Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL BRA 10/2017

20 November 2017

Excellency,

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; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/7, 28/11, 35/15, 34/18, 36/15 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning acts of intimidation and threats against human right defenders **Elias de Souza**, **Vanessa Rosa dos Santos**, **Reginaldo Rosa dos Santos**, **Lúcio Guerra Júnior**, Patrícia **Generoso**, and **Lúcio da Silva Pimenta**, as well as their families, allegedly in relation to having brought legal proceedings to question the legality of a public hearing for the expansion of the mining project Minas-Rio, and ultimately suspending the hearing. We would furthermore like to refer to information received concerning the alleged limited capacity and lack of independence of the authorities of the State of Minas Gerais to effectively protect the concerned human rights defenders, as well as to information received regarding the underlying environmental and social impacts of the Minas Rio Project.

According to the information received:

a) Context

The Minas Rio Project is a large-scale iron ore mine located in the states of Minas Gerais and Rio de Janeiro, currently operated by the company Anglo American Minério de Ferro Brasil S.A. (Anglo American), a subsidiary of Anglo American Investimentos - Minério de Ferro Ltda, which in turn is a subsidiary of the English mining transnational Anglo American plc. The project, which began operations in 2014 and is at the moment undergoing its third phase of development, includes a mine, a beneficiation plant, a 525 kilometers pipeline and dedicated export

facilities at the port of Açu. The third phase of development seeks to achieve an extraction rate of 56 million tons of iron ore a year, which allegedly poses a number of environmental and social concerns.

On 11 April 2017, a judge granted an injunction suspending a public hearing on the issue of the development of the third phase of the mine, on the basis that the convocation to the hearing had been done with too short notice, insufficient outreach in the media, and without the necessary environmental assessments. On the same day, the company published a note on its website saying that the suspension was harming the licensing process, and was putting at risk the continuity of the operations of the Minas-Rio Project.

Information started circulating thereafter on social media disclosing the names of the applicants in the case, and accusing them of harming the development of the project. From then on, the concerned human right defenders – Mr. Elias de Souza, Ms. Vanessa Rosa dos Santos, Mr. Reginaldo Rosa dos Santos, Mr. Lúcio Guerra Júnior, Ms. Patrícia Generoso, and Mr. Lúcio da Silva Pimenta –as well as their families, began to face different acts of intimidation and threats within their communities, which to date have allegedly continued, despite the fact that the hearing finally took place on 20 July 2017.

Mr. de Souza, Ms. and Mr. Rosa dos Santos, Mr. Guerra, Ms. Generoso and Mr. da Silva Pimenta have denounced these acts before the state police and have sought protective measures by the Protection Programme for Human Rights Defenders of the State of Minas Gerais (PPDDH), which have been granted to some of the applicants. However, as will be explained below, a number of shortcomings allegedly hinder their effectiveness.

b) Acts of intimidation, threats and specific protection measures granted

Mr. Elias de Souza and his family

Mr. de Souza, who is recognized as a leader and representative of the rural communities of Conceição do Mato Dentro in the state of Minas Gerais, was the object of several threats and a defamation campaign after the suspension of the hearing regarding the expansion of the Minas Rio Project on 11 April 2017.

On 12 April 2017, Mr. de Souza was attacked and death-threatened by a resident of the São Sebastião do Bom Sucesso district, possibly as a result of the tension within the community among those in favour of the mining project, and those against it. Mr. de Souza submitted a complaint on that same day to the Civil Police, which led to investigations and interrogations of witnesses in the following months. These proceedings are still pending.

Other threats received by Mr. de Souza following the suspension of the hearing concern the circulation of anonymous pamphlets entitled “Leader or Criminal”

(*Líder ou Bandido*), which accused him of attempting to impede the economic development of the communities involved in the project. Similarly, vehicles he identified as possibly being owned by the company started circling and doing bootleg turns in front of his house late at night on a regular basis, making a lot of noise and raising dust.

In addition, his house, already damaged by the vibration caused by explosions taking place at the mine, was stoned by unidentified persons one night, and it is claimed that on several occasions unidentified persons have taken photographs of those entering Mr. de Souza's house.

On 16 May 2017, the PPDDH granted protection measures in view of the above-mentioned threats to Mr. de Souza and his family. These measures consisted of the installation of surveillance cameras in his house and the award of financial aid amounting to $540 reais per month during five months.

On 1 August 2017, after confirming that the threats had continued to happen and had been in fact worsening, PPDDH decided to transfer Mr. de Souza and his family to an undisclosed location to ensure their safety.

Ms. Vanessa Rosa dos Santos and Mr. Reginaldo Rosa dos Santos

Ms. and Mr. Rosa dos Santos, who have been active in the protection of environmental human rights for many years, owned a farm located on grounds in which the slurry pipeline of the Minas Rio Project passed through. As a result of the noise, dust and lack of water caused by it, they decided to resettle. However, they engaged in the struggle against the development of mining in their community, and started to receive threats. Among other acts of intimidation, Ms. Rosa dos Santos received threats through text messages, and was once asked by a stranger whether she had life insurance, adding the remark: "do it fast, you will really need it". They also found on a different day a note in their house, which said "We know it was you! For Anglo, always yes to step 3. Next."

On 28 April 2017, Ms. and Mr. Rosa dos Santos were harassed by a group of people while doing shopping. The group referred to the suspension of the public hearing and the human rights activities of the five applicants of the judicial request. Allegedly, similar situations have happened on a number of times.

On 16 May 2017, the PPDDH granted protection measures to Ms. and Mr. Rosa dos Santos, consisting of the installation of surveillance cameras in their house and the allocation of financial aid of $937 reais per month. In its decision, the PPDDH acknowledged that "the level of vulnerability of the couple is immense".

Mr. Lucio Guerra Júnior and Ms. Patrícia Generoso

Mr. Guerra Júnior is the founder of the movement REAJA (Network of Articulation and Environmental Justice for the People Affected by the Rio-Minas Project) and as such has been active in defending environmental rights in the context of the Minas Rio Project since it began explorations in 2008. Ms. Generoso has joined Mr. Guerra Júnior's efforts in defending human rights.

On 11 April 2017, the day the public hearing was suspended, he was added in five different groups on social media, where he immediately started to receive threats. In one of these groups, a message referred to another human rights defender who was threatened for opposing a mining company, saying "look what happens when someone speaks against the mine".

On 17 and 24 April 2017, Mr. Guerra Júnior received several random phone calls offering him funeral services.

On 20 July 2017, the day the public hearing concerning Minas Rio finally took place, an agent from the military police stood observing his house for the whole day.

On 26 July, Mr. Guerra Júnior again received an isolated phone call offering funeral services.

On 29 August 2017, the day of the most recent public hearing related to the licensing process of the mining project, Ms. Generoso received several threatening phone calls.

On 6 September 2017, after a colleague came to her house to discuss questions related to the mining project, Ms. Generoso received phone calls every 20 to 30 minutes.

On the week of the 11 to the 15 September 2017, before Ms. Generoso travelled to Geneva to take part in a side event during the 36th session of the Human Rights Council, she received an increased number of automated phone calls offering funeral services or just silent calls.

After Ms. Generoso's trip to Geneva, the couple has continued to receive similar phone calls, not only on their mobile phone, but also on their landline at their other residence in the city of Belo Horizonte.

Mr. Guerra Júnior and Ms. Generoso filed a first complaint before the Public Ministry concerning these threats on 20 April 2017, and have on a number of occasions updated the authorities on the different ongoing threats received. To date, the case is still under investigation by the Public Ministry.

Mr. Guerra Júnior and Ms. Generoso did not receive protection measures by the PPDDH.

Mr. Lucio da Silva Pimenta

Mr. da Silva Pimenta was evicted from his home as a result of a judicial decision related to the development of the Minas Rio Project and now lives in a shed without running water or electricity. He has never received any compensation from the mining company.

Mr. da Silva Pimenta was part of the group requesting the suspension of the public hearing. However, unlike the other applicants, he has to date not received any threat.

c) Concerns regarding the limited capacity and lack of independence of the State authorities to effectively protect human rights defenders

According to the information received, there are multiple connections between different officers of the Minas Gerais State Police and Anglo American, which may compromise the security of human rights defenders involved in activism against the mining activities of the company.

In this respect, it is alleged that Anglo American provided new trucks and refurbished the headquarters of the Military Police, the Military Police for Transportation and the Military Police for the Environment, the costs of which were around 2,5 million reais. It is similarly claimed that the company will also refurbish the headquarters of the Civil Police, that it funded the construction of 16 houses for agents of the Military and Civil Police, and that it is building a new jail in Conceição do Mato Dentro.

It is further reported that a well-known former high-ranking official of the Military Police is currently employed by the company to coordinate its security activities. The retired policeman is said to spend significant amounts of time at the premises of the Military Police with his former colleagues, which puts him in a privileged position to access the files and often listen to persons presenting complaints, the confidentiality of which is not guaranteed. Furthermore, it is feared that this particular ex-officer still exercises leverage over his former subordinates and thus is in a privileged position to secure the interests of the company. In addition, two other former policemen are said to work now for the company, further raising concerns about the independence of the State police.

The reported connections between private corporations and the Military and Civil Police forces and the consequent perception of lack of independence of public security officials also compromise the effectiveness of institutions mandated to investigate crimes (the Public Ministry) and to provide protection to Human Rights Defenders (the PPDDH) – as both rely on the police to carry out their

work. This insecure environment discourages human rights defenders from contacting and trusting State authorities when at risk, severely jeopardizing their work.

d) Public hearings organized by the Human Rights Commission of the Legislative Assembly of the State of Minas Gerais

On 24 May 2017 and 29 August 2017, public hearings were organized by the Human Rights Commission of the Legislative Assembly of the State of Minas Gerais to discuss the threats received by human rights and environmental defenders in the context of the Minas Rio Project. Following these hearings, the Public Ministry of Minas Gerais and the Federal Public Ministry issued recommendations urging the State of Minas Gerais to oblige Anglo American to guarantee appropriate compensation for the persons relocated; to ensure the right of the affected people to participate in the surveys of land, social and property registries; and to safeguard the right of the affected to enjoy independent and freely chosen technical advice of a multidisciplinary character. The State and Federal Public Ministries similarly recommended Anglo American to anticipate and recognize the rights to compensation and participation, ensuring at least the parameters already established by the State environmental agency in the previous phases of the project.

On 9 October 2017, the State government replied to these recommendations arguing that the communities concerned are not facing irreparable environmental damage, and thus that there is no obligation under Brazilian law to resettle them.

e) Environmental concerns

Water use and contamination

One of the critical environmental impacts of the project concerns the use of a water slurry pipeline to transport the processed powdered iron ore to an export port in Açu, on the coast of the State of Rio de Janeiro. This pipeline is 525 kilometers long and passes through 32 municipalities (25 in the state of Minas Gerais and 7 in the state of Rio de Janeiro). Its construction was done on expropriated land. This has caused grave damages to agricultural livelihoods and to local ecosystems. Pastures have been divided in two by a deep fissure where the pipeline passes, and has reportedly increased. The construction of the port was also based on the expropriation of land, and has allegedly caused beach erosion, flooding, and pollution of local farmland by seawater.

It is alleged that the slurry pipeline uses 5,023 cubic meters of water per hour, and thus has significantly reduced the availability of fresh water for other uses, particularly agriculture, in the communities of Agua Quente, Passa Sete, Faustinos, Cabeceira do Turco, Tudo, Sapo, Gondo and Arrudas. Moreover, ammonia is added to the water in the pipeline to ensure that the powdered ore

remains in suspension in the water and does not clog the pipe. Therefore, it is claimed that when there are leaks from the pipeline, this ammonia sums up to the pollutants that end up in local watercourses.

Waste disposal and the fear of tailings dam failure

The primary tailings dam of the Minas-Rio Project currently has a capacity of 370 million cubic meters of waste, which makes it one of the biggest in Brazil, and allegedly poses a risk to three communities located in areas where there would not be enough time for the authorities to intervene in case of an accident. The third step of the mining expansion plan envisages further heightening the dam. The communities concerned fear the consequences of possible dam failure, as happened with other dams in the past. However, it is claimed that neither the state government nor the company consider them to be living on land directly affected by the mine. Therefore, these communities are not subject to compensation or possibility of relocation.

Grave concern is expressed at the alleged acts of intimidation and threats against Mr. Elias de Souza, Ms. Vanessa Rosa dos Santos, Mr. Reginaldo Rosa dos Santos, Mr. Lúcio Guerra Júnior, Ms. Patrícia Generoso, and Mr. Lúcio da Silva Pimenta, as well as their families, in relation to having brought legal proceedings to question the legality of a public hearing for the expansion of the mining project Minas-Rio. We similarly express deep concern at the claims of ineffective protection by the authorities of the State of Minas Gerais against these threats, allegedly as a result of their limited capacity and their lack of independence. Finally, we express our concern at the underlying environmental and social impacts of the Minas Rio Project in Minas Gerais.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above, as detailed in the **Annex on Reference to international human rights law** attached to this letter.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide details on the ongoing investigations concerning the different threats against the above-mentioned human rights defenders.

3. Please provide relevant information regarding the alleged links that exist between Anglo American and the different state police authorities of Minas Gerais, and explain what measures have been adopted by your

Excellency's Government to prevent, investigate and sanction any act that compromises the capacity and independence of these public security institutions.

4. Please provide information on any measure adopted by your Excellency's Government to oversee the implementation of the recommendations of the Public Ministry of Minas Gerais and the Federal Public Ministry after the hearing held on 24 May 2017 and 29 August 2017.

5. Please provide information regarding any assessment carried out of environmental and human rights impact of the Minas Rio Project.

6. Please provide specific information on the measures taken to ensure the safety of communities living in areas potentially affected by the primary tailings dam of the project.

7. Please provide information on the measures adopted to provide appropriate compensation to the persons and families whose lands have been expropriated or who have otherwise been affected by the Minas Rio Project.

8. Please indicate what measures have been adopted to ensure that human rights defenders in Minas Gerais are able to carry out their legitimate work in a safe and enabling environment without fear of threats or exposure to threats or acts of intimidation.

9. Please indicate what measures, including legislation and policies, your Excellency's Government has put in place to prevent, investigate and redress human rights abuses related to the activities of business enterprises operating in the country and what steps the Government is taking to ensure that victims have access to effective remedy, in line with article 2(3) of the ICCPR and the UN Guiding Principles on Business and Human Rights.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Surya Deva
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

John H. Knox
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Baskut Tuncak
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In particular, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which Brazil acceded to on 24 January 1992, and in particular to articles 2(3), 6 and 19, which guarantee the right to an effective remedy, to life, and to freedom of opinion and expression.

With respect to the right to freedom of opinion and expression, we would wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognise its exercise as one of the essential foundations of a democratic society. Similarly, we would like to recall General Comment No. 31 of the Human Rights Committee, which observed that there is a positive obligation on States to ensure protection of individuals exercising Covenant rights, including the right to recourse to legal remedies and to freedom of expression, against violations by its agents and by private persons or entities, which includes the duty to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice and to redress the harm caused by non-state actors. A failure to investigate and bring perpetrators of such violations to justice could, in and of itself, give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). Moreover, the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 4, stress the obligation to protect through judicial or other means all individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

Reference should also be made to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. Of particular relevance are articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 5 (a), establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully; article 6 (b) and c) provides that everyone has the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, and to study, discuss, form and hold opinions on the observance of these rights. article 12 (1) and (3), provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or

opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.

We would also like to refer your Excellency's Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

In connection with the above concerns regarding the potential risks of impact of hazardous substances, we wish to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by your Excellency's Government on 24 January 1992, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights describes the normative content of article 12 of ICESCR and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfil the right to health. In General Comment No. 14, the Committee interprets the right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe drinking water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information. (E/C.12/2000/4, para. 11).

We recall Human Rights Council resolution 31/32, which in its paragraph 1 reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development.

Finally, we would also like to refer to the Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/4) in 2011. The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. They recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.