



To:

Special Rapporteur on the rights of indigenous peoples

Special Rapporteur on the human right to safe drinking water and sanitation

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Working Group on human rights and transnational corporations and other business enterprises

September 5, 2013

Subject: New Mining Code in Brazil Jeopardises Human Rights

Dear Experts,

VIVAT International, Franciscans International, Geneva for Human Rights, and our Brazilian partners¹ hereby express our deepest concern that the proposed new mining regulatory framework and the process for policy formulation have not allowed for sufficient consultation with communities most impacted by the mining enterprises.

The mining of materials plays a key role in Brazil's economy and development, with the monetary profits of mining exports further boosting the GDP of the country. Mining has expanded enormously during the past ten years in Brazil: overall production value has increased 550%; exploitation of zinc increased 648%, copper 598%, iron ore 88%. Moreover, the Brazilian mining sector has broken profitability records: royalties accruing from mining through the CFEM² tax have leaped from US\$ 137 million in 2004 to US\$ 353 million in 2012. Consequently, the magnitude of this market boom has re-ignited interest in reforming the legal framework on mining in Brazil.³

The current updating of the Mining Code offers an excellent opportunity for the Government of Brazil to correct the gaps in the 1967 Code and those that still exist in the new Draft Code. These gaps, as identified by local NGOs, include:

¹ Justiça nos Trilhos, Instituto Brasileiro de Análises Sociais e Economicas (IBASE).

² Financial Compensation for Exploiting Mineral Resources.

³ National Committee in Defence of Territories against Mining.

- a) Serious negative impacts on communities and the Environment from mining operations.
- b) Failures to protect and respect mining workers.
- c) Lack of adequate local community participation in decision-making.⁴

The lives and source of livelihood of many indigenous, peasants, *quilombola* and *ribeirinha* across Brazil who live in mining areas have been adversely affected by these extractive industries. These people have a right to consultation and participation in decision-making, a right to food, a right to safe drinking water, and a right to adequate housing.

Mining has consumed more than 5,000 trillion liters of water in 2012, and the sector broke records in the number of application for water permits. At the same time, mining has polluted several rivers and underground waters. The expansion of mining has also resulted in an increased number of deaths, mutilations and diseases of mining workers; in 2013 alone, 22 mining workers have died on duty. Moreover, throughout the country hundreds of communities suffer daily the impact of mining and its associated infrastructure, often destroying the livelihoods of these communities and their land. Yet as mining exploitation doubles or triples, according to the scenarios pointed out by the 2030 National Mining Plan, the lifetime of mineral deposits are expected to be shortened by half or even more. These are non-renewable natural resources.⁵

The proposal for the new mining Code, the result of a confidential and anti-democratic process, completely disregards and neglects these crises. For example, there is no mention of the disastrous impact on water and consequently on communities. References to the environment are general and extremely weak. It is clear that, in comparison to the mining Code currently in force, the new proposal is drastically worse with regard to socio-environmental safeguards. For example, article 54 of the current Code, passed under the dictatorship regime in 1967, states that owners of mining concessions are responsible for “damages and losses caused to third parties”, “promoting the safety and health of the local populations”, “avoiding air and water pollution” and “protecting and conserving water sources”. Ominously, the proposal for the new Code is silent on these issues.

Mining is not only a business; it bears social and environmental dimensions and responsibilities as well. If the current proposal is approved, it will be a Code for the mining market, with benefits going to the mining business -- but it will not be a Code of mining activity in Brazil as a whole. We speak for the rights of affected communities, the rights of workers in the mining industry, and the right to an ecologically balanced and healthy environment. We want a Code that respects and addresses these dimensions of basic human rights.⁶

Each and all of these issues and areas of concern must be addressed in a comprehensive manner as the new mining Code is in preparation. The regulations put in place through the new Code must be truly transparent and must reflect a participatory process. It is in the interests of all stakeholders that the necessary environmental and social safeguards be properly articulated in the new bill. Once this Code is in place it will not be addressed again for many years, hence this is the time for the Government to make the right decisions. Getting the regulatory framework right this time will help avoid social conflict into the future.

⁴ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/23/32 (14 March 2013). The report cites the right to life, health, food, water, work and adequate housing; conflicts between local communities and business including forced evictions from traditional lands and failure to guarantee free, prior, and informed consent; and harassment and persecution of community members and human rights defenders, including arbitrary detention, threats, violence and killings, targeting by armed groups, disappearances, restrictions of the freedoms of assembly and expression, and other violations of rights (para.13).

⁵ National Committee in Defence of Territories against Mining.

⁶ Ibid

We are generally supportive of the preferred model⁷ for Resource Extraction in indigenous peoples Territories as outlined in the latest report of James Anaya, the UN Special Rapporteur on the rights of indigenous peoples. Communities must also be free to oppose or withhold consent for extractive projects.

While we have focused on the contents of the new Bill and its impact on the local communities, we are also concerned about the process that is being followed in the preparation of these new legal provisions. Our major question is whether enough time is being given to the consultative process with local communities and whether in fact the voice of these communities is being heard.⁸

In conclusion, we ask the Government of Brazil to:

- i) Ensure that the changes to the Draft Bill are consistent with the Indigenous Peoples Statutes.
- ii) Translate the provisions of ILO Convention 169 into the new Bill.
- iii) Uphold the Rights of Indigenous Peoples as affirmed in the UN Declaration on Indigenous Peoples.
- iv) Include in the new Code adequate protections for people and the environment in accordance with the Brazilian Constitution and International Law.
- v) Incorporate into the New Code the recommendations⁹ made by the “National Committee in Defense of Territories against Mining”. The proposals in this document have been discussed and affirmed by more than 140 NGOs, community leaders, social movements and academic researchers in Brazil.¹⁰
- vi) Continue a consultative process between the Government and the Working Group on Human Rights and Transnational Corporations and other Business enterprises as long as the deliberations on the new code last.

We thank you for your consideration of this important matter.

Sincerely,

VIVAT International: *Edward Flynn, Felix Jones, Zelia Cordeiro*
Franciscans International: *Francesca Restifo, Amanda Lyons*
Geneva for Human Rights: *Adrien-Claude Zoller*

⁷ Report to the Human Rights Council. Study on Extractive industries and indigenous peoples, UN Doc. A/HRC/24/41 (1 July 2013).

⁸ For more, see Carlos Bittencourt, IBASE, *The Dilemmas of the New Mining Code*; Carlos Aguilar Sánchez, Revenue Watch, *Brazil: No Easy Miracle - Increasing Transparency and Accountability* (2012).

⁹ Suggested amendments to Bill No. 5807/2013 that establishes the new mining regulatory framework of Brazil.

¹⁰ Public Note - National Committee in Defense of Territories Against Mining.