

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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(Please use this reference in your reply)

19 May 2023

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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 44/15, 50/17, 52/4, 51/16 and 45/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged human rights violations and abuses against members of the Kokoya community in Bong County, Liberia, in relation to both a toxic spill by MNG Gold Liberia Inc., subsidiary of Avesoro Holdings Ltd, and to the use of excessive force, intimidation and arrest by the Liberian National Police of community members, including environmental and indigenous defenders and civil society activists, who demanded accountability for related human rights abuses and environmental harm.

According to the information received:

Toxic spill

MNG Gold Liberia Inc. (hereafter MNG Gold) is a subsidiary of Avesoro Holdings Ltd, which is domiciled in the United Kingdom of Great Britain and Northern Ireland. MNG Gold has operations in Liberia and received a permit for gold mining exploration on 28 August 2015 from Liberia's Environmental Protection Agency.¹ On 27 September 2017, MNG Gold's Tailing Storage Facility's (TSF) spilled three million gallons of toxic chemicals, including cyanide, mercury, and lead in its Kokoya mine, in Bong County.

According to a report to the Liberian Senate from the National Bureau of Concessions of Liberia (NBC),² the "catastrophic failure at the Tailing Storage Facility [...] led to a 3 million gallon diverse toxic chemicals release including cyanide, mercury and lead which are highly dangerous to the community, flora

¹ Permit no. EPA/EC/ESIA/001-0815

Report to Senate from The Director-General, National Bureau of Concessions on "Magnitude of the deleterious effects of the pollution on the environment and communities in Liberia by the Turkish-Liberian concessionaire entity MNG".

and fauna and will remain in the environment for many decades to come.”³ In fact, according to the World Health Organization, there is no level of exposure to mercury or lead that is known to be without harmful effects. Even small amounts of exposure to lead can cause serious health problems, including permanent disabilities. In addition, mercury is persistent, bioaccumulates and causes irreversible health and neurological damage. Further, mercury goes through the food chain, so rural populations, and especially children, could be affected. Very high levels of lead or mercury can be fatal. Cyanide is also a rapidly acting, potentially deadly chemical.

The spill had a serious impact on the health of the communities in the immediate area, exacerbated by the lack of prompt action by the company in the aftermath of the spill. According to information received, MNG Gold’s management was aware that there were dozens of people in the spillage area seeking medical treatment, but it took hours to put in place the necessary urgent medical response. As a result of this delay, numerous community members, including children and women, were left unattended. The report of the NBC to the Senate indicated that emergency medical treatment should be a component of any Health, Safety and Environment Emergency Contingencies planning relating to cyanide and mercury poisoning, or Standard Operating Procedures for pollution emergencies.⁴

No impartial assessment to examine the full impact of this spillage has been conducted, including on groundwater, soil, streams, waterways and agricultural land. According to the report of the NBC, the “multitude of toxic chemicals present in the spill”, some of which present a “complex chemical breakdown and their resultant transformation over time” require “constant monitoring before and after any remedial interventions”.⁵ The NBC concluded that MNG Gold Management had demonstrated “wanton, reckless and inconsiderate dispossession of the emergency medical needs of the community”.⁶

Under section 4 of the Liberian Environmental Management Protection Act of 2002, environmental management includes: the precautionary principle; the polluter-pays principle; the principle of inter-generational equity; and the principle of public participation. Despite this, MNG Gold has not provided effective remedy for the damages caused by the toxic spill, where members of impacted communities in Kokoya, including Kpelle and Bassa Indigenous Peoples, suffered the environmental degradation of their ancestral lands and contamination of drinking water. Community representatives filed a lawsuit against MNG Gold with an initial demand for compensation of 11 million US dollars. However, the case was settled out of court and MNG Gold eventually agreed to pay 450,000 US dollars. According to the NBC, mining companies in Ghana and Argentina had to pay fines of 5 million and 9.3 million US dollars respectively for comparable toxic spills.

³ Ibid, p. 1

⁴ Ibid, p. 3

⁵ Ibid, p. 5

⁶ Ibid, p. 3

Excessive use of force

On 5 November 2018, a Chinese contractor for MNG Gold, China Gezhouba Group Co Ltd, was driving a vehicle which crashed with a motorcyclist within the concession area, killing the driver of the vehicle, the passenger on the motorcycle, and two bystanders. The incident prompted members of the community, who were already outraged by the lack of accountability and adequate reparation for the toxic spill, to protest peacefully at the MNG Gold site, demanding an immediate investigation into the deaths caused by the local contractor. The protests resulted in some damages to the MNG Gold facilities, which could not be properly investigated. According to information received, the Liberian National Police (“LNP”) responded with a disproportionate use of force during and after the protest, including severe beatings, threatening demonstrators with guns, and handcuffing demonstrators while transporting them to the Sanniquellie Central Prison. The police arrested an undocumented number of individuals in connection with the protest, including many who had not participated in the demonstrations, and also peaceful protesters who were not involved in the damage to MNG Gold property. The arrests took place at different times, including several days after the demonstration, during the day and at night, and at various locations. The State then indicted 83 individuals and prosecuted 44 more for crimes, including armed robbery, arson, and terroristic threat.⁷

Significant procedural and evidentiary irregularities were reported in the investigations and conviction of individuals in connection with the protest, including environmental and indigenous defenders as well as civil society activists, who were arrested following this incident. For example, individuals were initially taken to Gbarnga police station and were subsequently transferred to Sanniquellie prison, located in a different county, with no explanation. The judge refused their requests to present individual defence and reduced the number of witnesses in the subpoena from 27 to 10. The witnesses who were allowed to testify faced logistical challenges in accessing the Court due to its location far from Bong County and due to a lack of resources necessary to travel to the Court.

Further, those held in custody reported being stripped naked, tied up, and denied access to drinking water. Some also reported being beaten, including with sticks, which resulted in severe injuries and, in some instances, in permanent disability. Two detainees died shortly after being released from prison on medical grounds, four other community members have been released on medical grounds and one more is currently critically ill and in need of urgent medical care. Seventeen community members and activists are currently still in prison, many of whom are showing signs of malnutrition and other forms of illness.

⁷ The police charge sheet cites 67 defendants as having been officially arrested and charged, but six more names were written in by hand, bringing the total number of defenders charged with the same crimes to 73. A single indictment document, however, names 83 individuals, 10 of whom are not accounted for in the police charge sheets available in the case files. Other court documents go on to reference 85 to 86 charged individuals, again, suggesting that the prosecution materials were riddled with inaccuracies. During pre-trial formalities, some of the accused were set free and only 44 individuals were ultimately tried in court. Of those who faced trial, 24 were found guilty and the remaining 20 were acquitted.

In cases where sentences were not imposed, the criminal prosecution of community members and activists resulted in serious financial burdens and generated significant social, economic, and psychosocial challenges for the accused, their families and communities in Bong County, who already live in extreme poverty and are in a situation of extreme physical and economic marginalization.

The information received indicated that MNG Gold should have been aware that such a level of repression and intimidation would have negative impacts on the right of communities and its members to express their concerns, and that it should have ensured an environment in which community members could put forward their grievances safely.

Without prejudging the accuracy of these allegations, we express our most serious concern regarding the human rights and environmental impacts of MNG Gold's activities, and in particular the toxic spill of September 2017. We are also concerned about information received regarding Your Government's ill-treatment of community members held in custody and the conditions of those who are still in detention. We remain preoccupied that such conditions of detention may amount to arbitrary arrest and detention, violation of the right to a fair trial, inhuman and degrading treatment and, in some instances, to torture. We are seriously concerned by the alleged use of criminal prosecution and judicial harassment to intimidate and silence environmental and indigenous defenders as well as civil society activists, and to silence community members' voices who are demanding that Your Excellency's Government and MNG Gold protect and respect human rights in the context of mining operations, including the rights to a clean, healthy and sustainable environment, to water and sanitation, to health, and to Indigenous Peoples' right to access and use their ancestral lands. We are also concerned about the effect that such harassment has had, and continues to have, on the right to freedom of expression and the right to peaceful assembly of impacted communities. We would like to highlight the important role of States and business in ensuring conducive environments for effective stakeholder engagement.

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, including policies, legislation, and regulations, to fulfil its obligations to protect against human rights abuse by business enterprises under its jurisdiction, and ensuring that business enterprises within its territory conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set

forth by the UN Guiding Principles on Business and Human Rights (UNGPs). This includes any effective measures to enforce existing legal obligations to protect human rights and the environment in the context of the extractive sector.

3. Please provide detailed information on the steps taken, or being considered, to facilitate the protection of environmental and indigenous human rights defenders. In addition, we would appreciate an update on the progress made regarding Your Government's commitment in developing national action plan on business and human rights (NAP), in particular if the draft includes provisions to protect human rights defenders.
4. Please indicate what actions have been taken by your Government to ensure a proper investigation will be conducted with regards to damages that resulted from the protests, and to ensure accountability and access to an effective remedy for the human rights violations by the State and abuses by the company, including environmental harm and the use of excessive force during peaceful assemblies, described in this letter. This includes guarantees of non-repetition regarding the operations of MNG Gold as well as other businesses operating in the country.
5. Please provide updated and comprehensive information on the impacts and damages of mercury, cyanide and lead contamination in the above-mentioned area, and the health of local communities and Indigenous Peoples, in particular the availability of safe drinking water and access to adequate food.
6. Please indicate what measures have been taken to ensure health care services to affected communities, including Indigenous Peoples affected by the toxic spill of mercury, cyanide, and lead.
7. Please provide information on any measures planned to prevent negative human rights impacts from mercury, cyanide, and lead contamination, including mechanisms for just and fair redress, and indicate which measures have been taken to mitigate adverse environmental, health, economic, social, cultural or spiritual impacts on the affected Indigenous Peoples.
8. Please provide information on whether Your Excellency's Government intends to ratify the Minamata Convention on Mercury, which it signed in September 2014, and when Your Excellency's Government intends to conduct the Mercury Initial Assessments; required by article 3 paragraph 4 of the Convention.
9. Please indicate the steps Your Excellency's Government has taken, or is intending to take, to ensure the environmentally sound management and disposal of hazardous substances and wastes.
10. Please indicate the steps that Your Excellency's Government has taken, or is considering to take, to ensure that business enterprises domiciled

in your territory and/or jurisdiction establish or participate in effective operational-level grievance mechanisms in line with the UNGPs, and to cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.

We would appreciate receiving a response within 60 days. Past 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.

We may publicly express our concerns in the near future, as we believe that the information received is sufficiently reliable to indicate that there is a matter that warrants immediate attention. In addition, we believe that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with Your Excellency's Government to clarify the relevant issues.

Please be informed that letters on this subject matter have been also sent to those business enterprises that are involved in the allegations above, including MNG Gold, and Avesoro Holdings, as well as to the home-State of all involved companies (Government of the United Kingdom of Great Britain and Northern Ireland).

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

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Annex

Reference to international human rights law and standards

In connection with above alleged facts and concerns, wish to draw the attention of Your Excellency's Government to obligations under international human rights instruments, to which Liberia is party. We wish to recall article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Liberia on 22 September 2004, which guarantees the right to life.

As highlighted by the Human Rights Committee in general comment no. 36, the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para 26). Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para 62).

We would also like to remind Your Excellency's Government of its obligations under article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Liberia is a party, relating to the right of everyone to take part in cultural life. The Committee on Economic, Social and Cultural Rights, in its 2009 general comment 21 on the right to take part in cultural life (E/C.12/GC/21), stressed that States parties should take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by Indigenous Peoples. The strong communal dimension of Indigenous Peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous Peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity. States parties must therefore take measures to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources (para. 36). Furthermore, States parties must also respect the rights of Indigenous Peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life (para. 49 d).

General comment 21 (2009) also recalls that States have the obligation to respect and protect cultural heritage in all its forms. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others (E/C.12/GC/21, para. 50).

In its resolutions 33/20, 37/17 and 49/7 on cultural rights and the protection of cultural heritage, the Human Rights Council noted that “the destruction of or damage to cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights.” Cultural heritage is also a critical resource for safeguarding, questioning and transmitting historical knowledge and narratives of the past, and as such, are resources to ensure the right to education and training without any discrimination, as recognized in article 13 of the ICESCR. The Special Rapporteur in the field of cultural rights has underscored that States have a duty not to destroy, damage or alter cultural heritage, and to take measures to preserve and safeguard cultural heritage from destruction or damage by third parties (A/HRC/17/38, and A/HRC/31/59). The obligation to preserve and safeguard cultural heritage is also inscribed in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, stressing the responsibility of States not to intentionally destroy their own heritage.

We also wish to refer to Human Rights Council resolution 48/13 of 8 October 2021 and General Assembly resolution 76/300 of 29 July 2022, which recognize the right to a clean, healthy and sustainable environment as a human right, noting that guaranteeing a “safe climate” constitutes one of the substantive elements of this right.

We also wish to highlight the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which sets out international human rights standards relating to Indigenous Peoples’ rights. Article 26 of UNDRIP asserts the right of Indigenous Peoples to ‘the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’. Article 32 affirms that Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and 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 furthermore underlines 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.

With regard to the environment, article 29(1) of the UN Declaration on the Rights of Indigenous Peoples clearly states that ‘Indigenous Peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources’. Furthermore, as detailed in the Framework Principles on Human Rights and the Environment (A/HRC/37/59), annex), which outline human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment, States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (framework principle 1). In addition, 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 effective enforcement of their environmental standards against public and private actors (principle 12) and should take additional measures to protect the rights of those most vulnerable to or at particular risk of environmental harm, taking into account their needs, risks and capacities (principle 14).

We would like to recall articles 5 and 6 of 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 (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. These articles guarantee the right to meet or assemble peacefully; as well as the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, we would also like to refer to article 12(1) and (2), which provide that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms, and that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

The Human Rights Council resolution 31/32 in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. 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.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. 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.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected

conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. Moreover, the commentary of principle 11 states that "business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes". The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. (...) Business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services".

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts" (guiding principle 13).

Principles 17-21 lay down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes".

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. 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).

States have a duty to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes to the United Nations General Assembly (A/74/480). This obligation derives implicitly, but clearly, from a range of rights and duties enshrined in the global human rights framework, under which States are obliged to respect and fulfil recognized human rights, and to protect those rights, including from the consequences of exposure to toxic substances. These rights include the human rights to life, health, food and drinking water, a healthy environment, adequate housing and safe and

healthy working conditions.

Both the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. In this regard, we would like to draw the attention of your Excellency's Government to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The principles provide that States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfill human rights (principle 1); States must respect, protect and fulfill human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2); and States must ensure effective enforcement of their environmental standards against public and private actors (principle 12).