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Re: Belo Sun Mining Corp. failure to comply with disclosure obligations

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Dear Mesdames/Sirs:

I. Introduction

We represent an international coalition of civil society organizations and networks – composed of Amazon Watch, Earthworks, Instituto Socioambiental (ISA), Inter-American Association for Environmental Defense (AIDA), International Rivers, MiningWatch Canada, Movimento Xingu Vivo para Sempre, and Rede Xingu+. We support communities protecting their land and rights threatened by Belo Sun Mining Corp in its attempts to install a massive open-pit mining operation along an ecologically and culturally sensitive stretch of the Xingu

River in the Brazilian Amazon. The objective of this letter is to call attention to the repeated dissemination of misleading information by Belo Sun Mining Corp, including by its CEO, downplaying the socio-environmental, legal and financial risks of the Volta Grande project along the Xingu River and the company's non-compliance with relevant legislation, in what we consider a deliberate attempt to attract uninformed investors, in clear violation of OSC regulations. The information presented below is based on independent monitoring of the environmental licensing process for Belo Sun's Volta Grande Project, including documentation from various state and federal government agencies in Brazil, independent technical studies and testimony from threatened local communities, with whom the organizations listed above work in close support.

Belo Sun Mining Corp. ("Belo Sun" or the "Company") is a Canadian-based mining company with a portfolio of gold-focused projects in Brazil, currently prioritizing development of the massive *Volta Grande Gold Project*. Belo Sun trades on the Toronto Stock Exchange under the symbol "BSX".¹

Belo Sun seeks to become the largest open-pit gold mining company in Brazil, by operating in the *Volta Grande* (Big Bend) region of the Xingu River, state of Pará, in the Brazilian Amazon. This is one of the most significant biodiversity sites in the world already confronting the impacts of operations of the infamous Belo Monte Hydroelectric Dam Complex. In addition to the Juruna (Yudjá), Arara and Xikrin, the region is home to other Indigenous Peoples and several riverine communities.

Local communities of the Xingu, independent experts and Brazilian authorities responsible for safeguarding human rights and environmental legislation have demonstrated that Belo Sun has not fulfilled a number of its legal obligations within the environmental licensing process. In particular, these pertain to insufficient analysis of social and environmental risks and disregard for the right to Free, Prior and Informed Consultation and Consent (FPIC) of Indigenous Peoples and other traditional populations. Such failures contrast with the company's official statements on the status of the project and its social and environmental responsibilities.

Such failures, associated with violations of human and environmental rights of local communities, cannot be simply remedied, given the fundamental flaws and overwhelming risks intrinsic to the project. For example, expert analysis conducted by several independent scientists, leading to public lawsuits filed against the company by Public Prosecutors and Defenders, has shown that the environmental impact assessment commissioned by Belo Sun is seriously flawed. These lawsuits challenge the legality and legitimacy of the entire licensing process, and have already resulted in initial legal decisions that have paralyzed the project. Should judicial decisions against the project continue to be successful, Belo Sun will not have a legal right to conduct mining activities in the Xingu region.

II. *Materiality*

These facts have been intentionally ignored in public declarations made by the CEO, as seen below, and downplayed in recent official documents such as the 2020 Annual Information

¹ <https://www.belosun.com/>

Form² (AIF), the most recent Management Discussions and Analysis document³ and the latest Corporate Update⁴. Thus there is reasonable evidence - which merits further investigation - that Belo Sun breached the Securities Act disclosure requirements under section 75(1), which states that companies should disclose material changes “**forthwith**” (without delay). We emphasize that social and environmental risks and non-compliance with relevant legislation should be considered material changes if they have a direct impact on share value. In this case the facts hereby reported invariably result in operational disruptions. As we will detail further in this letter, Belo Sun has repeatedly failed to fully disclose the status of the project and its risks, while disseminating misleading information, through: 1) declarations by its CEO at public events and in media outlets with ample coverage and reach; and 2) misrepresentation of critical caveats to the project in official documents, especially regarding consultation of Indigenous communities and land tenure conflict at project sites.

i. Public declarations by Belo Sun’s CEO

On March 8, 2021 Belo Sun’s president and CEO, Peter Tagliamonte, spoke at the Prospectors & Developers Association of Canada (PDAC) convention, the world's largest mining event, claiming that its mining project was "fully authorized" and that construction was expected to begin at the end of 2021.⁵ In the same interview, Tagliamonte attributed the delay in the environmental licensing process exclusively to the COVID-19 pandemic, failing to mention that there are serious threats to Belo Sun’s operations due to the ongoing suspension and potential cancellation of its environmental licences, as detailed later in this document.⁶ This statement follows other declarations by Tagliamonte reiterating his assertions of the project’s compliance with regulatory requirements and the timeline expected for construction to begin.

In an interview dated March 28th with the Canadian Broadcasting Corporation (CBC News)⁷, Tagliamonte repeated the assertion that the Volta Grande Project has been fully permitted, adding that “FUNAI, the Brazilian government body responsible for handling issues related to Indigenous Peoples and their land rights, has approved the company's consultation plans for the Volta Grande gold project” and that “the company has a good relationship with local Indigenous communities”. These statements, disseminated through far-reaching media coverage - and in the case of PDAC, targeted specifically at investors - contradict the real status of the project, as evidenced by the vast documentation and numerous lawsuits, which will be detailed in the next sections.

ii. Misrepresentation of critical caveats to the project in official documents

Recent official documents by Belo Sun such as the 2020 Annual Information Form (AIF)

² <https://sec.report/otc/financial-report/279793>

³ <https://www.belosun.com/resources/financials/BSX-MDA-March-31-2021.pdf>

⁴ <https://www.belosun.com/news/belo-sun-provides-a-corporate-update-announces-agm-voting-results>

⁵ <https://www.youtube.com/watch?v=0PQIQhOOZng>

⁶ Ibid.

⁷ <https://www.cbc.ca/news/world/belo-sun-brazil-gold-bolsonaro-amazon-indigenous-environment-rainforest-business-1.5963002>

and the most recent Management Discussions and Analysis (MD&A) include boilerplate language about the standard risks related to obtaining the “corresponding mining concession”, acknowledging that there is no assurance that the company will obtain such licences, and that even if it does, that the licences will not “be heavily contested and thus costly and time consuming to the Corporation”. While this seems like a more realistic outlook regarding the licensing process, the company's documents still fail to disclose the concrete nature of these risks, especially in light of Brazilian legislation and the international commitments adopted by Brazil regarding the rights of affected communities.

There are in fact seven different legal actions against Belo Sun, which demand the suspension or full cancellation of the licensing process. And although a significant share of court decisions issued so far have been unfavorable to the company's plans, Belo Sun often refers to the outcomes of these legal actions as formalities that can be overcome in its disclosures. One important example is how the company has communicated its obligations for the consultation of Indigenous Peoples in the Volta Grande of the Xingu River region. As shown in section III below, Belo Sun has historically attempted to deny the impacts of the project on these communities, and therefore has disregarded the consultation process mandated by the Brazilian Constitution and the ILO Convention 169⁸. This gap in the licensing process has been the subject of two legal actions, one of which resulted in a preliminary decision that suspended the Installation Licence until “free and informed Consultation” of Indigenous Peoples is carried out.⁹

In its most recent MD&A, Belo Sun states that the “Indigenous Study has now been approved by FUNAI and the Company is proceeding with the final required meetings with the Indigenous Communities”. In November 2020, FUNAI issued a technical note (n. 270/2020) stating that the Indigenous Component Studies were adequate and ready to be presented to the Indigenous Peoples. However, in contradiction to the company's statements, the court decision that suspended the Installation Licence did not refer solely to the lack of the Indigenous Component Study, but to the lack of a consultation process as a whole (see section III, sub-section iv), which has not yet been carried out. FUNAI is not the legal representative of Indigenous Peoples, and while it has a mandate to safeguard their rights, as a federal government agency, it is not in a position to give final approval on their behalf. As it has not carried out a free and informed consultation process, Belo Sun does not possess the material elements to claim that the suspension of the licence can be lifted. However, this is exactly what the company reported on its most recent Corporate Update, where it stated that it “continues to advance financial discussions with various groups in preparation for the commencement of construction following the lifting of the suspension of the construction license (LI)”¹⁰.

The consultation of Indigenous Peoples does not consist merely of a formal process of presentations and meetings, at the end of which “the completed process will then be filed”¹¹ with relevant authorities. This is a gross misrepresentation of the consultation process, which indicates not only the company's disregard for internationally recognized Indigenous rights but also its

⁸ It also contradicts the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the American Declaration of Indigenous Peoples, both instruments that were supported by the Brazilian state.

⁹ <http://www.mpf.mp.br/regiao1/sala-de-imprensa/noticias-r1/trf1-ordena-consulta-previa-a-indigenas-afetados-pela-mineradora-belo-sun-e-mantem-suspensao-do-licenciamento>

¹⁰ <https://www.belosun.com/news/belo-sun-provides-a-corporate-update-announces-agm-voting-results>

¹¹ <https://www.belosun.com/resources/financials/BSX-MDA-March-31-2021.pdf>. P.6

unwillingness to disclose the concrete risks of the process to investors and regulatory authorities. According to Brazilian legislation (which includes provisions from ILO Convention 169 to which Brazil is a signatory) not only is the company required to consult Indigenous communities on their own terms (following Indigenous communities' protocols), a lengthy and time-consuming process (especially in the context of a pandemic), but it must also accommodate their demands. Negotiations around consent will invariably result in major material changes to the project. This fact is not being disclosed by the company. And while there is no consensus around the possibility of a veto power by the Indigenous Peoples, the company's failure to comply with community demands and requests will undoubtedly result in further legal action against the company, potentially delaying the project even further.

This is just one example of how the company, while acknowledging the generic risks associated with the licensing process, fails to disclose the concrete details of the legal actions and suspensions in play regarding its project, relying instead on investors' lack of knowledge concerning licensing legislation in Brazil. Contrary to statements in the Annual Information Form, greater scrutiny of the project by “the local communities, non-governmental organizations, the Federal Public Prosecutor (MPF) Office, (...), and other Brazilian and foreign institutions” is not just the result of greater attention being focused on the Volta Grande region, but rather, of the project's flawed licensing process, whose irregularities will continue to be challenged until they are effectively addressed. In the following sections we will explore these issues in depth, emphasizing at least four main issues that have a direct impact on the risks associated with investments in Belo Sun: i) The history of judicial proceedings; ii) Community relations and conflict around the project; iii) Flaws and gaps in the environmental impact assessment; iv) Violation of the Indigenous Peoples' right to prior consultation. This information has been concealed or mishandled by the company to create a sense of regularity, which we claim goes against the company's obligation to be forthcoming regarding situations that represent substantial threats to the mining project and hence, to its share value.

III. Background

The project is located in the municipality of Senador José Porfírio (PA), less than 50 km from the main dam of Belo Monte and less than 9.5 km from the Paquiçamba Indigenous territory. The proposed gold mine is expected to operate for 12 years and use cyanide to extract gold from 3.5 million tons of ore per year, with an average grade of 1.47 grams of gold per ton of ore¹². However, the last feasibility study presented by the company dates back to 2015, which makes it hard for relevant stakeholders to follow updates and developments of the technical aspects of the project.

i. A history of judicial proceedings

From the outset, Belo Sun has faced numerous lawsuits regarding the Volta Grande Project filed by the Federal Public Prosecutor's Office, the State Public Prosecutor's Office, the State Public Defender's Office, and the Union Public Defender's Office. All of these lawsuits refer to the multiple flaws in its licensing process and in the project's technical studies. Among other things,

¹² Brandt Meio Ambiente, 2016a. Projeto Volta Grande—Senador José Porfírio -PA—Licença de Instalação Processo 5340/2015.

the lawsuits seek the cancellation of the company's licences and the suspension of the project's licensing process.

The first court ruling against the project dates back to 2014, when the preliminary license (LP) obtained by Belo Sun was suspended following a Public Civil Action filed by the Federal Public Prosecutor's Office. The Action demanded that Belo Sun submit a Indigenous Component Study (ECI in Portuguese) in order to identify the impacts on Indigenous communities from the installation of the project. Belo Sun's 2012 Environmental Impact Study (EIA) and Environmental Impact Report did not include the ECI.

As mentioned above, the Installation Licence obtained by the company in February 2017 was suspended by a court order in April the same year, because the ECI was considered unsuitable by FUNAI. The suspension was confirmed by a decision from the Federal Regional Court (TRF-1) in December of that year, ordering the company to carry out consultation while respecting the protocols of the affected Indigenous Peoples. The decision remains valid today.

Another set of civil actions addresses land use concerns and other alleged irregularities. In the first of these actions the State Public Defender claims that the company has illegally acquired land in public settlement areas, such as Vila da Ressaca, Galo and Ouro Verde. As a result of this action, Belo Sun was prohibited from carrying out any operations and had to remove signs prohibiting hunting, fishing and mining in these areas. The second lawsuit questions the entire licensing process, the impact studies and the size of the direct impact area identified by the company. The suit claims that the direct impact area is much larger than what is recorded by Belo Sun's rural environmental registration. It also claims that one of the conditions of the Preliminary License, the resettlement of affected families in Vila da Ressaca, had not been fulfilled.¹³

Finally, in November 2019, the Court of Justice of the State of Pará upheld the suspension of the project's Installation Licence (IL), until the effective fulfillment of conditionalities requiring that the families in the area of indirect influence of the Volta Grande Gold Project be properly resettled and that the mining company submit periodic reports on the status of the resettlement process of the affected traditional populations. This decision was partially overturned by the State Court of Appeal of Para State, but in a separate ruling the State Court of Belem held up compliance of the relocation plan as a condition to maintain the IL. According to the Para State Public Defender (DPE), the relocation plan is yet to be carried out in a proper manner.

Despite the intense legal battles Belo Sun has faced due to its continuous disregard for environmental and human rights law, the company does not acknowledge these legal actions as evidence of significant deficiencies of the Volta Grande Project licensing process so far. Instead, it insists that these are merely normal risks associated with the “speculative and unpredictable nature of litigation”.¹⁴

What Belo Sun fails to disclose is that the lawsuits brought against the company are not routine obstacles to be expected in such projects, but rather, are the result of a systematic pattern of irregularities and violations related to the company's behaviour during the licensing process. It rarely mentions in its corporate disclosures the content of the lawsuits or the allegations made by national authorities and local communities. Instead, it focuses on the procedural aspects of the legal actions, prompting the idea that resuming construction is merely a matter of time and negotiations with authorities, as shown by the example below:

¹³ <https://xinguvivo.org.br/2020/04/27/licenca-de-belo-sun-segue-suspensa-por-tres-decisoes-da-justica/>

¹⁴ <https://sec.report/otc/financial-report/279793> p.18

The Volta Grande LI outlined a timeframe to complete construction of the PVG within a 3 year period. As a result of the delays arising from the court ruling requiring Belo Sun to undertake a new Indigenous Study, the Company engaged SEMAS¹⁵ in discussions regarding this issue. SEMAS has confirmed with the company that the time schedule of the LI was suspended with the judicial court ruling received in April 2017 and that once the LI is reinstated the time for completion of the LI will commence.¹⁶

As mentioned above, courts have not only required Belo Sun to revise the Indigenous Component Study and address major gaps, but, more importantly, to carry out a consultation process with the communities, which could result in significant changes in the project. **To assert that the resumption of the mining project’s installation is an imminent step after this “delay” is a misrepresentation of the complex situation on the ground, and of the consultation process and potential outcomes.**

Please see Annex I for a brief description of the seven lawsuits mentioned above and their current status. It is important to stress that if the lawsuits succeed, Belo Sun will lose all licences and will have to restart the licensing process with the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA in Portuguese), the relevant federal agency.

ii. Community relations and conflicts around the project

According to Belo Sun’s most recent AIF, “over the years, the Company has established a climate of transparency and confidence with communities around the Volta Grande Gold Project by being open, approachable and by regularly providing the means for dialogue with anyone who may be impacted by its activities”¹⁷. However, this assertion is not only challenged by four of the seven lawsuits outlining the lack of consultation and compensation measures for affected communities, but also by the mounting records of harassment and misconduct of company officials on the ground, as thoroughly documented by the Public Defender's Office of the State of Pará.¹⁸

Communities have denounced the intimidation by local company officials working in the region, the spread of false information, attempts to co-opt local leaders, and the overall damage to the social fabric of traditional riverine communities and Indigenous Peoples from the Volta Grande of the Xingu¹⁹. There are also numerous accounts of intimidation and harassment at meetings and debates convened to discuss the project and its impacts, such as academic debates and public hearings, involving politicians and other local elites.²⁰ The targets of this harassment are usually researchers who are critical of the project, and families and leaders who oppose it, especially Indigenous leaders. According to local families, the conflict has escalated recently, with allegations of vandalism to properties owned by families who oppose the project, as well as verbal and

¹⁵ SEMAS stands for Secretariat of the Environment in the State of Pará.

¹⁶ <https://www.belosun.com/resources/financials/BSX-MDA-March-31-2021.pdf> p. 31

¹⁷ <https://sec.report/otc/financial-report/279793> p.11

¹⁸ Denounce filed for UN Special Procedures in 2018: <https://ox.socioambiental.org/sites/default/files/ficha-tecnica/node/218/edit/2018-06/Publico%20-%20Amea%C3%A7a%20a%20Defensores%20e%20Defensoras%20-%20Xingu%20Vivo%20e%20Cooperativa%20dos%20Garimpeiros%20%281%29.pdf>

¹⁹ Ibid.

²⁰ <http://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/pesquisadores-que-estudam-impactos-da-mineradora-belo-sun-denunciam-intimidacao>

physical violence and even death threats.²¹

While these accounts of harassment and intimidation are not directed at Belo Sun's administration, they demonstrate a much more complex and contentious situation as a result of the project than what has been disclosed by the company. Clearly, the dissemination of misleading information by Belo Sun contributes to such conflicts. Opposition to the project is strong in the region of the Volta Grande, as demonstrated by numerous statements by leaders of Indigenous Peoples and other traditional communities concerning threats to their livelihoods and rights. Increasingly, their voices are gaining national and international attention.²² The escalation of conflicts in the Volta Grande region, already severely impacted by the Belo Monte dam, could lead to further legal actions, constituting additional obstacles and delays in the licensing process.

iii. Flaws and gaps in the environmental impact assessment

The environmental impact assessment (EIA) is a crucial tool for an accurate assessment of the project's capacity and likely costs related to mitigation, reparation and accidents. The feasibility of the project is demonstrated by the EIA, which should be built on solid methodology and analysis that guarantee the viability of the project itself. Two EIAs were produced by an external consultant for Belo Sun's Volta Grande project (in 2012 and 2016), apart from the feasibility study presented to investors in 2015.

Belo Sun claims that it "is committed to advancing its Volta Grande Gold Project in a responsible and sustainable manner"²³. Nevertheless, Belo Sun's EIA has been severely criticized 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, highly susceptible to pressure from the company - the contractor of the studies. There is no 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. The two EIAs (2012 and 2016) present divergent information on sensitive issues such as subsoil characteristics but there has not been an update to the impacts assessment to reconcile them²⁴.
2. Impacts on aquatic fauna are seriously underestimated. Both the installation and operation of the mine 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 EIA²⁵.
3. The tailings dam was not designed under any seismic safety criteria, violating Brazilian regulations

²¹ SANTOS, Selma et al. Business status, institutional violence and participatory rituals of environmental licensing of the volta Grande Xingu project, Brazilian Journal of Development, Curitiba, v.7, n.1, p. 10625-10646 Jan. 2021. Available at: <https://bit.ly/3rrROuY>

²² <https://xinguvivo.org.br/2019/11/21/comunidades-do-medio-xingu-se-mobilizam-contraincidentes-em-seus-territorios/>

²³ <https://www.belosun.com/responsibility/overview/>

²⁴ ANGÉL, Andrés. Observações aos documentos associados ao licenciamento ambiental do projeto de mineração de ouro Volta Grande, Pará, Brasil, at <https://aida-america.org/en/node/3039>

²⁵ LOPES and PEZZUTI, "Parecer sobre o Estudo de Impacto Ambiental – Componente Indígena (EIA-CI) de Belo Sun junto à comunidade Juruna, Terra Indígena Paquiza, 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

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 performed²⁶.

4. The official failure simulation indicates that the tailings from a potential rupture would take 97 minutes to reach the Xingu river, and then stop from flowing down further, without presenting plausible justification for this data. According to the modeling presented by independent experts, in a very conservative scenario, a flood would cover an initial distance of up to 41 kilometers along the river in just two hours, reaching the Arara Indigenous Land of Volta Grande²⁷.
5. 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 leak²⁸.
6. Plans for closing the mines and tailing dams presented in the EIA are superficial and insufficient to guarantee safe closure²⁹.
7. 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 failures³⁰.

Nowhere in its recent communications to investors and regulators has Belo Sun presented the concerns raised in these independent experts' studies. The company has, however, reconsidered its plans for the mine's tailing dams, as noted in a message by CEO Peter Tagliamonte to MiningWatch on July 6th, 2020. In the message, the CEO stated that Belo Sun would move away from wet tailings and that it "planned to modify our tailing disposal to a filtered (dry stack) system that will not require a retaining dam". In information provided to investors in May 2019, Belo Sun wrote that, during the first three months of 2019, "the Company engaged SRK to undertake a scoping study to review dry stack [filtered] tailings storage"³¹. As studies show, it is not correct that filtered tailings do not require a dam³². But more importantly, this significant change of plans has not been reported to Brazilian authorities. In a presentation to FUNAI in October 2019³³, the company described the same plan for storage of wet tailings that was described in the 2016 EIA, and both Indigenous Component Studies also describe the same plan for storage of wet tailings that was described in the 2016 EIA³⁴. The company has been presenting contradictory information to investor audiences and Brazilian stakeholders regarding a fundamental safety issue in the Volta Grande project, which calls for greater investigation and clarification.

²⁶ 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

²⁷ Ibid. p. 35

²⁸ Ibid. p.17

²⁹ Ibid. p. 30

³⁰ Ibid. p. 34

³¹ <https://www.belosun.com/resources/presentations/Belo-Sun-Corporate-Presentation-July-2019.pdf>

³² EMERMAN, Steven. Op. cit. p.33

³³ Ibid.

³⁴ JGP Consultoria e Participações, 2020. Volta Grande Project—Study of the Indigenous Component –Paquiçamba Indigenous Land: Processo FUNAI N° 08620.19136/2012-40, 816 p

iv. *Violation of the Indigenous Peoples' right to prior consultation*

Belo Sun's environmental impact assessment has not yet been the subject of consultation with Indigenous Peoples, nor with other traditional communities of the Volta Grande region of the Xingu, despite the fact that the mining project is in an advanced stage of preparation. The company has established its administrative headquarters, built structures in potential project sites and even entered into individual contracts with local residents, all while dismissing or evading the need to perform consultations - a gross violation of ILO Convention 169. It wasn't until the Regional Federal Court (TRF1 in Portuguese) required the company to carry out the studies on the Indigenous component and a process of Free, Prior and Informed consultation that Belo Sun started moving in this direction.³⁵

Although Belo Sun was ordered to carry out a consultation by the courts, its work in this area is highly flawed. First, studies conducted and presented between 2019 and 2020 by a consultant hired by the company were considered insufficient and inadequate by Indigenous Peoples (whose requests for additional information were not considered). Independent researchers³⁶ agreed, and filed letters and official documents throughout 2020 with the relevant authorities, questioning the gaps in the Indigenous Component Study. That same year, FUNAI accepted these concerns and ordered Belo Sun to update the studies and to include a more comprehensive analysis of the impacts, particularly regarding the overlapping impacts with other large infrastructure projects, such as the BR-230 highway and the Belo Monte hydroelectric dam.

At the beginning of 2020, an updated Indigenous Study was submitted to FUNAI - five years after the first feasibility study was presented. It has been approved by FUNAI for presentation to Indigenous Peoples, which means that the consultation process can begin. While the company has stated in its MD&A that it will only start a process of consultation "once the Indigenous communities have been vaccinated for COVID-19 virus", local news outlets revealed that the company had been pressuring FUNAI to carry out in-person consultations, after Indigenous communities stated they would not accept virtual meetings as an alternative³⁷. In a technical note published on February 10th 2021, FUNAI detailed "health protocols" so that the company could hold such meetings during one of the worst moments of the COVID-19 pandemic in Brazil. Due to national and international pressure, Belo Sun was forced to drop these plans³⁸.

We consider these developments, not disclosed in detail by the company in its most recent updates, to be representative of Belo Sun's disregard for the consultation process, which is absolutely central to the project's continuation. Should Belo Sun continue to treat consultation only as a formality as it works towards approval, it will likely continue to face strong opposition and unfavourable court rulings, delaying the project, or even precluding it entirely.

³⁵ TRF 1, Apelação Cível n.. 0002505-70.2013.4.01.3903/PA. At: https://ox.socioambiental.org/sites/default/files/ficha-tecnica//node/218/edit/2018-09/Belo%20Sun%20-%20Ementa_0.pdf

³⁶ <https://www.socioambiental.org/pt-br/noticias-socioambientais/projeto-de-mineracao-belo-sun-e-inviavel-aponta-estudo-tecnico>

³⁷ <https://noticias.uol.com.br/colunas/rubens-valente/2021/03/11/mineradora-canadense-amazonia-indigenas.htm>

³⁸ <https://noticias.uol.com.br/colunas/rubens-valente/2021/03/15/funai-mineradora-indigenas-coronavirus.htm>

IV. *The impact of human rights violations and social conflict on share prices*

Companies directly implicated in human rights and land rights abuses rarely disclose the myriad legal, political, reputational, and operational risks to investors inherent in such abuses, all of which can significantly impact the finances of issuers. But according to an analysis by the Justice and Corporate Accountability Project (JCAP), failure to disclose such information can temper with the feasibility of a project and/or company, with impacts such as “drops in share price; divestment by institutional investors; and shareholder class action lawsuits against the company”³⁹.

JCAP’s research found that human rights violations and failures to consult Indigenous communities, when publicized, usually affect share prices by a drop ranging from 11 to 22 percent. They also found that “investors regard conflict with local communities as a risk to their investment, and one that legally should be disclosed”⁴⁰. Disregard for the land rights and human rights of Indigenous Peoples and traditional communities regularly leads to project delays and even cancelation. This disregard also helps accelerate environmental degradation, climate change, and social conflict and violence.

In the Volta Grande region itself, recognition of serious human rights violations has led to divestment. In 2020 the Norway’s Government Pension Fund Global (GPF) decided to divest from Eletrobras, Latin America’s largest utilities company and responsible for the Belo Monte dam, because of “unacceptable risk that the company contributes to serious or systematic human rights violations”⁴¹.

This shows investors are increasingly not willing to be associated with companies that are being prosecuted for violating human rights and that are involved in conflict with communities. Investors should have “all the information needed to evaluate the risks associated with extractive industry shares,”⁴² and the lack of disclosure directly affects their interests and resources.

Environmental and human rights violations tied to Canadian mining projects have reached such an alarming height that, in January of 2021, the Ontario Capital Markets Modernization Taskforce (the Taskforce) released a report that not only recognizes the increased investor interest in Environmental, Social and Governance (ESG) factors, but also that “the inclusion of ESG criteria positively correlates to investment performance.”⁴³ According to its findings, “greater ESG disclosure helps investors understand not only potential risks for the issuer but also the opportunities.”

In their submission to the “Taskforce” on the “Capital Markets Modernization Taskforce: Consultation Report”, Canadian Lawyers for International Human Rights concluded that:

³⁹ <http://www.minesandcommunities.org/article.php?a=14409%3E>

⁴⁰ <https://theconversation.com/investors-are-increasingly-shunning-mining-companies-that-violate-human-rights-154702>

⁴¹ <https://www.norges-bank.no/en/news-events/news-publications/News-items/2020/2020-05-13-spu/>

⁴²

<https://poseidon01.ssrn.com/delivery.php?ID=03610411812211908807606801711406909111803403208003608607200111509012607411810102609503903112000111601502210501607911012500203006105001701006009700709706412711711400708805307911411909010300001212611800106800112611500409910412011608411910109301200009009&EXT=pdf&INDEX=TRUE>

⁴³ <https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf>

Shareholders are seeking increased transparency and disclosure on risks related to human rights impacts. Companies have been either unwilling to disclose or do not adequately understand how to effectively disclose the risks that arise from the activities of their business or business relationships. Mandatory disclosure of human rights impacts, and due diligence should therefore be a critical consideration when shaping the ESG reporting regime in Ontario.⁴⁴

Increasingly, banks, asset managers and other financial firms are also publicly recognizing the crucial role of respect for environmental and human rights. The World Bank has had a strict FPIC policy in place since 2015.⁴⁵ A 2017 Directive from the European Commission recommends disclosures on human rights due diligence and efforts to prevent human rights abuses, including the rights of Indigenous Peoples.⁴⁶ The dire situation of communities in the Volta Grande region requires a strict due diligence from Belo Sun, and this should be disclosed to its investors.

V. Conclusions

In summation, Belo Sun has (i) publicly disseminated misleading information through its CEO and official documents and (ii) failed to disclose material information regarding the legal status of the licensing process, the social conflict created on the project site, the environmental risks of the project and the associated violations of Indigenous Peoples' rights.

From the beginning, Belo Sun has failed to fully communicate to current and potential investors about the complex nature of its project, with its enormous social and environmental risks, tensions and conflicts involving Indigenous Peoples and other local communities, including violations of their rights, and a series of legal problems surrounding the project. All of these have direct implications for delays, and raise fundamental questions about the project's viability. Indeed, independent technical studies, declarations by community leaders and a series of lawsuits have all highlighted how the company has consistently downplayed social and environmental risks of the project, as well as the right of Indigenous Peoples and other traditional communities to a process of free, prior and informed consultation and consent. Moreover, the company is failing to disclose the extent of community and Indigenous opposition to its Volta Grande project.

This leads to major exposure to reputational and legal risks for investors, at a moment when heightened attention is focused on the Amazon rainforest and its capacity to provide environmental services and mitigate climate change. It also has a direct impact on share values, as repeated legal actions have stopped and delayed the company's operating plans several times. In this context, the company must fully disclose the risks associated with its project, including those related to local conflict and other potential impediments to the project.

The company's mishandling of information related to the issues stated above indicates, in our view, a clear breach of the Ontario Securities Act, which requires companies to avoid misrepresentations and to disclose the nature and substance of material changes.

⁴⁴ <http://claihr.ca/wp-content/uploads/2020/09/2020-09-07-CLAIHR-Submission-to-Capital-Markets-Modernization-Taskforce.pdf>

⁴⁵ The World Bank, "World Bank Board Committee Authorizes Release of Revised Draft Environmental and Social Framework," 4 August 2015, <https://www.worldbank.org/en/news/press-release/2015/08/04/world-bank-board-committee-authorizes-release-of-revised-draft-environmental-and-social-framework>.

⁴⁶ The Directive is currently under review and these types of standards are expected to become binding. See European Commission, *Guidelines on non-financial reporting (methodology for reporting non-financial information)*, C/2017/4234, 2017, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705\(01\)#ntr25-C_2017215EN.01000101-E0025](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01)#ntr25-C_2017215EN.01000101-E0025).

For this reason, we request that the Ontario Securities Commission formally investigate Belo Sun's compliance with disclosure requirements under Ontario's securities legislation and policies, and take appropriate disciplinary action, as warranted.

If you have any questions, please contact Viviana Herrera at viviana@miningwatch.ca and Marcella Torres at mribeiro@aida-americas.org.

Yours sincerely,

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VI. Annex I. Summary of lawsuits against Belo Sun and the Volta Grande Project

1. [ACP nº 0002505-70.2013.4.01.3903](#). The Federal Public Prosecutor's Office (MPF in Portuguese) claimed that the Indigenous Component Studies (ECI in Portuguese) were incomplete; absence of FPIC according to ILO Convention 169; absence of response from FUNAI about the project; and requested suspension of the environmental licensing. There has been a lower court ruling in favor of the MPF, confirmed in a civil appeal trial at the Regional Federal Court (TRF1 in Portuguese) with an order for compliance of article 6 of ILO Convention 169. The order for the suspension of the environmental licensing still stands.
2. [ACP nº 0001813-37.2014.4.01.3903](#). The Federal Public Prosecutor's Office (MPF in Portuguese) requested that the licensing process was moved from the Secretariat of the Environment in the State of Pará (SEMAS/PA in Portuguese) to the relevant federal agency IBAMA (federalization of the environmental licensing process) as well as the cancellation of all licences already issued by SEMAS/PA. The MPF obtained a favorable lower court decision and the company's appeal is pending trial at the TRF1. The decision neither suspended nor recognised the cancellation of the licences already issued which is why the MPF has also appealed.
3. [ACP nº 0002624-17.2019.8.14.0058](#). The State Public Prosecutor's Office (MPPA in Portuguese) argued the the state environmental agency is not competent or legitimate in conducting the licensing; requested the suspension of any licensing for mineral exploration in Vila da Ressaca, Ilha da Fazenda and Garimpo do Galo; and also requested that the licences granted be declared null and void. This lawsuit has been sent to the Federal Justice in Altamira and it is still pending preliminary injunction.
4. [ACP nº 0005149-44.2013.8.14.0005](#). The Public Defender's Office of the State of Pará (DPE-PA in Portuguese) alleged forced evictions of former residents of the mining areas of the Volta Grande do Xingu (Vila da Ressaca, Garimpo do Galo, Vila Ouro Verde); illegal acquisition of federal public lands in transactions between the Belo Sun company and supposed owners, disturbing the peaceful possession of nearly a thousand people living in the area; requested a ban on evictions and the removal of restrictive signs installed by the company. It has obtained a preliminary injunction in favor of the DPE-PA ordering a halt to evictions and removal of restriction signs. It had also obtained a preliminary injunction to suspend the installation licence in 2017, overturned that same year.
5. [ACP nº 0001062-06.2017.8.14.0005](#). The State Public Defender's Office (DPE-PA in Portuguese) alleged absence of land tenure studies; exclusion of the traditional river communities of Ilha da Fazenda and Itatá from the foreseen direct impacts despite their proximity to the mine structures; requested injunctive relief to suspend Belo Sun's licensing to avoid harm to river communities. It had achieved a preliminary decision favorable to DPE-PA, 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. Overturned in October, 2020.
6. [ACP nº 0000242-26.2017.4.01.3903](#). The Union Public Defender's Office (DPU in Portuguese) argued insufficient impact studies of Indigenous Peoples already affected by the Belo Monte hydroelectric plant and absence of an analysis of the synergistic impacts of these two projects and requested suspension of the licensing process. The requested injunctive relief to suspend licensing is still pending.

7. [ACP nº 0801861-11.2020.8.14.0005](#). The State Public Defender's Office (DPE-PA in Portuguese) aimed to ensure the right to territory (possession/property) to the riverine peoples established along the Xingu River in the region known as Volta Grande, due to the threats posed by the environmental licensing of Belo Sun's mining project; alleged the lack of studies and FPIC of river communities of the Volta Grande do Xingu according to ILO Convention 169; required suspension of the licensing and cancellation of the EIA-RIMA (Environmental Impact Assessment - Impact Assessment Report) for lack of consultation with riverbank dwellers. It is pending injunctive relief.