

**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:  
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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 regarding **the alleged violations and abuses of the human rights of indigenous and local communities residing in Didipio, Nueva Vizcaya Province, in the Philippines and the environmental degradation in this region, due the activities of the gold and copper mine exploited 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.

The FTAA will expire in June 2019, but can be renewed by the Government for another 25 years.

The protests of local communities, including indigenous peoples, among them the Bugkalot, Ifugao, Ibaloi, Kankanaey, and criticism from various organizations delayed the operations of the mining company for more than a decade. In June 2008, around 180 families were forcibly evicted from their homes, which were destroyed by the company staff supported by heavily-armed members of the national police. Residents were beaten and suffered various injuries while their houses were being bulldozed off cliffs and burned down. It is reported that these forced evictions were carried out without a court order. In addition, some small farmers, including from indigenous communities, were forced through intimidation and harassment to sell their lands and farms to the company, or convinced to do so because the company and its proxies, including some local officials, mis-represented the impacts of the mining activities on the economic development of the region and the environment. In addition, some who had agreed to sell their lands never received an adequate compensation or even the amount they had agreed to.

In October 2009, another attempt to demolish several houses was reported which resulted in the violent dispersal of protesting residents by the national police who used truncheons, shields and tear gas.

In 2011, the Commission on Human Rights of the Philippines investigated the human rights abuses and violations that occurred in the context of the establishment of the mine. It concluded that the company had violated the residents' rights to adequate housing, rights to property, rights to freedom of movement, and their rights to security, as well as the rights of the indigenous communities to manifest their culture and identity. It further concluded that the police had used excessive force during the forced evictions. Therefore, the Commission recommended that the Government investigate the human rights abuses and "consider the probable withdrawal of the FTAA". In spite of the conclusions of the Commission, the company started the commercial exploitation of the mine in 2013, both through an open-pit and via underground mining.

In 2014, some civil society organizations (CSOs) conducted in depth studies of the negative impacts of the mining activities on the environment and surrounding ecosystems.<sup>1</sup> They concluded that the establishment of the mining facilities and conduct of the mining operations were threatening the rich biodiversity of the area and had devastating impacts on the environment. For example, large areas of forests have been lost as the company was given in 2008 a special permit to cut

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<sup>1</sup> Environmental Investigation Mission on the Impacts of Large Scale Mining in Nueva Vizcaya, Philippines, Technical report, Kalikasan People's Network for the Environment (Kalikasan PNE) and AGHAM – Advocates of Science and Technology for the People, in cooperation with Center for Environmental Concerns - Philippines (CEC) Alyansa ng Nagkakaisang Novo Viscayano para sa Kalikasan (ANNVIK) Defend Patrimony! Alliance Ecosystem Alliance, September 2014.

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  $\mu\text{g L}^{-1}$  and 50  $\mu\text{g L}^{-1}$ , 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,

arbitrarily arrested and detained, especially as they have been accused by the military of supporting the communist rebels.

In February 2017, the Nueva Vizcaya Provincial Government issued a report in which it denounced the negative impacts of the mine activities on the environment and the local communities.

On 14 February 2017, following an audit, the then-Secretary of the Department of Environment and Natural Resources (DENR), Ms. Gina Lopez, issued an order of suspension of the mining activities of the company in Didipio because of the human rights and environmental violations and abuses documented since the company started its activities. However, the company appealed to the Office of the President of the Philippines, which stayed the suspension order, citing due process issues. Furthermore, the DENR Secretary was replaced by a former military officer.

In 2018, the company requested to extend and expand its mining operations. Local communities sent numerous petitions to the Government, including the new DENR Secretary, and to local authorities to oppose the extension of the mine and to request the suspension of its operations. The petitioners have not received any reply yet.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reports that your Excellency's Government is failing to meet its international human rights obligations to protect the human rights of the indigenous peoples and local communities living near the Dipidio mine, against abuses by a business enterprise domiciled in its country. This is underscored by the obligations under the international human rights framework for your Excellency's Government, which requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudication.

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 our responsibility, under the mandates 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 highlight the steps that your Excellency's Government has taken, or is considering to take, to protect against human rights abuses by business enterprises, including the company, and ensuring that business enterprises

domiciled in its territory respect human rights throughout their operations, as set forth by the UN Guiding Principles on Business and Human Rights.

3. Please provide information regarding the measures that your Excellency's Government is taking, or considering to take, to ensure that those affected by the activities of overseas subsidiaries of companies, domiciled in its territory, have access to effective remedies, including in Australia.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. 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 be informed that a letter on the same matter has also been sent to the Government of the Philippines and to the involved company.

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

Surya Deva

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

David R. Boyd

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

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**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 International Covenant on Economic, Social and Cultural Rights (ICESCR) and its General Comments nos. 4 , 7 and. 24;
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Rights of the Child (CRC)
- The United Nations Declaration on the Rights of Indigenous Peoples;
- The Framework Principles on Human Rights and the Environment;
- The United Nations Guiding Principles on Business and Human Rights;
- Basic Principles and Guidelines on Development- based Evictions and Displacement
- United Nations Declaration on Human Rights Defenders

In relation to the right to an adequate standard of living, including the right to housing, under article 11 of the International Covenant on Economic, Social and Cultural Rights, ratified by the Philippines on 7 June 1974, we further recall the General Comments No. 4 and 7 of the Committee on Economic Social and Cultural Rights (CESCR), which stress the need to provide adequate legal protection from forced eviction, due process, alternative accommodation, and access to an effective remedy of those that are affected by eviction orders. As forced evictions usually violate also other human rights, such the freedom from cruel, inhuman and degrading treatment (ICCPR, art. 7), the right to security of the person (*ibid.*, art. 9.1) and the right to non-interference with privacy, home and family (*ibid.*, art 17) they constitute gross violations of human rights. According to these General Comments, States must further explore all feasible alternatives to forced eviction in consultation with the affected individuals and families. Moreover, it must carry out informed consultation, ensure that forced evictions will not lead to homelessness by providing adequate alternative housing facilities, resettlement and compensation for lost property. We also recall the Special Rapporteur on adequate housing's report on the obligations of subnational and local governments in the implementation of the right to adequate housing (A/HRC/28/62) and on homelessness (A/HRC/31/54). We also call your attention to the Basic Principles and Guidelines on Development- based Evictions and Displacement (A/HRC/4/18, Annex).

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 rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. With respect to their rights to property in the form of land and natural resource rights, Article 26 states the right of indigenous peoples to ‘the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’ and for legal recognition of those rights ‘with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.’

UNDRIP sets out that indigenous peoples have the right to the conservation and protection of the environment and that States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. (Article 29).

In addition, UNDRIP affirms in Article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that ‘States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources’.

UNDRIP provides for the rights of indigenous peoples to redress for actions that have affected the use and enjoyment of their traditional lands and resources. In that regard, Article 28 states that ‘indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.’ Article 32 of UNDRIP sets out that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. Article 10 affirms that indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

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).

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 UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. 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 or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- 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 abuse 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). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). 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.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where

a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19).

Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

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.

In addition, the Committee on the Economic, Social and Cultural Rights in its General Recommendation 24 (2017) states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.”

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.