

December 7, 2018

To: BASKUT TUNCAK
Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes

DAVID R. BOYD
Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment

ANITA RAMASASTRY
Chair-Rapporteur on the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises

CLEMENT NYALETSOSI VOULE
Special Rapporteur on Freedom of Peaceful Assembly and of Association

MICHEL FORST
Special Rapporteur on the Situation of Human Rights Defenders

PHILIP ALSTON
Special Rapporteur on Extreme Poverty and Human Rights

With Pres. VOJISLAV SUC
Copies President of the United Nations Human Rights Council

To: Comm. MICHELLE BACHELET
United Nations High Commissioner for Human Rights

SUBMISSION

Complainants

This Complaint-Communication is submitted by Kalikasan PNE and SAPAKKMMI.

The **Kalikasan People's Network for the Environment (Kalikasan PNE)**, represented by Clemente Bautista and Leon Dulce, is a duly-registered national environmental campaign center in the Philippines established in 1997 to enable greater coordination and complementation of people's actions to address environmental issues that worsen the lives of already marginalized people. Kalikasan PNE is actively involved in the campaign against

settlement case against the Salvadoran government resulted in a ruling in favor of the government in 2016, strengthening the findings that OceanaGold violated El Salvador's laws.

In the Philippines, its gold and copper mine is located in Barangay Dipidio, Nueva Vizcaya and was the first mining project approved by the Philippine government under the Financial Technical Assistance Agreement (FTAA) which allowed a 100%-owned foreign corporation to conduct large-scale mining in the country. The official OceanaGold website referred to its Didipio mine as "Our Didipio Gold and Copper Mine on the island of Luzon in the Philippines is an underground operation internationally recognised for exceptional safety, environment and social development performance". In reality, its Didipio mine is an **Open Pit Mine**.

The Dipidio mine has a reserve life of 20 years and holds an estimated 1.41 million ounces of gold and 169, 400 tons of copper.¹ Its office in the Philippines is located at 2nd Floor Carlos J. Valdes Building 108 Aguirre Street Makati, Manila, 1229 Philippines.

As can be gleaned from its 2018 Report to its stockholders, the Didipio mine is the cheapest in terms of cost per capita for every ounce of copper or gold produced. While its all sustaining cost (as of June 30, 2018) for its mines in Macraes (New Zealand) for example is US\$ 1,002 US\$/oz, it is a mere US\$ 294 US\$/oz in Didipio. Its Haile gold mine in the United States has an all sustaining cost of US\$ 737 per ounce of gold, more than double than its cost in Didipio as shown in below:²

Figure 1 – Production and Cost Result Summary

Year to date 30 Jun 2018		Haile	Didipio	Waihi	Macraes	Consolidated	
						Q2 2018	Q2 2017
Gold Produced	koz.	75.7	58.8	39.3	94.8	268.6	272.4
Gold Sales	koz.	75.5	59.5	40.9	90.5	266.4	256.0
Average Gold Price	US\$/oz.	1,315	1,317	1,314	1,315	1,315	1,244
Copper Produced	kt.	-	7.8	-	-	7.8	10.3
Copper Sales	kt.	-	7.2	-	-	7.2	10.0
Average Copper Price	US\$/lb.	-	3.06	-	-	3.06	2.57
Cash Costs	US\$/oz.	365	167	680	595	445	351
All-In Sustaining Costs	US\$/oz.	737	294	854	1,002	744	599

Table 1. Production and Cost Result Summary from "OceanaGold Announces Robust Financial Results; Declares Dividend," by OceanaGold, 2018, OceanaGold. Retrieved August 4, 2018, <https://www.oceanagold.com/wp-content/uploads/2018/07/180726-OceanaGold-Q2-2018-Financial-Results-News-Release.pdf>. Copyright 2018 by OceanaGold Corporation.

Members of the communities affected by the operations of OceanaGold Corporation are residents of the barangays of Alimit, Bilet, Biyoy, Camamasi, Dipidio, Dine and Kakiduguen in

¹ . <https://www.reuters.com/article/philippines-oceanagold-idAFSGE70G05720110117>.

² Retrieved August 4, 2018, <https://www.oceanagold.com/wp-content/uploads/2018/07/180726-OceanaGold-Q2-2018-Financial-Results-News-Release.pdf>. Copyright 2018 by OceanaGold Corporation

There has been violence committed against those protesting against OceanaGold in the communities affected by its operations and yet OceanaGold and its private security guards as well as state security forces protecting it have not been made accountable. Complainants aver that no timely, substantial justice can be attained in the Philippines due to this support by government.

CHARGES

Rampant Civil and Political Rights Violations

As early as June 2008, at least 187 houses in Dipidio were illegally and violently demolished by OceanaGold Philippines, Inc. in the course of its surface and rights acquisition program. The demolition resulted to physical harm and injuries to residents who were beaten while their houses were being bulldozed off cliffs and burned down. The demolition was made even without any court order. Hence, as early as 2008, during the initial stages of construction, the indigenous communities of the affected barangays, together with the local government and church groups, already protested against the operation of OceanaGold.

Earlier, on April 2008, the provincial government of Nueva Vizcaya issued a Cease and Desist Order against OceanaGold after the latter failed to pay quarry taxes amounting to about PhP30 Million.⁴ The mining corporation retaliated against the provincial governor Ruth Padilla by filing charges against her before the Philippine's Office of the Ombudsman. Gov. Padilla is the wife of Rep. Carlos Padilla, the Congressman of the lone District of the Province of Nueva Vizcaya.

On July 2008, the Philippine Commission on Human Rights (CHR) ordered its Region 2 office, which has jurisdiction over the area, to conduct an investigation on the alleged human rights violation committed by OceanaGold Philippines against the indigenous people living in the area.⁵

On October 2009, there was another attempt to demolish several houses that resulted in the violent dispersal of protesting residents by the Philippine National Police (PNP) who used truncheons, shields and tear gas.

On 10 January 2011, the CHR issued a Resolution finding OceanaGold Philippines Inc. in violation of the following: the Right to Residence, Right to Adequate Housing and Property Rights, Right to Freedom of Movement and the right not to be subjected to arbitrary interference, the Right to Security of Persons and the right of the indigenous community to Manifest their Culture and Identity.

The CHR also found the Philippine National Police (PNP) to have violated its Operational Procedure during the demolition by carrying high-powered firearms and applying

⁴ <http://www.gmanetwork.com/news/news/regions/106272/oceana-gold-says-it-didn-t-commit-human-rights-violations/story/>.

⁵ *Id.*

Technology for the People found the silt-affected river of Dinaoyan and its confluence with the Surong Creek, all downstream of OceanaGold's mine, to have turbidity levels and heavy metal concentrations breaching various safety levels.

The EIM Technical Report contained the following initial findings: lower number of observed organisms in the affected area, very high turbidity of the stream from the impact area and abnormal levels of copper in the stream and sediments emanating from the area surpassing safe levels for aquatic organisms.

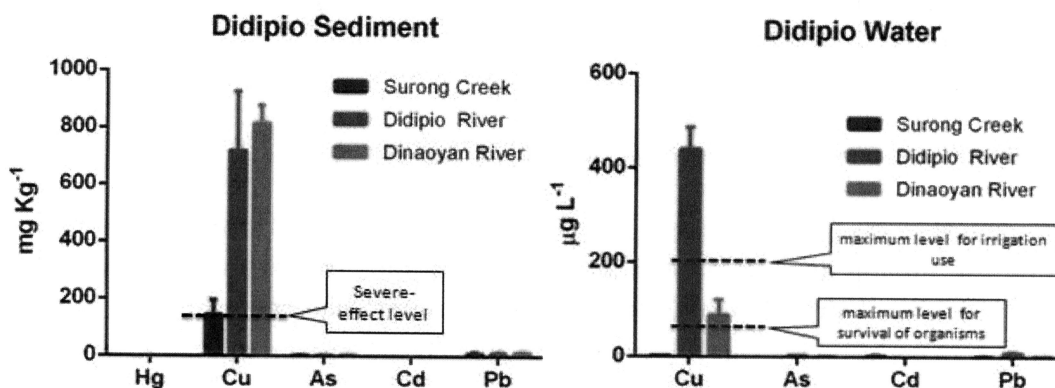


Figure 2. Graph demonstrating the levels of copper, a heavy metal, concentrated in the sediments and waters of Didipio river. From the 2014 Environmental Investigation Mission Technical Report.

A February 2017 report by the Provincial Government of Nueva Vizcaya made several derogatory findings against OceanaGold:

“The degraded state of Didipio and its peripheral localities’ environment and natural resources due to mining will be most intensely felt by the poor, especially given the rural nature of the affected communities where almost the entire populace depend on these resources for their primary source of living. Kasibu’s forests ecosystem, inland water bodies and caves are home to a wide variety of flora and fauna. The OGPI mining enterprise, likewise threaten the viability of the Capisaan Cave System which is a unique, natural and non-renewable resource with important scientific, economic, educational, cultural, historical and aesthetic values.”

The report cites findings by the University of the Philippines Center for Integrative Development Studies – Biodiversity Conservation Program (BCP-UPCIDS) that the Caraballo-Palali Mountain Range in which Didipio is situated to be classified as the following:

- Very High Biological Importance for Terrestrial and Inland Water Areas
- Very High as Conservation Priority Areas for Terrestrial and Inland Water Areas
- Part of the Terrestrial Biodiversity Corridors
- Research Priority Areas for Arthropods
- Extremely High Conservation Priority Areas for Amphibians and Reptiles
- Very High Conservation Priority Areas for Terrestrial Mammals

“OGPI violated the Indigenous Community’s Right to Manifest their Culture and Identity: Majority of the 187 families were “forced to leave Didipio for good, and abandon their indigenous community, customs, traditions and way of life. [...] Demolition and the attendant displacement of indigenous peoples effectively deny said peoples the right to enjoy and manifest their Ifugao culture in community with other members of their indigenous group. It means the dislocation and displacement of women, men and children. It means the destruction of life and a way of life intimately connected with the land they nurtured, with a view to leaving a legacy for their children and their kin that will come after. [...] In demolishing the houses of indigenous peoples in Didipio, OGPI effectively precluded them of the right to enjoy, manifest and celebrate their culture in community with their indigenous group.”

Despite the derogatory report of CHR, OceanaGold has not been made to account by the Philippine government.

In 2011, the CHR recommended to the Philippine Government to consider the probable withdrawal of the FTAA granted to OceanaGold. The recommendation was ignored and the government allowed the mining corporation to operation despite the findings of gross human rights violations.

In 2017, the DENR issued a suspension order against OceanaGold over its environmental and human rights violations which was determined after an audit was conducted. OceanaGold appealed the order to the Office of the President – now under Philippine President Rodrigo Roa Duterte – which subsequently stayed the suspension order, citing due process.

On December 2017, the trial court where the case against the Kasibu 5 is pending, dismissed the charges against four of the five detained individuals. The fifth accused remains in jail.

In 2018, concerned citizens of Alimit filed a petition expressing their strong opposition to the planned expansion of OceanaGold's operations in their area. They have stated in their petition that the company's expansion will contribute to the worsening of the pollution of their river, will contribute to the drying of their remaining creeks and streams, will enroach on their farm lands, will make their slopes unstable, and will lead to the loss of their livelihood.

They gave copies of their petition to the local governments of barangay Alimit and Kasibu municipality respectively, the governor and the congressman of Nueva Vizcaya province, and the regional and central offices of the Mines and Geosciences Bureau. No response to the petition has been made by authorities as of this writing.

Connivance Between the Philippine Government and Its State Agents in Protecting OceanaGold’s Business Interests

- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and respect for human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

SUMMARY

In sum, complainants aver the following:

The Philippine government must be held accountable for its direct action of providing the State's security forces to support OceanaGold's destructive mining operations and committing human rights violations. The Philippine government must be held accountable for allowing and in fact supporting OceanaGold's mining operations despite its violation of environmental and other laws, its acts that are destructive of the health, livelihood and resources of the people of Didipio and Nueva Vizcaya.

Complainants ask the UN Human Rights Council through its relevant bodies to give remedy to the people of Nueva Vizcaya who have so far not succeeded in holding the Philippine government and OceanaGold accountable for their actions. OceanaGold's FTAA is in the process of being renewed in 2019 for another possible twenty-five years unless the Philippine government is made to account for its acts and omissions that violated the rights of the people affected by OceanaGold's mining operations.

If left unchallenged, OceanaGold's operations could cause adverse environmental and socio-economic impacts over a far wider area than Nueva Vizcaya in many other provinces and impact on thousands of people. Urgent and timely action is implored of the UN HRC.

Evidence

Complainants present the following reports/resolutions as evidence without prejudice to the submission of additional evidence/reports.

Among the evidence that complainants will present are

(a) Copy of 2011 Commission on Human Rights (CHR) Resolution [attached as Annex "A"]

After conducting its own investigations, the CHR issued a resolution which found OceanaGold Philippines Inc. guilty of violating the property rights, right to freedom of movement, right to security of person, right to manifest the culture and identity, and right to water of the people of Didipio. They also found the PNP guilty of violating its own operational procedures by using excessive force and high powered firearms—a deed the Resolution clearly states "was an overkill."

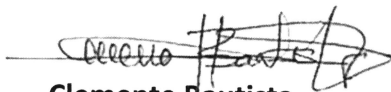
- (1) **REVIEW** the FTAA of OceanaGold Philippines Inc. in the light of these human rights violations and in consideration of the existing international agreements and conventions and in consideration with its compliance with the UN Framework for Business Enterprises;
- (2) **ORDER** that OceanaGold immediately cease and desist from its expansion activities and destructive actions that pollute the waters of Didipio and Nueva Vizcaya, and surrounding environment without prejudice to the suspension of its mining operations should it persist in its destructive actions;
- (3) **DEMAND** that OceanaGold **COMPENSATE** property owners and those in the community who were denied of just compensation for the use or deprivation of their land and property by OceanaGold.

D. **SUBMIT AN AMICUS CURIAE BRIEF** to the Supreme Court of the Philippines or other appropriate judicial body in the country recommending legal action based on the findings of your office's investigations.

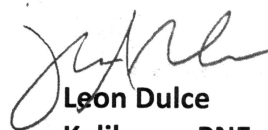
E. Other forms of remedy, just and equitable are also prayed for.

Signed, this 7th of December 2018 in Quezon City, Philippines.

FOR THE COMPLAINANTS:



Clemente Bautista
Kalikasan PNE



Leon Dulce
Kalikasan PNE

[name withheld for security purposes]

SAPAKKMMI