



**MISSION PERMANENTE DU BRESIL AUPRES DE L'OFFICE DES NATIONS UNIES  
ET DES AUTRES ORGANISATIONS INTERNATIONALES A GENEVE**

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The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honor to refer to the letter AL BRA 01/24, dated 12 March 2024, from the Special Rapporteur on the situation of human rights defenders; the Chair-Rapporteur of the Working Group on human rights and transnational corporations and other businesses; the Special Rapporteur on human rights obligations related to the enjoyment of a safe, clean, healthy, and sustainable environment; and the Special Rapporteur on the rights of indigenous peoples.

The Permanent Mission of Brazil in Geneva would like to forward the attached observations of the Government of Brazil regarding the aforementioned letter.

The Permanent Mission of Brazil in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 13<sup>th</sup> May, 2024.

*To the Office of the United Nations High Commissioner for Human Rights (OHCHR)  
Special Procedures Branch*

*Chief*

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## ANNEX

### **COMMENTS FROM THE GOVERNMENT OF BRAZIL**

#### **REGARDING LETTER AL BRA 01/2024 (03/12/2024)**

On behalf of the allegation letter AL BRA 01/2024, dated March 12<sup>th</sup>, 2024, the Brazilian government has the honor to inform the following.

#### 1.1. MINISTRY OF HUMAN RIGHTS AND CITIZENSHIP

##### PROGRAM FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS, JOURNALISTS, AND ENVIRONMENTALISTS (PPDH)

The Program for the Protection of Human Rights Defenders, Journalists, and Environmentalists (PPDH) informs that it is aware of the allegations regarding the Volta Grande Project. In fulfilling its mission to protect human rights defenders, the PPDH is conducting an analysis of the available information and closely monitoring any potential requests for inclusion of individuals in the program.

The Program is closely following the progress of the Volta Grande mining project, as well as the legal complaints filed against the project, concerning the level of consultation with indigenous peoples and peasants, as well as its environmental impact assessment.

To date, the PPDH has not received requests for inclusion in the program from indigenous or peasant leaders related to the aforementioned situation. However, the Brazilian government is attentive to the progress of events and prepared to receive any eventual requests for inclusion that may arise.

Following the precepts of ILO Convention 169, prior, free and informed consultation is one of the elements that effectively realize the right to self-determination of indigenous peoples, quilombolas, and traditional communities, and consultation protocols are instruments for defending territory and socio-cultural diversity. For traditional communities, the protection of their people, ensuring the physical integrity of their members, is inseparable from the protection of their lands in all their diversity of occupation and material and immaterial aspects.

The General Coordination of the PPDH, within its competence and according to the general guidelines of the National Policy for the Protection of Human Rights Defenders (PNPDDH), is working to strengthen the federal pact, through joint and articulated action of the different spheres of government, in the protection of human rights defenders and in addressing the causes that

generate the state of risk or vulnerability. Regarding the alleged threats and intimidations against human rights defenders in the area planned to be affected by the Volta Grande project, including by the private security company Invictus, the PPDH reaffirms its commitment to the safety and protection of these defenders, as well as its efforts to ensure the protection to everyone involved.

The Program implements various measures to ensure that human rights defenders can carry out their legitimate work in a safe and conducive environment, free from threats or acts of intimidation, with protections tailored to the individual needs of each person included in the program. Protection measures may include the installation of security cameras at the defenders' workplaces and residences, providing police escorts if necessary, and specialized monitoring by a technical team from the PPDH, which offers continuous support to the defenders, including legal, psychological, and social assistance, as well as guidance on security measures. Additionally, depending on the case, the PPDH may implement other personalized measures, such as temporarily relocating defenders to safer locations and providing emergency phones.

The PPDH is focused on the protection and security of human rights defenders, journalists, and environmentalists who may face risks or threats as a result of their work. Although the program is not directly involved in preventing, addressing, or mitigating the potential environmental or human rights impacts of the mining project, including the right to a clean, healthy, and sustainable environment, it remains vigilant to ensure the safety of human rights defenders working in the area.

Within its scope of action, the PPDH has been working to coordinate with other institutions to monitor and support government actions regarding the recommendations of the report, especially those related to the protection of human rights defenders and the strengthening of public policies aimed at promoting human rights.

The Program for the Protection of Human Rights Defenders, Journalists, and Environmentalists (PPDH) has the mission to protect and ensure the safety of human rights defenders, journalists, and environmentalists who are at risk due to their work, as well as to adopt a series of preventive and reactive measures to protect the people included in the program. The PPDH works in partnership to ensure the effective protection of defenders, journalists, and environmentalists. The program's technical teams maintain constant communication with defenders to assess their needs and adjust protection measures as necessary, ensuring they can continue their work safely and protected.

The Program for the Protection of Human Rights Defenders, Journalists, and Environmentalists, linked to the Ministry of Human Rights and Citizenship (PPDH/MDHC), acts in monitoring human rights defenders under threat and at risk throughout the national territory, in accordance with the competencies set forth in the scope of Ordinance No. 507, of February 21, 2022, of Decree

No. 9.937/2019, and the amendments resulting from Decree No. 11.867, of December 27, 2023, which establish prerogatives and attributions aimed at coordinating protective measures for the accompanied public.

Article 1: The Program for the Protection of Human Rights Defenders, Journalists, and Environmentalists - PPDH is hereby regulated, within the scope of the Ministry of Women, Family and Human Rights, with the objective of coordinating measures for the protection of individuals threatened as a result of their work in the defense of human rights to:

- I - protect their personal integrity; and
- II - ensure the continuity of their work in the defense of human rights.

Paragraph 1: The PPDH shall be executed primarily through cooperation voluntarily entered into between the Union, the States, and the Federal District.

Paragraph 2: Technical cooperation agreements, conventions, adjustments, or partnership agreements may be entered into with the States, the Federal District, and with public and private entities and institutions aimed at the execution of the PPDH.

Paragraph 3: The processing of personal data of human rights defenders monitored by the PPDH, including in digital media, must, to the extent applicable, comply with Law No. 13.709, of August 14, 2018 - General Data Protection Law.

The PPDH continues to monitor and protect human rights defenders, journalists, and environmentalists under threat, with an emphasis on the security and integrity of these individuals.

The PPDH also encourages respect for human rights in accordance with the United Nations Guiding Principles, promoting awareness and the adoption of responsible business practices. The program understands the need for a fair and ethical business environment committed to respecting and protecting human rights in all its activities. Furthermore, it supports initiatives that promote corporate social responsibility and the adoption of policies and procedures to prevent, mitigate, and remedy adverse impacts on human rights, thus reinforcing companies' commitment to these fundamental values.

Furthermore, the Ministry of Human Rights and Citizenship is leading an Interministerial Working Group (GTI), established through Decree No. 11.772/2023, aimed at developing a proposal for a National Policy on Business and Human Rights, with competencies to:

- I - conduct studies on national and international legal frameworks for the protection of human rights concerning business activities, with a view to the elaboration and implementation of the National Policy on Business and Human Rights; and

II - propose measures and actions to improve the effectiveness of public policies related to:

- a) regulating corporate conduct regarding the promotion and defense of human rights;
- b) redressing human rights violations and monitoring thereof; and
- c) implementing corporate policies in line with national and international normative guidelines.

Moreover, the guidelines for the elaboration of said national policy include, in article 3:

I - enhancing the effectiveness of current sectoral programs and public policies related to the defense and promotion of human rights in the business sphere;

II - encouraging the implementation of corporate mechanisms for preventing human rights violations;

III - monitoring to ensure compliance with human rights obligations; and

IV - alignment with the United Nations Sustainable Development Goals.

Currently, the GTI is in the phase of gathering national and international regulatory frameworks on the theme of "Business and Human Rights," with the aim of drafting the initial outlines of the national policy's guidelines. This process considers not only instruments such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the UN Guiding Principles on Business and Human Rights but also Brazilian legislation on the defense and promotion of human rights in the business context.

Additionally, the General Coordination of Business and Human Rights, responsible for the GTI, is working in collaboration with other ministries to structure initiatives both within and complementarily to the scope of the national policy.

It is also worth noting the recent holding of a public hearing on the rights of those affected in territorial conflicts and in the world of work, organized by the National Human Rights Council (CNDH), in partnership with the GTI. In this hearing, the rights of traditional communities and the responsibilities of companies were addressed, with a focus on combating racism and defending territories, as well as the rights of workers and the obligations of companies, especially regarding decent work, against precarization, and harassment. Reports were also presented by individuals affected by territorial conflicts, business activities, harassment, discrimination, and conditions akin to slavery.

In this context, the Ministry of Human Rights and Citizenship is proposing advancements in the Business and Human Rights agenda, aiming to address gaps in a globally relevant debate.

Additionally, efforts are being made to strengthen regulations to ensure protection, defense, and accountability for human rights violations in the business context.

Furthermore, it is important to highlight the support and ongoing efforts to advance Bill No. 572/2022, which creates the "National Framework Law on Business and Human Rights" and establishes guidelines for public policies on the subject. According to the justification of this bill, despite the existence of scattered legislation on environmental protection, labor rights, and fundamental rights guaranteed by the Constitution, there are significant gaps in the regulation of corporate conduct in Brazil and in the reparation of socio-environmental damages, a central issue for the General Coordination of Business and Human Rights. The legislative action proposes:

Accountability of companies for direct or indirect human rights violations: Article 5 provides for the accountability of companies for human rights violations, whether caused directly or indirectly by their activities. It also establishes joint liability among business groups, as well as its extension to the entire value chain, imposing the adoption of control, prevention, and reparation mechanisms capable of identifying and preventing human rights violations arising from their activities.

Full reparation of victims due to human rights violations: The full reparation of victims of human rights violations is one of the fundamental principles of the legislative proposal, as established in Article 3, item IV. This principle reaffirms the right of individuals and communities affected to full reparation for human rights violations committed by companies, in accordance with the principle of the centrality of the victim's suffering. Additionally, the legislative proposal provides for the right to prior, free, informed, and good-faith consultation with affected persons, ensuring the right to consent.

Adoption of immediate measures to cease business activities presenting risks: As established in Article 6, companies must promote, respect, and ensure human rights in the context of their activities, guiding their actions by the following guidelines:

I - Avoid causing or contributing to human rights violations by preventing damage caused by their own activities or services provided in their commercial relations, and address such damage when it occurs, providing for the immediate cessation of the ongoing violative activity;

XIX - In the event of identifying an ongoing violation in the production chain, immediately cease the activity or take action to ensure the violation ceases immediately, through their influence in the chain.

Participation of affected communities in the reparations process: as outlined in Article 5, item XVI, companies must establish mechanisms to enable the material participation of the community, particularly its leaders, in decision-making regarding reparations and compensation processes, including transportation and meals during events aimed at popular consultation. Additionally, they

must ensure access to independent technical assistance for populations affected by disasters, by covering the costs of such hiring, providing all conditions for the work to be carried out, and not interfering in the choice of such entities, which should be democratically made by the affected individuals themselves.

Right to information and publicity of corporate acts: companies and economic sectors will be responsible for disseminating information about their activities to affected communities through appropriate notification methods, taking into account the situation of remote, isolated communities without internet access, or with low literacy rates, and ensuring that such notifications are not only delivered but also understood using the languages of the affected individuals and groups (Article 6, item XIII).

Protection of Human Rights Defenders: as established by Article 6, companies must respect collective processes, associations, labor unions, organizations, movements, and other forms of representation of workers, communities, human rights defenders, as legitimate subjects in establishing dialogue and defending the interests of those whose human rights have been violated or are under threat of violation. They must also ensure mechanisms for protecting individuals affected by human rights violations by companies, as well as human rights defenders who are at risk and under threat due to their work in denouncing violations.

Respect for territorial rights and self-determination of indigenous peoples: it is important to highlight the provision regarding respect for the territorial rights and self-determination of indigenous peoples, quilombolas, and traditional communities, as well as their sovereignty over natural resources and local genetic wealth, in accordance with ILO Convention No. 169, the United Nations Declaration on the Rights of Indigenous Peoples, and the American Declaration on the Rights of Indigenous Peoples.

On the international stage, given the significance of the topic, in 2014, the UN Human Rights Council approved Resolution 26/9, which established an intergovernmental working group to develop a Binding Treaty on Business and Human Rights. Expectations are that this international binding treaty will advance the process of direct accountability for companies, recognizing that they violate human rights, and evolving from previous treaties of a more "voluntary" nature.

The measures mentioned represent significant progress in the Business and Human Rights agenda in Brazil. Not only do they recognize the imperative need for regulation to ensure protection and prevent human rights violations by business activities, but they also present guiding principles aimed at reducing legal and political asymmetry among the involved parties - that is, companies and affected individuals. These actions contribute significantly to reducing the "architecture of impunity," especially in the face of a systematic scenario of human rights violations by companies.

## 1.2. MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE

### ENVIRONMENTAL LICENSING

The Volta Grande Project involves the extraction and beneficiation of gold ore for the production of approximately 5 tons of gold per year. As declared by Belo Sun Mineração Ltda, the extraction will occur through open-pit mining in two simultaneous pits, with the ore and waste rock being transported by trucks to the beneficiation plant and waste rock piles, respectively. The beneficiation plant is of the conventional type for processing gold ores, consisting of primary crushing, semi-autogenous grinding followed by conventional grinding, cyanide leaching in closed tanks followed by adsorption on activated carbon.

The original competence for the environmental licensing of the Belo Sun Project would be with the State Secretariat for Environment and Sustainability of Pará (Semas/PA), which issued two environmental licenses, the Preliminary License - LP No. 1312/2014 (SEI No. 13889558) and the Installation License - LI (SEI No. 13889559). Understanding that the state of Pará was incompetent to conduct the environmental licensing process for the Volta Grande Project, the Federal Public Attorney proposed a Public Civil Action against the State of Pará, Ibama, and Belo Sun Mineração Ltda, seeking judicial oversight of the licensing in question.

The judgment rendered by the Federal Regional Court of the 1st Region (TRF1) in Public Civil Action 0001813-37.2014.4.01.3903 confirmed Ibama as the environmental agency responsible for the licensing of the project, stating that it should evaluate "the regularity of the licenses already granted" in order to ratify or not, avoiding unnecessary repetitions of acts and studies. The judicial decision considered that the federal autarchy responsible for the licensing of the Belo Monte Hydroelectric Plant "can adequately assess the interactions between the projects and their repercussions on neighboring indigenous communities, affected by the first project and whose situation may worsen due to the mining project."

In compliance with the court order, Belo Sun proceeded with the opening of an administrative process by completing the Activity Characterization Form (FCA) with initial information about the project (SEI No. 13886103).

The licensing process refers to the polygons of the National Mining Agency - ANM 812.559/1976, 850.249/2001, 805.657/1976, 805.659/1976, and 805.658/1976, in the municipality of Senador José Porfírio, State of Pará. Of these, only polygon 850.249/2021 is not listed in the licenses previously issued by Semas.

Upon verification of the information regarding each of the polygons, the following dimensions were identified:

812.559/1976 - 637.3 hectares;  
850.249/2001 - 173.06 hectares;  
805.657/1976 - 522.06 hectares;  
805.659/1976 - 645.07 hectares;  
805.658/1976 - 552.02 hectares.

On April 25, 2024, Semas, in compliance with the TRF1 decision, forwarded to Ibama the records of the environmental licensing process for the Volta Grande do Xingu Project, processes 2012\_5028 and 2015\_5340.

Within Ibama, therefore, the environmental licensing procedures are in the initial phase, where the next steps should involve issuing the Terms of Reference to define the criteria and minimum content for the preparation of the environmental study that will support the analysis of the environmental feasibility of the Project. However, in compliance with the TRF1 decision, the information already gathered by the company in the licensing conducted with Semas should be considered.

Among the information to be considered in the licensing process are those related to the local and regional dynamics that may be impacted by the eventual implementation of the project, including the possibility of holding public hearing(s).

It is worth noting that the purpose of holding a public hearing is to present to stakeholders the information related to the environmental licensing process (knowledge of the project and the environmental impacts arising from it), as well as to address doubts and gather criticism and suggestions regarding the Project, as provided for in Conama Resolutions No. 01/1986 and 09/1987.

The participation of federal government agencies and entities responsible for possible interventions in indigenous lands, as well as other institutions deemed pertinent throughout the environmental licensing process of the project, will also be promoted. Due to the TRF1 decision, the Volta Grande Project is not under implementation, and environmental licensing should be carried out by Ibama, during which existing information should be analyzed and new information requested if deemed necessary for the proper instruction of the Environmental Impact Assessment (EIA) and applicable administrative acts.

It should be noted that the Aliança Pela Volta Grande do Xingu - Amazon Watch, composed of social organizations from the Volta Grande do Xingu region and various national and international environmental entities, presented a demand in a meeting at the Ibama Presidency, held in October

2023, aimed at expanding the debate on the protection of human and environmental rights of regional communities. Subsequently, the demands were formalized under document SEI No. 18095961, which constitutes the records of process No. 02001.001726/2024-61. The proposal of this entity is to conduct a new round of consultations with communities in the Xingu River region, ensuring effective social participation and informed free consultation.

In the context of environmental licensing, effective and potential environmental impacts associated with projects are studied, among other factors, as well as the respective mitigating measures (AIA procedure).

Among the environmental impacts are those related to the socioeconomic component as a whole. Specificities related, for example, to potential impacts on indigenous communities are criteria for consultation with the responsible bodies and entities, in the specific case, the National Foundation of Indigenous Peoples, which may require the entrepreneur to conduct hearings and studies of the indigenous component regarding the Project's intervention in the community.

Furthermore, environmental licensing per se, considering the current regulations, has as its main foundation the control of pollution and its effects on various environmental components (abiotic, biotic, and socioeconomic), therefore, not replacing public policies or instruments objectively aimed at ensuring various rights, such as the rights of indigenous peoples, quilombolas, or other more vulnerable social groups.

### 1.3 MINISTRY OF INDIGENOUS PEOPLES

The Volta Grande Mining Project, led by the Canadian mining company "Belo Sun Mining Ltda", was presented to the Secretariat of Environment and Sustainability of the State of Pará (SEMAS/PA) in 2012, with the aim of obtaining a license to implement, in the Volta Grande do Xingu region (VGX), the largest gold mine in Brazil, with indications, according to the Environmental Impact Studies (EIA), that 3.16 tons of ore will be extracted per year in the first eleven years and, according to the company's website, research indicates the possibility of extracting up to 7 (seven) tons per year. The project aims to be established in the Municipality of Senador José Porfirio (PA), less than 50km (fifty kilometers) from the main dam of the Belo Monte Hydroelectric Plant (UHE Belo Monte), less than 10km (ten kilometers) from the Paquiçamba Indigenous Land, owned by the Juruna Indigenous People, and even less kilometers away from riverside communities, such as "Ilha da Fazenda", and indigenous villages not yet demarcated by the State, such as the São Francisco Village, of the Juruna Indigenous People.

As per its jurisdiction, the Ministry of Indigenous Peoples (MPI) shall analyze the impacts of the mining project on local indigenous peoples. In its assessment, the MPI should consider the use of

potentially harmful chemicals in gold extraction, as well as assess the safety of tailings dam construction projects. Another aspect to be analyzed concerns the potential socioeconomic transformation of the mining project on-site (it is estimated that 2,100 direct workers and 500 employees in the operational phase will arrive at the site), as well as the construction of additional housing and roads, which could require resettlements.

As is known, the Canadian mining company obtained a license to start its installation in the area, granted in 2012 by the Secretariat of Environment and Sustainability of the State of Pará (SEMAS/PA). However, the Federal Regional Court of the 1st Region, responding to a request from the Federal Public Attorney, suspended the said License in 2017, alleging that no prior, free, and informed consultation had been conducted with indigenous peoples, in accordance with ILO Convention No. 169. Although the company claims to have already complied with the judicial order to conduct the prior, free, and informed consultation, the Installation License remains judicially suspended.

The Ministry of Indigenous Peoples is reviewing the indigenous component studies that the mining company has submitted to the court. At present, the MPI questions, in the studies presented, the reason for the exclusion of the Xikrin-Mebêngôkre Indigenous Peoples from the Trinchiera-Bacajá Indigenous Land, and the Juruna indigenous people from the São Francisco Village. Confirmation is also awaited regarding consultations with the riverside population of the Volta Grande do Xingu.

It is worth noting that the mining company justifies the non-inclusion of the Xikrin-Mebêngôkre in the licensing process based on Interministerial Ordinance No. 60, of March 24, 2015, signed by the Ministers of the Environment, Justice, Culture, and Health. According to the company's interpretation, the said Ordinance would obviate the need to conduct studies on the indigenous component and consult indigenous peoples located more than 10km (ten kilometers) from the project. Regarding the Juruna, the claim is that there is no obligation to consult and include in the studies indigenous peoples who are not on demarcated lands.

Furthermore, there are no conclusive studies on the synergistic impacts to be borne by the Volta Grande do Xingu in the hypothetical scenario of simultaneous operation of the Belo Monte Hydroelectric Plant and the Belo Sun Mine. In this regard, it is noted that Norte Energia S/A, in a letter dated March 14, 2022, addressed to the Secretariat of Environment and Sustainability of Pará (SEMAS/PA), the Environmental Licensing Directorate of IBAMA, the General Coordination of Environmental Licensing of the National Indigenous Foundation (FUNAI), the Federal Public Attorney, and the State Public Ministry of Pará, requested a reassessment of the licensing process for the Belo Sun Mine, considering the "conflict between activities and the risk of implementing mining activity together with the operation of the Belo Monte plant." The letter also argued that studies "indicated incompatibility between hydroelectric and mining enterprises."

It is important to emphasize that the Ministry of Indigenous Peoples understands that the demarcation of indigenous lands and the guarantee of their effective occupation by indigenous communities, who are their rightful possessors, are fundamental and structural measures to prevent, address, and mitigate both environmental impacts and human rights. Thus, we point out specific actions for territorial protection and demarcation of indigenous lands in the region in question.

Regarding the protection of indigenous territories in the Xingu River basin, studies are underway with the National Indigenous Foundation (FUNAI) for interventions in different indigenous lands, simultaneously, with the Xingu Reserve Park being one of the highlighted areas. The protection of these territories directly results in the prevention and mitigation of environmental impacts in this region.

Protection against invasions, degradation, or improper predatory exploitation of these mentioned indigenous lands is essential for the protection of the life, health, and personal integrity of members of indigenous peoples in situations of isolation who live in constant mobility in the Xingu-Bacajá interfluvium. Among the measures taken, the closure of the area that gave rise to the Ituna-Itatá Indigenous Land, as a condition in the licensing process of the Belo Monte Hydroelectric Plant, stands out.

The Ituna-Itatá Indigenous Land was recognized by the Brazilian State in 2011 through Ordinance No. 38/PRES/FUNAI, of January 11, 2011 (published in the Official Gazette of the Union of January 12, 2011), with an area of 137,765 hectares. The objective of the ordinance was to safeguard, through access and use restrictions, the territory of isolated groups (Isolated Indigenous People Registry No. 110/Igarapé Ipiaçava, from the CGIIRC/FUNAI database) and ensure that FUNAI could conduct field research and information gathering expeditions to support the identification of the isolated group and the demarcation and protection of the Indigenous Land. Currently, the Indigenous Land is subject to a Use Restriction ordinance valid until June 2025.