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June 15, 2022

Mr. Filbert,

**RE: Questions regarding your proposed Sangihe Island industrial mining operations**

MiningWatch Canada has been alerted to plans by Canadian [Baru Gold Corp.](#) (Baru) (previous to 2020 East Asia Minerals)<sup>1</sup> to mine gold and silver on Sangihe Island, through a subsidiary, the Sangihe Gold Corporation, which owns 70% of PT. Tambang Mas Sangihe (TMS).<sup>2</sup>

Given controversy and local opposition<sup>3</sup> related to your concession on Sangihe Island, affecting some 55,000 residents in 80 villages and seven sub-districts,<sup>4</sup> as well as environmental concerns related to a 420 square kilometer industrial mining concession on a 736 square kilometer island – and given your claims to adhere to Environmental Social and Governance best practice,<sup>5</sup> which includes transparency - we seek transparency on the following issues.

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<sup>1</sup> <https://barugold.com/about/ceos-year-end-report/>

<sup>2</sup> The other owners of TMS being three Indonesian companies: Sungai Belayan Sejati, Sangihe Prima Mineral, and Sangihe Pramata Mineral.

<sup>3</sup> <https://news.mongabay.com/2022/04/court-setback-doesnt-sway-indonesian-villagers-fighting-a-mining-firm/> ; <https://www.mining-journal.com/gold-and-silver-news/news/1416735/baru-%E2%80%98vigorously-supporting%E2%80%99-ministry-in-lawsuit-over-sangihe-mining-permit> ; <https://www.reuters.com/world/asia-pacific/indonesia-police-investigate-death-politician-who-opposed-remote-gold-mine-2021-06-14/> ; <https://www.juniorminingnetwork.com/junior-miner-news/press-releases/2203-tsx-venture/baru/101552-baru-gold-responds-to-false-allegations-and-rumours-on-sangihe-gold-project.html> ; <https://www.bbc.com/news/av/world-asia-57902815> ; <https://newswwc.com/world/singapore/not-for-sale-locals-protest-indonesias-controversial-sangihe-island-gold-mine-project-via-documentary-film-the-online-citizen-asia/> ; SANGIHE NOT FOR SALE (FULL MOVIE) - SANGIHE DOCUMENTARY FILM, <https://www.youtube.com/watch?v=1Qm68ioCt1Y> ; <https://www.facebook.com/noMiningonSangihe/> ; <https://www.change.org/p/jokowi-sangihe-is-a-beautiful-small-island-we-reject-its-exploitation-savesangiheisland-2>

<sup>4</sup> <https://newswwc.com/world/singapore/not-for-sale-locals-protest-indonesias-controversial-sangihe-island-gold-mine-project-via-documentary-film-the-online-citizen-asia/> ;

<sup>5</sup> <https://barugold.com/news-releases/baru-gold-corp-launches-csr-initiatives-at-sangihe-gold-project/>

**1) Permitting history** – It appears that the Contract of Work (CoW or KK) now held by TMS dates to April 28, 1997,<sup>6</sup> was inactive through August 30, 2009 and reactivated on August 31, 2009.<sup>7</sup> It is our understanding that Constitution Law UU 4/2009<sup>8</sup> was ratified and enforced on January 12, 2009 and requires companies to apply for a Mining Business Permit (IUP)<sup>9</sup> and to apply for an adjustment of existing CoWs to meet the requirements of current legislation within one year.<sup>10</sup>

*Can you provide dated evidence that Baru/TMS applied for and received an IUP and the required adjustment of the 1997 CoW within the required time limit of one year?*

**Mining on a small island** - In December 2010, seemingly in contradiction of Constitution Law UU 4/2009, the Minister for Energy and Mineral Resources issued a Decree<sup>11</sup> granting TMS a CoW Exploration Activity Stage, while reducing the concession area to 82.080 ha.<sup>12</sup> Although in 2018 the concession was reduced further to the current 41.810 ha, this still exceeds the maximum 25k ha allowed by mining law UU 3/2020. Furthermore, this CoW also appears to be in contradiction to Article 35(k) of Constitution Law UU 27/2007 (later amended by Constitution Law UU 1/2014) concerning the Management of Coasts and Small Islands, which states that no one is allowed to exploit minerals on small islands; those with a land area of less than 2.000 square kilometers.

*Can you provide evidence that Baru/TMS has a permit from the Minister for Oceans and Fishery to utilize the small island of Sangihe for industrial mining?*

The Ministry for Energy and Minerals apparently later found the TMS CoW to be invalid and/or called for a cessation of activities four times between September 2016 and November 2019.<sup>13</sup>

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<sup>6</sup> On April 28, 1997, the Ministry of Energy and Mineral Resources signed a Contract of Work with PT TMS regarding the development of gold commodity mineral resources located in Sangihe Talaud Regency. In 1997 Sangihe Talaud Regency had not been divided into separate regencies, i.e. Sangihe Islands Regency, Talaud Islands Regency and Sitaro Islands Regency (Siau, Tagulandang, Biaro).

<sup>7</sup> The TMS Contract of Work was reactivated by the Minister of Energy and Mineral Resources with No. 2511/30/DJB/2009 dated 31 August 2009.

<sup>8</sup> I will refer to this law as 4/2009.

<sup>9</sup> Under Article 158 of Law 4/2009 a mining business without an IUP is in contradiction to the law.

<sup>10</sup> Article 169a of Law 4/2009, concerning Minerals and Coal Mining, rules that Contracts of Work that existed prior to the enactment of this Law remain in effect until the expiration of the contract/agreement, but have to be adjusted to the existing law regulations within one year.

<sup>11</sup> On December 10, 2010, the Minister of Energy and Mineral Resources issued a Decree concerning the Beginning of the CoW Exploration Activity Stage as well as the Reduction of the CoW Area with Decree No. 514.K/30/DJB/2010 with validity to 5th July 2013.

<sup>12</sup> The original CoW granted to Aurora Gold (BreX) was 124.00 ha including the whole of Sangihe and Karakelang island of neighbouring Talaud. In 2010 it was reduced to 82.080 ha.

<sup>13</sup> September 19, 2016, the Contract of Work of TMS was declared invalid by the Minister of Energy and Mineral Resources through a letter from the Director of Mineral Business Development, Number 1603/30/DBM.PU/2016 dated 19 September 2016 regarding: Determination of Contract of Work for PT Tambang Mr. Sangihe; May 10, 2017, the Contract of Work of TMS was declared invalid by the Minister through the Director General of Minerals and Coal, Letter No. 1009/30/DJB/2017 dated 10 May 2017 regarding the Determination of the Contract of Work of PT Tambang Mas Sangihe; December 11, 2018, TMS was asked to cease activities by the Minister of Energy and Mineral Resources through a Letter of Suspension Extension from the Director General of Mineral and Coal No. 2118/30.07/DJB/2018 dated December 11, 2018 regarding the Determination of the CoW of PT TMS; November 13, 2019, TMS was again asked to cease activities through a Letter of Suspension Extension from the Director

*Can you confirm, or deny, that the CoW held by TMS was found to be invalid and/or that TMS was asked to cease activities by the Minister through his officials four times between September 2016 and November 2019 and support your response by evidence?*

Furthermore, the Sangihe Island's Regency Government, which has the authority to grant a "location recommendation" that confirms that a proposed use by a business in a specific location is in accordance with the regional zoning plan, in 2018 officially refused to grant its consent to the company's proposed location of business based on Indonesia's Constitution Law UU 27/2007 (later amended to Constitution Law UU 1/2014), concerning the Management of Coasts and Small Islands and prohibiting mining on islands with a land area of less than 2.000 square kilometers (Chapter 35(k) of UU 27/2007).<sup>14</sup> This law is reflected in the Regional Spatial Usage Plan (RTRW) for Sangihe 2014 – 2034, which aligns with UU 1/2014.

*Can you provide evidence that Baru/TMS proposed mining project has received approval under the Spatial Usage Plan from the Sangihe Regency government?*

Regional Regulation (Perda 1/2017) for the Province of North Sulawesi relating to small islands does not mention Sangihe as an area mapped out for mining. Nonetheless, an Environmental Permit, Number: 503/DPMPTSPD/IL/182/IX/2020 dated 25 September 2020, was granted at the provincial level on the basis of Baru/TMS's EIA.<sup>15</sup>

On January 29, 2021, the Minister for Energy and Mineral Resources issued a DECISION OF THE MINISTER OF ESDM RI Number: 163.K/MB.04/DJB/2021, Concerning Approval for Increasing the Stage of Exploration to Production Operation Activities. As Baru puts it the "Company's licence was upgraded to 'Operation Production License' to advance the project to construction and production in 2022."<sup>16</sup> We understand that this license permits Baru to mine gold on Sangihe for the next 33 years, until January 2054, and that this greatly exceeds the 20-year maximum allowed under the 2020 mining law.

*Can you confirm that the length of time to mine granted to Baru/TMS is 33 years and that this exceeds the 20-year maximum set out in the 2020 mining law? Please provide a copy of the Baru/TMS EIA for the Sangihe project.*

***Mining in a forest area*** – We understand that the mining concession is in a forest area called Sahendarumang and that the Sahendarumang forest is both a water source for villagers and habitat for the cerulean flycatcher, which is critically-endangered and endemic to the island. We also understand that open-pit mining is prohibited in forest areas.

*Can you confirm that Baru/TMS plans to mine gold via open pit in a forest area?*

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General of Mineral and Coal, No. 1923/30.07/DJB/2019 dated November 13, 2019 regarding Determination of the CoW held by PT TMS.

<sup>14</sup> The official letter number is cited in this newspaper article <https://www.sinarharapan.net/penantian-masyarakat-sangihe-cahaya-keadilan-terbit-dari-ptun-jakarta-timur/> Letter no 050/28/63 dated 10th January 2018 by head of BKPRD, Secretary of Sangihe Regency, Edwin Roring SE.ME

<sup>15</sup> [https://miningwatch.ca/sites/default/files/salinan\\_putusan\\_57\\_g\\_lh\\_2021\\_ptun\\_mdo.pdf](https://miningwatch.ca/sites/default/files/salinan_putusan_57_g_lh_2021_ptun_mdo.pdf)

<sup>16</sup> Management's Discussion & Analysis, For the three months ended November 30, 2021. <https://sedar.com/CheckCode.do>

***Community consultation and consent*** - We understand that Article 135 of Constitution Law UU 4/2009 requires mining operators to consult with and seek prior consent from landowners or holders of land rights. As well, Constitution Law UU 32/2009, relating to communication transparency, and UU 1/2014 chapter 60(1) mandate the involvement of affected people in the Environmental Impact Assessment Study (EIA). We have seen reports that local traditional leaders (ketua adat) and affected people and local communities were not, or inadequately, consulted.<sup>17</sup>

*Can you provide evidence that Baru/TMS has received consent from all affected traditional leaders (ketua adat), affected people and local communities in preparing its EIA? Please provide a copy of the Baru/TMS EIA.*

**2) Legal actions** – It is our understanding that legal actions have been initiated in regard to Baru’s proposed mining on Sangihe Island at both the provincial and national level.

At the national level a case was filed on June 23, 2021 in the State Administrative Court in Jakarta<sup>18</sup> by several villagers of Bowone village against the Minister for Energy and Mineral Resources alleging that the Minister for Energy and Mineral Resources unlawfully granted an Approval for Increasing the Production Operation Stage of PT Tambang Mas Sangihe's Contract of Work by decree (163.K/MB.04/DJB/2021) on January 29, 2021. The case alleges that Article 158 under Law 4/2009 is clear that all mining operations must be authorized by an IUP, IPR or IUPK. We understand that on April 20, 2022 the court ruled that it does not have the jurisdiction to decide the case. This ruling was appealed by the plaintiffs on May 12, 2022.

The second lawsuit was filed by 56 women from Bowone and Binebas villages, in October 2021, in Manado, the capital of North Sulawesi Province, before the Manado Provincial Administrative Court alleging that an Environmental Permit to mine gold and silver on Sangihe Island was wrongly granted by North Sulawesi provincial authorities.

This case alleges that North Sulawesi provincial authorities violated Indonesian law as statutory provisions for granting an environmental assessment approval were neglected. Central in this suit is that affected communities were not involved in the assessment process as required by Constitution Law UU 32 of 2009. Also, that Indonesia’s Constitution Law 1/2014, concerning the Management of Coasts and Small Islands, which also requires the involvement and rights of local people, was ignored. This suit also claims that the Sangihe Islands Regency Government’s refusal, in January 2018, to provide consent to the company's proposed location of business, based on Indonesia’s Constitution Law UU 27/2007, and the Regency Governor’s objection to the Environmental Permit (EIA) granted to TMS, were ignored. The case refers to Constitution Law 1/2014 chapter 26 a(3), which states that the authority to grant a “location recommendation,” which confirms that a proposed use by a business in a specific location is in accordance with the regional zoning plan, lies with the Regency. Chapter 16 makes the required “location permit” conditional on being granted the “location recommendation” by the Regency. Chapter 18 states that the location permit is valid for two years and if not utilized, it can be cancelled. Chapter 23 doesn’t include mining in business activities being considered suitable for small islands, thus UU 1/2014 follows Chapter 35(k) of Constitution Law UU 27/2007.

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<sup>17</sup> <https://www.change.org/p/jokowi-sangihe-is-a-beautiful-small-island-we-reject-its-exploitation-savesangiheisland-2>

<sup>18</sup> Registered at the Registrar's Office of the Jakarta Administrative Court under No. 146/G/2021/PTUN-Jkt

On June 2, the Manado Administrative Court Panel of Judges found in favour of the 56 women, granting their request for a delay in the implementation of the Environmental Permit and granting their request for a suspension of activities in preparation for mining until legal proceedings are final.<sup>19</sup> North Sulawesi Provincial permit granting authorities have said they will appeal the decision.

TMS has stated publicly that it will ignore the ruling and continue with activities to prepare the site for mining. On June 12 Baru/TMS brought more heavy equipment to Sangihe Island. As of the date of this letter the heavy equipment was being blockaded by Sangihe villagers from reaching the mine site resulting in a conflict with police.<sup>20</sup> It is of concern that Baru/TMS appears to be ignoring the ruling of the Manado Administrative Court Panel of Judges and that this has led to an escalation of conflict locally with possible repercussions and violence against local rights defenders.

Baru has of the writing of this letter not issued any communication regarding the June 2 ruling of the Manado Administrative Court Panel of Judges.

These legal cases are a strong indication of a lack of a social license to operate. They also could have material effect on Baru/TMC's operations and should be disclosed in detail to shareholders. *Can you please provide references to public filings by Baru/TMC where the substance of the allegations in these two cases are fully disclosed to shareholders? Can you confirm that Baru/TMS intends to adhere to the laws of Indonesia, as minimally required by the Government of Canada, and halt all operations on Sangihe until the appeal of the cancellation of your Environmental Permit has been concluded?*

**3) Local opposition** – Baru/TMS faces significant opposition to its proposed industrial gold mining operation from, among others: a local grassroots group called Save Sangihe Island, major church congregations on the island, the Board of Indigenous Peoples, Non-Government Organizations (local, regional, and national), students' organizations, as well as Sangihese communities in Jakarta and the diaspora.<sup>21</sup> A signature list circulated by SSI in May 2021 shows that 80% of the households in Bowone village and almost 100 % in Tamako and South Manganitu districts reject the gold mining project.<sup>22</sup>

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<sup>19</sup> <https://miningwatch.ca/news/2022/6/10/indonesian-women-win-legal-victory-protect-small-island-home-canadian-baru-gold>

<sup>20</sup> <https://miningwatch.ca/news/2022/6/15/baru-gold-ignores-court-order-putting-lives-indonesians-risk>

<sup>21</sup> Among 36 organisations opposed to industrial mining on Sangihe Island are local organizations such as: Sangihe Protestant Church Congregation (GMIST) Sangihe and Jakarta, Sangihe Traditions Board (Badan Adat Sangihe), Kesatuan Pemuda Pegiat Budaya Sangihe, Kesatuan Kapitalaung (Kepala Desa) Menolak Tambang Sangihe, Polytechnical University Nusa Utara Civitas akademika Politeknik Nusa Utara, Alumni SMP 201 and SMA 1 Tahuna, Sanggar Seriwang Sangihe, Komunitas Seni Visual Secret, Perkumpulan Sampiri Sangihe, Sangihe Divers Club, KNTI – Sangihe, Kopitu Sangihe, AMAN Sangihe, GAMKI Sangihe, Pemuda GMPU, GP Ansor Sangihe, Gapoktan Organic Sangihe, AMPS, MPA Anemon, Mangasa Ngalipaeng, KPA Spink. Wider Indonesian NGO opposition includes national NGOs such as: JATAM, change.org and Greenpeace Indonesia, Walhi, KontraS, Econusa, Lokataru, Jaringanusa, Burung Indonesia, Aliansi Bhineka Tunggal Ika. At the Province of North Sulawesi level opposition is supported by Yayasan Suara Nurani Minaesa, WALHI Sulut, YLBHI-LBH Manado, Amalta, IMM – Sulut, and LMND Sulut.

<sup>22</sup> See, "Laporan Penelitian Investigasi Kabupaten Kepulauan Sangihe 27 Juni - 1 Juli 2021" by kontraS, a human rights organization. On page 29 it is mentioned that 140 families of Bowone reject TMS.



Local opposition has apparently already affected the timing of Baru/TMC's planned operations as we understand that landing heavy mining equipment on the island, including a drill rig, has been prevented by local actions three times, namely between 22 to 24 December 2021, at the Pananaru Port on Sangihe, and on 3 February 2022 at Tahuna and Pananaru Ports on Sangihe, and on 23 February 2022 by the harbormaster of Mobongo Amurang Port on the North Sulawesi mainland; the latter because TMS had failed to provide him with the appropriate transportation documents.

It is our understanding that TMS must hold permits that apply in the Republic of Indonesia before it can transport heavy equipment to Sangihe Island and operate it there. This was apparently made clear by the head of the provincial transportation authority during a meeting in Manado on March 4th, 2022.<sup>23</sup> It appears that TMS does not yet have an Island Utilization Permit from the Minister of Marine Affairs and Fisheries as required for foreign companies to utilize Sangihe Island.

Local opposition is a strong indication of a lack of a social license to operate. It can also have material effect on Baru/TMS's operations and should be disclosed to shareholders.

*Can you please provide evidence that Baru/TMS has an Island Utilization Permit from the Minister of Marine Affairs and Fisheries, as required for foreign companies to utilize Sangihe Island? Can you please provide references to filings by Baru/TMS where the extent and substance of local opposition is disclosed to shareholders in a comprehensive, even-handed and responsible manner?*

**4) Mine waste management** - As you know, the waste to product ratio in gold mining is high. Industrial mining on mountainous small tropical islands with high rainfall is problematic concerning usage of limited land and water for the operations, but also, particularly in mountainous volcanic deposits, from the point of view of waste management. We have not been able to find information on where you plan to put tailings impoundments and waste rock dumps and how you plan to ensure these do not contaminate groundwater, downstream surface water, and coastal areas.

*Please provide a copy of the Baru/TMS EIA and any other information prepared by the company regarding mine waste management plans for the proposed project.*

Finally, the irony is not lost on us that Baru's profit-motivated efforts to mine gold, not a critical mineral for energy transition, on a small island thereby increasing risk to water and the surrounding ocean, flies in the face of the World Ocean Declaration previously signed by nearly 80 countries in May 2009 during the World Ocean Conference in Manado, in the very Province of North Sulawesi, where Sangihe Island is located. Indonesia hosted the conference and Canada attended.

The Declaration commits the signatories to undertaking the conservation and management of marine resources in a sustainable and long-term manner meeting internationally agreed development goals including the United Nations Millennium Development Goals on human

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<sup>23</sup> <https://manado.tribunnews.com/2022/03/05/pt-tms-kecewa-alat-berat-tak-bisa-menyeborang-ke-pulau-sangihe-kepolisian-siap-kawal-keamanan?page=all>

health, food, security, poverty alleviation and disaster preparedness, in relation to the marine environment.

As a Canadian organization with a long-standing focus on the environmental and human rights impacts of Canadian mining companies operating overseas we are both rights defenders and stakeholders and as such **we look forward to your detailed responses to the questions we pose in this open letter**. We express particular concern for your apparent disregard for the June 2 ruling of the Manado Administrative Court Panel of Judges in regard to the cancellation of your Environmental Permit, and in particular express our concern for the resulting conflict and repercussions<sup>24</sup> on the rights of those citizens of Sangihe who are actively opposing Baru Gold and TMS's attempts to continue developing the mine in spite of the June 2 ruling. We expect you to cease all activities that are leading to an escalation of conflict and to respect the ruling of the court and all laws of Indonesia.

Sincerely,



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<sup>24</sup> <https://twitter.com/SaveSangihe/status/1536955866871582720>