

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human right to a 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; the Working Group on the rights of peasants and other people working in rural areas; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: AL OTH 3/2025

(Please use this reference in your reply)

14 January 2025

Mr. King,

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 human right to a 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; Working Group on the rights of peasants and other people working in rural areas; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 53/3, 55/2, 49/13, 52/9, 50/17, 52/4, 54/9, 54/10 and 51/19.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

HSBC Custody Nominees (Australia) Limited

In this connection, we would like to bring to your attention information we have received concerning **alleged human rights violations committed at Chatree gold mine against local communities. The Chatree mine is operated by Akara Resources Public Company Limited (Akara), a subsidiary of Kingsgate Consolidated Limited (Kingsgate), whose top shareholders include HSBC Custody Nominees (Australia) Limited, Citicorp Nominees PTY LIMITED, BNP Paribas Nominees PTY LTD and JP Morgan Nominees Australia PTY LTD, with the involvement of Taurus Funds Management PTY LTD and Nebari Holdings as lenders, Precious Metal Refining Co. Limited and Ausiris Company Limited as downstream buyers, and LotusHall Mining Heavy Engineering Construction Co., Ltd as the operator.**

According to the information received:

Timeline

Opening

In 1993, Akara was granted a licence by the Thai Government to undertake gold exploration along the Phichit, Phetchabun and Phitsanulok province borders. In 1994, Akara commenced exploration. In 2000, the Office of Environment Policy and Planning approved Akara's Environmental Impact Assessment and provided Akara with four licenses to operate the Chatree Mining Complex for a period of 20 years. Akara officially started its commercial gold mining production in 2001 with a capacity of 1 million tons per annum.

Expansion

Starting in 2004, Akara underwent a period of expansion of the mining site and extension of mining licenses, acquiring an increasing amount of land, which forced residents to move out of their homes and land. Villagers sought to curb this expansion and filed complaints with local authorities and the National Human Rights Commission of Thailand (NHRCT). In 2007, the NHRCT alerted the Government about human rights violations faced by communities surrounding the mine. Despite this, Akara's Environmental Impact Assessments for tailing storage facilities were approved by the Office of Environment Policy and Planning, and it received new licenses in 2008 for a northern expansion of the mining complex. In 2012, Akara obtained a new license from the Government and expanded its plant's manufacturing capacities to 5 million tonnes per annum.

Suspension

In February 2015, Akara's activities were briefly suspended by the Department of Primary Industries and Mines (DPIM) due to health concerns from heavy metal contamination of groundwater sources, including manganese, arsenic, and iron contamination, which was later determined to be related to a leak from a tailings storage facility of the mine. Activities resumed within the same month.

Closure

In 2016, the Government terminated Akara's operations due to complaints from surrounding communities, effective 1 January 2017. Kingsgate, Akara's parent company, filed for arbitration against the Thai Government. In November 2020, immediately following the arbitration process, the Thai Government granted Akara 44 new special prospecting licenses, enabling the company to continue its gold exploration in the Phetchabun Province.

Reopening

In January 2022, Kingsgate announced it had received four renewed licenses, valid for 10 years. The Chatree mine officially reopened in March 2023. In May 2024, a second plant received authorization to operate.

Right of access to information and public participation

Local villagers reported that neither the authorities, nor Akara properly consulted them regarding the development of the mine. Their rights to access to information and to public participation were consistently undermined, including via inaccurate reporting of villagers' concerns and favoritism toward pro-mining villagers (such as providing them with transportation to attend meetings) in the context of public hearings related to Akara's request for concession licenses. Villagers also routinely faced intimidation by supporters of the mine when expressing their views at public meetings. With regard to the reopening of the mine, public hearings were only held in November 2022, months after the Government had approved the new mining licenses in January 2022. Additionally, at an April 2023 meeting concerning Community Development Funds, villagers were initially excluded and later prevented from speaking, highlighting continued barriers to meaningful participation.

Further, local communities lack access to information regarding the mine's activities. Environmental Impact Assessments are not publicly available, and only monitoring reports from June to December 2023 have been published, making it difficult for community members and independent observers to effectively monitor health or environmental impacts. Despite claims by the DPIM in March 2022 that baseline environmental and health assessments were conducted, no data has been published. Since the reopening of the mine, villagers have reported that they did not receive any information about the risks linked to the reopening, or about prevention and mitigation measures. Further, safeguards under the Mineral Act of 2017, such as the monitoring of health and environmental impacts, have not been fully respected, as reports and findings have not been shared with affected communities.

Freedom of expression and peaceful assembly

Between 2008 and 2015, and again since the mine reopened, villagers have reported repeated instances of threats and intimidation by Akara and its associates, including LotusHall. These threats included job termination, police

questioning, and physical threats, creating a climate of fear that has hindered the communities' efforts to seek justice and their ability to express dissent, criticism or opposition to the activity of the mine. Between 2013 and 2016, Akara also pursued legal action against community members for alleged defamation, trespassing and peaceful protests. For instance, in July 2016, villagers held a peaceful protest to prevent Akara's trucks from transporting ore out of the mining area. The Thab Khlo district police subsequently filed charges against 27 out of 100 villagers who participated in the protest for allegedly violating section 309 of the Criminal Code and article 16 of the Public Assembly Act of 2015.

Since the mine started its activities, local communities have progressively been divided between villagers who support the mine, notably villagers working at the mine, and villagers seeking reparations for the human rights impacts they have faced.

Right to an adequate standard of living, right to food, right to safe drinking water, right to land, and right to a clean, healthy and sustainable environment that is free of toxic substances

Water contamination has been a longstanding issue around the mine, with several studies confirming the presence of heavy metals, including cyanide, arsenic, and manganese. In fact, authorities warned villagers in 2002 and 2010 not to consume water from wells due to high levels of contamination. Investigations in 2010 and 2011 by the Pollution Control Department and Khon Kaen University, respectively, confirmed poor water quality, including finding cyanide in surface water. In 2015, villagers reported black-colored surface water over harvested rice paddy fields, later confirmed to contain high cyanide levels, likely due to leakage from a tailings storage facility (TSF1). In 2017, a study conducted by an international research team appointed by a fact-finding committee confirmed groundwater contamination due to leakage from the mine's TSF1 facility. Further assessments by DPIM in 2018 confirmed the TSF1 leak, and data showed that areas contaminated with manganese, arsenic and iron had expanded since the 2001-2005 period. Exposure to some of these chemicals could lead to death or negative health impacts on the cardiovascular, neurological, respiratory, reproductive, endocrine systems, amongst others.

Since the mine's reopening, seepage from TSF1 has not been addressed and signs of continued water pollution were observed in 2023. Villagers remain concerned about water quality and have experienced continued water shortages, affecting domestic use and farming, since the mine resumed operations.

The environmental contamination caused by the operations at the Chatree mine has also had significant impacts on the local communities' rights to land and food. For instance, the lack of water for farming left villagers with the impossibility to sustain their economic activities which impacted their livelihoods as crops showed stunted growth.

In 2014, a study by Rangsit University found unsafe levels of heavy metals within 10 km of the mine and concluded that they would affect the food chain. In 2022, a study confirmed mercury levels in chicken and duck eggs above the permissible limits set by the Ministry of Public Health. These instances of contamination severely affected local agriculture, with some farmers experiencing a drastic drop in rice yields. Due to the gradual extension of the mine and environmental contamination during this period, many villagers sold their land to Akara and moved elsewhere.

Since the mine's reopening, there have again been concerns about heavy metal contamination of water sources, leading villagers to purchase drinking water. Farmers have also encountered challenges in selling their produce, which has impacted their income.

Although the Thai Government and Akara provided temporary solutions, such as providing water and offering coupons to purchase crops from other sources, not all affected villagers were granted access to these resources. Further, this aid stopped when the Government suspended the operations of Chatree mine in 2016.

Beyond land and livelihood issues, the mine's operation caused noise, dust and vibrations. In March 2009, the Pollution Control Department (PCD) found that between 2009 and 2010 the noise levels exceeded the standard limits.

Right to the highest attainable standard of health

Between 2014 and 2016, several studies by consultants conducting an environmental and health impact assessment found levels of heavy metals, such as manganese, arsenic, and cyanide, exceeding standards set by the Ministry of Public Health in the blood and urine of residents living near the gold mine. These findings led to a suspension of mining operations, which resumed after less than a month when Akara presented evidence of medical treatment for affected locals and initiated academic investigations into the health impacts.

In 2019, a comparison study showed that following the suspension of the mine, arsenic contamination levels in children, which have been proven to result in a decrease in learning and intellectual abilities, decreased significantly and coincided with a drop in the number of children with learning impairments. Further, in 2019, a study concluded that the mine cyanide discharge limit of 20 mg/L set by the company was not safe for human health. A 2022 study found an elevated risk of cancer for villagers living near the mine, associated with both lead and cadmium consumption, especially for those consuming eggs within 25 km of the mine.

As a result of these instances of contamination, local communities suffered physical and mental health issues like itchy skin, skin rashes, wounds, numbness, lung and respiratory diseases, sleep deprivation, blurred vision, cancer, depression, anxiety, and paranoia. Even after the mine reopened, villagers continued to suffer from chronic conditions and expressed concerns

about increased cancer risk.

Right to effective remedy

In 2016, affected rightsholders filed a class action lawsuit demanding compensation for loss of livelihood, negative health impacts, and environmental damage. The court accepted the lawsuit on 31 October 2019, but Akara's delaying tactics and the COVID-19 pandemic pushed back the hearings multiple times. Mediation efforts in 2020 failed as Akara objected to the compensation demanded by the villagers and instead wanted to distribute payments through state-mandated rehabilitation funds, which the villagers rejected.

The second and third court hearings occurred on 25 January 2022 and between 22 and 24 February 2023, respectively. In March 2023, the plaintiffs submitted their proposal for Akara to pay the amount of 100 million THB for 300 people, which Akara rejected. Akara also attempted to delay the process further by encouraging objections to the appointment of new petitioners and reportedly assisting dissenters with legal documents. The court heard the applications of three petitioners on 19-20 September 2023, two on 22 January 2024 and the last one on 19 April 2024. On 8 July 2024, Akara's Community Relations Manager was heard as an objector to the new petitioners. On 21 August 2024, the court approved the new petitioners to be plaintiffs; however on 10 September 2024 Akara appealed this decision, arguing procedural flaws. On 17 December 2024, a mediation hearing was held during which petitioners submitted their proposal for Akara to pay 60 million THB to the class action lawsuit members and to be managed directly by them. The company instead wants to establish a new fund that it would manage. The next mediation hearing is scheduled for 21 February 2025.

While we do not wish to prejudge the accuracy of these allegations, we wish to express deep concern about the allegations of human rights abuses related to the operations of Akara. We are particularly concerned that the mine's operations severely affected the right to life, the right to the highest attainable standard of health, the right to food, the right of access to information and public participation, the right to land, the right to safe drinking water, the right to an adequate standard of living, and the right to a clean, healthy and sustainable environment that is free of toxic substances. We are extremely concerned about the prolonged lack of access to effective remedy for those adversely affected by the operations of the mine.

In addition, we are seriously concerned at the reported harassment, intimidation and persecution of human rights defenders who have denounced and exposed the reported abuses and sought reparation for the human rights impact of the mine's activities, which appear to be directly related to the legitimate exercise of their rights to freedom of peaceful assembly and expression on an issue of public interest, where transparency and access to information are essential. Additional concern is expressed about the broader impact of the above-mentioned allegations, which can have a deep chilling effect on human rights defenders and civil society as a whole.

Financial institutions have their own responsibilities under the UN Guiding Principles to respect human rights and conduct human rights due diligence. Financial businesses can be directly linked to adverse human rights impacts through its business relationships (such as through the provision of financing); they can also contribute to human rights harm through their own operations and actions. Further, the Office of the United Nations High Commissioner for Human Rights has issued statements indicating that if a bank identifies, or is made aware of, an ongoing human rights issue that is directly linked to its operations, products or services through a client relationship, yet over time fails to take reasonable steps to seek to prevent or mitigate the impact, it can be viewed as enabling the situation. The Organisation for Economic Co-operation and Development (OECD) Guidance on Due Diligence for Responsible Corporate Lending and Securities Underwriting further states that where a bank is directly linked to an adverse human rights impact through a client, it still has a responsibility to prevent or mitigate the impact, and that “[w]here the adverse impacts are directly linked to a bank’s lending or securities underwriting through a client, it should also use its leverage to seek to prevent and mitigate those impacts”. This approach has been applied by the OECD National Contact Points (NCP): for example, the Norwegian NCP concluded that “If [an investor], after investing, learns of a portfolio company’s human rights impacts, it still has a number of tools available, including shareholder proposals, engagement with management, and the threat of divestment”. Further, in the Society for Threatened Peoples Switzerland’s complaint to the Swiss NCP regarding UBS Group AG, the Swiss NCP recognized that a financial business, through investing in a business enterprise, was directly linked to potential adverse human rights impacts by its relationship with that business enterprise.

Further, a financial business can move from being directly linked to an adverse human rights impact to contributing to that impact if it does not take action to prevent or mitigate the business relationship to which it is directly linked, including by undertaking human rights due diligence. Therefore, the alleged involvement of financial institutions in the financing of the Chatree mine’s activities could be in violation of international human rights law and standards.

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 provide information on how your company addresses human rights risks and impacts linked to actual and potential investment activities in its policies, frameworks and strategies, in line with the UN Guiding Principles on Business and Human Rights (UNGPs).

3. Please indicate specific remedial measures that your company has taken, or is considering taking, to prevent being associated with human rights law, international criminal law and international humanitarian law abuses.
4. Please provide detailed information with respect to measures taken by your company to respect human rights, including to conduct a human rights due diligence processes when investing in companies.
5. Please indicate whether your company has taken any measures to undertake meaningful stakeholder engagement, including with human rights defenders and civil society, to know and address human rights related impacts linked to its investments.
6. Please describe the guidance, if any, that the Government of Australia has provided to your company, or to which your company has access, on how to respect human rights throughout your operations, in line with the UNGPs.

This communication and any response received from your company 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your company to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been sent to the Governments of Thailand, Australia, France, United States of America, United Kingdom of Great Britain and Northern Ireland, and to Akara Resources Public Company Limited, Kingsgate Consolidated Limited, HSBC Holdings PLC, Citicorp Nominees PTY Limited, Citigroup, BNP Paris Nominees PTY Ltd., BNP Paribas, JP Morgan Nominees Australia PTY Limited, JP Morgan Chase & Co., Taurus Funds Management PTY LTD, Nebari Holdings, Precious Metal Refining Co. Limited, Ausiris Company Limited, LotusHall Mining Heavy Engineering Construction Co., Ltd, with a copy to Responsible Jewellery Council.

Please accept, Mr. King, the assurances of our highest consideration.

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

Astrid Puentes Riaño
Special Rapporteur on the human right to a clean, healthy and sustainable
environment

Michael Fakhri
Special Rapporteur on the right to food

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Geneviève Savigny
Chair-Rapporteur of the Working Group on the rights of peasants and other people
working in rural areas

Marcos A. Orellana
Special Rapporteur on the implications for human rights of the environmentally sound
management and disposal of hazardous substances and wastes

Pedro Arrojo-Agudo
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 draw your attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We would 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) after years of consultation with governments, civil society, human rights defenders and the business community. The guiding principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These guiding principles are based on the recognition of:

- a) "The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms.
- b) The role of business enterprises as specialized bodies or corporations performing specialized functions, which must comply with all applicable laws and respect human rights.
- c) The need for rights and obligations to be matched by appropriate and effective remedies when they are violated".

The guiding principles also make clear that companies have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to companies on how to meet their responsibility to respect human rights and to provide remedies where they have caused or contributed to adverse impacts. The guiding principles have identified two main components of the corporate responsibility to respect human rights, which require "business enterprises to:

- a) Prevent their own activities from causing or contributing to adverse human rights impacts and address those impacts when they occur.
- b) Seek to prevent or mitigate adverse human rights impacts directly related to operations, products or services provided through their business relationships, even where they have not contributed to those impacts". (guiding principle 13)

The commentary to guiding principle 13 notes that companies can be affected by adverse human rights impacts, either through their own activities or as a result of their business relationships with other parties (...) The 'activities' of business enterprises are understood to include both actions and omissions; and their 'business relationships' include relationships with business partners, entities in their value chain and any other non-State or State entities directly linked to their business operations, products or services.

To meet their responsibility to respect human rights, companies should have in place policies and procedures appropriate to their size and circumstances:

- a) A political commitment to uphold their responsibility to respect human rights.
- b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their human rights impact.
- c) Processes to redress any adverse human rights impacts they have caused or contributed to (guiding principle 15).

According to guiding principles 16-21, human rights due diligence involves:

- a) Identifying and assessing actual or potential adverse human rights impacts that the enterprise has caused or contributed to through its activities, or that are directly related to the operations, products or services provided by its business relationships.
- b) Integrate the results of impact assessments into relevant business functions and processes, and take appropriate action in accordance with their involvement in the impact.
- c) Monitor the effectiveness of the measures and processes adopted to address these adverse human rights impacts in order to know whether they are working.
- d) Communicate how adverse effects are addressed and demonstrate to stakeholders - particularly those affected - that appropriate policies and processes are in place to implement respect for human rights in practice.

This process of identifying and assessing actual or potential adverse human rights impacts should include substantive consultation with potentially affected groups and other stakeholders (guiding principle 18).

Where an enterprise causes or is likely to cause an adverse human rights impact, it should take the necessary steps to end or prevent that impact. “The establishment of operational-level grievance mechanisms for those potentially affected by corporate activities can be an effective means of redress provided they meet certain requirements listed in principle 31 (guiding principle 22).

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 and other attempts to influence the outcome (commentary to guiding principle 25).