DUE PROCESS OF LAW. DIRECT ENFORCEMENT OF FUNDAMENTAL FAIR AND ADVERSARIAL HEARING RIGHTS. Private associations that play a predominant role in a given economic and/or social sphere, keeping their members in relationships of economic and/or social dependence, are part of what can be called a public space, even if they are not state-owned. The Brazilian Union of Composers - UBC, a non-profit civil society, is part of the structure of ECAD and, therefore, assumes a privileged position to determine the extent of the enjoyment and fruition of its members' copyrights. The withdrawal of a member from the UBC membership, without any guarantee of fair hearing and adversarial proceedings, nor due constitutional process, is considerably prejudicial to the defendant, who is unable to receive the copyrights related to the performance of his works. The denial of constitutional guarantees and due process ends up restricting the freedom of the member to practice his profession. The public nature of the activity carried out by the society and the dependence of the associative link for the professional practice of its members legitimize, in this specific case, the direct enforcement of the fundamental rights in accordance with the principles of due process of law, adversarial proceedings and a fair opportunity to be heard. (art. 5º, LIV e LV, CF/88).

IV. APPEAL TO THE SUPREME COURT DISMISSED."



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

the autonomy of will in private relations cannot violate the fundamental rights and guarantees provided for in the Constitution.

Consequently, companies operating in Brazil are directly bound by the duty to respect, protect, and promote human rights, including those ensured by the Federal Constitution and national laws and those provided for in international treaties to which Brazil is a signatory. Bill No. 572/2022 reaffirms this duty, making it clear that companies, when conducting their activities, cannot remain silent in the face of fundamental rights violations and must be proactive to avoid and mitigate adverse impacts arising from their operations.

Bill No. 572/2022 sets out direct obligations for companies in several provisions. Article 4, I⁸, of the Bill establishes that companies must respect and not violate human rights, reinforcing that such rights must prevail over any economic or business interest. That article establishes the direct responsibility of companies to ensure that their activities do not result in adverse impacts on fundamental rights. Article 5, para. 1⁹, also mentioned above, states that companies are jointly liable for human rights violations throughout their production chains, regardless of a formal contract-based relationship. This provision reflects the horizontal effectiveness of fundamental rights, consolidating the companies' obligation to respect, protect, and promote human rights in their direct operations and production chains.

Article 7¹⁰ imposes on companies the duty to adopt due diligence mechanisms in human rights and the environment, ensuring the identification, prevention, and mitigation of risks related to their activities. In turn, Article 16¹¹ establishes that companies' redressing

(RE 201819, Rapporteur: ELLEN GRACIE, Rapporteur for the Judgment: GILMAR MENDES, Second Panel, tried on 10/11/2005, DJ 10/27/2006 PP-00064 EMENT VOL-02253-04 PP-00577 RTJ VOL-00209-02 PP-00821)

⁸ "Article 4. State and companies both are obliged to: I – Respect and not violate Human Rights;"

⁹ "Article 5. Companies based in or economically active in Brazilian territory are held accountable for human rights violations caused directly or indirectly by their operations.

Paragraph 1. Liability for the violation is joint and several and extends throughout the production chain, including the controlling company, controlled companies, as well as public and private investors, including subcontractors, branches, subsidiaries, economic and financial institutions with operations outside the national territory, and national economic and financial entities that participate by investing in or benefiting from any stage of the production process, including when there is no formal contractual relationship."

¹⁰ "Article 5. Companies must carry out a due diligence process to identify, prevent, monitor and repair human rights violations, including social, labor and environmental rights, and must, at least:

I – Encompassing those the company may cause or to which it may contribute, by its own operations, or that are directly related to its activities and operations, products or services through its commercial relations;

II - Be continuous, recognizing that the risks of human rights violations may change over time, as its activities and operations develop as well as the company's operational context."

¹¹ "Article 16. Regarding compensation and accountability of companies, the following will be taken into account when applying sanctions:

I – the seriousness of the violation;

II - the advantage possibly obtained by the companies that directly or indirectly committed the violation;

III - the level of injury caused or the risk of injury produced;

IV - the effects generated directly and indirectly by the violation;

V - the economic power of the companies that directly or indirectly committed the violation or produced its risk of occurrence.

VI - the number of people placed in a situation of violation of rights, or exposed to the risk of injury;



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

and accountability mechanisms must consider criteria such as the severity of the violation, the level of harm caused, and the effects produced directly or indirectly by the violation, ensuring that specific legal obligations accompany business actions.

2.1.3. Full compensation for damages caused

Another fundamental aspect of the Bill is the provision for full reparation of damages caused by companies that violate human rights. The principle of full reparation is widely consolidated in international human rights law and the Inter-American Court of Human Rights case law and has been reinforced in several cases, such as *Velásquez Rodríguez v. Honduras*, *Brasil Verde Farm Workers v. Brazil*, and *Santo Antônio de Jesus Fireworks Factory Employees v. Brazil*. The understanding consolidated by the Inter-American Court of Human Rights establishes that compensation for damages should not be limited to compensatory measures¹² but should also include restitution¹³, rehabilitation¹⁴, satisfaction¹⁵, and guarantees of non-repetition¹⁶.

Bill No. 572/2022 expressly recognizes full reparation in Article 3, item IV¹⁷, which establishes the right of affected individuals and communities to full reparation for human rights violations committed by companies, in compliance with the principle of the centrality of the victim's suffering, as a fundamental principle. Furthermore, Article 4, item III, subitem "a,"¹⁸ determines that, in the event of human rights violations, the State and companies must act to ensure full reparation for the violations. Article 9, item II¹⁹, obliges

Sole paragraph. In actions seeking compensation for damages resulting from violations of Human Rights, no legal or conventional limits may be applied to the arbitration of values."

¹² Refers to financial compensation for material damages (direct economic losses, such as loss of property or income) and immaterial damages (suffering, anguish or pain caused by the violation).

¹³ It consists of restoring the situation to the pre-violation situation, whenever possible. This may include, for example, the return of a victim to his or her territory, reinstatement in employment or the reversal of unlawful administrative or legislative acts.

¹⁴ It involves measures aimed at the physical, psychological or social recovery of the victim, such as access to medical treatment, psychological support and social or labor reintegration programs, especially in cases of torture, enforced disappearance or forced displacement.

¹⁵ It includes symbolic measures of recognition of state accountability, such as public apologies, memorials, rehabilitation of the victim's image and dissemination of the truth about the facts, seeking to restore the dignity of victims and their families.

¹⁶ These are structural reforms designed to prevent the recurrence of violations, including legislative changes, training of public officials, creation of oversight mechanisms and reform of institutions responsible for violations.

¹⁷ "Article 3. The principles and guidelines which govern the enforcement of this law are: (...)

IV. The right of affected individuals and communities to full compensation for human rights violations committed by companies, in compliance with the principle of the centrality of the victim's suffering."

¹⁸ "Article 4. State and companies both are obliged to: (...)

III – In the event of any violation:

a) Act towards full reparation of violations;"

¹⁹ "Article 9. The Federal Government, the States, the Federal District and Municipalities must take the measures provided for in article 5 through public policies, within the scope and limits of their powers, applicable standards and regulations, including: (...)

II - Act towards full reparation of violations, prioritizing the principle of the centrality of the victim's suffering, which requires the leading role of affected individuals or communities in the development of prevention mechanisms, full compensation and guarantees of non-repetition;"



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

the Federal Government, the States, the Federal District, and the Municipalities to adopt measures to ensure full reparation for the violations, with the victims playing a leading role in building prevention and compensation mechanisms.

Article 11, item X²⁰, expressly recognizes the right of affected individuals, groups, and communities to full reparation for human rights violations resulting from business activities. Articles 13 and 14²¹ establish a Reparation Fund, managed with the participation of affected communities, to cover the victims' basic needs until full reparation for damages cases are consolidated. Article 16²² prescribes that the reparation and liability of companies should consider criteria such as the severity of the violation, the level of harm caused, and the effects produced directly or indirectly by the violation, reinforcing the need for a broad response that is proportionate to the damage caused. Finally, Article 19, item IV²³, prohibits out-of-court or judicial agreements that exempt companies from their

²⁰ "Art. 11. The following are considered rights of individuals, groups and communities affected by violations or potential violations of human rights: (...)

X – Full reparation for Human Rights violations resulting from business activities;”

²¹ "Art. 13 - In the event of mandatory reparation, the violating company must create a Fund to cover the basic needs of the people, groups and communities affected until the full compensation for damages process is consolidated.

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

II - The Federal Prosecution Service shall act exclusively as an inspector of the execution and in the management of said Fund.

III - The Fund shall serve as a guarantee for emergency and reparation measures for the affected communities.

Sole Paragraph. Pending regulation of the aforementioned Fund, the money shall be deposited in an official credit establishment, in an account with monetary correction, to be managed by the court responsible for assessing the action for compensation of damages.

Art. 14 The general objectives of the Fund referred to in Article 13, among others, shall be:

I - Providing resources for emergency financial aid to the affected population to guarantee their subsistence;

II - Meeting priority health demands resulting from acts caused by human rights violations;

III - Providing drinking water, in cases where sources previously used to supply communities are compromised;

IV - Hiring and supporting an independent technical advisory body to act as an emergency response team;

V - Guaranteeing advisory services to draw up a damage repair matrix;

VI - Guaranteed access to the internet, travel and food for community leaders in the negotiation processes with companies and public authorities;

VII - Other specific demands presented by the people, communities and groups affected.”

²² "Art. 16: With regard to the reparation and accountability of companies, the following shall be taken into consideration when applying sanctions:

I - the seriousness of the violation;

II - the advantage possibly gained by the companies that directly or indirectly committed the violation;

III - the level of damage generated or the danger of damage produced;

IV - the effects generated directly and indirectly by the violation;

V - the economic power of the companies that directly or indirectly committed the violation or produced its risk of occurrence.

VI - the number of people placed in a situation where their rights have been violated, or exposed to danger of injury;

Sole paragraph. In actions seeking reparation for damages resulting from human rights violations, no legal or conventional limits may be applied to the arbitration of amounts.”

²³ "Art. 19 - In the event that agreements are proposed and negotiated between the government and legal entities that violate human rights, in relation to damages caused to the community, committed in the context of business activity, whether within the extrajudicial or judicial sphere, this practice must be guided by the search for solutions that guarantee human rights, and must observe the guidelines described below: (...)

IV - Any individual agreements or terms of adjustment of conduct entered into may not lead to the relaxation of guarantees and principles that are legally and constitutionally provided for and that can be recognized by the courts, nor may they mitigate the full accountability of companies for human rights violations committed within the context of their operations;”



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

obligation to ensure full reparation to victims.

By structuring a regulatory regime that reaffirms the primacy of human rights, imposes direct obligations on companies, and ensures full compensation for damages, Bill No. 572/2022 aligns the national legal system with the international commitments the country has assumed and improves legal certainty in Brazil, reducing litigation.

Therefore, this Bill's approval is an essential step towards consolidating a predictable and fair regulatory environment aligned with the highest human rights protection standards.

2.2. Responsible innovation

Bill No. 572/2022 also stands out for its responsible innovation in regulating relations between human rights and companies, avoiding normative obsolescence and the uncritical adoption of foreign models that do not reflect the Brazilian reality. This innovation manifests in three main aspects: the rule's space-time adequacy, the use and expansion of legal entities consolidated in the Brazilian legal system, and contributions based on the lived experience of those affected by corporate violations.

2.2.1. The space-time adequacy

The space-time adequacy of Bill No. 572/2022 is one of its great merits, as the proposal does not restrict itself to merely reproducing the UN Guiding Principles on Business and Human Rights, which contains severe limitations in terms of preventing and repressing human rights violations by companies, as already mentioned above, nor does it uncritically copy foreign legislation, such as the due diligence laws of France and Germany, which reflect a view predominantly focused on commercial and regulatory relations in the Global North.

The UN Guiding Principles' non-binding nature and the lack of concrete accountability mechanisms have perpetuated corporate impunity, allowing large conglomerates to continue to operate with no legal consequences proportional to the damage caused. Furthermore, their approach does not provide for direct obligations on companies, transferring to States the sole responsibility for protecting and promoting human rights. Given the private sector's political and economic influence, this often proves insufficient.

On the other hand, France's and Germany's due diligence laws were designed to meet European regulatory and commercial demands, reflecting an approach focused on



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

protecting markets and consumers; so, they do not structurally address the challenges faced by countries that large-scale corporate violations, such as Brazil, have historically impacted. Despite representing necessary steps towards controlling production chains, these regulations do not fully include the local realities of countries in the Global South, where affected communities are more vulnerable, and monitoring mechanisms are still weak. Thus, merely replicating these standards could result in adopting a decontextualized model that would not address the specificities of human rights violations occurring in Brazil.

So, Bill No. 572/2022 innovates by adopting modern concepts more suited to Brazilian reality, such as placing the victim's suffering at the center. It establishes that people and communities affected by human rights violations resulting from business activities must have the right to full reparation, ensuring their active participation in the redressing process, prevention, and guarantees of non-repetition. Article 3 expressly provides for this perspective in item IV²⁴, which determines that full reparation must comply with the principle of placing the victim's suffering at the center, ensuring that they are the protagonists in creating responses to the violations suffered.

Article 9, item II²⁵, reinforces this guideline by imposing on the Federal Government, States, Federal District, and Municipalities the obligation to act by placing the victim's suffering at the center, ensuring that the prevention and reparation of violations are structured based on the perspective of those who were directly impacted. In addition, Article 11, item XII²⁶, consolidates this principle by recognizing it as a right of those affected people, groups, and communities, establishing it as a structuring axis of the comprehensive reparation model adopted by the Bill.

Therefore, placing the victim's suffering at the center provides a leading role to the affected people and communities, ensuring that they have an active voice in creating mechanisms for prevention, full reparation, and guarantees of non-repetition. The drafting of policies to mitigate corporate impacts has traditionally taken place without the effective participation of victims, reinforcing structural inequalities and perpetuating an exclusionary development model. By reversing that logic, the Bill establishes a normative basis that

²⁴ "Art. 3. The principles and guidelines governing the application of this law are: (...)

IV. The right of affected people and communities to full compensation for human rights violations committed by companies, observing the principle of the centrality of the victim's suffering;"

²⁵ "Art. 9. The Federal Government, the States, the Federal District and the Municipalities must take the measures provided for in Article 5 by means of public policies, within the scope and limits of their powers, rules and regulations, including: (...)

II - Work towards full compensation for violations, based on the principle of the centrality of the victim's suffering, which imposes the protagonism of the individuals or communities affected in the development of mechanisms for prevention, full reparation and guarantees of non-repetition;"

²⁶ "Art. 11: The following are considered to be the rights of people, groups and communities affected by human rights violations or potential violations: (...)

XII - The centrality of the victim's suffering;"



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

promotes restorative justice and recognition of the dignity of those affected, ensuring that their experience and knowledge are central to the design of state and corporate responses to human rights violations.

The Inter-American Court of Human Rights case law substantiates this approach as it has recognized in several decisions the need to ensure victims an active role in reparation processes, as exemplified in the cases of *Pueblo Kaliña y Lokono v. Suriname* and *Brasil Verde Farm Workers v. Brazil*. In these rulings, the Inter-American Court emphasized the need to place those affected at the center of decision-making on compensatory measures, ensuring their effective participation in drafting and implementing redressing policies.

Regarding placing the victim's suffering at the center, the role of Brazilian legal expert Antônio Augusto Cançado Trindade at the Inter-American Human Rights System and the International Court of Justice (ICJ) is worth mentioning. During his term as a Judge at the Inter-American Court of Human Rights (1995-2006), Cançado Trindade consolidated the understanding that the victim should be the main object of protection and reparation in human rights violations. To him, international jurisdiction should not be limited to a debate between States but rather ensure justice and dignity for victims. Furthermore, he was responsible for expanding victims' rights to be heard and presenting allegations directly to the Court, consolidating the principle that international justice should be an instrument of reparation rather than only sanctioning States. As a Judge at the ICJ (2009-2021), he continued to promote this perspective, arguing that human dignity should be the guiding principle of international justice.

In addition to placing the victim's suffering at the center, Bill No. 572/2022 makes progress by setting a higher standard and preventing a race from hitting rock bottom, telling transnational companies they must adopt, in addition to the rules of the countries in which they operate, those that ensure better protection of human rights, regardless of where the damage occurred. Article 6, XVIII²⁷ establishes that transnational corporations must adopt the standards of the country with which they have some connection to ensure more protection of human rights, regardless of the location of the damage. This provision seeks to prevent transnational corporations from taking advantage of regulatory gaps or less protective rules in certain countries to reduce costs and increase their profit margins, often at the expense of fundamental human rights. This ensures that companies always follow the highest

²⁷ "Art. 6. Companies must promote, respect and ensure human rights in the context of their activities, based on the following guidelines: (...)

XVIII- The duty of transnational companies to adopt for themselves the rules of the country among which they have some kind of link, which guarantee greater protection of human rights, regardless of where the damage occurred;".



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

regulatory standard, preventing the so-called "race to hit rock bottom," in which competition between countries and markets leads to the relaxation of rights to attract investment.

The mechanism at issue represents significant progress as it consolidates the need for higher standards, ensuring that the most protective standards are applied universally within the company's activities, not only in jurisdictions with stricter regulations. So, Bill No. 572/2022 prevents companies from using global regulatory fragmentation as a strategy to reduce operating costs through lowering human rights standards to the minimum; at the same time, the Bill reinforces the responsibility of corporations to operate within a level of respect for human rights without making them relative to commercial interests.

- Another essential progress the Bill promotes, adapted to the Brazilian reality, is strengthening external control of business activities. Bill No. 572/2022 mentions and includes external control of business activities in Article 11, V²⁸, as provides for the supervision of business activities conducted by unions, the Public Prosecutor's Service, and the Public Defender's Office, ensuring that these institutions play an active role in supervising compliance with the company's social function (FC, art. 173, para. 1, I²⁹), of ownership (FC, art. 5^o, XXIII³⁰; Art. 170, III³¹; Art. 182, para. 2^o³²; head of Article 184³³ and

²⁸ "Art. 11: The following are considered rights of people, groups and communities affected by human rights violations or potential violations: (...)

V - The guarantee of external control of business activity through the inspection of trade unions and other class entities, the Public Prosecutor's Office and the Public Defender's Office;"

²⁹ "Art. 173 - Except in the cases provided for in this Constitution, the direct exploitation of economic activity by the State shall only be permitted when necessary for national security imperatives or the relevant collective interest, as defined by law.

Paragraph 1 The law shall establish the legal status of public companies, mixed-capital companies and their subsidiaries that carry out economic activities involving the production or sale of goods or the provision of services, providing for:

I - their social function and forms of supervision by the State and society;"

³⁰ "Art. 5 All are equal before the law, without distinction of any kind, and Brazilians and foreigners residing in the country are guaranteed the inviolability of the right to life, liberty, equality, security and property, under the following terms: (...)

XXIII - property shall fulfill its social function;"

³¹ "Art. 170. The economic order, based on the appreciation of human work and free enterprise, aims to ensure dignified existence for all, in accordance with the guidelines of social justice, with due regard for the following principles: (...)

III - the social function of property;"

³² "Art. 182. Urban development policy, implemented by the municipal government in accordance with general guidelines established by law, aims to organize the full development of the city's social functions and guarantee the well-being of its inhabitants. (...)

Paragraph 2 Urban property fulfills its social function when it meets the fundamental requirements of city planning expressed in the master plan."

³³ "Art. 184: The Federal Government is responsible for expropriating rural property that is not fulfilling its social function for the purposes of agrarian reform, by means of prior and fair compensation in agrarian debt securities, with a real value preservation clause, redeemable within a period of up to twenty years from the second year of issue, and whose use will be defined by law."



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

Art. 186³⁴), and contracts (Civil Code, Srt. 421³⁵), reinforcing the need for business activity to be subordinated to social justice and sustainability standards.

2.2.2. Use and expansion of legal entities consolidated in the Brazilian legal system

Bill No. 572/2022 also stands out for not seeking to “reinvent the wheel” but for expanding and improving legal entities already existing in the Brazilian legal system. Instead of simply creating unusual legal institutions whose practical application could generate consequences that are hard to predict, to the detriment of legal certainty, the proposal aims to consolidate and expand mechanisms that have already proven effective in protecting human rights, ensuring their more comprehensive and equitable application.

One of the most emblematic and significant examples of this approach is the legal figure of **free, prior, and informed consultation**, initially provided for in Convention 169 of the International Labour Organization (ILO)³⁶, which, in Brazilian law, has been applied mainly to Indigenous peoples and traditional communities. Bill No. 572/2022 expands the scope of that mechanism, extending its application to all people and communities affected by business activities, reinforcing its importance as an essential instrument to ensure more protection and social participation.

The Bill provides for free, prior, and informed consultation in articles 3, V³⁷ and 11, VI³⁸. Article 3, item V, establishes that prior, free, informed, and good faith consultation must be ensured to those affected, ensuring their right to consent to projects that may impact them. Along the same lines, article 11, section VI, provides that prior, free, informed, and good faith consultation is a right of affected people, ensuring the power to veto projects that affect their territories and respecting consultation

³⁴ “Art. 186. The social function is fulfilled when the rural property simultaneously meets the following requirements, according to the criteria and degrees established by law:

I - rational and adequate utilization;

II - adequate use of available natural resources and preservation of the environment; III - compliance with the provisions regulating labor relations;

IV - exploitation that favors the well-being of owners and workers.”.

³⁵ “Art. 421. Freedom of contract shall be exercised within the limits of the social function of the contract.

Sole paragraph. In private contractual relations, the principle of minimum intervention and the exceptional nature of contractual revision shall prevail.”.

³⁶ It was incorporated into the Brazilian legal system by Decree No. 5,051 of April 19, 2004. This decree was later revoked and replaced by Decree No. 10,088 of November 5, 2019, which reaffirmed the incorporation of the convention into Brazilian domestic law, guaranteeing its application in the country.

³⁷ “Art. 3. The principles and guidelines governing the application of this law are: (...)

IV. The right to prior, free, informed and good faith consultation with those affected, guaranteeing the right to consent;”.

³⁸ “Art. 11: The following are considered to be the rights of persons, groups and communities affected by human rights violations or potential violations: (...)

VI - The prior, free, informed and good faith consultation of indigenous peoples, *quilombola* communities and traditional peoples and communities affected by business activity, ensuring the right to veto projects in their territories, the right to consent, as well as respect and promotion of the consultation protocols drawn up by the communities;”.



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

protocols drawn up by communities. These provisions provide the active participation of impacted populations in decision-making processes, preventing large projects from being implemented without considering their rights and interests.

The expansion of free, prior, and informed consultation addresses a regulatory gap in Brazil, where projects with significant socio-environmental impacts are often executed without the affected populations having the opportunity to participate in the decision-making process actively. It is essential to highlight that according to the Inter-American Court of Human Rights case law established based on cases such as *Saramaka People v. Suriname* and *Kichwa Indigenous Peoples of Sarayaku v. Ecuador*, the right to prior consultation cannot be reduced to a formal or merely informative procedure, it must ensure the effective involvement of affected communities in decision-making regarding projects that impact their territories and ways of life.

At the same time, the Bill includes procedural instruments aimed at reducing asymmetries, such as **piercing the corporate veil**, reversing the burden of proof and criminal liability of legal entities, strengthening access to justice, and preventing corporate impunity.

Piercing the corporate veil, provided for in Article 18, VII³⁹, prevents companies from using their corporate structure to avoid their responsibilities, allowing the assets of partners and controllers to be affected when there is an abuse of legal personality to defraud obligations or hinder the redress of damages. This mechanism is already set forth in Brazil's Consumer Protection Code (Consumer Protection Code, art. 28⁴⁰) and environmental law (Law n. 9,605/1998, art. 4⁴¹), and its inclusion in Bill No. 572/2022 strengthens the possibility of effective accountability of companies involved in human rights violations.

Another essential element to ensure access to justice is the **reversal of the burden of proof**, provided for in article 11, I⁴², which recognizes the lack of power the

³⁹ "Art. 18: Accountability mechanisms shall be used, among others not provided for in the list below: (...) VII- Disregard of the legal entity, as already provided for in the Consumer Protection Code;"

⁴⁰ "Art. 28: The judge may disregard a company's legal personality when, to the detriment of the consumer, there is an abuse of rights, excess of power, infringement of the law, unlawful act or violation of the articles of association. Disregard will also be carried out when there is bankruptcy, a state of administration order, closure or inactivity of the legal entity caused by poor management.

Paragraph 1 (Vetoed).

Paragraph 2 Companies that are part of corporate groups and controlled companies are subsidiarily liable for the obligations arising from this code.

Paragraph 3. Consortium companies shall be jointly and severally liable for the obligations arising from this Code.

Paragraph 4 - Related companies shall only be liable for fault.

Paragraph 5. The legal entity may also be disregarded whenever its personality is, in any way, an obstacle to recovering damages caused to consumers."

⁴¹ "Art. 4: A legal entity may be disregarded whenever its personality hinders compensation for damage caused to the quality of the environment."

⁴² "Art. 11: The rights of people, groups and communities affected by human rights violations or potential violations are considered to



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

victims of corporate violations in relation to large corporations and determines that, in cases where the impossibility of producing evidence may hinder access to justice, the burden of proof falls on the company. This mechanism, which is already applied in consumer law (CDC, art. 6, VIII⁴³), prevents victims from being harmed by the asymmetrical information and resources that usually favor companies in legal proceedings. With this provision, the Bill ensures that the burden of demonstrating the adoption of measures to prevent and mitigate violations falls on companies, ensuring equality of arms between the parties and, thus, due process.

Furthermore, the Bill provides for the **criminal liability of legal entities**, as established in Article 5, para. 2⁴⁴, determining that companies will be subject to civil, administrative, and criminal liability if their activities violate human rights. This provision reinforces that corporate impunity must be combated through effective sanctions that are proportionate to the severity of the damage caused, complementing the already existing criminal liability of legal entities in environmental law (Law no. 9,605/1998, art. 3⁴⁵).

These mechanisms ensure that access to justice is not thwarted by legal strategies used to avoid accountability, ensuring that victims of corporate violations have adequate means to obtain redress and justice.

By consolidating these procedural instruments into a single regulatory framework, Bill No. 572/2022 promotes significant progress in reducing structural inequalities between companies and affected people and communities, preventing abuse, and ensuring business activities are aligned with human dignity and social justice principles.

Finally, it is worth noting that Bill No. 572/2022 adopts the **liability of corporations for human rights violations in their value chains**, which is a fundamental step toward ensuring that companies are held accountable for damages caused throughout

be:

I - Recognition of the disadvantaged position of those affected vis-à-vis companies, applying the reversal of the burden of proof in cases where the impossibility of producing it may hinder access to justice;”

⁴³ “Art. 6 Basic consumer rights: (...)

VIII - the facilitation of the defense of their rights, including the reversal of the burden of proof, in their favor, in civil proceedings, when, at the discretion of the judge, the claim is credible or when they are in a disadvantaged position, according to the ordinary rules of experience;”

⁴⁴ “Article 5. Companies based in or economically active in Brazilian territory shall be held accountable for human rights violations caused directly or indirectly by their operations. (...)

Paragraph 2 Companies must adopt control, prevention and redress mechanisms capable of identifying and preventing human rights violations arising from their activities, notwithstanding their civil, administrative and criminal liability should such violations occur.

⁴⁵ “Art. 3 Legal entities shall be held administratively, civilly and criminally liable in accordance with the provisions herein, in cases where the infraction is committed by decision of their legal or contractual representative, or of their collegiate body, in the interest or benefit of their entity.

Sole paragraph. The liability of legal entities does not exclude that of individuals, authors, co-authors or participants in the same fact.”



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

their entire production structure. Brazilian legislation already recognizes this concept within the scope of environmental damages through the figure of the 'indirect polluter' (Law No. 6,938/1981, art. 3, IV⁴⁶) and liability for non-compliance with occupational health and safety standards (Law No. 6,019/1974, art. 9, para. 1⁴⁷), is expanded by Bill No. 572/2022 to cover all human rights violations that may occur throughout a company's production chain, regardless of the existence of a direct contract-based link.

Head of article 5 and para. 1⁴⁸ substantiates this approach as it establishes the **strict liability of companies for human rights violations resulting from their activities and operations, including those conducted by third parties in their value chains.** Article 6, XII⁴⁹ reinforces the said provision by establishing that The company must ensure that its subsidiaries, suppliers, and contractors comply with human rights and that the lack of direct control over a link in the production chain cannot be used as a pretext for exemption from liability; furthermore, Article 18, para. I⁵⁰, coupled with Article 5, para.1⁵¹ allows for applying sanctions and interim measures against companies that benefit directly or indirectly from violations committed throughout their production structure.

Accountability in the value chain reflects an increasing recognition that corporate activity cannot be analyzed separately but within a context of economic interdependence that often involves outsourcing, subcontracting, and global supply chains.

⁴⁶ "Article 3 - For the purposes of this Law, the following definitions shall apply: (...)

IV - polluter means the individual or legal entity, whether governed by public or private law, directly or indirectly responsible for an activity that causes environmental degradation;"

⁴⁷ "Article 9 The contract signed by the temporary employment company and the service taker shall be in writing, shall be available to the supervisory authority at the service taker's establishment and shall contain: (...)

Paragraph 1. The contracting company is responsible for ensuring the safety, hygiene and health conditions of workers, when the work is carried out on its premises or at a location designated by it."

⁴⁸ "Article 5. Companies based in or economically active in Brazilian territory shall be held accountable for human rights violations caused directly or indirectly by their operations.

Paragraph 1 Liability for the violation is joint and several and extends throughout the entire production chain, including the controlling company, controlled companies, as well as public and private investors, including subcontractors, branches, subsidiaries, economic and financial institutions operating outside the national territory, and national economic and financial entities that participate by investing or benefiting from any stage of the production process, including when there is no formal contractual relationship."

⁴⁹ "Article 6. Companies must promote, respect and ensure human rights in the context of their activities, based on the following guidelines: (...)

XII - Disclosure, in an easily accessible place, of the corporate management structure and its policies for the promotion and defense of human rights and information to those responsible for decision-making and their respective roles in the production chain;"

⁵⁰ "Article 18. Accountability mechanisms shall be used, among others not provided for in the list below:

I - interdiction or suspension of the activities carried out by companies related to the violation or the risk of violation until they take the necessary remedial and preventive measures."

⁵¹ "Article 5. Companies domiciled or economically active in Brazilian territory shall be held accountable for human rights violations caused directly or indirectly by their operations.

Paragraph 1. Liability for the violation is joint and several and extends throughout the entire production chain, including the controlling company, controlled companies, as well as public and private investors, including subcontractors, branches, subsidiaries, economic and financial institutions operating outside the national territory, and national economic and financial entities that participate by investing or benefiting from any stage of the production process, including when there is no formal contractual relationship."



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

By establishing an expanded accountability model, Bill No. 572/2022 overcomes historical gaps in the Brazilian legal system. This ensures that companies cannot escape their obligations by fragmenting their operations or through contracts that outsource essential activities but maintain the company as the ultimate beneficiary of human rights violations.

2.2.3. Experience-based contributions

The responsible innovations promoted by Bill No. 572/2022 also result from its participatory construction process, which involved extensive consultations and the direct involvement of victims and those affected by corporate violations. Based on these concrete experiences, the Bill includes essential legal tools to address corporate impunity and reduce power asymmetries between companies and impacted communities.

Among these innovations, including Independent Technical Advisors (ATIs) stands out. The said inclusion is provided for in articles 6, XV⁵², 9, III⁵³, 14, IV and V⁵⁴, and 19, I⁵⁵, which ensure technical and legal support to the affected communities, allowing them adequate conditions to participate in the redress and compensation processes.

Inspired by the redress cases regarding the damage caused by the collapse of the Fundão dam in Mariana/MG and the Córrego do Feijão Mine dam in Brumadinho/MG, the ATIs ensure that victims can fully understand their rights and negotiate with companies in a situation closer to equality, preventing unilateral decisions from being imposed on the affected communities.

The Bill also provides for creating a **Reparation Fund**, as set out in articles 13

⁵² “Art. 6. Companies must promote, respect and ensure human rights in the context of their operations, abiding by the following guidelines: (...)”

XV - Ensure access to independent technical advisory services for people affected by disasters, by paying the costs of hiring them, providing all the conditions for carrying out the work and not interfering in the choice of such entities, which should be made democratically by the people affected themselves;”

⁵³ “Art. 9. The Federal Government, the States, the Federal District and the Municipalities must take the measures provided for in Art. 5 by means of public policies, within the scope and limits of their powers, applicable rules and regulations, among them: (...)”

III – Guarantee, in addition to the obligation of companies, independent technical advice to people affected by human rights violations by companies in order to ensure a technical and logistical structure for adequate participation, which must be chosen by the people affected and paid for by the violating entrepreneur;”

⁵⁴ “Art. 14 The general objectives of the Fund referred to in art. 13 shall be, among others: (...)”

IV - Hiring and Supporting Independent Technical Advice for emergency response teams;

V - Guaranteeing advisory services for drawing up a damage compensation matrix;”

⁵⁵ “Art. 19 - In the event that agreements are proposed and negotiated between the Government and legal entities that violate human rights, in relation to damages caused to the community, committed in the context of business activity, whether in the extrajudicial or judicial sphere, this practice must be guided by the search for solutions that guarantee human rights, and must observe the dictates described below:

I - Listening, dialogue and participation of workers, trade unions, people and communities affected, their supporters and technical advisors, in the creation of instances and procedures to be adopted for solutions that guarantee human rights;”



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

and 14⁵⁶, which ensures financial resources for full reparation for damages caused by corporate violations. This fund is managed with the affected communities' participation, enabling them to have an active voice in resource allocation and drafting compensation measures. This mechanism prevents reparation from depending solely on the financial availability of the responsible companies, ensuring speed and effectiveness in the reconstruction of violated rights. So, the fund is essential to secure monetary compensation and other redress measures, such as social rehabilitation and structural measures to prevent repetition.

Another relevant innovation is the **mandatory quarantine** in Article 19, IX⁵⁷. It prevents public officials who have directly participated in negotiating agreements related to cases of human rights violations by companies from acting on their behalf for five years. This measure is essential to prevent the revolving door phenomenon, in which regulators and public managers migrate to the private sector shortly after making strategic decisions on the same cases in which they begin to act as business representatives. The quarantine seeks to reinforce the integrity of public management and avoid conflicts of interest that could compromise the impartiality of state decisions in monitoring and holding companies accountable for human rights violations.

⁵⁶ “Art. 13 - In the event of mandatory reparation, the violating company must create a Fund to cover the basic needs of the people, groups and communities affected until the process of full compensation for the damage caused is consolidated.

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

II - The Federal Prosecution Service shall act exclusively as an inspector of the execution and in the management of said Fund.

III - The Fund shall serve as a guarantee for emergency and reparation measures for the affected communities.

Sole Paragraph. Pending regulation of the aforementioned Fund, the money shall be deposited in an official credit establishment, in an account with monetary correction, to be managed by the court responsible for assessing the action for compensation of damages.

Art. 14 -. The Fund referred to in art. 13 shall have the following general objectives, among others:

I - Providing resources for emergency financial aid to the affected population to guarantee their survival;

II - Meeting the priority health demands resulting from acts caused by human rights violations;

II - Providing drinking water, in cases where the sources previously used to supply the communities have been compromised;

IV - Hiring and supporting an independent technical advisory body to act as an emergency response team;

V - Guaranteeing advisory services to draw up a damage compensation matrix;

VI - Guaranteed access to the internet, travel and food for community leaders in the negotiation processes with companies and the Government;

V - Other specific requests made by the people, communities and groups affected.”.

⁵⁷ “Art. 19: In the event that agreements are proposed and negotiated between the Government and legal entities that violate human rights, in relation to damages caused to the community, committed in the context of business activity, whether in the extrajudicial or judicial sphere, such practice must be guided by the search for solutions that guarantee human rights, and must observe the guidelines described below: (...)

IX - Prohibition for public officials who acted at the head of the negotiation to act in the same cases as representatives of private actors, providing for the mandatory compliance of an impediment period of 5 years.”.



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

Therefore, Bill No. 572/2022 moves away from insufficient regulatory solutions based on self-regulation and corporate voluntariness, adopting an innovative model that imposes concrete legal obligations aligned with the needs of the Brazilian context. Its differential lies in the combination of regulatory updating, the use of consolidated legal mechanisms, and the inclusion of instruments developed based on the practical experience of victims and experts, consolidating itself as an effective regulatory framework adapted to the singularities of Brazil's reality.

3. Bill no. 572/2022 of the House of Representatives: points with room for improvement

As demonstrated, Bill No. 572/2022 represents significant progress in regulating corporate activity regarding human rights, filling regulatory gaps, and establishing due diligence and corporate accountability guidelines.

However, like any complex regulatory framework, there is room for improvement to achieve clear rules and the purpose of the standards. Therefore, harmonizing the terminology used throughout the text and expressly defining key concepts can reduce interpretative ambiguities, facilitating the application of the law without compromising the goals of preventing and mitigating adverse impacts on human rights.

Furthermore, differentiating corporate obligations according to companies' sizes and the sector in which they operate can make the Bill more proportional and efficient, promoting a balance between the protection of human rights and economic sustainability.

Improving these provisions will enable the standard to achieve its purpose of strengthening the protection of human rights in the business context, ensuring that companies fulfill their social role.

3.1. Adoption of uniform terminology and clearly-defined concepts

Bill No. 572/2022 contributes to regulating corporate activity regarding human rights. One aspect that can be improved is adopting a uniform terminology and clearly defining fundamental concepts. Predictability and consistency in interpreting these rules are essential to ensure legal certainty and facilitate the implementation of the obligations provided for in the Bill.



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

Establishing clear concepts is a common practice in national and international legislation that seeks to regulate complex and interdisciplinary topics. Regulations such as the Data Protection Law (Law No. 13,709/2018) and the Brazilian Law for the Inclusion of Persons with Disabilities (Law No. 13,146/2015) include detailed definitions to ensure the consistent application of their provisions. In the case of Bill No. 572/2022, the inclusion of a specific provision to conceptualize key terms such as “company,” “value chain,” “adverse impacts,” and “groups in vulnerable situations” could contribute to a clearer interpretation, facilitating its operationalization.

Another point that could be improved refers to the non-uniform use of certain expressions throughout the text. For example, while Article 2, sole paragraph⁵⁸, mentions the “value chain,” other provisions use the terms such as “production chain” and “provision chain” (Article 5, para. 1⁵⁹; Article 6, IV, XII, and XIX⁶⁰; Article 9, XI⁶¹; article 12, IV and VI⁶²; Article 20, V⁶³). Although these concepts are close, their use without a precise delimitation can lead to different interpretations, reinforcing the importance of an express definition to ensure legal certainty in applying the norm.

⁵⁸ “Art. 2 This law is aimed at state officials and institutions, including the justice system, as well as companies and financial institutions operating in the national territory and/or with transnational operations. Sole paragraph. Target companies include companies, their subsidiaries, affiliates, subcontractors, suppliers and all other entities in their global value chains.”

⁵⁹ “Article 5. Companies based in or economically active in Brazil are responsible for human rights violations caused directly or indirectly by their operations.

Paragraph 1 Liability for the violation is joint and several and extends throughout the entire production chain, including the controlling company, controlled companies, as well as public and private investors, including subcontractors, branches, subsidiaries, economic and financial institutions operating outside the national territory, and national economic and financial entities that participate by investing or benefiting from any stage of the production process, including when there is no formal contractual relationship.”

⁶⁰ “Art. 6. Companies must promote, respect and ensure human rights in the context of their operations, abiding by the following guidelines: (...)

IV - Respect all international and national standards prohibiting the exploitation of child labor and labor in conditions analogous to slavery throughout the production chain; (...)

XII - Publish, in an easily accessible place, the corporate management structure and its policies for the promotion and defense of human rights and informing those responsible for decision-making and their respective roles in the production chain; (...)

XIX- In the event of an ongoing violation being identified in the production chain, immediately cease the activity or act so that the violation ceases immediately, through its influence in the chain.”

⁶¹ “Art. 9. The Federal Government, the States, the Federal District and the Municipalities must take the measures provided for in Art. 5 by means of public policies, within the scope and limits of their powers, applicable rules and regulations, including: (...)

XI - Establishing, maintaining and strengthening early warning systems and a network of channels for reporting human rights violations committed in the context of business activities for the use of suppliers, workers and the community, considering the entire production chain;”

⁶² “Art. 12: Companies must draw up a six-monthly human rights report containing: (...)

IV - The company's political commitment to respecting human rights, including labor and environmental rights, and its strategy to this end, which should include, at least, disclosing the expectation that all those involved in its production chain shall also respect human rights.

VI - Identification of human rights risks, including labor and environmental risks, throughout the production chain.”

⁶³ “Art. 20: It is the state's responsibility to create mechanisms for the participation of civil society and other interested actors in the drafting, implementation and execution of public policies relating to this Law, by means of: (...)

V – Concrete proposals for monitoring and intervening in production chains with the greatest potential or actual violation of human rights;”



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

Another relevant aspect concerns the scope of the law. Article 2⁶⁴ establishes that the Bill applies to “companies and financial institutions operating in the national territory and/or transnationally active” but does not specify which criteria define a transnational activity. Therefore, a more detailed wording could be considered, inspired by international instruments, such as the proposed UN Binding Treaty on Business and Human Rights, which defines transnational business activities based on the interconnection between operations in different jurisdictions and significant commercial relations.

One more point could be further detailed: the very concept of human rights in the context of Bill No. 572/2022. Although the proposal seeks to establish clear parameters for business activity, there is no express definition of which human rights are covered nor an explicit reference to the set of international treaties ratified by Brazil. Including a provision that expressly refers to the international human rights instruments ratified by the country would help align the standard with Brazil’s commitment on the international stage and avoid interpretative doubts about the scope of the obligations provided for therein.

In short, given these considerations, a possible improvement to Chapter I of Bill No. 572/2022 could include a specific article to conceptualize essential terms and harmonize the terminology used throughout the text. This adjustment would contribute to a clearer and more uniform interpretation of the rule, benefiting both business actors, as it would provide more predictability regarding their obligations, and victims of violations, as it would provide more robust guarantees of access to redress and justice, with no room for interpretative gaps to be used to their detriment.

3.2. Differentiating corporate obligations based on size and sector

As explained above, Bill No. 572/2022 contains a set of obligations for companies regarding protecting and respecting human rights. However, another point for improvement concerns the differentiation of corporate obligations based on the size of the company and the sector in which it operates.

Adopting a more calibrated model, which considers the risk level of business activities and each company’s structural capacity to comply with the imposed duties, can contribute to more balanced and effective regulation.

The text of the Bill already makes a partial distinction by excluding micro and small enterprises (MSEs) from the obligation to draft periodic reports, as provided for in

⁶⁴ “Art. 2 This law is aimed at state officials and institutions, including the justice system, as well as companies and financial institutions operating in the national territory and/or with transnational operations. Sole paragraph. Target companies include companies, their subsidiaries, affiliates, subcontractors, suppliers and all other entities in their global value chains.”.



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

Article 12, para. 4⁶⁵. However, this exclusion does not extend to the other obligations provided by the law, which may result in challenges to its implementation. Small businesses, which often operate with limited resources, may have difficulty meeting specific requirements, especially regarding human rights due diligence. This process involves continuous risk analysis, adoption of preventive measures, and accountability.

In Article 170, IX⁶⁶, the Federal Constitution recognizes the need for favorable treatment for small businesses, reinforcing the relevance of adjusting the Bill to ensure the proportionality of the requirements imposed on different types of companies. Otherwise, there is a possibility of over-compliance, which may compromise free competition in the market, resulting in losses for consumers and investors. In this regard, it is essential to point out that over-compliance occurs when the imposition of excessive or indistinct regulatory obligations leads companies to adopt compliance measures that go beyond what is needed, resulting in high operating costs and disproportionate difficulties for specific economic agents.

The current wording of Bill No. 572/2022 provides broad obligations for all companies without establishing proportional distinctions between those with significant economic and operational capacity and those of smaller size. Although, as mentioned in Article 12, para. 4⁶⁷ already provides for a specific exemption for micro and small companies in the obligation to prepare periodic reports, the other requirements of the rule apply indistinctly to all companies, which may generate a scenario in which small businesses are excessively burdened without necessarily presenting significant risks in terms of human rights.

Free competition, ensured by Article 170, IV, of the Federal Constitution⁶⁸, may be harmed when smaller companies, many of which are family-owned and have limited administrative structures, are subject to the exact requirements as large corporations that have the financial and operational resources to implement complex due diligence and

⁶⁵ “Art. 12: Companies must draw up a six-monthly human rights report containing: (...)”

Paragraph 4 Micro and Small Companies are excluded from the obligations set out in this article pending a specific law that regulates the form, content and differentiated periodicity of these companies.”

⁶⁶ “Art. 170. The economic order, based on the appreciation of human work and free initiative, aims to ensure dignified existence for all, in accordance with the dictates of social justice, with due regard for the following principles: (...) IX - favorable treatment for small companies incorporated under Brazilian law and having their headquarters and administration in the country.”

⁶⁷ “Art. 12. Companies must draw up a six-monthly human rights report containing: (...)”

Paragraph 4 Micro and Small Companies are excluded from the obligations set out in this article pending a specific law that regulates the form, content and differentiated periodicity of these companies.”

⁶⁸ “Art. 170. The economic order, based on the appreciation of human work and free enterprise, aims to ensure dignified existence for all, in accordance with the dictates of social justice, with due regard for the following principles: (...) IV – Freedom of competition;”



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

monitoring measures. If these requirements are not tailored to the size of the business activity, large companies may consolidate their position in the market. In contrast, small businesses will have difficulty remaining competitive, which forces them to pass on costs to consumers or close their operations.

Due to their large-scale operations, complex supply chains, and significant capacity for socio-environmental impact, large companies tend to be more frequently associated with human rights violations. Thus, a scenario of over-compliance, in which regulatory requirements become excessively onerous and indiscriminate, can generate adverse effects that, in the medium and long term, increase human rights violations instead of reducing them as intended.

In addition to the differentiation based on size, it is recommended that the Bill also establish distinctions based on the level of risk associated with business activities. Sectors traditionally linked to severe impacts on human rights and the environment, such as mining, oil and gas, large infrastructure projects, agribusiness, and textiles, have characteristics that require more rigorous monitoring and specific compliance requirements. This is because these activities have a history of higher incidences of violations, such as precarious working conditions, significant environmental damage, and forced displacement of communities.

Adopting an official list of high-risk sectors drawn upon objective criteria could contribute to more effective and targeted monitoring, ensuring that activities with more potential for impact are subject to stricter control. Regulations could include requirements such as different audit frequencies, periodic publication of detailed reports, and mandatory implementation of more robust preventive mechanisms.

In addition, regulatory differentiation could consider the interconnection of production chains, preventing companies in lower-risk sectors from being indirectly linked to abusive practices without proper supervision. For example, the garment sector may not present high environmental risks, but its supply chain often involves labor in degrading conditions and precarious outsourcing, which justifies stricter control.

In short, possible improvement measures in Bill No. 572/2022 may include refining corporate obligations and introducing objective criteria for applying standards according to the size of the company and the risk inherent to the sector in which it operates.

This improvement could further strengthen legal certainty by ensuring that the law does not impose disproportionate burdens on small businesses and that more impactful sectors are subject to more robust oversight. Adjustments in this regard have the potential to make regulation more realistic and enforceable, promoting a balance between human



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

rights protection and economic feasibility for different types of businesses.

4. Final considerations

Bill No. 572/2022 represents an essential step towards consolidating a binding regulatory framework on human rights and companies in Brazil, establishing a new level of corporate accountability, and overcoming the ineffectiveness of voluntary mechanisms, which have not proven sufficient to prevent and repair violations. The proposal provides substantial advances by imposing concrete obligations on the business sector, making it unavoidable for companies to respect, protect, and repair adverse impacts on human rights, regardless of their activity sector or inclusion in complex production chains. By strengthening prevention and reparation mechanisms, the Bill seeks to hold economic agents accountable for damages caused and to structure a corporate governance model that prevents the repetition of violations and promotes a fairer and more sustainable business environment.

The need to fight corporate impunity and promote a development model that harmonizes economic growth and respect for fundamental rights makes it essential to expedite the processing of Bill No. 572/2022. The lack of robust legislation creates a regulatory void, allowing companies to operate without clear due diligence guidelines, favoring the perpetuation of possible abusive practices, such as work in conditions analogous to slavery, irreversible socio-environmental impacts, and disrespect for traditional communities and Indigenous peoples.

By establishing objective rules for corporate liability, the Bill creates a secure regulatory framework for companies, which will have greater predictability in their operations, and for affected communities, which will have more effective instruments for access to justice and full reparation.

In this scenario, the National Congress must prioritize the processing of the PL as an essential measure to ensure legal certainty, equity, and respect for human rights in the business environment.

It is also worth noting that, in addition to consolidating domestic regulatory progress, the approval of Bill No. 572/2022 will place Brazil in a prominent position on the global stage, reaffirming its commitment to protecting human rights and becoming an international reference in regulating business activities. The creation of robust and innovative legislation, which incorporates principles of due diligence, responsibility in the production chain, and full reparation, will bring the country closer to the most advanced



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

discussions on the subject, increasing its protagonism in international relations and in negotiations on the UN Binding Treaty on Business and Human Rights.

Finally, it is worth highlighting that the positions adopted in this Technical Brief reflect the experience accumulated by the Human Rights and Business Working Group of the Office of the Federal Ombudsman for Citizens' Rights (PFDC) of the Federal Prosecution Services, which since 2016, has actively participated in the public debate and worked tirelessly to build institutional strategies to fight human rights violations in the business context.

Furthermore, the content of this Technical Brief is enriched by the valuable input gathered at a public hearing held by the PFDC on August 28, 2024. The hearing brought together representatives from academia, civil society organizations, social movements, the private sector, and public authorities to discuss creating a national regulatory framework on human rights and companies.

Finally, the diverse perspectives and contributions obtained in this process and reflected in this Technical Brief reinforce how important and urgent it is to approve Bill No. 572/2022 and, consequently, consolidate a regulatory model aimed at building a more ethical, sustainable business environment aligned with contemporary society's expectations.

Brasília/DF, March 7th, 2025

NICOLAO DINO
Associate Prosecutor General
Federal Ombudsman for Citizen's Rights

THALES CAVALCANTI COELHO
Federal Prosecutor
Coordinator of the WG Human Rights and Business of the PFDC

Document Signature/Certification **PGR-00069964/2025 NOTA TÉCNICA nº 1-2025**

Signatory: **NICOLAO DINO DE CASTRO E COSTA NETO**

Date and Time: **07/MAR/2025 7:43:17pm**

Signed with login and password

Signatory: **THALES CAVALCANTI COELHO**

Date and Time: **07/MAR/2025 8:01:59pm**

Signed with login and password



FEDERAL PROSECUTION SERVICE
OFFICE OF THE FEDERAL OMBUDSMAN FOR CITIZEN'S RIGHTS

Access <http://www.transparencia.mpf.mp.br/validacaodocumento>. Key ecd55b8f.232e7550.e6d3af96.84ff6bd8

Translator: Márcia Carolina Macêdo

CPF: 294.501.848-95

