

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 OTH 23/2023
(Please use this reference in your reply)

3 April 2023

Mr. Dale Fergusson,

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.

I am 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 businesses) 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 the 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, I would like to bring to the attention of your company 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

Savannah Resources

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

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

² Article 16 3)

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 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" (emphasis added).

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 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 throughout your business operations, in line with the UN Guiding Principles on Business and Human Rights (UNGPs).
3. 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.

This communication and any response received from your company 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

³ Directive 2011/92/EU article 6.

Rights Council.

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 company to clarify the issue/s in question.

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

Please accept, Mr. Ferguson, 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 your attention of to the following human rights standards.

In particular, I wish to your attention to the right to a clean, healthy and sustainable environment as recognized by resolutions A/HRC/Res./48/13 and A/Res./76/300.

I would like to refer to the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultation with governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These Guiding Principles are based on the recognition of:

- a) The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms;
- b) The role of business enterprises as specialised bodies or corporations performing specialised functions, which must comply with all applicable laws and respect human rights;
- c) The need for rights and obligations to be matched by appropriate and effective remedies when they are violated.

The Guiding Principles also make clear that businesses have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to business on how to meet their responsibility to respect human rights and to provide remedies where they have caused or contributed to adverse impacts. The Guiding Principles have identified two main components of the corporate responsibility to respect human rights, which require business enterprises to:

- a) Prevent their own activities from causing or contributing to adverse human rights impacts and address those impacts when they occur;
- b) Seek to prevent or mitigate adverse human rights impacts directly related to operations, products or services provided through their business relationships, even where they have not contributed to those impacts" (Guiding Principle 13). (Guiding Principle 13).

To meet their responsibility to respect human rights, businesses should have in place policies and procedures appropriate to their size and circumstances:

- a) A political commitment to uphold their responsibility to respect human rights;

b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their human rights impact;

c) Processes to redress any adverse human rights impacts they have caused or contributed to (Guiding Principle 15).

In addition, the Guiding Principle 18 and 26 underline the essential role of civil society and human rights defenders in helping to identify potential adverse human rights impacts related to business. The Commentary to Principle 26 underlines how States, in order to ensure access to remedies, must ensure that the legitimate activities of human rights defenders are not obstructed. In its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights highlighted the urgent need to address the adverse impacts of business activities on human rights defenders. It explains, for States and business, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights defenders.
