



Center for International Human Rights

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**Ethiopia's Violations of Civil and Political Rights
in connection with the Lega Dembi Gold Mine**

**Submitted for consideration at the 136th Session
of the Human Rights Committee**

Submitted by:

Development by Unity and Brotherly Action for the Future (DUBAF)

**Center for International Human Rights (CIHR)
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Submitted by:

Development by Unity and Brotherly Action for the Future (DUBAF)¹
and
Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law,²

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This report supplements and updates our August 2020 LOI stage report on violations by Ethiopia of the civil and political rights of the indigenous Guji people who live in communities near the Lega Dembi gold mine. As we documented in that report, serious deficiencies in mine management and government regulatory oversight have left the soil and water contaminated with dangerous levels of cyanide, arsenic and mercury. This contamination has had its predictable effects: high rates of miscarriage, stillbirth, and infant mortality; many children born with profound disabilities; local villagers afflicted with debilitating illnesses; and devastation of livestock, crops and wildlife. While the mining company (MIDROC) is also at fault, our prior report showed that Ethiopia bears responsibility for licensing the mine and allowing it to operate without adequate regulatory oversight, excluding the affected communities from meaningful participation in licensing and regulatory decisions, refusing to make public the environmental, health and socio-economic impact reports, failing to ensure that the toxic contamination is cleaned up and future contamination is prevented, neglecting to provide an adequate supply of clean water to local people, and preventing victims from receiving adequate compensation and reparations.

Ethiopia has now lifted the temporary suspension of the mine’s license, which had been imposed in May 2018 in response to massive community protests over the 10-year renewal of MIDROC’s mining license. Since about March 2021, full-scale mining operations have been resumed. Promises made at the time of the suspension and again during Ethiopia’s CEDAW review have been ignored – most notably, the promise that the mine would not be allowed to resume operation “until the toxic waste has been resolved and no longer poses a threat.”³ Instead, driven by its overriding interest (particularly at a time of war) in hard currency from the sale of gold, the State has allowed the mine to reopen without first requiring MIDROC to remedy existing contamination and taking effective measures to prevent further contamination. Nor has the State kept its promises that there would be an independent environmental impact

¹ Development by Unity and Brotherly Action for the Future (DUBAF) is an Ethiopian NGO whose members and leaders are indigenous Guji people. DUBAF was established with the aim of making a lasting, positive difference in the life and livelihood of marginalized communities through supporting self-help initiatives and promoting indigenous values.

² The Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law (Chicago, USA) is dedicated to human rights education and advocacy within the United States and worldwide. CIHR is in special consultative status with the United Nations Economic and Social Council (ECOSOC). Since 2018, CIHR has worked with DUBAF in advocating for communities impacted by the Lega Dembi mine.

³ Committee on the Elimination of Discrimination against Women, 1666th meeting, 72nd session, unofficial transcription of recorded remarks of representative of Ethiopia related to Lega Dembi p. 2 (21 Feb. 2019). Video from which the transcription was made is available at <https://media.un.org/en/asset/k1a/k1agktzaxo> at (hour:minute:second) 1:33:55 – 1:35:43 [hereinafter Ethiopia Remarks to CEDAW].

assessment,⁴ that mining would resume only when “all stakeholders agree on the result of that investigation,”⁵ and that all victims of the toxic contamination would receive “due compensation.”⁶

The reopening of the mine has brought dire consequences. Local people report, as before, high levels of miscarriages and stillbirths. Children continue to be born with severe congenital malformations. Recently, for example, a child was born with no limbs; this poor child died not long after birth. According to local people, some ailments, such as persistent coughs and skin rashes, were temporarily alleviated while the mine was shut down, but now, people again complain of continuous coughs, asthma, and skin problems from exposure to mining dust, particularly during the dry season. Livestock continue to die after drinking water from tailing dams, which, contrary to repeated recommendations, remain largely if not entirely unfenced. When the mine was temporarily closed, farmers reported better-than-normal harvests; but now, since the mine’s reopening, harvest yields reportedly have again dropped.

Ethiopia, however, would have this Committee believe that the problems of Lega Dembi have all been resolved. In its LOI Replies, the State “acknowledges the concerns” over “allegations” that toxic contamination from the mine has caused “health side effects and ailments.”⁷ But without acknowledging the truth of these “allegations,” the State, in essence, assures the Committee that it has taken all necessary actions and that all is now well in the communities near the mine.

In what follows, we will first present information on the Lega Dembi mine and its impacts on the environment, health, livelihood and way of life of the Guji people who live near the mine (Section I). We will then respond to the factual misstatements in the State’s LOI Replies and update the Committee on the current situation with respect to the mine (Section II). We will conclude with suggested questions and recommendations for the State (Section III).

I. Lega Dembi and its environmental and health impacts on the Guji people

Lega Dembi is a massive gold mine in the Shakiso District of the Oromia Regional State in southern Ethiopia where, for centuries, indigenous Guji people have pursued an agro-pastoral way of life on their ancestral lands. In 1997, Ethiopia granted a 20-year mining license to MIDROC, whose billionaire owner, through his various businesses, is the largest private employer in Ethiopia.⁸ In 2009 MIDROC received an additional license to build and operate the adjacent Sakaro Gold Mine, an underground mine connected by tunnel to Lega Dembi. No consultations were held with the local people before these licenses were issued.

⁴ *Midroc’s gold mining permit suspended after protests*, ETHIOPIA OBSERVER (May 9, 2018), quoting a spokesman from Ethiopia’s Ministry of Mines, Petroleum and Natural Gas, <https://www.ethiopiaobserver.com/2018/05/09/midroc-gold-mining-permit-suspended/> [<https://perma.cc/Z3SN-J96X>]; *Ethiopia Agrees to Suspend MIDROC Gold Mining After Protests*, VOA (9 May 2018), <https://www.voanews.com/africa/ethiopia-agrees-suspend-midroc-gold-mining-after-protests> [<https://perma.cc/G78Q-6BXN>].

⁵ VOA, *supra* note 4.

⁶ Ethiopia Remarks to CEDAW, *supra* note 3.

⁷ Human Rights Committee, 134th session, Replies of Ethiopia to the list of issues in relation to its second periodic report (26 Jul. 2021) at ¶ 150 [hereinafter LOI Replies].

⁸ Danny Hakim and Ben Hubbard, *He Owns Much of Ethiopia. The Saudis Won’t Say Where They’re Hiding Him.*, NEW YORK TIMES (Mar. 16, 2018), <https://www.nytimes.com/2018/03/16/business/saudi-arabia-purge.html> [<https://perma.cc/X79S-QB8A>].

In early 2018, MIDROC sought a 10-year renewal of its Lega Dembi mining license. Again, no community consultations were held. Despite widespread community opposition, and in the face of a MIDROC-commissioned environmental impact study that disclosed toxic contamination and very serious failures of mine management and government regulatory oversight,⁹ the State renewed MIDROC’s license. At the time, a government official reported to local people – contrary to the actual findings in the report – that the environmental study had found no significant environmental problems with the Lega Dembi mine.¹⁰ To this day, the report itself has not been made public.

The decision to renew the license sparked massive protests, which led the State to suspend MIDROC’s license and mining operations in May 2018 – shortly after Abiy Ahmed had become Prime Minister – pending what was promised to be an independent assessment of the mine’s impacts. At that time, the State represented that “operations would resume if and when ‘all stakeholders agree on the result of that investigation.’”¹¹

Following the suspension of MIDROC’s license, the State facilitated an assessment process. Notably, that process did not include an independent environmental impact assessment. It did include a Canadian-financed environmental impact “desk audit” (*i.e.*, a review of prior reports) by Canadian consultants, a community health study by the Ethiopian Public Health Institute with guidance from the Canadian consultants, and a socio-economic impact assessment by researchers at Ethiopia’s Dilla and Bule Hora Universities.

In February 2019, at CEDAW’s review of Ethiopia, the State pledged that “as soon as the findings of these assessments are completed, if indeed the mine is found to have been responsible for the toxic waste and the resultant health side effects on the communities around the mines,” the State would take appropriate action.¹² The State assured CEDAW that Ethiopia has an “adequate legal framework to hold the mine accountable and to also make sure that it pays due compensation and that it does not resume functions until the toxic waste has been resolved and no longer poses a threat.”¹³

CEDAW applauded the decision to close the mine and conduct impact assessments, but expressed concern “about the grave health, environmental and socioeconomic impact of the operations of the [Lega Dembi] mine on Guji rural women and their families.”¹⁴ CEDAW 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.”¹⁵

⁹ *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]. Although this report has not been made public, a leaked copy has been obtained.

¹⁰ Following the license renewal, Minister of Defense Motuma Makasa, who had previously been the Minister of Mines, spoke at a meeting in Adoolaa, a town located about 20 km from the Lega Dembi mine. According to the Minister, the March 2018 audit had found no significant environmental problems with the Lega Dembi mine.

¹¹ ETHIOPIA OBSERVER, *supra* note 4 (quoting a spokesman from Ethiopia’s Ministry of Mines, Petroleum and Natural Gas).

¹² Ethiopia Remarks to CEDAW, *supra* note 3.

¹³ *Id.* 1:35:23–1:35:43.

¹⁴ Committee on the Elimination of Discrimination against Women, 1665th and 1666th meetings, Concluding observations on the eighth periodic report of Ethiopia, U.N. Doc. No. CEDAW/C/ETH/8, ¶ 45 (14 March 2019), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fETH%2fCO%2f8&Lang=en [hereinafter CEDAW Concluding Observations].

¹⁵ *Id.* ¶ 46.

Unfortunately, as will be explained below, Ethiopia has neither complied with CEDAW's recommendations nor followed through on its own publicly stated commitments.

A. Exposure to toxic contamination

To fully understand the extent of toxic contamination and the failures of mine management and government regulation, a complete and fully independent environmental impact assessment must be conducted – and to date, this has not happened during the 20+ years that MIDROC has held the license for the mine.

Much, however, can be learned from studies that have been done, despite their limitations. The information that follows is drawn from three sources: a leaked copy of the March 2018 environmental assessment by Addis Ababa University Business Enterprise PLC commissioned by MIDROC to support its license renewal application;¹⁶ a leaked copy of the report of the environmental desk audit conducted by Canadian consultants after the May 2018 suspension of MIDROC's license;¹⁷ and findings by independent researchers from two universities located relatively near the mine who, though barred from the mine itself, conducted their own sampling and analysis of water and soil below the mine.

Cyanide. MIDROC acknowledges using cyanide to separate gold from ore.¹⁸ Cyanide is highly toxic: it can cause respiratory failure and heart, brain, and nerve damage, and it can be lethal.¹⁹

The March 2018 environmental audit commissioned by MIDROC concluded: “[C]yanide is present in considerable amount both in water and soil samples . . . at this specific site. The fact that cyanide enters the areas outside the tailings dam from tailings dam discharge and the seepage . . . creates a health threat because the people and animals are using the water . . .”²⁰

Arsenic. Arsenic is a heavy metal often found in goldmining areas, and lax mining practices can result in its release into the environment. Arsenic can harm pregnancies, impair brain development, and damage organs.²¹

The March 2018 audit found concentrations of arsenic substantially exceeding recommended limits in soil and water samples within and downstream from Lega Dembi. For example, water taken at the point of “[d]ischarge from the third dam to the Environment” showed a concentration of arsenic nearly **10 times** the World Health Organization (WHO) standard.²²

Mercury. The presence of mercury is a cause for particularly grave concern. “Exposure to mercury – even small amounts – . . . is a threat to the development of the child in utero and

¹⁶ March 2018 Audit, *supra* note 9.

¹⁷ Ethiopian Public Health Institute and Ministry of Mines, Petroleum and Natural Gas, *Legademi Mining and Community Health Study: Technical Report 2018* [hereinafter Mining and Community Health Study 2018].

¹⁸ March 2018 Audit, *supra* note 9, p. 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.*, pp. 37, 52.

¹⁹ *Facts About Cyanide*, Centers for Disease Control and Prevention, (Apr. 4, 2018), <https://emergency.cdc.gov/agent/cyanide/basics/facts.asp>; March 2018 Audit, *supra* note 9, p. 49.

²⁰ March 2018 Audit, *supra* note 9, p. 83.

²¹ World Health Organization, Arsenic Fact Sheet (15 Feb. 2018), <https://www.who.int/en/news-room/fact-sheets/detail/arsenic>; March 2018 Audit, *supra* note 9, p. 44.

²² March 2018 Audit, *supra* note 9, p. 74, Table 11.

early in life.”²³ Even low-level exposure can cause “spontaneous abortion, stillbirth, congenital anomalies, pre-term birth and low birth weight.”²⁴ It can also cause other “serious health problems,” including “toxic effects on the nervous, digestive and immune systems, and on lungs, kidneys, skin and eyes.”²⁵

MIDROC denies using mercury at Lega Dembi, but it has never adequately accounted for a 100 kg vat of mercury stored at Lega Dembi when the mine was privatized, and it prevented the 2018 environmental assessment team from entering the room where the mercury had been stored.²⁶ Moreover, even if MIDROC has not used mercury to separate gold from ore, absent proper precautions, the cyanide used to do so can release mercury naturally present in the ore and can mobilize mercury residue that may remain from the era of State-owned mining when mercury admittedly was used.²⁷

A 2019 analysis of soil, sediment and water samples by researchers from Bule Hora and Dilla Universities documented dangerous levels of mercury contamination in the area below the Lega Dembi mine. Concentrations of mercury in both water and soil exceed standards set by the World Health Organization (WHO). The concentrations of mercury observed in the water are 12-80 times higher than the WHO standard,²⁸ making the water undrinkable and unsafe for any human contact.

B. Failures of mine management and government oversight

Very serious failures of mine management and government regulatory oversight have led to the toxic contamination described above.

1. Catastrophic failures of mine management

The March 2018 environmental audit documented extremely serious shortcomings in the mine’s management and operations, including (among others) the following:

Failure to fence off highly toxic tailing dams from public access. Lega Dembi channels toxic waste from the mining process through a series of three tailing dams, a process that is supposed to purify the water before it is released back into the natural environment. (The term “tailing dam” is used to refer to both the earthen embankment and the large pond that forms above the embankment.) Although the water in the tailing dams is highly toxic, the March 2018 Audit found that the dams were **not fenced off**, allowing free access by livestock and wildlife, and – most concerning – by local people who fetch water from the second and third ponds for household use.²⁹

Failure to prevent seepage of toxic wastewater into groundwater. Although a well-regulated mine would have multiple impermeable liners at the base of the tailing dams to

²³ World Health Organization, Fact Sheet on Mercury and health (31 Mar. 2017), <https://www.who.int/news-room/fact-sheets/detail/mercury-and-health> [hereinafter WHO Mercury Fact Sheet].

²⁴ 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> [<https://perma.cc/R8FA-RJCV>] [hereinafter TNH, *Health woes, outrage, and toxins*].

²⁵ WHO Mercury Fact Sheet, *supra* note 23.

²⁶ March 2018 Audit, *supra* note 9, pp. 66, 120.

²⁷ TNH, *Health woes, outrage, and toxins*, *supra* note 24; March 2018 Audit, *supra* note 9, pp. 48-49, 56.

²⁸ Research team from Dilla and Bule Hora Universities.

²⁹ March 2018 Audit, *supra* note 9, pp. 84, 103, 107, 117, 123.

prevent seepage,³⁰ at Lega Dembi, “no liners were installed to prevent passage of leachate to the groundwater system.”³¹

Contamination of freshwater stream. Mine management has placed tailing dams so that a freshwater stream used by the community for water flows directly through them, thus contaminating that water source.³² A well-regulated mine would have kept the stream separate, preserving it as a source of clean water for the community.

Lax monitoring and record-keeping as to risks of toxic contamination. Although the mining company’s internal environmental policy called for annual internal audits and twice-yearly external audits, “the present team has seen no evidence that these tasks are performed systematically and as planned.”³³

Failure to comply with recommendations made in a prior environmental audit. At the time of the 2018 audit, the mining company still had not complied with corrective recommendations made as far back as 1998.³⁴

2. Persistent failures of government regulatory oversight

The March 2018 audit report was equally critical of the State’s failure to monitor the mine and enforce compliance with environmental standards.

Ethiopian law purports to protect the environment: the Constitution provides all persons with the “right to a clean and healthy environment” and affirms that development projects “shall not damage or destroy the environment.”³⁵ 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, sound management during operation, and the endorsement of both precautionary and “polluter pays” principles to control pollution.³⁶ Ethiopian law requires environmental impact assessments prior to federal licensing of projects that are likely to have negative environmental impacts.³⁷

Unfortunately, Ethiopia has failed to implement this legal framework at Lega Dembi:

“The **overall audit findings** is 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

³⁰ *Id.* p. 102.

³¹ *Id.*

³² *Id.* pp. 65, 118, 121.

³³ *Id.* p. 91.

³⁴ *Id.* p. xii, 96-97, 119.

³⁵ Constitution of the Federal Democratic Republic of Ethiopia, arts. 44(1), 92(1)–(4), 21 August 1995, available at <https://ethiopianembassy.be/wp-content/uploads/Constitution-of-the-FDRE.pdf>.

³⁶ Environmental Policy of Ethiopia §§ 3.8(k), 2.3(m), 3.6(g), 3.8(b), 2 April 1997. 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.

³⁷ Environmental Protection Organs Establishment Proclamation No. 295/2002, art. 6(5); Environmental Impact Assessment Proclamation No. 299/2002, art. 3–5.

neglect in compliance and enforcement program activities within the MMPNG, and significant deficiencies within the MoEFCC activities.”³⁸

“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.”³⁹

One problem is that Ethiopia has assigned its mining ministry conflicting roles. Its “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.”⁴⁰ For example:

“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.”⁴¹

3. Criticisms of the mine in the environmental desk audit

The environmental desk audit by the Canadian consultants, conducted after the suspension of the mining license, corroborates the serious deficiencies plaguing the mine. It found:

- “Potential exposure to heavy metals from current mine-site water runoff and discharge, as well as historical mining activities”
- “Poor chemical and waste management resulting in an increased risk of exposure to metals and other hazardous contaminants”
- “Dust generation”
- “Poor community engagement strategies, lack of appropriate grievance mechanisms, and no social performance systems in place by MIDROC”
- “Historical use of mercury in the Legadembi Mining area”⁴²

³⁸ March 2018 Audit, *supra* note 9, p. 120 (emphasis added).

³⁹ *Id.* p. 119 (emphasis added).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* p. 1.

C. Impact of toxic contamination on the local Guji people's health, livelihood and way of life

Lega Dembi's impact on the lives of local people has been cataclysmic. Women have suffered uncommonly high rates of miscarriage and stillbirth. Many infants have died shortly after birth or have been born with severe physical and developmental abnormalities that shorten life expectancy and compromise quality of life, including deformed limbs, paralysis and mental incapacity. Local people have suffered debilitating health issues, including tumors, headaches, skin conditions and vision problems. Traditional livelihoods have been upended: livestock have died or been sickened, crops have produced smaller yields, and people have become ill from eating the food grown in the affected area. Children's 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.

1. Testimonies of community members

The testimonies of community members paint a searing picture of the suffering of the local people:⁴³

Aida and her family live a five-minute walk from Lega Dembi. Three times, Aida miscarried at about four months into the pregnancy. She has headaches and sometimes has trouble eating. Her husband, Negasi, has joint pain and struggles to get up in the morning. Her son, seven-year-old Kofi, has severe vision problems that prevent him from attending school. Sometimes he cries because of the burning in his eyes, sometimes he has difficulty eating and sometimes he cannot physically move. His two younger siblings have frequent skin problems. The family lost six cattle that had drunk contaminated water, and they have had to sell other cattle to pay for the children's medical treatments. They now are often forced to buy food because their crops no longer produce enough for the family's needs. Negasi has complained to the government about his family's situation many times, but nothing has been done.

Ife and her family, who live a 20-minute walk from the mine, also have suffered. Dust from mining explosions gave Ife headaches during her pregnancy with her son Abraham. Abraham was born with a deformed leg and feet, which keep him from going to school as he cannot walk that far. His four older siblings struggle in school and do not play like other children. Ife's husband, Kaleb, suffers from joint pain and sometimes struggles to stand upright. The family has lost crops and ten cattle; some of these cows died instantly after drinking the contaminated water. The parents now sometimes have to do day labor to get money for food. Kaleb complained to the local government, to no avail.

⁴³ The following four testimonies were given to CIHR in January 2019. The names used in this section have been changed to protect the identity of the victims. These accounts and the accompanying photos are used with the written consent of the adults and the children's parents.

Kiyya and Gadaa live a half-hour walk from the mine. They lost two children when Kiyya suffered two late-term miscarriages. Their five-year-old daughter Caaltuu was born with limb deformities that limit her ability to walk. This means she cannot go to school because the school is a long walk away. Although she can talk, she has trouble with comprehension. Her older brother and parents suffer headaches and other ailments. Their crops have not done well, and their oxen now have such weak bones that they cannot plow the land. Previously self-sufficient, the parents have had to turn to day labor to buy food for the family.



Ayyantu's family lives a ten-minute walk downstream from the mine. When she was pregnant with her daughter Kedija, Ayyantu drank from the nearby water and ate from her family's crops. Kedija, now nine, was born with paralysis. She cannot use her hands, feed herself or walk; one of her parents must constantly be with her. Her brother Hirko developed a tumor on his back before his second birthday. The parents, too, have health problems. Ayyantu wants more children, but she has not been able to conceive. The family has lost more than half of its livestock, its crops of maize, teff and wheat have become less productive, and eating what they grow gives Ayyantu stomach problems.



The New Humanitarian (TNH) reported similar testimonies, obtained in early 2020, from local people:

“‘We are the walking dead,’ Dembela Megersa told The New Humanitarian, describing the unaccountable pain in his back that has afflicted him for years. His 25-year-old wife, Jibo Buno, sitting beside him, recounted the misery of five miscarriages in as many years, followed by a stillbirth. The lifeless baby’s body was mangled by deformity when she delivered it seven months into her sixth pregnancy, she said.”⁴⁴

“‘I didn’t know it was dangerous,’ said 38-year-old Dube Udisa, who used to bathe in the water and has been unable to walk for six years. He now lies crippled inside his mother’s cramped

⁴⁴ TNH, *Health woes, outrage, and toxins*, *supra* note 24.

shop. He said his bones are weak, and his fingers have collapsed into the shape of a claw. ‘There was no sign at the time,’ he said of the water near the mine.”⁴⁵

Kifle Hirbaye explained that his “seven year-old daughter’s growth is so stunted, and her limbs so badly deformed, she cannot attend school. ‘All I need is her health,’ he told TNH outside his home. ‘If she’s healthy I don’t need anything else.’”⁴⁶



Photograph by Tom Gardner, TNH.

Wakjira Meko (pictured above) was only two months old when TNH visited the village near the mine where his family lives. Born with severe birth defects, he died shortly after TNH visited the area.⁴⁷

These are not isolated examples. Area residents for years have complained of the very high number of health problems, miscarriages, and children born with disabilities. “Mothers are having miscarriages every single day,” a health care worker from the Shakiso area reported.⁴⁸ “I am not seeing this in other places, only around the mining site.”⁴⁹

2. Findings of the community health study

These testimonies have been fully corroborated by the State’s community health study, conducted in 2018 after the suspension of the mining license. The Ethiopian Public Health Institute, with guidance from Canadian consultants, surveyed nearly 3,000 households in the Lega Dembi area. Using a long and detailed questionnaire, survey workers interviewed households and recorded the villagers’ responses. To persuade the community people to cooperate, researchers promised that the study results would be shared with the community; with this assurance, nearly all households agreed to participate, sharing a great deal of highly

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Cecilia Jamasmie, *Ethiopians Protest MIDROC Gold Mining License Renewal*, TESFANEWS (May 7, 2018), <https://www.tesfanews.net/ethiopians-protest-midroc-mining-license-renewal/>.

⁴⁹ *Id.*

personal information. The household survey information was supplemented by focus group discussions, key informant interviews and a review of data from local health facilities.⁵⁰

Although the State refuses to publish the report or share it with the community, a leaked copy has been acquired, enabling us to share the findings here.

The results of this study are damning:

- “The proportion of **congenital malformation** in the five Gotts (villages), when compared to national figures **is exceedingly higher.**”⁵¹ Elsewhere in Ethiopia, the rate (per 1000 live births) was less than 2%; in the Lega Dembi area, the rate was found to be slightly **over 17%.**⁵²
- “Birth complications such as **miscarriage and stillbirth are also exceptionally high** when compared to national figures.”⁵³ The study showed 169 households reporting one or more stillbirths over the past five years and 383 reporting one or more miscarriages.⁵⁴
- “Communities [in the mining area] are affected by different kinds of **chronic illnesses and disabilities.**”⁵⁵ Thirteen percent “were observed with chronic illness and disability.”⁵⁶ More than half of the households “reported **persistent coughs, wheezing, and phlegm,**”⁵⁷ and 49% “experienced **shortness of breath.**”⁵⁸ “[D]iseases of the **skin and subcutaneous tissue . . . are abnormally higher** when compared to studies from different parts of the country.”⁵⁹ Roughly one third (32.6%) of respondents “experienced **headaches at least once a week.**”⁶⁰
- Among households with **livestock**, “40% . . . reported the occurrence of the **unusual or new disease,**”⁶¹ and 91% of the diseased animals drank from the tailing dam ponds.⁶²
- **19.9%** of households “were **accessing retention dams to collect water for HH [household] use,**” **including drinking.**⁶³ More than 80% said that the “main reason . . . to use water from retention dams for domestic purposes was the absence of a community water supply.”⁶⁴
- **94%** of respondents said they had “**never received notification warning of the danger** of accessing any of the TDF [Tailing Dam Facility] ponds.”⁶⁵

⁵⁰ Mining and Community Health Study, *supra* note 17, p. 1.

⁵¹ *Id.* p. 69 (emphasis added).

⁵² *Id.* p. 60 (emphasis added).

⁵³ *Id.* p. 69 (emphasis added).

⁵⁴ *Id.* pp. 62-63.

⁵⁵ *Id.* p. 69 (emphasis added).

⁵⁶ *Id.* p. ii.

⁵⁷ *Id.* p. ii (emphasis added).

⁵⁸ *Id.* p. 35 (emphasis added).

⁵⁹ *Id.* p. iii (emphasis added).

⁶⁰ *Id.* p. 34 (emphasis added).

⁶¹ *Id.* p. iii (emphasis added).

⁶² *Id.*

⁶³ *Id.* pp. 47, 54 (emphasis added).

⁶⁴ *Id.* p. 47.

⁶⁵ *Id.* p. ii (emphasis added).

- “[A]bout **61.4%** of the HHs **rely on river water** for domestic use such as drinking and cooking,” **even though** “[p]revious reports have shown that **rivers adjoining [Lega Dembi] . . . are contaminated with pollutants** released from the mining plants.”⁶⁶ River water was used due to “limited access to improved water utilities” and “lack of official notification that river water may be contaminated with pollutants from Legadembi.”⁶⁷
- “Community members are also **frequently exposed to high dust levels**,” as there are “high levels of dust **emanating from the [tailing] dam**.”⁶⁸
- “According to interviews and [focus group] discussion, the local communities have experienced the following effects as the **direct results of MIDROC’s operations**:
 - **deformities (especially children);**
 - **infertility, birth complication, and stillbirths;**
 - **deformities, stillbirths, miscarriage, and death of animals/livestock;**
 - **land degradation** (road and mining purpose result in loss of productivity);
 - **deforestation;**
 - **Loss of biodiversity** (animals like lion, elephant, etc.);
 - **death** as a result of **conflict with security forces** employed to protect the mine site;
 - **impact on livelihoods and low employment opportunity . . . ;** and
 - **Loss of culture.**”⁶⁹

This community health survey corroborates findings reported earlier in the MIDROC-commissioned March 2018 environmental audit:

“Field visit and informal discussion with the local communities during the field visit at Legadembi mine areas indicated that there are physical and mental abnormalities on children including impaired neurobehavioral development, deformation of legs and feet, [and] frequent stillbirth. [There are also] joint weakening and bone hardening, and easily breaking of bones in livestock.”⁷⁰

It also, of course, corroborates what local people have been saying for many years, through their repeated complaints and protests over Lega Dembi’s impact on their children, their own health, their livelihoods and their way of life.

⁶⁶ *Id.* p. 54 (emphasis added).

⁶⁷ *Id.*

⁶⁸ *Id.* p. 55 (emphasis added).

⁶⁹ *Id.* p. 53 (emphasis added).

⁷⁰ March 2018 Audit, *supra* note 9, p. 113.

II. Responses to statements made by Ethiopia in its LOI Replies

A. Impact assessments

According to the State's LOI response, MIDROC's Lega Dembi license was suspended in 2018 "to conduct independent assessment study on the impact of the gold mine on the environment and health related issues," with support from Canada.⁷¹ Per the State, "the Government has facilitated the assessment process that included environmental impact audit, a community health survey and socio-economic impact assessment."⁷²

While this is partially true, it is misleading.

1. **There has been no independent environmental impact assessment, only a "desk audit" of earlier reports, and the State has refused to make the report of this desk audit public**

An independent environmental impact assessment is absolutely essential: it is recognized as one of the "important preconditions for the implementation of extractive operations."⁷³

Yet despite the State's promise at the time of the license suspension, there has been no independent environmental impact assessment. The Canadian consultants brought in to conduct the assessment never visited the mine or the surrounding community and never spoke with the local people. They did not observe the mining operation, they did not take and analyze soil and water samples. In short, they did not conduct an environmental impact assessment.

Instead, what they did was a "desk audit" of prior reports on Lega Dembi's environmental impact. Only one of the reports they reviewed was dated more recently than 2011,⁷⁴ and that report – the March 2018 Audit discussed above – suffers from a lack of independence. It was commissioned by MIDROC, conducted within limitations imposed by MIDROC (e.g., the mine was shut down almost entirely during the auditors' visit, the auditors were prohibited from entering the room where mercury had been stored, and groundwater quality could not be tested because all the monitoring boreholes were dysfunctional), and the lab selected by MIDROC to analyze soil and water samples was a long-time client of MIDROC.⁷⁵

Additionally, while we believe the Canadian consultants conducted the desk audit, the report was issued not in their names but in the names of the Ethiopian Public Health Institute (EPHI) and the Ministry of Mining, Petroleum, and Natural Gas (MMPNG), compromising its

⁷¹ LOI Replies, *supra* note 7, at ¶ 150.

⁷² *Id.* at ¶ 151.

⁷³ James Anaya, Special Rapporteur on the rights of indigenous peoples, *Report to the Human Rights Council on the human rights concerns of indigenous peoples relating to extractive industries*, 1 July 2013, U.N. Doc. A/HRC/24/41 ¶ 65. *See also*, John H. Knox, Special Rapporteur on human rights and the environment, *Report to the Human Rights Council presenting framework principles on human rights and the environment*, 24 Jan. 2018, U.N. Doc. A/HRC/37/59, preceding Annex ¶ 20; Special Rapporteur on hazardous substances and wastes, *Report to the Human Rights Council on guidelines for good practices in relation to the human rights obligations related to the environmentally sound management and disposal of hazardous substances and wastes*, 20 July 2017, U.N. Doc. A/HRC/36/41, ¶¶ 19-20, 74.

⁷⁴ Mining and Community Health Study, *supra* note 17, p. viii.

⁷⁵ March 2018 Audit, *supra* note 9, pp. 2-3, 66.

independence, since the consultants' findings and conclusions may have been altered or toned down by the MMPNG.⁷⁶

Neither of these environmental reports (the March 2018 Audit or the more recent desk audit), which despite their limitations revealed extremely serious problems, has been made public.

2. The State has refused to make public the report of the community health study, and it has dropped plans to conduct the planned second part of the health impact analysis

To induce community members to participate in the household survey, which required people to share highly personal information, the State promised to share the results with the people. But despite this promise and despite repeated requests by community members to see the report, the State has refused to make the community health study public.

Additionally, only the first stage of the health impact assessment was ever conducted. A planned second stage, involving a comparative chemical analysis of bio-samples (e.g., hair, nails) from people living near the mine and from a control group living above the mine, was deemed “imperative,”⁷⁷ but it was never conducted.

3. The State refused to accept the report of the socio-economic impact analysis because the researchers would not alter their findings to make them less critical of the mine, and the State has refused to make public the final draft received from the researchers

The State contracted with researchers at Dilla and Bule Hora Universities to conduct a socio-economic impact analysis of the mine, but when, as required, the researchers presented their report to the Government as a “draft,” the Government asked them to alter their findings to make them less critical of the mine. When the researchers refused to do so, the Government refused to accept the report (and refused to pay the researchers the second installment of their payment).

The State has not made the socio-economic impact report public. It told the researchers not to disclose the results until the Government authorized disclosure, which, to date, it has not done.

B. Consultations

Local communities – and particularly indigenous people like the Guji – have the right to consultation and participation in decisions about development projects that affect them, in accordance with the principle of free, prior and informed consent.⁷⁸ To be *informed*, indigenous people must have full access to all relevant information, “presented in a manner and form understandable to [them], including translation into a language that they understand.”⁷⁹ The information made available should include “social, environmental and cultural impact

⁷⁶ The desk audit report was combined with the report of the community health study into a single report, *Legademi Mining and Community Health Study: Technical Report 2018*. While it acknowledges the assistance of the Canadian consultants, it was issued in the names of the EPHI and the MMPNG.

⁷⁷ *Mining and Community Health Study*, *supra* note 17, p. iv.

⁷⁸ United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295, arts.18–19, 32(2) (2 October 2007).

⁷⁹ 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 (10 Aug. 2018) [hereinafter EMRIP FPIC Study].

assessments” and “all the potential harm and impacts that could result from the proposed activity.”⁸⁰ To be *prior*, the consultation and participation must take place before decisions are made, so that indigenous people can “influence the outcome of decision-making processes affecting them,” not merely “have their views heard.”⁸¹ It is not enough to “provid[e] indigenous peoples with information about decisions already made or in the making, without allowing them genuinely to influence the decision-making process.”⁸² To be *free*, “[t]he context or climate of the process must be free from intimidation, coercion, manipulation . . . and harassment.”⁸³

In its LOI Replies, the State claims it has engaged in “[c]ontinuous and successive consultations” with relevant stakeholders, including “the local communities.”⁸⁴

This statement is untrue. To begin with, only *certain* members of the local communities, selected by the Government, have been allowed to participate in these meetings. In the months leading up to the reopening of the mine, the Government met in Addis Ababa (and perhaps elsewhere) with selected individuals, individually or in small groups, to encourage them – sometimes, reportedly, with individual financial inducements – to support the reopening of the mine. On March 7, 2021, just before the mine reopened, a meeting was held in Shakiso (the large town closest to the mine) with approximately 150 local people in attendance – but only people approved by the Government were allowed to attend.

Moreover, none of these purported “consultations” complied with the principle of free, prior and informed consent.

- They were not *informed*, because the Government has refused to make public the reports of the various impact assessments.
- They were not *prior*. They were held *after*, not *before*, the Government had made up its mind. Instead of holding community consultations to decide whether, and if so, under what circumstances, the mine should be allowed to resume operations, these meetings were held to announce the State’s decision to allow the mine to reopen and the measures the State said would be taken in connection with the reopening. For example, at a December 2020 meeting in Addis Ababa, the Government simply announced its plans for reopening the mine, remedial measures, and compensation, without any opportunity for those in attendance to ask questions, disagree or offer suggestions. Similarly, at the March 7, 2021, meeting referred to above, the Government announced decisions it had already made – its decision to allow the mine to reopen and its decisions on measures it claimed would be taken.
- They were not *free*, given the climate of repression and intimidation in which they took place. Since at least October 2019, the local community has been unable to hold their own meetings to discuss the mine or its impacts on the community, due to “command post” security restrictions in place in the Guji Zone, under which no meetings can be

⁸⁰ *Id.* ¶ 22(b).

⁸¹ *Id.* ¶ 15.

⁸² *Id.* ¶ 16; James Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples*, U.N. Doc. A/HRC/12/34 ¶ 46 (15 July 2009).

⁸³ EMRIP FPIC Study, *supra* note 79, ¶ 20(a).

⁸⁴ LOI Replies, *supra* note 7, ¶ 152.

held without prior government authorization. It is widely reported that community members who voice opposition to Lega Dembi are accused of belonging to the Oromo Liberation Army-Shane (OLA-Shane), an armed group designated by the Government as a terrorist organization, which means they risk imprisonment or even death. For example, before the mine reopened, one human rights defender associated with opposition to Lega Dembi reported receiving death threats against himself and his family, and another reported being detained for months without charge before finally being released for lack of evidence against him.

This campaign of intimidation continues to this day. Members of the local community report that mine opponents have been imprisoned for months on end without official charges or opportunity for a hearing. One source who provided information used in this report was warned, by someone he was speaking with, to be careful:

“[T]o be frank . . . you have to care for yourself. Anyone can arrest you and put you in jail . . . I and my friend here – we both faced imprisonment very recently. I stayed there for 45 days and he stayed for almost same days. They don’t say it is because you oppose Lega Dambi rather they say it is because of the current situation in the country . . . So, there is no question about the threat.”

Another person said, “I was arrested and taken to jail for speaking against the company . . . They said ‘you are suspected of supporting shane.’” Yet another local person said, “Sometimes there is a call from unknown mobile numbers seen on screen as ‘private number’ to warn us to stop complaining against the gold mine.”

In sum, the Government has not engaged, and is not currently engaging, in a true process of consultation with the local community.

C. Assurances that the mine “would not resume functions until issues related to the toxic waste has been resolved and no longer poses a threat.”⁸⁵

According to the State’s LOI Replies, Ethiopia has “assured” the community that the mine “would not resume functions until issues related to the toxic waste has been resolved and no longer poses a threat.”⁸⁶ Although the State did make this promise, implicitly when the license was suspended and explicitly during its February 2019 CEDAW review, this promise not been fulfilled.

Empty “assurances” that toxic contamination no longer poses a threat are meaningless. It will be no small task to remediate existing contamination and to make the changes that are necessary to prevent further contamination now that the mine is again operating. The State knows this – here are some of the many recommendations from the two reports the State received in 2018 (the March 2018 Audit and the *Legademi Mining and Community Health Study* report):

- “Make access of animals and people to the dams impossible by introducing physical barriers. Fencing of hazardous areas or strict guarding of areas like tailings dam and

⁸⁵ LOI Replies, *supra* note 7, at ¶ 150.

⁸⁶ *Id.*

reclaim dams are required to protect humans and animals from exposure to this areas.”⁸⁷

- “Divert the freshwater stream from entering the tailing dam and avail it for the service of the community. The raw water coming from the northern part is mixed with the tailing dam and became polluted. This water should be diverted from entering the tailing dam so that to supply clean water to the surrounding community.”⁸⁸
- “Minimize leachate infiltration to the groundwater from the tailings dam and waste rock dump sites. Design of the tailings dam may not protect the groundwater from being contaminated. The monitoring wells which were not functional for so long time should be rehabilitated as soon as possible to evaluate the status of groundwater in terms of pollution.”⁸⁹
- “Implementation of leading practice management of tailings dams” – on an “immediate” basis.⁹⁰
- “[I]mprovement of dust management approaches.”⁹¹ “Mainstream strategies to control the emission of fugitive dust that stem from the tailing dams and mining area through wet down working areas and roads; revegetate/cover exposed soils and other erodible material as soon as possible; use dust suppression spray systems in the loading, transfer, and discharge of dust-generating materials.”⁹²
- “Mitigat[e] the mine site water runoff (from waste rock piles) and ensure water discharged into the receiving environment meets set guidelines as defined by Ethiopian Standard Agency (ESA) and Environmental Protection Authority.”⁹³
- “Rehabilitate the damaged piezometers at the tailings dam and monitor the dam stability.”⁹⁴
- “Design and implement a regular environmental monitoring (water (river and groundwater) and sediment) program.”⁹⁵
- “Environmental sampling including regular water sampling and air quality sampling should be implemented with regular compliance checks completed by the regulatory body to ensure full knowledge of potential chemical exposure.”⁹⁶

⁸⁷ March 2018 Audit, *supra* note 9, p. 121; *see also* Mining and Community Health Study, *supra* note 17, p. i.

⁸⁸ March 2018 Audit, *supra* note 9, p. 121.

⁸⁹ *Id.* p. 121.

⁹⁰ Mining and Community Health Study, *supra* note 17, p. iii.

⁹¹ *Id.* p. iii.

⁹² *Id.* p. iv.

⁹³ Mining and Community Health Study, *supra* note 17, p. iv.

⁹⁴ March 2018 Audit, *supra* note 9, p. 121.

⁹⁵ Mining and Community Health Study, *supra* note 17, p. iv.

⁹⁶ *Id.* p. iv

- “Inspection should be conducted by regulatory body or by employing independent consultants on a regular basis and without prior notice to the mine to ensure compliance with environmental standards and related requirements.”⁹⁷
- “Report publicly the results and trends of all mining compliance and enforcement activities to avoid misunderstanding and conflict between the communities and MIDROC Gold.”⁹⁸
- “Develop[] water supply systems to provide the community with accessible and sustainable improved community water supply units; ensur[e] the water quality by implementing water safety plans.”⁹⁹

Has any of this been done? The answer is “no,” according to local sources. Implementing many of these large-scale recommendations would require work visible to local people, implementation of others would be known to workers within the mine, and one – the call to publicly report the results of all mining compliance and enforcement activities – explicitly requires public disclosure. Yet local people, including mine workers, report that these recommendations have not been implemented.

The LOI Replies are silent on all of this. They do not say what the State or MIDROC has done to clean up the prior toxic contamination. They do not say if there has been recent monitoring to show that the prior contamination “no longer poses a threat.” The LOI Replies do not say what, if anything, the State has required MIDROC to do, to ensure that the resumption of mining will not produce further contamination. And if the State has required MIDROC to do anything, the LOI Replies do not say whether MIDROC has complied. They say nothing about how – if at all – the Government will monitor water, soil and air quality in the area near and downstream from the mine. How, then, can the State honestly say that the toxic contamination “no longer poses a threat”?

Instead, the LOI Replies explain only that there is now a signed memorandum of understanding (MOU) between the mining company and the Oromia Regional State with an “action plan for the resolution of social, health and environmental impacts of the mining.”¹⁰⁰ But this MOU – like the impact assessments – has not been made public; local people report having never seen it and having no idea what it actually says.

During the closed-door meetings (described above), in which the State announced the reopening of the mine and the measures it said would be taken for the benefit of the community, promises were made about compensation and economic benefits for the local community (see below for discussion), but very little was said about what would be done to remove the threat of toxic contamination.

- The State reportedly said that MIDROC would pay 62 million Ethiopian birr (1.18 million USD) to rehabilitate the environment. But much was left unanswered. How was that figure determined? Is it enough to ensure that the prior toxic contamination “no

⁹⁷ March 2018 Audit, *supra* note 9, p. 122.

⁹⁸ *Id.* p 123.

⁹⁹ Mining and Community Health Study, *supra* note 17, p. iv.

¹⁰⁰ LOI Replies, *supra* note 7, ¶ 152.

longer poses a threat”? How will the money be spent? What, exactly, will be done to rehabilitate the environment? And when will all of this be done?

- Nothing was said about what MIDROC would be required to do to ensure that future mining operations would not cause further contamination. This is particularly remarkable in the face of the long list of recommendations noted above. Will any of them be implemented?
- The State said that clean water would be provided to the community. To date, however, neither MIDROC nor the State has met the community’s need for a sufficient, accessible and safe water supply.

MIDROC reportedly has provided some additional water to some (but not all) of the villages near the mine. But the amount provided is not nearly enough to meet community needs, the locations at which water is provided are too far from many households to be accessible to them, and there are concerns that the water provided is not safe for drinking, household use, or watering livestock. For all these reasons, local people continue to use water from the contaminated streams and even from the second and third tailings dams. Livestock continue to drink from the tailing dams and the contaminated streams.

- The State said that the tailing dams would be fenced to prevent people and animals from accessing the toxic water and that signs would be posted to warn people that the water was dangerous.

But although the mine has now been operating for about a year and a half, MIDROC still has not erected secure barriers to prevent access to the tailing dams. According to local observers, as late as July 2022, the tailing dams remain largely, if not entirely, unfenced. The first and largest dam, with a pond the size of a small lake, reportedly is not fenced at all.¹⁰¹ Along one side of this dam, a ditch was dug to prevent livestock from drinking the water. Access to the toxic water remains possible from the other sides, and the ditch presents its own dangers – livestock have died from falling in the ditch as they try to access the water. Reports vary somewhat regarding the second and third dams – some local people say that there is no fencing, others say that there are only short segments of fencing. Still others say that short segments of fencing were erected, but were poorly constructed, allowing them to be removed or destroyed by animals pushing through to drink water, or by neighboring farmers who claim the fencing was placed, not on the mine’s property, but on their own.

As for warning signs, local observers report that only a few signs have been seen near the tailing dams, and none have been seen along the streams downstream from the mine, even though that water, too, is toxic.

Due to the absence of adequate fencing and warning signs, combined with the lack of sufficient alternative water supplies, local people continue to use the water in the lower two tailing dams for washing, bathing, and possibly cooking and even drinking.

¹⁰¹ Recent photographs show some portions of the first dam and its very large pond, confirming, for those portions, the absence of fencing.

Livestock and other animals also drink water from all three dams, and community members use the contaminated water in streams for all purposes.

In sum, the mine *has* been allowed to resume operations, but there is *no* factual basis for asserting that toxic contamination no longer poses a threat.

D. Compensation

The LOI Replies say that the MOU action plan includes “paying due compensation” to community members “already affected by the toxic substances emitted from the mine.”¹⁰²

Although some compensation payments have been made, most victims to date have received no compensation. While a very few larger payments reportedly have been made, most payments have been only 20,000 Ethiopian birr – about 370 USD. This amount is in no way commensurate with the victims’ loss or with the wealth of MIDROC and its billionaire owner, who reportedly has a net worth of more than five billion USD.¹⁰³ Reportedly, only one compensation payment is allowed per household, regardless of how many victims there may be in the family. So far as our informants know, there have been no payments to the children who are condemned for life to suffer from devastating congenital malformations, nor are there ongoing payments to the parents who must care for these children throughout their lives. And, reportedly, there are no payments to compensate for miscarriages, stillbirths, or the death of a child.

Additionally, the entire compensation process has been shrouded in mystery. The selection of recipients has been completely non-transparent, and local people have observed that payments often seem to have gone not to victims, or the worst-off victims, but to relatives of people involved in the payment process or to cadre of the ruling party.

E. Voluntary relocation

The LOI Replies say that the MOU action plan also calls for the “voluntary relocation of the local community affected by the . . . toxic wastes.”¹⁰⁴ Given the Guji people’s deep ancestral ties to the land, it does not seem likely that many people would desire relocation. To date, none of our sources were aware of any relocations or any efforts to identify families that might want to relocate.

F. Community development initiatives and economic benefits to the community

The LOI replies say that the MOU action plan includes “supporting the local administration in its development activities,”¹⁰⁵ and at the closed-door meetings described above, the State said that local people would get jobs, local and regional governments would get a share of the royalties, and a gold exploration license for Okote would be transferred from MIDROC to GODU, a local share company owned by a group of Guji businessmen.

¹⁰² LOI Replies, *supra* note 7, ¶ 153.

¹⁰³ *Bloomberg Billionaires Index Mohammed Al-Amoudi*, BLOOMBERG NEWS (15 Sept. 2022), <https://www.bloomberg.com/billionaires/profiles/mohammed-al-amoudi/?leadSource=uverify%20wall>.

¹⁰⁴ LOI Replies, *supra* note 7, ¶ 153.

¹⁰⁵ *Id.*

Reportedly, MIDROC is building a small hospital on land it owns outside the town of Shakiso, and there are some reports that the local administration has plans to use royalty money to build a health clinic in the village of Reji. Local people have expressed concern that, since the hospital will be on MIDROC land, in the future it might be restricted solely for the use of MIDROC employees. That aside, these initiatives, if completed, will be positive ones, but not enough to offset the devastating and ongoing harm caused by the toxic contamination from the mine.

As for jobs, local people report that, as before, very few of the mining jobs are held by local people. For the most part, local people are only hired to work as guards to keep other local people off the mine's property.

The transfer of the Okote gold exploration license to GODU may be of significant financial benefit to the small group of Guji businessmen who are the principal owners of that company, and it can be seen as a shrewd political move, as it reportedly has succeeded in making the GODU businessmen strong supporters of the reopening of Lega Dembi. But it does nothing for most of the people living in the villages near the mine – the people who are suffering most from Lega Dembi.

G. Transparency and accountability

According to the LOI Replies, “a mechanism has been put in place which requires transparency and accountability in the operation of the mining Company.”¹⁰⁶

This is patently untrue. Community members are denied access to reports on the mine's environmental impact, as well as to the community health study report and the draft of the socio-economic report that was presented to the government. While touting its MOU with MIDROC, the State refuses to make it public. The compensation process is shrouded in secrecy. If there has been any current monitoring of water, soil, and air quality – which we doubt – those monitoring results have not been disclosed to the public.

Reportedly, the State has created a Shakiso-based office called the “coordination and implementation office for addressing community issues related to MIDROC Lega Dembi.” But community people, reportedly, know very little if anything about this office – most have no idea it exists, and those who have heard of it do not know what it does. The office is said to have representatives from MIDROC, the government and, supposedly, the local community. It is unclear, however, how the person designated as the local community representative was selected; he was not elected or nominated by the community. What is known is that he is a cadre of the ruling party.

The climate of intimidation and repression, described above, also undercuts any possibility of true transparency and accountability. Community people cannot meet to discuss their concerns about the mine. They cannot ask probing questions about toxic contamination from the mine and what is being done about it. They cannot criticize the compensation scheme. In an environment where voicing opposition to Lega Dembi gets one labeled an enemy of the State, there can be no transparency and accountability.

¹⁰⁶ *Id.*

III. Proposed questions and recommendations for the State

A. Proposed questions

1. Have the recommendations in the *Legadembi Mining and Community Health Study: Technical Report 2018*, the March 2018 environmental audit by Addis Ababa University Business Enterprises, and the socio-economic impact report been fully implemented? Please address both the recommendations calling for action by the mining company, and those calling for reforms to the State's regulatory oversight. As to those recommendations that require action by the mining company, has the State required MIDROC to comply as a precondition to the resumption of mining? And if so, what has the State done to confirm that MIDROC has fully complied?
2. What measures has the State taken to ensure that the streams, groundwater and soil in the Lega Dembi area have been decontaminated, so that the toxic contamination documented in the impact reports no longer poses an ongoing threat? Since the mine's reopening, has the State conducted periodic monitoring of stream water, groundwater, soil and air quality? Who conducts this monitoring, and how often is it done? What have the monitoring results shown? Does the State publish the monitoring results, on a website or otherwise, so that they are freely accessible to the public, particularly the local people? Will it commit to doing so?
3. What has the State done to ensure that ongoing mining will not cause further contamination? What has the State required MIDROC to do in this regard, and what steps has the State taken to confirm that MIDROC has complied with these requirements?
4. How many people affected by toxic contamination from the mine have, to date, received compensation? What has been the size of these payments, and, if there are differing levels of payment, how many payments of each size have been made? On what basis has the State selected the people who have received payments? How has the State determined how much each such person should receive? Who has been responsible for selecting the recipients and determining their award amounts?
5. Have compensation payments been made to the children born with congenital malformations, paralysis, or cognitive disabilities, and to the parents or other family members who will have to care for them throughout their lives? Have payments been made to compensate parents for the loss of children through miscarriage, stillbirth, or infant mortality? If so, how many such payments, of each type, have been made, and in what amount?
6. What steps will the State take to ensure that people with concerns, complaints, or questions about Lega Dembi and its impacts on their community are free to discuss these matters, including by holding meetings, and to make known their complaints publicly, without fear of being arrested or attacked as a consequence of their opposition to the mine?

B. Proposed recommendations

1. Reinstate the suspension of the Lega Dembi mining license, conduct a comprehensive and independent environmental impact assessment (EIA) in accordance with international standards and best practices, and ensure that all recommendations made in the EIA are fully implemented before mining is allowed to resume.
2. During the pendency of the EIA process, take immediate steps, as recommended in the prior environmental, health and socio-economic studies, to (a) provide community members with clean water, in an accessible manner and in an amount sufficient for drinking, household use, and the watering of livestock, (b) erect a secure enclosure around the tailing dams to prevent access to the toxic water by people and animals, (c) take effective measures to mitigate airborne exposure to dust from the tailing dams and mining areas, including through revegetation, spray systems, and other dust management strategies, and (d) implement other measures to mitigate the ongoing harm until the decontamination and rehabilitation of the environment is complete.
3. Engage in consultations with the local community, in accordance with the principal of free, prior and informed consent (FPIC), to determine whether and under what conditions the Lega Dembi mine should be allowed to resume operations.
4. Ensure full transparency throughout the process of conducting the EIA and implementing its recommendations. Engage in consultations with the community on plans for the EIA, publish the EIA results (including its report) in a manner accessible to the community, and ensure that the community is kept fully informed on progress in implementing the EIA recommendations. Publish the reports of past and future environmental, health, and socio-economic impact studies.
5. Ensure that people who oppose, criticize or question the operation of the Lega Dembi mine can speak freely, individually and in meetings, without being subjected to arrest, violence, or other forms of intimidation.
6. Ensure that due compensation, commensurate with the injuries and losses suffered, is paid to each victim of the mine's toxic contamination, including, among others, (a) those who suffered miscarriage, stillbirth or the death of a child, (b) children born with congenital malformations or developmental disabilities, and (c) the family members who will have to care for these children throughout their lives. Provide, in addition, other appropriate reparations, including (a) health and rehabilitative care and (b) education for children whose disabilities prevent them from attending local schools. Standards for due compensation and reparations should be developed in consultation with the local community, and the entire process should be carried out in a fully transparent manner.
7. In line with the "polluter pays" principle, require MIDROC and its owner, Mohammed Al-Amoudi – who have profited handsomely from the mine – to bear the primary cost of implementing these recommendations. Although, as a privately

held company, MIDROC Gold Mine's assets are not publicly reported, Mr. Al-Amoudi's current net worth is reportedly more than five billion USD.¹⁰⁷

8. Ensure that the individuals and institutions responsible for contaminating the environment and harming the health and well-being of the local people are brought to justice.

¹⁰⁷ BLOOMBERG NEWS, *supra* note 101.