**Submission in response to OHCHR Call for Input on**

**“Realizing children’s rights through a healthy environment”**

Submitted by: Development by Unity and Brotherly Action for the Future (DUBAF), Girja Integrated Rural Development Association (GIRDA), and the Center for International Human Rights (CIHR) of Northwestern University’s Pritzker School of Law[[1]](#footnote-2) (8 October 2019).

This submission provides information about the impact on children’s rights, including the right to health, of the environmental degradation and pollution by the privately-owned Lega Dembi gold mine in Ethiopia.

**Background Information.** The Lega Dembi mine is a massive gold mine in the Shakiso District of the Oromia Regional State in southern Ethiopia. For centuries, indigenous Guji people have pursued an agro-pastoral way of life in this area, raising livestock and farming on their ancestral lands.

In 1997, Ethiopia granted a 20-year mining license to Mohammed International Development Research and Organization Companies (MIDROC), whose owner, through his various businesses, is the largest private employer in Ethiopia. Prior to privatization, the State operated a much smaller gold mine in the same area. MIDROC vastly expanded the size and scale of the mine, causing massive deforestation and the exclusion of the Guji people from portions of their ancestral land. In 2009, MIDROC obtained an additional license for the adjacent Sakaro Gold Mine, an underground mine connected by tunnel to the Lega Dembi mine.

As described below, the mine has caused severe health consequences, particularly for children. But despite the harsh environmental and health impacts, and despite widespread community opposition, in April 2018 the State renewed the mine’s license for an additional ten years. This decision sparked massive protests, which in turn led the State to suspend MIDROC’s license pending assessments of its environmental, health and socio-economic impacts. As of today, the mine remains closed, though the community fears that it may be allowed to reopen. In March 2018 CEDAW expressed concern “about the grave health, environmental and socioeconomic impact of the operations of the mine on Guji rural women and their families,” and it urged the State to “ensure full transparency and independence during the assessment process, including by publishing the results and sharing them with the Guji people, address the environmental and health damage caused and provide adequate reparations and compensation to the victims.”[[2]](#footnote-3) To date, Ethiopia has not complied with these recommendations.

**1. Impact on Children’s Rights, Particularly to Health**

The environmental degradation and pollution caused by the Lega Dembi mine have violated the rights of the children in nearby communities to health, clean water, food, and education. 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.[[3]](#footnote-4) Children as well as adults have suffered debilitating health issues, including tumors, headaches, skin conditions, and vision problems. The right to food has also been impaired: livestock have died or become ill, crops have produced smaller yields, and people have become ill from eating the food grown in the affected area. Their right to education has also been impaired, as children with deformed legs are unable to walk the long distances to school, and the schools lack the resources to educate children with severe developmental and physical disabilities.

These impacts resulted both from MIDROC’s irresponsible conduct of its mining operations and from the State’s failure to adequately regulate, monitor, and hold to account the mine. A March 2018 audit conducted by Addis Ababa University Business Enterprise PLC revealed, among many problems, the following departures from the way that a well-regulated mine would be operated:

a. **Failure to fence off the highly toxic tailings pond to prevent public access.** The toxic waste produced when gold is extracted from the ore is channeled into a tailings pond, where it is supposed to be contained until it has been purified. MIDROC has not fenced off this toxic pond, leaving it is accessible to people and animals.[[4]](#footnote-5) Local residents fetch water there for domestic use and have allowed their livestock to drink from the pond.[[5]](#footnote-6) Many people report that they have never been warned not to do so.

**b. Failure to install impermeable liners at the base of the tailings pond.** A well-regulated mine would have impermeable liners at the base of the tailings pond to prevent seepage of toxic waste into the groundwater.[[6]](#footnote-7) At the Lega Dembi mine, however, “no liners were installed to prevent passage of leachate to the groundwater system.”[[7]](#footnote-8)

**c. Contamination of freshwater stream due to the design of the mine.** In designing the layout of the mine, MIDROC situated the tailings pond in such a way that a freshwater stream used by the community for water flows directly through the tailings pond, thus contaminating that water source.[[8]](#footnote-9) A well-regulated mine would have kept the stream separate from the tailings pond, preserving it as a source of clean water for the community.[[9]](#footnote-10)

Due to these and many other failings, people living near and downstream from the Lega Dembi mine have been exposed to cyanide, heavy metals, and, it is feared, mercury. MIDROC acknowledges using cyanide to separate gold from ore.[[10]](#footnote-11) Cyanide is highly toxic: it can cause respiratory failure, heart, brain, and nerve damage, and it can be lethal.[[11]](#footnote-12) Heavy metals, which are often present where gold is found, and which can be released into the environment by the mining process, pose another danger. For example, both lead and arsenic have the potential to harm pregnancies, impair brain development, and damage organs.[[12]](#footnote-13) Soil and water samples within and downstream from the Lega Dembi mine area have revealed concentrations of arsenic that substantially exceeded recommended limits.[[13]](#footnote-14) The same is true of the concentrations of other heavy metals within the mining area, including high concentration of lead in soil samples.[[14]](#footnote-15) The possible exposure to mercury is also a cause for grave concern. Exposure to even small amounts of mercury can impair development, vision, hearing, and memory and have toxic effects on the nervous, digestive, and immune systems.[[15]](#footnote-16) MIDROC denies using mercury at Lega Dembi, but it has never adequately accounted for a 100 kg vat of mercury stored in the “gold room” when MIDROC took over operations from the State, which admits to having used mercury before the mine was privatized. Notably, MIDROC refused to allow the AAUBE auditors to enter the gold room, ostensibly for some unspecified “security” reasons.[[16]](#footnote-17) Moreover, even if MIDROC has not used mercury to separate gold from ore, the cyanide used to separate gold from ore can simultaneously release mercury naturally present in the ore, and can mobilize mercury residue that may remain from the era of State-owned mining.[[17]](#footnote-18)

**3. and 4. Measures for the protection of the environment and related gaps and challenges**

The situation at the Lega Dembi mine illustrates the consequences of a legal framework not implemented in practice. Ethiopian law purports to protect the environment: The Constitution provides all persons with the “right to a clean and healthy environment” and requires the State to ensure development projects do not damage the environment.[[18]](#footnote-19) The 1997 Environmental Policy of Ethiopia outlines policy goals, including regular audits and environmental monitoring with results made available to the public, the conditioning of mine contracts on pre-development environmental impact assessments (EIAs), sound management during operation, and the endorsement of both precautionary and “polluter pays” principles to control pollution.[[19]](#footnote-20) Ethiopia’s Environmental Protection Authority (EPA) requires EIAs prior to federal licensing of projects that are likely to have negative environmental impacts.[[20]](#footnote-21)

None of this has been implemented with respect to Lega Dembi. The 2018 AAUBE audit concluded:

“The overall audit findings are that the MMPNG [Ministry of Mines, Petroleum and Natural Gas] and MoEFCC’s [Ministry of Environment, Forest and Climate Change] compliance and enforcement activities of the mine are inadequate to protect the area from significant health and environmental risks. We found neglect in compliance and enforcement program activities within the MMPNG, and significant deficiencies within the MoEFCC activities.”[[21]](#footnote-22)

“MMPNG regulatory oversight activities are inadequate. MMPNG’s mandate to promote the mining industry conflicts with its role as a regulator, thus reducing its regulatory effectiveness, particularly with respect to safety, health and environmental issues. The fact that the ministry signed the Sakaro Mining contract agreement before submission of Environmental and Social Impact Assessment report and mine rehabilitation plan and before obtaining Environmental Clearance Certificate is a clear reflection of the dual role of the ministry.

Although MoEFCC has adopted compliance and enforcement legislative frameworks, there are significant gaps in implementing the frameworks that were issued. MoEFCC has not yet provided any approved standards for environmental pollutants of mining. . . Inspections by MMPNG and MoEFCC did not meet regulatory requirements. Neither MMPNG nor MoEFCC are conducting adequate monitoring and regular site inspections and neither have assessed how this is impacting risks.

Both ministries lack sufficient resources and tools to manage environmental risks from mining activities. eg. Standards and laboratories, resources dedicated to the regulatory activities of monitoring, compliance and enforcement.[[22]](#footnote-23)

Despite the serious shortcomings disclosed by the AAUBE audit, a month after receiving the report the Ministry of Mines renewed MIDROC’s license for an additional ten years. Only because of the protests that erupted in response to this decision did the State change course and suspend the mine’s license. As for the AAUBE report? It was suppressed and not made available to the public, yet another indication of the unwillingness of the State to address these profound problems.

**5. State Measures to Fulfill Children’s Right to Participate**

Ethiopia’s Constitution provides several guarantees on the right to participate, including that “[n]ationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.”[[23]](#footnote-24) The Constitution makes ratified treaties “an integral part of the law of the land,”[[24]](#footnote-25) and the Convention on the Rights of the Child, which Ethiopia has ratified, has as a core principle children’s right to participate.[[25]](#footnote-26) The Ethiopian Constitution also requires that “[t]he conduct of affairs of government . . . be transparent.”[[26]](#footnote-27)

These constitutional promises have not been kept. Ignoring the obligation of free, prior and informed consent, the State did not consult the community in its decision to grant a license to MIDROC in 1997, nor at any point since.[[27]](#footnote-28) MIDROC and the State continually ignored vociferous protests and failed to address complaints, leading people to feel that MIDROC is a “government by itself.”[[28]](#footnote-29)

It is particularly unfortunate that the State is continuing its pattern of non-transparency with respect to the current environmental and health impact assessments. It is believed that a team of Canadian consultants, brought in to conduct an environmental assessment, submitted a report to the State in late 2018, but that report has not been made public. The State has also failed to share with the community the results of a health impact assessment, despite promises to do so when the community was asked to cooperate with the study. In late 2018, some 3000 households responded to a lengthy oral questionnaire administered by the Ethiopian Public Health Institute, in consultation with the Canadian consultants. It is believed that the survey results confirm the severe health impacts suffered by communities near and downstream from the mine. Although a report on this study was presented to the State in June 2019, the results still have not been shared with the affected community.

**6. Monitoring of Environmental Risks to Children**

As noted above, the monitoring of Lega Dembi’s environmental risks to the community, including children, has been totally inadequate. As just one egregious example, the AAUBE auditors noted that their audit could not include an analysis of groundwater samples “because all monitoring boreholes were damaged and were not functional during the field visit.”[[29]](#footnote-30)

1. DUBAF and GIRDA are licensed Ethiopian NGOs. DUBAF aims to make a lasting, positive difference in the life and livelihoods of the marginalized communities through supporting self-help initiatives and promoting indigenous values. GIRDA works with poor women, girls and boys, youth and marginalized communities and community-based institutions to have a significant positive impact on the underlying causes of poverty. CIHR, which is in special consultative status with ECOSOC, is dedicated to human rights education and legal and policy-focused human rights advocacy within the U.S. and worldwide. [↑](#footnote-ref-2)
2. Committee on the Elimination of Discrimination against Women, 1665th and 1666th meetings, Concluding observations on the eighth periodic report of Ethiopia, CEDAW/C/ETH/8, ¶¶ 45-46 (14 March 2019), https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fETH%2fCO%2f8&Lang=en. [↑](#footnote-ref-3)
3. *See* A study on socio economic impacts of MIDROC Gold Mine – Lega Dembi & Sakaro operations, *prepared by* Research Team from Dilla and Bule Hora Universities (September 2019),pp. 27–30 (hereinafter Dilla & Bule Hora Study); Cecilia Jamasmie, *Ethiopians Protest MIDROC Gold Mining License Renewal*, TesfaNews (7 May 2018), https://www.tesfanews.net/ethiopians-protest-midroc-mining-license-renewal/; Interviews with community members. [↑](#footnote-ref-4)
4. *Compliance audit in chemical management on MIDROC Gold Mine PLC’s Legadembi and Sakaro Mining Operations*, *prepared by* Addis Ababa University Business Enterprise PLC (March 2018), pp. 103–04, 121 (hereinafter AAUBE Report). [↑](#footnote-ref-5)
5. *Id.* at 84, 117, 123. [↑](#footnote-ref-6)
6. *Id.* at 102. [↑](#footnote-ref-7)
7. *Id.* [↑](#footnote-ref-8)
8. *Id.* at 65. [↑](#footnote-ref-9)
9. *Id.* at 118 [↑](#footnote-ref-10)
10. *Id.* at 59. Cyanide is commonly used in gold mines, but it is essential that its use be carefully managed with appropriate measures being taken to avoid environmental degradation and adverse health impacts. *See id.* at 37, 52. [↑](#footnote-ref-11)
11. *Facts About Cyanide*, Centers for Disease Control and Prevention, (Apr. 4, 2018), https://emergency.cdc.gov/agent/cyanide/basics/facts.asp.; AAUBE Report, *supra* note 4, at 49. [↑](#footnote-ref-12)
12. World Health Organization, https://www.who.int/ipcs/assessment/public\_health/chemicals\_phc/en/; AAUBE Report, *supra* note 4, at 44–45. [↑](#footnote-ref-13)
13. AAUBE Report, *supra* note 4, at 72–73, 76–78. [↑](#footnote-ref-14)
14. *Id.* at 72, 77. [↑](#footnote-ref-15)
15. World Health Organization, https://www.who.int/ipcs/assessment/public\_health/chemicals\_phc/en/; *id.* at 45. [↑](#footnote-ref-16)
16. AAUBE Report, *supra* note 4, at 3, 66. [↑](#footnote-ref-17)
17. We note that the AAUBE audit did not find evidence of excessive levels of mercury in soil and water samples. However, it must also be noted that the audit was conducted “at the request of MIDROC GOLD PLC,” *id.* at 2, and that the laboratory analyses were conducted by a lab that “has been a client of MIDROC Gold PLC for the last seven years,” *id.* at 3. Under these circumstances, and given certain additional acknowledged limitations of the audit, *id.* at 2–3, the finding of no excessive levels of mercury needs to be confirmed (or repudiated) by an independent team of experts, working with an independent lab and without the acknowledged limitations of the 2018 audit. [↑](#footnote-ref-18)
18. Constitution of the Federal Democratic Republic of Ethiopia art. 44(1), 92(1)–(4), 21 August 1995, available at https://www.refworld.org/docid/3ae6b5a84.html (hereinafter Ethiopia Constitution). [↑](#footnote-ref-19)
19. Environmental Policy of Ethiopia §§ 3.8(k), 2.3(m), 3.6(g), 3.8(b). Many of these guiding principles have been adopted in proclamations. *See*, *e.g.*, Mining Operation Proclamation No. 678/2010; Environmental Pollution Control Proclamation No. 300/2002; Environmental Impact Assessment Proclamation No. 299/2002. [↑](#footnote-ref-20)
20. Environmental Protection Organs Establishment Proclamation No. 295/2002 art. 6(5) (http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85158/95185/F193782397/ETH85158.pdf); Environmental Impact Assessment Proclamation No. 299/2002 art. 3–5 (http://extwprlegs1.fao.org/docs/pdf/eth44281.pdf). [↑](#footnote-ref-21)
21. AAUBE Report, *supra* note 4, at 120. [↑](#footnote-ref-22)
22. AAUBE Report, *supra* note 4, at 119. [↑](#footnote-ref-23)
23. Ethiopia Constitution, *supra* note 18, art. 43(2); *see also* *id.* art. 92(3). [↑](#footnote-ref-24)
24. *Id.* art. 9(4). [↑](#footnote-ref-25)
25. Convention on the Rights of the Child art. 12, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3. [↑](#footnote-ref-26)
26. Ethiopia Constitution, *supra* note 18, art. 12(1). [↑](#footnote-ref-27)
27. Dilla & Bule Hora Study, *supra* note 3, at 51. [↑](#footnote-ref-28)
28. *Id*. at 53. [↑](#footnote-ref-29)
29. AAUBE Report, *supra* note 4, at 3. [↑](#footnote-ref-30)