

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the 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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL PHL 1/2019

13 February 2019

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/7, 37/8, 32/8, 36/15, 33/9, 34/9, 34/5, 33/12 and 33/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of **the failure of the Government of the Philippines to protect the human rights of the indigenous peoples and local communities living near Dipidio, Nueva Vizcaya Province, the impact on the livelihood of the population and the overall environmental degradation in this region, which are resulting from the exploitation of a gold and copper mine by OceanaGold Corporation, an Australia-based mining company.**

According to the information received:

OceanaGold Corporation (hereafter "the company"), is an Australia-based mining company that operates a gold and copper mine in Didipio (hereafter "the mine") in the Northern Luzon province of Nueva Vizcaya, under a Financial and Technical Assistance Agreement (FTAA), which grants rights to explore, extract and utilize minerals for development and commerce for a 25-year period. Originally, the FTAA was signed in 1994 between the Government of the Philippines and Climax-Arimco Mining Corporation, which merged with OceanaGold in 2006.

more than 17,000 trees for the development of the mine. Reportedly, the company continued to cut trees afterwards and in breach of the 1995 Mining Act and the Revised Forestry Code, it did not undertake the mandatory reforestation of the zone. At the same time, the local and indigenous communities were prohibited from harvesting trees and forest products in forest areas located within the mining concession.

Currently, as the mine operates 24 hours a day, seven days a week, air pollutants, primarily dust, are persistent and led to a high incidence of respiratory illnesses particularly among children and the elderly, especially during summer time. In addition to impacting the right to health, those air pollutants also affected agricultural productivity, with lower crop yields being experienced by local farmers.

The Didipio river is allegedly contaminated by heavy metals. It is reported that the local communities rely on the Didipio river as source of drinking water and water for personal uses as well as for agriculture and irrigation purposes. Due to the contamination of the river, allegedly, the local communities were not able to access safe drinking water. The CSOs found that the concentration of copper in the river exceeds the Severe-Effect Level and the maximum level both for irrigation use and the survival of aquatic organisms, which are 200 µg L⁻¹ and 50 µg L⁻¹, respectively. The sediments of the river are heavily polluted and could negatively affect human health as well as benthic or sediment-dwelling organisms. The mine stands at the headwaters of a river that flows into the longest river system in the entire country, as it flows through four provinces, past millions of homes, and becomes the mighty Cagayan River before emptying into the Pacific Ocean on the northern end of Luzon island. The same river flows through irrigation facilities that sustain agriculture and through hydro-electric dams that provide power to the Luzon Grid. Therefore, contaminants from the mine could potentially put at risk millions of livelihoods and critical ecosystems.

Moreover, in spite of the strict laws governing toxic chemicals in the Philippines, the company has managed to maintain a total opacity on the possible use of cyanide, a toxic chemical, in its mining activities. It appears that no government officials know with certainty what processing chemicals are used at the mine, while the presence of dead and dying trees in the surroundings of the tailings pond and impacts on water quality and biota downstream suggest that dangerous chemicals are indeed used or released through processing.

Through 2017, forced evictions of at least 133 families were carried out in the villages of Kakiduguen, Biyoy and Dine. In addition, there has been an increase of the military presence in the region, allegedly to fight against the communist insurgents. However, in practice, the military appear to be protecting the company and preventing any form of protest against the company and its activities. As a result of this heavy military presence in the region, community leaders and environmental rights defenders feel increasingly at risk of being harassed,

balanced environment pursuant to Section 16 of the Constitution of the Philippines.

3. Please provide information on the investigation carried out, as requested by the Commission on Human Rights of the Philippines, on the human rights violations and abuses that occurred in the context of the establishment of the Didipio mine, and in particular the forced evictions and excessive use of force by the national police, as well as the violations of the indigenous peoples' rights. Please indicate if any compensation has been provided to the victims or what are the effective remedies available to them.
4. Please provide, in detail, information on the process and the outcome of the investigations to determine the cause of the contamination of Didipio River including its origin, victims and the impact on the health and food security of the communities as well as the impact on the surrounding environment;
5. Please indicate the measures taken to ensure that residents of the areas near the mine have adequate access to health care diagnosis and treatment.
6. Please provide information on measures taken by your Excellency's Government to monitor and mitigate the contamination of the Didipio River. Please provide any details regarding steps taken to ensure the quality and safety of drinking water and sanitation for the affected population including any water quality test in accordance with WHO standards.
7. Please provide the details of the measures taken by your Excellency's Government to ensure the effective implementation and enforcement of its national legislation and regulations relating to mining activities, in particular for the issuance of FFTA, as well as the protection of the environment by mining companies. Please also indicate whether human rights and environmental impact assessments were undertaken before the FFTA was signed in 1994 and will be carried out with regard to the extension and expansion of the mine requested by OceanaGold and the possible renewal of the FFTA in 2019, and if so kindly provide details of the assessments and results, even if only preliminary. Please explain the decision of the Office of the President to stop the order of suspension of OceanaGold Corporation activities taken on 14 February 2017 by the former Secretary of the Department of Environment and Natural Resources, and what your Excellency's Government is intending to do in this regard.
8. Please indicate what measures have been taken to ensure that environmental rights defenders and local community leaders are able to

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

Hilal Elver

Special Rapporteur on the right to food

Dainius Puras

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

Leilani Farha

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Victoria Lucia Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples

Léo Heller

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

sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

Furthermore, the UN General Assembly (resolution 70/169) and the Human Rights Council (resolution 33/10) recognized that water and sanitation are two distinct but interrelated human rights. In particular, we recall explicit recognition that “the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living”.

We wish to refer also to article 12 of ICESCR, which guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment No. 14 on article 12, the CESCR interprets the right to health as “an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information” (para. 11). Moreover, according to General Comment 14, States are required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil (para. 36). In addition, the Committee clarifies that in some cases, “violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others; the failure to protect consumers and workers from practices detrimental to health ...” (para. 51).

We also wish to highlight that Article 6 of the Convention on the Rights of the Child (CRC) recognizes that every child has the inherent right to life and requires States parties ensure to the maximum extent possible, the survival and development of the child. Article 24 (1) and (2) stipulates States Parties should recognize the right of the child to the enjoyment of the highest attainable standard of health. Article 24 (2)(c) in particular stipulates that States should combat disease and malnutrition (...) inter alia, through the provision of adequate clean drinking-water and taking into consideration the dangers and risks of environmental pollution. Related to this, in his thematic report A/HRC/33/41 of 2016 the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes reiterates that States should prevent childhood exposure to pollution and toxic chemicals as part of their obligation to protect children, and guarantee an effective remedy for exposure and environmental contamination.

Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, elaborates upon existing binding

Regarding the alleged lack of information on the possible use of cyanide, which is a toxic chemical, we wish to refer to the fundamental principles laid down in Article 19 of the UDHR, and Article 19(2) of the ICCPR which guarantee the right to “seek, receive and impart information” as part of the right to freedom of expression. Access to information is a prerequisite to the protection of human rights from hazardous substances, to public participation in decision-making and for monitoring governmental and private-sector activities. Public participation in decision-making is based on the right of those who may be affected to speak and influence the decision that will impact their basic human rights.

The obligation of States to realize the right to information about hazardous substances to the public is emphasized in the 2015 Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (A/HRC/30/40) in section III.A.

A human rights-based approach to hazardous substances and wastes, including pollutants, toxic industrial chemicals and pesticides, requires a specific focus on the protection of those most vulnerable or at risk: children, the poor, workers, persons with disabilities, older persons, indigenous peoples, migrants and minorities, while taking into account gender-specific risks, as noted by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes in his 2017 report (A/HRC/36/41). He also highlighted that States must ensure that laws, policies and institutions aimed at assessing and mitigating the potential impacts of toxics are based on the needs of the most vulnerable.

We would also like to highlight the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. These Guiding Principles are grounded in recognition of:

- a) “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) “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; and
- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

It is a recognized principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to