

# **Alliance in Defence of the Volta Grande do Xingu**

## **Stakeholders' Submission to the 2022 Universal Periodic Review of Brazil**

Prepared by

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Amazon Watch

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MiningWatch Canada

Centre for the Political Economy of Labour at University of Strathclyde

Rettet den Regenwald e.V./ Salva la Selva

Earthworks

March 2022

## **The Stakeholders: The “Alliance in Defence of the Volta Grande do Xingu”**

This submission has been prepared in the name of the ‘**Alliance in Defence of the Volta Grande do Xingu**’, a coalition of local communities, civil society actors, NGOs and academic institutions that was established in 2021 to provide direct support and visibility to the human rights risks and perceived transgressions associated with the Belo Sun Mining project and other infrastructure projects in the State of Pará (Brazil). The coalition was established upon request of the local communities (more details at point 2.3 below), and has been gathering online and in presence with regularity. Several field missions have been realised in order to collect first hand data on the state of the region and the human rights’ threats represented by the gold mine project. Public and legal actions have been undertaken in order to draw national and international attention to the situation, and to obtain an immediate and irreversible suspension of the operations. Given the high level of risk that environmental and human rights defenders experience in Brazil, in particular with regards to mining and large-scale projects, the present submission is realised on their behalf by a group of national and international stakeholders. The form, content and purposes of this submission have been agreed upon with the local communities and feature their anonymised contributions..

The aim of this submission is to draw the panel’s attention to the fact that the proposed open-pit gold mine project poses a significant and immediate risk to the most fundamental human rights of the thousands of people living in the Volta Grande do Xingu, and **contravenes recommendations made to Brazil during the previous sessions of the Universal Periodic Review (UPR) and the development of the human rights situation in the country**. In our submission, we first provide the contextual background of the project and then provide evidence about the different human rights that are at stake in this case and that need to be protected. This submission is signed by:

**University of Antwerp Law SustJust Legal Clinic:** linked with the Sustainable Development and Global Justice Master’s of Law and the Law and Development Research Group,<sup>1</sup> the Legal Clinic provides pro-bono legal advice to civil society organisations and NGOs in the areas of environmental law, human rights law and access to justice. For this report, Amélie Foko'o

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<sup>1</sup> <https://www.uantwerpen.be/en/research-groups/law-and-development/>

Magoua, Anna Chevalier and Cassandra Ajufoh have worked under the supervision of Prof. Dr. Tomaso Ferrando.

**Movimento Xingu Vivo Para Sempre<sup>2</sup>** is a social movement integrated by grassroots movements, traditional communities and national and international civil society organisations that defend the rights of the peoples and the ecosystem of the Volta Grande do Xingu against infrastructure projects, mining projects and other extractive activities. The MXV emerged in 2008 in the struggle against the construction of the Belo Monte dam.

**Society for Threatened People (STP)<sup>3</sup>** is an international human rights organisation working for the protection of persecuted minorities and indigenous peoples. The STP documents human rights violations, raises public awareness and represents the interests of the affected communities before the authorities and policy-makers. It supports local initiatives aimed at strengthening the human rights of minorities and indigenous peoples, working nationally and internationally with other organisations and individuals pursuing similar goals. The STP has consultative status at both the United Nations Economic and Social Council (ECOSOC) and the Council of Europe.

**Amazon Watch<sup>4</sup>** is a non-profit organisation founded in 1996 to protect the rainforest and advance the rights of Indigenous peoples in the Amazon Basin. It partners with Indigenous, traditional and environmental organisations in campaigns for human rights, corporate accountability and the preservation of the Amazon's ecological systems.

**Asociación Interamericana para la Defensa del Ambiente (AIDA)<sup>5</sup>** is a regional non-governmental organization with 25 years of experience in the American continent, with the mission of strengthening the ability of people to guarantee their individual and collective right to a healthy environment through the development, application and effective enforcement of national and international legislation.

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<sup>2</sup> <https://www.facebook.com/movxinguvivo/>

<sup>3</sup> <https://www.gfbv.ch/en/>

<sup>4</sup> <https://amazonwatch.org/>

<sup>5</sup> <https://aida-americas.org/>

**MiningWatch Canada**<sup>6</sup> works in solidarity with Indigenous peoples and non-Indigenous communities who are dealing with potential or actual industrial mining operations that affect their lives and territories, or with the legacy of closed mines, as well as with mineworkers and former workers seeking safe working conditions and fair treatment. MWC explicitly values the experience and knowledge of Indigenous peoples, mining-affected communities, and workers, and bases its work on mutual learning and participatory, deliberative and transformative methodologies.

**Centre for Political Economy of Labour (Strathclyde University)** is a centre that brings together researchers and labour activists in Europe, Asia, Africa and Latin America to explore how commodity trades, colonial legacies, and enduring inequalities in political power, health and wealth are experienced, accommodated and resisted by workers and communities across the Global north and south. Brian Garvey, a contributor to this report, is one of the co-ordinators and is based at the University of Strathclyde, Glasgow, UK.

**Rettet den Regenwald e.V./ Salva la Selva**<sup>7</sup> is a non-profit organisation that has been actively campaigning for the protection of rainforests worldwide since 1986. RdR/SIS supports local grassroots and indigenous organisations in the tropics to prevent land grabbing, deforestation, environmental destruction, animal murder/cruelty and illegal trade. The organisation carries out online petitions, information campaigns and international networking. Currently is supporting the Xingu Vivo Para Sempre movement.

**Earthworks**<sup>8</sup> is a non-profit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions. Earthworks fulfils its mission by working to reform government policies, improve corporate practices, influence investment decisions and encourage responsible materials sourcing and consumption. Earthworks exposes the health, environmental, economic, social and cultural impacts of mining and energy extraction through work informed by sound science.

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<sup>6</sup> <https://miningwatch.ca/>

<sup>7</sup> <https://www.regenwald.org/>

<sup>8</sup> <https://earthworks.org/about/>

## 1. THE VOLTA GRANDE GOLD MINING PROJECT: A HUGE, IMMINENT AND IRREPARABLE THREAT FOR PEOPLE AND THE ENVIRONMENT

### 1.1. Overview

The **Volta Grande Project** (hereafter “VGP”) is a proposed open-pit gold mining project that the company **Belo Sun Mineração Ltda** (Belo Sun)<sup>9</sup> plans to realize in the municipality of Senador José Porfírio in the state of Pará, in the Brazilian Amazon.<sup>10</sup> The site is located in the *Volta Grande do Xingu* region, approximately 49 kilometres southeast of the town of Altamira (population 150,000). The Volta Grande - or "Big Bend"- of the Xingu River is a stretch of one of the largest and most important Amazonian rivers, an extremely important region for the conservation of the planet's biodiversity. The region is part of the **priority areas for Biodiversity Conservation**, indicated in a federal ordinance by the Brazilian Federal Ministry of Environment in 2019, given its complex geomorphology that favours the existence of endemic species in the region.<sup>11</sup> This is the same area where **the Belo Monte hydroelectric dam was recently built**.

The VGP mining site is projected to occupy over 2,000 ha of public land in the **Volta Grande**, including part of a land reform settlement. The VGP is a small part of Belo Sun's much broader mining interest in the region, which comprises four mining concession applications, 58 exploration permits, 16 exploration permits extension that have been required , covering a **total area of 172,631 hectares** within the “Tres Palmeiras” greenstone belt.<sup>12</sup> **This represents an area more than twice the size of New York City**. The initial plan includes two open-pit mines, a sanitary landfill, two water retention lakes, a tailings dam, an effluent treatment plant, lodging, internal access roads, an explosives storage facility near the Xingu River, a fuel supply station, a support structure and a water and effluent treatment plant. This

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<sup>9</sup> Belo Sun Mineração Ltda is a subsidiary of Belo Sun Mining Corporation, a mining company headquartered in Toronto, Canada. It trades in the Toronto Stock Exchange under the symbol “BSX”. As a publicly-traded company, many of Belo Sun’s shareholder documents can be found through the System for Electronic Document Analysis and Retrieval (sedar.com). Belo Sun has three exploration projects in Brazil, but the company appears to be entirely focused on the VGP. Belo Sun currently enjoys support from shareholders in Canada, Brazil, United States, Switzerland, Singapore and Luxembourg.

<sup>10</sup> Belo Sun, Volta Grande Feasibility Report, 2015, available from [https://www.belosun.com/staging/belosun.com/\\_resources/Feasibility-Study-Volta-Grande-Project.pdf](https://www.belosun.com/staging/belosun.com/_resources/Feasibility-Study-Volta-Grande-Project.pdf)

<sup>11</sup> <https://www.cambridge.org/core/journals/environmental-conservation/article/abs/deforestation-and-conservation-in-major-watersheds-of-the-brazilian-amazon/47932329C4217F856D27A6C3151C0015>

<sup>12</sup> Belo Sun Mining Corp., *Annual Information Form of 2020* (English), Toronto, 24 March 2021, p. 21, available on <https://sec.report/otc/financial-report/279793>.

entire structure poses a serious risk to the region as a whole, and more specifically to the populations in the project's areas of direct influence.

If built, it is expected that the VGP will be Brazil's **largest open-pit gold mine**, and thus one of the largest threats to the Amazon ecosystem and the existing livelihoods of its inhabitants. The initial mine throughput is estimated to be 3.5 million tons per year, and once full production is reached, that number will be **7 million tons**, with an estimated 205,155 oz of gold produced per year. Given that to **extract one gram of gold in open pit mining up to 4 tons of debris are produced, approximately 1000 litres of water are used and contaminated**, and one ounce (28 grams) of produced gold emits on average almost one tonne of carbon dioxide, the anticipated local and broader environmental and human rights impacts are evident and more than severe.

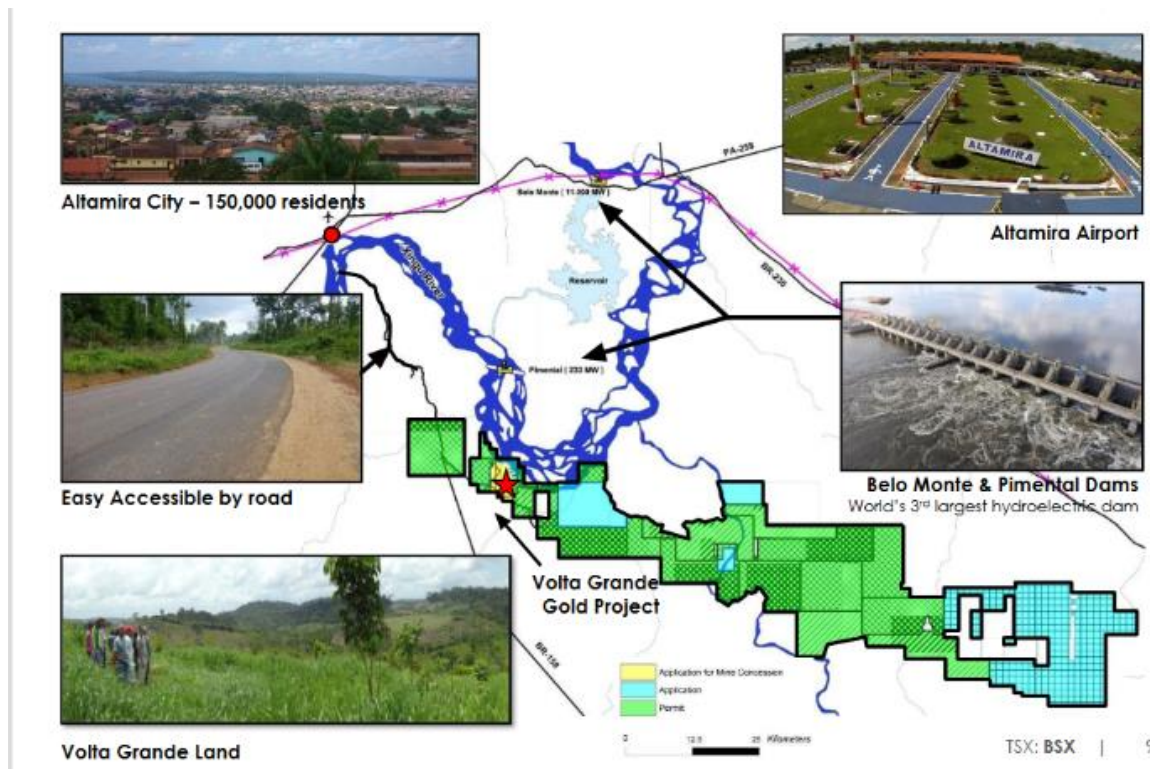


Figure 1: extension of the company's concessions<sup>13</sup>

<sup>13</sup> Source, Belo Sun, The Largest Undeveloped Gold Deposit in Brazil, Gold Stock analyst conference, 2021, available from: <https://www.belosun.com/resources/presentations/Gold-Stock-Analyst-Conference-BSX-Presentation-2021.pdf> [last accessed 29 March 2022].

## 1.2 The company: Belo Sun Mineração Ltda

Belo Sun Mineração Ltda is a subsidiary of Belo Sun Mining Corporation, a mining company headquartered in Toronto, Canada. It trades in the Toronto Stock Exchange under the symbol “BSX”. As a publicly-traded company, many of Belo Sun’s shareholder documents can be found through the System for Electronic Document Analysis and Retrieval (sedar.com). Belo Sun has three exploration projects in Brazil, but the company appears to be entirely focused on the VGP. Belo Sun currently enjoys support from shareholders in Canada, Brazil, United States, Switzerland, Singapore and Luxembourg.

## 1.3. Multiple communities impacted

The Volta Grande do Xingu is home to a mosaic of traditional peoples and communities. A nearly 100 km long stretch of the Xingu River at the Volta Grande is already suffering the impacts of the Belo Monte dam, which diverts a significant portion of the river flow away from its natural course, creating the so-called “Reduced Flow Stretch”<sup>14</sup>. Those who live in this stretch of the territory are suffering from radical transformations in the river, including reduced water availability, difficulties navigating, fish scarcity and increased mortality of all fauna that relied on the river.

The environmental and human rights consequences of the Belo Monte dam have been extensively documented by both national and international stakeholders.<sup>15</sup> If installed, the **VGP will deepen and amplify the rights violations of these groups, which include indigenous peoples, peasant, agrarian, resettled, extractive and riverine communities**. These communities often share ancestral origins and typically develop a series of activities to sustain their livelihoods. Most of the people living in the region engage in fishing, small-scale mining and small-scale agriculture at the same time. They all share the fact of being traditional communities, in the sense that they are culturally differentiated groups that have their own forms of social organization and depend on the land and the river for their social, cultural and material reproduction.<sup>16</sup>

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<sup>14</sup> J. PEZZUTI, C. CARNEIRO, T. MANTOVANELLI AND B. ROJAS GARZÓN, *Xingu, O Rio Que Pulsa Em Nós*, 1<sup>st</sup> ed., Altamira (Pará), Instituto Socioambiental, 2018, and see <https://www.socioambiental.org/pt-br/noticias-socioambientais/guerra-pela-agua-apos-cinco-anos-de-operacao-de-belo-monte-volta-grande-do-xingu-sofre-com-a-seca>.

<sup>15</sup> For additional details about the PBA, visit <http://www.ibama.gov.br/licenciamento-ambiental/processo-de-licenciamento> and <https://www.acs.org/content/dam/acsorg/greenchemistry/news/environmental-licenses-in-brazil.pdf>

<sup>16</sup> The category of Traditional community is officially recognised by Article 3º(I) of the Federal Decree 6040 of 7 February 2007; available on [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2007/decreto/d6040.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6040.htm)..

As Maria comments: “I’m a fisherwoman. They are destroying our territory. They want to take from us our river, our food, our home [...]. They want us to stay quiet, and leave. But I don’t have another place for me and my family. Our place is here where I was born and where we learned, learned to respect nature, the animals. Traditional peoples suffer a great injustice. They want to expel us, but this place is part of us”.<sup>17</sup>

The map below (Figure 2) shows in purple the extension of the overall project, and reveals how it directly affects resettlement areas, villages, and at least four indigenous territories (TI Paquicamba, TI Arara da Volta Grande, TI Trincheira Bacajá and TI Ituna/Itatá, along with several villages and areas of resettlement (Áreas de Reassentamento) that overlap or share a boundary with the concession.

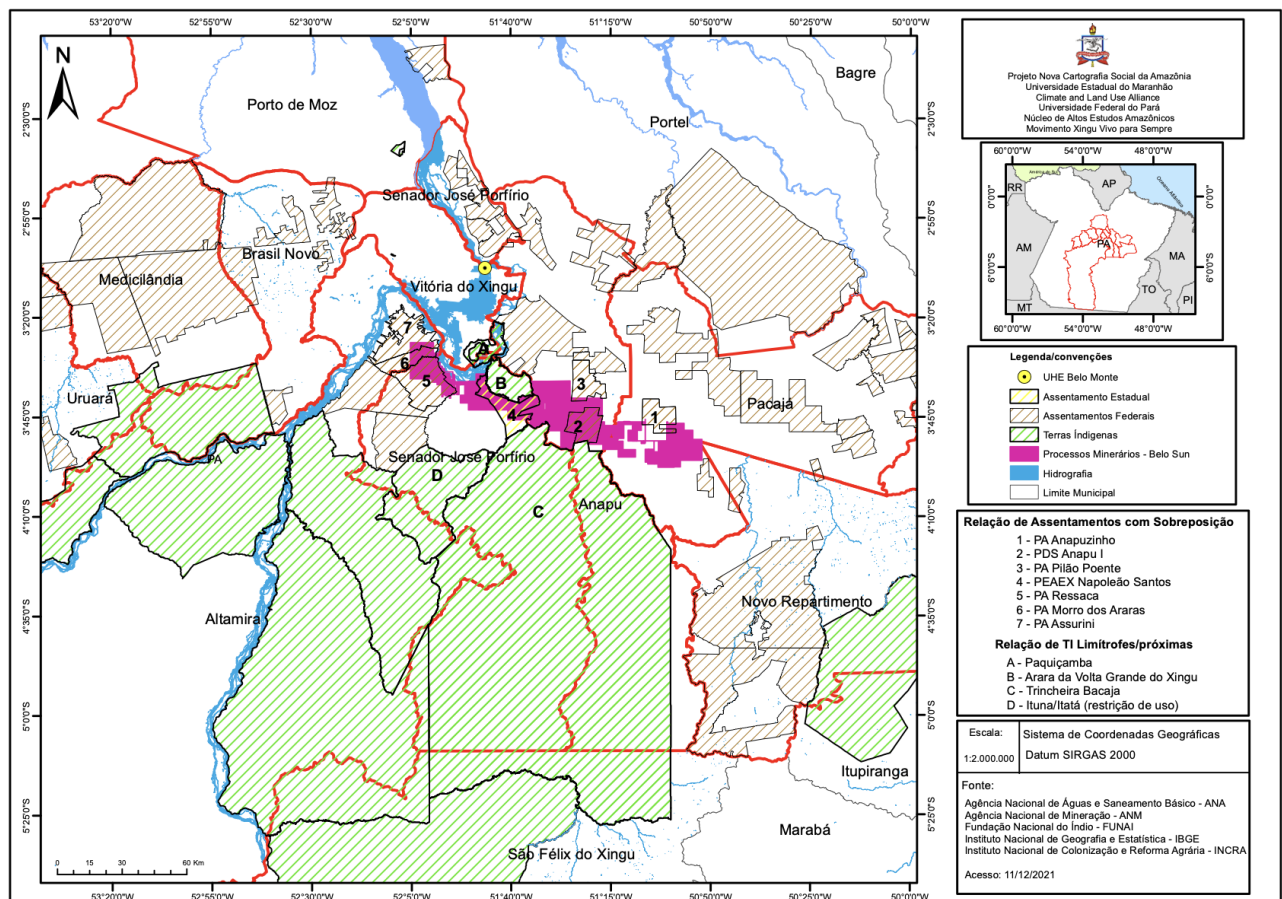


Figure 2: The mining concession among villages and indigenous territories<sup>18</sup>

<sup>17</sup> The Interviews that are quoted in this submission were conducted between 8 February and 17 March 2022 by B Garvey and A L Barbosa in line with ethics procedures of University of Strathclyde and pseudonyms are used for reasons of personal security.

<sup>18</sup> Source, FUNAI.

*(i) Traditional campesino and extractive communities in rural reform settlements*

The **agrarian reform settlement** that will be most directly impacted by the VGP is the Projeto de Assentamento Ressaca, or PA Ressaca. In 1999, the national agrarian reform agency, INCRA (Instituto Nacional de Colonização e Reforma Agrária), designated a sizeable area of public (Federal) land for the resettlement of rural families (see Figure 2). The initial Belo Sun's mining project overlaps with the rural development area designated by INCRA. **Over 500 families live there and will be drastically impacted by the project.**<sup>19</sup>

Beyond the PA Ressaca, there are other agrarian reform settlements in the region, such as the **PA Assurini, PA Morro dos Araras, and PAEX Napoleão Santos** (see Fig. 2). Even though these are not directly within the area where Belo Sun wishes to install its first extraction site, they are close enough to be significantly impacted, especially if the further mining interests of Belo Sun in the region advance along the planned scheme of Figure 1. As discussed below, no consultation has been taking place.

*(ii) The Vilas Ressaca, Galo and Ouro Verde*

The area where Belo Sun wants to implement the VGP is a traditional artisanal mining territory. There is evidence that small-scale mining has been practised by families in the regions at least since the mid-1930s. As of the late 1970s and 1980, there was a significant influx of families from different regions of Brazil in search of gold. This led to the consolidation of three villages which have artisanal mining at the core of their social and economic organisation, alongside fishing and food cultivation: **Vila Ressaca, Vila do Galo and Vila Ouro Verde**.

As Vitor (34), born in Vila Ressaca, reflects: *“We are artisanal fishing people, artisanal miners and extractivists [...] our lives have been utterly compromised; the river is no longer productive, our rights are being taken -we have rights, no?- for no benefits in return. The people, my father, have been here for years. they have houses, have land, often without documents, yet we suffer threats, and face all these things we never had before, and this alongside corruption at a municipal, state and federal level that is violating our rights.”*

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<sup>19</sup> Belo Sun Mining Corp., *Annual Information Form of 2020* (English), Toronto, 24 March 2021, p. 16, available on <https://sec.report/otc/financial-report/279793>.

In 2016, Belo Sun communicated to the Environmental Agency of Pará, which is currently overseeing the VGP's licencing process, that a total of 813 people would have to be removed from these villages, 549 from the Vila Ressaca, 239 from Vila do Galo and 39 from Vila Ouro Verde. **More than 1000 people, including elders and children, will have to leave their villages in order to give space to the mine.**<sup>20</sup> According to the information submitted by Belo Sun in the environmental licensing process, **all of the families that live in these villages will need to be removed.** No one will remain on the land.<sup>21</sup>

The impacts of the project upon these families will be direct and systematic. They will have to leave their homes, their houses will be taken down, they will no longer have the ability to carry out artisanal mining. Since a significant part of the agriculture from PA Ressaca is sold in these villages, their eradication will also negatively impact the families' right to livelihood, healthy environment, food, water and traditional knowledge. This is in stark **contrast with the recommendations that Brazil previously received in the context of the UPR and the obligations that it has undertaken at international level.**

*(iii) Indigenous Peoples and their territories at risk*

The broader Volta Grande do Xingu region is the traditional territory of a plethora of Indigenous peoples. The indigenous groups that are situated closer to where the VGP is planned, and that therefore face a greater risk of suffering the negative impacts of the latter, are the **Juruna from the Paquiçamba Indigenous Land and the Arara, who live in the Arara da Volta Grande Indigenous Land.** Beyond them, the **Xikrin from the Trinchira Bacajá Indigenous Land, the Xipaia and other indigenous communities** who live outside these Indigenous lands, in territories which have not yet been recognized by the state, may be impacted by the VGP.

Although the concessions are not - at least formally - overlapping with demarcated indigenous territories, Figure 2 above shows with clarity **the immediate proximity between the extraction site and the indigenous territories.** Moreover, some of the concessions overlap with non-demarcated indigenous territories, a central issue that is discussed at point 2.2 below. Moreover, the extraction and waste sites are located both **upstream and downstream vis-a-**

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<sup>20</sup> Cf. Integratio, *Projeto Volta Grande Belo Sun Mineração Ltda., Plano de Controle Ambiental - 3.3.3 Relocation, Negotiation and Social Inclusion Programme*, Oct. 2016, p. 15.

<sup>21</sup> Cf. Integratio, *Projeto Volta Grande Belo Sun Mineração Ltda., Plano de Controle Ambiental - 3.3.3 Relocation, Negotiation and Social Inclusion Programme*, Oct. 2016.

**vis indigenous territories:** this may have an irreparable and irreversible impact on the livelihood and fundamental rights of indigenous communities who are dependent on a healthy environment, healthy rivers, and subsistence activities that are closely connected with the quality of the environment and the right to roam.

## 2. HUMAN RIGHTS UNDER THREAT

### 2.1. Violation to the Xikrin People's right to Free Prior Informed Consent<sup>22</sup>

Brazil ratified the ILO Convention 169 in 2004. However, UPR recommendations formulated after that date<sup>23</sup> continuously stressed the need to increase democratic participation of indigenous peoples in decision-making processes. Advancing the agenda of Free, Prior and Informed Consent was a clear request, with indication of the need to implement effective consultation processes.<sup>24</sup> In 2016, the **Special Rapporteur on the rights of indigenous peoples expressed her concern about the possibility of cumulative effects of the Belo Monte and Belo Sun projects, and about the lack of consultation with possibly affected indigenous communities.** In 2018, the NGO Conectas made a representation before the UN, denouncing violent threats suffered by members of the Xingu Vivo Movement and of the co-operative of artisanal miners based in Vila Ressaca, two organisations that are opposing the Mining project. The VGP is thus an **emblematic example of the recurring violation of FPIC** by the Brazilian authority and the disregard of previous recommendations.

In its first manifestation on the environmental licensing of the VGP, the Federal Indigenous Agency (FUNAI) elaborated a technical note determining that Belo Sun should be required to assess impacts of the VGP on Trincadeira Bacajá and Koatinemo Indigenous Lands, in addition to the Paquçamba and Arara da Volta Grande Grande lands. **The definitive terms of reference for the environmental licensing included the Trincadeira Bacajá Indigenous Land.**

In 2014, however, the **Environmental Agency of Pará (SEMAS) issued Preliminary License nº 1.312/2014 and disregarded the FUNAI's requirement**, retaining as a conditioning

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<sup>22</sup> With information and excerpts taken from the Legal Opinion on the violations to the right to consultation and consent of indigenous and riverine peoples affected by the Volta Grande Project / Marés, Carlos Frederico; Oliveira, Rodrigo Magalhães de; LIMA, Liana Amin; Shiraishi, Joaquim. Belém, Curitiba, Dourados, São Luis: Observatory of Consultation Protocols, 2022. Opinion requested by the Federal Public Ministry of Altamira and presented in the records of Public Civil Action No. 0002505-70.2013.4.01.3903.

<sup>23</sup> Mid-Term Report, civil society on the Universal Periodic Review (2017-2019), p. 25.

<sup>24</sup> *Ibidem*.

measure only the obligation to undertake the Indigenous Component Study for the Paquiçamba and Arara of the Volta Grande Indigenous Lands (Environmental Licence Condition No. 26). This was in line with a request by Belo Sun, which indicated that Trincadeira Bacajá should be excluded from the term of reference. FUNAI eventually granted this request, **reversing its earlier decision which had required the that impact studies be conducted for Trincadeira Bacajá.**<sup>25</sup>

It is evident **how serious is the fact that FUNAI changed its position, despite there being no changes in the factual scenario and without any additional or supervening grounds**<sup>26</sup>. The administrative bodies use arbitrary criteria to define the impacts of large enterprises and there is **a lack of foreseeability and predictability when it comes to indigenous people's rights**. As such, FUNAI's decision violates Convention 169 by arguing that the distance from the PVG to the Trincadeira Bacajá Indigenous Land (36 km) allows the state to presume that the latter will not be impacted by the project. It denies the right to prior consultation on these terms.<sup>27</sup>

Moreover, the possibility of expansion of mining by Belo Sun Mineração Ltda. to the surroundings of the Trincadeira Bacajá Indigenous Land (as demonstrated by the document produced by Belo Sun itself) requires **that the Xikrin be consulted**.<sup>28</sup> Once the project begins, it may be too late to have a meaningful, legitimate and valuable consultation of the indigenous communities that will be affected. However, **no FPIC procedure has been opened, in blatant violation of Brazil's international obligations**.

In April 2017, an interim order was issued by a judge from the Brazilian Federal Regional Court suspending the Company's Installation Licence until due consultation had been carried out with

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<sup>25</sup> FUNAI argued that this Indigenous land is located at a distance of 36 km from the project, referring to the Interministerial Ordinance (Portaria) nº 60/2015.

<sup>26</sup> It should be noted that Funai has experienced both drastic funding cuts and controversial appointments under the current administration; see <https://www.theguardian.com/world/2019/jul/21/bolsonaro-funai-indigenous-agency-xavier-da-silva>

<sup>27</sup> According to the ILO Convention and international jurisprudence, for a group to have the right to be consulted, it is sufficient to demonstrate that it will be potentially affected by the administrative measure, and it is not necessary to prove current and effective impacts, even because it is a matter of consultation that must precede any authorization of the enterprise. This is a definition that demands a multidisciplinary technical evaluation, with the participation of the groups themselves, who know their territory and its dynamics of coexistence and use of natural resources.

<sup>28</sup> The map above (Figure 2), extracted from the FUNAI Proceedings nº 08620.019136/2012-40, reveals that the company has dozens of mining processes for gold extraction contiguous to the Trincadeira Bacajá Indigenous Land.

Juruna and Arara indigenous communities. In December 2017, the Federal Court of Appeals in Brasilia ruled to uphold the suspension order. In late 2021, the Federal Public Defenders Office (DPU) recommended that proper Free, Prior and Informed Consent be carried out with the Xikrin from Trinchiera Bacajá as well as other Indigenous groups that will be affected by the VGP but are not living within demarcated Indigenous lands.<sup>29</sup> **Recently, Belo Sun has required the lift of the suspension which could authorize the installation of the mine, and the suit is scheduled to be reassessed by the Court in April 2022.**

## **2.2. Right to housing, livelihood and land**

### *2.2.1. Reduction of agrarian settlements without adequate procedure*

In 2005, the Human Rights Committee already expressed **concerns regarding forced evictions of indigenous populations from their land, and the lack of legal remedies to reverse these evictions and compensate the evicted populations for the loss of their homes and means of subsistence.**<sup>30</sup> More recently, **Brazil was also exhorted to ensure that indigenous peoples are protected from threats, attacks and forced evictions.**<sup>31</sup> The VGP situation clearly violates these previous recommendations and international law obligations.

The existence of the PA Ressaca is a legal obstacle to the installation of the PVG, since land reform is protected by the Brazilian Federal Constitution, and the installation of the open pit industrial mining project would directly hinder the development of agrarian activities. **The two projects - land reform and industrial mining - are incompatible.** This generates a land use conflict, and it is the constitutional role of INCRA to defend national agrarian reform policy in face of the activities that threaten it.

Along with the relocation plan discussed above, at least since 2017, INCRA has been negotiating ways to hand over a part of PA Ressaca to Belo Sun. In 2021, despite the fact that Belo Sun's installation licence was suspended due to irregularities in the FPIC process, the mining company and INCRA signed an agreement that enabled Belo Sun to install its gold mining project within federal public land in the Volta Grande. This agreement **reduced the**

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<sup>29</sup> Cf. Defensoria Pública da União (DPU), Recomendação n.º 4679103 - DPU PA/GABDPC PA/DRDH AP PA.

<sup>30</sup> CCPR/C/BRA/CO/2, para. 6.

<sup>31</sup> Report of the Working Group on the Universal Periodic Review, Brazil, 18 July 2017, see recommendation 234.

**area of a settlement created 22 years ago.**<sup>32</sup> In the agreement (Contract N° 1224/2021), INCRA n area of 2,428 hectares, partially situated within the PA Ressaca and partially situated within other public lands (where the Villa Ressaca, Ouro Verde and Galo are located), to Belo Sun for 20 years. Over 600 families live in this area. In an unprecedented deal, the agreement establishes that INCRA will receive from Belo Sun a farm located more than 1,500 kilometres away, in the municipality of Luciara, in Mato Grosso, in exchange for the permission to mine within INCRA's lands - which are designated Federal Public Lands - in the Volta Grande. **The area is occupied by settlers and villagers who were not consulted in the process.**

In 2013, the **State Public Defender's Office (DPE) filed a suit requesting the suspension of Belo Sun's installation licence due to illegalities in the process of displacing the families and workers of Vila Ressaca, Galo and Ouro Verde.**<sup>33</sup> Belo Sun was found to be intimidating these communities and restricting their access to communal land, and the DPE achieved a preliminary decision determining the suspension of the Installation Licence - LI until the effective compliance with the conditions 29 and 30 established on the occasion of the granting of the preliminary licence. **This decision was overturned in October, 2020, despite ongoing intimidation practised by Belo Sun against community members and the lack of any consultation on the project and agreement on the resettlement plan.**

#### *2.2.2. Incomplete and Slow Demarcation of Indigenous Land Facilitates Mining Operations*

At the moment of writing, the **demarcation of the Paquiçamba Indigenous Land, located near the project, has not yet been finalised and neither has the 'disintruision' (the removal of non-indigenous occupants from indigenous lands).** The establishment of a massive mining project in the same area opens the door to further conflicts over Indigenous land and increases the risk of violence, threats, harassment, and human rights violations of Indigenous peoples<sup>34</sup>. Moreover, granting concessions that overlap with undemarcated indigenous land is contrary to previous recommendations made to the Brazilian government by several HR bodies.

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<sup>32</sup> The PA Ressaca was instituted in 1999 by Administrative Ordinance INCRA/SR-01/PA no 67, September 1999.

<sup>33</sup> Defensoria Pública do Estado do Pará, Ação Civil Pública n. 0001062-06.2017.8.14.0005

<sup>34</sup> The deteriorating situation for indigenous peoples has led to a landmark case at the ICC in the Hague; see <https://apiboficial.org/2021/08/09/unprecedented-apib-denounces-bolsonaro-before-the-icc-in-the-hague-for-indigenous-genocide/?lang=en>

In 2004, the Committee on the Elimination of all forms of Racial Discrimination (hereafter “CERD”) expressed concerns and recommended Brazil to complete the demarcation of indigenous lands by 2007<sup>35</sup>. In 2005, **the Human Rights Committee recommended Brazil to accelerate the demarcation of indigenous lands and provide effective civil and criminal remedies for deliberate trespass on those lands.**<sup>36</sup> More recently, several recommendations were made to Brazil regarding the ongoing demarcation process on the occasion of the third cycle of the UPR<sup>37</sup>. Furthermore, in a letter following the third cycle of the Universal Periodic Review of Brazil, the High Commissioner for Human Rights requested the state to adopt an effective plan of actions for the demarcation and the protection of indigenous lands<sup>38</sup>. Despite all this, demarcations are still incomplete and most processes remain paralyzed.

### *2.2.2 Illegal purchase of agrarian reform plots*

There is strong evidence that at least since 2015, Belo Sun has been illegally acquiring land reform plots within the PA Ressaca. At least 21 lots of families settled in PA Ressaca were bought directly by the company from landholders. These plots are Designated Federal Public Land which cannot be purchased. The law imposes a series of conditions for transactions involving land reform plots, such as the emission of the definitive land title to the landholder by INCRA. For a period of 10 years after the emission of this title, the land cannot be sold. But Belo Sun bought plots without these conditions being met, in a context of misinformation and asymmetry between the company and landholders which significantly weakened the latter. INCRA was aware of these illegal purchases of its land but did nothing to prevent them or enforce its right to the land.

### **2.3. Rivers’ contamination and the right to water**

**The VGP will irreparably impact the local rivers and creeks (two of them will be transformed into reservoirs, one into a tailings dam), and lower the underground water levels.** Lower water levels are likely to negatively impact family agriculture. The VGP tailings dam poses significant concerns for its potential for **water contamination** in the event of a

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<sup>35</sup> CERD/C/64/CO/2, para. 15.

<sup>36</sup> CCPR/C/BRA/CO/2, para. 6.

<sup>37</sup> Report of the Working Group on the Universal Periodic Review, Brazil, 18 July 2017, see recommendations 223, 230, 236, 237, 238, 239.

<sup>38</sup> Letter by the High Commissioner to the Foreign Minister, Universal Periodic Review of Brazil, 23 October 2017, p. 5.

tailings rupture or spill like we saw in Brumadinho in 2018<sup>39</sup>. The mine is expected to **generate 504 million tons of waste during its 18 years of production**. In its 2012 Environmental Impact Assessment, the company said it would use a wet **tailings system** to store mine waste during production, storing 35.43 million cubic metres of mine tailings and water behind a 44-meter high tailings dam along the banks of the Xingu River. These types of tailings designs pose significant environmental risks related to their stability, location, and design, and is cause for significant concern for both the health of the Xingu River and the entire area – the Xingu River being a major tributary of the Amazon River.

A 2020 study analysing Belo Sun’s proposed dam found significant cause for concern: “**The recycling of the cyanide leachate between the tailings reservoir and the ore processing plant has the potential to enrich the tailings water in antimony, arsenic, and mercury**. The dam has not been designed with any seismic safety criterion and with no study of local or regional seismicity. In the most likely failure scenario, the initial runout of tailings would cover 41 kilometres with significant impact on the Arara de Volta Grande do Xingu indigenous land.”<sup>40</sup>

**The collapse of tailings dams is a sad reality of the recent history of Brazil**. After a 2019 country visit to Brazil that included a review of the catastrophic tailings dam failures in Mariana and Brumadinho, the UN Special Rapporteur on Toxics and Human Rights at the time concluded, “There exists an urgent need for the human rights of many vulnerable groups to be respected, protected, and fulfilled from the threats posed by toxic substances and hazardous wastes in Brazil.”<sup>41</sup>

## 2.5. An attack to the right to adequate food

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<sup>39</sup> It is little comfort that the project was designed by VOGBR Recursos Hídricos e Geotecnia Ltda., the company responsible for the construction of the notorious Fundão tailings dam that collapsed in Minas Gerais in 2015 (Aires et al., 2018). The latter dam that held 2.65 million cubic meters of waste is dwarfed by the 35.43 million cubic meters of waste capacity of Volta Grande.

<sup>40</sup> Steven H. Emerman, Ph.D., Malach Consulting, LLC, Evaluation of the Tailings Dam, Cyanide Use and Water Consumption at the Proposed Volta Grande Gold Project, Pará, Northern Brazil, Report written at the request of Amazon Watch, submitted June 1, 2020, available from [https://xinguvivo.org.br/wp-content/uploads/2020/06/Volta\\_Grande\\_Report\\_Emerman.pdf](https://xinguvivo.org.br/wp-content/uploads/2020/06/Volta_Grande_Report_Emerman.pdf) [last accessed 30 March 2022].

<sup>41</sup> United Nations, End-of-visit statement by the United Nations Special Rapporteur on human rights and hazardous substances and wastes, Baskut Tuncak on his visit to Brazil, 2 to 13 December June 2019, 13 December 2019, available from: <https://www.ohchr.org/en/statements/2019/12/end-visit-statement-united-nations-special-rapporteur-human-rights-and-hazardous?LangID=E&NewsID=25434> [last accessed 30 March 2022].

The human right to adequate food is affirmed under Article 11 of the ICESCR to which Brazil is a state party and which it ratified on 24 January 1992. This right was further recognized as a social right under the Brazilian Federal constitution in 2010 (primarily art. 5, 6, 7, 208 & 227), highlighting the country's pledge to respect, protect and fulfil the obligation of combating hunger and food insecurity by developing internal mechanisms which will aid in the (progressive) realisation of this right.<sup>42</sup>

The state of the right to food has not gone unnoticed in previous UPRs. In the 2012 cycle of the UPR, the Special Rapporteur on the right to food recommended that Brazil strengthen the protection of the right to food by establishing an independent national institution for the promotion and protection of human rights, in accordance with the Paris Principles.<sup>43</sup> Further recommendations were made to **develop a strategy to ensure an equitable redistribution of land, which would support the progressive realisation of this right, in the context of national food security**.<sup>44</sup>

A UPR mid-term report prepared by several civil society organisations in 2019 refers to recommendations 217, 218, 222, 235 and 241, **highlighting the fact that indigenous populations are 60% more susceptible to infant mortality linked to malnutrition, amongst other causes. Furthermore, it was reported that a survey showed that in three Guarani-Kaiowa villages 28% of households had minors under the age of 18, who were living under severe food insecurity**.<sup>45</sup>

The realization of a 170,000 hectares investment, adjacent to a river and several indigenous territories is in **clear and open violation of these recommendations, in particular with regards to the human right to food of indigenous communities**. Open pit mining of gold means deforestation, explosives, contamination and privatisation of land. It will have an evident and irreparable impact on local fauna and flora, on the quality of the water, and on the immediate capacity of communities to access nutritious food in an adequate and dignifying way. As mentioned above, all the communities living in the area are deeply dependent on the

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<sup>42</sup> See Constitution of the Federative Republic of Brazil 2010 , “Constitutional text of October 5, 1988, with the alterations introduced by Constitutional Amendments No. 1/1992 through 64/2010 and by Revision Constitutional Amendments No. 1/1994 through 6/1994.”, 3rd edition, accessed at (<https://www.globalhealthrights.org/wp-content/uploads/2013/09/Brazil-constitution-English.pdf>)

<sup>43</sup> Report of the Working Group on the Universal Periodic Review, 22 March 2012, see recommendation 5

<sup>44</sup> Report of the Working Group on the Universal Periodic Review, 22 March 2012, see recommendation 53

<sup>45</sup> Mid-Term Report civil society on the Universal Periodic Review (2017-2019), pg.27.

access to the forest and the river for their livelihood. They are fisherfolks and hunters who need clean rivers and forests to feed themselves. They are small-scale farmers that need non-contaminated land to farm.

## 2.6. An ecocide in the making

The scale of the planned operations, the proximity to the river and communities dependent on this unique and globally significant ecosystem is a pathway towards ecocide. To produce enough raw gold to make a single ring, 20 tons of rock and soil are dislodged and discarded.<sup>46</sup> Much of this waste carries with it mercury and cyanide,<sup>47</sup> which are used to extract the gold from the rock.<sup>48</sup> The resulting erosion clogs streams and rivers and can eventually taint marine ecosystems far downstream of the mine site. Exposing the deep earth to air and water also causes chemical reactions that produce sulfuric acid<sup>49</sup>, which can leak into drainage systems. Air quality is also compromised by gold mining, which releases hundreds of tons of airborne elemental mercury every year.<sup>50</sup> Open pit mining is so detrimental for the environment that **other Latin American countries like Costa Rica and El Salvador have banned it.**<sup>51</sup>

Belo Sun's VGP had two EIA produced by an external contractor (in 2012 and 2016), apart from the feasibility study presented to investors in 2015. The EIAs have been **severely criticised by scientists and experts due to its lack of updated data, superficial analysis and deficient methodologies**. Some of the flaws found by independent experts are the following:

1. Use of **inadequate and obsolete evaluation methods and lack of proper identification of environmental impacts** in the assessments, especially the concurrent effects with Belo Monte and with climate change; neither is the overall complexity of the region acknowledged in the studies.<sup>52</sup>

<sup>46</sup> See <https://www.smithsonianmag.com/science-nature/environmental-disaster-gold-industry-180949762/>.

<sup>47</sup> See <http://www.miningfacts.org/Environment/What-is-the-role-of-cyanide-in-mining/>.

<sup>48</sup> See <https://news.mongabay.com/2022/03/honduras-bans-open-pit-mining-citing-environmental-and-public-health-concerns/>.

<sup>49</sup> See <http://codelcoecuador.com/161-2/>.

<sup>50</sup> See <http://www.epa.gov/oita/toxics/mercury/asgm.html>.

<sup>51</sup> Costa Rica banned open pit mining: <https://www.reuters.com/article/costarica-mining-idAFN0912629920101110>

-El Salvador banned all metallic mining: <https://www.theguardian.com/global-development/2017/mar/30/el-salvador-makes-history-first-nation-to-impose-blanket-ban-on-metal-mining>

<sup>52</sup> The two EIA (from 2012 and 2016) present divergent information on sensitive issues such as subsoil characteristics but that has not resulted in an update to the impacts assessment between them. ANGÉL, Andrés. Observações aos documentos associados ao licenciamento ambiental do projeto de mineração de ouro Volta Grande, Pará, Brasil, at <https://aida-americas.org/en/node/3039>

2. **Impacts on aquatic fauna are seriously underestimated.** Both the installation and operation of the mining will have direct impacts on terrestrial and semi-aquatic turtles. Studies show at least seven species that would be affected, none of them mentioned in the company's study.<sup>53</sup>
3. **The tailings dam was not designed under any seismic safety criteria, violating Brazilian regulations on tailings dams.** The company did not include in its studies a local seismicity analysis, nor did it simulate the response of the structure to a hypothetical seismic acceleration. Seismic activity could lead to tailings dam failures. No risk analysis of the geological faults mapped in the vicinity of the project site was performed.<sup>54</sup>
4. There is a **high risk of toxic water being spilled into the Xingu which is not thoroughly acknowledged in the company's studies.** The project anticipates that the cyanide leachate, a substance used to separate gold, will be recycled, which could create tailings water highly enriched with toxic elements such as arsenic and mercury. This tailings water would be highly toxic to aquatic organisms in the Xingu River in the event of dam failure or leak.<sup>55</sup>
5. Plans for **closing the mines and tailing dams presented in the EIA are superficial and insufficient to guarantee safe closure**<sup>56</sup>.
6. The use of the tailings reservoir for capture of surface runoff is contrary to the mining industry trend of reducing the water stored in tailings reservoirs in order to reduce both the probability and consequences of dam failures.<sup>57</sup>

## 2.7. Increasing risk for human rights and environmental defenders

Throughout the early 2000s, Brazil was the scene of recurrent episodes of rural violence related to conflicts about the tenure and ownership of the rural lands. Those were of strong symbolic nature and **involved human rights and environment defenders** such as *Sister*

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<sup>53</sup> LOPES and PEZZUTI, “Parecer sobre o Estudo de Impacto Ambiental – Componente Indígena (EIA-CI) de Belo Sun junto à comunidade Juruna, Terra Indígena Paquicamba, sobre os recursos aquáticos e a pesca”, at [https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/parecertecnico\\_ufrpa-ufrn\\_eia-ci\\_de\\_belo\\_sun.pdf](https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/parecertecnico_ufrpa-ufrn_eia-ci_de_belo_sun.pdf)

<sup>54</sup> EMERMAN, Steven. Evaluation of the Tailings Dam, Cyanide Use and Water Consumption at the Proposed Volta Grande Gold Project, Pará, Northern Brazil, at [http://xinguvivo.org.br/wp-content/uploads/2020/06/Volta\\_Grande\\_Report\\_Emerman.pdf](http://xinguvivo.org.br/wp-content/uploads/2020/06/Volta_Grande_Report_Emerman.pdf)

<sup>55</sup> Ibid. p.17

<sup>56</sup> Ibid. p. 30

<sup>57</sup> Ibid. p. 34

*Dorothy Mae Stang*. Leader of 500 families of rural workers, she was killed in 2005 in a small community in the Brazilian Amazon region<sup>58</sup>.

In 2007, the Human Right Committee<sup>59</sup> and the Special Representative of the Secretary-General<sup>60</sup> on the situation of human rights defenders were expressing **concerns about the numerous assassinations of human rights defenders, attempts on their lives, and threats**. Back at the time, NGOs<sup>61</sup> were also shedding light on the issue. Front Line, for instance, noted that defenders were characterised as "**enemies of the State**" and that there was a great amount of arbitrary use of judicial procedures against them, so it called upon the UN to urge the Brazilian authorities to prioritise their protection<sup>62</sup>. To this, Brazil effectively **noted a need to improve its system of protection of Human Rights defenders**. This observation was, *inter alia*, corroborated by the United Kingdom, Canada, and Belgium who were welcoming the establishment of a national program and plan for the protection of the defenders in Brazil and recommending the Brazilian Government intensify its effort for the security of the latter through cooperation with all stakeholders.<sup>63</sup>

**The VGP will inevitably increase the pressure on the land and the risk for the lives of those who will be speaking up in defence of their territories and rights**, in open contrast with national and international obligations assumed by Brazil, previous recommendations, and of the need to make sure that the trend of violence is reversed.

## CONCLUSIONS

For all the above mentioned reasons, we respectfully request that the OHCHR recommend that the Brazilian Federal Government, the National States and the public agencies (depending on their authority):

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<sup>58</sup> UN Human Rights Council, *National Report Submitted In Accordance With Paragraph 5(a) Of The Annex To Human Rights Council Resolution 5/1*: Brazil, 7 March 2008, para. 36, 37.

<sup>59</sup> UN Human Rights Council, *Compilation Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15(b) Of The Annex To Human Rights Council Resolution 5/1*: Brazil, 31 March 2008, para. 10, and also see CCPR/C/BRA/CO/2, para. 13.

<sup>60</sup> *Ibid.*, and also see A/HRC/4/37/Add.2., para. 15.

<sup>61</sup> Such as Front Line, Human Rights Watch, and the Pará Society for the Defence of Human Rights.

<sup>62</sup> UN Human Rights Council, *Summary Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15 (c) Of The Annex To Human Rights Council Resolution 5/1* : Brazil, 6 March 2008, para. 34.

<sup>63</sup> Report of the Working Group on the Universal Periodic Review, Brazil, 22 May 2008, para. 15, 54, 57, 62, and recommendations 3, 4.

1. **Cancel the Volta Grande project**, which is in direct opposition to Brazil's national and international obligations, and poses a clear and imminent threat to the fundamental rights of thousands of people (indigenous and non-indigenous alike), the ecological balance of the Amazon region and the Xingu River basin.
2. Elaborate an action **plan to mobilise and strengthen State and Federal Public Defenders to rightfully and safely address the situation of companies such as Belo Sun** acting as a "state" in areas of its influence. This shall include addressing the denunciations about intimidation, restriction of access to certain public areas or to the river itself, harassment, armed guards circulating and approaching habitants of the region, illegal control of circulation of people, and illegal maintenance of operations.
3. Comply with recommendation 136.51 (3rd cycle) to **develop a national action plan on business and human rights** in order to prevent development projects from violating the rights of traditional populations, indigenous peoples and workers and causing damage to the environment, and in order to ensure an effective remedy with meaningful consultations with the affected communities.
4. Ensure the **respect of national and international law on the ground**, including through the implementation of legal support plans, and the safety of its habitants, avoiding the paramilitarization of the area.
5. Recognize the **illegality of the sale contracts concerning agrarian reform lots acquired by Belo Sun Mineração Ltda.**
6. Comply with previous UPR recommendations aimed at **avoiding setbacks in the current state of Indigenous people and traditional communities' rights**, and actively engage in the guarantee of their defence and promotion.
7. Comply with the **obligations derived from the ILO Convention 169** and annul all projects that don't comply with the consultation rights of Indigenous peoples and traditional communities
8. **Incorporate the best standards for an Environmental and Social Impact Assessment into its national policy.**
9. Put an **end to large-scale mining projects and policy actions** that amplify the violence, criminalization and discrimination against human rights and environmental defenders, including by public agents. Ensure that those responsible are punished and that the damage caused is compensated.
10. Issue an action plan to **address processes and decisions by environmental state agencies** which contradict scientific evidence and best practices. Strengthen the

capacities of licensing bodies so they can operate under strict technical criteria, resisting external economic pressure. Adopt a national action plan that will strengthen environmental agencies' capacities to integrate social and biological diversity considerations, along with human rights ex-ante and ex-post assessments.