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**Urgent appeal submitted to:**

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*UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*

Baskut Tuncak

*Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*

Victoria Tauli Corpuz

*Special Rapporteur on the rights of indigenous peoples*

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*Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*

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*Special Rapporteur on the human rights to safe drinking water and sanitation*

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*Working Group on the issue of human rights and transnational corporations and other business enterprises*

**This urgent appeal relates to the decision of the Government of Ethiopia (GOE) to allow the imminent reopening of the Lega Dembi gold mine, a large privately-owned mine that has caused catastrophic harm to the environment and to the health and well-being of the indigenous Guji people who live near and downstream from the mine.** In response to vociferous community protests over the GOE's April 2018 decision to renew the mine's license for an additional ten years, in May 2018 the GOE suspended the license and closed the mine. It promised an independent assessment of the mine's environmental impact, after which the mine would reopen "if and when 'all stakeholders agree on the results of that investigation.'"<sup>1</sup>

<sup>1</sup> *Midroc's gold mining permit suspended after protests*, ETHIOPIA OBSERVER (May 9, 2018), quoting a spokesman from Ethiopia's Ministry of Mines, Petroleum and Natural Gas, <https://www.ethiopiaobserver.com/2018/05/09/midrocs-gold-mining-permit-suspended/>; *Ethiopia Agrees to Suspend*

Ethiopia renewed this commitment during its February 2019 review by the Committee for the Elimination of Discrimination Against Women (CEDAW). Responding to questions, the representative of the GOE acknowledged the strong community concerns over “the allegations that toxic emissions from the mine had caused the population different health side effects and ailments.” He pledged that “as soon as the findings of these assessments are completed, if indeed the mine is found to have been responsible for the toxic waste and the resultant health side effects on the communities around the mines,” the State would take appropriate action.<sup>2</sup> Specifically, he assured CEDAW that “Ethiopia does have adequate legal framework to hold the mine accountable and **to also make sure that it pays due compensation and that it does not resume functions until the toxic waste has been resolved and no longer poses a threat.**”<sup>3</sup>

CEDAW applauded the decision to close the mine and conduct impact assessments, but expressed concern “about the grave health, environmental and socioeconomic impact of the operations of the [Lega Dembi] mine on Guji rural women and their families.”<sup>4</sup> CEDAW urged the State to “ensure full transparency and independence during the assessment process, including by publishing the results and sharing them with the Guji people, address the environmental and health damage caused and provide adequate reparations and compensation to the victims.”<sup>5</sup>

To date, the GOE has broken its promises and has ignored the CEDAW recommendations:

1. **There has been no transparency.** The results of the health, environmental and socio-economic assessments have not been made public and, most notably, have not been shared with the affected communities. The written reports are not publicly available, and no meetings or other communications have taken place to present the results to the community.
2. **There has been no independence with respect to the environmental impact assessment.** Instead, a team of Canadian consultants wrote an environmental assessment report based on a desk audit of existing documents, supplemented perhaps by interviews with GOE and MIDROC personnel. They never visited the mine, they never took and analyzed soil and water samples, and they never spoke with members of the affected community.

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*MIDROC Gold Mining After Protests*, VOA (9 May 2018), <https://www.voanews.com/africa/ethiopia-agrees-suspend-midroc-gold-mining-after-protests>; see also, *Ethiopia suspends gold mining firm’s licence after weeks of protests*, Reuters (10 May 2018), <https://af.reuters.com/article/metalsNews/idAFL8N1SH2LF>; *Ethiopia suspends MIDROC’s Lega Dembi gold-mining license*, APA News (10 May 2018), <http://apanews.net/en/news/ethiopia-suspends-midroc-lega-dembi-gold-mining-license>.

<sup>2</sup> Committee on the Elimination of Discrimination against Women, 1665th meeting, 72nd session, unofficial transcription of recorded remarks of representative of Ethiopia related to Lega Dembi p. 2 (21 Feb. 2019). Video from which the transcription was made is available at <http://webtv.un.org/search/consideration-of-ethiopia-contd-1666th-meeting-72nd-session-committee-on-the-elimination-of-discrimination-against-women-6005667564001/?term=consideration%20of%20ethiopia&lan=english&cat=Meetings%2FEvents&sort=date&page=29>, at (hour:minute:second) 1:33:55 – 1:35:43.

<sup>3</sup> *Id.* 1:35:23 – 1:35:43 (emphasis added).

<sup>4</sup> Committee on the Elimination of Discrimination against Women, 1665th and 1666th meetings, Concluding observations on the eighth periodic report of Ethiopia, CEDAW/C/ETH/8, ¶ 45 (14 March 2019), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fETH%2fCO%2f8&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fETH%2fCO%2f8&Lang=en).

<sup>5</sup> *Id.* ¶ 46.

3. **There have been no consultations with the affected community.** The indigenous Guji community impacted by the mine has had no opportunity to consult or participate in the decision as to whether and under what circumstances the mine should be allowed to reopen. The principle of free, prior and informed consent has been totally ignored.

4. **Although nothing has been done to remediate the toxic contamination or to prevent renewed contamination in the future, the GOE and the mining company have taken steps directed toward the imminent reopening of the mine.** On or about 14 October 2019, the GOE established a committee consisting of two representatives of the federal government, three representatives of the Oromia regional government, and three representatives of the company that owns the mine, and directed this committee to develop a plan to implement the reopening of the mine within two weeks. The mining company, for its part, has notified mine employees to prepare to return to work.

**Given the urgency of this situation, we respectfully ask for your intervention to remind the GOE of its human rights obligations and to urge it not to allow the Lega Dembi mine to reopen until:**

a. **The results of the environmental, health, and socio-economic impact assessments are made public and are shared with the affected community.** The written reports must be made public, and the information contained in those reports must be explained to the community truthfully and in a manner that is understandable to community members.

b. **Consultations are held with the affected community to determine whether and under what conditions the Lega Dembi mine should be allowed to resume operations.** These consultations must be carried out in a manner consistent with the principle of free, prior and informed consent.

c. **Appropriate measures are implemented to remediate the existing contamination and to assure that future mining operations do not lead to a resumption in contamination of the soil, water and air in the communities near and downstream from the mine.** The determination of what must be done to safeguard the health and well-being of these communities should be informed by international standards and best practices.

d. To provide the information that must underlie the development of remedial measures, **a full, expert, and independent environmental impact assessment (EIA) is carried out, and the health impact assessment is completed.** Instead of conducting only a document review, independent experts should complete a full EIA. Additionally, the health impact assessment should be completed. To date, only the first phase of the study, centered on a household survey, has been carried out. The second phase, involving a comparative biochemical analysis of blood and hair samples of people near and downstream from the mine vs. people living upstream, has not yet been started.

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**Alleged victims:** Members of the indigenous Guji community who live near and downstream from the Lega Dembi mine.

**Alleged perpetrators:** The Government of Ethiopia, including its Ministry of Mines, Petroleum and Natural Gas, and the Mohammed International Development Research and Organization Companies (MIDROC), which owns and operates the Lega Dembi mine.

**Organizations submitting the communication:** Development by Unity and Brotherly Action for the Future (DUBAF), Girja Integrated Rural Development Association (GIRDA), and the Center for International Human Rights (CIHR) of Northwestern University's Pritzker School of Law.<sup>6</sup>

**Date, place and detailed description of the circumstances of the incident(s) or the violation:**

**A. The Lega Dembi gold mine**

The Lega Dembi mine is a massive gold mine in the Shakiso District of the Oromia Regional State in southern Ethiopia. For centuries, indigenous Guji people have pursued an agro-pastoral way of life in this area, raising livestock and farming on their ancestral lands.

In 1997, Ethiopia granted a 20-year mining license to Mohammed International Development Research and Organization Companies (MIDROC), whose owner, through his various businesses, is the largest private employer in Ethiopia. Prior to privatization, the State operated a much smaller gold mine in the same area.<sup>7</sup> MIDROC vastly expanded the size and scale of the mine, causing massive deforestation and the exclusion of the Guji people from portions of their ancestral land. In 2009, MIDROC obtained an additional license for the adjacent Sakaro Gold Mine, an underground mine connected by tunnel to the Lega Dembi mine.

**B. Exposure to toxic substances**

Analysis of soil and water samples has shown that the Lega Dembi mining operation has exposed the local community to dangerous levels of multiple toxins, including cyanide, arsenic, and mercury.

MIDROC acknowledges using cyanide to separate gold from ore.<sup>8</sup> Cyanide is highly toxic: it can cause respiratory failure, heart, brain, and nerve damage, and it can be lethal.<sup>9</sup> Heavy metals such as arsenic and lead are often present where gold is found, and they have been found to be present

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<sup>6</sup> DUBAF and GIRDA are licensed Ethiopian NGOs. DUBAF aims to make a lasting, positive difference in the life and livelihoods of the marginalized communities through supporting self-help initiatives and promoting indigenous values. GIRDA works with poor women, girls and boys, youth and marginalized communities and community-based institutions to have a significant positive impact on the underlying causes of poverty. Both DUBAF and GIRDA work with the communities in the Guji Zone of Ethiopia's Oromia Regional State, including in the Shakiso District in which the Lega Dembi mine is located. CIHR, which is in special consultative status with ECOSOC, is dedicated to human rights education and legal and policy-focused human rights advocacy within the United States and worldwide.

<sup>7</sup> For a number of years after privatization, a much smaller State-owned gold mine continued operation near the Lega Dembi mine. This mine was closed at some point five to eight years ago.

<sup>8</sup> *Compliance audit in chemical management on MIDROC Gold Mine PLC's Legadembi and Sakaro Mining Operations, prepared by Addis Ababa University Business Enterprise PLC* (March 2018), p. 59 (hereinafter AAUBE Report). Cyanide is commonly used in gold mines, but it is essential that its use be carefully managed with appropriate measures being taken to avoid environmental degradation and adverse health impacts. *See id.* pp. 34, 37, 51-52.

<sup>9</sup> *Facts About Cyanide*, Centers for Disease Control and Prevention, (4 Apr. 2018), <https://emergency.cdc.gov/agent/cyanide/basics/facts.asp>; AAUBE Report, *supra* note 8, p. 49.

at the Lega Dembi mine site. They can be released into the environment by the mining process. Exposure to these elements is extremely dangerous; for example, both arsenic and lead have the potential to harm pregnancies, impair brain development, and damage organs.<sup>10</sup> Mercury, which can be used to separate gold from ore, and which can also be found naturally occurring in areas where gold is present, is also highly toxic. Exposure to even small amounts of mercury can impair development, vision, hearing, and memory and have toxic effects on the nervous, digestive, and immune systems.<sup>11</sup>

These toxic substances have contaminated the water, air and soil in communities near Lega Dembi by a number of pathways. Toxic waste produced when gold is extracted from ore is channeled into a tailings pond. This pond is the first of a series of three ponds that are created by three dams (one between the tailings pond and the second pond, a second dam between ponds two and three, and a third dam before release of the water into the natural environment). These ponds are not fenced off, allowing free access by livestock, wildlife, and – most concerning – local people who fetch water from the second and third ponds for household use.<sup>12</sup>

Groundwater has been contaminated by seepage from these highly toxic ponds. Contrary to industry standard, the ponds have not been lined with an impermeable layer to prevent seepage.<sup>13</sup> This contaminated groundwater reaches the surface in small streams that spring from the ground and flow into larger streams, further contaminating the water supply. During the rainy season, the tailings ponds sometimes overflow, contaminating both ground and surface water. There is also run-off in the rainy season from areas of the open pit mine where rain collects and overflows; this contributes to acid mine drainage and the spread of water contaminated with heavy metals. Community members have no choice but to drink, cook with and bathe in the contaminated water, as they do not have clean water piped into their communities and they cannot afford to buy bottled water.

The mine also contaminates the air that people breathe. Explosions, which are used to break the rock to extract the ore, create huge amounts of dust that is carried on the wind into the surrounding communities. The large machines that are used to crush the rock into small particles also generate large amounts of dust. During the dry season, portions of the tailings ponds dry up, leaving behind the toxic residue. This toxic residue, as well as the heavy-metal-laden dust from the open pits, is blown about by the wind, polluting the air that the people breathe and poisoning crops and plants. Finally, both the water and the air contaminate the soil in which people grow their crops.

Without access to the results of an independent, complete, and professionally conducted environmental impact assessment, it is impossible to identify all of the toxins to which the people living near Lega Dembi have been exposed or the levels of their exposure. However, what is known is deeply troubling.

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<sup>10</sup> World Health Organization, [https://www.who.int/ipcs/assessment/public\\_health/chemicals\\_phc/en/](https://www.who.int/ipcs/assessment/public_health/chemicals_phc/en/); AAUBE Report, *supra* note 8, pp. 44–45.

<sup>11</sup> World Health Organization, [https://www.who.int/ipcs/assessment/public\\_health/chemicals\\_phc/en/](https://www.who.int/ipcs/assessment/public_health/chemicals_phc/en/); AAUBE Report, *supra* note 8, p. 45.

<sup>12</sup> AAUBE Report, *supra* note 8, pp. 84, 103, 107, 117, 123.

<sup>13</sup> *Id.* pp. 41, 102.

**Cyanide:** A 2018 environmental impact assessment commissioned by MIDROC itself concluded:

“[C]yanide is present in considerable amount both in water and soil samples outside of the tailings dam in the license area and such issue must be addressed and a better cyanide management should be in place particularly at this specific site. The fact that cyanide enters the areas outside the tailings dam from tailings dam discharge and the seepage along the rock fill dam, and the fact that the detoxification plant is not frequently in use, creates a health threat because the people and animals are using the water from Dam 2 [*i.e.*, the second pond] to which it is discharging.”<sup>14</sup>

**Arsenic:** Soil and water samples within and downstream from the Lega Dembi mine area have revealed concentrations of arsenic that substantially exceed recommended limits. For example, analysis of a sample taken at the point of “Discharge from the third dam to the Environment” showed a concentration of arsenic (As) of 98.0 µg/l – a level nearly ten times as high as the World Health Organization’s 10.0 µg/l standard for arsenic.<sup>15</sup>

**Mercury:** MIDROC denies using mercury at Lega Dembi, but it has never adequately accounted for a 100 kg vat of mercury stored in the “gold room” when MIDROC took over operations from the State, which used mercury to separate gold from ore before the mine was privatized.<sup>16</sup> Moreover, even if MIDROC has not used mercury, the cyanide used to separate gold from ore can simultaneously release mercury naturally present in the ore, and can mobilize mercury residue that may remain from the era of State-owned mining.

In responding to community protests against the mine in 2010, MIDROC blamed the government for using mercury and the government blamed MIDROC for using mercury.

The 2018 assessment report commissioned by MIDROC indicates the absence of evidence of excessive levels of mercury in soil and water samples.<sup>17</sup> It should be noted, however, that this assessment was performed under contract with MIDROC and that the laboratory analyses for the study were conducted not by the assessment team from Addis Ababa University Business Enterprise PLC but by a laboratory that, per the report, had been a MIDROC client for seven years.<sup>18</sup>

In contrast to the findings reported in the 2018 report, in 2019 a team of independent researchers from Dilla and Bule Hora Universities found levels of mercury contamination in water, sediment and soil samples that substantially exceed international standards. Mercury levels in the tailings pond were found to be nearly 500 times the WHO standard for water. Downstream from the mine, concentrations in the Lega Dembi River were found to be about twice the maximum allowed under the WHO standard. Analysis of sediment taken at the tailings pond revealed concentrations of mercury more than 800 times the allowable amount, while samples of streambank sediment along the Lega Dembi River downstream from the mine contained concentrations more than 250 times the level permitted under international standards. Soil samples, too, contained high levels of

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<sup>14</sup> AAUBE Report, *supra* note 8, p. 83.

<sup>15</sup> *Id.* p. 74 Table 11.

<sup>16</sup> *Id.* p. 66.

<sup>17</sup> *Id.* p. 80.

<sup>18</sup> *Id.* pp. 2–3.

mercury contamination. At the tailings pond, analysis of soil samples revealed concentrations of mercury of about 145 times the level permitted under international standards. Downstream soil samples contained concentrations of mercury that are about eight times the international standard.<sup>19</sup>

### **C. Lega Dembi's impact on the local community**

The environmental degradation and pollution caused by the Lega Dembi mine have violated the rights of the indigenous Guji people in nearby communities to life, health, clean water, food, and education. Women have suffered uncommonly high rates of miscarriages and stillbirths, and many infants have died shortly after birth or been born with severe physical and developmental disabilities that shorten life expectancy and compromise quality of life, including deformed limbs, paralysis and mental incapacity.<sup>20</sup> Children as well as adults have suffered debilitating health issues, including tumors, headaches, skin conditions, and vision problems. The right to food has also been impaired: livestock have died or become ill, crops have produced smaller yields, and people have become ill from eating the food grown in the affected area. Children's right to education has also been impaired, as children with deformed legs are unable to walk the long distances to school, and the schools lack the resources to educate children with severe developmental and physical disabilities.

The experiences of two families illustrate the suffering caused by the mine.<sup>21</sup>

Kiyya and Gadaa live a half-hour walk from the mine. They lost two children when Kiyya suffered two late-term miscarriages. Their five-year-old daughter Caaltuu was born with limb deformities that limit her ability to walk. This means she cannot go to school, because the school is a long walk away. Although she can talk, she has trouble with comprehension. Her older brother and parents suffer headaches and other ailments. Their crops have not done well, and their oxen now have such weak bones that they cannot plow the land. Previously self-sufficient, the parents have had to turn to day labor to buy food for the family.

Ayyantu's family lives a ten-minute walk downstream from the mine. When she was pregnant with her daughter Kedija, Ayyantu drank from the nearby water and ate from her family's crops. Kedija, now nine, was born with paralysis. She cannot use her hands, feed herself, or walk; one of her parents must constantly be with her. Her brother Hirko developed a tumor on his back before his second birthday. The parents, too, have health problems. They have lost more than half of their livestock, their crops of maize, teff and wheat have become less productive, and eating the food they grow gives Ayyantu stomach problems.

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<sup>19</sup> The research team from Dilla and Bule Hora Universities just completed their laboratory analysis of the samples in October 2019, and they are currently completing the report on their findings. Although their work does not constitute a full environmental impact analysis, it provides important information on toxic contamination near and downstream from the Lega Dembi mine. The Dilla/Bule Hora research team intends to make its findings public once the written report is completed.

<sup>20</sup> See A study on socio economic impacts of MIDROC Gold Mine – Lega Dembi & Sakaro operations, prepared by Research Team from Dilla and Bule Hora Universities (September 2019), pp. 27–30 (hereinafter Dilla & Bule Hora Socio-Economic Impact Study); Cecilia Jamasmie, *Ethiopians Protest MIDROC Gold Mining License Renewal*, TESFANEWS (7 May 2018), <https://www.tesfanews.net/ethiopians-protest-midroc-mining-license-renewal/>; Interviews with community members.

<sup>21</sup> These narratives are used with the consent of the victims, whose names have been changed to protect their privacy.

These are not isolated examples. Area residents for years have complained of the very high number of health problems, miscarriages, and children born with disabilities. “Mothers are having miscarriages every single day,” a health care worker from the Shakiso area reported.<sup>22</sup> “I am not seeing this in other places, only around the mining site.”<sup>23</sup>

Local people repeatedly complained to local government authorities and engaged in protest demonstrations against the mine, all to no avail.

#### **D. The 2018 renewal of MIDROC’s license and the AAUBE environmental impact assessment**

Despite strong community opposition, in 2018, MIDROC asked the GOE to renew its license for an additional ten years. To support this request, in January 2018 it contracted with Addis Ababa University Business Enterprise PLC (AAUBE) to conduct an environmental compliance audit.

The AAUBE assessment, while apparently a good faith and professional assessment, suffered from certain serious constraints acknowledged in the report itself. Among the more serious were these:

\* The laboratory analysis of soil and water samples was not performed in an independent manner. Rather, due to a “lack of time to look for alternative laboratories,” all laboratory analysis of samples was conducted by a company “which has been a client of MIDROC Gold PLC for the last seven years.”<sup>24</sup>

\* MIDROC shut down most of the mining operations during the period of the assessment visit, making it impossible for the assessors “to inspect the mine under full working condition.”<sup>25</sup>

\* The assessment team was unable to take groundwater samples “because all monitoring boreholes were damaged and were not functional during the field visit.” Thus, there was no analysis of the mine’s impact on groundwater.<sup>26</sup>

\* MIDROC prevented the assessment team from entering the “gold room” where mercury had been used and stored before the mine was privatized, and no accounting was provided on the fate of the 100 kg of mercury present there when MIDROC took over the mine.<sup>27</sup>

Notwithstanding these and other limitations, the AAUBE report documented profound problems both with MIDROC’s management of the mine and with the GOE’s regulatory oversight.

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<sup>22</sup> Cecilia Jamasmie, *Ethiopians Protest MIDROC Gold Mining License Renewal*, TESFANEWS (May 7, 2018), <https://www.tesfanews.net/ethiopians-protest-midroc-mining-license-renewal/>.

<sup>23</sup> *Id.*

<sup>24</sup> AAUBE Report, *supra* note 8, p. 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* pp. 3, 66.

As to MIDROC, the audit revealed, among many problems, the following departures from the way a well-regulated mine would be operated:

a. **Failure to fence off the highly toxic tailings ponds to prevent public access.** As noted above, the toxic waste produced when gold is extracted from the ore is channeled into the first of three interconnected ponds, where it is supposed to be contained until it has been purified. These highly toxic ponds remain unfenced and accessible to the community, as well as to wildlife.<sup>28</sup> The lower two ponds are used as a source of water by community members, who fetch water for domestic use and allow their livestock to drink from these ponds.<sup>29</sup> Many community members report never having been warned not to do so, and even those who may be suspicious of the water continue to use it for lack of alternative sources of clean water.

b. **Failure to install impermeable liners at the base of the tailings ponds to prevent seepage into groundwater.** A well-regulated mine would have multiple impermeable liners at the base of the tailings ponds to prevent seepage of toxic waste into the groundwater.<sup>30</sup> At the Lega Dembi mine, however, “no liners were installed to prevent passage of leachate to the groundwater system.”<sup>31</sup>

c. **Contamination of freshwater stream due to the design of the mine.** The tailings ponds at Lega Dembi are situated in such a way that a freshwater stream used by the community for water flows directly through them, thus contaminating that water source.<sup>32</sup> A well-regulated mine would have kept the stream separate, preserving it as a source of clean water for the community.<sup>33</sup> MIDROC, however, has not diverted the stream away from the tailings ponds.

d. **Lax and inadequate monitoring and record-keeping with respect to the risks of toxic contamination.** For example, although monitoring of groundwater quality is crucial to ensure the safety of the communities that rely on that water, at the time of the assessment none of the boreholes needed to conduct this monitoring were functional.<sup>34</sup> More generally, the assessment team found that although MIDROC’s internal environmental policy committed to both internal audits and twice-yearly external audits, “except for some fragmented and ad hoc audit and monitoring reports, the present team has seen no evidence that these tasks are performed systematically and as planned.”<sup>35</sup>

e. **Failure to comply with recommendations made in prior environmental impact assessments.** According to the AAUBE report, that report was not the first EIA to identify problems and make recommendations. Per the report, MIDROC had not followed the recommendations previously made.<sup>36</sup> (None of these EIAs were made public.)

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<sup>28</sup> AAUBE Report, *supra* note 8, pp. 103–04, 121.

<sup>29</sup> *Id.* pp. 84, 117, 123.

<sup>30</sup> *Id.* p. 102.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* p. 65.

<sup>33</sup> *Id.* p. 118.

<sup>34</sup> *Id.* p. 3.

<sup>35</sup> *Id.* p. 91; *see also id.* p. 119. The report also noted the “[l]ack of a proper database and document management.” *Id.* p. 119.

<sup>36</sup> *Id.* pp. 96–97.

The AAUBE assessment also found very serious problems with the GOE’s regulatory oversight of the mine.

Ethiopian law purports to protect the environment: the Constitution provides all persons with the “right to a clean and healthy environment” and requires the State to ensure development projects do not damage the environment.<sup>37</sup> The 1997 Environmental Policy of Ethiopia outlines policy goals, including regular audits and environmental monitoring with results made available to the public, the conditioning of mine contracts on pre-development environmental impact assessments, sound management during operation, and the endorsement of both precautionary and “polluter pays” principles to control pollution.<sup>38</sup> Ethiopian law requires EIAs prior to federal licensing of projects that are likely to have negative environmental impacts.<sup>39</sup>

Unfortunately, the Lega Dembi situation illustrates the consequences of a legal framework not implemented in practice. The 2018 AAUBE audit concluded:

“The overall audit findings are that the MMPNG [Ministry of Mines, Petroleum and Natural Gas] and MoEFCC’s [Ministry of Environment, Forest and Climate Change] compliance and enforcement activities of the mine are inadequate to protect the area from significant health and environmental risks. We found neglect in compliance and enforcement program activities within the MMPNG, and significant deficiencies within the MoEFCC activities.”<sup>40</sup>

“Although MoEFCC has adopted compliance and enforcement legislative frameworks, there are significant gaps in implementing the frameworks that were issued. MoEFCC has not yet provided any approved standards for environmental pollutants of mining. . . Inspections by MMPNG and MoEFCC did not meet regulatory requirements. Neither MMPNG nor MoEFCC are conducting adequate monitoring and regular site inspections and neither have assessed how this is impacting risks.

Both ministries lack sufficient resources and tools to manage environmental risks from mining activities. eg. Standards and laboratories, resources dedicated to the regulatory activities of monitoring, compliance and enforcement.”<sup>41</sup>

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<sup>37</sup> Constitution of the Federal Democratic Republic of Ethiopia art. 44(1), 92(1)–(4), 21 August 1995, available at <https://www.refworld.org/docid/3ae6b5a84.html>.

<sup>38</sup> Environmental Policy of Ethiopia §§ 3.8(k), 2.3(m), 3.6(g), 3.8(b), 2 April 1997, available at <http://extwprlegs1.fao.org/docs/pdf/eth133155.pdf>. Many of these guiding principles have been adopted in proclamations. See, e.g., Mining Operation Proclamation No. 678/2010, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103974/126647/F1812617041/ETH103974%20Eng.pdf>; Environmental Pollution Control Proclamation No. 300/2002, available at <http://extwprlegs1.fao.org/docs/pdf/eth44282.pdf>; Environmental Impact Assessment Proclamation No. 299/2002, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85156/95183/F804075597/ETH85156.pdf>.

<sup>39</sup> Environmental Protection Organs Establishment Proclamation No. 295/2002 art. 6(5), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85158/95185/F193782397/ETH85158.pdf>; Environmental Impact Assessment Proclamation No. 299/2002 art. 3–5, available at <http://extwprlegs1.fao.org/docs/pdf/eth44281.pdf>.

<sup>40</sup> AAUBE Report, *supra* note 8, p. 120.

<sup>41</sup> *Id.* p. 119.

The AAUBE report noted in particular the conflict of interest created by MMPNG's dual responsibilities to promote the growth of the mining industry while simultaneously policing its compliance with environmental regulations. Originally, these responsibilities were separate: the Ministry of Mines, Petroleum and Natural Gas was tasked with promoting the growth of the mining industry, while the regulatory oversight functions were assigned to the Environmental Protection Authority.<sup>42</sup> But in 2009, instructions from the Prime Minister's office transferred oversight of environmental impact assessments from the environmental ministry to the mining ministry, thus creating the inherent conflict of interest noted in the AAUBE report:

“MMPNG regulatory oversight activities are inadequate. MMPNG's mandate to promote the mining industry conflicts with its role as a regulator, thus reducing its regulatory effectiveness, particularly with respect to safety, health and environmental issues. The fact that the ministry signed the Sakaro Mining contract agreement before submission of Environmental and Social Impact Assessment report and mine rehabilitation plan and before obtaining Environmental Clearance Certificate is a clear reflection of the dual role of the ministry.”<sup>43</sup>

Despite the serious shortcomings disclosed by the AAUBE audit, a month after receiving the report the Ministry of Mines, Petroleum and Natural Gas renewed MIDROC's license for an additional ten years.

Neither the results of the AAUBE study nor the study report itself were made public.<sup>44</sup> Instead, a government representative sent to explain the basis of the license renewal decision misrepresented the findings of the report. Following the license renewal, Minister of Defense Motuma Makasa, who had previously been the Minister of Mines, spoke at a meeting in Adoolaa, a town located about 20 km from the Lega Dembi mine. According to the Minister, the AAUBE report had found no significant environmental problems with the Lega Dembi mine.

#### **E. The May 2018 license suspension and the impact assessments**

The April 2018 decision to renew the mine's license for another ten years led to an outbreak of protests in the Shakiso area. In response to these protests, in May 2018 the GOE changed course and suspended the mine's license. It promised an independent assessment, after which “operations would resume if and when ‘all stakeholders agree on the result of that investigation.’”<sup>45</sup>

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<sup>42</sup> The “Environmental Protection Authority” later became the “Ministry of Environment, Forest and Climate Change,” referred to in the quotations from the AAUBE report. As of November 2018, that entity has become the Environment, Forest and Climate Change Commission. Proclamation No. 1097/2018 (36-17) available at <https://chilot.me/wp-content/uploads/2019/08/Proclamation-No.1097-2018-DEFINITION-OF-THE-POWERS-AND-DUTIES-OF-THE-EXECUTIVE-ORANGS.pdf>.

<sup>43</sup> AAUBE Report, *supra* note 8, p. 119.

<sup>44</sup> Even today, the AAUBE assessment report remains generally unavailable to the public, though at some point some people acquired leaked copies of the report.

<sup>45</sup> *Midroc's gold mining permit suspended after protests*, ETHIOPIA OBSERVER (9 May, 2018), <https://www.ethiopiaobserver.com/2018/05/09/midrocs-gold-mining-permit-suspended/>; *Ethiopia Agrees to Suspend MIDROC Gold Mining After Protests*, VOA (9 May, 2018), <https://www.voanews.com/africa/ethiopia-agrees-suspend-midroc-gold-mining-after-protests>; *see also, Ethiopia suspends gold mining firm's licence after weeks of protests*, REUTERS (10 MAY, 2018), <https://af.reuters.com/article/metalsNews/idAFL8N1SH2LF>; *Ethiopia suspends MIDROC's Lega Dembi gold-mining license*, APA NEWS (10 May, 2018), <http://apanews.net/en/news/ethiopia-suspends-midrocs-lega-dembi-gold-mining-license>.

Three impact assessments were to be performed: an environmental impact assessment, a health impact assessment, and a socio-economic impact assessment. Without holding a competitive bid process, the GOE accepted Canada's offer to fund an environmental impact assessment conducted by Canadian consultants. The Canadian consultants also provided guidance regarding the design of the health impact assessment, which was to be carried out by the Ethiopian Public Health Institute. A team of researchers from Dilla and Bule Hora Universities, both of which are located relatively near the Lega Dembi mine, were selected to conduct the socio-economic impact assessment.

**Environmental impact assessment.** Although an independent assessment had been promised, no independent environmental assessment was ever conducted. The Canadian consultants never visited the mine, never took water or soil samples, and never spoke with members of the local community. Instead, they produced a report based on a review of documents, perhaps supplemented by some interviews of MIDROC or GOE personnel. A draft of this report was presented to the GOE in about December 2018. Sometime thereafter, the Canadians submitted the final version of their report.

It is believed that this report relied heavily on the AAUBE report discussed above, and that it repeated the recommendations made in that report. However, the contents of the report cannot be confirmed as the report has never been made public. In particular, the findings, conclusions and recommendations made by the Canadian consultants have never been shared with the communities impacted by the mine.

**Health impact assessment.** The health impact assessment was designed to have two parts. The first part consisted of a household survey of people living in the villages nearest to the Lega Dembi mine, designed to obtain information about adverse health impacts suffered by household members. The second part was to consist of biochemical testing of blood and hair samples of people living upstream, near, and downstream from the mine, so that a comparison could be made of the upstream samples, as compared to the near and downstream samples.

To persuade the community people to cooperate with the survey phase, researchers promised them that the results of the study would be shared with the community. With those assurances, there was an exceedingly high rate of cooperation with the survey – some 3000 households shared a great deal of highly personal information. The survey was conducted in late 2018, and during the first half of 2019 a draft report was prepared and presented to the GOE. Thereafter, a final report was prepared and submitted. It is believed that this report confirms the severe health impacts suffered by communities near and downstream from the mine, with particularly severe problems reported in the areas closest to the Lega Dembi mine.

Unfortunately, contrary to the promises made to the community, neither the study report nor the study results have been shared with the community. The second phase of the health impact assessment, involving biochemical testing, has not even begun. It is not clear whether this portion of the study will ever be carried out.

**Socio-economic impact assessment.** The socio-economic impact study has also been completed, and both a first draft and a subsequent version have been submitted to the government. It is believed that this report was highly critical of the mine. However, like the other two assessment reports, it has not been made public.

## **F. Decision to allow the imminent reopening of the mine**

As of yet, there has been no transparency with respect to the results of these three assessments. The reports have been withheld from the public, and there have been no discussions or consultations of any kind with the local people.

There have also been no measures taken to remediate the existing environmental damage caused by the mine.

There is strong reason to believe that each of the three impact assessments documented serious problems. Because the Canadian consultants never went to the mine, they would have had to rely on the most recent EIA conducted by others, and that is the 2018 EIA conducted by AAUBE. Although the March 2018 report of that study was not made public at the time, and it still is not generally accessible within Ethiopia, by spring 2019 the report had leaked out, and its criticisms of MIDROC and the GOE are described above. As to the health impact assessment, given the frequent complaints of local people about the health problems they have suffered, it is reasonable to believe that the health impact assessment documented significant health problems among community members. The socio-economic study was also based on interviews with community people; it is thus very likely that it, too, was very critical of the mine.

Despite all of the above, the GOE has now reached the decision to allow the mine to reopen. On or about 14 October 2019, the GOE established a committee consisting of two representatives of the federal government, three representatives of the Oromia regional government, and three representatives of the company that owns the mine, and directed this committee to develop a plan to implement the reopening of the mine within two weeks. It is believed that their plan will call for MIDROC to pay some amount of compensation to the community or to community members. However, there has been no indication that the company will be required to remedy the existing contamination or provide reliable assurances against future contamination before being allowed to resume operations. Significantly, no local government representatives and no representatives of the indigenous community have been included on this committee.

The mining company, for its part, has notified mine employees to prepare to return to work.

## **G. International human rights standards regarding the right to information, the obligation to conduct impact assessments, the right to consultation and participation, and the right to an effective remedy**

### **1. Right to information**

The right to receive information is recognized in Art. 19(2) of the International Covenant on Civil and Political Rights, to which Ethiopia is a State party.<sup>46</sup> This right “embraces a right of access to information held by public bodies.”<sup>47</sup>

The right to information is a right in itself and is “essential to the exercise of other rights.”<sup>48</sup> This right “is particularly important in relation to environmental issues. Public access to environmental information enables individuals to understand the effect of environmental harm on their rights, including their rights to life and health, and supports the exercise of other rights, such as rights to expression, participation and remedy.”<sup>49</sup> There are two dimensions to access to environmental information: “States should regularly collect, update and disseminate environmental information, and they should provide affordable, effective and timely access to environmental information held by public authorities.”<sup>50</sup> The State’s obligation goes beyond ensuring public access to information upon request, by requiring the State to proactively disclose information and inform the public irrespective of requests.<sup>51</sup>

When there is an “imminent threat of environmental harm,” States “must ensure that all information that would enable the public to take protective measures is disseminated immediately.”<sup>52</sup> There is no justification for withholding such information from the public: “[h]ealth and safety information about toxic chemicals must never be confidential.”<sup>53</sup>

Under the principle of free, prior and informed consent, indigenous people have a particular right to information about the environmental, health and socio-economic impacts of projects affecting

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<sup>46</sup> International Covenant on Civil and Political Rights art. 19(2), *adopted* Dec. 16, 1966, 999 U.N.T.S. 171; *Status of Ratification Interactive Dashboard – International Covenant on Civil and Political Rights*, OHCHR, (30 Sept. 2019), <https://indicators.ohchr.org/>.

<sup>47</sup> Human Rights Committee, General Comment No. 34: Article 19 (Freedoms of opinion and expression), U.N. Doc. CCPR/C/GC/34 (2011), ¶ 18.

<sup>48</sup> Okechukwu Ibeanu, Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, *Report to the Human Rights Council*, 18 Feb. 2008, U.N. Doc. A/HRC/7/21 ¶ 32 (hereinafter 2008 Report of SR Toxics).

<sup>49</sup> John H. Knox, Special Rapporteur on human rights and the environment, *Report to the Human Rights Council on the relationship between children’s rights and environmental protection*, 24 Jan. 2018, U.N. Doc. A/HRC/37/58 ¶ 42 (hereinafter 2018 Report of SR Environment); *see also* Baskut Tuncak, Special Rapporteur on hazardous substances and wastes, *Report to the General Assembly*, 15 Nov. 2018, U.N. Doc. A/73/567 ¶ 30 (hereinafter 2018 Report of the SR Toxics) (discussing the critical nature of the right to information in the context of toxins).

<sup>50</sup> 2018 Report of SR Environment, *supra* note 49, ¶ 43. *See also* Special Rapporteur on hazardous substances and wastes, *Report to the Human Rights Council on guidelines for good practices in relation to the human rights obligations related to the environmentally sound management and disposal of hazardous substances and wastes*, 20 July 2017, U.N. Doc. A/HRC/36/41 ¶¶ 19–20 (hereinafter 2017 Report of SR Toxics) (stating that States are “duty-bound to regularly generate, collect, assess and update information,” and to effectively communicate such information so it is available, accessible, and functional).

<sup>51</sup> 2008 Report of SR Toxics, *supra* note 48, ¶¶ 33, 50.

<sup>52</sup> 2018 Report of SR Environment, *supra* note 49, ¶ 43.

<sup>53</sup> 2017 Report of SR Toxics, *supra* note 50, ¶ 20.

their communities. Thus, “[i]ndigenous people should have full access to the information gathered in impact assessments that are done by State agencies or extractive companies.”<sup>54</sup> This information “should be presented in a manner and form understandable to indigenous peoples,” and should include information on the “social, environmental and cultural impact assessments . . . and all the potential harm and impacts that could result from the proposed activity.”<sup>55</sup>

Businesses as well as States have human rights obligations regarding access to information. The independent responsibility of business enterprises to exercise human rights due diligence includes an obligation to maintain ongoing communication on how impacts are being addressed and to show stakeholders that there are adequate policies and processes in place to respect human rights in practice.<sup>56</sup> Accordingly, businesses should communicate adequate and easily accessible information to stakeholders on a regular basis.<sup>57</sup>

The failure to share the results and reports of the current Lega Dembi environmental, health and socio-economic impact assessments with the affected communities violates these important principles. The refusal to share the results of the health impact survey is particularly egregious, because the GOE obtained the local communities’ cooperation with the survey by specifically promising to share with them the results of the study.

Unfortunately, the refusal to make public the current impact assessments continues a long-standing pattern of non-transparency. Throughout the years that MIDROC has operated the Lega Dembi mine, none of the mine’s monitoring data or environmental impact assessments have ever been shared with the community. The 2018 AAUBE study, discussed in this report, was also kept secret. Although copies of that study have leaked out, the study still is not generally available and its results have not been shared with the people living near the mine.

## **2. Obligation to conduct independent, comprehensive impact assessments**

In the context of extractive industries, closely linked to the right to information is the obligation of States and companies to conduct comprehensive and independent assessments of the environmental, health and socio-economic impacts of proposed mining operations.<sup>58</sup> As has been recognized by the Special Rapporteur on the rights of indigenous peoples, environmental and human rights impact assessments are “important preconditions for the implementation of extractive operations.”<sup>59</sup>

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<sup>54</sup> James Anaya, Special Rapporteur on the rights of indigenous peoples, *Report to the Human Rights Council on the human rights concerns of indigenous peoples relating to extractive industries*, 1 July 2013, U.N. Doc. A/HRC/24/41 ¶ 65 (hereinafter 2013 Report of SR Indigenous Peoples).

<sup>55</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Study for the Human Rights Council on Free, prior and informed consent: a human rights-based approach*, 10 Aug. 2018, U.N. Doc. A/HRC/39/62 ¶ 22.

<sup>56</sup> Working Group on business and human rights, *Report to the General Assembly*, 16 July 2018, U.N. Doc. A/73/163 ¶¶ 2, 10, 13.

<sup>57</sup> Working Group on business and human rights, *Report to the Human Rights Council on Gender dimensions of the Guiding Principles on Business and Human Rights*, 23 May 2019, U.N. Doc. A/HRC/41/43 Annex ¶ 41 (discussing Guiding Principle 21 of the Guiding Principles on Business and Human Rights through a gender-lens).

<sup>58</sup> See 2018 Report of SR Environment, *supra* note 49, ¶ 46.

<sup>59</sup> 2013 Report of SR Indigenous Peoples, *supra* note 54, ¶ 65.

Principle 8 of the Framework Principles on Human Rights and the Environment states that “[t]o avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.”<sup>60</sup> The Commentary to Principle 8 explains that this assessment of environmental impacts “should also examine the possible effects of the environmental impacts of proposed projects and policies on the enjoyment of all relevant rights, including the rights to life, health, food, water, housing and culture.”<sup>61</sup> Impact assessments must be particularly attentive to the impacts of proposed projects on the most vulnerable, such as children, pregnant women, and indigenous people.<sup>62</sup>

Businesses as well as States have an obligation with respect to impact assessments. Under the Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in June 2011, businesses should implement a “human rights due diligence process to identify, prevent, mitigate, and account for how they address environmental impacts on human rights.”<sup>63</sup>

The independence of the assessment process is of paramount importance. “The integrity of information relied upon by Governments must be beyond reproach. The reliance of regulators on industry-funded studies . . . and the confidentiality of studies relied upon by authorities to reach conclusions are some of the concerns raised in this area.”<sup>64</sup> Accordingly, “States must ensure the integrity of the evidence-gathering and decision-making processes in order to protect human rights from being infringed by the effects of toxics.”<sup>65</sup>

Under these standards, neither the GOE nor MIDROC has complied with its obligation to ensure that there is a comprehensive and independent assessment of the environmental impact of the Lega Dembi mine. While the AAUBE study may have been undertaken in good faith by the assessment team from AAUBE, it was not fully independent. It was undertaken under contract with MIDROC,<sup>66</sup> MIDROC controlled the circumstances of the assessment (*e.g.*, by closing most mining operations for the duration of the assessment visit and by excluding the assessment team from the gold room, where mercury had been, and perhaps still is, stored),<sup>67</sup> and a lab that for seven years had been a MIDROC client was responsible for all of the laboratory analysis of soil and water samples.<sup>68</sup> The assessment was also incomplete in certain critical respects. For example, because the boreholes that should have been used for groundwater monitoring were not functional, the assessment team was unable to perform the critically important assessment of groundwater contamination.<sup>69</sup>

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<sup>60</sup> John H. Knox, Special Rapporteur on human rights and the environment, *Report to the Human Rights Council presenting framework principles on human rights and the environment*, 24 Jan. 2018, U.N. Doc. A/HRC/37/59, preceding Annex ¶ 20 (hereinafter 2018 Framework Principles of SR Environment).

<sup>61</sup> *Id.* Annex ¶ 21.

<sup>62</sup> *See id.* Annex ¶ 43; *see also* 2018 Report of SR Environment, *supra* note 49, ¶ 62.

<sup>63</sup> *Guiding Principles on Business and Human Rights*, 2011, U.N. Doc. HR/PUB/11/04 p. 16, Principle 15(b); *see also*, John H. Knox, Special Rapporteur on human rights and the environment, *Report to the General Assembly*, 19 July 2018, U.N. Doc. A/73/188 ¶ 18.

<sup>64</sup> 2017 Report of SR Toxics, *supra* note 50, ¶ 74.

<sup>65</sup> *Id.* ¶ 71.

<sup>66</sup> AAUBE Report, *supra* note 8, p. 2.

<sup>67</sup> *See id.* pp. 2–3, 66.

<sup>68</sup> *Id.* p. 3.

<sup>69</sup> *Id.*

The environmental assessment report prepared by the Canadian consultants does not cure the deficiencies with the AAUBE assessment study. When MIDROC’s license was suspended in May 2018, the GOE promised that there would be an independent assessment of the environmental impact of the Lega Dembi mine. But the Canadian consultants’ report comes nowhere near being an independent, expert assessment of environmental impacts. The Canadians never visited the mine, never took soil or water samples, and never met the affected community. Their entire report rested on a review of existing documentation, perhaps supplemented by discussions with GOE and MIDROC personnel.

The health impact assessment was also insufficient. It was designed to have two components: a household survey in the communities closest to the mine, and a biochemical analysis of samples (*e.g.*, blood and hair) from people living near and downstream from the mine, as compared to samples from a control group of people living upstream. As of yet, the second phase of the assessment has not been performed.

### **3. Right to consultation and participation**

Communities affected by extractive projects have the right to consultation and participation in the decisions regarding those projects. “[P]ublic participation in the management of toxics” is of “critical importance.”<sup>70</sup> Such participation is “necessary to safeguard a broad range of rights from environmental harm.”<sup>71</sup> States therefore “have an obligation to realize the right to meaningful participation” and must “facilitate the right to participate in environmental decision-making regarding toxics.”<sup>72</sup> “[P]ublic participation must be open to all members of the public who may be affected” by a project.<sup>73</sup>

Indigenous peoples have a particular right in this regard. A core principle of the United Nations Declaration on the Rights of Indigenous Peoples is that indigenous peoples have the right to consultation and participation in decisions about projects that will affect them, in accordance with the requirement of free, prior and informed consent.<sup>74</sup> With regard to extractive projects, Article 32(2) of this Declaration requires States to “consult and cooperate in good faith with the indigenous peoples concerned . . . in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”<sup>75</sup>

The indigenous Guji people who live near and downstream from the Lega Dembi mine have been denied their right to consultation and participation in decisions. They were never consulted when the mining license was first granted to MIDROC in 1997, nor were they consulted in 2009 when MIDROC was granted an additional license for the adjacent Sakaro mine. Despite the

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<sup>70</sup> 2017 Report of SR Toxics, *supra* note 50, ¶ 22.

<sup>71</sup> John H. Knox, Independent Expert on human rights and the environment, *Report to the Human Rights Council on a compilation of good practices*, 3 Feb. 2015, U.N. Doc. A/HRC/28/61 ¶ 42 (hereinafter 2015 Report of IE Environment).

<sup>72</sup> 2017 Report of SR Toxics, *supra* note 50, ¶ 21; *see also* 2018 Framework Principles of SR Environment, *supra* note 60, Principle 9, Annex ¶¶ 23–26; 2015 Report of IE Environment, *supra* note 71, ¶ 42.

<sup>73</sup> 2018 Framework Principles of SR Environment, *supra* note 60, Annex ¶ 24.

<sup>74</sup> United Nations Declaration on the Rights of Indigenous Peoples, 2007, U.N. Doc. A/RES/61/295 ¶¶ 18–19.

<sup>75</sup> *Id.* at Art. 32(2). *See also* 2013 Report of SR Indigenous Peoples, *supra* note 54, ¶ 25; 2015 Report of IE Environment, *supra* note 71, ¶ 97.

community's well-known concerns about the environmental, health and socio-economic impacts of MIDROC's mining operations, the GOE never consulted them in advance of the April 2018 decision to renew the mine's license for another ten years. At no point did the local Guji people have any opportunity to participate in the decisions as to whether and, if so, under what conditions MIDROC should be allowed to conduct mining operations at the Lega Dembi and Sakaro mines.

Now, as the GOE makes preparations for the imminent reopening of the Lega Dembi mine, the Guji people who suffer the mine's impacts have again been denied their right to consultation and participation in the decision-making process.

#### **4. Right to an effective remedy**

Communities and people whose rights have been violated are entitled to an effective remedy.<sup>76</sup> An important component of such a remedy is the payment of adequate compensation. But in the context of exposure to toxics, compensation by itself is not an effective remedy:

“Compensation for victims is a necessary component of an effective remedy. However, compensation alone is insufficient, given the persistence of toxics in the environment and the irreversible and lifelong consequences of many types of exposure. Prevention must also be a priority, according to human rights obligations.”<sup>77</sup>

The right to an effective remedy thus requires not only compensation but also the cessation of actions giving rise to rights violations, timely rehabilitation of the environment and people affected, and a guarantee non-repetition:

“The right to an effective remedy requires the remediation of contaminated sites, the cessation of actions or inactions that give rise to impacts, the provision of health care, and the dissemination of information to ensure that parents and children know how to prevent recurrence. Timely reparation to prevent recurrence is essential.”<sup>78</sup>

This obligation falls on both States and business enterprises. States have the obligation to protect against human rights violations, including those committed by business enterprises, and should compel businesses to prevent violations.<sup>79</sup> Businesses, for their part, “should prevent exposure to toxics” and are “required to remediate contamination.”<sup>80</sup> These obligations cannot be ignored on the basis of cost: “the protection of profit margins by industries is not a legitimate or justifiable derogation from any human right.”<sup>81</sup>

The GOE's apparent intention to allow the imminent reopening of the Lega Dembi mine is incompatible with the Guji community's right to an effective remedy for past and ongoing

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<sup>76</sup> See, e.g., International Covenant on Civil and Political Rights Art. 2(3)(a); U.N. Human Rights Council, *Resolution adopted by the Human Rights Council* on 22 March 2018, U.N. Doc. HRC/RES/37/8, Preamble ¶ 12.

<sup>77</sup> Special Rapporteur on hazardous substances and wastes, *Report to the Human Rights Council*, 2 Aug. 2016, U.N. Doc. A/HRC/33/41 ¶ 104 (hereinafter 2016 Report of SR Toxics).

<sup>78</sup> *Id.* ¶ 40; see also 2017 Report of SR Toxics, *supra* note 50, ¶ 98.

<sup>79</sup> See *Guiding Principles on Business and Human Rights*, *supra* note 63, Principle 1; 2018 Report of SR Toxics, *supra* note 49, ¶ 109.

<sup>80</sup> 2016 Report of SR Toxics, *supra* note 77, ¶¶ 79, 86.

<sup>81</sup> *Id.* ¶ 82.

contamination. To allow the mine to resume operations before remediating the existing contamination and taking effective measures to prevent further contamination would ignore the GOE's and MIDROC's independent obligations to prevent human rights abuses, violate the people's right to an effective remedy, and perpetuate the devastating impacts of the mine.

## **H. Conclusion**

**Based on the above, and given the urgency of the situation due to the GOE's intention to allow the imminent reopening of the Lega Dembi mine, we respectfully ask for your urgent intervention to remind the GOE of its human rights obligations and to urge it not to allow the Lega Dembi mine to reopen until:**

a. **The results of the environmental, health, and socio-economic impact assessments are made public and are shared with the affected community.** The written reports must be made public, and the information contained in those reports must be explained to the community truthfully and in a manner that is understandable to community members.

b. **Consultations are held with the affected community to determine whether and under what conditions the Lega Dembi mine should be allowed to resume operations.** These consultations must be carried out in a manner consistent with the principle of free, prior and informed consent.

c. **Appropriate measures are implemented to remediate the existing contamination and to assure that future mining operations do not lead to a resumption in contamination of the soil, water and air in the communities near and downstream from the mine.** The determination of what must be done to safeguard the health and well-being of these communities should be informed by international standards and best practices.

d. To provide the information that must underlie the development of remedial measures, **a full, expert, and independent environmental impact assessment (EIA) is carried out, and the health impact assessment is completed.** Instead of conducting only a document review, independent experts should complete a full EIA. Additionally, the health impact assessment should be completed. To date, only the first phase of the study, centered on a household survey, has been carried out. The second phase, involving a comparative biochemical analysis of blood and hair samples of people near and downstream from the mine vs. people living upstream, has not yet been started.

## **I. Attachments**

The following documents are submitted with this urgent appeal:

1. *Compliance audit in chemical management on MIDROC Gold Mine PLC's Legadembi and Sakaro Mining Operations*, prepared by Addis Ababa University Business Enterprise PLC (March 2018).
2. Questionnaire used by Ethiopian Public Health Institute for the first portion (survey portion) of the health impact assessment.