

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

Ref.: AL OTH 16/2024

(Please use this reference in your reply)

12 March 2024

Dear Mr. Palmedo,

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.

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 60 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 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, we would like to bring to the attention of your company, Sun Valley Gold LLC, information we have received 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, being developed by Belo Sun Mining Ltd, whose largest shareholders are Sun Valley Gold LLC and RBC Global Asset Management Inc.

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-

Sun Valley Gold LLC

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 Ltd, incorporated in Ontario, Canada, with its head office in Toronto, and listed on the Toronto Stock Exchange, has been developing the Volta Grande gold 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 fulfillment 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 negatively affected by the Belo Monte Hydroelectric Power Project, one of the world's largest hydroelectric dams, which stands 20 kilometres from the proposed site of the Volta Grande mine. The land sought for the 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 Belo Sun Mining Ltd 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 Porfirio 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 Mining Ltd company 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 Mining Ltd'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 Mining Ltd 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 Belo Sun Mining.

Financial institutions have their own responsibilities under the UN Guiding Principles on Business and Human Rights to respect human rights and conduct human rights due diligence. Financial businesses can be directly linked to adverse human rights impacts through its business relationships (such as through the provision of financing); they can also contribute to human rights harm through their own operations and actions. Further, the Office of the United Nations High Commissioner

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

for Human Rights has issued statements indicating that if a bank identifies, or is made aware of, an ongoing human rights issue that is directly linked to its operations, products or services through a client relationship, yet over time fails to take reasonable steps to seek to prevent or mitigate the impact, it can be viewed as enabling the situation. The Organisation for Economic Co-operation and Development (OECD) Guidance on Due Diligence for Responsible Corporate Lending and Securities Underwriting further states that where a bank is directly linked to an adverse human rights impact through a client, it still has a responsibility to prevent or mitigate the impact, and that “[w]here the adverse impacts are directly linked to a bank’s lending or securities underwriting through a client, it should also use its leverage to seek to prevent and mitigate those impacts”. This approach has been applied by the OECD National Contact Points (NCP): for example, the Norwegian NCP concluded that “If [an investor], after investing, learns of a portfolio company’s human rights impacts, it still has a number of tools available, including shareholder proposals, engagement with management, and the threat of divestment”. Further, in the Society for Threatened Peoples Switzerland’s complaint to the Swiss NCP regarding UBS Group AG, the Swiss NCP recognized that a financial business, through investing in a business enterprise, was directly linked to potential adverse human rights impacts by its relationship with that business enterprise.

Further, a financial business can move from being directly linked to an adverse human rights impact to contributing to that impact if it does not take action to prevent or mitigate the business relationship to which it is directly linked, including by undertaking human rights due diligence. Therefore, the alleged involvement of financial institutions in the financing of the Volta Grande project could be in violation of international human rights law and standards.

In connection with these serious concerns, we would like to refer your attention to international human rights instruments and standards relevant to these concerns, cited 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 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 steps that your company takes to determine whether it causes, contributes to or is directly linked to human rights abuses as a result of its business activities or through business relationships.
3. Please indicate whether your company has a human rights policy commitment, informed by human rights experts, that describes what your company, as an investor, expects of all business relationships in terms of human rights. Please indicate whether any such commitment is public and actively communicated, and whether it is embedded throughout the business, including within other policies and procedures.

4. Please indicate any steps that your company has taken to strive for coherence in its responsibility to respect human rights, including in the policies and procedures that govern your wider business activities and relationships as they relate to human rights.
5. Please provide information on the risk assessments that your company carries out prior to engaging in business activities or business relationships, and whether these studies are prepared with a human rights-based approach, taking into account environmental impacts, as well as social and cultural impacts on relevant communities located in affected areas.
6. Please indicate measures taken to ensure that your company complies with international environmental laws and human rights standards, including through its business relationships.
7. Please provide information on the measures taken by Sun Valley Gold LLC to guarantee that Belo Sun Mining Ltd engages in meaningful, timely and ongoing engagement with communities affected and potentially affected by the Volta Grande mining project, in line with the United Nations Guiding Principles and ILO Convention 169.
8. Please advise the steps taken to ensure that your company respects human rights in line with the UN Guiding Principles on Business and Human Rights, including by conducting human rights due diligence that addresses how to prevent, mitigate and remediate the adverse climate change-related and other human rights impacts that your 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.
9. Please provide information on any action taken by your company to prevent recurrence of the kind of allegations specified in this letter. As part of this response, please explain what monitoring and evaluation systems you have put in place to ensure the effectiveness of actions taken to mitigate and prevent the allegations mentioned in this letter.
10. Please provide information on steps taken by your company to establish, or participate in effective operational-level grievance mechanisms, in line with the UN Guiding Principles on Business and Human Rights, to address adverse human rights impacts caused by your company throughout your operations globally.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received 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 related letters on the same matter have also been sent to Belo Sun Mining Ltd, RBC Global Asset Management, the Government of Brazil, the Government of Canada, and the Government of the United States, where your company is headquartered.

Please accept, Mr. Palmedo, 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 the above alleged facts and concerns, we would first like to draw your attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31). The Guiding Principles were unanimously adopted by the Human Rights Council in 2011, through resolution A/HRC/RES/17/31, after years of consultations between participating governments, civil society and the business community. 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 as a specialised organ of society that performs specialised functions and must comply with all applicable laws and respect human rights;
- c) The need for rights and obligations to be accompanied by adequate and effective remedies in the event of non-compliance".

The Guiding Principles are the authoritative global standard for business to prevent and address business-related adverse human rights impacts. The responsibility to respect human rights constitutes a global standard of conduct applicable to all businesses, transnational and otherwise, regardless of their size, sector, location, ownership and structure. It exists irrespective of the capacity and/or willingness of States to meet their own human rights obligations and does not diminish those obligations. It is a responsibility additional to that of complying with national laws and standards for the protection of human rights.

The Guiding Principles identify two main components of the corporate responsibility to respect human rights, which require that "enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities 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).

To meet their responsibility to respect human rights, enterprises should have policies and procedures that are appropriate to their size and circumstances, including:

- a) "A policy commitment to meet their responsibility to respect human rights;
- b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute." (guiding principle 15)

Furthermore, principle 22 states that if companies "identify that they have

caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes."

In view of the above, we would like to refer to the International Covenant on Civil and Political Rights, in particular to its articles 6.1, 9 and 19 which enshrine the right to life, the right to liberty and security of person and the right to freedom of expression. The right to security of person refers to protection against physical or psychological injury, or physical and moral integrity.

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, 2007¹ and Convention 169 of the International Labor Organization on Indigenous and Tribal Peoples.

Finally, we would like to refer to the fundamental norms set out in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, otherwise known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to article 1 of the Declaration, which states that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.