

Input on the right of indigenous peoples to safe drinking water

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The experience of the Guji people who live near the Lega Dembi gold mine in southern Ethiopia illustrates the adverse impact large-scale mining can have on the right to clean water of indigenous peoples. Failures of mine management and government oversight have led to toxic contamination of the water supply, with devastating effects on the health and well-being of the Guji people. The Guji have been denied their rights to free, prior and informed consent and access to information, and their protests have been met with harassment, intimidation and violence.

This submission is by DUBAF, an Ethiopian NGO whose members and leaders are indigenous Guji people, and CIHR, an academic and advocacy organization that, since 2018, has worked with DUBAF in advocating for communities impacted by the Lega Dembi mine.

The Guji People

The Guji are an agro-pastoral indigenous people who have lived for centuries in the Oromia Regional State in southern Ethiopia, raising livestock and farming on their ancestral lands. They are a marginalized group, living in poverty and receiving few social services from the government.

Lega Dembi

In 1998, the Ethiopian government granted a 20-year mining license for Lega Dembi to MIDROC, a private company owned by the largest private employer in Ethiopia. Despite widespread community opposition, in April 2018 Ethiopia renewed MIDROC's license for ten years. It did so although an environmental audit, commissioned by MIDROC – and withheld from the public – had disclosed toxic contamination and serious failures of mine management and government oversight.¹ Shortly thereafter, the license was suspended due to widespread protests. At the time, the Government promised there would be independent environmental and health impact studies and involvement of all stakeholders before any resumption of mining. But in early 2021, the mine was allowed to reopen without the free, prior and informed consent of the Guji people, and without proper public disclosure of the environmental and health impact reports.

Contamination of the water supply

According to Guji elders, the Guji traditionally obtained their water from the Dembi River and other small rivers in the area, and because these rivers originated in a dense forest, the water was clean as well as plentiful.² But the construction and operation of Lega Dembi destroyed the forest and contaminated the local rivers. Studies have documented dangerous levels of

mercury, arsenic, and cyanide in the soil and water in the area near and downstream from the mine.³

Toxic waste produced when gold is extracted from ore is channelled into a large pond restrained by the first of three tailing dams. This highly toxic water is supposed to be purified before it is released back into the environment. However, due to failures of mine management and government oversight, contaminated water has been allowed to enter the water supply near and below the mine.

The MIDROC-commissioned environmental audit documented many failings. Instead of leaving the Dembi River as a source of clean water for community use, MIDROC diverted the river through its tailing dams, contaminating the water. MIDROC failed to install impermeable liners at the base of the tailing ponds, allowing seepage into the groundwater. The highly toxic tailing ponds were left unfenced and accessible to the community as a water source.⁴ Local people, who had not been warned that the water was dangerous, used the water for household use and watering their livestock.⁵

At present, the local Guji people obtain water from the small rivers and streams below the mine. No signs are posted to warn that this water is contaminated and dangerous.

Prior to the reopening of the mine, the Government promised that clean water would be provided to the community, but that promise has not been kept. Attempts were made to fix some dysfunctional water tap points, but these efforts reportedly failed. The Government also tried unsuccessfully to drill a borehole, but stopped drilling without explanation to the community. After mining resumed, MIDROC briefly trucked in water, but this stopped after only a few weeks.

The only way to obtain clean water now is to purchase it from private individuals who truck it in for sale. But this water is only sold once per week, the amount is insufficient, it is not accessible to everyone due to distance, and it is too expensive for most people to buy. The Guji people thus continue to rely on stream water that has been contaminated by the Lega Dembi mine.

Effects of toxic water on the Guji People

The Guji community has suffered the predictable consequences of exposure to water contaminated with mercury, arsenic and other toxins. Women have suffered uncommonly high rates of miscarriages and stillbirths, and many infants have died shortly after birth or been born with severe physical and developmental disabilities that shorten life expectancy and compromise quality of life, including deformed limbs, paralysis and mental incapacity.⁶ Local people have suffered debilitating health issues, including tumors, headaches, skin conditions, and vision problems. Livestock have died, crops have produced smaller yields, and people have become ill from eating the food they grow.

Denial of the right to free, prior, informed consent

Lega Dembi illustrates why the right to effective participation, consultation and consent is so important for indigenous people such as the Guji. This mine has wreaked havoc on their lives, their community, and their way of life. But the Guji people had absolutely no voice in the original decision to license the mine, in the 2018 decision to renew the mine's license, or in the

recent decision to allow the mine to reopen. They have been excluded from decision-making on mine oversight, impact assessments, identification of remedial measures necessary to restore the environment and prevent further contamination, and the determination of just reparations.

In 2020, the Government began to hold meetings with certain members of the local community, and based on these meetings, it claims to have held community consultations. But these were not true consultations within the meaning of free, prior and informed consent. Only persons selected by the Government were allowed to attend. Reportedly, most of these people were members of the governing party, and some participants were promised rewards for supporting the reopening of the mine. Moreover, these were not meetings to discuss whether, and on what terms, the mine should be allowed to reopen. The Government simply announced the reopening of the mine and the remedial measures it said would be taken. While some of these measures, if implemented, would be positive ones, they have not yet been implemented, and the local people strongly doubt that the promises will be kept. These purported “consultations” do not satisfy the State’s obligation to respect the Guji people’s right to effective participation, consultation and consent.

Denial of the right to access to information

For free, prior and informed consent and effective consultation to take place, indigenous peoples must be provided with all the information required to make an informed decision. The Ethiopian Government, however, has refused to make public the reports of Lega Dembi’s environmental and health impacts.

The March 2018 environmental audit commissioned by MIDROC, referenced above, has never been made public. Although copies have been leaked, because the report has not officially been made public, local people cannot refer to it in raising their concerns about the health impacts of the mine.

The Government has also refused to make public an environmental report prepared after the temporary suspension of the mining license. It is believed that Canadian experts provided by the Canadian International Resources and Development Institute (CIRDI) conducted a desk audit in late 2018 of prior reports of Lega Dembi’s environmental impact. It has been rumored that their report contains extensive criticism and recommendations. But the report itself has not been made public.

Nor has the Government made public the report of a community health survey conducted in late 2018 by the Ethiopian Public Health Institute in consultation with the Canadian experts. Nearly 3000 households in the Lega Dembi area participated in the survey, based on promises that the study results would be shared with the community. The New Humanitarian (TNH) reports that the still-secret results of this survey are damning. Communities near the mine were found to have “the highest rate of birth defects measured in Ethiopia.”⁷ The study “showed that the ages of children born with defects aligned with the years in which [MIDROC] was operating.”⁸ The study also reportedly documented the high level of health problems of community members.⁹ Almost without exception, community members said they had never been warned not to use the water in the Lega Dembi tailing ponds.¹⁰

This extremely vital information has been withheld from the community. At a meeting to announce the reopening of the mine, a government official dismissed the idea of making the reports public, saying the information was too complex to be understood by the Guji

community. This is not an acceptable excuse for the Government’s refusal to release these reports, as has been made clear by both the Special Rapporteur and the Expert Mechanism on the rights of indigenous peoples. “Indigenous peoples should have full access to the information gathered in impact assessments that are done by State agencies or extractive companies.”¹¹ This information “should be presented in a manner and form understandable to indigenous peoples,” and should include information on the “social, environmental and cultural impact assessments . . . and all the potential harm and impacts that could result from the proposed activity.”¹²

Repression, intimidation and violence against protesters

The Ethiopian Government has a documented history of criminalizing protests and brutalizing protesters. A 2016 Human Rights Watch report on the Government’s response to protests in the Oromia Region, including protests against Lega Dembi, concluded: “Security forces committed numerous human rights violations in response to the protests, including arbitrary arrest and detention, killings and other uses of excessive force, torture and ill-treatment in detention, and enforced disappearances.”¹³

These tactics have been used over the years against activists and community members who have protested Lega Dembi. Anti-mine protests in 2009 led to beatings and mass arrests, including the arrests of some fifteen protest leaders.¹⁴ Protests in 2014 and 2016 were likewise suppressed by security forces. For example, in April 2016, security forces came to the home of a protest participant, accused him of having organized the local protests, and killed him.¹⁵ Familiar patterns re-emerged in 2018 when activists and community members protested the renewal of MIDROC’s mining license. At least five protesters were killed and others were injured when security forces opened fire on the demonstrators with live ammunition.¹⁶

MIDROC’s private security force has also brutalized local people, shooting those viewed as coming too close to the mining site. In one incident, a local man was forced at gunpoint into the most toxic tailing pond, where he immediately perished. It has been reported, including by a former MIDROC worker, that MIDROC has maintained its own private jail within the mining complex.

The resulting climate of fear and intimidation has been intensified by the militarization of the area near the mine. Since at least autumn 2019, the Government has imposed a “command post” regime in the area, under which the military takes lead responsibility for security. Under this regime, no meetings of any kind can be held without prior government approval. This has effectively prevented the Guji from coming together – before or since the reopening of the mine – to discuss their grievances or express their opposition.

Under these circumstances, it is not surprising that there have been no public protests in response to the resumption of mining. Local people who have voiced their opposition have suffered consequences. Some have been detained for supposedly having links to rebel groups. Others have been threatened and forced to flee the area. For now, the Government has largely succeeded in suppressing any public expression of opposition to the mine.

¹ *Compliance audit in chemical management on MIDROC Gold Mine PLC’s Legadembi and Sakaro Mining Operations*, Addis Ababa University Business Enterprise PLC (March 2018) [hereinafter March 2018 Audit].

² Research Team from Dilla and Bule Hora Universities, *A study on socio economic impacts of MIDROC Gold Mine – Lega Dembi & Sakaro operations* (September 2019), p. 31.

³ Tom Gardner, *Health woes, outrage, and toxins near Ethiopia gold mine*, The New Humanitarian (27 May 2020), <https://www.thenewhumanitarian.org/investigation/2020/05/27/Ethiopia-Oromia-Shakiso-gold-mine-health-problems> [hereinafter TNH, *Health woes, outrage, and toxins*]; March 2018 Audit, *supra* note 1, pp. 74, 83, 84.

⁴ March 2018 Audit, *supra* note 1, pp. 65, 84, 102, 103, 117, 118, 121.

⁵ *Id.*, pp. 103, 117; TNH, *Health woes, outrage, and toxins*, *supra* note 3.

⁶ TNH, *Health woes, outrage, and toxins*, *supra* note 3; Cecilia Jamasmie, *Ethiopians Protest MIDROC Gold Mining License Renewal*, TESFANEWS (7 May 2018), <https://www.tesfanews.net/ethiopians-protest-midroc-mining-license-renewal/>; March 2018 Audit, *supra* note 1, p. 113.

⁷ TNH, *Health woes, outrage, and toxins*, *supra* note 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ James Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples: Extractive industries and indigenous peoples*, U.N. Doc. A/HRC/24/41 ¶ 65 (1 July 2013), <https://undocs.org/en/A/HRC/24/41>.

¹² Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), *Free, prior and informed consent: a human rights-based approach*, U.N. Doc. A/HRC/39/62 ¶ 22(b) (10 Aug. 2018), <https://undocs.org/A/HRC/39/62>.

¹³ Human Rights Watch, “Such a Brutal Crackdown,” Killings and Arrests in Response to Ethiopia’s Oromo Protests, p. 21, *see also* pp. 13-14 (June 2016), https://www.hrw.org/sites/default/files/report_pdf/ethiopia0616web.pdf.

¹⁴ Asebe Regassa, *Frontiers of Extraction and Contestation: dispossession, exclusion and local resistance against MIDROC Laga-Dambi Gold Mine, southern Ethiopia*, THE EXTRACTIVE INDUSTRIES AND SOCIETY, p. 7 (Aug. 2021), <https://www.sciencedirect.com/science/article/pii/S2214790X21001519>.

¹⁵ VOA NEWS, *Mining Firm's License Renewal Fuels Protests in Ethiopia* (5 May 2018), <https://www.voanews.com/a/mining-firm-license-renewal-fuels-protests-ethiopia/4378439.html>.

¹⁶ ETHIOPIA OBSERVER, *Five people killed in Legademi gold mine protest* (9 May 2018), <https://www.ethiopiaobserver.com/2018/05/09/five-people-killed-in-legademi-gold-mine-protest/>.