

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL IDN 1/2019

6 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 implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; 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 promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/7, 36/15, 37/8, 32/8, 34/18, 32/32, 34/5 and 33/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged failure to protect against human rights abuses linked to coal mining operations in East Kalimantan Province, including violations of rights to life, to water and sanitation, to food, and to a clean and safe environment.** We would also like to bring your attention information concerning alleged **harassment and attacks against JATAM (Mining Advocacy Network), an environmental non-governmental organisation, for denouncing this situation.**

According to the information received,

About 70 per cent of the territory of the Province of East Kalimantan has been identified as eligible for coal mining activities. As a result, there are more than 1400 coal mining licences granted by municipal, provincial or national authorities and around 630 mining pits. According to the Indonesian National Human Rights Commission (Komnas HAM), Indonesian legislation requires coal mining companies to conduct reclamation and post mining clean-up activities,¹ such as

¹ See Komnas HAM report, Human rights abuses in abandoned coal pits cases in East Kalimantan, "Pelanggaran hak asasi manusia dalam kasus eks lubang tambang batu bara di Kalimantan Timur, 2016,

filling in open-pit mines or restoring removed soil and revegetation. However, reports from Komnas HAM, indicate that most companies leave such pits or mining sites exposed without even a fence or a warning sign.² The empty pits and piles of topsoil leave vast areas prone to flooding and risk turning into deadly sites for young children, who fall and drown in the pits, which are often located nearby residential areas, in violation of the law that requires that mining activities be conducted at a distance of at least at 500 metres from residential zones.³

Since 2012, Komnas HAM, has monitored cases of fatal accidents in used mining pits. In 2015, it alerted local and national authorities on the number of fatal accidents in those pits involving children, and sent them recommendations (letters no. 1.440/K/PMT/IV/2015 dated 7 April 2015 and no. 3.808/K/PMT/XI/2015 dated 10 November 2015). In 2015, the provincial authorities of East Kalimantan adopted local regulations and circulars on the basis of these recommendations, including one to request an inventory of the existing mining pits.⁴ However, Komnas HAM reported in 2016 that the inventory had yet not been completed.

As of November 2018, more than 30 persons, a large majority being children, have died after falling into used mining pits in East Kalimantan Province since 2011.⁵ The majority of accidents reportedly occurred in Samarinda, the provincial capital, where mining licences, mostly issued by the municipal authorities, cover more than 70 percent of the city territory and overlap with residential areas. It has been reported that effective investigations were almost never conducted and persons responsible were not held accountable.

In addition, acid mining drainage and hazardous discharge of acid mine waste containing iron, manganese, copper, nickel and aluminum pose serious threats to water resources for a long time, even after the mining exploitation is over. Because of coal mining, the land and water resources are significantly degraded and become useless for food production. Furthermore, due to the depletion of groundwater and surface water caused by coal mining, local residents are often

quoting: Law no. 4/2009 on the Mining of Mineral Resources and Coal (UU Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara); Law no 32/2009 on Conservation and Management of Environment; and Government Regulation (GR) no. 78/2010 on Reclamation and Post-Mining/Mining Closures. See also Regulation of Minister of energy and mineral resources no.7/2014 on Reclamation and post-mining in mineral and coal mining business activity.

- ² According to decision no. 555/K/26/MPE/1995 of the Minister of Energy and Natural Resources, pits without fences should have some kind of warning sign at their edge.
- ³ See Komnas HAM 2016 report, referring to Environmental Minister regulation no. 4/201 on Environmental Friendly Indicator for Businesses or Open Coal Mining Activity.
- ⁴ Local regulation no. 1/2014 on Conservation and Management of the Environment; and Regulation no. 17/2015 of the Governor of East Kalimantan on the Regulation of License Governance in Mining Sector, Forestry and Palm Plantations in East Kalimantan; Governor Circular Letter No. 660.2/4543/BLH/2015 dated 24 August 2015 on the establishment of an Inventory of Coal Mining Pit located in any City or Regency of East Kalimantan.
- ⁵ In 2016, Komnas HAM, undertook an investigation that concluded that 24 persons, including 22 children, had died in such circumstances between 2011 and June 2016, see report op. cit.

forced to use the contaminated water with heavy metals and low acidity from the mine pit, for washing, bathing, irrigation of crops and fish farming, and this leads to decrease in agricultural yields, fisheries yields and in food security for those whose livelihoods depend on fishing or agriculture. Allegedly, some of this contaminated water was absorbed in the water distribution system and channeled towards residential areas for household use and may seriously affect people's health and nutrition. The local Environment Protection Agency for South Kalimantan Province had also found in its 2013 annual report that water quality was degraded by coal mining activities.⁶ In February 2016, independent measurement showed that the water in a former mining pit in Penajam Pasir Utara had an acidity of around pH 3.76, which can be considered as dangerous and exceeds the standard set by the local government under Local Regulation no. 2/2011 on Water Quality Management and Water Pollution Control.⁷

In this context, JATAM (Mining Advocacy Network), a civil society organisation member of the Human Rights Working Group, campaigns for the respect of human rights and domestic legislation by the mining sector, including the rehabilitation of abandoned mining pits. JATAM has repeatedly called upon Indonesia authorities to investigate these fatal accidents effectively, to have the responsible parties held accountable, and ensure that the families be properly compensated.

On 5 November 2018, around 8:00 p.m., while no staff was present, the JATAM East Kalimantan Office in Samarinda city was ransacked by a group of about 30 persons, who broke the back door, damaged windows and a motorbike belonging to one staff. The group also ransacked a neighbour's house. Before this attack, JATAM office had been often monitored by unidentified persons. This attack occurred the day after another child died after falling in a pit, a case that JATAM publicised. On 26 November, JATAM submitted a complaint to the Police Station of Samarinda about the ransacking of its office. In the past, JATAM had been subjected to various acts of intimidation and harassment for its legitimate activities in favour of the protection of the environment and human rights. For example, on 26 January 2016, shortly after the freezing of the permits of 11 coal mining companies in East Kalimantan, JATAM office was attacked. This organisation recorded more than 20 cases of harassment and attack concerning 81 environmental rights defenders and local residents throughout the country opposing mining companies' activities between 2011 and 2018.

Without prejudging the accuracy of these allegations, we express our most serious concern about the alarming number of fatal accidents due to abandoned mining pits and the negative impacts on the livelihood of population living near former mining sites,

⁶ Environment Protection Agency (Badan Lingkungan Hidup Daerah or BLDH) for South Kalimantan Province, 'Annual Report: Regional Environment Status South Kalimantan Province 2013.'; See also Greenpeace, Coal Mines Polluting South Kalimantan's Water, December 2014, and Waterkeeper Alliance and JAMAT, Hungry Coal, Coal Mining and Food Security in Indonesia, 2017.

⁷ Komnas HAM report, 2016, p. 92.

which resulted from the blatant failure of mining companies to respect the Indonesian legislation about the rehabilitation of former mining sites and the apparent lack of action by your Excellency's Government in this regard. Thus, concern is expressed about the apparent failure of the Government of Indonesia to discharge its obligation to protect the rights of East Kalimantan residents, in particular their right to life, to health, to safe drinking water and sanitation, to food and to a healthy and safe environment. Indeed, under domestic law, the Government, in particular the Minister of Energy and Natural Resources, has the authority to control the issuance of mining licences by provincial and municipal authorities,⁸ which should conform to the requirement of having some distance between mining sites and residential zones⁹. It also has the authority to supervise the compliance by businesses of their obligations to protect the environment and rehabilitate mining sites.¹⁰ However, in spite of being alerted by Komnas HAM and civil society organisations on these outstanding issues, it is alleged that the Government consistently failed to take any action, in breach of its obligation to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

In addition, we are also concerned that in this context, the Government is also failing to protect the rights of environmental human rights defenders to denounce the negative human rights impact of the activities of mining companies and to protect them from physical attacks, intimidation and harassment, including via judicial proceedings and criminalization of their legitimate activities.

In connection with the above alleged facts and concerns, please also 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 the allegations.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate the judicial, administrative, legislative or other steps taken by your Excellency's Government to prevent further fatal accidents linked to existing mining pits and to ensure that the families of victims who died after falling in abandoned mining pits have access to effective remedies. Please indicate the current status of the inventory of abandoned pits that was requested by the provincial authorities of East Kalimantan.

⁸ Articles 6,7 and 8 and Articles 139 to 144, Law no. 4/2009 on Mining, Mineral and Coal.

⁹ Regulation no. 4/201 of the Minister of Environment on Environmental Friendly Indicator for Businesses or Open Coal Mining Activity and decision no 55/K/26/MPE/1995 of the Minister of Energy and Natural Resources.

¹⁰ Articles 71, 73, 74, 77 and 82, Law no. 32/2009 on the Environmental Protection and Management.

3. Please provide information on measure taken by your Excellency's Government to conduct ex-post assessment after the mining operation has been completed, particularly focusing on the impact on the livelihood of the population living in the vicinity of the mining sites and their enjoyment of the right to safe drinking water, sanitation, food and health. Please also provide information on measures affording redress to the population that has allegedly suffered from negative impacts.
4. Please provide details of any recent analyses of hazardous substances carried out to determine contamination levels that could have resulted from mining activities, including (but not limited to) water resources. Please also provide information on measures put into place to ensure the monitoring of the health condition of populations who are, were or may be exposed to hazardous substances, including water and other routes of exposure.
5. Please clarify the status and outcome of investigations conducted in the almost 30 cases of persons killed after falling into abandoned mining pits, most of which were brought to the attention of your Excellency's Government by Komnas HAM and other civil society organisations. If investigations have not been initiated, please explain the reasons why, and how this is consistent with the international human rights obligations of Indonesia.
6. Please provide the details of the measures taken by your Excellency's Government to ensure the effective implementation of its national legislation and regulations relating to coal mining activities, in particular for the issuance of licences, as well as the protection of the environment and the rehabilitation of former mining sites by coal mining companies. Please also indicate whether human rights and environmental impact assessments are carried out before issuing new coal mining licences in East Kalimantan Province, and if so kindly provide details of the assessments and results.
7. Please indicate the steps that the Government has taken, or is considering to take, to ensure to implementation of the United Nations Guiding Principles on Human Rights, such as: (i) enforcing laws that are aimed at requiring business enterprises to respect human rights; (ii) providing guidance to these business on how to respect human rights; (iii) taking appropriate steps to ensure the effectiveness of domestic judicial mechanisms with respect to business-related human rights abuses.
8. Please indicate what measures have been taken to ensure that environmental human rights defenders are able to carry out their legitimate work in a safe and enabling environment in Indonesia, without fear of persecution and harassment of any sort.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we 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 our highest consideration.

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Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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

David R. Boyd
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Hilal Elver
Special Rapporteur on the right to food

David Kaye
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Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to recall the relevant applicable international human rights norms, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights (UDHR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Covenant on Civil and Political Rights (ICCPR);
- The Convention on the Rights of the Child (CRC);
- The Framework Principles on human rights and the environment;
- The United Nations Guiding Principles on Business and Human Rights;
- The Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

We wish to draw attention to your Excellency's Government's obligations under international human rights instruments to guarantee the right of every individual to life, liberty and security and not to be arbitrarily deprived of life, recalling article 3 of the UDHR, and article 6(1) of the ICCPR, acceded by Indonesia on 23 February 2006. Article 6 of the Convention on the Rights of the Child (CRC), which your Excellency's Government ratified on 5 September 1990, also recognizes that every child has the inherent right to life and requires that States parties ensure to the maximum extent possible, the survival and development of the child. It further requires State parties to take all effective and appropriate measures to diminish infant and child mortality.

We wish to refer to article 12 of ICESCR, acceded to by your Excellency's Government on 23 February 2006, which guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is also recognized under article 25 of the UDHR, where it is read in terms of the individual's potential, of the social and environmental conditions affecting individual's health, and in terms of health services. Article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

In its General Comment No. 14 on article 12, the Committee on Economic, Social and Cultural Rights (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).

Moreover, article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, as well as the fundamental right of everyone to be free from hunger.

The Committee on Economic, Social and Cultural Rights has defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee clarified that States have an immediate obligation to respect the right to food, which means that it and its agents must refrain from any actions that negatively affect the right to food and result in preventing existing access to adequate food of its people.

We recall the explicit recognition of the human rights to safe drinking water 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 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”.

Further reference is made to the fundamental principles laid down in 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. Also, article 24(e) of the CRC creates an obligation for State Parties to “ensure that ... parents and children, are informed, have access to education and are supported in the use of basic knowledge of ... environmental sanitation and the prevention of accidents”.

The importance of the right to information about hazardous substances to the general public is emphasized in the 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 paragraphs 7, 8 and 48, as well as in the General Comment of the Human Rights Committee No. 34 on article 19 of the International Covenant on Civil and Political Rights (CCPR/C/GC/34).

As detailed in the Framework Principles 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, States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Framework Principle 1). Furthermore, States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2). States should also ensure the effective enforcement of their environmental standards against public and private actors (Principle 12), and they should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities (Principle 14).

We would also like to highlight the UN 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 respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

We would further like to refer to the thematic report of the Special Rapporteur on Toxics containing Guidelines for good practices in relation to the human rights obligations related to the environmentally sound management and disposal of hazardous substances and wastes (A/HRC/36/41). The report stresses that States have an obligation to respect, protect and fulfil recognized rights implicated by the production, use, release, storage and disposal of hazardous substances and wastes (para 4). It also reaffirms that empowering rights holders, particularly those most at risk, to defend their rights helps States meet their obligations under human rights law and uphold principles of accountability, democracy and rule of law (para 76). In this report the Special Rapporteur makes reference to the “widely recognized crisis facing environmental human rights defenders”, defending rights in the context of toxic threats from extractive industries. In relation to ensuring the right to an effective remedy in the context of extractives, the report suggests that States must identify and remediate contaminated sites, and take measures to mitigate the adverse impacts of toxic contamination until remediation is complete.

We would also like to highlight the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Finally, we would like to remind that the Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security call upon States to facilitate sustainable, non-discriminatory and secure access and utilization of resources and protect the assets that are important for people's livelihoods (Guideline 8.1), and to consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production, prevent water pollution, and protect the fertility of the soil (Guidelines 8.13)