

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

REFERENCE:
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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, pursuant to Human Rights Council resolution 37/8.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received **concerning the harmful impact of the copper and gold mining on the unique and irreplaceable eco-system of the Cerattepe and Genya mountains, as well as detrimental effects on the human rights of the local population related to the safe and healthy environment in Artvin.**

The **Cerattepe and Genya** mountains cover more than 4,400 ha, and are located in the Eastern Black Sea Region of Turkey, just above the historic town of **Artvin**. The mountains are part of the Caucasus eco-region and are considered to be one of the most biologically rich and culturally diverse zones in the world. They are home to 1,268 different species, 199 of which are endemic to the area. Çoruh Valley, Karsal and Yalnizcam mountains in Artvin are habitats of significant plant species and cover two national parks, three natural conservation areas, a natural park, a gene protection forest and two wildlife conservation sites. Cerattepe is also an important migration route that provides resting sites for wild migratory birds.

According to the information received:

The Cerattepe and Genya area is rich in raw materials, including gold, silver, zinc and copper reserves. Field explorations at the site were launched by the General Directorate of Mineral Research and Exploration in 1986. The first mining license was given in 1987. In the early 1990s, the license was transferred to the international mining company Cominco, which started explorations and test drillings.

In 1995, Green Artvin Association was set up to organize against the mining project and mobilize the residents of Artvin. In 1998, a petition with more than ten thousand signatures was delivered to the Ministry of Environment, which in turn halted the project for re-evaluation. Unable to start mining due to the local opposition, Cominco left the mine in 2004 and transferred the license to INMET Mining. The Green Artvin Association filed a court case against the mining project, which resulted in the revocation of the mining license in 2008. The decision was upheld in 2009 by the high court, the Council of State.

Consequently, all of the mining and operation licences of the INMET Mining were thereafter cancelled.

In 2012, a new mining license was issued by the authorities to Cengiz Holding based on the newly filed Environmental Impact Assessment (EIA) for the mining project in the Cerattepe and Genya mountains. At the end of 2014, Rize Administrative Court overruled the project's approved EIA. The Court reportedly concluded that "If the planned mining project is materialized, the city of Artvin will no longer exist as a living space for its inhabitants".

In June 2015, Cengiz Holding prepared another EIA with minor modifications to the original report and obtained a new permit for excavation activities. The approval was based on a new regulation enacted by the Minister of Energy and Natural Resources in 2011, modifying the mining law and granting a new operation license to the Cerattepe mine, along with 1,342 other mining sites in Turkey. During the tender process, Ozaltin obtained the license and transferred it to Etibakir owned by Cengiz Construction Company. In 2013, a lawsuit was filed against the company by nearly three hundred individuals. The regulation was said to be pending several legal challenges at the Supreme Court of the State Council on the grounds of its incompliance with the Constitution of Turkey.

In July 2015, the newly approved EIA was legally challenged by 751 individuals, making it one of the largest environmental court cases in Turkey's history. While the legal process into the approved EIA was pending, Cengiz Holding tried to access Cerattepe to cut trees and continue construction on the mining site. Consequently, the Artvin community reacted by initiating a continuous barricade of the road leading to the planned area.

On 15 February 2016, the blockade of the mining projects turned into mass protests, after several thousand police officers were brought into Artvin to allow the workers of Cengiz Holding to enter the mining site. The following week, the peaceful protesters in Artvin were forcefully dispersed by riot police and military forces, who reportedly used rubber bullets and tear gas. Several hundred individuals are said to have filed complaints in court against the violent crackdown. At the same time, the Artvin Forestry Department filed a criminal complaint against Cengiz Holding for cutting down trees in the region. The company reportedly filed a complaint against the members of the Artvin Forestry Department for obstructing the timely delivery of the construction, and an investigation was reportedly launched.

In October 2016, the Rize Administrative Court turned back a demand for the cancelation of the project in October 2016 in a verdict in line with the EIA report. The Court reportedly ruled in favour of the Ministry's report about the slated mining activities, rejecting the request for the cancellation of the report lodged by 751 plaintiffs. It purportedly stated that even in areas such as national parks and cultural preservation sites, it was possible to engage in mining activities because

the planned mine was not located within the prohibited areas; Cerattepe is 660 meters away from the park boundary. In July 2017, the Council of State has upheld the decision of the Rize Administrative Court.

In August 2017, a group of 30 media representatives visited the Cerattepe region to examine and report on the environmental harm caused by the planned mining in the area. The journalists reported that water resources that provide Artvin's drinking water were polluted, and the excavated soil from the mine tunnel was carried on by the wind to the forested land.

While I do not wish to prejudge the accuracy of the above allegations, I am deeply concerned about the harmful impact that the copper and gold mining may have on the unique and irreplaceable eco-system of the Cerattepe and Genya mountains, which provide habitat to rare and threatened species and endemic plants.

I am also alarmed about serious risks that the mining poses to the exercise of human rights of the local population related to the safe and healthy environment of the area. In particular, I am concerned about the potential pollution and contamination of the waterway sources feeding Artvin, which may infringe on the rights of the local population to access safe drinking water. I am further concerned about allegations that more than 50,000 trees are planned for cutting, which will cause harm not only to the local environment but may also increase risks of landslides, threatening the safety and security of the Artvin population and livelihoods.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on any investigation carried out in connection to the complaints lodged against the use of force by the police and the military against peaceful protesters in Artvin in February 2015, including the justification on the use of tear gas and rubber bullets against peaceful protesters.
3. Please provide, in detail, the measures taken by the Government in implementing its obligations to carry out Strategic Environmental Assessments and Environmental Impact Assessments, before decisions are taken to approve mining projects that may threaten the biodiversity of the Cerattepe and Genya mountains and infringe on the rights of the local

population. Please also explain how the affected communities in Artvin are consulted in this regard.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

John H. Knox

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw your Excellency's Government's attention to applicable international human rights norms and standards.

I would like to draw the attention of your Excellency's Government to article 6.1 of the International Covenant on Civil and Political Rights, providing for the right to life (ratified by Turkey in 2003); and articles 12 of the International Covenant on Economic, Social and Cultural Rights, providing for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (ratified by Turkey in 2003).

I also wish to refer to the Framework Principles on human rights and the environment of the Special Rapporteur on human rights and the environment (A/HRC/37/59, annex), which summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Namely, the Framework Principle 1 provides that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights. In the same vein, Principle 2 reiterates that States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment. Principle 4 holds that States should provide a safe and enabling environment in which human rights defenders that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence. Principle 8 reaffirms that, to 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.

With regard to human rights obligations related to biodiversity, the Special Rapporteur on human rights and the environment clarified that States procedurally should (a) assess the social and environmental impacts of all proposed projects and policies that may affect biodiversity; (b) provide public information about biodiversity, including environmental and social assessments of proposals, and ensure that the relevant information is provided to those affected in a language that they understand; (c) provide for and facilitate public participation in biodiversity-related decisions; (d) provide access to effective remedies for the loss and degradation of biodiversity (A/HRC/34/49, Section III(a)). Substantively, every State should establish legal and institutional frameworks for the protection of biodiversity that: (a) regulate harm to biodiversity from private actors as well as government agencies; (b) adopt and implement standards that accord with international standards, are non-retrogressive and non-discriminatory, and respect and protect the rights of those who are particularly vulnerable to the loss of biodiversity and ecosystem services (Section III(b)).

I also wish to recall the explicit recognition of the human rights to safe drinking water and sanitation by the UN General Assembly (resolution 64/292) and the Human

Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of ICESCR. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Furthermore, the General Assembly in its resolution 70/169 of 2015 recognized that “the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”.

Finally, I would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution 17/31. The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights. Business enterprises should conduct human rights impact assessments in accordance with the Guiding Principles on Business and Human Rights, which provide that businesses “should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships”, include “meaningful consultation with potentially affected groups and other relevant stakeholders”, “integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action” (see Guiding Principles 18–19).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.