Submission to the CEDAW Committee on the right of indigenous women and girls

to effective participation, consultation and consent

in the context of extractive industries

Submitted by:

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This submission is offered to highlight the particular importance of the right of indigenous women and girls to effective participation, consultation and consent in the context of extractive activities, and to urge the Committee to address this issue in its upcoming General Recommendation.

Throughout the world, indigenous women and girls are severely impacted by extractive activities taking place on their ancestral lands. Indigenous communities lose access to land used for mining, and their remaining lands can be poisoned by toxic contamination of the water and soil on which indigenous life depends. This contamination can cause frequent and severe health problems, high rates of miscarriage, stillbirth, infant mortality and congenital disabilities, the withering of crops and the death of livestock. The risk of toxic contamination is particularly great when mines are poorly managed and government regulatory oversight is insufficient or non-existent.

Because of the gravity of these impacts, it is particularly important that there be full respect for the right of indigenous women and girls to *effective* participation, consultation and consent in all decisions about extractive activities. Sham opportunities to participate, consult and consent are not sufficient. To be *effective*, participation, consultation and consent must comply with the principle of free, prior and informed consent (FPIC).

This submission draws on the experience of the indigenous Guji women and girls who live near the Lega Dembi gold mine in the Oromia Region of Ethiopia. Their experience provides an illustrative example of the harms caused by extractive activities when indigenous women and girls are *not* accorded their right to effective participation, consultation and consent in all decisions about a mine.

DUBAF[[1]](#footnote-1) is an Ethiopian NGO whose members and leaders are indigenous Guji people and whose primary mission is to improve life for the Guji community. CIHR[[2]](#footnote-2) is an academic and advocacy organization that, since 2018, has worked with DUBAF in advocating for the rights of the indigenous Guji people impacted by the Lega Dembi mine.

**I. The example of the Lega Dembi gold mine:**

 **Violations of the rights of indigenous Guji women and girls**

**A. Background Information**

The Lega Dembi mine is a gold mine in the Shakiso District of Ethiopia’s Oromia Regional State. 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 1998, Ethiopia granted a 20-year mining license to MIDROC, a company whose owner, through his various businesses, is the largest private employer in Ethiopia. Despite the mine’s severe impact on the health and well-being of the Guji community 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 led the State to suspend MIDROC’s license pending what were promised to be independent assessments of its environmental, health and socio-economic impacts.

During the period of the license suspension, the CEDAW Committee took note of the Lega Dembi situation and issued the following Concluding Observations to Ethiopia:

“45. The Committee notes that the State party temporarily closed the Lega Dembi mine in the Oromia region and is assessing the impact . . .. It is concerned, however about the grave health, environmental and socioeconomic impact of the operations of the mine on Guji rural women and their families.

46. **The Committee recommends that the State party 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.**”[[3]](#footnote-3)

To date, Ethiopia has ignored these recommendations.

 \* There still has been no independent assessment of the mine’s environmental impact. Instead, a team of Canadian experts only reviewed pre-existing environmental impact data provided by MIDROC and the Government.

 \* There has been no transparency. The Government refuses to make public any of the existing environmental impact data, including the conclusions reached by the Canadian experts. The Government also refuses to make public the report of a community health study conducted during the mine suspension period by the Ethiopian Public Health Institute in cooperation with the Canadian experts.

 \* There has been no opportunity for the Guji community, including women and girls, to enjoy their right to effective participation, consultation and consent with respect to decisions about the mine.

 \* The environmental contamination has not been remedied, and victims to date have received no compensation.

Nevertheless, in February 2021 the Government allowed MIDROC to resume mining at Lega Dembi.

**B. Toxic contamination of the environment**

Due to poor mine management and an absence of government regulatory oversight,[[4]](#footnote-4) Lega Dembi has produced massive environmental contamination. Studies have documented dangerous levels of mercury, arsenic and cyanide in the soil and water in the area near Lega Dembi.[[5]](#footnote-5) Exposure to mercury “can affect almost all organs in the body, often leading to kidney failure, lung damage, or brain diseases. Prolonged exposure at lower levels can result in weakness, fatigue, loss of weight, and gastrointestinal disturbances.”[[6]](#footnote-6) Cyanide, too, is highly toxic: it can cause respiratory failure and heart, brain and nerve damage, and it can be lethal.[[7]](#footnote-7)

Exposure to these toxins is extremely dangerous to women’s reproductive health. “Exposure to mercury – even small amounts – . . . is a threat to the development of the child in utero and early in life.”[[8]](#footnote-8) Even low-level exposure can cause “spontaneous abortion, stillbirth, congenital anomalies, pre-term birth and low birth weight.”[[9]](#footnote-9) Exposure to arsenic can lead to adverse pregnancy outcomes and infant mortality, with impacts on child health.[[10]](#footnote-10) “In utero and early childhood exposure [to arsenic] has been linked to negative impacts on cognitive development.”[[11]](#footnote-11) Animal studies showing increased birth defects and other reproductive problems after exposure to cyanide[[12]](#footnote-12) have led experts to advise that cyanide be treated as a possible teratogen in humans as well.[[13]](#footnote-13)

**C. Impact of toxic contamination on Guji women and girls**

Toxic contamination from Lega Dembi has violated the rights of Guji women and girls to life, health, clean water, food, and education. Women have suffered uncommonly high rates of miscarriage, stillbirth and infant mortality, and many children have been born with severe physical and developmental disabilities that shorten life expectancy and compromise quality of life, including deformed limbs, paralysis and mental incapacity. As primary caregivers, women have borne a large share of the burden of caring for children born with these profound disabilities. People’s livelihoods and food supply have also been compromised. Livestock have died, crop yields have fallen, and locally grown food has sickened those who eat it. Women, children and men have suffered numerous health problems, including headaches, difficulty waking up in the morning, joint pain, back pain, stomach problems, and skin problems including rashes, itching and burning. Children with disabilities have lost access to education, as those with deformed legs cannot walk the distance to schools, and schools lack the resources to educate children with severe disabilities.

 ***Testimonies of community members***[[14]](#footnote-14)

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. 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 often are forced to buy food, because their crops no longer produce enough for the family’s needs.

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 deformed 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.

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.

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.

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.”[[15]](#footnote-15)

Kifle Hirbaye explained that his “seven year-old daughter’s growth is so stunted, and her limbs so badly deformed, she cannot attend school.”[[16]](#footnote-16) Wakjira Meko 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 thereafter.[[17]](#footnote-17)

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.[[18]](#footnote-18) “I am not seeing this in other places, only around the mining site.”[[19]](#footnote-19)

 ***Information from reports the Government refuses to make public***

These testimonies, we believe, have been corroborated by the community health assessment that the Government refuses to make public. The Ethiopian Public Health Institute, in consultation with Canadian experts provided by the Canadian International Resources and Development Institute (CIRDI), surveyed nearly 3,000 households in the Lega Dembi area. Using a detailed questionnaire, survey workers interviewed households and recorded the villagers’ responses. To persuade the community 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 personal information.

According to reporting by The New Humanitarian, the results of this still-secret study are damning. The communities near the mine were found to have “the highest rate of birth defects measured in Ethiopia.”[[20]](#footnote-20)  Within the Lega Dembi area, the “highest incidence of defects was closest to the mine.”[[21]](#footnote-21) The study “showed that the ages of children born with defects aligned with the years in which Midroc was operating.”[[22]](#footnote-22)

A March 2018 environmental audit commissioned by the mining company – which has also been withheld from the public[[23]](#footnote-23) – reached similar findings:

 “Field visit and informal discussion with the local communities . . . 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.”[[24]](#footnote-24)

**D. Denial of the right to effective participation, consultation and consent**

The Lega Dembi situation illustrates why the right to effective participation, consultation and consent is so important for indigenous women and girls. This mine has wreaked havoc on their lives, their community, and their way of life. But Guji women and girls had absolutely no voice in the original decision to license the mine, in the April 2018 decision to renew the mine’s license, or in the recent decision to allow the mine to reopen. They have had no voice in decisions about the regulation or oversight of mining operations. They have had no voice in the impact assessment process. They have had no voice in determining necessary remedial measures to prevent the continuing release of toxic contaminants. And they have had no voice in determining just reparations and compensation for victims of the mine’s toxic contamination.

The Lega Dembi experience highlights the importance of distinguishing sham consultations from the genuine engagement required by the right to *effective* participation, consultation and consent. The Government claims it has held “consultations” with the community about the decision to reopen the mine, but these were not true consultations within the meaning of free, prior and informed consent. After all the decisions had been made, government officials held closed meetings with selected community members to announce the reopening of the mine and the remedial measures they say they will take. While these measures, if actually implemented, would be positive ones, the community has had no opportunity for input and no opportunity to give or withhold consent. The Government controlled which community members could attend the meetings, the measures that were announced are insufficient to remedy the magnitude of the harm, and there is widespread distrust that even these measures will actually be implemented. These purported “consultations” do not satisfy the State’s obligation to respect the right to effective participation, consultation and consent.

**II. The nature of the right of indigenous women and girls to effective participation, consultation and consent in the context of extractive activities, in line with the principle of free, prior and informed consent**

A core principle of the United Nations Declaration on the Rights of Indigenous Peoples is that indigenous peoples have the right to consultation and participation in decisions about projects that affect them, in accordance with the principle of free, prior and informed consent.[[25]](#footnote-25) A recent study by the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) provides important guidance on the scope and meaning of the concept of free, prior and informed consent.[[26]](#footnote-26) We encourage the CEDAW Committee to incorporate within its own General Recommendation the insights and understandings presented by EMRIP in this important study. In what follows, we will highlight certain important aspects of EMRIP’s understanding of this right, which we believe align completely with the requirements of the right to *effective* consultation, participation and consent.

 ***The elements of free, prior and informed consent***

To be ***free***, “[t]he context or climate of the process must be free from intimidation, coercion, manipulation . . . and harassment.”[[27]](#footnote-27)

To be ***prior***, the consultation and participation must take place before decisions are made, so that indigenous peoples can “influence the outcome of decision-making processes affecting them.”[[28]](#footnote-28) It is not enough that indigenous women merely “have their views heard;”[[29]](#footnote-29) they must have the opportunity “to make a different proposal or suggest a different model, as an alternative to the one proposed by the Government or other actor.”[[30]](#footnote-30) It is also 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.”[[31]](#footnote-31)

For the consultation and participation to be ***informed***, indigenous peoples 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.”[[32]](#footnote-32) In terms of substance, the information made available should include “social, environmental and cultural impact assessments” and “all the potential harm and impacts that could result from the proposed activity.”[[33]](#footnote-33)

***Consent***“is a key principle that enables indigenous peoples to exercise their right to self-determination,” including in the context of development projects that affect their land and resources.[[34]](#footnote-34) Genuine consent can only be given when it is free, prior and informed.[[35]](#footnote-35) Where an indigenous people conclude that a development project would not be beneficial to them or their future generations, they have the right to withhold their consent[[36]](#footnote-36) or to suggest modifications or alternatives to the proposal as a condition for giving consent.[[37]](#footnote-37) Once obtained, consent can still be withdrawn at any later stage;[[38]](#footnote-38) for example, it can be withdrawn if “a business breaches its obligations under an agreement, or it becomes apparent that consent was given without the benefit of all available information.”[[39]](#footnote-39) The right to give or withhold consent is particularly important regarding extractive activities. “[G]iven the well-known risks and impacts of extractive industries on indigenous peoples, . . . the general rule in the case of extractive industries’ projects within the territories of indigenous peoples is that the free, prior and informed consent of indigenous peoples is required.”[[40]](#footnote-40)

Though it is the State’s duty to ensure compliance with the principle of free, prior and informed consent,[[41]](#footnote-41) private businesses have their own responsibility to refrain from initiating projects when free, prior and informed consent has not yet been given or when it has been withheld.[[42]](#footnote-42)

**III. Conclusion**

Extractive activities on indigenous lands can endanger the lives, the health and the way of life of indigenous women and girls. This danger underscores the importance of the right to *effective* participation, consultation and consent, in line with the principle of free, prior and informed consent, in the context of extractive projects. States and extractive companies must respect this right throughout the entire lifespan of extractive projects: initial project planning; assessments of the environmental, health, socio-economic and human rights impacts; decisions on whether or not to allow projects to proceed, and, if allowed, the conditions under which they must operate; ongoing monitoring and public reporting of mining impacts throughout the life of the project; the planning and implementation of measures to restore the environment and safeguard the community to the maximum extent possible when the mine ceases operation; and, where community members have been harmed by the mine, the determination of appropriate reparations and compensation.

We urge the CEDAW Committee, in its upcoming General Recommendation on the right of indigenous women and girls to effective participation, consultation and consent, to:

1. Specifically address the importance of this right in the context of all decisions regarding extractive activities on indigenous lands;

2. Affirm that the right implies compliance with the principle of free, prior and informed consent;

3. Take note of and incorporate the understanding of free, prior and informed consent presented in the 2018 study by the UN Expert Mechanism on the Rights of Indigenous Peoples; and

4. Clarify that, as noted above, States and extractive companies are obliged to respect this right throughout the entire lifespan of extractive projects.

1. Development by Unity and Brotherly Action for the Future (DUBAF) is a licensed Ethiopian non-profit/non-governmental organization established with the aim of making a lasting, positive difference in the life and livelihoods of the marginalized communities through supporting self-help initiatives and promoting indigenous values. [↑](#footnote-ref-1)
2. The Center for International Human Rights (CIHR) of Northwestern University’s Pritzker School of Law (Chicago, USA) pursues human rights education and legal and policy-focused human rights advocacy within the United States and worldwide. CIHR conducts legal research, compiles reports, and represents individuals and NGOs in cases and projects addressing violations of human rights. CIHR is in special consultative status with the United Nations Economic and Social Council (ECOSOC). [↑](#footnote-ref-2)
3. Committee on the Elimination of Discrimination against Women, 1665th and 1666th meetings, Concluding observations on the eighth periodic report of Ethiopia, U.N. Doc. CEDAW/C/ETH/8, ¶¶ 45-46 (14 March 2019), https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED%20AW%2fC%2fE TH%2fCO%2f8&Lang=en. [↑](#footnote-ref-3)
4. *See* Addis Ababa University Business Enterprise PLC, Compliance audit in chemical management on MIDROC Gold Mine PLC’s Legadembi and Sakaro Mining Operations, at 65, 102, 118-120 (March 2018) (hereinafter March 2018 Audit); DUBAF, GIRDA and CIHR, Ethiopia’s Violations of Civil and Political Rights in connection with the Lega Dembi Gold Mine, at 6-8 (17 Aug. 2020), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ETH/INT\_CCPR\_ICO\_ETH\_42868\_E.pdf. [↑](#footnote-ref-4)
5. March 2018 Audit, *supra* note 4, at 59, 84, 103, 107, 117, 123; 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-healthproblems (hereinafter TNH, *Health woes, outrage, and toxins*). [↑](#footnote-ref-5)
6. TNH, *Health woes, outrage, and toxins, supra* note 5. [↑](#footnote-ref-6)
7. Centers for Disease Control and Prevention, *Facts About Cyanide*, (4 Apr. 2018), https://emergency.cdc.gov/agent/cyanide/basics/facts.asp.; March 2018 Audit, *supra* note 4, at 49. [↑](#footnote-ref-7)
8. World Health Organization, *Mercury and health, Key Facts* (31 Mar. 2017), https://www.who.int/news-room/fact-sheets/detail/mercury-and-healthealth (who.int). [↑](#footnote-ref-8)
9. TNH, *Health woes, outrage, and toxins*, *supra* note 5. [↑](#footnote-ref-9)
10. World Health Organization, *Arsenic, Key Facts* (15 Feb. 2018), https://www.who.int/news-room/fact-sheets/detail/arsenic. [↑](#footnote-ref-10)
11. *Id*.; March 2018 Audit, *supra* note 4, at 4. [↑](#footnote-ref-11)
12. U.S. Department of Health and Human Services, *Toxicological Profile for Cyanide*, at 8 (July 2006), https://www.atsdr.cdc.gov/toxprofiles/tp8.pdf. [↑](#footnote-ref-12)
13. New Jersey Department of Health and Senior Services, *Hazardous Substance Fact Sheet*, at 2 (August 2006) https://nj.gov/health/eoh/rtkweb/documents/fs/1693.pdf. [↑](#footnote-ref-13)
14. The first four testimonies were given to CIHR in January 2019. Names have been changed to protect identity. These accounts and the accompanying photo are used with the written consent of the adults and the children’s parents. [↑](#footnote-ref-14)
15. TNH, *Health woes, outrage, and toxins*, *supra* note 5. [↑](#footnote-ref-15)
16. *Id.*  [↑](#footnote-ref-16)
17. *Id.*  [↑](#footnote-ref-17)
18. Cecilia Jamasmie, *Ethiopians Protest MIDROC Gold Mining License Renewal*, TESFANEWS (7 May 2018), https://www.tesfanews.net/ethiopians-protest-midroc-mining-license-renewal/. [↑](#footnote-ref-18)
19. *Id.*  [↑](#footnote-ref-19)
20. TNH, *Health woes, outrage, and toxins*, *supra* note 5. [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. Although CIHR has acquired a copy of this report, it is believed that unless the Government makes the report public, it would endanger local people to distribute it or openly discuss it with them. [↑](#footnote-ref-23)
24. March 2018 Audit, *supra* note 4, at 113. [↑](#footnote-ref-24)
25. United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295, arts.18–19, 32(2) (2 October 2007). [↑](#footnote-ref-25)
26. 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). [↑](#footnote-ref-26)
27. *Id.* ¶ 20(a). [↑](#footnote-ref-27)
28. *Id.*, ¶ 15. [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. *Id.* [↑](#footnote-ref-30)
31. *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) (hereinafter James Anaya Report). [↑](#footnote-ref-31)
32. EMRIP FPIC Study, *supra* note 26, ¶ 22(b). [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. *Id.*, ¶ 25. [↑](#footnote-ref-34)
35. *Id.*, ¶ 24. [↑](#footnote-ref-35)
36. *Id.*, ¶¶ 25-27: Food and Agriculture Organization, *Free Prior and Informed Consent: An indigenous peoples’ right and a good practice for local communities*, *Manual for Project Practitioners,* at 16 (2013), http://www.fao.org/3/i6190e/I6190E.pdf (hereinafter FAO FPIC Manual). [↑](#footnote-ref-36)
37. *Id.* [↑](#footnote-ref-37)
38. FAO FPIC Manual *supra* note 36, at 13. [↑](#footnote-ref-38)
39. United Nations Global Compact*, A Business Reference Guide: United Nations Declaration on the Rights of Indigenous Peoples*,at 28 (2013), https://www.unglobalcompact.org/library/541 (hereinafter UNGC, *A Business Reference Guide*). [↑](#footnote-ref-39)
40. EMRIP FPIC Study, *supra* note 26, ¶ 32. [↑](#footnote-ref-40)
41. *Id.*, ¶ 56; *see also* James Anaya Report, *supra* note 31, ¶ 38. [↑](#footnote-ref-41)
42. UNGC, *A Business Reference Guide*, *supra* note 39, at 58. [↑](#footnote-ref-42)