

JOINT SUBMISSION FOR 3RD CYCLE UPR REVIEW OF ETHIOPIA

COALITION OF NGOs FOR UPR – ETHIOPIA, IN SUPPORT OF HEALTH-FOCUSED, EFFECTIVE ENVIRONMENTAL REGULATION OF MINING (CHEERM)

I. Introduction

1. This Joint Submission is submitted by the Coalition of NGOs for UPR – Ethiopia, in Support of Health-Focused, Effective Environmental Regulation of Mining (CHEERM), which is comprised of 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 Pritzker School of Law.

2. Ethiopia has violated numerous human rights, including the right to health and the right of children to special measures of protection, through its licensing of private gold mining operations in the Oromia Region of Southern Ethiopia, without requiring appropriate environmental and health safeguards and without compelling the mining company to pay reparations to the victims. As will be further explained below, over the course of its 20 years in operation, the privately-operated Lega Dembi gold mining operation has had devastating consequences for women and children, including a high prevalence of miscarriages, stillbirths, and the births of children with severe physical and/or developmental disabilities.

3. The State’s decision in April 2018 to renew the license of the Lega Dembi mine led to widespread protests in the Oromia Region. This, in turn, led the State on May 9, 2018 to suspend the license for the Lega Dembi mine until the completion of an environmental assessment. This is a very welcome development, for which the Government of Ethiopia should be applauded.

4. Notwithstanding this positive development, the community remains very concerned both about the conduct of the assessment and about the steps the State will take upon the conclusion of the assessment. Will community input be solicited as part of the environmental assessment process, and will the results of the assessment be made public? Will the license to operate the Lega Dembi mine be reinstated? If so, what requirements will be imposed to ensure that the mine is operated in a manner that does not harm the environment and endanger the health of the community? Will the company that operates the Lega Dembi mine be required to pay reparations to past victims, as a condition of the reinstatement of its license?

5. This Submission will proceed as follows. In Section II, we will set out the background regarding the Lega Dembi mining operation and its environmental impact. In Section III, we will indicate the devastating health consequences of the pollution caused by the Lega Dembi mine. In Section IV, we will discuss Ethiopia’s failure to adequately regulate the Lega Dembi mining operations. Finally, in Section V, we will present recommendations that we believe should be made to the State, and we will note related recommendations from Ethiopia’s 2nd Cycle UPR review.

II. The MIDROC Gold Mining Operation and Its Environmental Impact

6. The Lega Dembi gold mine is located in the southern part of Oromia Regional State, (one of the nine regional states of the Federal Democratic Republic of Ethiopia). This is a rural region, which is predominately home to the Oromo people.

7. Since 1997, the Lega Dembi mine has been owned by MIDROC (Mohammed International Development, Research Companies), a private company that purchased the mine from the Ethiopian Government. MIDROC received a 20-year license from the State to operate the Lega Dembi mine. The MIDROC mine became operational in August 1998.

8. The mine has been a very profitable venture for MIDROC. MIDROC purchased the mine for \$172 million USD.¹ Between 1998 and 2011, MIDROC reportedly earned \$466 million USD from its Lega Dembi operation.² By 2014, MIDROC's total revenue solely from the sale of gold mined at Lega Dembi exceeded \$1.25 billion USD.³

9. In November 2009, MIDROC successfully struck a deal with the Ethiopian Government to expand its mining operations in the Oromia Region. The Ministry of Mines and Energy granted MIDROC a license to mine the Sakaro Gold Mines, only three kilometers from the Lega Dembi mine.⁴

10. MIDROC reportedly uses cyanide in its gold mining operations. However, unlike many large gold mining companies, it has not signed the International Cyanide Management Code.⁵ This voluntary code provides principles and standards of practice for the production, transportation, handling and storage of cyanide, as well as other aspects of working with cyanide.⁶ At least 45 gold mining companies around the world, including in Africa, are signatories.⁷

11. All evidence suggests that MIDROC's gold-mining operations have not complied with best practices for cyanide processing. Gold mines like Lega Dembi are well-known to pollute the environment in various ways, including through acid mine drainage and the use of tailings ponds, which collect toxic chemicals and heavy metals.⁸ Without proper precautions, these chemicals and metals, such as lead, arsenic, chromium, and mercury, can contaminate surface water and groundwater.⁹ Additionally, the cyanide levels in tailings ponds must be closely monitored to prevent cyanide pollution.¹⁰ MIDROC's operation of the Lega Dembi mine suffers from these deficiencies, and has resulted in severe contamination, including of the community water supply.

12. The people who live in the communities surrounding the mine are exposed to these toxins not only by drinking contaminated water, but also by bathing in it, cooking with it, walking bare foot, and eating plants or animals from the contaminated area.

13. In 2002, the Ministry of Mining in Ethiopia found that tests of the soil, air, and water at the Lega Dembi mine showed that "the situation is still needed to be improved."¹¹

14. In December 2009, according to local Parliament Member Demboba Boku, local experts found dangerously high levels of mercury in the local river.¹² Students petitioned the local government for help, citing the adverse health effects to people and animals.¹³ Administrators

from the area said they would respond to the protesters' concerns on December 16, 2009.¹⁴ However, when the protesters arrived to hear the response, they were surrounded by police.¹⁵ More than 100 people were detained over the next two days.¹⁶ After these protests, on January 20, 2010, MIDROC owner Sheikh Al Amoudi visited the region and gave 15 million Birr (current value approximately \$537,000 USD) towards community development.¹⁷ However, local people continued to call for clean-up efforts.

15. In April 2018, the Ethiopian government renewed MIDROC's license to operate the Lega Dembi mine for another 10 years.¹⁸ This license renewal sparked more local protests, again citing environmental and health concerns.¹⁹ At least five protesters were reported to have been killed by security forces.²⁰ Some members of Ethiopia's Parliament also expressed concern regarding the health impacts of the MIDROC mines.²¹

16. As a direct result of these protests, in May 2018, the Ministry of Mines, Petroleum and Natural Gas suspended MIDROC's Lega Dembi area gold-mining license, including both the Lega Dembi and Sakaro mines.²² The Ministry stated there would be an independent investigation, and mining would resume when "all stakeholders agree on the result of that investigation."²³

17. As of October 3, 2018, MIDROC's license remains suspended, and it is unclear if and when the mine will be allowed to reopen. However, the Lega Dembi area has the largest gold deposit in Ethiopia, and the federal government collects significant royalties from "large-scale production of gold."²⁴ Under these circumstances, community members believe that mining will be allowed to resume at some point. It is therefore urgent that the State institute and enforce strict laws and regulations to ensure that the Lega Dembi mine, if allowed to resume operations, does so in a manner that does not cause harm to the environment and the health of the local communities.

III. Health Consequences of the Lega Dembi Mining Operation

18. As noted above, throughout their daily lives, the people living in the area surrounding the Lega Dembi mine are extremely vulnerable to the adverse health effects of the toxic chemicals and heavy metals that contaminate the water supply. Members of the community drink contaminated water, cook with contaminated water, bathe in contaminated water and walk barefoot in areas affected by contaminated water, and they eat plants and animals that have been poisoned by the contaminated water.

19. The health effects for women and children in the impacted community are especially devastating. The Ethiopian NGOs submitting this report have seen and spoken to victims and their family members. Many women in the region have suffered miscarriages and stillbirths. Children born alive have suffered from a very high rate of severe congenital disabilities, including both physical disabilities and developmental disabilities. Prevalent physical disabilities in children in the region include (but are not limited to) blindness, severe limb abnormalities, and microcephaly (being born with an abnormally small head).

20. Cows and other livestock that drink from rivers downstream of the mine have also developed complications and died from poisoning.

21. High-levels of mercury and cyanide are known to cause these types of health consequences in people and animals. The World Health Organization (“WHO”) considers mercury to be “one of the top ten chemicals ... of major public health concern,” and notes that “[e]xposure to mercury – even small amounts – may cause serious health problems, and is a threat to the development of the child in utero and early in life.”²⁵ Exposure to cyanide can cause many serious health effects in the short term, such as respiratory failure, and in the long-term can cause “heart, brain and nerve damage.”²⁶

22. Although the mining operation is currently suspended, these and other toxic substances linger, continuing to harm people and animals. Moreover, compensation has not been paid to the families who have lost children or to those whose children will suffer debilitating, life-long disabilities.

IV. Ethiopia’s Failure to Adequately Regulate the Lega Dembi Mining Operations

23. The Lega Dembi Mine operated for 20 years before the new Ethiopian government took the firm and appropriate step of suspending MIDROC’s mining license.

24. During that period, the Ethiopian government failed to protect the surrounding community from serious health risks and environmental degradation, even though the potential health and environmental consequences of MIDROC’s mining operation were well-known.²⁷

25. Under Ethiopia’s regulation for the licensing of mines, a company applying for a mining license is supposed to submit an Environmental Impact Assessment.²⁸ Thus, environmental impact ought to be considered when deciding whether to issue a mining license.

26. Unfortunately, environmental impacts have not been adequately considered or addressed in licensing decisions. As the World Bank has found, various structural problems have prevented Ethiopia from effectively regulating the mining industry.

27. First, as found by the World Bank, there are “too few inspectors and auditors to inspect mining operations” and “monitor compliance with licensing conditions...”²⁹ Failure to adequately inspect and audit the Lega Dembi Gold Mine likely contributed to the continued pollution over approximately 20 years. Even when the Ministry of Mines found there was still work to be done to stop pollution, as described above, it is unclear what, if any, follow-up occurred.

28. Second, “[t]here are no detailed guidelines in relation to the environmental, health and safety, and social conditions that should be attached to licenses,” causing “uncertainty during both license issuing and inspection...”³⁰ In particular, Ethiopia’s Mining Regulations provide that licensees must “follow all necessary procedures for the safe and prudent transport, storage, handling and use of explosive and chemicals.”³¹ Large-scale miners are additionally supposed to “progressively restore or reclaim the land covered by the license...”, and must notify the Licensing Authority, and proceed with mitigation, when the environment has been seriously injured or jeopardized.³² However, the regulations do not define “necessary procedures” for chemical use, or refer to any other environmental guidelines. (Although the set of regulations from

which the quoted regulations were drawn was amended in 2013, the quoted regulations were not changed, nor was any substance added regarding environmental regulation of the licensure or operation of large-scale mines.)³³

29. Ethiopia also has an “Environmental Impact Assessment Proclamation”, Proclamation No. 299/2002, which outlines the Environmental Impact Assessment process and requirements. But that document similarly does not clarify to what environmental standards companies may be held. Furthermore, Environmental Impact Assessments, including for mining in the Oromo region, have not been made publically available.³⁴ Thus, it is difficult to assess what standards, if any, are being applied.

30. Ethiopia has taken a firm and welcome stance by suspending MIDROC’s mining license pending further environmental investigation. Ethiopia should now build on this important first step by ensuring that future mining operations do not cause environmental degradation and harm to the health of local communities. Additionally, both Ethiopia and MIDROC should provide reparations to the affected communities, by cleaning up contaminated water and soil and by paying compensation to victims of the health impacts of MIDROC’s mining operations.

V. Proposed Recommendations for Ethiopia

31. Ethiopia should adopt and enforce strict laws and regulations to ensure that all mining operations in Ethiopia operate in a manner that does not cause harm to the environment and the health of the local communities.

32. Ethiopia should ensure that its assessment of the environmental and health impact of MIDROC’s Lega Dembi and Sakaro mines:

(a) is conducted according to best practices;

(b) includes input from members of the affected communities; and

(c) is conducted in an open and transparent manner, with methodologies and results made available to the public.

33. Ethiopia should not permit MIDROC to resume mining operations until MIDROC:

(a) conducts clean-up operations to remedy its past contamination of surface water, ground water and soil;

(b) provides reparations to victims, including in particular women who suffered miscarriage or stillbirth and children who are living with congenital disabilities; and

(c) ensures that its future mining operations will not cause harm to the environment and the health of the local communities.

34. Ethiopia should join MIDROC in providing reparations to the affected communities.

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35. These proposed recommendations build on the following prior recommendations, which were made to Ethiopia during its 2nd Cycle UPR review:

(a) Saudi Arabia (Recommendation No. 155.157): “Strengthen existing efforts to ensure a safe and healthy environment;”

(b) Maldives (Recommendation No. 155.158): “Address issues of environmental degradation and disaster management, in order to ensure the protection of the environment;” and

(c) South Sudan (Recommendation No. 155.159): “Further strengthen existing efforts to integrate human rights in the national development policies, strategies and plans.”

With respect to the MIDROC mining operations, these recommendations were not implemented prior to May 2018. In May 2018, as noted above, Ethiopia took an important first step towards their implementation by suspending MIDROC’s mining license.

Endnotes:

¹ Berhane Hailemariam, *Ethiopia: Ministry Tosses Midroc’s License*, ADDIS FORTUNE (May 12, 2018), <https://allafrica.com/stories/199808280014.html>.

² U.S. Embassy in Addis Ababa, *Environmental Allegations Generate Protests, Mass Arrests*, (Feb. 22, 2010), released by Wikileaks on Aug. 30, 2011, available at <https://oromialandinfo.wordpress.com/2013/04/04/oromia-ethiopia-wikileaks-govts-crackdown-on-oromo-on-behalf-of-midroc-gold-during-shakisoguji-protests-of-2009/>.

³ *MIDROC Gold Mine PLC Overview and Contribution*, WORLD BANK (Oct. 2014), http://www.worldbank.org/content/dam/Worldbank/Event/Africa/Ethiopia%20Extractive%20Industries%20Forum%202014/5a_MIDROC.pdf.

⁴ *Id.*; see also *supra* note 2.

⁵ *Directory of Signatory Companies*, INTERNATIONAL CYANIDE MANAGEMENT CODE, <https://www.cyanidecode.org/signatory-companies/directory-of-signatory-companies> (last visited Oct. 3, 2018).

⁶ *About the Cyanide Code*, INTERNATIONAL CYANIDE MANAGEMENT CODE, <https://www.cyanidecode.org/about-cyanide-code> (last visited Oct. 3, 2018).

⁷ *Supra* note 5.

⁸ Yigzaw Binega, Ministry of Mines and Energy Ethiopia, *Monitoring of soil, air, water, and noise at the at the Lega Dembi Gold Mine*, PROCEEDINGS OF THE NINTH INT’L CONFERENCE ON TAILINGS AND MINE WASTE/FORT COLLINS/COLORADO/USA/27-30, p. 41 (January 2002).

⁹ See *id.*; see also Muibat Omotola Fashola et al., *Heavy Metal Pollution from Gold Mines: Environmental Effects and Bacterial Strategies for Resistance*, 13 INT. J. ENVIRON. RES. PUBLIC HEALTH 1047 (Oct. 2016), available at <https://www.mdpi.com/1660-4601/13/11/1047>.

¹⁰ *Supra* note 8.

¹¹ *Id.* at p. 43.

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- ¹² U.S. Embassy in Addis Ababa, *Environmental Allegations Generate Protests, Mass Arrests*, (Feb. 22, 2010), released by Wikileaks on Aug. 30, 2011, available at <https://oromialandinfo.wordpress.com/2013/04/04/oromia-ethiopia-wikileaks-govts-crackdown-on-oromo-on-behalf-of-midroc-gold-during-shakiso-guji-protests-of-2009/>.
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ *Id.*
- ¹⁷ *Id.*
- ¹⁸ *Protesters Demand Ethiopia Cancel Billionaire's Gold-Mine Permit*, ETHIOSUN, (May 7, 2018) <http://www.ethiosun.com/archives/257426>.
- ¹⁹ Abdur Rahman Alfa Shaban, *Protests in Ethiopia forces govt to suspend MIDROC gold-mining license*, AFRICA NEWS (May 10, 2018 04:00) <http://www.africanews.com/2018/05/10/protests-in-ethiopia-forces-govt-to-suspend-midroc-gold-mining-license/>.
- ²⁰ *Five people killed in Legadembi gold mine protest*, ETHIOPIA OBSERVER, (May 9, 2018) <https://www.ethiopiaobserver.com/2018/05/09/five-people-killed-in-legadembi-gold-mine-protest/>.
- ²¹ Yonas Abiye, *MPs raise environmental concern over Midroc Gold*, *et al*, (May 5, 2018) <https://www.thereporterethiopia.com/article/mps-raise-environmental-concern-over-midroc-gold-et-al>.
- ²² *Supra* note 19.
- ²³ *Midroc's gold mining permit suspended after protests*, ETHIOPIA OBSERVER, (May 9, 2018) <https://www.ethiopiaobserver.com/2018/05/09/midrocs-gold-mining-permit-suspended/>.
- ²⁴ Janelle Plummer, *Diagnosing Corruption in Ethiopia*, WORLD BANK, at p. 384 (2012) <https://openknowledge.worldbank.org/bitstream/handle/10986/13091/699430PUB0Publ067869B09780821395318.pdf?sequence=1&isAllowed=y>.
- ²⁵ *Mercury and Health*, WORLD HEALTH ORGANIZATION, (Mar. 31, 2017) <http://www.who.int/news-room/fact-sheets/detail/mercury-and-health>.
- ²⁶ *Facts About Cyanide*, CENTERS FOR DISEASE CONTROL AND PREVENTION, (Apr. 4, 2018) <https://emergency.cdc.gov/agent/cyanide/basics/facts.asp>.
- ²⁷ *See, e.g.,* Worash Getaneh, *Sulfide Mineralization in the Lega Dembi Primary Gold Deposit, Sidamo, Southern Ethiopia*, p. 136, (June 2018), available at <http://etd.aau.edu.et/bitstream/handle/123456789/8112/Worash%20Getaneh.pdf?sequence=1&isAllowed=y>.
- ²⁸ “Regulations on Mining Operations”, Council of Ministers Regulations No. 182/1994, Art. 5(2)(d), available at <http://www.mom.gov.et/upload/miningreg.pdf>.
- ²⁹ *Supra* note 24 at p. 384-85.
- ³⁰ *Id.* at p. 379-80.
- ³¹ *Supra* note 28 at Art. 29(2).
- ³² *Id.* at Art. 29(3).
- ³³ *See* “A Proclamation to Amend the Mining Operations Proclamation”, Proclamation No. 816/2013, available at <http://www.mom.gov.et/upload/PROCLAMATION%20No.8162013.pdf>.
- ³⁴ “*Such a Brutal Crackdown*”: *Killings and Arrests in Response to Ethiopia's Oromo Protests*, HUMAN RIGHTS WATCH, (June 15, 2016) <https://www.hrw.org/report/2016/06/15/such-brutal-crackdown/killings-and-arrests-response-ethiopias-oromo-protests>.