

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 and the Special Rapporteur on the rights of Indigenous Peoples

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(Please use this reference in your reply)

12 March 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 and Special Rapporteur on the rights of Indigenous Peoples, pursuant to Human Rights Council resolutions 52/4, 53/3, 46/7 and 51/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged threats and intimidation of human rights defenders, including Indigenous Peoples and peasants, raising concerns about the potential negative impact of the proposed Volta Grande gold mining project.

Belo Sun Mining Ltd is a mining company incorporated in Ontario, Canada, with its head office in Toronto. It is listed on the Toronto Stock Exchange. The company is led by Mr. Peter Tagliamonte, President, CEO and Director. Among its major shareholders are the investment funds Sun Valley Gold LLC (domiciled in the United States of America) and RBC Global Asset Management Inc (domiciled in Canada).

The Alliance for the Volta Grande do Xingu is a network of local movements and national and international human rights organizations that collaborate to defend the Amazon region of the Volta Grande do Xingu as a living and healthy socio-environmental region. The Articulation of Indigenous Peoples of Brazil (APIB) is a member of the alliance.

According to the information received:

Since 2012, Belo Sun Mining has been developing the Volta Grande hgold project. The project, located on the Xingu River in Pará State, Brazil, consists of mining concessions and exploration permits covering 175,560 hectares across several municipalities, and includes a planned open-pit gold mine, targeting a gold reserve which the company estimates at 3.8 million ounces. The area identified for the mine is the ancestral home of several Indigenous Peoples, including demarcated and undemarcated territory, and *Ribeirinhos*: riverine communities whose lives and the fulfilment of their rights are intertwined with the Xingu River and its health, including as their main source of food. Many of these communities have already seen their human rights severely affected by the Belo Monte Hydroelectric Power Project, one of the

world's largest hydroelectric dams, which stands approximately 20 kilometres from the proposed site of the Volta Grande mine. The land sought for the mining project also overlaps with areas designated for agrarian reform in the country, including the Ressaca Settlement Project.

While a license for the development of the Volta Grande project was issued by the State Secretariat for the Environment and Sustainability in Pará (SEMAS) in 2017, this license has been suspended since a court ruling in the same year. The project has been the subject of at least 9 legal complaints since 2013, including by the Federal Prosecutor's Office (MPF), the Public Defender's Office of Pará and the Federal Public Defender's Office, and the State Public Prosecutor's Office (MPE). The complainants have challenged the company and State of Pará on issues including the adequacy of the company's studies on the impact of the proposed project on affected Indigenous Peoples, the legitimacy of the licensing process, the level of consultation with *Ribeirinho* communities for the company's environmental impact study and possible violations of land rights of local Indigenous Peoples. Despite these complaints and long-standing concerns about the potential impact of the mine, in 2021 the Volta Grande project was selected by the Ministry of Mines and Energy as a priority project under the 2021 Pro-Strategic Minerals Policy (Law 10.657/2021).

In this context, human rights defenders, including Indigenous Peoples and peasants, who have been voicing their concerns about the proposed mine and its potential impact on human rights and the environment have been facing intimidation and threats.

Incidents in this regard are long-standing. In November 2017, during a meeting to discuss the risks of Belo Sun's mining project at the Federal University of Pará, the mayor of Senador José Porfírio, one of the municipalities directly affected by the proposed project, and approximately 40 other people interrupted the event and threatened the participants, including researchers and human rights defenders. A similar incident occurred later in the same month, on 23 November 2017, when human rights defenders including Indigenous Peoples participated in a public meeting on the mine held in the Senador José Porfírio municipality.

More recently, local human rights defenders, including women human rights defenders, have received serious threats, with at least one human rights defender forced to leave the area for his own safety after receiving threats in May 2020. These threats have reportedly been perpetrated by local supporters of the mine, as well as by Invictus, a private security firm engaged by Belo Sun in the context of the project. Invictus employees have reportedly also intimidated Indigenous Peoples and peasants living in the area of the proposed project through armed patrols and filming them with cameras and drones without their consent. Human rights defenders, Indigenous Peoples and peasants, have also been subjected to physical violence aimed at forcing them from their homes, in the context of increased land prices driven by Belo Sun's project.

In early June 2022, in response to the announcement of a contract between Belo Sun and the National Institute for Colonization and Agrarian Reform

(INCRA) granting the company access to public land ear-marked for agrarian reform in the proposed area of the mine, approximately 100 landless peasants from the area, together with Indigenous Peoples, formed a protest encampment in land included in the agreement. During the 10-day encampment, which the protestors used to call for the authorities to render the pact null and uphold the planned agrarian reform, those participating were reportedly threatened by local supporters of the mine and the security company Invictus.

In recent months, human rights defenders have also been targeted through an allegedly spurious legal procedure. On 17 October 2023, Belo Sun filed a criminal complaint against 40 individuals who had expressed opposition to the mining project, including 33 peasants involved in the above-mentioned land protest and 6 civil society representatives, including members of the Alliance for the Volta Grande Do Xingu.¹ In its complaint, the company accuses the peasants involved in land-occupations in areas ear-marked for the company for the Volta Grande project of criminality, and the civil society representatives of being accomplices. The complaint followed a report published by the Articulation of Indigenous Peoples of Brazil (APIB), a member of the Alliance for the Volta Grande do Xingu, in May 2023, in which the group alleged violations of the rights of Indigenous Peoples by Belo Sun. The case is currently ongoing.

Without wishing to prejudge the accuracy of the information received, we wish to express our serious concern at the alleged threats, intimidation and legal and physical harassment of human rights defenders, Indigenous Peoples and peasants in the context of the development of the Volta Grande gold project by the company Belo Sun. We stress that there can be no sustainable development without respect for human rights and the environment, including the rights of human rights defenders, Indigenous Peoples and peasants. In addition, we would like to stress that the Constitution of Brazil protects the human right to a healthy environment, article 225 providing that “all have the right to an ecologically balanced environment.”

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 provide details of the current status of the implementation of the Volta Grande mining project, as well as on the legal complaints registered against it in relation to its level of consultation with Indigenous Peoples and peasants and its environmental impact assessment.

¹ Court of Justice of the State of Pará. Single Court of Senador José Porfírio. Case no. 0800424-62.2023.8.14.0058

3. Please provide details on the measures taken to ensure that all directly and indirectly affected Indigenous Peoples have had timely access to information concerning the project, including its size and potential environmental and human rights impact, and have been able to fully participate in consultations concerning its development, in line with the UN Declaration on the rights of Indigenous Peoples and ILO Convention 169.
4. Please provide details on any steps that may have been taken by your Excellency's Government in response to the alleged threats and intimidation against human rights defenders in the area set to be affected by the Volta Grande project, including by the private security company Invictus. If no such steps have been taken, in particular investigations or the authorization of protective measures for the human rights defenders, please indicate the reason why.
5. Please indicate what measures have been adopted to ensure that human rights defenders in Pará State 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, in particular Indigenous human rights defenders and human rights defenders from peasant communities.
6. Please indicate what measures are envisaged or have been adopted to prevent, address or mitigate potential human rights and environmental impacts of the mining project, including on the right to a clean, healthy and sustainable environment.
7. Please provide information regarding the measures that your Excellency's Government has taken, in response to the recommendations provided in the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to Brazil in 2015 (A/HRC/32/45/Add.1).
8. Please provide information on the measures that your Excellency's Government is taking or considering taking to ensure that persons affected by activities by business enterprises in your jurisdiction have access to remedy, through State judicial or extra-judicial mechanisms.
9. Please provide information on steps taken by Your Excellency's Government to encourage businesses to establish and/or participate in operational-level grievance mechanisms, in line with the UN Guiding Principles on Business and Human Rights, to effectively address human rights impacts caused by and/or contributed to by businesses through their operations.
10. Please advise the steps taken to ensure that Your Excellency's Government encourages respect for human rights in line with the UN Guiding Principles, including by requiring businesses to conduct human rights due diligence that addresses how to prevent, mitigate and remediate adverse human rights impacts that business may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government 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 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 be informed that related letters on the same matter have also been sent to Belo Sun Mining Ltd, RBC Global Asset Management, Sun Valley Gold LLC, the Government of Canada, and the Government of the United States of America.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

José Francisco Cali Tzay
Special Rapporteur on the rights of Indigenous Peoples

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 following human rights norms and standards.

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, 9 and 19, which guarantee the right to an effective remedy, to life, to security of person, and to freedom of opinion and expression.

In connection to article 6 of the ICCPR, we would like to highlight the Human Rights Committee's general comment 36, concerning the right to life. In its General Comment, the Committee stated that the obligation of State parties to respect and ensure the right to life "extends to reasonably foreseeable threats and life-threatening situations" (CCPR/C/36 para. 7). Concerning human rights defenders specifically, the Committee stated that the duty to protect the right to life requires State parties to take "special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence" and that such persons "include human rights defenders" (para. 23). The Committee also stressed that State parties to the Covenant have an obligation, "where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents." (Para. 27)

The right to security of person refers to protection against physical or psychological injury, or attacks on physical and moral integrity, and obliges State parties to take appropriate measures to protect individuals from foreseeable threats to their life or physical integrity from any State or non-State actor. As the Human Rights Committee has underlined, States parties should respond appropriately to patterns of violence against certain categories of victims, such as intimidation of human rights defenders, and should take appropriate measures to protect the victims of such violence (CCPR/GC/35 para. 9).

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 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.

We also wish to refer 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, in particular, article 1, which states that everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and article 2, which provides that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

We would further like to make specific reference to article 9 of the Declaration on Human Rights Defenders, which holds that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the Declaration, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights, as well as to article 12 of the Declaration, which states that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone exercising their rights under the Declaration against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action.

In addition, we wish to 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. In this context, we would also like to refer to general comment no. 26 of the Committee on Economic, Social and Cultural Rights), on the connections between land and the rights guaranteed in the International Covenant on Economic, Social and Cultural Rights (E/C.12/GC/26). In the General Comment, the Committee cites the UN Declaration on Human Rights Defenders, reiterating the State duty to respect human rights defenders and their work, including where it connects with struggles over land. The Committee further clarified that the State duty to protect requires States to take proactive actions to ensure economic, social and cultural rights are not infringed upon by the activities of businesses and investors either at home or abroad.

We would also like to refer to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on September 13, 2007 and Convention 169 of the International Labor Organization on Indigenous and Tribal Peoples.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in its article 1 states that Indigenous Peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. This includes the rights to life, physical and mental integrity, liberty and security of person (article 7).

With respect to their rights to property in the form of land and natural resources, article 26 provides for the right of Indigenous Peoples to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired and for legal recognition of those rights with due respect to the customs,

traditions and land tenure systems of the Indigenous Peoples concerned. Article 32(2) recognizes the right of Indigenous Peoples "to determine and develop priorities and strategies for the development or use of their lands or territories and other resources" and to be consulted in good faith "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".

Furthermore, the UNDRIP provides for the rights of Indigenous Peoples to redress for actions that have affected the use and enjoyment of their traditional lands and resources. In that regard, article 28 states that Indigenous Peoples have the right to just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned, occupied or used and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Article 15(2) of ILO Convention N°169 also states that in cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult the Indigenous Peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The Article further elaborates that the peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

In connection with above alleged facts and concerns, we would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. 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, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, 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.

Principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. Moreover, the commentary of principle 11 states that "business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes". The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. [...] Business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services".

The Guiding Principles have 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" (guiding principle 13).

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 fines), 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).

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.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

We wish to draw the attention of Your Excellency's Government to the human right to a clean, healthy and sustainable environment as recognized by resolutions A/HRC/Res./48/13 and A/Res./76/300. We 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 4 provides that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence”.