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To: Michel Forst
United Nations Economic Commission for Europe
Aarhus Convention and its Protocol on Pollutant
Release and Transfer Registers

Palais des Nations, 8-14 avenue de la Paix
CH - 1211 Geneva 10, Switzerland

Your reference: ACSR/C/2023/11 (Switzerland) (21.08.2023)

19 March 2024
By email: Aarhus-EnvDefenders@un.org

**Solway Investment Group's reply to correspondence regarding complaints to the
Special Rapporteur**

Dear Mr. Forst,

Solway Investment Group ("SIG") respectfully acknowledges the receipt of your correspondence ACSR/C/2023/11 (Switzerland) of 21 August 2023. Although 60 (sixty) days had been given to respond, we could not properly investigate such serious allegations in such a short timeframe, and hence the delayed response could only be provided at this time. We thank you for your patience in waiting for our response which we feel now is more fulsome and complete than we could have provided in the original timeframe.

We are writing to respond to your above-noted correspondence (your "Letter") sent in your capacity as the UN Special Rapporteur on Environmental Defenders under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). As we have indicated previously, Solway Investment Group ("Solway") takes the allegations in your Letter very seriously and has conducted an independent review of the facts underlying these allegations.

We wish to reiterate that Solway, and all of our subsidiaries, including Compañía Guatemalteca de Níquel ("CGN") and Compañía Procesadora de Níquel de Izabal S.A. ("ProNico") (collectively the "Company"), are committed to protecting human rights including the fundamental rights to freedom of association and expression. Solway is also continuing to develop its capacities in relation to business and human rights in connection with its Environmental, Social, & Governance ("ESG") implementation plan, which has included

training on human rights for its employees and other stakeholders and raising awareness of its human rights policies and commitments within the wider Company.

As a threshold matter, we note that your Letter has been addressed to Solway Investment Group, which is an entity registered in Switzerland, as well as to Swiss and Maltese governmental authorities. However, the matters in your Letter are in respect of a national of Guatemala and concern allegations that took place in Guatemala by companies that are Guatemalan. Since Guatemala is not a State Party to the Aarhus Convention and the territorial locus of the alleged events are in that country, Solway does not consider there to be any valid jurisdictional basis for the allegations under the terms of the Aarhus Convention. We understand that the Swiss authorities have already written to you and concur in that regard in a letter dated 30 October 2023. We respectfully embrace those comments.

However, despite the fact that the Aarhus Convention does not apply in this instance, we are taking the concerns raised in your correspondence very seriously. SIG is fully committed to respecting and protecting human rights in all its operations globally, including in Guatemala. Our approach is guided by the commitment of our management that formalises our understanding and principles in our Code of Conduct and the associated Policies and procedures. Our ESG management system is based on Performance Standards of the International Financial Corporation (IFC) and the United Nations Guiding Principles (UNGP) on Business and Human Rights, among other international standards, principles, and guidelines for good practices relevant to our operations.

Although Solway Investment Group has accomplished a great deal in improving its management and oversight of ESG topics since acquiring CGN-PRONICO in 2011, we acknowledge that we still have work to do. We have developed a comprehensive plan related to a range of ESG initiatives, including ensuring the protection of human rights, which is in the process of being implemented, with a road map to implement remaining initiatives across our Group of companies.

We also take this opportunity to convey our support for the inhabitants of the Lake Izabal region and El Estor, many of whom are our employees, business partners, and suppliers.

Some of the allegations you raised in your letter had been brought to our attention previously, and indeed, occurred before Solway Investment Group acquired the Guatemalan entities in question in 2011. However, we understand that this does not absolve us from taking any actions in relation to this matter.

In order to fully address the allegations around Mr. Choc and to determine their veracity we had launched a full and independent investigation in the fall of 2023 which was conducted by a leading US law firm with experience investigating human rights issues. Importantly, the investigation includes evidence-gathering on the ground in Guatemala and reviewing the alleged actions of Solway Investment Group, CGN-PRONICO employees, or any other persons who may have been acting on behalf of these entities or any personnel. Apart from defining the scope, Solway management did not interfere or guide the investigation in any way in order to maintain independence of the investigation.

The investigation could not include review of any actions taken by government officials acting in their official capacities, as Solway does not have a right to investigate government decisions or actions *per se*. In addition, the investigation team made numerous attempts to reach out to Mr. Choc to get his perspective and understand to what extent he may have evidence of Solway-linked personnel's involvement in any of the alleged acts against him. Unfortunately,

the investigators did not receive any responses to the invitations from Mr. Choc and therefore we could not investigate specific allegations which presumably come from Mr. Choc regarding claims of Solway employee involvement.

However, we feel that the report impartially captures many of the issues which are at the heart of your allegations against Solway. We have included as an attachment to this letter the Summary Report of the Findings from the independent investigation which provides additional details and context to the responses in this letter. The report does not include any statements from Mr. Choc who, despite numerous attempts by the investigation team to contact and interview him, did not respond to any of the invitations to provide his side of the story.

We also would like to note that on 31 January 2024, after numerous procedural delays, all charges relating to allegations you have made against Solway and its Subsidiaries were dropped against Mr. Choc by the independent judiciary of Guatemala. As noted in our investigation summary Report, neither Solway or its Subsidiaries played an active role in promoting or continuing the legal action against Mr. Choc.

Without prejudice to the above, and given the public nature of the allegations made, Solway Investment Group nonetheless considers it important to voluntarily correct the record by addressing the allegations set forth in your Letter. I remain available to answer any further questions or provide clarifications, if necessary.



Denis Gerasev

Management Board Member
Solway Investment Group GmbH

1. Please provide any additional information and/or comments you may have on the above allegations

As noted, Solway does not consider there to be any valid jurisdictional basis for the allegations under the terms of the Aarhus Convention.

Our independent investigation reviewed each of your seven allegations to the extent possible given the inherent limitations of such reviews, including the passage of time since some the allegations were made, the ability to access documents or contact persons who may or may not have had any involvement in the allegations, and the actions taken by government officials acting in their official capacities.

Solway also would like to remind the Special Rapporteur of the divisions of obligations, rights, and responsibilities between private companies and the State with regards to human rights. Many of the allegations against Solway include acts which Solway legally cannot take and imply a level of influence over independent public bodies and officials in Guatemala which simply does not exist. Indeed, even the United Nations' own *Guiding Principles on Business and Human Rights* and the *Protect, Respect, Remedy* Framework makes a distinction as to the respective and distinctive roles and responsibilities between the State and Private companies in protecting human rights.

FIRST ALLEGATION: ANONYMOUS THREATS RECEIVED BY MR. CHOC AIMED AT STOPPING HIS COVERAGE AND COMPLAINT BROUGHT BY CGN

The First Allegation in your Letter raises concerns related to Mr. Choc's coverage of the protests against the Fénix mine, including alleged anonymous threats against him following such coverage which were allegedly "aimed at stopping his coverage."

The independent Review did not reveal evidence of any threats made or directed by anyone at CGN to or against Mr. Choc. Employees, including former employees, which were interviewed stated that there were no such company-backed efforts, either openly or implied, to threaten or harass Mr. Choc. Despite several efforts to contact Mr. Choc to engage on these allegations, Mr. Choc did not take the opportunity to provide any evidence which is contrary to this finding which would implicate any Solway-directed involvement.

The First Allegation also refers to the complaint brought by CGN on 11 May 2017.

The decision to file complaints in 2017 by CGN's legal representative was done as the workers themselves were afraid to do so for fear of reprisals from protesters after being detained themselves after the protests. It had been initially decided that support from CGN's legal representative (and approved by the then General Director of CGN), was an action which would have supported their workers and not done as an attack *per se* against any specific party. To be clear, although protecting the interests of its workers were at the heart of this matter, this is a situation which can no longer be repeated due to more restrictive guidelines designed and implemented by Solway globally regarding the use of Company legal resources.

It is important to note, that based on the Review of the court filings and discussions with Interviewees, the complaint did not identify Mr. Choc by name. The complaint referenced other individuals and referred to violations of the right to freedom of movement, commerce, and labour, and alleged that the protestors were responsible, amongst other things, of the instigation to commit a crime, threats, illegal detention, and illegal association.

It is possible that the Guatemalan judicial authorities became aware of Mr. Choc's presence during the May 2017 protests as a result of information (mainly photographs) provided by representatives of CGN at the request of Guatemalan authorities, even though the originating CGN complaint did not reference Mr. Choc by name.

SECOND ALLEGATION: ARREST WARRANT ISSUED AGAINST MR. CHOC

The Second Allegation states that an arrest warrant was issued against Mr. Choc in August 2017.

According to the legal representative of Solway's subsidiary, after Mr. Choc (along with others) failed to appear before the judge at the scheduled date and time from the summons citing illness and submitting a medical certificate. The judge, who did not find the medical certificate credible, issued an arrest warrant in accordance with Guatemalan law. As a private company, CGN does not have the power or authority to issue an arrest warrant.

THIRD ALLEGATION: REPORTING OBLIGATIONS IMPOSED ON MR. CHOC

As to the Third Allegation that Mr. Choc was subject to the arrest warrant for over a year and half and then subjected to a court order requiring him to report monthly to the Guatemalan public prosecutor, CGN was not involved in either the criminal court's decision to lift the arrest warrant in January 2019 or the court order requiring Mr. Choc to report monthly to the Guatemalan Public Prosecutor's Office.

FOURTH ALLEGATION: ROLE OF CGN'S LEGAL REPRESENTATIVE

In connection with the Fourth Allegation that CGN's legal representative was joined by the Court in January 2019 as a "co-plaintiff" in the criminal proceedings, the legal representative of Solway's subsidiary is, as the legal representative of Solway's subsidiary CGN, a co-plaintiff in the proceedings against Mr. Choc pursuant to Article 116 of the Guatemalan Criminal Code.

Under Article 116 of the Guatemalan Criminal Code, victims, relatives, and others, such as companies, have the right to "to propose avenues of investigation, participate in proceedings, request certain tests or examinations and seek the intervention of a judge if they disagree with a prosecutor's decision not to carry out a particular line of investigation.

As a co-plaintiff, CGN does not have the power to issue court orders or judicial decisions.

On December 7 2023, PRONICO submitted a request to the court to withdraw from the case due to a lack of grounds (where Solway was co-joined by the courts, and not at the request of Solway or its Guatemalan subsidiaries).

FIFTH ALLEGATION: DEFAMATION AND HARASSMENT

The Fifth Allegation alleges that Mr. Choc was subjected to various forms of defamation and harassment.

Regarding this allegation, the Review did not reveal that the Guatemalan Subsidiaries were involved in any defamation campaigns against Mr. Choc. According to Interviewees, the Company appears committed to journalistic freedom and has had an open approach to the media, inviting different media outlets to visit the mine on several occasions as well as addressing journalists' questions through its press office.

Regarding the allegation that Mr. Choc's house has been raided by "persons unknown" and by the Guatemalan police and army, the investigation could not uncover any involvement by the Guatemalan Subsidiaries in these alleged raids or theft. Investigators were only made aware of a raid by the police related to a police investigation of protests in 2021. Interviewees also noted that robbery and theft are common in Guatemala.

Repeated attempts to get Mr. Choc's side of the story on these incidents or to get evidence which may have shown such involvement has not been successful despite repeated attempts to engage with Mr. Choc. We therefore must rely on the representations made by Solway personnel to the independent investigation team that there was no such involvement by Company personnel nor was there a company-sanctioned effort to encourage others to harass or defame Mr. Choc.

SIXTH ALLEGATION: 2021 PROCEEDINGS AGAINST MR. CHOC

As to the Sixth Allegation relating to the 2021 protests at the Fénix mine and the resulting criminal charges that were brought by Mr. Choc by the National Civil Police of Guatemala ("PNC"), these were brought against Mr. Choc by the Guatemalan authorities, not CGN.

According to media reporting at that time, the 2021 protests were again violent, and police officers were injured during them. The police searched Mr. Choc's home pursuant to a court order. Solway's Guatemalan Subsidiaries were not involved in bringing the charges relating to this incident (or the decision to drop the charges in September 2022).

The court had postponed this hearing to January 31, 2024 and had subsequently dismissed all charges against Mr. Choc and any conditions or restrictions that had been put in place because of the pending charges.

SEVENTH ALLEGATION: DELAYS TO MR. CHOC'S PROCEEDINGS AND REPORTING OBLIGATIONS

As described in the investigation Report, it appears that there were various reasons as to why the proceeding against Mr. Choc relating to the May 2017 protests had been delayed, including the Covid pandemic and actions taken by Mr. Choc.

Monthly reporting obligations to which Mr. Choc remained subjected to was not at the request of Solway, but a court-imposed order and taken independently without any influence of Solway.

Additionally, according to Interviewees, the case against Mr. Choc was provisionally closed in October 2019 and that the Guatemalan public prosecutor requested that the Court dismiss the case against Mr. Choc in January 2020. The court officially ended the criminal proceedings against Mr. Choc on 31 January 2024.

2. Please explain how the pending criminal proceedings against Mr. Choc by employees of Solway's subsidiary, and in which the legal representative of Solway's subsidiary is a co-plaintiff, are compatible with Solway's expressed commitment in principle 5.2 of its policy to upholding the human rights of freedom of association and expression.
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After careful review and investigation, Solway has found no credible evidence that shows any linkages between the Company, any of its employees, or anyone working on behalf of the Company and the allegations that have been presented in your correspondence.

Attempts to hear Mr. Choc's side of the events, including any evidence of involvement by Solway personnel were unsuccessful, despite repeated attempts or meet and engage. We

therefore must rely on the representations made by Solway personnel to the independent investigation team.

Solway Investment Group stands by its commitment to human rights and will continue to develop and implement appropriate Policies and procedures related to the wider ESG topics, including human rights.

3. Please provide information as to the actions, including any remedial measures, Solway or its subsidiary have taken or will take to ensure the immediate dismissal of the pending criminal proceedings against Mr. Choc, and to provide redress for the negative impacts on him thereof.
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As noted above, in response to the sixth allegation relating to the 2021 protests at the Fénix mine and the resulting criminal charges that were brought by Mr. Choc by Guatemala's National Civil Police, these were brought against Mr. Choc by the Guatemalan authorities, not at the request of Solway or any of its personnel. In connection with this protest, the Company understands that the police searched Mr. Choc's home pursuant to a court order. The Company was not involved in bringing the charges (or the decision to drop the charges in September 2022).

Regarding the seventh allegation regarding the fact that the 2017 proceedings remained ongoing at the time of your initial letter to Solway, the resolution of the relevant legal proceedings was ultimately a matter for the Guatemalan legal and judicial authorities. Solway understands that the proceeding against Mr. Choc was provisionally closed in October 2019 and that Public Prosecutor requested that the Court dismiss the case against Mr. Choc in January 2020. Solway understands that the proceedings had not been concluded due to a variety of factors that are not within the control of Solway, including because of the Covid pandemic, the resulting court backlog, and an appeal brought by Mr. Choc. Solway was not a party to the relevant proceedings and therefore was not able to put an end to the criminal proceedings involving Mr. Choc in the manner that the Special Rapporteur seems to suggest is possible.

Most recently, On December 7 2023, PRONICO had submitted a request to the court to withdraw from the case due to a lack of grounds (where we were co-joined by the courts, and not at the request of Solway or its Guatemalan subsidiaries). The court has postponed this hearing to January 31, 2024. During the January 31st 2024 hearing all charges were dropped against Mr. Choc in relation to this matter.

4. Please provide information as to the actions taken, if any, as a result of the present letter.
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Solway Investment Group places a high priority on all matters of human rights, environmental management, and social responsibility, which can collectively be referred to as Environment, Social, and Governance ("ESG"). Since the acquisition of Compañía Guatemalteca de Níquel SA (CGN) and Compañía Procesadora de Níquel de Izabal SA (PRONICO) in 2011 we have invested significant resources into designing and implementing a wide range of ESG Policies and Procedures, engagement with local communities, including the indigenous community, and strengthening our overall approach to managing our social and environmental impacts to be a responsible investor and member of the community. We strive to not only effectively managing our environmental impacts, but also providing meaningful employment for the local community and much-needed socio-economic development together with our local partners in the community.

Our approach specifically around Human Rights follows the principles contained in the UN *Guiding Principles on Business and Human Rights* and the *Protect, Respect, Remedy Framework*.

Following the guidelines of the United Nations Guiding Principles on Business and Human Rights we recognise the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights, a principle which has been woven into the fabric of our ESG framework. We also recognise the State's role and obligations with regards to human rights and in turn Solway Investment Group complies with all legislation in this regard which has been enacted by Guatemala and do not encroach, interfere with, or attempt to influence the responsibilities or obligations of the State with regard to their obligations to protecting human rights.

Global events and geopolitics have significantly impacted Solway's overall business, and production has been halted at our operations in Guatemala since January 2023 as a result. This suspension of operations has unfortunately led to layoffs of personal and meant that implementation of some of the ESG related initiatives and development programs have been paused at CGN-PRONICO for the moment. None of the functions relating to protecting human rights, safety, or environmental monitoring and management have been affected by the suspension of operations and are operating normally.

The Fenix mine, CGN, and PRONICO are the largest local employers in one of the most economically challenged regions of Guatemala. Before the suspension of work the projects provided jobs for 1,633 employees, 61% of whom come from the local communities in El Estor themselves and 31% from other regions in Guatemala. We are most proud of the fact that over half of our workforce are from indigenous communities. Foreign nationals are only employed when there are specific skills or experience which is not available locally. In addition, we have hundreds of local contractors and suppliers, which in turn provide indirect employment and economic benefits to the local community.

We include links to our two latest public Sustainability Reports which covers our Guatemalan operations for 2020 and 2021. They were developed based on the Global Reporting Initiative (GRI) and covers a full range of environmental, social, and sustainability governance and oversight in line with the GRI Guidelines. Independent assurance was performed by an external assurance provider on selected indicators and data for the 2020 report, but external assurance was not completed on the 2021 report due to external factors.

[2020 Sustainability Report](#)

[2021 Sustainability Report](#)

In order to strengthen governance and improve oversight and accountability around ESG topics, including Environmental Management, Human Rights, and stakeholder engagement a Group level ESG Steering committee was formed over the course of 2022 and 2023. The mandate of the Steering Committee is to coordinate and direct all efforts related to ESG and plan the implementation of further elements of the planned ESG and compliance framework. The composition of this steering committee will include both executive and independent directors which will provide an additional layer of oversight on this important work.

Other achievements over the past two years around governance, oversight, and management of ESG topics include:

On Group level:

- Further formalization of the Solway Group Mission, Vision, and Value statements.

- Adoption of a Human Rights Policy which will be implemented globally at all our operations.
- Implementation of a Grievance Mechanism to support engagement with stakeholders and hear their concerns or issues and take appropriate remediation action.

A range of Policies and procedures on Group level covering our ESG management system were developed and already partially implemented:

- Group wide ESG Strategy
- Group Code of Conduct
- Allegation Management process (whistleblowing process)
- Compliance training for the SIG management
- New Corporate Governances structures including the SIG Board, and ESG oversight and governance (including non-executive directors and executive directors)

Specifically, around human rights the following initiatives have been implemented at the Guatemalan assets (as a pilot project, and partly implemented at the other SIG assets):

- Human Rights Impact Assessment
- Introduction of a Human Rights Due Diligence process as per UNGP guidance
- Development of Human Rights Policies and implementation plan for CGN and PRONICO in Guatemala

Training sessions with SIG and asset management representatives, and clients and business partners (e.g., suppliers)