

## URGENT APPEAL

**Hostilities and death threats against human rights and environmental defenders as retaliation for their opposition to Belo Sun Mining Corp. in the Brazilian Amazon<sup>1</sup>**

*April 24th 2018*

**\*\* RISK OF IRREPARABLE DAMAGE \*\***

To the following United Nations Special Procedures:

**Ms. Anita Ramasastry**, Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises

**Mr. Baskut Tuncak**, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

**Mr. Michel Forst**, Special Rapporteur on the situation of human rights defenders

**Mr. John Knox**, Special Rapporteur on human rights and the environment

**Ms. Victoria Tauli-Corpuz**, Special Rapporteur on the rights of indigenous peoples

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<sup>1</sup> The organizations declare that they have reliable knowledge of the facts and/or represent directly and indirectly affected by the mining corporation.

## Summary

This urgent appeal aims at requesting several UN Special Procedure Mandates an urgent action against imminent irreparable damage to human rights defenders in the Brazilian Amazon. Individuals and organizations have been suffering verbal and physical hostilities stemming from their opposition to a devastating mining project in a region already strained by the 3rd largest hydropower plant in the world. The hostilities have been committed and / or incited by local authorities, with the complicity of employees of the Belo Sun Mining Corp. Recently, the hostilities have escalated to death threats, causing human rights defenders to flee the region.

The threatened human rights defenders operate in a high-risk area, which has been plagued by violence. If urgent action is not taken, they might face serious aggressions against their physical integrity and their lives. The threats are also hindering important work on behalf of rights of local communities and traditional peoples.

This Urgent Appeal is based on the irreparable nature of the damages which may arise out of the hostilities, affecting both the threatened individuals and vulnerable communities in the Brazilian Amazon.

## 1. Introduction

This complaint reports on threats and aggressions suffered by members of the Movement “Xingu Vivo Para Sempre” and the Cooperative “Cooperativa Mista de Garimpeiros de Ressaca, Galo, Ouro Verde e Ilha da Fazenda”. The threats stem from the activities of these organizations in defense of human and environmental rights of the local population, in the context of the project of an open-pit gold mine in the region of Volta Grande do Xingu by the company Belo Sun. The individuals who are at risk are:<sup>2</sup>

- Movimento Xingu Vivo Para Sempre (headquartered in Altamira, PA)
  - Maria
  - Luisa
  - Fernanda
  - Aline

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<sup>2</sup> Names have been changed due to privacy and security concerns

- Manuela
- Cooperativa Mista dos Garimpeiros da Ressaca, Galo, Ouro Verde e Ilha da Fazenda (headquartered in Senador José Porfírio, PA)
  - Antonio
  - Pedro
  - Joao
  - Heloisa
  - Mauricio

The circumstances of the aggressions and threats to each individual are described below. In order not to aggravate risk to the above mentioned individuals, we request **confidentiality** of their names. We also request non-disclosure of any information allowing their identification. All individuals and organizations have provided their informed consent to this petition.

## **2. Context**

The Movement Xingu Vivo Para Sempre (Xingu Vivo) is a social movement dedicated to the defense of human and environmental rights in the region of Volta Grande do Xingu in the Brazilian Amazon. The region gained national and international renown due to the Belo Monte Hydroelectric Power Plant, one of the largest dams in the world. The construction of the power plant caused a series of violations of the rights of the local population and generated severe impacts on the life of the community. One of the most impacted municipalities was Altamira, where Xingu Vivo is headquartered. Although members of the movement reside in Altamira, they travel constantly to other places in the region of Volta Grande do Xingu, to visit families and communities that live by the river. Xingu Vivo monitors the human rights violations suffered by these people, disseminates information to the population, and organizes advocacy efforts, such as public hearings and petitions.

The Cooperative “Cooperativa Mista dos Garimpeiros de Ressaca, Galo, Ouro Verde e Ilha da ” (Cooperative) organizes and advocates for the interests of artisanal gold prospectors (known as “garimpo” workers) in the region of Volta Grande do Xingu. Its headquarters are in the Ressaca village, a small community located in the municipality of Senador José Porfírio. The leaders and members of the Cooperative are people who work daily in the artisanal “garimpo”, an activity that involves traveling to isolated areas of the Amazon forest.

The two organizations operate within a high-risk area for human rights defenders. According to Global Witness, [Brazil is the deadliest country in the world for defenders of human and environmental rights](#). Amnesty International also reported

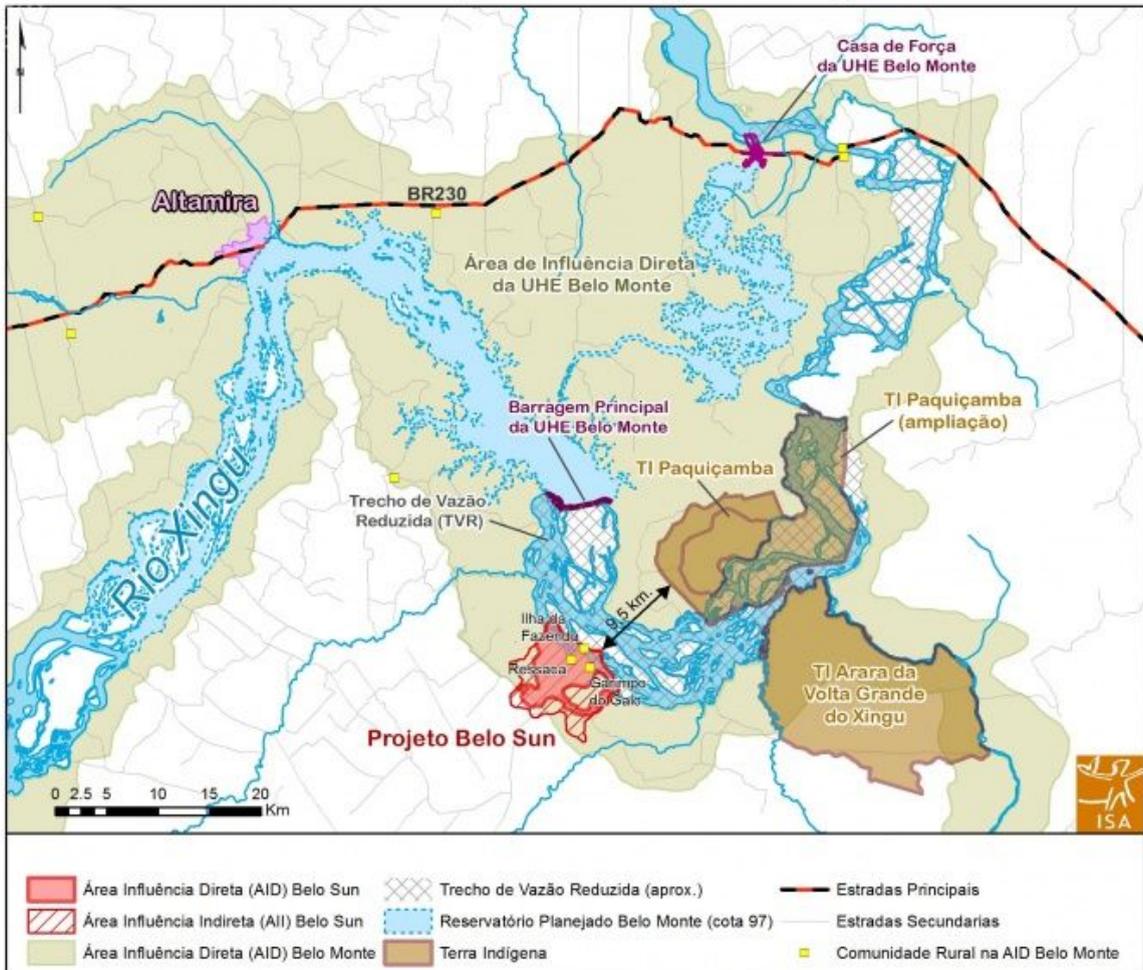
that [58 human rights defenders were killed in Brazil during the first semester of 2017](#). On May 24th 2017 alone, [ten land activists were executed](#) in the state of Para. In addition, [Altamira is the most violent Brazilian town](#), with a homicide rate of 124,6 per hundred thousand inhabitants. More specifically, there have been emblematic killings of human rights defenders in the region of Volta Grande do Xingu. It was in this region that, in 2005, the missionary Dorothy Stang was executed. More recently, in 2016, [the Altamira secretary for the environment was also victim to an extra judicial killing](#).

### **3. The Volta Grande mining project**

The Ressaca village is home to around 300 families, whose subsistence is based on agriculture, fishing and artisanal “garimpo”. The village is about 13 km downstream from one of the dams at the Belo Monte Hydroelectric Power Plant. The residents use the Xingu River for transportation and for subsistence activities, such as fishing. These activities were negatively impacted by the construction of the dam, which reduced the flow of the river - more than 80% of the water that passed through the Ressaca village was diverted to a canal that feeds the turbines of the hydroelectric dam. In addition, residents also report changes in water quality and decreased fish stocks.

On top of the impacts caused by the hydropower plant, Ressaca village is the epicenter of yet another development project: the Volta Grande mine, owned and managed by Belo Sun Mining Corp. The project seeks to build an open-pit gold mine in the Volta Grande do Xingu region. If the project is implemented, Belo Sun will open a crater in the place currently occupied by the Ressaca village. In addition, Belo Sun will build a tailings dam similar to the “Fundão” dam, whose breakup caused one of the greatest environmental disasters in Brazilian history. Gold extraction will last twelve years. [According to the Socio-Environmental Institute](#), after this period, the mine will leave “two giant piles of sterile material, which will occupy an area of 346 hectares, with an average height of 205 meters and 504 million tons of rocks. A mountain twice as large as the iconic Sugar Loaf, stuffed with chemically active material, on the banks of the Xingu River.”

## Volta Grande do Xingu - location of the mine



Map source: [Socio-Environmental Institute](http://www.socio-environmental.org).

## The mine would leave two giant piles of sterile material



Figure source: [Rosa Luxemburgo Foundation](http://www.rosa-luxemburgo.org)

The Volta Grande project would cause serious damage to the environment and local communities. In addition to detonations and the risk of toxic spills, the project would increase the demographic pressure of the region, which does not have the infrastructure needed to receive the corresponding influx of migrants. On December 2017, the Brazilian National Human Rights Council published a [report](#) expressing severe concerns about human rights violations that would stem from these impacts. According to the Council:

“The gold extraction process depends on the use of harmful products, such as cyanide, in the vicinity of the Xingu River, as well as the construction of a large waste dam for discarded substances, with notable risks of disruption, regardless of the precautions to be taken by the entrepreneur. In addition, project implementation will lead to socioeconomic transformation in the region, with the arrival of some two thousand and one hundred direct workers for implementation and five hundred and thirty employees in the operational phase. This inflow estimate adds to people who will be attracted to the region without formal employment at the mine”.<sup>3</sup>

The Council also stressed that the full impacts of the hydropower plant over the region are not yet completely clear, and that mitigation measures relating to Belo Monte still had not been implemented:

“Several of the specific mitigation measures for the Volta Grande region imposed by the Brazilian Environmental Institute (IBAMA) have not yet been implemented, such as construction of a sewage system at the Ressaca Village, supply of potable water to village residents, effective functioning of territorial protection units at the Paquiçamba indigenous territory, complete land regularization of impacted indigenous lands, among many others. The construction of new leisure equipment, schools, and improvements in health care at Ressaca Village are obligations not complied with in the scope of the hydropower plant licensing procedure”.<sup>4</sup>

The impacts of the mine should be studied and evaluated within the environmental licensing process. However, two of the three environmental licenses required under Brazilian law were obtained through a process plagued by flaws. In particular, the impact studies disregarded the rights of indigenous peoples. In addition, they did not incorporate the cumulative and synergic impacts of the mine with the Belo Monte dam. According to Brazilian norms, Belo Sun studies should consider the sum of the impacts to be caused by the mine with the impacts that the hydroelectric power plant

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<sup>3</sup> National Human Rights Council. Report on the rights of communities impacted by the implementation of the Belo Monte hydropower plant and the Belo Sun mine. December 2017. Available in Portuguese at [http://www.mdh.gov.br/sobre/participacao-social/cndh/relatorios/RelatriodeBeloMonteBeloSun\\_aprovadocomrevisaoDOPLENRIO.pdf/view](http://www.mdh.gov.br/sobre/participacao-social/cndh/relatorios/RelatriodeBeloMonteBeloSun_aprovadocomrevisaoDOPLENRIO.pdf/view).

<sup>4</sup> Ibid.

already produces on the Volta Grande region, in its physical, biotic and anthropic aspects. All these elements interact and affect the local population - and in particular the indigenous and riverside communities, and combined impacts may jeopardize their physical and cultural survival.

Due to these problems in the environmental licensing procedure, the Public Defender's Office at the State of Pará and the Federal Public Prosecutor's Office brought suits against Belo Sun. According to these institutions, the company underscored impacts and disregarded the rights of traditional communities. On December 13, a Federal Court of Appeals analyzed the issue and [decided to suspend the project's installation license](#). The court also determined that free, prior and informed consultation procedures are mandatory, and should be conducted in accordance with the standards set by ILO Convention 169.

The decision is in line with statements made by international human rights bodies. In fact, in addition to the historically upholding the rights of traditional communities in face of development projects (and in particular the right to free prior and informed consent), international protection mechanisms have addressed Belo Sun specifically. [In its mission report about Brazil](#), the United Nations Working Group on Business and Human Rights signaled Belo Sun as an issue of concern. The UN Special Rapporteur on the Rights of Indigenous Peoples [recommended](#) that the Belo Sun project "should not be considered if the potential for similar impacts [to the Belo Monte Hydropower Plant] exists or if the indigenous peoples concerned withhold their free, prior and informed consent following the conduct of participatory social, environmental and human rights impact assessments and good faith consultations."

Even before project implementation, the community of Ressaca village has already been affected by the mining company. The company has acquired land on the site, and has established restrictions on the activities that the residents used to live of, such as hunting, fishing and artisanal mining. In addition, there are reports of threats of forced eviction and irregular land purchase.

#### **4. Belo Sun Mining Corp.**

[Belo Sun](#) is a Canadian company, exclusively dedicated to the exploration of gold in the region of Volta Grande do Xingu. It is [part of the Forbes & Manhattan \(F&M\) portfolio](#). F&M incubates, finances and manages 'junior companies' in the extraction industry. It is a private entity based in Canada.

Belo Sun's share distribution used to follow the following ratio (as of September 30, 2016):

Agnico Eagle Mines	~20%
Sun Valley Gold	~20%
Canadian Gold Funds	~20%
European Gold Funds	~7%
US Gold Funds	~6%
Management & Insiders	~6%

Source: [Belo Sun Investor Factsheet](#)

However, as discussed in section 5, following an international campaign in April 2018, Agnico Eagle Mines decided to divest. Therefore, the company's shareholder distribution is currently undergoing changes, which involve a [decision](#) by Belo Sun to repurchase some of its shares.

## 5. Threats to human rights defenders

### November 1st and 2nd: calling for a public hearing

On November 1st and 2nd, members of Xingu Vivo and the Cooperative met with subsistence farmers, garimpo workers, riverine families and fishermen and women from the Volta Grande do Xingu. During the meetings, they decided to organize a petition calling for a public hearing to address the negative impacts caused by Belo Sun Mining Corp. They aimed to bring together public authorities (including the mayor of Senador José Porfírio, the Public Defender's Office and the Public Prosecutor's Office) and the local community, so that the residents expressed their concerns about the project. The petition gathered about one hundred signatures and the hearing was scheduled for November 23rd.

### November 18 to 22: preparation of the public hearing

On November 18, members of Xingu Vivo went to the region of Volta Grande in order to publicize the hearing, mobilize residents and make preparations related to the event. Around noon, Pedro, Maria, Manuela and Fernanda's mother were leaving a house when they saw a person running behind the car they were in, asking them to stop. According to local residents, the person following the car is a Belo Sun employee. The man said that there were some people who wanted to talk to the members of Xingu Vivo, and asked them to go to the house of a former city councilor.

When Pedro, Maria, Manuela and Fernanda's mother entered the house, they encountered about thirty people waiting for them. There was only one exit door, which was blocked after they came in. The meeting was chaired by the former city councilor who owned the house. In addition to him, the main participants were: a merchant, a resident of the area (who was identified as husband of a Belo Sun employee) and two city hall employees. These people questioned the work of Xingu Vivo in the region of Volta Grande, arguing that the local population was favorable to the mining company. They also said that Xingu Vivo talks about the community without authorization from the residents. They accused Xingu Vivo of looking over only a few people from the region, who constitute a minority in the municipality and who, according to them, do not represent the vision of the majority. They also accused the movement of manipulating the local population and committing fraud, for example through the use of false signatures and by filing lawsuits without the consent of the community. For these reasons, they said the meeting should serve as a warning that the members of Xingu Vivo were not authorized to be in the Ressaca Village, and that if they continued their activities in the region, they would be expelled. The tone of the meeting was aggressive. The following quotes were reported by members of Xingu Vivo:

- "If anything happens to you, it is because of your attitude. People do not want you here."
- "If you do not leave, I do not take responsibility for what will happen to you."

The members of Xingu Vivo challenged the accusations. They then asked to leave the room, since they had appointments for that afternoon. The meeting participants allowed them to leave under the condition that they return to the site on the same day.

During the afternoon of November 18th, Pedro, Maria, Manuela and Fernanda's mother traveled around the region announcing the hearing. Mauricio and Antonio, two members of the Cooperative, remained in the Ressaca Village, where they live. That afternoon, Mauricio and Antonio were approached on the street. They were surrounded by a group of people who sought to dissuade them from opposing the mine. These people told them: "you are against us"; "you are going to be expelled from here"; "you cannot speak against the mine."

At eight o'clock in the evening, Pedro, Maria, Fernanda's mother, and Manuela returned to the place where the meeting had been held. At that moment, there were over a hundred people waiting for them, many of them outside the house, since there was not enough space inside. The leaders of the meeting then repeated what they had said during the day, however, they did so even more aggressively. In addition to hostilities directed at Xingu Vivo as a collective ("you have to leave, we do not want

you here"), in the evening meeting there were more individualized quotes. For example:

- "The blame for all these problems lies with Luisa, coordinator of Xingu Vivo"
- "These girls are not to blame, it's all Luisa's fault."
- "Joao is the only person in the way of the mine, the whole community wants Belo Sun."

One of the main concerns of the meeting participants was the lawsuit against Belo Sun. The members of Xingu Vivo explained that the lawsuits had not been filed by the movement. They also said that at the hearing on the 23rd there would be explanations about the legal proceedings. After these explanations, meeting participants became calmer and ended the meeting.

However, in the days that followed, hostilities started growing again. During this period, Joao and Mauricio were harassed on the street and received death threats ("if you continue [to oppose the mine] you will die"; "do not go there [referring to a place in the region] or they will get you").

On November 22nd, a leaflet began to circulate in the Ressaca village accusing Xingu Vivo of having unduly appropriated resources from the Sustainable Regional Development Plan of the Xingu, an intergovernmental policy that should have benefited the community. Also on the 22nd, the city hall informed Xingu Vivo that the room that had been reserved for the hearing (at a local school) was no longer available for use. Xingu Vivo had to find a new location in under 24 hours.

#### November 23: the public hearing

On the day of the hearing, several people went to the Ressaca Village, including members of civil society, indigenous communities and representatives of the Public Defender's Office. These people reached the place by river, aboard small boats. Knowing that this would be the main mode of transportation, the mayor of Senador José Porfírio organized a demonstration at the place where the boats would leave the passengers. Demonstrators held banners in favor of the mine, chanted slogans and tried to stop some of the boats from docking, pushing them into the middle of the river. Luisa, for example, was able to land only with the protection of two policemen who were accompanying the representatives of the Public Defender's Office. When most of the new arrivals were able to disembark, the protesters headed to the place where the hearing would be held.

On the way to the hearing, several opponents of the mine were harassed. In addition to verbal assaults, some of them also suffered physical aggression. Fernanda was held by the arms. Joao was pushed aggressively by a group of people who sang

chants individually attacking him. Mauricio was surrounded, threatened with death and choked.

When they arrived at the hearing site, protesters surrounded the speakers' table. Singing chants, they prevented researchers from exposing studies on the impacts of mining. A public defender asked to speak and was able to calm protesters down. However, hostilities started again when members of the indigenous Juruna and Arara communities asked to speak. They were unable to talk due to continuous booing. After a project opponent spoke, one of the community members said, "Stop it. You are hurting the community. This will end up making you lose your lives."

After the hearing, members of Xingu Vivo spent two days in the Ressaca Village. During that period, their house was constantly under watch by people unknown to them. When the defenders moved, they were followed. On at least one occasion, they realized they were being photographed. After this period, they returned to Altamira and then traveled to Belém, where two seminars about Belo Sun would be held.

Joao also intended to travel to Belém in order to attend the seminars. However, he received a message according to which "the order of the mayor is not to let Joao travel". To avoid any problems, he spread word in the community that he would leave the village on the 27th, by boat. Instead, he left on the night of the 26th, on a motorcycle, and had no issues.

#### November 28 and 29: seminars in Belém

On November 28, Maria, Manuela, Fernanda and Joao participated of an event at the State University of Pará, in Belém. Speakers presented the study "[The Open Veins of Volta Grande do Xingu](#)", which documents Belo Sun impacts. A representative of the Municipality of Senador José Porfírio attended the event, and spoke emphatically in favor of the mine. The event went smoothly.

On the 29th, a similar event would be held at the Federal University of Pará. However, upon arriving at the venue, Maria, Fernanda and Manuela met the Mayor of Senador José Porfírio. He was accompanied by about forty people, including civil servants, three city councilors and a state representative of Pará. The mayor was also accompanied by the Belo Sun Social Development director. Noting the group's aggressivity, Maria, Fernanda and Manuela decided not to attend the event and left the venue.

The group that accompanied the mayor prevented the speakers from exposing their research, chanting slogans in favor of Belo Sun. Professor Rosa Acevedo Marin, responsible for the event, decided to cancel the seminar and attempted to leave.

However, the group that accompanied the mayor pushed the Professor into the room and closed the doors of the auditorium, preventing seminar participants from leaving. At the moment, city officials said: "let's go get the Xingu Vivo girls and drag them here by the hair"

Professor Rosa, students, researchers and other participants were forced to remain on the auditorium for about forty minutes, during which the mayor sat at the speakers' table and defended the mining company.

After the event at the Federal University of Pará, Professor Rosa Acevedo Marin, public defender Andrea Barreto (who was present at the seminar and the audience in the Ressaca Village) and members of Xingu Vivo decided to go to the Federal Public Prosecutor's Office to report the hostilities they had suffered. The Federal Public Prosecutor's Office initiated an investigation, and recommended the members of Xingu Vivo not to return to Altamira.

#### December - present

After the events, Joao intended to return to the Ressaca Village, where he lives. In order to do so, he went to Altamira, where he would take a boat to his house. However, before embarking, he received a telephone call from his son, Pedro. Pedro asked his father not to return to Ressaca because he was afraid of what might happen to him. He reported that Mauricio had suffered **physical assaults** again. Pedro also said that he had received messages and heard threats directed at Joao: "if Joao dares to set foot on the Ressaca village, **he will be beat out of here**", "he will be **lynched**", "we will **put him to rest under the river**". According to Pedro, the same threats were made in relation to the "Xingu Vivo girls", which is the general nickname the group favoring Belo Sun uses to refer to Maria, Manuela, Fernanda and Aline. Luisa, on the other hand, is considered "guilty" for the obstacles to the mining project, and was **explicitly threatened with death**.

On December 6th, a Federal Court of Appeals issued a decision contrary to Belo Sun. This judicial decision suspended the environmental license of the mine. Hence, the company currently does not have authorization for its intended operations. Nevertheless, Belo Sun [announced](#) that it is exploring all legal measures to appeal the decision.

On March 29, the organization Avaaz launched an international campaign against Belo Sun. The campaign is based on a [petition](#) calling the mine's largest investor, Agnico Eagle Mines, to divest. The petition was signed by more than 750,000 individuals and prompted Agnico to [decide](#) to sell its shares.

These events have been perceived as victories in the struggle against Belo Sun. However, they generated a strong reaction from mine supporters, who have scaled up threats, insults and aggressions. Due to these threats, Joao decided not to return to his residence. He is currently residing with relatives in another town. He is unable to work and survives through donations. Heloisa, the mother of Pedro, reports fearing for her life and her family. She does not leave her residence anymore and is estranged from her husband. In addition, the telephone landline of her residence has stopped working. Landline phones are the only form of communication in the region, since there is no mobile phone service. She suspects that the line has been purposely sabotaged.

Mauricio, Antonio and Pedro remain in the Ressaca Village and continue to suffer hostilities and threats.

Following the recommendation of the Federal Public Prosecutor's Office, members of the Xingu Vivo decided not to go to the region of Volta Grande anymore. Therefore, they are unable to continue the organizational and educational work they carry out in the area. Fernanda and Manuela decided not to return to Altamira and remain in Belém.

## **6. On the relevant International Law**

The aggressions and threats suffered by the members of Xingu Vivo and the Cooperative are meant to retaliate for their opposition to the mine, as well as to prevent future action against the Volta Grande project. As such, they violate the individuals' and organizations' right to freedom of expression<sup>5</sup> and association<sup>6</sup>. Moreover, the hostilities have also caused a member of the Cooperative to leave his

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<sup>5</sup> The right to freedom of expression has been established by numerous international treaties, including the International Covenant on Civil and Political Rights (article 19) and the American Convention on Human Rights (article 13). In addition, the UN Declaration on Human Rights Defenders reiterates the right of all individuals to "freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms", as well as to "study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters."

<sup>6</sup> The right to freedom of association is protected by the International Covenant on Civil and Political Rights (article 22), the American Convention on Human Rights (article 16), among other international treaties. According to the Inter-American Commission on Human Rights: "respect for and guarantee of personal integrity is directly related to the free exercise of the activity of defending and promoting human rights. The defense of human rights can be exercised freely only when the persons engaged in it are not victims of any threats or of any type of physical, psychological, or moral aggression, or other forms of harassment. As a result, threats or acts of physical, psychological, or moral aggression that keep defenders from doing their work could also constitute violations of defenders' right to association." Inter-American Commission on Human Rights. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. 31 December 2011. Par. 46.

residence, therefore removing him from his subsistence activities and impairing his right to work and to an adequate standard of living,<sup>7</sup> as well as his freedom of movement and residency.<sup>8</sup> The threats have also resulted in anxiety and constant fear for all threatened individuals and their families, violating their right to physical and psychological integrity.<sup>9</sup>

Moreover, Xingu Vivo and the Cooperative work towards the realization of human and environmental rights in the Volta Grande region. If they are unable to continue their activities, there is a high risk that the project will continue without due regard for the rights of local residents and traditional communities. These potential violations include the right to access information,<sup>10</sup> to public participation<sup>11</sup>, and, in the case of indigenous and riverine communities, to free prior and informed consultations.<sup>12</sup> The systemic violations during the construction of the Belo Monte dam also indicate that the region is not capable of absorbing a substantial population influx, potentially resulting in higher violence rates, violations of the right to adequate housing, and even human trafficking. Finally, the mere prospect of implementation of the mine has

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<sup>7</sup> The right to work and to an adequate standard of living (including adequate food, clothing and housing) is guaranteed by articles 16 and 11 of the International Covenant on Economic, Social and Cultural Rights, as well as by article 6 of the Additional Protocol to the American Convention on Human Rights.

<sup>8</sup> The right to freedom of movement and residency is protected by the International Covenant on Civil and Political Rights (article 12), the American Convention on Human Rights (article 22), among other international treaties. According to the Inter-American Commission on Human Rights: “when acts of intimidation reach the point at which a defender is forced to leave the place where he or she is carrying out the work of defending human rights, the person's freedom of movement and residence may be infringed. In this regard, the inter-American Court has found that this right could be violated when a defender is a victim of threats or harassment and the State does not provide the guarantees necessary to allow the person to move about freely and reside in the territory in question, even when those threats and acts of harassment are carried out by non-State actors.” Inter-American Commission on Human Rights. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. 31 December 2011. Par. 47.

<sup>9</sup> The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have determined that “a campaign of threats, harassment, surveillance, arrests, searches and attempts against [defenders’] lives and physical integrity, about which the authorities were aware and which produced constant fear, distress and family separation, amounts to a violation of the personal integrity of those who are affected”, as well as their families. See Inter-American Commission on Human Rights. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. 31 December 2011. Par. 44; Inter-American Court of Human Rights. *Gutiérrez-Soler v. Colombia*. 12 September 2005. Par. 57.

<sup>10</sup> The right to seek, receive and impart information is protected by the International Covenant on Civil and Political Rights (article 19.2) and the American Convention on Human Rights (article 13.1). The Inter-American Court on Human Rights has specifically established a right to access environmental information in the case *Claude-Reyes et al. v. Chile*. 19 September 2006.

<sup>11</sup> See Inter-American Commission on Human Rights. *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*. OEA/Ser.L/V/II.Doc. 47/15. Par 116-118.

<sup>12</sup> International Labor Organization Convention 169: *Convention concerning Indigenous and Tribal Peoples in Independent Countries*. See also: Inter-American Commission on Human Rights. *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*. OEA/Ser.L/V/II.Doc. 47/15. Par 172-212.

already prompted reports of illegal land purchase by Belo Sun Mining Corp., as well as of non-compensated restrictions to local residents subsistence.

Brazil has ratified the main international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights and its Additional Protocol in the Area of Economic, Social and Cultural Rights. As such, it has an obligation to refrain from directly violating human rights through the actions of its own agents, as well as to protect individuals from violations committed by third parties. In accordance with the UN Special Rapporteur for Human Rights Defenders,

“the State duty to protect against human rights abuses entails ensuring that defenders are not subjected to attacks from State actors or third parties for their activities. Respect and support for the work of defenders are essential to fulfilling the duty to protect and clearly setting the expectation that business enterprises — at home and elsewhere — should respect human rights. Discharging this duty requires that States foster an environment that is supportive of the human rights that are fundamental to the activities and safety of defenders, including the freedom of peaceful assembly and association and freedom of opinion and expression, and their right to protest, access funding and develop and discuss new human rights ideas, as well as their right to be protected and to effective remedy”.<sup>13</sup>

Despite Brazil’s formal commitment to the protection of human rights in general and human rights defenders in particular, the international community has expressed concern over the situation of Brazilian human rights defenders.<sup>14</sup> At the 2017 Universal Periodic Review, several recommendations addressed the need to better protect human rights defenders in Brazil, indicating that the state should “provide better protection to human rights defenders and strengthen civil society as an essential partner in boosting the human rights system” and “take all necessary measures to guarantee the safety of human rights defenders and journalists as they carry out their tasks”, for example.<sup>15</sup>

The duty to protect human rights also extends to Canada, the home state of Belo Sun Mining Corp. Canada has ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Although the language of these treaties does not make explicit reference to

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<sup>13</sup> United Nations Special Rapporteur on the situation of human rights defenders. Report of the Special Rapporteur to the Seventy-Second session of the Human Rights Council. 19 July 2017. Par. 33.

<sup>14</sup> Human Rights Council. Thirty-sixth session. Report of the Working Group on the Universal Periodic Review - Brazil. A/HRC/36/11. 11-29 September 2017. Recommendations 111 - 122.

<sup>15</sup> Ibid.

extraterritorial obligations, the United Nations Guiding Principles on Business and Human Rights clarify that “states should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations”.<sup>16</sup> This duty has been reaffirmed by international human rights treaty bodies and mechanisms, including the International Committee on Economic, Social and Cultural Rights. According to the Committee:

“States parties’ obligations under the Covenant d[o] not stop at their territorial borders. States parties [a]re required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they were incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory).”<sup>17</sup>

Finally, companies also have “an independent responsibility to ensure that defenders can effectively and safely address the human rights impacts linked to their operations.”<sup>18</sup> This means Belo Sun Mining Corp should have conducted human rights due diligence to prevent any violations stemming from its activities, preferably in consultation with human rights defenders.<sup>19</sup> It should also have established grievance mechanisms and other systems enabling it to identify and act upon threats, hostile acts and other violations linked to its activities.<sup>20</sup>

## 7. Closing remarks

The Movement “Xingu Vivo Para Sempre” and the Cooperative “Cooperativa Mista dos Garimpeiros da Ressaca, Galo, Ouro Verde e Ilha da Fazenda” have suffered hostilities, aggressions and threats. These stem from their opposition to the Belo Sun Mining Corp., as well as their reporting of socio-environmental impacts and human

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<sup>16</sup> United Nations Guiding Principles on Business and Human Rights. Principle 2.

<sup>17</sup> United Nations Committee on Economic, Social and Cultural Rights. General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. 2017. Par. 26.

<sup>18</sup> United Nations Special Rapporteur on the situation of human rights defenders. Report of the Special Rapporteur to the Seventy-Second session of the Human Rights Council. 19 July 2017. Par. 54.

<sup>19</sup> United Nations Guiding Principles on Business and Human Rights. Commentary to Principle 18. In addition, the UN Special Rapporteur for Human Rights Defenders has stated that “the responsibility of businesses to respect human rights not only entails a negative duty to refrain from violating the rights of others, but also a positive obligation to support a safe and enabling environment for human rights defenders in the countries in which they are operating. Discharging this duty requires consultation with defenders in order to understand the issues at stake and the shortcomings that impede their work.” United Nations Special Rapporteur on the situation of human rights defenders. Report of the Special Rapporteur to the Seventy-Second session of the Human Rights Council. 19 July 2017. Par. 58.

<sup>20</sup> United Nations Guiding Principles on Business and Human Rights. Principle 29.

rights violations that would result from the implementation of a gold mine in the region of Volta Grande do Xingu.

In December, 2017, a Federal Court of Appeals issued a decision against the mining company, suspending the mine's installation license. In April 2018, the company's main shareholder decided to divest. However, these decisions have not decreased the risk and the hostilities suffered by human rights defenders in the region. On the contrary, the project sponsors and economic beneficiaries have become more aggressive, intensifying the threats. For them, the dispute over the project's implementation has not yet been lost, and organizations such as Xingu Vivo and the Cooperative are depicted as responsible for the obstacles faced by the mining company.

The threats and aggressions have been incited and / or directly committed by officials of the municipality of Senador José Porfírio and its allies. The Mayor organizes and is present in moments of harassment, such as the hearing held in the Ressaca Village and the seminar at the Federal University of Pará. In addition, on at least one occasion, the threats included reference to "mayor's orders". As representatives of the State, officials of the municipality have the obligation not to violate the right to freedom of expression, freedom of association, physical integrity and life of opponents of the mining project. The State also has a duty to take positive measures to ensure that these rights are not violated by third parties. These obligations are of particular prominence because individuals and organizations have been attacked because of their work for the defense of human and environmental rights.

Belo Sun Mining Corp. has a duty to act with due diligence to respect human rights. Therefore, it must take positive action to ensure that its operations do not contribute to rights violations, meaning that Belo Sun should have implemented mechanisms to identify violations suffered by human rights defenders. Moreover, company officials based in the region are aware of the events of the last month, and at least one employee accompanied the Mayor in the demonstration at the Federal University of Pará. Therefore, company employees must immediately stop participating in - and being complicit with - hostile acts against human rights defenders. The company should also use its leverage over the city hall to demand cessation of hostilities. It must also establish mechanisms to ensure that threats and assaults against mine opponents do not recur; and, if they occur, are promptly identified, discontinued and remedied.

Although they have sought the Federal Public Prosecutor's Office, the individuals under threat do not wish to be included in the witness protection program because they do not trust local authorities.

## 8. Requests

The petitioner herewith request the above-mentioned UN human rights mandates:

- Declare that the hostile acts toward Movement “Xingu Vivo Para Sempre” and Cooperative “Cooperativa Mista dos Garimpeiros da Ressaca, Galo, Ouro Verde e Ilha da Fazenda” and their members violate international human rights law;
- Request the Brazilian State and the Canadian State to take all necessary steps to protect the life and integrity of the threatened individuals, as well as their families, taking due account of their privacy and justified mistrust of local authorities;
- Urge the Brazilian government to address the weaknesses of the defenders’ protection policies, and - **in consultation with the victims** - ensure that the individuals listed in this appeal are placed under the program of defenders in a manner that accounts for their legitimate concerns over local authorities;
- Request that the Brazilian State refrains from granting any further license or authorization to the “Volta Grande” gold mine project, for its irreparable and irreversible harms to the local communities and ecosystem;
- Call Belo Sun Mining Corp., its controllers, and its investors to immediately cease any behaviour that implies in complicity with the agressions suffered by defenders of the two social movements, and to issue a public commitment to human rights in general, and to the rights of human rights defenders in particular; and
- Call Belo Sun Mining Corp., its controllers, and its investors to publicly condemn all human rights abuses suffered by opposers of the Volta Grande project, and to implement mechanisms directed to remedy misdeeds and prevent future violations.

**This Urgent Appeal has been submitted by the following organizations**

AIDA Américas

Conectas Direitos Humanos

Cooperativa Mista de Garimpeiros de Ressaca, Galo, Ouro Verde e Ilha da Fazenda

Justiça Global

Movimento Xingu Vivo Para Sempre

Public Defender's Office - State of Pará