

**OECD Complaint against Condor Non-Lethal Technologies for**  
**Possible Violations of the 2011 OECD Guidelines for**  
**Multinational Enterprises**

**COMPLAINANT:**                   **Americans for Democracy & Human Rights in**  
**Bahrain (ADHRB)**  
  
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**DEFENDANT:**                   **Condor Non-Lethal Technologies**  
  
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## **I. INTRODUCTION**

### **1. GENERAL BACKGROUND**

1. The present complaint outlines matters that give grounds to investigate whether Condor Non-Lethal Technologies SA (Defendant) violated the 2011 Edition of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) by selling tear gas to the Government of the Kingdom of Bahrain (Bahrain government).

2. On 14 February 2011, the Bahrain people protested for greater political and civil rights. On that same day, the Bahrain government responded by using excessive and disproportionate force against unarmed civilians. In the years that ensued, the Bahrain government continued to violently suppress demonstrations. Today, Bahrain remains in a state of human rights and humanitarian crisis. This complaint focuses on the Defendant's role in violating human rights in Bahrain as a tear gas supplier to the Bahrain government.

3. Chapter IV of the OECD Guidelines requires the Defendant to, "within the framework of internationally recognized human rights, the international human rights obligations of the

countries in which they operate as well as relevant domestic laws and regulations.”<sup>1</sup> As such, this duty requires the Defendant to suspend its business relationships with Bahrain and other member countries of the Gulf Cooperation Council (GCC). If the Defendant fails to do so, it will, inadvertently or otherwise, continue to cause and/or contribute to the human rights violations occurring in Bahrain.

4. It is hoped that further investigation by the Ombudsman, and through its good offices, contact with the Defendant, will provide an independent non-adversarial arena within which the parties can discuss the concerns raised by this complaint. The overarching aim is to assist as far as possible with protecting the human rights of Bahrain citizens.

5. Americans for Democracy & Human Rights in Bahrain (Complainant) asks the Brazilian National Contact Point (NCP) to ascertain whether the Defendant has, and continues to, breach the OECD Guidelines in connection to supplying the Bahrain government with tear gas. If the NCP determines that the Defendant has made such violations, the Complainant request the NCP to recommend

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<sup>1</sup> ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (2011) [hereinafter OECD Guidelines], Ch. IV, available at [www.oecd.org/corporate/nme/48004323.pdf](http://www.oecd.org/corporate/nme/48004323.pdf) (last visited 20 August 2015).

the Defendant to comply with Chapter IV, Paragraph 6 of the OECD Guidelines, which states the following:

Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where [the Defendant] identify that they have caused or contributed to these impacts.<sup>2</sup>

## **2. PARTIES**

### **A. The Complainant**

6. Americans for Democracy & Human Rights in Bahrain (Complainant) is a non-profit 501(c)(3) organization based in the United States of America. It primarily advocates for democratic reform in Bahrain to actors in the United States and the international community. The organization is directed by Husain Abdulla, a Bahraini national and naturalized United States citizen who was stripped of his Bahraini citizenship by the Bahrain government after advocating for greater respect for human rights and democratic reform in the country.

### **B. The Defendant**

7. Condor Non-Lethal Technologies SA (Defendant) is a multinational enterprise operating in the global security market for over 30

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<sup>2</sup> OECD Guidelines, *supra*, note 1, ch. IV, para. 6.

years. The Defendant is headquartered in the Federative Republic of Brazil and has offices in both the Republic of Singapore as well as the United Arab Emirates.<sup>3</sup>

8. The Defendant is well established as a world-renowned manufacturer of over 150 different forms of crowd-control products including guns, missiles, pyrotechnics, and explosives, for consumption by civil, military, and federal forces both domestically and internationally.<sup>4</sup> The Defendant frequently participates in exhibitions hosted throughout each year in various locations around the world by large internal security expositions such as the International Defence Exhibition (IDEX) located in Dubai<sup>5</sup>; the Defence and Security Equipment International (DSEI) located in London<sup>6</sup>; Milipol located in Paris<sup>7</sup>; and Eurosatory located also in Paris.<sup>8</sup>

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<sup>3</sup> Fabio Zanini, *Fabricante brasileira de armas 'não letais' prevê salto nas exportações*, FOLHA DE S.PAULO, 18 April 2015, <http://www1.folha.uol.com.br/mundo/2015/04/1618351-fabricante-brasileira-de-armas-nao-letais-preve-salto-nas-exportacoes.shtml> (last visited 14 August 2015).

<sup>4</sup> Condor Non-Lethal Technologies, INTERNATIONAL DEFENCE EXHIBITION & CONFERENCE, <http://www.idexuae.ae/page.cfm/Action=Exhib/ExhibID=874> (last visited 14 August 2015)

<sup>5</sup> *Id.*

<sup>6</sup> Exhibitor List, DSEI, <http://www.dsei.co.uk/page.cfm/action=ExhibList/ListID=2/t=m/goSection=3> (last visited 14 August 2015).

<sup>7</sup> Condor Non-Lethal Technologies, MILIPOL, <http://en.milipol.com/Catalogues/Exhibitors-list-2013/Exhibitors-list/CONDOR-NON-LETHAL-TECHNOLOGIES> (last visited 14 August 2015).

<sup>8</sup> 2014 Exhibitors List, EUROSATORY, <http://www.eurosatory.com/Portals/8/Documents/PDF/exhibitor-list-2014.PDF> (last visited 14 August 2015).



9. The Defendant sells a line of smoke munitions manufactured for 12 gauge and 37/38mm, 37/40mm, 38.1 mm and 40 mm caliber models.<sup>9</sup> The outer casings of the smoke munitions bear the Defendant's name and logo as well as a lot label identifying the batch and date in which a specific canister was manufactured.<sup>10</sup> The Defendant's products are also stamped with the Brazilian flag and branded with the words "Made in Brazil."
10. The Defendant sells two tear gas canister models called the GL 203/L - Multiple Charge Tear Gas and the 203 GL/T - Triple Charge Tear Gas. Both of these tear gas canisters display a distinct blue stripe around the top and bottom of the canisters.
11. Additionally, the Defendant maintains a training center to educate individuals on the preferred use of its products.<sup>11</sup> Registration for the Defendant's training services is provided on its website.<sup>12</sup>

### **3. Complainant's Good Faith Participation in OECD Proceedings**

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<sup>9</sup> PRODUCTS, CONDOR NON-LETHAL TECHNOLOGIES, <http://www.condornaletal.com.br/eng/produtos.php>

<sup>10</sup> Reda al Fardan, *Brazilian tear gas linked to recent death of Abdulaziz al Saeed*, BAHRAIN WATCH, 26 January 2015, <https://bahrainwatch.org/blog/2015/01/26/brazilian-tear-gas-linked-to-the-recent-death-of-abdulaziz-al-saeed/>

<sup>11</sup> TRAINING, CONDOR NON-LETHAL TECHNOLOGIES, <http://www.condornaletal.com.br/eng/treinamento.php> (last visited 14 August 2014).

<sup>12</sup> *Id.*

12. The OECD Guidelines require complainants to engage the complaint procedure in good faith. They explain that "good faith behaviour in this context means responding in a timely fashion, maintain confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines." In addition to reiterating its respect for the good faith requirement, the Complaint also discloses below further actions taken as well as any formal parallel proceedings in which the Complainant will engage in the near future.

### **C. Complainant's Previous Attempts to Resolve the Issue**

13. In compliance to the OECD Guidelines, as provided in paragraph 12 of this complaint, the Complainant contacted the Defendant on four separate occasions and urged the Defendant to engage in efforts to resolve this issue. Specifically, the Complainant requested to meet with the Defendant to discuss potential strategies for preventing the Defendant's tear gas from entering Bahrain. The Defendant did not respond to the Complainant's first two letters. After the Complainant sent its third letter announcing the Complainant's intent to submit a complaint to the

NCP in the event of further non-communication, the Defendant provided a response on 14 July 2015. The response promised to send a representative of the organization to Bahrain to investigate the alleged misuse of Condor's products. The Complainant replied to the Defendant on 20 July 2015, asking the Defendant to provide more information concerning the potential investigation, including information pertaining to any actions that the representative may be authorized to take in order to ensure that misuse of the Defendant's product does not continue. However, as of the date of this complaint, there has not been any additional correspondence from the Defendant.

**i. Informal Actions Taken Outside of the OECD Complaint Process**

14. On 21 April 2015, the Complainant first contacted the Defendant in a letter addressed to Mr. Paulo Amorim (Mr. Amorim), the Defendant's Chief Executive Officer. The Complainant expressed its concerns with the Defendant's contributions to the violations against human rights in Bahrain. The Complainant notified the Defendant of the growing political unrest and the ongoing human rights crisis in Bahrain due to the Bahrain government's continual use of violence against unarmed civilians. The Complainant detailed the stories of several victims who perished in apparent connection with the Defendant's

tear gas canisters. The Complainant pleaded with Mr. Amorim to reconsider any of its business transactions where its products could possibly enter into Bahrain. The Complainant expressed its interests in meeting with Mr. Amorim to discuss possible avenues for mitigating the presence of the Defendant's tear gas in Bahrain. The Complainant did not receive any return correspondence from the Defendant as a result of this letter.

15. On 22 May 2015, the Complainant contacted the Defendant for the second time in a letter addressed to Mr. Amorim. The Complainant referenced its first letter and reiterated its concern with the Defendant's presence in Bahrain. The Complainant described how Bahrain security forces continue to use the Defendant's products in a violent manner with the intent to cause serious bodily harm and to kill. The Complainant shared the stories of victims who were injured and killed by the hands of the Bahrain government. Again, the Complainant urged the Defendant to meet in order to discuss potential strategies for preventing further human rights violations in Bahrain. The Complainant cautioned that if the Defendant disregards its efforts to engage with the Defendant, then it would be forced to take its concerns public. The Defendant did not respond to the Complainant.

16. On 24 June 2015, the Complainant contacted Mr. Amorim for the third time by means of both post mail and email. The Complainant informed Mr. Amorim that Bahrain is still suffering from human rights violations. The Complainant welcomed Mr. Amorim to contact them in order to discuss how to prevent the further abuse of human rights in Bahrain. The Complainant advised Mr. Amorim that if it did not hear from him by the deadline of 15 July 2015, then the Complainant would file an official complaint against the Defendant with the OECD.

17. On 26 June 2015, the Defendant's representative emailed the Complainant and informed the Complainant that it believed its products offer assistance to law enforcement officers to ensure "human rights and security actions." Furthermore, the Defendant's representative stated that it would forward the letter to Mr. Amorim.

18. On 14 July 2015, the Complainant received an email from Mr. Mario Wagner Marinho de Carvalho (Mr. de Carvalho), the Defendant's After-Sales Manager.<sup>13</sup> Mr. de Carvalho stated that the Defendant is a non-lethal technologies company that "reduc[es] mortality and preserv[es] Human Rights and Lives [sic], through proportional use of force." Mr. de Carvalho

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<sup>13</sup> See Email from Condor Offices to Complainant, Appendix A.

emphasized that the Defendant's products are "designed to temporarily incapacitate humans, with no irreparable injury, and provides training to officials who are legally responsible for implementing use of force through out [sic] the world." Mr. de Carvalho mentioned that Libya and Syria were responsible for hundreds of thousands of human lives because those countries did not use non-lethal products. Mr. de Carvalho denied that the Defendant's products caused any fatalities in Bahrain, but "if there were any fatalities, then these are likely to have occurred due to the misuse of non-lethal technology (lack of training) rather than the non-lethal technology itself. Mr. de Carvalho also admitted that the Defendant sold products to Bahrain. At the end of the email, Mr. de Carvalho stated that the Defendant is sending the Regional Account Manager to Bahrain to look into the matter.

19. On 21 July 2015, the Complainant sent the Defendant a letter in response to Mr. de Carvalho's email in an attempt to further constructive engagement. The Complainant thanked the Defendant for its commitment to sending its Regional Account Manager to Bahrain to investigate the contributions of its products to the human rights situation in Bahrain. The Complainant requested information from the Defendant regarding (1) products that it intends on providing to the Bahrain government; (2) specific

trainings that it provided or intends to provide in Bahrain on the use of its products; (3) steps that it is willing to take to force the Bahrain government to both fully comply and implement any trainings that it may provide; and (4) the analysis it performed on the potential human rights impact of its products in its decision to sell tear gas-related products to Bahrain. The Complainant reiterated its interests in meeting with the Defendant to discuss potential strategies for eliminating the human rights impact that the Defendant has on Bahrain. As of the date of this complaint, the Complainant has not received any further correspondence from the Defendant.

**ii. Formal Actions Taken Outside of the OECD Complaint Process**

20. At the time of the filing of this complaint, the Complainant is not involved with any formal parallel proceedings concerning the presence of the Defendant's tear gas in Bahrain. In the event that the Complainant does decide to pursue a parallel proceeding against government actors, the Complainant understands such alternative mechanisms are not intended to constitute departure from the good faith requirement. The Commentary on the Implementation Procedures of the OECD Guidelines state the following:

When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerns. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation.<sup>14</sup>

21. Therefore, if the Complainant does participate in parallel proceedings, it does so with the intent that in this present complaint, the NCP would be able to “function as a creative, collaborative facilitator of positive outcomes that are not available through legal action.”<sup>15</sup>

## II. STATEMENT OF FACTS

### 1. COUNTRY CONDITIONS

22. In February 2011, tens of thousands of Bahrainis engaged in peaceful demonstrations to demand a democratically elected government that respects their basic human rights.<sup>16</sup> Specifically, they called for a new constitution; an elected government; greater authority for Parliament; greater political

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<sup>14</sup> OECD Guidelines, *supra*, note 1, ch. 2, para. 26.

<sup>15</sup> Parallel Legal Proceedings, OECD WATCH, <http://oecdwatch.org/filing-complaints/instructions-and-templates/parallel-legal-proceedings> (last visited 14 August 2015).

<sup>16</sup> Bill Law, *Bahrain protests prompt global concerns*, BBC NEWS, 15 February 2011, <http://www.bbc.com/news/world-middle-east-12471243> (last visited 20 August 2015).



freedom; and the elimination of discrimination against the majority Shi'a population.<sup>17</sup>

23. In response to the uprising on 14 February 2011, the Bahrain government used extreme force and violence to suppress its people.<sup>18</sup> The Bahrain government fired live ammunition, shotgun pellets, rubber bullets, and tear gas in an attack on peaceful demonstrators.<sup>19</sup> As a result, the Bahrain government injured thousands and even killed several civilians.

24. One month after the start of uprisings, the king declared Bahrain in a state of emergency and called on countries from the GCC to provide military assistance in protecting the monarchy.<sup>20</sup>

25. The GCC is an organization formed to collectively confront security challenges by creating a unified military command structure for its member states.<sup>21</sup> The GCC is composed of

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<sup>17</sup> Kenneth Katzman, *Bahrain: Reform, Security, and U.S. Policy*, CONGRESSIONAL RESEARCH SERVICE, 8 May 2015, <http://www.fas.org/sgp/crs/mideast/95-1013.pdf>.

<sup>18</sup> Charles Gordon Smith & Jill Ann Crystal, *Bahrain: domestic and foreign relations since independence*, ENCYCLOPEDIA BRITANNICA (2013), available at <http://www.britannica.com/place/Bahrain/domestic-and-foreign-relations-since-independence> (last visited 20 August 2015).

<sup>19</sup> *Id.*

<sup>20</sup> PHYSICIANS FOR HUMAN RIGHTS, WEAPONIZING TEAR GAS: BAHRAIN'S UNPRECEDENTED USE OF TOXIC CHEMICAL AGENTS AGAINST CIVILIANS (August 2012) [hereinafter PHR Report], at 6, [https://s3.amazonaws.com/PHR\\_Reports/Bahrain-TearGas-Aug2012-small.pdf](https://s3.amazonaws.com/PHR_Reports/Bahrain-TearGas-Aug2012-small.pdf).

<sup>21</sup> Gulf Cooperation Council, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/gulf/gcc.htm> (last visited 14 August 2015).

Bahrain, Saudi Arabia, United Arab Emirates, Qatar, Kuwait, and Oman.<sup>22</sup>

26. Among GCC member states, a security pact enhances cooperation and coordination, particularly in the field of internal security.<sup>23</sup> The GCC's security pact provides in part, "Each state party should take legal measures on any act considered a crime under its existing legislation when its citizens or residents interfere in the domestic affairs of any other state parties."<sup>24</sup> GCC states that ratified the security pact include Bahrain, Saudi Arabia, Qatar, the UAE, and Oman.<sup>25</sup> As such, these five GCC states are obligated to preserve "the security and stability of the GCC countries... and moreover to defend the Islamic faith and idealistic views from destructive atheistic views and party activities."<sup>26</sup>

27. In response to the Bahrain king's call for security assistance, GCC countries deployed approximately 1,500 troops to support

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<sup>22</sup> Countries Name, COOPERATION COUNCIL FOR THE ARAB STATES OF THE GULF, <http://www.gcc-sg.org/eng/indexc64c.html?action=GCC> (last visited 14 August 2015).

<sup>23</sup> *GCC: Joint Security Agreement Imperils Right*, HUMAN RIGHTS WATCH, 26 April 2014, <https://www.hrw.org/news/2014/04/26/gcc-joint-security-agreement-imperils-rights>

<sup>24</sup> *GCC: Joint Security Agreement Imperils Rights*, HUMAN RIGHTS WATCH, 26 April 2014, <https://www.hrw.org/news/2014/04/26/gcc-joint-security-agreement-imperils-rights> (last visited 20 August 2015).

<sup>25</sup> *Id.*

<sup>26</sup> ROUHOLLAH RAMAZANI & JOSEPH KECHICHIAN, *THE GULF COOPERATION COUNCIL: RECORD AND ANALYSIS* 48, available at <https://books.google.com/books?id=hyXcVOV4G6YC&pg=PA48&lpg=PA48&dq=gcc+security+agreement&source=bl&ots=tMWs-lvGcs&sig=qKAvcxh5Ljg96ozioRjFnCQFyYw&hl=en&sa=X&ved=0CFoQ6AEwCGoVChMIsaqctJvMxglVTDmsCh3QKgh#v=onepage&q=gcc%20security%20agreement&f=false>

Bahraini security forces, two-thirds of which were from Saudi Arabia.<sup>27</sup>

28.25. In June 2011, the Bahrain government commissioned an independent inquiry into the abuses that occurred in the immediate aftermath of the protests that occurred earlier that year. In November 2011, the Bahrain Independent Commission of Inquiry (BICI) published a 500-page report analyzing its findings in regards to the allegations of human rights violations committed by the Bahrain government.<sup>28</sup>

29. The BICI concluded that the Bahrain security forces had used excessive force against peaceful protesters, and that the government had arbitrarily arrested, tortured and ill-treated them and denied them fair trials. The BICI also found that responsibility for such violations rested at governmental level. Additionally, the BICI submitted 26 recommendations to the Bahrain government in regards to correcting its human rights violations.

30. The Bahrain government formally accepted all of the BICI's findings as true and without contest. However, one year after

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<sup>27</sup> Id.

<sup>28</sup> See Bahrain Independent Commission of Inquiry, *Report of the Bahrain Independent Commission of Inquiry* (BICI Report), November 2011, available at [www.bici.org.bh](http://www.bici.org.bh) (last visited 20 August 2015).

the release of the BICI report, the Project for Middle East Democracy (POMED) reported that only 3 of the 26 BICI report recommendations had been implemented.<sup>29</sup> Additionally, a Chatham House report in November 2012 summarized as follows:

One year after the Bahrain Independent Commission of Inquiry (BICI) presented recommendations to deal with the legacy of the uprising and the grievances that underpinned it, significant political issues remain unaddressed. In the absence of any serious process of political dialogue, the population in Bahrain is increasingly fragmented and violence is gradually escalating; trends toward political and sectarian polarization are becoming increasingly marked.<sup>30</sup>

While the BICI report forced Bahrain to take a step towards resolving its human rights situation, the BICI report was only a first step. In the years that followed the February 2011 uprisings, Bahrain continued to experience a human rights crisis.

31. In 2012, the Ambassador of Brazil, Maria Nazareth Farani Azevedo (Ms. Azevedo), recognized the escalation of violent clashes between security forces and protestors in Bahrain during the 20<sup>th</sup>

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<sup>29</sup> PROJECT ON MIDDLE EAST DEMOCRACY (POMED), ONE YEAR LATER: ASSESSING BAHRAIN'S IMPLEMENTATION OF THE BICI REPORT, (November 2012), <http://pomed.org/wp-content/uploads/2013/12/One-Year-Later-Assessing-Bahrains-Implementation-of-the-BICI-Report.pdf>

<sup>30</sup> CHATHAM HOUSE, THE OUTLOOK FOR BAHRAIN, (November 2012), [http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Middle%20East/1112bahrain\\_summary.pdf](http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Middle%20East/1112bahrain_summary.pdf)

Session of the United Nations Human Rights Council (HRC).<sup>31</sup> On behalf of the Brazilian government, Ms. Azevedo urged Bahrain authorities to engage in dialogue with its protestors as resorting to the use of force may increase tensions.<sup>32</sup> She stated, “[W]e encourage Bahrain to seek further cooperation with the mechanisms of the multilateral human rights system.”<sup>33</sup>

32. In 2013, the United States Department of State’s Bureau of Democracy released a report covering the ongoing human rights situation in Bahrain.<sup>34</sup> The report highlighted that one of the most serious human rights problems occurring in Bahrain was “citizens’ inability to change their government peacefully.”<sup>35</sup> Additionally, the report stated the following:

Other significant human rights problems included arbitrary deprivation of life; lack of consistent accountability for security officers accused of committing human rights violations; arrest of individuals on charges relating to freedom of expression; reported violations of privacy; and restrictions on civil liberties, including freedom of speech, press, assembly, association, and some religious practices.<sup>36</sup>

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<sup>31</sup> Joint Statement on the OHCHR and the human rights situation in Bahrain, 24th Session of the Human Rights Council, 9 September 2013, [http://eeas.europa.eu/delegations/un\\_geneva/documents/eu\\_statments/human\\_right/20130909\\_joint\\_statement\\_on\\_the\\_ohchr\\_and\\_the\\_human\\_rights\\_situation\\_in\\_bahrain.pdf](http://eeas.europa.eu/delegations/un_geneva/documents/eu_statments/human_right/20130909_joint_statement_on_the_ohchr_and_the_human_rights_situation_in_bahrain.pdf) [hereinafter HRC Joint Statement Bahrain]

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> U.S. STATE DEPARTMENT, BAHRAIN 2013 HUMAN RIGHTS REPORT, <http://www.state.gov/documents/organization/220560.pdf>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

33. On 9 September 2013, during the 24<sup>th</sup> Session of the HRC, Brazil signed onto the joint statement regarding Bahrain at the HRC.<sup>37</sup> Brazil was one of 47 states who shared concerns regarding the “continued harassment and imprisonment of persons exercising their rights to freedom of opinion and expression.”<sup>38</sup> Furthermore, this joint statement expressed concerns “that those alleged to have committed human rights violations are often not held accountable.” Additionally, countries that signed onto this joint statement stated their expectations that officials “refrain from any violence.”<sup>39</sup>

34. The Government of Bahrain continues to forcibly suppress the protest movement today. The United States Department of State’s 2014 Human Rights report pointed to concerns that the Bahrain government continued to arrest and detain protesters “on vague charges, occasionally leading to their torture and mistreatment in detention.”<sup>40</sup> The 2014 report further explained that other significant human rights problems include, “[A]rbitrary deprivation of life; impunity for security officers accused of

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<sup>37</sup> UN Human Rights Council Issue Joint-Statement on Bahrain at 26th Session, BAHRAIN INSTITUTE FOR RIGHTS AND DEMOCRACY, 10 June 2014, <http://birdbh.org/2014/06/un-human-rights-council-issue-joint-statement-on-bahrain-at-26th-session/>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> U.S. Department of State, Bahrain 2014 Human Rights Report, available at <http://www.state.gov/documents/organization/236806.pdf> (last visited 21 August 2015).

committing human rights violations; arbitrary arrest; violations of privacy; and restrictions on civil liberties.”<sup>41</sup>

35. On 10 June 2014, 46 states signed a joint statement at the 26<sup>th</sup> Session of the HRC noting serious concerns over the human rights situation in Bahrain.<sup>42</sup> Specifically, this joint statement expressed concerns regarding, *inter alia*, the repression of demonstrations; the continued harassment of persons exercising their rights to freedom of opinion and expression; and the continuing reports of ill-treatment and torture in detention facilities.

36. In 2015, Human Rights Watch (HRW) published its annual country report on Bahrain in which it alleged that, “the justice system has failed to hold members of the security forces accountable for serious rights violations, including in cases where their use of excessive and unlawful force proved fatal.”<sup>43</sup> Furthermore, the HRW report stated the following:

The authorities have prosecuted only a few of the security personnel implicated the serious and widespread abuses that the BICI documented, focusing almost exclusively on low-ranking officers who, in most cases, have been acquitted or punished with disproportionately lenient sentences.<sup>44</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> HRC Joint Statement Bahrain, *supra*, note 37.

<sup>43</sup> HUMAN RIGHTS WATCH, WORLD REPORT 2015: BAHRAIN, <https://www.hrw.org/world-report/2015/country-chapters/Bahrain> (last visited 20 August 2015).

<sup>44</sup> *Id.*

37. In April 2015, Amnesty International (Amnesty) published a report called, *Behind the Rhetoric: Human Rights Abuses in Bahrain Continue Unabated*.<sup>45</sup> Specifically, Amnesty reported the following in regards to the human rights abuses committed by the Bahrain government and the lack of reform:

The authorities have also sought to strengthen anti-terrorism legislation in the face of increasing violence against security forces, and expanded their powers to revoke the nationality of anyone considered to be a government opponent. The failure to deliver on government promises has led to rising tensions within Bahrain with protests, recurring bouts of street violence and an increase in attacks on police officers.<sup>46</sup>

38. Bahrain is still experiencing a human rights crisis. As international criticism indicates (see paragraphs 31-37), the Bahrain government continues to use excessive and disproportionate force against its unarmed civilians without accountability or government reform.

## **2. THE BAHRAIN GOVERNMENT'S USE OF TEAR GAS ON UNARMED CIVILIANS**

39. The Bahrain government uses tear gas in a manner that causes serious bodily injuries and deaths. Tear gas is designed as a tool to control riots in a nonlethal manner by incapacitating

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<sup>45</sup> *Behind the Rhetoric: Human Rights Abuses in Bahrain Continue Unabated*, AMNESTY INTERNATIONAL, 15 April 2015, <http://www.amnestyusa.org/research/reports/behind-the-rhetoric-human-rights-abuses-in-bahrain-continue-unabated>.

<sup>46</sup> *Id.*



those who come in contact with its toxic chemical agents.<sup>47</sup> It commonly contains a chemical compound called o-chlorobenzylidene malonitrile (CS).<sup>48</sup> Exposure to CS may result in "severe tearing, burning in the nose and throat, eye spasms, chest tightness, coughing, and wheezing among other signs of oral and respiratory distress."<sup>49</sup> Studies indicate that effects from tear gas exposure may develop within 20 seconds.<sup>50</sup> The more serious effects of tear gas exposure include blindness, heart damage, and even death from asphyxiation.<sup>51</sup> This generally occurs under certain circumstances such as tear gas being fired inside small space with poor air circulation or within a close range.

40. The BICI reported on the Bahrain government's use of tear gas during the 2011 protests:

The Commission has found that PSF units resorted to the disproportionate use of tear gas for the dispersion of protestors. On many occasions, the number of tear gas canisters fired at protesters was disproportionate to the size of the demonstration and the number of participants. In a number of situations, tear gas canisters were fired at private homes, in a manner that was unnecessary and indiscriminate.<sup>52</sup>

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<sup>47</sup> Shiar Youssef, *A lethal 'non-lethal' weapon*, OPEN SECURITY, 27 June 2013, <https://www.opendemocracy.net/opensecurity/shiar-youssef/lethal-non-lethal-weapon>.

<sup>48</sup> Frederick T. Fraunfelder, *Is CS gas dangerous?*, THE BMJ, 19 February 2000, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1127513/> (last visited 20 August 2015).

<sup>49</sup> PHR Report, *supra*, note 20, at 21.

<sup>50</sup> Y.G. Karagama, *Short-term and long-term physical effects of exposure to CS spray*, 96 JOURNAL OF THE ROYAL SOCIETY OF MEDICINE 172-74 (2003), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC539444/> (last visited 20 August 2015).

<sup>51</sup> *Health effect of tear gas and pepper spray*, WAR RESISTERS LEAGUE, <http://facingteargas.org/bp/38/health-effects> (last visited 20 August 2015).

<sup>52</sup> BICI Report, *supra*, note 28, para. 1117.

41. Bahraini security forces have repurposed tear gas as a weapon to be used against the political opposition rather than as a tool for crowd control. From 2011 to 2014, sources estimate that government forces have used tear gas to kill at least 38 individuals.<sup>53</sup> Government security forces have been repeatedly documented using tear gas canisters themselves as high-velocity projectile weapons. Tear gas is also used as a way to discriminate against Bahrain's religious minorities and to retaliate against political activists.

42. Bahrain security forces fire tear gas canisters directly into crowds of protesters, which has caused several deaths. In August 2011, Bahraini forces fired from close range and struck 14-year-old, Ali Jowarah al Sheikh directly in the head. Ali was taken to a local hospital, where he was pronounced dead. The Bahrain Independent Commission of Inquiry conducted an autopsy and concluded that Ali's injuries appeared consistent with those that would be caused by the impact of an unexploded tear gas canister fired from short range.

43. Bahrain security forces also use tear gas to suppress the Shia population, who represent a majority of the population but have no effective representation in the Sunni-led government. Security forces have also blanketed entire Shia villages in tear

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<sup>53</sup> AMERICANS FOR DEMOCRACY & HUMAN RIGHTS IN BAHRAIN (ADHRB), APART IN THEIR OWN LAND 10 (vol. 1, 2015), available at [http://adhrb.org/wp-content/uploads/2015/03/ADHRB\\_Apart-in-Their-Own-Land\\_web.pdf](http://adhrb.org/wp-content/uploads/2015/03/ADHRB_Apart-in-Their-Own-Land_web.pdf).

gas to retaliate for specific acts of dissent. Of the 38 individuals that government forces have killed since 2011 using tear gas, all of them have been Shia.

44. The misuse of tear gas by Bahrain security forces has also been linked to long-term pain and suffering.<sup>54</sup> A 2012 report by Physicians for Human Rights states that the organization had interviewed seven women who lived in villages that were subjected to tear gas attacks. These women were pregnant during the attacks and all of them reportedly suffer miscarriages. Physicians for Human Rights also noted that civilians who had been exposed to tear gas showed early symptoms of asthma, including a persistent cough, shortness of breath, chest tightening, and wheezing.

45. In 2015, a hundreds of protesters gathered to celebrate the fourth anniversary of the 2011 uprisings. Although this was a peaceful protest, Bahrain security forces responded to these protests by firing tear gas canisters at protesters.

#### **D. Victims of the Bahrain government's use of tear gas**

46. The Bahrain government's violent use of tear gas is well-documented. While tear gas is marketed as a non-lethal crowd-control weapon, it could be used in a manner that violates human

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<sup>54</sup> PHR Report, *supra*, note 20, at 28-30.

rights. The Bahrain government has caused serious bodily injuries and even death to civilians because of the violent manner in which it uses tear gas.

**i. Sajeda Faisal Jawad and Sarah Faisal Jawad**

47. In November 2011, Bahrain security forces surrounded the Shia village of Bilad al-Qadeem and launched tear gas canisters at residents, including the home of the Jawad family. Sajeda Faisal Jawad had difficulty breathing after inhaling the toxic fumes produced by the tear gas canisters launched into her home. Sarah Faisal Jawad is Sajeda's sister who also inhaled large amounts of tear gas. After the attack, their parents took them to the hospital to receive treatment for their injuries. However, Sajeda and Sarah's conditions worsened and both girls died from respiratory failure. Sajeda was only five days old and Sarah was only three years old.

**ii. Yahya Yousif Ahmed**

48. On 5 March 2012, Yahya Yousif Ahmed died after suffering from the side effects of toxic gas.<sup>55</sup> Yahya was only one month old. While pregnant with Yayhya, Yahya's mother was subjected to tear gas several times. Consequently, Yahya suffered from abdominal inflammation and increased blood acids and died.

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<sup>55</sup> *Bahrain: Two more deaths caused by tear gas*, BAHRAIN CENTER FOR HUMAN RIGHTS, 9 March 2012, <http://www.bahrainrights.org/en/node/5103> (last visited 20 August 2015).

### **iii. Sayed Ahmed Saeed Shams**

49. Sayed Ahmed Saeed Shams died on 30 March 2011. The Bahrain government has not recorded a formal cause of death. However, witnesses reported that Sayed Ahmed was struck in the head by a tear gas canister while visiting a relative in Saar. When Sayed Ahmed fell to the ground, witnesses stated Bahrain security forces physically assaulted him. Sayed Ahmed died before he could receive medical attention.<sup>56</sup>

### **iv. Zainab al-Khawaja**

50. Zainab al-Khawaja is a prominent human rights activist in Bahrain.<sup>57</sup> In 2012, Bahraini security forces struck Zainab with a tear gas canister in the leg within close range while she was participating in a protest near the village of Buri.<sup>58</sup> Photographs taken after the attack show Zainab limping with blood running down her leg.

### **v. Mahmood al-Jazeera**

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<sup>56</sup> See BICI Report, *supra*, note 28, para. 969- 971.

<sup>57</sup> VIDEO: Bahraini Human Rights Activist Zainab Alkhawaja Freed from Prison, Father Still Behind Bars, DEMOCRACY NOW!, 19 February 2014, [http://www.democracynow.org/blog/2014/2/19/video\\_bahraini\\_human\\_rights\\_activist\\_zainab](http://www.democracynow.org/blog/2014/2/19/video_bahraini_human_rights_activist_zainab) (last visited 20 August 2015).

<sup>58</sup> Reem Khalifa, *Zainab al-Khawaja, Bahrain Activist, Hurt By Gas Canister, Say Witnesses*, THE HUFFINGTON POST, 28 August 2012, [http://www.huffingtonpost.com/2012/06/28/zainab-al-khawaja-bahrain\\_n\\_1633639.html](http://www.huffingtonpost.com/2012/06/28/zainab-al-khawaja-bahrain_n_1633639.html) (last visited 20 August 2015).

51. On 14 February 2011, Bahraini security forces directly struck Mahmood al-Jazeeri on the head with a tear gas canister fired from a gun. As a result of his injuries, Mahmood died. Mahmood was only 20 years old.

**vi. Mohammad al-Muwali**

52. A 32-year-old male named Mohammad al-Muwali reported that Bahraini security forces attacked him with three tear gas canisters inside his car as he drove near the site of a demonstration.<sup>59</sup> One tear gas canister struck him on the head while the other two were fired into the backseat of his car. Within 30 seconds, he began vomiting when local residents came to his rescue. Mohammad had to receive stitches in his head for his injuries from the tear gas canister.<sup>60</sup>

**vii. Ali Jawad Ahmad**

53. In August 2011, Bahrain security forces fired tear gas canisters into a crowd at close range. Witnesses provided accounts that one of the tear gas canisters struck Ali Jawad Ahmad in the

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<sup>59</sup> *Bahrain's use of tear gas against protesters increasingly deadly*, AMNESTY INTERNATIONAL, 26 January 2012, <https://www.amnesty.org/en/latest/news/2012/01/bahrain-s-use-tear-gas-against-protesters-increasingly-deadly/> (last visited 20 August 2015).

<sup>60</sup> PHR Report, *supra*, note 20.

head.<sup>61</sup> Shortly after he was taken to the hospital where he died. Ali was only 14 years old.

**viii. Fadhel Mirza al-Obeidi**

54. On March 1, 2011, Bahrain security forces shot Fadhel Mirza al-Obeidi in the head with a tear gas canister and then beat him in the area of his injury.<sup>62</sup> Within the following week, Fadhel was declared clinically dead. “[T]he medical report indicated that injury was caused by the impact of solid body to the right side behind the ears of the deceased.”<sup>63</sup>

**ix. Yaseen Jassim al-Asfoor**

55. On 20 January 2012, Bahrain security forces launched tear gas canisters into the home of Yaseen Jassim al-Asfoor.<sup>64</sup> The next day, Yaseen passed away. Yaseen was only 14 years old.

**x. Mohamed Khamis al-Khunaizi**

56. On 20 January 2012, Mohamed Khamis al-Khunaizi was subjected to excessive tear gas chemicals while he slept. A few hours later, Mohamed’s family found him dead.<sup>65</sup>

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<sup>61</sup> J. David Goodman, *A 14-Year-Old Boy is Killed in Bahrain as Security Forces Break Up a Protest*, THE NEW YORK TIMES, 31 August 2011, <http://www.nytimes.com/2011/09/01/world/middleeast/01bahrain.html> (last visited 20 August 2015).

<sup>62</sup> *Recent Deaths*, BAHRAIN WATCH, <https://www.bahrainwatch.org/bici/deaths.php> (last visited 21 August 2015).

<sup>63</sup> *Northern Governorate Police Station Director: Statements on death of youth in Duraz must be accurate*, BAHRAIN NEWS AGENCY, 10 March 2012, <http://www.bna.bh/portal/en/news/498080> (last visited 20 August 2015).

<sup>64</sup> *Tear Gas or Lethal Gas? Bahrain’s Death Toll Mounts to 43*, PHYSICIANS FOR HUMAN RIGHTS, 16 March 2012, <http://physiciansforhumanrights.org/blog/tear-gas-or-lethal-gas.html>.

**xi. Sakeena Marhoon**

57. In February and March of 2012, Bahrain security forces repeatedly fired tear gas canisters into the home of Sakeena Marhoon.<sup>66</sup> After the Bahrain government's most recent attack on her home, Sakeena was hospitalized for suffocation. Shortly after her hospitalization, Sakeena died at the age of 70.

**xii. Other tear gas violations of human rights committed by the Government of Bahrain**

58. Two sisters reported to investigators that the Bahrain security forces launched tear gas canisters directly into their home on five separate occasions.<sup>67</sup> In one particular incident, the two sisters reported that the Bahrain security force pulled off sealant from their windows and ripped off protective covers on the air conditioner prior to launching the tear gas canisters inside.<sup>68</sup>

59. Similarly, Bahrain security forces attacked another home by launching tear gas canisters through a window and into the kitchen, living room, storage room, and a safe room constructed

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<sup>65</sup> *26 year old Mohammed Al Khunaizi, dead from tear gas inhalation following Security Force attack – 20 January, CROOKED BOUGH*, <http://www.crookedbough.com/?p=5155> (last visited 21 August 2015); *Recent Deaths, BAHRAIN WATCH*, <https://bahrainwatch.org/bici/deaths.php> (last visited 21 August 2015).

<sup>66</sup> *Bahrain: Two more deaths from tear gas*, BAHRAIN CENTER FOR HUMAN RIGHTS, 9 March 2012, <http://www.bahrainrights.org/en/node/5103> (last visited 21 August 2015).

<sup>67</sup> PHR Report, *supra*, note 20, at 26.

<sup>68</sup> *Id.*



to keep toxic chemical agents out.<sup>69</sup> The family reported that their entire home was engulfed with toxic clouds of tear gas.<sup>70</sup> As a result, a young boy was forced to jump from the staircase in an attempt to escape the chemical fumes while a 14-year-old girl fainted.<sup>71</sup>

60. On 13 November 2014, Shia Rights Watch released a video documenting many instances in which Bahraini security forces disruptions of Ashura commemorations.<sup>72</sup> The video shows a mosque after government forces fired tear gas into the window.<sup>73</sup> It shows women fleeing from the building through the windows and doors.<sup>74</sup>

### **3. THE BAHRAIN GOVERNMENT'S USE OF DEFENDANT'S TEAR GAS PRODUCTS TO COMMIT HUMAN RIGHTS VIOLATIONS**

61. Since 2011, there has been recorded presence of the Defendant's products in Bahrain. Photographical evidence indicate that the Bahrain government has been using the Defendant's tear gas within the country. One photograph shows an empty tear gas canister with the manufacture date of May 2011 along with the

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Alan Williams, *Videos of recent attacks n unarmed Shia by Bahraini security forces*, COMMUNITIES DIGITAL NEWS, 13 November 2014, <http://www.commdiginews.com/world-news/middle-east/videos-of-recent-attacks-on-unarmed-shia-by-bahraini-security-forces-29320/> (last visited 20 August 2015).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

Defendant's distinct blue lines on the top and bottom of the tear gas canister.<sup>75</sup> Additionally, this empty tear gas canister is branded with the flag of Brazil and the words, "Made in Brazil."<sup>76</sup> Other photographs show numerous tear gas canisters manufactured by the Defendant in a pile.<sup>77</sup> The tear gas canisters shown in these photographs are from the Defendant's line of smoke munitions weapons.

62. In October 2012, the Brazil Foreign Ministry (BFM) conducted an internal investigation into allegations of the fatal use of the Defendant's tear gas against pro-democracy protesters in Bahrain.<sup>78</sup> The Defendant worked alongside the BFM to protect the Brazil's reputation during this investigation.

63. The BFM found that the Defendant did not engage in business transactions with Bahrain. Furthermore, the BFM determined that not only did the Defendant refrain from selling to Bahrain, but the Defendant also refrained from selling to the Persian Gulf altogether. The BFM suspected the Defendant's products have been

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<sup>75</sup> *Arms Watch: tracking the government and arms dealers fueling the bloodshed*, BAHRAIN WATCH, <https://bahrainwatch.org/arms/> (last visited 20 August 2015).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Brazil to investigate use of tear gas in Bahrain*, RASHEED'S WORLD, 11 January 2012, <http://www.rasheedsworld.com/wp/2012/01/brazil-to-investigate-use-of-tear-gas-in-bahrain/> (last visited 20 August 2015).

purchased by other countries then redistributed to Bahrain and eventually into the possession of the Bahraini government.<sup>79</sup>

64. However, contrary to the BFM's findings and the Defendant's repeated and public denials of selling tear gas directly to Bahrain, the Defendant has since admitted to the Complainant that it engages in the selling of tear gas to both Bahrain and other GCC countries.

65. Additionally, in April 2013, the Defendant announced at LAAD EXPO, "the largest and most important international defense and security expo[sition] in Latin America,"<sup>80</sup> that it signed another contract to supply the government of UAE with 600,000 units on non-lethal munitions, valued at \$12 million U.S. dollars.<sup>81</sup>

66. On 17 January 2015, Abdulaziz al-Saeed died in his home from asphyxiation after he inhaled tear gas chemicals following an extreme police crackdown on protestors in the village of Bilad al-Qadeem. Prominent human rights defender Nabeel Rajab took photographs of empty tear gas shell casings on the doorstep of

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<sup>79</sup> *Id.*

<sup>80</sup> *Technology and Innovation at International Defense and Security Expo*, DILOGO, 14 April 2015, <http://laadexpo.com.br/english/> [http://dialogo-americas.com/en\\_GB/articles/rmisa/features/2015/04/14/feature-06](http://dialogo-americas.com/en_GB/articles/rmisa/features/2015/04/14/feature-06) (last visited 20 August 2015).

<sup>81</sup> Bruno Fonseca & Natalia Viana, *Brazilian Weapons Firm Exports Arms to Turkey and Arab Countries*, GLOBAL VOICES, 4 July 2013, <https://globalvoicesonline.org/2013/07/04/brazilian-weapons-firm-exports-arms-to-arab-countries/> (last visited 20 August 2015).

Al-Saeed's home as well as in areas near the residential village.<sup>82</sup> Specifically, these empty tear gas canisters were the GL 203/L - Multiple Charge Tear Gas and the 203 GL/T - Triple Charge Tear Gas models, which belong to the Defendant's line of smoke munitions available for sale on its website. The empty tear gas canisters photographed in the photographs displayed the Defendant's name, logo, batch number, manufacture date, and the distinct bright blue lines for which the Defendant is known.

### **III. JURISDICTIONAL ANALYSIS**

67. The Defendant is subject to the jurisdiction of the National Contact Point (NCP) based in Brazil. According to the Article I(1) of the Amendment of the Decision of the Council on the OECD Guidelines, NCPs may receive and consider OECD complaints concerning multinational enterprises within their territorial jurisdiction. In determining whether the Defendant is within the OECD Guidelines' territorial jurisdiction, the following must be considered:

- a. Whether the Defendant is a multinational enterprise; and
- b. Whether the Defendant is from or operates in a country that adheres to the OECD Guidelines.

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<sup>82</sup> Reda al Fardan, *Brazilian tear gas linked to recent death of Abdulaziz al Saeed*, BAHRAIN WATCH, 26 January 2015, <https://bahrainwatch.org/blog/2015/01/26/brazilian-tear-gas-linked-to-the-recent-death-of-abdulaziz-al-saeed/> (last visited 20 August 2015).

68. Because the Defendant is a multinational enterprise from or operating in a country that adheres to the OECD Guidelines, the Defendant is subject to the jurisdiction of the Brazilian NCP.

#### **1. THE DEFENDANT IS A MULTINATIONAL ENTERPRISE.**

69. The Defendant is a multinational enterprise because it operates two additional offices located in different countries outside of its headquarters. While the OECD Guidelines do not require a "precise definition of multinational enterprises,"<sup>83</sup> it is sufficient that the Defendant operates two additional offices in other countries<sup>84</sup> outside of its headquarters to meet the first element for the OECD's jurisdiction.

70. First, the Defendant is headquartered in Rio de Janeiro within the municipality of Nova Iguaçu of the Federative Republic of Brazil. Additionally, the Defendant has a regional office located in Abu Dhabi of the United Arab Emirates.<sup>85</sup> Furthermore, the Defendant has another regional office located in the Republic of Singapore.<sup>86</sup> As such, the Defendant carries out its business activities from three offices, each located in a

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<sup>83</sup> OECD Guidelines, *supra*, note 1, ch. 4.

<sup>84</sup> Fabio Zanini, *Fabricante brasileira de armas 'não letais' prevê salto nas exportações*, FOLHA DE S. PAULO, 18 April 2015, <http://www1.folha.uol.com.br/mundo/2015/04/1618351-fabricante-brasileira-de-armas-nao-letais-preve-salto-nas-exportacoes.shtml>.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

different country from a different region. Therefore, the Defendant is a multinational enterprise under the OECD Guidelines.

## **2. BRAZIL ADHERES TO THE OECD GUIDELINES.**

71. Brazil is a non-member state that adheres to the OECD Guidelines.<sup>87</sup> “[C]ountries adhering to the Guidelines make a binding commitment to implement them in accordance with the *Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises.*”<sup>88</sup> Furthermore, “Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* where they operate, while taking into account the particular circumstances of each host country.”<sup>89</sup> Therefore, multinational enterprises in both active member states and non-member states are responsible for conducting business consistently with internationally recognized standards as governed by the OECD Guidelines.<sup>90</sup>

## **3. THE DEFENDANT IS SUBJECT TO THE JURISDICTION OF THE OECD GUIDELINES.**

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<sup>87</sup> OECD, OECD WATCH, <http://oecdwatch.org/oecd-guidelines/oecd> (last visited 20 August 2015).

<sup>88</sup> OECD Guidelines, *supra*, note 1, at Preface.

<sup>89</sup> OECD Guidelines, *supra*, note 1, at ch. 1, para. 3.

<sup>90</sup> OECD Guidelines, *supra*, note 1, at Preface.

72. The Defendant is subject to the jurisdiction of the OECD Guidelines, which extends to only "multinational company or companies from or operating in an OECD or adhering country."<sup>91</sup> Here, the Defendant is a multinational company because it operates two additional offices in both the Gulf and Asian regions outside of its headquarters located in Brazil. Since Brazil is a non-member state fully adhering to the OECD Guidelines, the Defendant, a multinational company operating from or in its territory, must observe the OECD Guidelines to the fullest extent possible.<sup>92</sup> Therefore, the Brazilian NCP is empowered to make determinations pertaining to whether or not the Defendant follows the OECD Guidelines.

#### **4. CHOICE OF LAW**

73. The Brazilian NCP has jurisdiction over this complaint (see paragraphs 69-72). Therefore, the NCP may adjudicate based on both international law as described in the OECD Guidelines as well as any international law accepted or controlling in the territory of the offence.

#### **A. OECD GUIDELINES**

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<sup>91</sup> *Eligibility of a Complaint*, OECD WATCH, <http://oecdwatch.org/filing-complaints/Eligibility%20of%20a%20complaint> (last visited 20 August 2015).

<sup>92</sup> OECD Guidelines, *supra*, note 1, ch. 1, para. 6.

74. Chapter II, Paragraph 2 of OECD Guideline states that enterprises should “respect the internationally recognised human rights of those affected by their activities.”<sup>93</sup> We have set out above why the activities of the Defendant - exporting tear gas to the Gulf - are directly affecting Bahraini civilians.

75. The OECD Guidelines do not themselves define “human rights.” Instead, the OECD Guidelines refer to internationally accepted human rights law, including at a minimum, the Universal Declaration of Human Rights (UDHR), the ICCPR, and the ICESR.<sup>94</sup>

76. As such, this complaint is founded upon, at a minimum human rights violations and the risk of future violations against rights and freedoms prescribed by the UDHR, ICCPR, and ICESCR. The complaint will also consider the interpretations of these international conventions by United Nations actors and organizations.

## **B. INTERNATIONAL LAW**

77. Beyond what the OECD Guidelines consider the minimum standard of international law, Brazil has also committed to a number of additional human rights standards, including multiple treaties and conventions.

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<sup>93</sup> *Id.* at ch. 2, para. 2.

<sup>94</sup> *Id.* at 32.



78. Brazil ratified the Convention on the Rights of the Child on 24 September 1990 and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) on 12 January 2007.<sup>95</sup> Additionally, Brazil acceded to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 24 January 1992.

79. Because Brazil has committed to these additional treaties, because they also in substance reflect standards of customary international law of peremptory character, and because the Defendant's conduct affecting the human rights of Bahraini citizens occurs in Brazil, the complaint will also consider the additional human rights standards contained within those additional treaties.

#### **IV. VIOLATIONS OF OECD GUIDELINES**

80. The Defendants violated the Guidelines when they sold tear gas products to Bahrain and their products were subsequently used to violate the human rights of Bahraini citizens. Pursuant to Chapter IV of the OECD Guidelines, "Enterprises should, within

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<sup>95</sup> *Ratification Status for Brazil*, UNITED NATIONS HUMAN RIGHTS, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN) (last visited 20 August 2015).

the framework of internationally recognized human rights recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations." Additionally, section 1 provides that enterprises should, "Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." The Defendant's sales to Bahrain violated Chapter IV, Sections 1, 2, 3, 4, and 5 of the OECD Guidelines. First, the Defendant violated knowingly allowed its products to directly cause or contribute to the human rights violations in Bahrain without seeking ways to prevent or mitigate the effects of those violations. Second, the Defendant failed to properly promulgate a human rights policy. Finally, the Defendant failed carry out appropriate human rights due diligence. Therefore, the Defendant violated the Human Rights chapter of the OECD guidelines when it sold tear gas canisters to the Bahrain government and those canisters subsequently caused adverse human rights impacts.

**1. THE DEFENDANT'S BUSINESS RELATIONSHIP WITH BAHRAIN AND OTHER GCC COUNTRIES CAUSED/CONTRIBUTED TO/ARE DIRECTLY LINKED TO HUMAN RIGHTS VIOLATIONS.**

81. The Defendant violated the sections 2 and 3 of chapter IV of the OECD Guidelines when the Bahrain government used the Defendant's tear gas products to violate human rights. Section 2 of chapter IV provides that enterprises should "within the context of their activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur." Sections of chapter IV provides that enterprises should "seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts." First, the Defendant sold tear gas products to Bahrain when it knew that such a sale was likely to have an adverse impact on human rights. Second, the Defendant failed to seek ways to prevent or mitigate adverse human rights impacts associated with those products. Finally, the Defendant's tear gas products directly contributed and are directly linked to adverse impacts on human rights in Bahrain.

**A. THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT SELLING TEAR GAS TO THE BAHRAIN GOVERNMENT WOULD HAVE AN ADVERSE IMPACT ON HUMAN RIGHTS.**

82. The Defendant knew or should have known that selling tear gas to Bahrain would have an adverse impact on human rights. First, the Brazilian government previously investigated the Defendant for

causing human rights abuses in Bahrain. Second, there is sufficiently widespread knowledge that the Bahrain government uses teargas to violate the rights of its citizens. Finally, the defendant was under an obligation to be especially aware of the potential of an adverse effect of the sale of its products to Bahrain given the dangerous nature of tear gas. These three events demonstrate first that the defendant was actually aware of the risk of adverse human rights impacts. Alternatively, they demonstrate that defendant should have known of the adverse human rights impacts.

**I. THE DEFENDANT HAD ACTUAL NOTICE OF THE BAHRAIN GOVERNMENT'S HUMAN RIGHTS ABUSES BECAUSE IT WAS PREVIOUSLY INVESTIGATED FOR CAUSING HUMAN RIGHTS ABUSES IN BAHRAIN.**

83. Defendant was put on actual notice by the BDF of its adverse human rights impacts in Bahrain and was therefore on notice of the substantial risk of adverse human rights impacts. Following the events that occurred in February 2011 (see paragraph 22, 23), the violent response by the Bahrain government sparked international concern as various news outlets reported the Bahrain government's use of excessive and disproportionate force. Specifically, there were reports of the Bahrain government violently using tear gas on civilians.

84. In 2011 and 2012, empty tear gas canisters manufactured by the Defendant were photographed in Bahrain. Allegations began to emerge that the Defendant was causing human rights abuses by selling tear gas to the Bahrain government who subsequently used the Defendant's products to commit these violations.

85. In October 2012, the BFM conducted an internal investigation into allegations of the fatal use of the Defendant's tear gas against pro-democracy protesters in Bahrain (see paragraphs 62, 63).<sup>96</sup> The Defendant worked alongside the BFM to protect the reputation of Brazil during this investigation.

86. The Defendant's direct involvement in a previous investigation regarding the human rights crisis occurring in Bahrain demonstrates its actual knowledge of those ongoing violations.

**II. THE DEFENDANT SHOULD HAVE KNOWN OF THE BAHRAIN GOVERNMENT'S HUMAN RIGHTS ABUSES BECAUSE THOSE ABUSES ARE WELL-KNOWN AND WIDESPREAD AND THE DEFENDANT HAD AN INCREASED DUTY TO BE AWARE OF THE POTENTIAL OF ADVERSE HUMAN RIGHTS IMPACTS OF ITS SALES.**

87. Alternatively, if it is not found that the defendant actually knew of the Bahrain government's human rights abuses, there is

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<sup>96</sup> *Brazil to investigate use of tear gas in Bahrain*, RASHEED'S WORLD, 11 January 2011, <http://www.rasheedsworld.com/wp/2012/01/brazil-to-investigate-use-of-tear-gas-in-bahrain/>.

sufficiently widespread knowledge of the Bahrain government's human rights abuses that the defendant should have known of the risk of an adverse impact. First, it is well-known and well-documented that the Bahrain government uses crowd-control devices to commit human rights abuses. After the events of February 2011, the human rights situation in Bahrain intensified as violence and unrest persisted. The Bahrain government's use of excessive and disproportionate force was reported by several well-known sources throughout the world (see paragraphs 31-37).

88. The Bahrain government has used tear gas to commit human rights violations by causing serious bodily injuries and death to civilians. As a result, various news sources reported the actions of the Bahrain government and it has grown to become notoriously and internationally known for its unjustified use of violence (see paragraphs 61-66). The criticism of these instances of human rights abuses is sufficiently well known that the Defendant should have known about the human rights crisis occurring in Bahrain.

89. Additionally, the Defendant was under a duty to be especially aware of potential adverse human rights impacts as it is in the business of selling a product which, if misused, poses a danger

to human life. The Guidelines provide, "In practice, some human rights may be at a greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention."<sup>97</sup> Here, the particular industry in which the Defendant operates as a tear gas manufacturer should have put the Defendant on notice of the potential impact that its products could have. Consequently, the Defendant is responsible for dedicating heightened attention towards the preservation of the inherent right to life recognized by the ICCPR given the life-threatening nature of the particular industry in which the Defendant operates.

**B. THE DEFENDANT FAILED TO TAKE NECESSARY STEPS TO PREVENT OR MITIGATE ADVERSE HUMAN RIGHTS IMPACTS ASSOCIATED WITH ITS PRODUCT IN BAHRAIN.**

90. The Defendant failed to seek ways to cease, prevent, or mitigate adverse human rights impacts associated with its products because the Defendant (1) had insufficient leverage to influence the Government of Bahrain to cease misuse of the Defendant's product, and (2) the Defendant sold tear gas to Bahrain or (3) other GCC countries. According to Chapter IV, paragraph 42 of the OECD Guidelines, the Defendant should "take the necessary steps to cease or prevent its contribution and use its leverage

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<sup>97</sup> OECD Guidelines, *supra*, note 1, ch. IV, para. 40.

to mitigate any remaining impact to the greatest extent possible." Additionally, paragraph 43 provides:

Where an enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations... [the enterprise should] use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact.

91. The Defendant has not undertaken the necessary affirmative steps to prevent or mitigate further human rights violations in connection with selling its tear gas to the Bahrain government. In order to prevent or mitigate the impact of its contribution to Bahrain's human rights situation, the Defendant could have explored two avenues: (1) abstain from selling tear gas to Bahrain; and (2) abstain from selling tear gas to other GCC countries.

**I. THE DEFENDANT DID NOT LIKELY HAVE SUFFICIENT LEVERAGE TO CHANGE THE METHODS BY WHICH THE BAHRAIN GOVERNMENT USES ITS TEAR GAS PRODUCTS.**

92. Although the OECD Guidelines recommend that the Defendant use its leverage to mitigate the adverse effects of the business relationship, there is no evidence that the Defendant had any leverage to actually change the practices of the Bahrain government. The OECD Guidelines state that an enterprise has "leverage" where "the enterprise has the ability to effect



change in the practices of an entity that cause adverse human rights impacts.”<sup>98</sup>

93. The Defendant likely does not have any ability to effect a change in Bahraini practices outside of terminating the business relationship. As discussed in paragraph 11 [section I, 2, B], the Defendant offers a training program to instruct tear gas purchaser on how to use its products. This appears to be the only leverage that the Defendant maintains or is capable of employing against government misuse of its product outside of terminating the business relationship. However, as discussed in paragraphs 61-66, the Bahrain has deliberately misused tear gas to violate human rights despite substantial international pressure to bring its practices into conformity with international human rights law. In 2011, the Bahrain Independent Commission of Inquiry repeatedly found that the government had misused tear gas to violate human rights, and recommended that the government train its security forces in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>99</sup> In 2014, the Government of South Korea suspended exports of tear gas to Bahrain, citing human rights concerns.<sup>100</sup> In July 2015, the European Parliament issued a resolution calling on the

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<sup>98</sup> OECD Guidelines, *supra*, note 1, ch. IV, para. 42.

<sup>99</sup> BICI Report, *supra*, note 28, para. 894.

<sup>100</sup> Schams Elwazer et al., *South Korea suspends tear gas exports to Bahrain*, CNN, 9 January 2014, <http://www.cnn.com/2014/01/09/world/meast/bahrain-south-korea-tear-gas/>.

European Union to end tear gas exports to Bahrain due to human rights issues.<sup>101</sup> Additionally, international human rights groups have repeatedly documented human rights abuses associated with tear gas and called on the Government of Bahrain to implement a stricter policy regarding the use of tear gas.<sup>102</sup>

94. In light of the substantial amount of international pressure directed at Bahrain to solve its human rights issues associated with tear gas, it is unlikely that a training course would substantially mitigate the adverse human rights impact. Given the widespread abuses that are ongoing in Bahrain and the Defendant's inability to leverage the Bahrain government to stop these abuses, the Defendant should have terminated its business relationship.

**ii. THE DEFENDANT FAILED TO ABSTAIN FROM SELLING TEAR GAS TO BAHRAIN.**

95. Without substantial alternative leverage, the Defendant could have prevented or mitigated the adverse human rights impacts of its products by abstaining from selling tear gas to Bahrain. This is the most direct solution to mitigate any potential risks that link the Defendant's business activities to the ongoing human rights situation in Bahrain.

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<sup>101</sup> European Parliament resolution of 9 July 2015 on Bahrain, in particular the case of Nabeel Rajab, EUR. PARL. DOC. P8\_TA-PROV (2015), available at, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0279&language=EN>.

<sup>102</sup> See, e.g., PHR Report, *supra*, note 20; ADHRB, *supra*, note 53; *Bahrain's Use of Tear Gas Against Protesters Increasingly Deadly*, *supra*, note 59.

96. However, the Defendant failed to prevent or mitigate the adverse human rights impacts of its products because it sold tear gas directly to Bahrain. The Defendant admitted to this on 14 July 2015. The Defendant responded by email to the Complainant's second letter of outreach (see paragraph 18) and stated the following:

We have no confirmation or evidence that the death of anyone in Bahrain is directly linked to use the use [sic] of CONDOR products, nor regarding the circumstances surrounding the use of the product. The only confirmation we have right now is that other non-lethal products manufacturers from North America and Asian have also provided products to Bahrain, in addition to CONDOR.<sup>103</sup>

97. The statement provides an admission that the Defendant provided tear gas to the Bahrain government. Therefore, the Defendant failed to prevent or mitigate the adverse human rights impacts of its products because it admitted that it sold tear gas directly to Bahrain.

**III. THE DEFENDANT FAILED TO ABSTAIN FROM SELLING TEAR GAS TO OTHER GCC COUNTRIES.**

98. In addition to abstaining from selling tear gas to Bahrain, the Defendant could also prevent or mitigate the adverse human rights impacts of its products by abstaining from selling its

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<sup>103</sup> See Email from Condor Offices to Complainant, Appendix A.

products to other GCC countries. The GCC has a security pact to provide security assistance to vulnerable GCC countries. (see paragraphs 24-26). As such, by abstaining from selling tear gas to other GCC countries that are bound by the GCC security pact to provide assistance to Bahrain, the Defendant would be preventing or mitigating the adverse human rights impact of its products. However, the Defendant has admitted to providing its products to other GCC countries.

99. In 2012, the Defendant admitted to selling tear gas to countries within the Gulf region.<sup>104</sup> Additionally, in April 2013, the Defendant renewed a contract with the UAE, Bahrain's fellow GCC member, to provide the UAE government with an additional 600,000 units of non-lethal munitions (see paragraphs 65).

100. In the past, several GCC countries have assisted Bahrain following the Bahrain king's call for a state of emergency (see paragraphs 24-26). As such, not only would selling tear gas directly to Bahrain violate the OECD Guidelines, but selling tear gas to GCC member states, would, too, constitute as a violation because GCC member states are obligated by the GCC security pact to provide military assistance to other vulnerable GCC members states.

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<sup>104</sup> See Email from Condor Offices to Complainant, Appendix A.

**C. THE DEFENDANT'S TEAR GAS CONTRIBUTED TO ADVERSE IMPACTS ON HUMAN RIGHTS IN BAHRAIN.**

101. According to the OECD Guidelines, a company's product can adversely contribute to a human rights situation when there is either a direct connection between the product and the adverse impact or the product is directly linked to the adverse impact. While it is only required that the Defendant's behavior satisfy one of these tests, the Defendant's product is both directly connected and directly linked to the adverse impact in Bahrain.

**I. THE DEFENDANT'S TEAR GAS IS DIRECTLY CONNECTED TO ADVERSE HUMAN RIGHTS IMPACTS IN BAHRAIN.**

102. The Defendant directly contributed to adverse impacts on human rights in Bahrain because the Government of Bahrain used the Defendant's product to commit human rights violations. The OECD Guidelines state that an enterprise contributes to an adverse impact when it makes a "substantial contribution, meaning an activity that causes, facilitates, or incentivizes another entity to cause an adverse impact and does not include minor or trivial contributions."

103. The Bahrain government used the Defendant's tear gas to commit human rights violations (see paragraphs 61-66). In January 2015, the Bahrain government fired tear gas into the residential village of Bilad al-Qadeem. As a result, Abdulaziz al-Saeed died from asphyxiation. There are photographs of empty tear gas

canisters manufactured by the Defendant near Abdulaziz's home (see paragraphs 66). The right to life is guaranteed by both Article 3 of the Universal Declaration of Human Rights<sup>105</sup> and Article 6 of the International Covenant on Civil and Political Rights.<sup>106</sup> As such, the Bahrain government used the Defendant's tear gas in an excessive manner that violated international human rights. Because the Bahrain government used the Defendant's product to commit a human rights violation, the Defendant's product is directly connected to human rights violations.

**ii. THE DEFENDANT'S PRODUCT IS DIRECTLY LINKED TO HUMAN RIGHTS VIOLATIONS IN BAHRAIN.**

104. The Defendant's product is directly linked to human rights violations in Bahrain because it is the same type of product that the Government of Bahrain uses to commit other human rights violations. The Government of Bahrain systematically uses tear gas and tear gas-related products to commit human rights violations.

105. Beyond the January 2015 death of Abdulaziz al-Saeed, the government has consistently utilized tear gas canisters as high-speed projectiles in order to engage in extrajudicial killings.

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<sup>105</sup> Universal Declaration of Human Rights (UDHR), G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), available at <http://www.un.org/en/documents/udhr/>.

<sup>106</sup> International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 993 U.N.T.S. 3, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

In February 2014, government security forces fired a tear gas canister at short-range at Abdulaziz Moussa al-Abbar. The tear gas canister struck him in his head, and he died after suffering critical brain injuries.<sup>107</sup> In February 2013, government security forces similarly killed Mahmood Isa al-Jazeera, a 20-year-old peaceful protester, when they fired a tear gas canister at him at short range. From March 2011 to March 2013, Physicians for Human Rights catalogued four other such instances of government forces engaging in acts of extrajudicial killing by inflicting blunt-force trauma upon victims using tear gas canisters.<sup>108</sup>

106. The Government of Bahrain has also used tear gas to cause death through asphyxiation. On 26 January 2013, 8-year-old boy Qassim Habib died after inhaling excessive amounts of tear gas in the village of Karbabad. On 12 January 2013, 87-year-old Habeeb Ebrahim died under the same circumstances. The Bahrain Center for Human Rights catalogued 36 such deaths between February 2011 and February 2015.<sup>109</sup> Including the deaths associated with blunt-force trauma, the Government of Bahrain has extrajudicially killed at least 42 persons utilizing tear gas-related weaponry since 2011.

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<sup>107</sup> *Bahrain: Civilian Shot By Police With Teargas Canister Dies After Two Month Coma*, BAHRAIN CENTER FOR HUMAN RIGHTS, 21 April 2014, <http://www.bahrainrights.org/en/node/6836> (last visited 3 August 2015).

<sup>108</sup> *Tear-Gas Related Deaths in Bahrain*, PHYSICIANS FOR HUMAN RIGHTS, <http://physiciansforhumanrights.org/issues/persecution-of-health-workers/bahrain/bahrain-tear-gas-deaths.html> (last visited 3 September 2015).

<sup>109</sup> See *Excessive Use of Force in Bahrain*, DOCS.GOOGLE.COM, <https://docs.google.com/spreadsheets/d/1JBJYey8jNRYQpcvPqzTc8BTGUsac3NVwEkiOTKktWvk/edit#gid=0> (last visited 3 September 2015).

107. The right to life is guaranteed by both Article 3 of the Universal Declaration of Human Rights<sup>110</sup> and Article 6 of the International Covenant on Civil and Political Rights.<sup>111</sup> In using tear gas to engage in the extrajudicial killings of at least 42 persons, the Government of Bahrain used a product directly linked to the Defendant's product to commit human rights violations.

108. Because the Defendant produces tear gas and sells its product to the Government of Bahrain, and because the Government of Bahrain uses tear gas to commit human rights abuses, the Defendant's product is directly linked to human rights abuses in Bahrain.

#### **D. Conclusion**

109. The Defendant sold tear gas to Bahrain and other GCC countries when (1) it knew or should have known about the human rights crisis occurring in Bahrain, (2) sold tear gas products in Bahrain without first taking steps to mitigate adverse human rights impacts, and (3) those products were subsequently used to commit human rights violations or were directly linked to human rights abuses. The Defendant directly contributed to the Bahrain government's human rights abuses because the abuses,

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<sup>110</sup> UDHR, *supra*, note 105.

<sup>111</sup> ICCPR, *supra*, note 106.



specifically the death of Abdulaziz al Saeed, would not have occurred if the Defendant had not supplied the tear gas to Bahrain. Therefore, the Defendant violated Chapter IV, Paragraphs 2 and 3, of the OECD Guidelines.

## **2. THE DEFENDANT FAILED TO PROMULGATE A HUMAN RIGHTS POLICY.**

110. The Defendant failed to promulgate a human rights policy into its business structure in violation of Chapter IV, paragraph 4, of the OECD Guidelines. Pursuant to the OECD Guidelines, the Defendant should “[h]ave a policy commitment to respect human rights.”<sup>112</sup> Paragraph 44 further explains this requirement of the OECD Guidelines:

[E]nterprises [should] express their commitment to respect human rights through a statement of policy that: (i) is approved at the most senior level of the enterprise; (ii) is informed by relevant internal and/or external expertise; (iii) stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (iv) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (v) is reflected in operational policies and procedures necessary to embed it throughout the enterprise.<sup>113</sup>

111. The Complainant could not locate the Defendant’s human rights policy. The Defendant’s website does mention that its products

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<sup>112</sup> OECD Guidelines, *supra*, note 1, ch. IV, para. 4.

<sup>113</sup> *Id.* at Ch. IV, para. 44.

provide "a means to be guided by respect for human rights and the preservation of life."<sup>114</sup> However, this is insufficient to demonstrate the Defendant's commitment to respecting human rights under the OECD Guidelines. If the Defendant does have such a policy, it has failed to disclose the policy as required by Paragraph 44(iv). Therefore, the Defendant's failure to promulgate a human rights policy violates the OECD Guidelines.

### **3. THE DEFENDANT FAILED TO CARRY OUT DUE DILIGENCE.**

112. The Defendant failed to carry out appropriate human rights due diligence prior to engaging in business with Bahrain or other GCC countries. Chapter IV, Paragraph 5 of the OECD Guidelines impels the Defendant to "carry out due diligence as appropriate to [its] size, the nature and context of operations and the severity of the risks of adverse human rights impacts"<sup>115</sup> prior to engaging in any business relationship. Paragraph 45 further explains the Defendant's due diligence obligations:

The process [of carrying out human rights due diligence] entails actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed.<sup>116</sup>

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<sup>114</sup> *Know a Little Bit About Condor*, CONDOR NON-LETHAL TECHNOLOGIES, <http://www.condornaletal.com.br/eng/institucional.php> (last visited 20 August 2015).

<sup>115</sup> OECD Guidelines, *supra*, note 1, ch. IV, para. 5

<sup>116</sup> *Id.* at Ch. IV, para. 45.

113. Taking into consideration (1) the size of the Defendant's business; (2) the nature and context of the Defendant's operations; and (3) the severity of the risks of adverse human rights impacts, the Defendant must have failed to carry out appropriate human rights due diligence. If it had carried out such due diligence, it would have foreseen the violations.

**A. DUE DILIGENCE APPROPRIATE TO THE SIZE OF THE DEFENDANT'S COMPANY**

114. Carrying out substantial risk-based human rights due diligence would have been appropriate to the Defendant's size, as they comprise a large multinational corporation with a presence in the GCC area. The Defendant is a world-renowned weapons manufacturer.<sup>117</sup> In addition to its office in Brazil, the Defendant operates two offices abroad, located in Singapore and the UAE.<sup>118</sup> With an office in the Gulf, the Defendant is a position to thoroughly investigate the potentially adverse impacts of selling tear gas to countries in the Gulf and to consider the current conditions of each state.

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<sup>117</sup> *Know a Little Bit More About Condor*, CONDOR NON-LETHAL TECHNOLOGIES, <http://www.condornaoletal.com.br/eng/institucional.php> (last visited 20 August 2015).

<sup>118</sup> Fabio Zanini, *Fabricante brasileira de armas 'não letais' prevê salto nas exportações*, FOLHA DE S. PAULO, 18 April 2015, <http://www1.folha.uol.com.br/mundo/2015/04/1618351-fabricante-brasileira-de-armas-nao-letais-preve-salto-nas-exportacoes.shtml>.

**B. DUE DILIGENCE APPROPRIATE TO THE NATURE AND CONTEXT OF  
THE DEFENDANT'S OPERATIONS IN THE GLOBAL SECURITY MARKET**

115. As a manufacturer of tear gas, the Defendant operates in the global security market. The OECD Guidelines require that due diligence undertaken by a company be appropriate to the nature and context of their operations. The nature of the global security market poses a grave possibility of contributing to existing human rights abuses. In countries where there is a record of human rights abuses, governments have used such weapons to cause serious bodily injuries and even extrajudicially kill civilians. As such, it is imperative that businesses operating in the global security market carry out extensive due diligence prior to selling tear gas. Because of the nature of the Defendant's business, the Defendant should be the Defendant subjects itself to the grave possibility of contributing, and even causing, severe human rights violations. The high risks of this market impose upon the Defendant an increased duty to carry out human rights due diligence.

**C. DUE DILIGENCE APPROPRIATE TO THE SEVERITY OF THE  
DEFENDANT'S RISKS OF ADVERSE HUMAN RIGHTS IMPACTS**

116. The Defendant failed to carry out human rights diligence as appropriate the severity of the risk that its shipments would

contribute to an adverse human rights impact. In order to determine what is appropriate due diligence given the severity of an adverse human rights impact, the Defendant must first identify the risk of adverse human rights. However, enterprises must do more than just identify risks when carrying out due diligence. Chapter IV, Paragraph 45 of the OECD Guidelines provides:

The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed.<sup>119</sup>

117. It is not clear whether or not the Defendant undertook a process by which it might measure its contribution to human rights abuses in Bahrain. In repeated correspondence with the Defendant, the Complainant has attempted to obtain information pertaining to such a process. The Defendant has not provided this information. In the absence of evidence that the Defendant undertook such a process, the Complainant is forced to conclude that the Defendant failed to assess the actual and potential human rights impacts in which its products would be involved.

118. However, even if the Defendant did undertake such a process, it is clear that the Defendant failed to act upon any information it may have obtained. Over the course of such a process, the Defendant would have found that the Government of Bahrain

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<sup>119</sup> OECD Guidelines, *supra*, note 1, ch. IV para. 45.

systematically abuses tear gas to injure and even extrajudicially kill innocent persons associated with peaceful protests (see paragraphs 87-89). On 20 January 2012, Bahrain security forces launched tear gas canisters into the home of Yaseen Jassim al-Asfoor, a 14-year-old Bahraini female. Yaseen passed away as a result of complications arising from inhaling excessive quantities of tear gas (See Paragraph 55). In November 2011, Bahraini security forces fired tear gas canisters into the home of Sajeda Faisal Jawad, a five-day-old female infant, and her sister, Sarah Faisal Jawad, a three-year-old female child. Both children later died as a result of complications arising from inhaling tear gas (See Paragraph 47). For further evidence of the Bahrain government's misuse of tear gas, see Statement of Facts section, paragraphs 39-60.

119. The right to life is guaranteed by both Article 3 of the Universal Declaration of Human Rights<sup>120</sup> and Article 6 of the International Covenant on Civil and Political Rights.<sup>121</sup> In engaging in the above-mentioned killings, the Government of Bahrain violated international human rights law.

120. If the Defendant had obtained the information pertaining to the Government of Bahrain's misuse of tear gas and analyzed it in good faith, it would have concluded that there was a substantial

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<sup>120</sup> UDHR, *supra*, note 105.

<sup>121</sup> ICCPR, *supra*, note 106.

likelihood that the Defendant's product would have a negative impact upon the human rights situation in Bahrain and would have contributed to human rights violations. As a result, in order to comply with the OECD Guidelines, the Defendant would have been forced to forego any sale of its product to Bahrain.

#### **D. CONCLUSION**

121. The Defendant failed to appropriately carry out human rights due diligence. First, a company of the Defendant's size has the resources to exercise due diligence. Second, the nature and context of selling tear gas internationally warrants the Defendant to carry out due diligence in examining risks of human rights impacts. Third, the severity of the risks of adverse human rights impacts in Bahrain required the Defendant address those risks if it had identified them. The Defendant must have failed to carry out due diligence appropriately because the Defendant's sales to the Bahrain government or GCC countries clearly posed a substantial risk of adverse human rights impact. Therefore, the Defendant failed to fulfill its human rights obligations under the OECD Guidelines.

#### **4. THE DEFENDANT'S TRAINING SERVICES ARE NOT AN ADEQUATE DEFENSE AGAINST THE ALLEGATIONS IN THIS COMPLAINT.**

122. The Defendant offers training on the preferred use of its tear gas through its website, which states that it “devotes special attention to the spread of the non-lethal concept with an aim to educate police and military authorities about the importance of gradual and proportionate use of force in situations of force and public disorder.”<sup>122</sup> While the Defendant’s training program is offered as an optional service for an additional cost, it does not absolve the Defendant from its responsibility to ensure that its business activities are not directly linked to human rights violations. Countries with a known record of police brutality, such as Bahrain, are not likely to utilize the Defendant’s training services. Additionally, even if these countries do register for training, it is unknown whether they will implement the lessons into its riot control activities, and the demonstrated history of these countries makes such implementation unlikely. In a 2013 joint mission to Bahrain, the International Rehabilitation Council for Torture Victims and REDRESS, found that human rights cases arising from Bahrain “appear to illustrate a lack of [...] training, the ignoring of [...] training or a lack of adherence to any rules of engagement.”<sup>123</sup> Therefore, the Defendant cannot rely on its

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<sup>122</sup> *Training*, CONDOR NON-LETHAL TECHNOLOGIES, <http://www.condornaletal.com.br/eng/treinamento.php> (last visited 20 August 2015).

<sup>123</sup> REDRESS, BAHRAIN: FUNDAMENTAL REFORM OR TORTURE WITHOUT END? (2013), <http://www.redress.org/downloads/publications/Fundamentalreform.pdf> (last visited 20 August 2015).



training services defend against the allegations that it violated the OECD Guidelines.

## **5. CONCLUSION**

123. The Defendant violated Chapter IV, Paragraphs 1, 2, 3, 4, and 5 of the OECD Guidelines when it supplied tear gas to Bahrain and other GCC countries who, in turn, used the Defendant's tear gas to commit human rights violations. The Defendants knew or should have known of the Bahrain government's human rights abuses following the use of excessive and disproportionate force on peaceful demonstrators in 2011. Despite this knowledge, the Defendant sold to the Bahrain government without attempting to mitigate any adverse effect. Additionally, the Defendant failed to promulgate a human rights policy. Finally, the Defendant did not appropriately carry out human rights due diligence. Therefore, the Defendant violated Chapter IV of the OECD Guidelines.

## **V. CONCLUSION**

124. The Defendant violated Chapter IV of the OECD Guidelines when the Bahrain government used the Defendant's tear gas to commit human rights violations. Therefore, the NCP should find in favor

of this complaint and seek mediation between the Complainant and the Defendant. The Complainant would like this mediation process to result in the Defendant taking the following steps:

125. The Complainant requests the Defendant suspend its business relationship with Bahrain and other GCC countries and cancel any scheduled shipment to those entities.

126. The Complainant requests that the Defendant disclose any human rights policy that it may have. If the Defendant does not currently have a human rights policy, the Complainant requests that the Defendant formulate and make publicly available a human rights policy.

127. The Complainant requests that the Defendant disclose any due diligence that it has conducted. If the Defendant did not carry out due diligence, the Complainant requests the Defendant to incorporate human rights due diligence into its operations.

128. The Complainant requests the Defendant to comply with Chapter IV, Paragraph 6 of the OECD Guidelines, and thereby (a) identify instances where it has caused or contributed to adverse human rights impacts and (b) provide for or cooperate through legitimate processes in the remediation of those impacts.