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Mandates of the Working Group on the issue of Human Rights and Transnational corporations and other business enterprises and the Special Rapporteur on the rights of indigenous peoples.

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Dear Mr. Letwin,

We have the honour to address you in our capacities as Working Group on the issue of Human Rights and Transnational corporations and other business enterprises and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 17/4 and 15/14.

In accordance with our mandates from the Human Rights Council, we are respectively authorized to “gather, request, receive and exchange information and communications from all relevant sources” on alleged human rights violations of indigenous peoples¹ as well as to “seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises” in order to, inter alia, promote the effective and comprehensive implementation of the United Nations Guiding Principles on Business and Human Rights².

In this connection, we have received information alleging that the Government of Suriname granted an extension of mining rights to your company, IAMGOLD and its subsidiary Rosebel Gold Mines N.V., through a modification of an existing mineral agreement between your company and Suriname, which is to be approved by the National Assembly of Suriname. The allegations express concerns that the concessions granted under the mineral agreement, along with the expansion of hydroelectric projects to support mining activities, would result in violations of the rights of the Saramaka people, a maroon tribal group in northeastern and central Suriname. The Saramaka people are the subject of a legally binding judgment issued by the Inter-American Court of Human Rights, in the case *Saramaka People v. Suriname*,³ which affirmed the collective land and resource rights of the Saramaka and ordered the Government of Suriname to legally recognize and protect those rights. Implementation of that case continues to be

¹ A/HRC/RES/15/14, para. 1(b).

² A/HRC/RES/17/4, para. 6

³ *Saramaka People v. Suriname*, Judgment of 28 November 2007, Inter-Am Ct. H.R., (Ser. C) No. 172 (2007).

outstanding, as the Special Rapporteur detailed in a 2011 report following an on-site visit to Suriname (A/HRC/18/35/Add.7).

The allegations received indicate that the terms of the Inter-American Court's judgment in the *Saramaka* case would be violated as a result of Suriname's agreement with your company, and your company would thereby be complicit with a violation of international human rights law.

In this letter, we would like to inform you of these allegations, provide a brief overview of the Government of Suriname's international obligations with respect to the Saramaka and indigenous and tribal groups generally, as well as discuss the human rights responsibilities of businesses such as your company within this context. In order to clarify the information we have received and help us assess this situation, we present at the end of this letter a set of questions about the mineral agreement, about whether or not due diligence has been exercised in relation to the rights of the Saramaka people, and about your company's actions in regard to the mineral agreement.

According to information received:

On 26 November 2012, Suriname concluded an agreement to modify the 7 April 1994 Mineral Agreement (as first amended on 13 March 2003) ("the Mineral Agreement"). The parties to this new agreement are the Government, the state-owned mining company N.V. Grasshopper Aluminum Company (Grassalco), the Canadian mining company IAMGOLD, and IAMGOLD's locally incorporated subsidiary Rosebel Gold Mines N.V. The Mineral Agreement makes the State a 'joint venture partner' in this mining operation, and thus part owner. As this new agreement in various ways contradicts extant law, it must be enacted by Suriname's legislative body, the National Assembly, and thus become a law in its own right. The new Mineral Agreement is reportedly still pending approval by the National Assembly.

The new Mineral Agreement, which has been consented to by Suriname's Council of Ministers and the Council of State as is required by the Constitution, will allegedly enlarge and grant new concessional rights to IAMGOLD over some 15 percent of Saramaka territory (defined in the Mineral Agreement as the 'area of interest') and allow the company to automatically convert rights of exploration to rights of exploitation (a permit to mine as opposed to explore for and define mineral deposits). This "area of interest" reportedly includes up to 33 Saramaka communities as well as two pre-existing concessions held by IAMGOLD: Headley's Reef and Thunder Mountain. Both of these existing concessions were allegedly obtained in 1992 without any consultation or agreement with the Saramaka. According to allegations, the Saramaka only became aware of their existence when company employees began operations in their lands, including in the residential areas of their villages.

Like the existing concessions, the agreement granting new concessions to IAMGOLD was allegedly negotiated and concluded without adequate participation of or consultation with traditional Saramaka authorities. Although the Mineral Agreement requires that environmental and social impact assessments (ESIAs) be conducted prior to the conversion of exploration rights into exploitation rights, the short time frame allocated for carrying out these studies would not allow for an effective process of consultation with the Saramaka, in accordance with their customs and traditions. Furthermore, the terms of the Mineral Agreement reportedly do not require that ESIAs be undertaken in connection with the prospective exploration in the area of interest, which according to the allegations, will almost certainly have a significant impact on Saramaka subsistence practices and the enjoyment of their traditional lands more generally.

According to the information received, the new and existing concessions, granted without consultation of the Saramaka and without ESIAs, contravene the binding judgment of the Inter-American Court of Human Rights in *Saramaka People v. Suriname*. Specifically, the concessions violate the Court's order that until the delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people.⁴

The judgment further requires the Government to "ensure that environmental and social impact assessments are conducted by independent and technically competent entities, prior to awarding a concession for any development or investment project within traditional Saramaka territory."⁵

At present, IAMGOLD, through its local subsidiary Rosebel Gold Mines N.V., reportedly operates a gold mine within the "Rosebel concession", which lies immediately adjacent to the N'djuka maroon community of Nieuw Koffiekamp within the traditional Saramaka territory. This community allegedly faces the prospect of forcible relocation once mining operations commence in the southern portion of the concession. This mining operation is also one of the concessions that the Inter-American Court ordered to be reviewed to determine its compatibility with the measures the Court required Suriname to take in order to ensure the survival of the Saramaka. It is alleged that this review has not taken place and the State has not given any indication that it intends to conduct that review. Although the Inter-American Court in its monitoring of Suriname's compliance with the *Saramaka* judgment also took note in November 2011 of the lack of review of this mining operation, the Government has not since taken any steps to change this situation. Notwithstanding this failure, the Government is

⁴ Saramaka People, *supra* note 2, paras. 194(a) and 214(5).

⁵ Saramaka People, *supra* note 2, paras. 194(e) and 214(9).

allegedly in the advanced stages of granting new rights to IAMGOLD to further expand its operations into Saramaka territory, allegedly putting the 33 communities in the modified Mineral Agreement's area of interest at risk of displacement.

Although not specified explicitly in the new Mineral Agreement, the State has also allegedly agreed to the concomitant development of new hydropower energy sources (known as the TapaJai project) to provide power for IAMGOLD's operations, with potential impacts on the Saramaka's territory. It is alleged that the Saramaka have not been provided with any information about the current design of the TapaJai project and their requests for this information have been ignored by the State. The State has allegedly begun constructing infrastructure related to this hydropower project in Saramaka territory recently and is doing so over the explicit objections of the Saramaka and their traditional authorities.

The existing Afobaka dam in Saramaka territory, which will be expanded under the TapaJai project, allegedly led to the forcible displacement of inhabitants of some Saramaka villages when it was constructed in the 1960s. It is alleged that both the TapaJai project and the expansion of the Afobaka dam and reservoir are likely to have further negative effects, including involuntary displacement due to inundation of five Saramaka communities, some of which are already in a vulnerable state as a result of previous displacement, as well as adverse effects on sacred sites and productive lands used for their subsistence. Construction of the roads required for the TapaJai project has allegedly begun without any form of ESIA, as required by the Inter-American Court judgment, and this as well will allegedly have a significant negative impact on the Saramaka People.

Furthermore, according to the allegations, the Government obtained the consent for the road construction from the *Gaama*, or Paramount Chief of the Saramaka. However, this consent was not valid since the Gaama owns no land and as such does not have authority under Saramaka customary law to make decisions regarding the use of Saramaka lands or territories. It has been pointed out that the captains of the landowning Saramaka clans are the traditional authorities that have this authority and that they have previously rejected the road construction related to the TapaJai project. Consequently, the road construction also violates the orders of the Court in *Saramaka People* requiring that consultations be conducted in accordance with Saramaka tradition and custom, and that the Saramaka must decide who will represent them in such consultations.⁶

In light of the above allegations and information, we would like to present a brief overview of international human rights standards applicable to this situation as well as previous observations that the Special Rapporteur on the rights of indigenous peoples has made regarding the Government of Suriname's international obligations. We would also like to address the corresponding human rights responsibilities of IAMGOLD and its

⁶ See *Saramaka People v. Suriname*, Judgment of 12 August 2008, Inter-Am Ct. H.R., (Ser. C) No. 185 (2008), para. 18.

subsidiaries, as outlined in the United Nations Guiding Principles on Business and Human Rights.

In 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, the product of over two decades of deliberations within the United Nations involving Member State Governments and indigenous peoples. The Declaration elaborates on the generally applicable human rights affirmed by various international human rights treaties to which Suriname is a party, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the International Convention on the Elimination of All Forms of Racial Discrimination, and places those rights within the particular historical, social and cultural context of indigenous peoples.⁷ The adoption of the Declaration by the vast majority of United Nations Member States, including Suriname, marks the current international consensus and understanding of the rights of indigenous peoples, and by extension those of tribal peoples, who have common characteristics and human rights concerns. In this regard, it is worth noting that the Inter-American Court of Human Rights, in its judgment in *Saramaka*, stated that the international human rights regime related to indigenous peoples is equally applicable to the Saramaka as a tribal people.⁸

Article 26 of the Declaration affirms the right of indigenous peoples “to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and to State recognition and protection of the same. The Declaration further provides that indigenous peoples have the right to be consulted “through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”, (art. 32). Furthermore, “[i]ndigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned” (art. 10).

As noted above, the Special Rapporteur on the rights of indigenous peoples has also issued a report specifically on the measures needed to secure indigenous and tribal peoples’ land and related rights in Suriname.⁹ This report was prepared at the request of the Government of Suriname, a request motivated by the judgment in *Saramaka*. In the report, the Special Rapporteur recommended that legislation be developed to secure indigenous peoples’ land and resource rights and to clarify the responsibilities of the Government and third parties when consulting with indigenous peoples in connection with development projects. In the report, the Special Rapporteur also referred to the Government’s obligations under the judgment in *Saramaka*, emphasizing that “[i]t is imperative that Suriname take steps to fully implement the judgment of the Court, in order to avoid a prolonged condition of international illegality.”

⁷ A/HRC/9/9, para. 86.

⁸ *Saramaka People*, *supra* note 2, paras. 85-86.

⁹ A/HRC/18/35/Add.7.

In November 2011, the Inter-American Court, in a subsequent resolution monitoring Suriname's compliance with its judgment, found that the Government had not yet complied with the majority of its substantive orders, including those dealing with: the delimitation, demarcation, and collective titling of Saramaka traditional territory; abstention from acts by the State or third parties that might affect the existence, value, use, or enjoyment of Saramaka territory; review of existing concessions; adoption of measures recognizing and ensuring the right to consultation in accordance with Saramaka tradition and custom; and assurances that adequate ESIA's be conducted prior to awarding development concessions within Saramaka territory.¹⁰

In light of the situation described above, it must be noted that businesses have responsibilities with regard to human rights that exist independently of State obligations and actions. In June 2011, and after years of consultations involving Governments, civil society, and the business community (including mining companies and the International Council on Mining and Metals), the United Nations Human Rights Council endorsed¹¹ the Guiding Principles on Business and Human Rights¹², thereby establishing them as the authoritative global standard of conduct for all States and businesses with regard to preventing and addressing business-related human rights impacts¹³. The Guiding Principles describe States' duties to protect human rights that could be affected by business operations, as well as the responsibility of businesses to respect human rights, and prescribe actions for both States and businesses to ensure access to effective remedy for victims of abuses. Principle 13 explains that the responsibility of business to respect human rights requires businesses to "(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. Principle 22 further states that "Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes." This responsibility applies to all internationally recognized human rights, and to all businesses, regardless of their size, sector, operational context, ownership or structure.

The Guiding Principles clarify that to meet its responsibility to respect human rights, businesses should carry out human rights due diligence, including by putting into place adequate mechanisms that will allow them, on an ongoing basis, to "identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships" (principle 18). Principle 19 of the Guiding Principles provides that the results of impact assessments and consultations should be integrated into the business's decision-making structure at an appropriate level so they can be used to effectively prevent and mitigate adverse human rights impacts, including by exerting leverage on other entities.

¹⁰ Inter-Am. Ct. H.R., Case of the Saramaka People v. Suriname, Monitoring Compliance with Judgment, (23 November 2011), para. 50, Resolution point 2.

¹¹ A/HRC/17/31.

¹² http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹³ A/HRC/21/21, para. 2

Specifically, if impact assessments or consultations reveal existing or potential adverse human rights impacts linked to the business's activities, the business should take steps to end or prevent those impacts. The commentary to Principle 12 further outlines that enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them, and consider relevant United Nations instruments on the rights of indigenous peoples, such as the United Nations Declaration on the Rights of Indigenous Peoples.

It should be noted that the responsibilities delineated in the Guiding Principles do not depend on the actions of the Government of Suriname. As the commentary to Principle 11 makes clear:

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

Regardless of the policies and priorities the Government of Suriname may have, IAMGOLD's responsibilities to respect human rights and provide for or cooperate in remediation of any human rights abuses which it has caused or to which it has contributed remain constant.

As we continue to monitor and clarify the circumstances surrounding the present situation, we would be interested in knowing IAMGOLD's views about the accuracy of the information contained in this letter and would be grateful to receive any additional information IAMGOLD may deem relevant. In particular, we would appreciate the company's cooperation and observations with regard to the following questions:

1. Are the facts summarized above accurate?
2. How has IAMGOLD sought to address its human rights responsibilities as outlined in principle 13 of the Guiding Principles with respect to existing concessions and operations and the new concessions detailed in the modified Mineral Agreement?
3. Have the Saramaka been consulted through their appropriate traditional authorities in order to obtain their free, prior and informed consent to existing mining concessions and operations and also to the new concessions and exploration described in the Mineral Agreement? To what extent have the Saramaka been involved in the planning and execution of mining operations on their territory and in the development of the Mineral Agreement?
4. Have any assessments been conducted to identify and evaluate the actual or potential human rights impacts of existing or planned mining projects, including

impacts on the Saramaka people, and are there plans for continual monitoring of human rights impacts?

5. What measures have been or will be taken to prevent or mitigate the adverse effects of mining operations, including potential displacement, on Saramaka communities? Similarly, what measures have been taken to mitigate adverse impacts of existing mining operations affecting Saramaka communities?

6. How and to what extent has IAMGOLD exercised its influence to address potential adverse human rights impacts caused by other parties connected to its operations and the Mineral Agreement?

7. Has IAMGOLD and its main shareholders sought guidance from the State where it is domiciled in, in this case Canada?

We undertake to ensure that your response will be taken into account in our assessment of this situation and in developing any recommendations that we may make to IAMGOLD, the Government of Suriname and the Government of Canada for consideration pursuant to the terms of our respective mandates. For this reason, we would appreciate a response from IAMGOLD within 60 days. In addition, we undertake to ensure that the response of IAMGOLD is accurately reflected in the reports that we may submit to the Human Rights Council.

Please accept, Mr. Letwin, the assurances of our highest consideration.

Puvan J. Selvanathan
Working Group on the issue of Human Rights and Transnational corporations and
other business enterprises

James Anaya
Special Rapporteur on the rights of indigenous peoples