

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

Ref.: AL PRT 1/2023

(Please use this reference in your reply)

3 April 2023

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, pursuant to Human Rights Council resolution 46/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the public consultation process on the revised environmental impact assessment submitted by Savannah Resources PLC regarding their proposed Barroso mining project, and related human rights concerns.

According to the information received:

Savannah Resources PLC is a company incorporated in 2010 with headquarters in London, operating in Portugal through its subsidiary Savannah Lithium, which is seeking approval to develop an open-pit lithium mine on a concession of 542 ha with plans to expand to 593 ha in Covas de Barroso in the municipality of Boticas, in Portugal.

If approved, the project is set to produce 1.5 million tons of rock containing lithium annually, as well as 6.85 million tons of waste material, with potential important negative impacts on local community members' human rights, including the human right to a clean, healthy and sustainable environment. In this regard, a large number of communities members have expressed their clear opposition to the project in various settings, including due to concerns about loss of forests and potential cutting of centenary oaks, water pollution, water shortages, potential disasters and the loss of traditional livelihoods. Further concerns have also been expressed about noise and changes in landscape and soil conditions.

The majority of the proposed mining project is located on community-owned land, in the area of Barroso, designated as a Globally Important Agricultural Heritage System by the Food and Agriculture Organization of the United Nations (FAO) as representing a world-renowned example of traditional agricultural systems, led by local communities, that support cultural heritage, biodiversity, landscape conservation and resilience to human, climate and environmental changes. It is the only region in Portugal to enjoy this designation and one of only seven in Europe. Barroso sustainably integrates farming, livestock raising, forestry and nature conservation. The region is famous for its cheese, honey and unique breeds of cattle, sheep and goats.

Environmental impact assessment and public participation

In May 2020, the initial environmental impact assessment for the Barroso mining project was submitted by Savannah Resources PLC. A first public consultation took place from 22 April to 16 July 2021.

The project is currently being analysed by the Portuguese Environmental Agency. Its assessment committee has determined that there was a need to modify the project's design in order to avoid or reduce significant effects on the environment and to provide for additional environmental mitigation in accordance with Decree-Law no. 151-B/2013, of 31 October.¹ In parallel, on 5 May 2021, a case was submitted to the Aarhus Compliance Committee by an interested party, related to the alleged failure to respect the right of access to environmental information about the proposed mine. The case is still pending.

On 17 March 2023, a meeting was organised by Savannah Lithium in Covas do Barroso. On this occasion, a large number of community members expressed their dissatisfaction with the project (and its approval process), identified human rights concerns including on their right to a clean, healthy and sustainable environment, and described their preoccupations about environmental sustainability and future generations.

On 22 March 2023, Savannah Resources PLC published a revised version of the environmental impact assessment of the Barroso mining projects, in accordance with the Portuguese Environmental Agency's assessment committee requirements with regards to project modifications to avoid or reduce significant effects on the environment and environmental mitigation and compensation.² The revised assessment and supporting documents have been made available on the Ministry of Environment and Climate Action's online public consultation platform (*Participa*) on 22 March 2023 for 10 working days with a deadline for participation of 4 April 2023. More than 1700 files have been posted on the platform as part of the consultation process.

Over recent years, residents have repeatedly raised concerns about lack of access to timely and accurate information, inadequate public consultation and the use of intimidation tactics to silence opposition to the project. In this regard, it is alleged that requests relating to the publication of the Environmental Impact Assessment evaluation by the Portuguese Environmental Agencies have remained unaddressed.

Without prejudging the accuracy of the information received, I am seriously concerned about the potential negative impacts of the Barroso mining project on the environment and human rights of local communities, including their right to a clean, healthy and sustainable environment, food, water and sanitation and cultural rights. In particular, I am also deeply preoccupied by allegations related to the flawed consultation process in the context of the final approbation of the project by the Portuguese Environmental Agency and potential impairment of the right to participation in decision making related to the environment and further human rights

¹ Decree-Law no. 151-B/2013, article 16

² Article 16 3)

negative impacts that could ensue. In this regard, I would like to stress that the period allocated for the public consultation on the revised environmental impact assessment of 10 working days does not match Portugal's obligations under regional legal instruments including Aarhus Convention and European law. In fact, European Directive 2011/92/EU requires a minimum of 30 days for public consultation.³ On this subject, I share the concerns raised by the European Commission in 2019 regarding Portugal's failure "to bring their national legislation into line with the Environmental Impact Assessment Directive (EIA Directive 2011/92/EU)." The European Commission identified the key shortcomings of Portugal's environmental assessment legislation as including: "the scope of the Directive, public consultation rules, rules on transboundary environmental impact assessment procedures, and the definition of certain of the projects listed in the Annexes"

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 provide details on a potential extension of the public consultation period, allowing for meaning and informed participation in decision making related to the environment in line with international and regional standards.
3. Please indicate the measures envisaged to ensure the compliance of Portugal's legislation with the obligations included in the Aarhus Convention and EU Directive.
4. Please indicate whether Portugal intends to enact human rights and environmental due diligence legislation.
5. Please provide information on the status of the publication of the environmental impact assessment's evaluation by the Portuguese Environmental Agency.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting for your reply, I urge that all necessary interim measures be taken to ensure effective and informed participation and prevent any related negative human rights impacts or violations that could ensue.

³ European Directive 2011/92/EU, article 6..

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please note that the allegations contained in this letter will also be sent to Savannah Resources PLC and the United Kingdom of Great Britain and Northern Ireland.

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

David R. Boyd

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the following human rights standards.

In particular, I wish to draw the attention of Your Excellency's Government to the right to a clean, healthy and sustainable environment as recognized by resolutions A/HRC/Res./48/13 and A/Res./76/300 and supported by Portugal as well as related national and regional obligation in this regard including article 66 of the Portuguese Constitution providing for the human right to a healthy and ecologically balanced environment, the Aarhus Convention and European Legal Standards including European Directive 2011/92/EU.

In particular, I would like to highlight the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), ratified by Portugal on 9 June 2003. In particular, I would like to draw Your Excellency's Government to article 6 (3) of the Convention regarding public participation in decisions on specific activities, which provides that "The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making". Furthermore, article 7 of the Convention provides that "Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment".

Furthermore, I also wish to highlight the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The principles provide that States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (principle 1); States must respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2). In particular, principle 7 provides that "States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective, timely access to information to any person upon request" and principle 9 stresses that "States should provide for and facilitate public participation in decision making related to the environment and take the views of the public into account in the decision-making process".

Lastly, I would like to bring the attention of Your Excellency's Government on my country visit report to Portugal (A/HRC/52/33 Add.1) and in particular recommendations 92 a) and b) which recommends that the Government should take

steps to improve access to environmental information, strengthen public participation and facilitate access to justice, including (a) Establishing a national strategy to protect environmental human rights defenders; (b) Considering the establishment of specialized environmental courts. Furthermore, I wish to highlight that recommendations 89 (a) and (c) recommend that the Government should advance healthy and sustainably produced food, including by: (a) Safeguarding world-renowned agricultural heritage systems and (c) Safeguarding the rights of peasants and other rural workers.
