

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on the human right to safe drinking water and sanitation.**

REFERENCE: AL Food (2000-9) Health (2002-7) Toxic waste (1995-14) Water (2008-1) Transnational corporations and business (2011)  
ARM 2/2012

3 December 2012

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 right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolution 17/4, 13/4, 15/22, 21/17, and 16/2.

We would like to draw the attention of your Excellency's Government to information we have received regarding the **Teghut copper-molybdenum mining project** that has been approved in the northeastern region of Lori in Armenia.

According to the information received:

The Government of Armenia granted a license for exploitation of a mine in Teghut to the Armenian Copper Programme (ACP)<sup>2</sup> Closed Joint Stock Company, a subsidiary of Vallex F.M. Establishment registered in Liechtenstein, in 2001, which was renewed in 2004 for a term extending until 2025. The company received approval from the Ministry of Nature Protection of the Republic of Armenia in 2006 to operate the mine, based on the submission of environmental impact assessment reports by the company. In November 2007, the Government of Armenia allegedly allocated 1,491 hectares of land for mining, without competition, to develop an open-pit mine.

According to the information received, the development and operation of the mining project will have serious environmental, health, social, and other human

rights impacts. Approximately 82.6% of the territory conceded to the company is covered with forest. To develop this project, it is alleged that approximately 357 hectares of forest would be clear-cut, while 756.2 hectares would be preserved as a sanitary zone. Dumping of tailings would be disposed of in the gorge of Duganadzor river, and mine exploitation would allegedly result in 500 million tons of tailings (hazardous waste) and 600 million tons of other kinds of other waste. This situation, according to the reports, not only poses a risk to those living around the project, but also to the entire country and to neighboring countries.

Furthermore, the information received indicates that allegedly the environmental impact assessments (EIA) submitted by the company to the Government, failed to take into consideration major environmental impacts, such as the drying up of water sources and soil erosion, that serve as a precondition to the enjoyment of a wide range of human rights of the population living in the mining zone, including the human rights to health, to adequate food, and to safe drinking water. These communities depend on their lands, water sources and environment for their personal use and their livelihood, and agricultural jobs would be destroyed. According to the information received, the mining activity and mining waste have a high risk of causing serious damage to the health and lives of the affected population, as it would pollute and destroy sources of drinking and irrigation water. In particular, it is alleged that dumping tails containing silver, rhenium, lead, arsenic, copper, molybdenum, zinc, sulfurous compounds, and various chemicals used in extraction and ore processing will contaminate the nearby pristine valleys of the Shnogh River and its tributaries, affecting food safety and human health. Moreover, the information used to develop the EIA was allegedly based on unreliable and old information and failed to consider the long term and cumulative impacts of the project.

In addition, based on the information received, the affected population's rights to information and public participation were also violated. This includes allegations that communities were not provided with information regarding the impacts of the mine to their livelihoods in a timely manner and that public participation was solicited long after the exploitation license was granted. In fact, these allegations are supported by the findings of the Aarhus Convention Compliance Committee in Case 43 of 2009 in response to communication ACCC/C/2009/43.

According to information received, several NGOs attempted to obtain a judicial invalidation of the documents on which the Government relied to approve the project. However, the Administrative Courts rejected the recourse on the grounds that the NGOs did not have a "legal interest" on the matter, since their rights would not have been affected by the approval of the project, thus excluding their possibility to bring a complaint on grounds of "legitimate interest" (Verdict VD/3275/05/09). In an appeal to the Cassation Court of Armenia, the plaintiffs allegedly obtained a partially favorable verdict, through recognition of legal standing to the "Ecodar" NGO. However, while being reviewed by the Administrative Court on a second motion, the Court decided that Ecodar would

only have grounds to complain if the subjective rights of the NGO were violated. The Cassation Court rejected a second appeal by Ecodar, and held that the last verdict of the Administrative Court would remain in force.

While we do not wish to prejudge the accuracy of the reports received, we would like to recall the relevant international human rights obligations that your Excellency's Government has undertaken. In particular, the State party should take into consideration the international obligations enshrined in the Universal Declaration of Human Rights, especially its article 25, which recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care". Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – to which Armenia is a party-stipulates that States recognize "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions".

With regard to the right to food, we would like to draw your Excellency's Government's attention to General Comment No. 12 (1999) of the Committee on Economic, Social and Cultural Rights (CESCR), where the latter described the core content of the right to food along with the corresponding obligations of States parties to respect, protect and fulfill the right. The Committee considers that the core content of the right to adequate food implies, *inter alia*, availability of food, which refers to the possibilities either of feeding oneself directly from productive land or other natural resources, or from well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food, which encompasses both economic and physical accessibility. The Committee further held that "the obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food".

Regarding access to safe drinking water and sanitation, we would like to remind your Excellency's Government that the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child entail human rights obligations attached to the access to safe drinking water and sanitation. Furthermore, on 28 July 2010 the UN General Assembly explicitly recognized water and sanitation as a fundamental human right. In 2010 the Human Rights Council (resolution 15/9) explicitly reaffirmed that safe and clean drinking water and sanitation are a fundamental human right, derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable of physical and mental health, as well as the right to life and human dignity. Your Excellency's Government co-sponsored this resolution, which was adopted by consensus. Furthermore, your Excellency's Government has also recognized that water and sanitation is a human right at the regional level when it signed the Message from Beppu of the first Asia-Pacific Summit on Water. The human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation.

Furthermore, in its General Comment No. 15 (2002), the CESCR has clarified that “water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health” and “environmental hygiene (...) encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions”.

The Committee states that the “obligation to protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, *inter alia*, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems”.

In relation to the right to health of the affected population, we wish to draw your attention to article 12 of the ICESCR, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. We also wish to refer your Excellency’s Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which describes the normative content of article 12 and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfill the right to health. In paragraph 4 of the General Comment, the Committee acknowledges that the right to health extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. Furthermore, paragraph 15 of the General Comment refers to the right to healthy natural and workplace environments and notes that the obligations of State parties in relation to this right include preventive measures in respect of occupational accidents and diseases, as well as the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.

The rights of affected persons and communities to be provided with information regarding potential activities that may impact them and to participate in decision making is necessary to ensure that other human rights are not violated. Access to information is a prerequisite to public participation in decision-making and 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 rights to information and public participation are widely expressed in human rights instruments, including the Universal Declaration of Human Rights (articles 19 and 21) and the International Covenant on Civil and Political Rights (articles 19 and 25). The right of affected persons and communities to be consulted is also essential, in accordance with the human rights to development, to ensure that development projects aim at “the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom” (Declaration on the Right

to Development, United Nations General Assembly resolution 41/128, A/RES/41/128, article 2, para. 3)

The rights of access to information and participation are also enshrined in the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which Armenia ratified in 2001. Indeed, according to the Compliance Committee of the Aarhus Convention, Armenia failed to comply with Art.3 and Art.6 which require a clear, transparent framework for implementation of the provisions related to public participation as well as public participation in the decision-making process. According to the Compliance Committee in regard to communication ACCC/C/2009/43 concerning compliance by Armenia in respect with decision-making on Teghut mining, "...the Party concerned failed to inform the public early in the environmental decision-making process and in a timely manner, as required by article 6, paragraph 2, of the Convention." In particular, in relation to article 6, paragraph 4, the Aarhus Convention Compliance Committee states, "Providing for public participation only after the license has been issued reduced the public's input to only commenting on how the environmental impact of the mining activity could be mitigated, but precluded the public from having input on the decision on whether the mining activity should be pursued in the first place, as that decision had already been taken(...). Therefore, the Committee finds that the Party concerned failed to provide for early public participation as required in article 6, paragraph 4, of the Convention." (ECE/MP.PP/2011/11/Add.1, para 76). The Compliance Committee recommended that Armenia take various legislative, regulatory, and administrative measures to correct these deficiencies.

In relation to the impact of business activities on human rights, we would like to remind your Excellency's Government that corporations, as well as States, have specific obligations and responsibilities in relation to human rights and we draw on the Guiding Principles on Business and Human Rights (A/HRC/RES/17/31) that were unanimously endorsed by the United Nations Human Rights Council in 2011. As stated in principle 13, the responsibility to respect human rights requires that business enterprises avoid causing or contributing to adverse human rights impacts through their own activities, that they address such impacts when they occur, and that they must seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations. This corporate responsibility to respect human rights should be seen conjointly with the State duty to protect against human rights abuses within its territory and/or jurisdiction by third parties, including business enterprises. This requires that States take appropriate actions to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

We also recall that "[w]hen investments involving large-scale transactions of tenure rights, including acquisitions and partnership agreements, are being considered, States should strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment" (Guideline 12.10, Voluntary Guidelines

on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed by the Committee on World Food Security on 11 May 2012). In this regard, we also refer to the guidance provided for the preparation of human rights impact assessments set out in the “Guiding principles on human rights impact assessments of trade and investment agreements” (A/HRC/19/59/Add.5).

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the alleged facts accurate?
2. Has the Government considered the different human rights impacts and implications the Teghut copper-molybdenum mining project could have on the local population? If so, were those impacts on the human rights of the potentially-affected population, and the obligation to prevent them or provide adequate reparations, including remedies considered before authorization of the implementation of the project?
3. What measures have been taken to ensure that the mining project does not have disproportionate negative impacts on the environment, the quality of life and on the livelihoods of neighboring communities?
4. Has the Government taken into consideration the potential implications of the project for the population in relation to their right to adequate food?
5. Have any measures been taken in relation to the right to water of the population, in particular in relation to having access to safe drinking water? Has the Government analyzed the probable effects that the pollution of the water sources that the population relies on for their personal and domestic uses would impose?
6. In relation to the right to health, what measures have been put in place to prevent a deleterious impact on the population’s health in Teghut as a result of the mining activities? Has a health impact assessment of the project been carried out by the Government? If so, what were the results of the assessment? If not, why has it not been carried out?
7. Has the Government required a human rights impact assessment from the Armenian Copper Programme (ACP)<sup>2</sup> Closed Joint Stock Company? Has any alternative been discussed in relation to the implementation of the project?
8. To what extent has the Government implemented the Guiding Principles on Business and Human Rights, and the normative framework revolving around the corporate responsibility to respect human rights? To what extent has the Government fulfilled its obligation of protecting the population from human rights violations, including those perpetrated by third parties?

9. What measures has the Government taken to implement recommendations of the Aarhus Compliance Committee findings regarding the deficiencies associated with access to information and public participation in decision-making both in relation to the Teghut mining project and in Armenia in general?

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the persons affected by the Teghut copper-molybdenum mining project are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

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