

Mandates of the Special Rapporteur on the rights of indigenous peoples; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Ref.: AL OTH 26/2022
(Please use this reference in your reply)

10 June 2022

Dear Mr. Hathaway, dear Mr. Shields,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 42/20, 44/15, 42/16 and 45/17.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention, information we have received concerning **a large-scale mining operation by Canadian-based Golden Shield Resources, in the absence of good faith consultation and without the free, prior and informed consent of the Wapichan indigenous peoples of South Rupununi, Guyana.** The gold mine is located on the Marudi Mountain, an area sacred to the Wapichan at the headwaters of the rivers that sustain the ecosystem the Wapichan people depend on.

Golden Shield Resources

According to the information received:

On 2 December 2021, Golden Shield Resources received a prospecting license to mine Mount Marudi, valid for three years, with two year-long renewals.¹ This follows the Government of Guyana approving an expansion agreement with Aurous Mining Inc., the Rupununi Miners Association, and Romanex Guyana without informing the Wapichan represented by the South Rupununi District Council ("SRDC") or its constituent communities, who learned of expansion plans from a Ministry of Natural Resources announcement on social media. According to reports, the SRDC sent a letter to the Ministry of Natural Resources on 19 November 2021, to express its objection to the project and asked the Government to revoke the agreement. Meetings were then held with the indigenous community allegedly after the agreement was signed. Copies of the agreement have not been provided to the community.

The information received alleges that the agreement was entered into without an environmental permit from the Environmental Protection Agency (EPA) despite evidence that the gold mining is leading to water pollution, mercury spills and deforestation. A previous draft environmental impact assessment report for mining in Marudi was rejected by the EPA, in part due to the lack of consultation and participation by the Wapichan. The EPA required that a new impact assessment be conducted and allegedly promised community visits to ensure that the rights of the Wapichan people would be respected in decision-making surrounding the mining activities at Marudi Mountain moving forward. The affected indigenous communities have expressed their fears over environmental harms caused by the expansion of mining activities, as the Marudi Mountain is not only culturally sacred to them but is the source of four major river systems on which they and the surrounding ecosystem depend on as a natural water source.

The information received alleges that several reports, including by Government agencies and environmental NGOs, indicate that mining activities in the Wapichan territory, especially around the Marudi Mountain area, are causing the release of toxic substances which are having adverse impacts on the environment and human health. There is documented evidence that mining activities often do not adhere to environmental or mining laws or regulation. One report from an inspection carried out by the Environmental Protection Agency in 2019², in response to complaints by the SRDC, found that "small scale unauthorised mining was being conducted in a precarious manner with little or no concern for mining safety and the environmental impacts from their activities. Discharges from the various mill crushers are being emitted directly on land with no containment or settling ponds."

The SRDC has a monitoring program that regularly tests pH, turbidity, conductivity, and temperature in creeks and rivers at sites both upstream and downstream from mining activity. Samples taken in 2021 at sites downstream

¹ Angela Harmatas, "Golden Shield Resources is putting the spotlight on Guyana's mineral potential with its Marudi Mountain gold project," *Proactive*, 23 Feb. 2022, <https://www.proactiveinvestors.com/companies/news/974777/golden-shield-resources-is-putting-the-spotlight-on-guyana-s-mineral-potential-with-its-marudi-mountain-gold-project-974777.htm>
Environmental Protection Agency, Environmental Management Division : Inspection Report – Complaint Investigation, 2019.

from mining activity have shown pH and turbidity levels significantly over the WHO reference limits. The samples from the water upstream of mining sites is, at least by these two indicators, cleaner or safer to drink than the water downstream of mining sites.

Further, a study³ undertaken in 2017 with support from the World Wildlife Fund and published in 2020, documented that the mercury level in hair samples from residents of four villages in Wapichan territory all exceeded tenfold the reference limit set by the WHO/FAO⁴. This study found that the average mercury levels were highest in the three villages closest to the Marudi mining area. These results are consistent with those of other studies done on mercury levels in indigenous villages in Guyana: higher mercury levels were associated with the consumption of contaminated fish. The information received also alleges that, despite numerous calls for it to do so, the Government has thus far undertaken minimal mercury testing and monitoring and has not provided any support for local residents to undergo clinical evaluation for mercury contamination.

Concerns have been raised that the Government has failed to legally recognize the land rights of the Wapichan people, Aishalton village in particular, that formally requested recognition of their ownership rights over Marudi Mountain beginning in 1967. According to the information received, domestic legislation inadequately protects indigenous peoples' right to free, prior and informed consent (FPIC). The Amerindian Act (2006) restricts FPIC primarily to titled lands thereby permitting mining concessions to be issued over untitled land without prior consultation and consent of the affected communities. While the Wapichan wait for their lands to be formally recognized by the Government, Marudi Mountain remains unprotected under the Act. Further, the law appears to discriminate against indigenous peoples that have had traditional occupation and use over those lands and territories.

Finally, the information indicates that the State's inclusion of mining in its list of "essential services,"⁵ incentivised mining expansion. As a result of the Government's action, the Wapichan territory has seen an influx of miners from within Guyana and Brazil, increasing the risk of exposure to COVID-19, and of exhaustion of Wapichan's natural resources and livelihoods.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed as to the lack of prior consultation and the exclusion of the Wapichan people from the decision-making process with respect to the mining expansion. The consultation with the affected indigenous peoples was reportedly conducted retrospectively, after the signing of the agreement. Such practice appears to be contrary to international human rights standards including the United Nations Declaration on the Rights of Indigenous Peoples. Mining projects in the Marudi Mountain have been associated with mercury spills and a wide range of potential adverse human health and societal risks that could potentially contaminate natural water sources used by the local Wapichan indigenous peoples as sources of safe drinking water for human consumption as well as for their animals and farming. It is

³ Watson, C., Hurtado-Gonzales, J., Chin, C., Persaud, J., Survey of Methylmercury Exposures and Risk Factors Among Indigenous Communities in Guyana, South America, *Journal of Health and Pollution*, 2020.

⁴ World Health Organization, *Guidelines for Drinking-water Quality*, Fourth Edition.

⁵ A list of services essential to preserving life, health, safety and basic societal functioning that were permitted to operate during national COVID-19 lockdowns.

important to highlight that the Wapichan have a holistic approach to nature, that connects water to forests and lands, and seeds and animals. Therefore, affecting any natural resource has a deep consequence on their physical and mental health. Our preoccupations also extend to alleged State measures that support the expansion of mining activities at the expense of indigenous peoples' health and safety, particularly the rights of indigenous peoples to control entry and access to their territories during the COVID-19 pandemic.

We express particular concern that an environmental impact assessment has not been undertaken despite the serious environmental, cultural and social impact of mining activities and potential human rights abuses related to the right to a safe and healthy environment. We are also concerned with the lack of legal and institutional framework that guarantees indigenous peoples are consulted with the view to obtaining their free, prior and informed consent on all projects that would affect them.

We would like to recall that in 2018, the Committee on the Elimination of Racial Discrimination in its Concluding Observations⁶ urged the State of Guyana to remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act and from other legislation and urged the State party to “recognise and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, in accordance with the Committee’s General Recommendation No. 23 (1997) on the rights of indigenous peoples. Moreover, the Committee requested the State party, in consultation with the concerned Indigenous Peoples, to demarcate or otherwise identify the lands which they traditionally occupy or use, and further asked Guyana to undertake environmental impact assessments and seek the free and informed consent of the concerned indigenous peoples prior to authorising any mining or similar operations which may threaten the environment in areas inhabited by these communities.

The Committee also reiterated its previous recommendation that the State party “refrain from approving projects and granting mining concessions that affect the lands, territories or resources of Indigenous Peoples without obtaining their free, prior and informed consent, and revoke such projects in Tassarene and Kangaruma villages and on Marudi Mountain to which the Indigenous Peoples did not consent”⁷ and encouraged the State party to “Conduct an environmental and social impact assessment with the full participation of all indigenous peoples affected by the mining project on Marudi Mountain.”⁸

We would also like to recall that in 2015, the Committee on Economic, Social and Cultural Rights, in its Concluding Observations⁹, noted its concern at the broad range of exceptions that allow mining and logging activities by external investors without the free, prior and informed consent of the affected indigenous peoples.

We wish to refer to the report of the Special Rapporteur on the rights of indigenous peoples to the General Assembly in 2020, urging against businesses using the Covid-19 situation to intensify activities to which indigenous peoples have objected.¹⁰ We would also like to recall the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its

⁶ [CERD/C/GUY/CO/14](#) paras.15, 16 and 19.

⁷ [CERD/95th/EWUAP/SK/ks.](#)

⁸ [CERD/EWUAP/Guyana/2018/JP/ks.](#)

⁹ [E/C.12/GUY/CO/2-4](#)

¹⁰ [A/75/185.](#)

mission to Canada in 2017 (A/HRC/38/48/Add.1), which recommended that Canadian businesses initiate informed and meaningful consultations with affected communities as early as possible, including at the stage of staking claims for extractive industry projects, and that rather than engaging only chiefs and band councils, consultations be conducted widely with the communities that may be affected by proposed business activities. Further, the report of the Special Rapporteur on toxics and human rights on his mission to Canada in 2019 (A/HRC/45/12/Add.1) recommended that business enterprises implement robust and transparent human rights due diligence and provide redress when activities, whether carried out in Canada or abroad, cause, contribute to or are linked with impacts of toxic exposure. He recommended that these processes should oblige business enterprises to undertake human rights risk assessments in respect of their activities throughout the supply chain.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 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 indicate the legal basis for the mining activities being carried out.
3. Please provide information as to what human rights due diligence policies and processes have been put in place by your company to identify, prevent, mitigate, and account for how you address adverse human rights impacts that your mining activities and business operations could cause or contribute to, as set forth in the UN Guiding Principles on Business and Human Rights (UNGPs).
4. Please indicate the measures taken by the company to ensure the implementation of the UNGPs, including information on whether your company has established or participates in any operational-level grievance mechanisms to provide access to remedy for affected individuals and communities.
5. Please provide information on any consultations undertaken by your company with the Wapichan indigenous communities prior to the approval of the project, and whether their free, prior and informed consent was sought and received, particularly concerning any potential relocation and social, health, cultural and environmental impacts. We would appreciate information regarding safety measures put in place to hold consultations during the global pandemic.
6. Please provide details on the measures taken by your company to undertake environmental and human rights assessments regarding the impacts of the mining activities on the Wapichan indigenous peoples in

line with international standards, and any plans to adopt appropriate mitigation and protections measures against water pollution, mercury spills, deforestation and increased risk of exposure to COVID-19 with the influx of miners from Guyana and Brazil.

7. Please indicate what measures have been taken to ensure health care and health care services to indigenous peoples, including indigenous children, contaminated by mercury.
8. Please provide updated and comprehensive information on any steps taken by your company to avoid, mitigate and address any impacts and damages of water pollution, mercury contamination and deforestation on the Marudi Mountain, and the health of local communities and indigenous peoples, in particular the availability of safe drinking water and access to adequate food.
9. Please provide information on any measures planned by your company to prevent negative human rights impacts from mercury contamination on the Marudi Mountain, including mechanisms for just and fair redress and measures to mitigate adverse environmental, health, economic, social, cultural, or spiritual impacts on the Wapichan indigenous peoples.
10. Please clarify whether your company has policies, procedures and training that focus on, and set clear expectations for, respect for human rights.
11. Please indicate measures taken to ensure a human rights-based approach to conservation in the areas potentially affected by mining activities and measures envisaged to prevent negative environmental and human rights impacts in these specific areas, including Aishalton village and other affected communities.
12. Please provide information on the measures taken to ensure that impacted residents have adequate access to basic social, medical, food, safe drinking water and sanitation and other services. Please provide information on any remedial measures that your company has taken, or has planned for the community members which will be subject to relocation, or forced to relocate due to the loss of access to livelihood, safe drinking water and food sources caused by the mining activities.
13. Please provide information on the ways in which your company has addressed environmental concerns related to pollution and contamination resulting from mining activities, as well as long-term risks.
14. Please describe the measures your company has taken or plans to take to prevent situations like this from recurring in the future.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your company will be made public via the communications reporting [website](#). They will also subsequently be made

available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence.

Please be informed that a letter on this subject matter has been also sent to the Governments of Guyana and Canada with regard to the allegations raised above.

Please accept, Mr. Hathaway, Mr. Shields, the assurances of our highest consideration.

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Marcos A. Orellana
Special Rapporteur on the implications for human rights of the environmentally sound
management and disposal of hazardous substances and wastes

Annex

Reference to international human rights law

In relation to the above-mentioned facts and concerns, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights.

The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. 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. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principle 13 has identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (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”.

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as

finer), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

The Guiding Principles on extreme poverty and human rights were adopted by the Human Rights Council by consensus on 27 September 2012, in resolution 21/11. The Guiding Principles recommend in particular that business enterprises "avoid causing or contributing to adverse human rights impacts through their activities, products or services, and to deal with such impacts when they occur", and that they "undertake a human rights due diligence process to identify and assess any actual or potential impacts on human rights posed by the company's own activities and by business partners associated with those activities" (paras. 100-101).

In the 2018 report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) to the General Assembly, the Working Group noted that "The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights and that in order to do so they are required to exercise human rights due diligence. Human rights due diligence refers to the processes that all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships". In addition, this involves (b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact; (c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working; (d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.

We specifically wish to highlight the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which sets out international human rights standards relating to indigenous peoples' rights. Article 26 of UNDRIP asserts the right of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired'. Article 32 affirms that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories.