ANNEX

REPLY OF THE GOVERNMENT OF BRAZIL REGARDING THE COMMUNICATION OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO DEVELOPMENT, DATED DECEMBER 21th 2023.

With regard to the contributions of the reports on following themes: (a) Climate justice: Loss and damage; and (b) The right to development of children and future generations, the Brazilian Government would like to provide the following information from its Ministry of Social Development and Assistance (MDS):

2. Climate change affects the different dimensions of Food and Nutrition Security (FNS) in different ways - availability, access, utilisation and stability. The negative effects of climate change are influenced by multiple social and economic factors, from food production to consumption, and include characteristics of production systems and units, transport and storage infrastructure, population income, and other conditions related to aspects of vulnerability and exposure. On the climate and food agenda, we recognise that:

the ways in which we produce - when through unsustainable production systems - exacerbate the effects of climate change and extreme weather events;

food and nutrition insecurity increases as extreme weather events affect food production, availability and composition;

the combination of climate change, obesity and malnutrition arising from the food systems is currently referred to as the “Global Syndemic” and needs to be prioritised and considered by national governments;

extreme weather events impact more negatively on the most socially vulnerable population groups, including children;

the wealthiest population groups are responsible for a significant amount of the world's greenhouse gas emissions. In contrast, the most socially vulnerable population groups are the first to feel the effects. Climate change (such as the drought in southern Brazil at the beginning of the year and the excess rainfall in the north) precedes an increase in food insecurity and all forms of malnutrition, especially for the most vulnerable people.

3. In light of the questions raised by the Special Rapporteur on the Right to Development of the UN Human Rights Council, the following points are suggested:

- It is important that the concept of loss and damage is better defined. However, considering the recent worsening of the effects of climate change, it is essential that financial support mechanisms for losses and damages are put in place as soon as possible and that contributions comply with the principle of common but differentiated responsibilities, based on equity and according to respective capacities, which implies considering the respective contributions, present and past, in relation to greenhouse gas emissions.

- It is essential to emphasise that the human right to adequate food is threatened and is being undermined as a result of climate change and that the losses and damage to food systems are the most significant and must be dealt with, prioritising above all the poorest population groups, in particular indigenous peoples, quilombola communities and traditional communities and peoples, but also the population on the outskirts of large urban centres, who have difficulty accessing a healthy and adequate diet.

- It is necessary for the multilateral system to establish methodologies for calculating the impacts of climate change on food systems and associated losses and damages so that financial compensation measures can be implemented, also adopting internationally recognised methodologies for estimating amounts and forms of payment.

4. The relationship between the right to development and the loss and damage caused by climate change is complex, multifaceted and multidimensional. Climate change has significant impacts, both economic and non-economic, which disproportionately affect different individuals, groups and territories. For example, children and women, indigenous peoples and territories most exposed to climate determinants at different scales are often the most affected.

5. At a global level, disasters will become more common. There are predictions of a high occurrence of events resulting from environmental deterioration, climate change and the excessive load over cities. According to recent studies, Brazil will be one of the regions of the world most affected by global warming. These extreme events will tend to occur more frequently, with greater intensity and concomitant impacts. The complexity and cumulative effect of these emergencies will only increase the number of people and property affected if preventive and proactive actions are not taken.

6. A disaster is the result of adverse events, whether natural, technological or man-made, on a vulnerable area exposed to the threat, causing human, material or environmental damage and consequent economic losses. In this scenario, there are territories that are more prone to the impacts of adverse events and these are generally occupied by individuals who are more socially vulnerable, whose families have less capacity and resilience in relation to the damage and losses. There are also less favoured populations with gender, racial and other characteristics, as well as indigenous, riverside and quilombola communities, who have historically been on the margins of political decisions related to the territories they inhabit. There are also persons that migrate or are displaced to the social fringes. Disasters for all these individuals are therefore linked to the socio-spatial logic prior to adverse events.

7. Territory and socially vulnerable populations are therefore key elements for understanding and acting on disasters and their impacts. This is in line with the necessary and important social protection provided by Brazil’s social assistance policy, which aims to guarantee life, reduce damage and prevent the incidence of risks, and is based on the organisation of the territory.

8. The impacts of climate change can directly undermine development efforts, jeopardising communities' ability to achieve adequate standards of living, access to education, health, water and sanitation. In addition, loss and damage can exacerbate existing inequality, exacerbating socio-economic and gender disparities. Thus, a human rights-based approach to the management of the impacts of climate change must integrate considerations such as accessibility, non-discrimination, equitable representation in decision-making, gender sensitivity and adaptation for marginalised communities and countries particularly vulnerable to the adverse effects of climate change.

9. States have a legal and moral obligation to prevent, mitigate and remedy the impacts of climate change on human rights, including the right to development. This includes adopting appropriate policies and measures to reduce greenhouse gas emissions, promote adaptation to climate change and support affected communities. Social protection for families and individuals affected, directly and indirectly, is part of the social assistance policy.

10. The role of the social assistance policy in emergency contexts is referred to in several of its legal norms, such as the Social Assistance Act (LOAS), law nº 8,742 of 7 December 1993, the National Social Assistance Policy (PNAS/2004), the Basic Operational Standard (NOB-SUAS/2012) and the National Classification of Social Assistance Services (2009). Thus, it is present in the operationalization of the Unified Social Assistance System (SUAS), which has the following guidelines: political-administrative decentralisation to the states, the Federal District and the municipalities; participation of the population, through representative organisations, in the formulation of policies and in the control of actions at all levels; primacy of state responsibility in conducting the policy at each level of government.

11. According to the Social Assistance Act, "it is the responsibility of the Federal Government, in conjunction with the states, the Federal District and the municipalities, to provide assistance in emergencies". With this provision in the law, the responsibilities for social assistance in emergencies has been made explicit over the years, based on discussions and standardisation in the national policy agreement and deliberation bodies - the Tripartite Inter-Management Commission (CIT), which has representation from the three federal entities (the Union, states/Federal District and municipalities); and the National Social Assistance Council (CNAS), which has government and civil society representation (managers, workers and users).

12. The shared responsibility among the three levels of government, in addition to deriving from the guidelines of the Unified Social Assistance System, stems from the complex nature of critical and emergency situations that demand joint efforts to prevent and deal with the damage suffered by the affected populations, as well as recovery afterwards. It is the responsibility of the federal Union, states and municipalities to ensure the conditions to prevent such situations and guarantee that people and families, when hit by the impacts of a disaster, receive the necessary protection and have their rights guaranteed.

13. In a joint effort, in 2009, after an extensive process of formulation and discussion, CNAS Resolution nº 109 of 11 November 2009 approved the National Classification of Social Assistance Services, in other words, a standardisation of the possibilities offered by the social assistance policy throughout Brazil. At its core, it established among its services the Protection Service in Situations of Public Calamities and Emergencies.

14 The Public Disaster and Emergency Protection Service provides support and protection to the population affected by emergencies and public disasters through temporary accommodation and material supplies, according to the needs detected. It ensures coordination and participation in joint intersectoral actions to minimise the damage caused and meet the needs identified. The people and families for whom this service is offered are those affected by emergency situations and public disasters (fires, landslides, mudslides, floods, among others) who have suffered partial or total loss of housing, personal objects or utensils, and are temporarily or permanently homeless; and those removed from areas considered to be at risk, as a preventive measure or by court order.

15. The service's objectives include: providing immediate shelter safe conditions; maintaining temporary accommodation when necessary; identifying losses and damage and registering the population affected; liaising with the public policy network and social support networks to meet the needs; promoting inclusion in the social assistance network and access to occasional benefits.

16. Through MDS Ordinance 90/2013, specific federal co-financing was regulated for the Protection Service in Situations of Public Disasters and Emergencies. The aim of this co-funding is to provide material support and comprehensive protection to the population affected by a situation of emergency or public disaster, by means of temporary accommodation, in accordance with the National Classification of Social Assistance Services.

17. The co-funding resources are aimed at organising spaces for temporary accommodation, rest and personal recovery, with healthy conditions, sanitary facilities for bathing and personal hygiene, with individual and/or family privacy; space for meals; space for living and socialising, with accessibility in all its environments; consumables for the development of the service: food, hygiene items, blankets, among others; structure for storing belongings and documents; team of professionals to carry out social work with families, ensuring proactive social protection, listening, guidance and referrals to the network of local services; guidance, information, communication related to the defence of rights; access to personal documentation; coordination of the network of social assistance services; coordination with the services of sectoral public policies and defence of rights; mobilisation of extended family, when necessary; mobilisation for the exercise of citizenship; activities for socialising and organising daily life; among others.

18. When an emergency or disaster occurs, the municipality must declare the emergency situation by means of a decree, which will help the Brazilian Ministry of Integration and Regional Development to start the procedures for federal recognition of the emergency situation. Recognition of the situation of emergency or disaster is a condition for the municipality to be eligible to receive federal co-financing from the social assistance policy for the Service. Federal funding can be used for emergency shelter in a hotel network: temporary rental by authorities by means of a lodging contract (hotels, inns, among others) to be used as temporary housing; emergency shelter in temporary housing: temporary rental by the authorities of housing for each family group, as long as it is totally relevant to the service and for a fixed period of time; emergency shelter in temporary accommodation: by using places available in the network: clubs, churches, schools, associations, among others.

19 .The federal funding reported is transferred from the National Social Assistance Fund (FNAS) directly to the social assistance funds of states and municipalities and can be accessed at any time by any federated entity (state, Federal District and municipalities), provided that the requirements expressed above are met. In recent years (2018 to 2023), around R$43 million (USD 8,5 million) has been transferred to numerous entities to carry out the Protection Service in Situations of Public Disasters and Emergencies, in view of the various social impacts resulting from these situations across the country.

20. With regard to the fight against hunger and poverty, guaranteeing climate justice encompasses issues that go beyond environmental issues, and in this context parallels are found with what is advocated in the human right to adequate food, as well as the bases for guaranteeing food and nutritional security.

21. Thus, in order to guarantee a balanced interaction with the environment, aligning production, distribution, access and consumption, considering all the dimensions that involve food systems, it is essential to take an approach that is capable of understanding the disparities and inequalities that affect different populations and population groups.

22. In recent years, various special reports and working groups have looked at these relationships, such as the FAO/UN Panel of Experts and the Committee on Food Security, with publications focusing on poverty reduction, hunger and food and nutrition insecurity, and from a systemic perspective, contextualised with other structural issues such as inequalities, gender, race, and also thematic dimensions such as the environment. Publications in highly prestigious journals by academic experts, such The Lancet, have also been making discussions and recommendations in the same direction. Two are worth highlighting here: the Lancet Commission coined the term Global Syndemic, for an integrated vision of three outcomes with impacts resulting from different forms of poor diet, from food and nutritional insecurity, and the advance of chronic non-communicable diseases, such as overweight and obesity, and the impact of climate change. Another publication, from the same journal, reflects on “Food in the Anthropocene”, with recommendations on the relationship between food, the planet and health, and how current ways of producing, distributing and accessing food have been unable to guarantee rights, especially to food, ensuring inequalities and causing environmental impacts.

23. From the perspective of impacts and affected populations, it should be noted that any mitigation, adaptation and loss and damage action - whether through the transfer of resources, funds or the design of strategies and actions - must take into account that the populations and groups most affected by inequalities are also subject to other impacts, such as those resulting from climate issues, as is the parallel with food insecurity. Examples are child malnutrition and lack of access to adequate nutrition in early childhood, whose indicators have improved very significantly in Brazil considering the historical series, although with fluctuations during the pandemic and the discontinuity of some public policies in the period. Similarly, populations living in pockets of inequality and black women are also more affected by food and nutritional insecurity - as shown by the latest monitoring of the situation of hunger and food insecurity in Brazil.

24. Based on the parallel with the climate crisis, which also disproportionately affects different population groups, the following questions arise: i) the most affected population groups (such as those mentioned above) have their specificities recognised and prioritised in the targeting and design of strategies, funds and other actions aimed at climate action, as well as at repairing losses and damages resulting from climate change; ii) States are obliged to guarantee rights, as well as to ensure them in a concrete way through policies, programmes and actions, while other entities and actors, including the private sector, are also responsible for following the laws in force and adopting good practices and procedures that do not conflict with rights, as well as making efforts to mobilise and contribute resources and other actions to support strategies such as national and global funds; iii) good practice benchmarks and regional and global regulations should be used that can be applied in different contexts, taking into account local and regional specificities, for example in the countries of the global south; iv) the design of funds can be a good strategy, as long as the scope is very well defined so that countries with better financial conditions can contribute, as well as based on mechanisms that make it possible for countries from the Global South to access resources of this nature; v) a rights-based approach should be the constitutive element for the operationalization and management of any fund, in order to guarantee that sensitivities in relation to gender, race and other population groups most affected are addressed, and for this, mechanisms are needed within the management and governance structure itself to incorporate these groups through their representations in the elaboration process; VI) this is one of the points constantly raised in global discussions in relation to the elaboration of funds, in addition to the principle of common but differentiated responsibilities, based on equity and according to respective capacities.

25. With regard to the right to development of children and future generations, this means having access to opportunities and resources that promote their integral development, including economic, social, political and cultural aspects. For future generations, this right means ensuring that current decisions do not jeopardise access to resources and opportunities in the future.

26. Development-related decisions made by the current adult generation can have significant impacts on the human rights of children and future generations. For example, economic development policies that prioritise the unbridled exploitation of natural resources can result in serious environmental damage, affecting the quality of life of future generations. Similarly, decisions on the use of new technologies, if they do not consider the impacts on children's health and well-being, can jeopardise their rights to health and education.

27. To ensure the meaningful participation of children and future generations in development-related decisions, it would be essential to create spaces and mechanisms that allow them to contribute effectively. This can include public consultations, advisory councils made up of children and young people, and the integration of children's perspectives into development policies and programmes. There are several good practices in this regard, such as the establishment of youth councils at local and national level, and the inclusion of children in decision-making forums on issues that directly affect them.

28. An intersectoral approach to children's participation is key to ensuring that policies and programmes consider the differentiated impacts on children due to various discriminations, exclusions or vulnerabilities. This involves collaboration between different sectors, such as health, education, social welfare and justice, to holistically address children's needs and rights.

29. In order to protect and empower child human rights defenders, it is necessary to ensure that they have access to the information, resources and support they need to exercise their rights safely and effectively. This can include training children and young people to be agents of change in their communities, and creating protection mechanisms against retaliation or violence.

30. Finally, in order to address violations of children's rights in the context of development policies, projects or programmes, it is essential to create judicial and non-judicial redress mechanisms adapted to children. This can include the creation of specialised children's rights courts and the implementation of reparation and assistance programmes for victims of violations.

31. In the context of the Unified Social Assistance System (SUAS), it is essential to ensure that all actions and policies are aligned with the principles of integral protection and the protective family bond. This means that children must be seen as subjects of rights, with a voice and active participation in the processes that affect them. In addition, SUAS must promote the strengthening of family ties, ensuring that children grow up in a safe and cosy environment, even when they are removed from family life for protection reasons.

32. There is currently a process of discussion and research with the states as part of the consultancy contracted through the project to support the Latin America and the Caribbean Free of Child Labour Regional Initiative. The plan aims to systematise the structure of the SUAS care network in the prevention and eradication of Child Labour, taking into account the impacts of the pandemic. The consultancy's product proposes a comprehensive analysis of the Strategic Actions of the Child Labour Eradication Programme (AEPETI) since 2014, identifying challenges, systematising good practices and formulating recommendations. The document includes a description of the methodology, procedures and tools to be used. The consultancy, in partnership with the International Labour Organisation (ILO) and the Brazilian Ministry for Social Development and Assistance (MDS), seeks to promote the Fundamental Principles and Rights of Labour in Latin America and the Caribbean in Brazil. The specific objectives include critically analysing the structure of SUAS, taking into account issues of gender, race, ethnicity and territoriality, as well as evaluating the documents related to AEPETI.

33. The National Secretariat for Care and Family of the Ministry of Social Development and Assistance is coordinating the process of drawing up the National Care Policy and Plan, in view of presidential decree nº 11,460 of 30 March 2023, which establishes the Inter-ministerial Working Group (GTI), under the Ministry of Social Development and Assistance and the Ministry of Women's Affairs. Children and adolescents are a priority audience for the Care Policy, especially early childhood. The GTI involves a total of 17 ministries and three public agencies to formulate a diagnosis of the social organisation of care in Brazil. In addition, the objectives of this policy are to reorganise the provision of care in the country, so as to share this responsibility between families, the state, the market, companies and communities, and to redistribute care responsibilities between men and women.

34. The responsibilities of the National Secretariat for Care and Family are set forth in presidential decree nº 11,392 of 20 January 2023:

Article. 37. The National Secretariat for Care and Family is responsible for proposing and adopting intersectoral and federal agreement strategies for the establishment of a National Policy and a Public Care System with attention to gender, race, ethnicity, territorial and life cycle inequalities; acting within the framework of sectoral socio-economic policies with a view to integrating policies to meet the care and social protection demands of families or similar social groups; and promoting the exchange of experiences with other countries, in particular South-South cooperation, within the framework of care policies and systems. The importance of guaranteeing the right to care for all those who need it and decent work for care workers should be emphasised. The target groups for this policy are: children and adolescents, young people, the elderly, people with disabilities, paid and unpaid care workers - including domestic workers.

35. Brazilian Government would also like to provide the following contributions from its Ministry of Human Rights and Citizenship (MDHC) with reference to the questionnaire:

A. Climate justice: Loss and damage

Question 1. How is the realisation of the right to development impacted by both economic and non-economic loss and damage from climate change? How is the impact experienced differently and/or disproportionately by different individuals (e.g., children and women), groups (e.g., Indigenous Peoples) and States (e.g., Small Island Developing States)?

36. Firstly, the right to development, considered by the literature to be a third generation right, has traditionally been associated with economic growth. However, its definition faces challenges arising from theoretical differences. The concept encompasses not only economic growth, but also development in social, cultural, political, scientific, technological and even spiritual aspects. This understanding is supported by the Declaration on the Right to Development, adopted by Resolution 41/128 of the UN General Assembly in 1986.

37. According to the Report on Business and Human Rights produced by the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), of the Inter-American Commission for Human Rights, the promotion of the right to development must necessarily be based on the well-being and rights of individuals and communities. Its incorporation into normative frameworks, strategies and policies on human rights and business could better define the responsibilities of the different actors involved in this process, including companies and financing and investment institutions. According to the Rapporteur, economic growth is not an end in itself, but rather a component for the realisation of the right to development.

38. With regard to business activities, these practices have intense negative socio-environmental impacts, resulting in human rights violations. In this process, vulnerable populations - such as residents of poor areas, indigenous peoples, quilombolas, traditional communities, small farmers, fishermen, among others - are the most affected by business activities. Many rights are violated, ranging from the right to life, physical integrity, safety, housing, decent work, health, water, food, culture, memory and information to full development. The disproportionate and serious impact of these rights, coupled with the consolidation of development amid worsening social inequality, highlights the obvious tension between business activities and human rights.

39. In December 2020, the Business and Human Rights Resource Centre launched a database of lawsuits, which seeks to establish the responsibility of companies for human rights abuses. This database identified 51 cases of human rights violations in Latin America, with Colombia and Brazil having the highest number of lawsuits, with 14 each. In addition, the two sectors with the highest number of related lawsuits are mining and hydrocarbons (mainly gas and coal), with 18 and 11 cases respectively. Other sectors identified were agriculture and the automobile industry. In 31 of these cases, the plaintiffs filed lawsuits outside the countries in which the events took place, filing them where the companies have their headquarters or carry out other business operations.

40. It is important to note that between March and April 2022, the Business and Human Rights Resource Centre also conducted a survey with members of the Latin American Strategic Litigation Network about their experiences in lawsuits related to companies and human rights in the region. The survey included questions about the types of lawsuits filed, the jurisdiction they are in, the economic sectors linked to the abuses, the challenges and obstacles faced during the proceedings, as well as the main lessons learnt. They received 16 responses from organisations in Brazil, Colombia, Chile, Ecuador, Honduras, Guatemala and Mexico, as well as others operating at regional level, and reported that organisations and communities that file lawsuits face various obstacles. Thirteen of the people and organisations that responded to the survey pointed to threats and intimidation against victims and survivors of human rights violations, human rights defenders and communities as one of the main limitations to litigation in the region, demonstrating hostility towards entities that seek to hold companies accountable.

41. Through the research, members of the Litigation Network identified other obstacles besides the high cost of legal proceedings. For example, in the collection of evidence or access to legal representation, the lack of laws regulating the activities carried out by companies and their potential impact on human rights, the lack of application of human rights standards by legal operators, excessive delays in proceedings, the absence of mechanisms to implement court decisions in favour of communities and the corruption of judicial systems.

42. Therefore, recognising that the right to an ecologically balanced environment is essential for promoting development, climate change, promoted mainly by the business sector, is responsible for human rights violations, having a disproportionate impact on vulnerable populations. From the right to life, physical integrity, security, housing, decent work, health, water, food, culture, memory and information to full development, these communities suffer the negative impacts of business activities.

A. Climate justice: Loss and damage

Question 2. What are the obligations of States and other actors such as development finance institutions and businesses to prevent, mitigate and remediate the impacts of climate change-related loss and damage on human rights, including the right to development?

43. Specifically with regard to policies for regulating business activities, states must adopt internal regulatory standards for the protection of human rights, including the right to an ecologically balanced environment, with the establishment of control mechanisms for the prevention of socio-environmental risks. At international level, a system must be put in place to reduce, remove or limit the power of companies to force states to make their standards more flexible, under the false argument of prioritising economic development. In this regard, Resolution 5/2020 of the Brazilian National Human Rights Council (CNDH) stands out, which states:

Article 1: This resolution sets out national guidelines on human rights and companies and is aimed at state agents and institutions, including the justice system, as well as companies and financial institutions operating in the national territory and Brazilian companies operating internationally, with the aim of guiding and assisting in the application of national and international standards for the protection of human rights, in particular economic, social, cultural, civil, political and labour rights, the right to development, decent work, self-determination and a balanced environment, including the right to work, as well as all the rights of indigenous peoples, quilombola and traditional communities.

§ 1: Human rights are universal, indivisible, inalienable and interdependent and the State has the duty to ensure the instruments for their application;

§ 2: Human rights must take precedence over any agreements of an economic nature, especially legal trade and investment instruments;

Article 2: The State is responsible for promoting, promoting, promoting and promoting human rights. The State is responsible for promoting, protecting, respecting and improving mechanisms for the prevention and redress of human rights violated in the context of business activities, and must adopt all legal and political measures necessary to ensure the civil, administrative, labour and criminal liability of companies involved in human rights violations;

§ 1 The State must ensure full access to justice, on equal terms, for people and communities affected by human rights violations committed by companies;

With regard to the liability of companies, the Resolution states that:

Article 3: National and transnational corporations are responsible for human rights violations caused directly or indirectly by their activities.

§ 1: Liability for the violation extends throughout the entire production chain, including the controlling company, controlled companies, as well as public and private investors, including international economic and financial institutions and national economic and financial entities that participate by investing in the production process;

§ 2: Decentralized control, without the figure of a shareholder or controlling block, can under no circumstances be used as an argument to eliminate or minimise the responsibility of a company or group for human rights violations arising from its activities;

§ 3: Companies must adopt control, prevention and redress mechanisms capable of identifying and preventing human rights violations arising from their activities, without prejudice to their responsibility should such violations occur.

44. Nevertheless, relevant international instruments incorporate parameters for corporate responsibility in human rights, such as the Universal Declaration of Human Rights; the Covenant on Economic, Social and Cultural Rights; specific conventions that prohibit discrimination; the fundamental principles of the International Labour Organisation (ILO); the UN Global Compact; the United Nations Principles for Responsible Investment; and the OECD Guidelines for Multinational Enterprises. Also, the Guiding Principles on Business and Human Rights is a fundamental reference, which guide states to take responsibility for the protection and promotion of human rights and companies to respect human rights, avoid impacts through commercial relations and take responsibility for reparations to victims of socio-environmental damage caused by their activities. According to these principles:

1) States must protect against human rights violations committed in their territory and/or jurisdiction by third parties, including companies. To this end, they must adopt appropriate measures to prevent, investigate, punish and redress these violations through appropriate public policies, standards, regulations and judicial review.

2) States should clearly establish the expectation that all companies domiciled in their territory and/or jurisdiction respect human rights in all their activities and operations.

(3) In fulfilment of their duty to protect, States should:

(a) Enforce laws that have the object or effect of making business enterprises respect human rights, and periodically assess the adequacy of these laws and fill any gaps;

(b) Ensure that other laws and policies governing business creation and activity, such as company law, do not restrict, but rather enable, business enterprises to respect human rights; (c) Provide effective guidance to companies on how to respect human rights in all their activities and operations;

(d) Encourage and, where necessary, require companies to report on how they address their human rights impacts. (...)

11. Companies must respect human rights. This means that they should refrain from violating human rights and should address adverse human rights impacts with which they have any involvement. (...)

13. The responsibility to respect human rights requires companies to:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities and address these impacts when they occur;

(b) Seek to prevent or mitigate adverse human rights impacts that are directly related to their activities and operations, products or services provided in their business relationships, even if they have not contributed to these impacts.

45. The Guiding Principles is not a legally binding instrument; the document is considered a soft law instrument of international law. Due to this regulatory gap, the Ministry of Human Rights and Citizenship, with the participation of 17 executive branch bodies, set up the Inter-ministerial Working Group (IWG) to draw up the National Policy on Human Rights and Business, in accordance with presidential decree nº 11.772/2023. The IWG is responsible for preparing studies on the national and international legal frameworks for the protection of human rights with regard to business activity, and proposing measures and actions to improve the effectiveness of public policies aimed at:

a) regulating the actions of companies in the promotion and defence of human rights;

b) remedying human rights violations and monitoring them;

c) implementing business policies in line with national and international normative guidelines.

46. In the Brazilian Congress, Bill 572/2022, proposed by deputy Helder Salomão (PT/ES) and others, aims at establishing the "National Framework Law on Human Rights and Business" and sets guidelines for the promotion of public policies on the subject. The legislative proposal holds companies responsible for human rights violations caused directly or indirectly by their activities, also imposing the adoption of control, prevention and redress mechanisms capable of identifying and preventing human rights violations arising from their activities. According to the bill:

Article: 4. The State and companies have common obligations to:

I - Respect and not violate human rights;

II - Not engage in acts of collaboration, complicity, instigation, inducement and economic, financial or service cover-ups with other entities, institutions or persons that violate human rights;

III - In the event of violations, companies must:

a) Act in the direction of full reparation for violations;

b) Ensure full access to all documents and information that may be useful for the defence of the rights of those affected;

c) Ensure that the reparation process does not generate new violations for those affected;

d) Act in cooperation in the promotion of acts of prevention, compensation and reparation for damage caused to those affected.

47. There is therefore a need to establish general guidelines and mechanisms to enhance the protection of people and communities affected by business activities, both in identifying risks of human rights violations and in implementing effective procedures to prevent, remedy and hold to account individuals and companies that have directly or indirectly contributed to human rights violations.

A. Climate justice: Loss and damage

Question 3. What is the legal and/or moral basis for States and other actors including businesses to contribute to the Fund for climate change-related loss and damage?

Question 4. In addition to making a financial contribution to the Fund, what non-financial components may be relevant from a climate justice perspective (e.g., transfer of green technologies, building of capacity and relocation pathways for climate-induced

migrants)?

Question 5. How should a human rights-based approach to operationalise and administer the Fund look like (e.g., integration of considerations such as accessibility, non-discrimination, fair representation in decision making, gender responsiveness, and accommodation for marginalised communities and countries especially vulnerable to the adverse effects of climate change)?

Question 6. How to ensure that the Fund and/or climate finance (including for mitigation and adaptation) does not result in a debt trap for developing countries?

48. The impacts of climate change transcend borders and disproportionately affect socially vulnerable communities, exacerbating global socio-economic disparities. In this context, the protection of the environment, together with the promotion of human rights and sustainable development, is gaining prominence on the national and international agendas. Concerns about inclusive and environmentally balanced socio-economic growth have been reflected in the promotion of public policies at home and abroad. There is growing recognition of the existence of a human right to an ecologically balanced environment. Other developments in this relationship emphasise the importance of ensuring the human right to life, health and physical well-being in cases of pollution, toxic contamination or even climatic phenomena resulting from global warming.

49. Faced with climate change, caused mainly by the globally consolidated mode of production and consumption, a multilateral regime for dealing with climate crises has been drawn up, based mainly on the United Nations Framework Convention on Climate Change (UNFCCC), its Kyoto Protocol and its Paris Agreement. Recently, at the 28th Conference of the Parties to the UNFCCC (COP-28), the need to increase funding for mitigation and adaptation to the effects of climate change was recognised. The Loss and Damage Fund, created in 2022 at COP-27, aims to assist developing countries in terms of economic and non-economic loss and damage resulting from climate change.

50. In the Brazilian national context, Bill 572/2022, in Articles 13 and 14, provides for the creation of a Fund to pay for the basic needs of people, groups and communities affected until the process of full reparation for damage caused by business activities is consolidated. The Fund's general objectives are the provision of resources for emergency financial aid to the affected population to guarantee their subsistence; meeting priority health demands arising from acts caused by human rights violations; the provision of drinking water, in cases where sources previously used to supply communities have been compromised; hiring and support for independent technical consultancy to act as an emergency response team; guaranteeing consultancy to draw up a damage repair matrix; guaranteeing access to the internet, travel and food for community leaders in the negotiation processes with the companies and public authorities; and other specific demands presented by the people, communities and groups affected.

51. In Brazil, the Amazon Fund, which is administered by the National Bank for Economic and Social Development (BNDES) aims to raise and invest non-reimbursable resources in "efforts to prevent, monitor and combat deforestation and promote the conservation and sustainable use of the Legal Amazon", according to presidential decree 6.527 of 2009. The BNDES is responsible for raising donations, selecting the supported projects, and monitoring and communicating their results. Since the Fund's creation, around 102 projects have been supported with R$1.8 billion (around US$ 360 million) in total. Sixty of these initiatives have already been completed.

52. In addition to the exclusively financial contribution, other components are considered fundamental for the promotion and defence of human rights in the face of socio-environmental impacts and climate change, such as: the transfer of green technologies, including renewable energy technologies, sustainable agricultural practices, efficient water management systems and other innovations; the contribution to strengthening technical and institutional capacities in developing countries; investment in feasibility research, planning and implementation of climate change adaptation measures; the promotion of awareness and education on climate change; the development of sustainable infrastructure systems, among other actions.

53. Guaranteeing equitable and inclusive actions in the face of climate change also requires the implementation of environmental justice, since situations of systemic injustice persist, driven by institutional and legal incentives that perpetuate and exacerbate social inequalities. Environmental justice, recognised as a fundamental movement in the re-signification of social struggles, is defined as a mechanism by which unequal societies, from a socio-economic perspective, assign a disproportionate burden of environmental damage to low-income population groups, discriminated racial groups, traditional ethnic peoples, as well as marginalised and vulnerable populations.

54. In addition, it is imperative to prioritise the effective participation of civil society in environmental policy-making and decision-making processes. This includes listening to and actively involving the communities affected by socio-environmental impacts, as well as establishing methods of transparency and publicity for acts related to the Fund. Climate justice goes beyond mere financial compensation, and also encompasses the promotion of measures that strengthen communities in situations of social vulnerability, providing them with sustainable means to face the challenges posed by climate change.

55. The impacts of climate change mainly affect economically and socially vulnerable populations. Recent research highlights the differences in the impact of climate change on human health and well-being in populations and regions with significant economic and social disparities. These documents emphasise how climate effects compromise human health by establishing an environment of energy and food insecurity (for example, inability to pay electricity bills leading to evictions) and difficulty in accessing housing with basic sanitation. Extreme weather conditions can contribute to an increase in homelessness due to the impossibility of cultivating agricultural land, which has become unsustainable due to the extreme heat. In this sense, safe housing is of significant importance, if vulnerable populations are to be able to live with extreme weather events and preserve their physical and mental health.

56. The Ministry of Human Rights and Citizenship's Directorate for Promoting the Rights of Homeless People works in conjunction with the Intersectoral Committee for Accompanying and Monitoring the National Policy for Homeless People (CIAMP Rua). This collegiate body is made up of members from civil society and the government, and its operating dynamics are supported by Thematic Working Groups and Permanent Commissions. The aim of this structure is to enable social movements working in the territories to put forward demands that directly affect the homeless population. These include issues related to climate change.

57. During 2023, the Ministry of Human Rights and Citizenship published Operation Welcoming Winter, with the aim of assisting the homeless population and preventing them from becoming ill and dying due to the intense cold. With an investment of R$5 million (US$ 1 million), items were distributed that offer thermal protection, in addition to the development of actions by the public authorities aimed at sheltering homeless people to provide guidance to this population on health care and the functioning of the network of services specialised in assisting this public.

B. The right to development of children and future generations

Question 5. What measures should be taken to protect and empower child human rights defenders?

58. The work of Brazil's National Programme for the Protection of Human Rights Defenders covers the entire national territory and is based on the National Policy for the Protection of Human Rights Defenders - PNPDDH, approved by presidential decree nº 6,044, of 12 February 2007, which established principles and guidelines for the protection and assistance of individuals or legal entities, groups, institutions, organisations or social movements that promote, protect and defend human rights and, due to their work and activity in these circumstances, find themselves in a situation of risk or vulnerability.

59. For the National Policy for the Protection of Human Rights Defenders (PPDDH), approved by abovementioned decree 6044, human rights defenders are "all individuals, groups and organisations in society that promote and protect universally recognised human rights and fundamental freedoms (Article 2, PNPDDH)." The Brazilian Committee of Human Rights Defenders (CBDDH) broadened this concept, saying that human rights defenders are considered to be all individuals, groups, organisations, peoples, social movements and other collective groups that are active in the struggle for the effective elimination of all violations of the fundamental rights and freedoms of peoples and individuals, including those seeking to win new individual and collective political, social, economic, cultural and environmental rights that have not yet taken on a juridical form or specific conceptual definition. Also included in the definition are those who politically resist capital's models of organisation, the strategies of delegitimization and criminalization, and the lack of social recognition of their demands.

60. Along these lines, together with the Programme for the Protection of Children and Adolescents Threatened with Death - PPCAAM, established by presidential decree 6.231/2007, which was replaced by decree 9.579, of 22 November 2018, the PPDDH is also appropriate for cases of children and adolescents threatened because of their work as human rights defenders. The PPCAAM has as one of its protective measures the removal of its protected minor from the territory where the threat occurs. The PPDDH, however, has the principle of guaranteeing the protection of human rights defenders in their places of work, with relocation in exception cases. This is because the work on human rights of the protected person work is usually related to the territory and the Programme aims to provide the necessary means to maintain their activism in safety. It is in this context that it is understood that, despite the specific nature of the PPCCAAM's target public, in some cases it is appropriate for children and adolescents to be under the Policy for the Protection of Human Rights Defenders, without prejudice to compliance with the principle of Comprehensive Protection established by the Brazilian Child and Adolescent Act. However, there are no children or adolescents in the PPDDH database who have been threatened because of their work in defence of human rights. In fact, children and adolescents assisted by the PPDDH are assisted because they are part of the family of a defender who has been threatened. This may indicate the need to carry out an assessment with the Rights Guarantee System, involving the PPCAAM, in order to identify the causes of threats to children and adolescents, especially those related to human rights work.

61. In conclusion, the Ministry of Human Rights and Citizenship, within the scope of its competence and in accordance with the general guidelines of the Policy for the Protection of Human Rights Defenders, acts, through joint and coordinated action, with different spheres of government, both in the protection of human rights defenders and in addressing the causes that generate their state of risk or vulnerability.