



MARCH 27, 2015 5:19PM EDT

Submission to Special Rapporteur on Human Rights and Hazardous Substances and Wastes

March 27, 2015

Baskut Tuncak

Special Rapporteur on human rights and hazardous
substances and wastes

Sustainable Human Development Section

Special Procedures Branch

UNOG-OHCHR

Palais des Nations

CH-1211 Geneva 10, Switzerland

Dear Mr. Tuncak,

Please accept Human Rights Watch's submission in relation to your thematic report to the Human Rights Council on the issue of the right of access to information with respect to hazardous substances and wastes.

Numerous international declarations and conventions recognize access to information as a pivotal human right. Article 19 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."^[i] Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) strengthens this concept by stating that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."^[ii]

Access to information is also identified in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The UN Committee on Economic, Social and Cultural Rights—a body of independent experts empowered with interpreting the ICESCR—has stated that a "core obligation" of states under the right to the highest attainable standard of health is "[t]o provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them."^[iii]

The relationship between the right to information and the right to the highest attainable standard of health has also been emphasized by the World Health Organization (WHO). The WHO constitution establishes as a principle that: "Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people."^[iv]

WHO subsequently elaborated that principle in the following terms: "A well-functioning health information system is one that ensures the production, analysis, dissemination and use of reliable and timely information on health determinants, health systems' performance and health status."^[v] Importantly, the principle includes not only on dissemination of information but also its production.

The 2008 report by the UN Special Rapporteur on the right to health underscores the central importance of information in an effective health system and the responsibility of international organizations, businesses and civil society organizations in relation to transparency about health information. Access to health information is an essential feature of an effective health system, as well as the right to health. Health information enables individuals and communities to promote their own health, participate effectively, claim quality services, monitor progressive realization, expose corruption, hold those responsible to account, and so on.^[vi]

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, known as the Aarhus Convention, which went into effect in 2001 and has been ratified by 47 countries in Europe, the Caucasus and Central Asia, also highlights the importance of access to information. Article 1 of the Aarhus Convention states: “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice.”^[vii] Article 5 of the Aarhus Convention underscores the responsibility to produce environmental information as well as disseminate it:

1. Each Party shall ensure that: (a) Public authorities possess and update environmental information which is relevant to their functions; (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment.”^[viii]

The Rio Declaration on Environment and Development also specifically recognizes the importance of access to information. Principle 10 states:

“At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.”^[ix]

Over the past decade Human Rights Watch has conducted extensive research regarding human rights violations and environmental degradation. Human Rights Watch has produced reports on: mercury poisoning from artisanal gold mining in Ghana, Mali, and Tanzania; lead poisoning in Kosovo, China, Kenya, Nigeria, and Thailand; pollution due to mining activities in India, Mozambique, and Papua New Guinea; radiation from the damaged Fukushima I nuclear power plant in Japan; and the health costs of industrial chemicals used in unregulated tanneries in Bangladesh.

In our research across more than a dozen countries, Human Rights Watch has repeatedly found that people exposed to hazardous substances and wastes are unable to access accurate and complete information on the substances they are exposed to, the risks that these substances pose to their health, and the measures that could be taken to minimize exposure or treat health conditions arising from that exposure. In many cases we have found that governments or private companies refuse to generate or make available environmental information of public interest, such as information on the presence of hazardous substances in the local environment. Governments often do little to provide information that would allow individuals and communities to assess risks they face from exposure to hazardous substances, or take measures to reduce exposure. In some cases, we have documented how governments refuse to release the results from individual medical tests documenting exposure to hazardous substances.

As with all human rights, governments have an obligation to respect, protect and fulfill the right to access to information when working within their own borders, through international agencies, or abroad; international financial institutions have obligations to respect and protect this right; and businesses have a responsibility to respect this right and provide a remedy for any abuses that stem from a failure to do so.

The submission below provides more detail on our research addressing the impact of the denial of the right to information with respect to hazardous substances and wastes.

Information should be accurate and sufficient

In 2014, Human Rights Watch reported on the issue of inaccurate and incomplete information with respect to the lead poisoning of local residents in Lower Klity Creek, a small village near Thailand’s border with Burma.^[x] Klity Creek, a stream running through the village and a main source of water for inhabitants, is heavily polluted by lead from a nearby lead processing factory (now defunct). Human Rights Watch spoke to many residents who suffered the symptoms of chronic lead poisoning, such as abdominal pain, headaches, fatigue, and mood changes. Some children in the community have been born with severe intellectual and developmental disabilities. From 2000 to 2008, the provincial and district public health authorities had undertaken testing of blood lead levels, but many village residents told Human Rights Watch that they did not receive the results of their blood tests (discussed below). Among individuals who did receive their test results, some were told by health officials that a level of less than 25 micrograms of lead per deciliter of blood in children and less than 40 micrograms of lead per deciliter of blood in adults was to be considered safe. However, public health authorities recognize that there is no safe level of lead exposure. The World Health Organization states that “At lower levels of exposure that cause no obvious symptoms, lead is now known to produce a spectrum of injury across multiple body systems.”^[xi] Since 2008, provincial and district public health authorities have ceased testing blood lead levels among villagers in and around Klity Creek.

In 2009, Human Rights Watch reported on the health and human rights crisis in lead contaminated Roma camps in Kosovo.^[xii] In the wake of the 1999 conflict, many families belonging to the Roma Mahalla minority were forced to flee their neighborhood in Mitrovica, and many settled in camps in the vicinity of the Trepca complex, a mine for lead and other heavy metals. Initial years of neglect of the lead contamination problem were followed by years of haphazard efforts to bring a solution to these issues. The extent and gravity of the contamination wasn’t known by the families living in the camps; the information provided to camp residents about the health situation and associated risks, as well as about ways to treat the serious cases of lead contamination, was far from complete. Human Rights Watch found that some general awareness raising has been facilitated through trained Roma activists and local doctors.^[xiii] Nevertheless, the information given on these occasions to residents of the camps related only to the improvement of hygiene, the need for a better diet, and the dangers of carrying out smelting activities, without telling them about the necessity to treat serious cases medically through chelation therapy. Aggregated results of testing, showing prevalence and trends, had never been transmitted to the community at large.^[xiv]

In Africa, Asia, and Latin America, an estimated 15 million artisanal gold miners – including many children – use mercury to separate the gold from the ore, by burning a toxic gold-mercury amalgam. Mercury is particularly harmful to children. It can delay development and cause illness, disability, and even death. Human Rights Watch has documented the harmful effects on humans from using mercury in small scale gold mining – the biggest sector using mercury globally – in Mali, Nigeria, Ghana, Tanzania, and Papua New Guinea.

For example, in Tanzania hundreds of thousands of people make a living out of artisanal gold extraction without being aware of the health consequences of using mercury in the extraction process.^[xv] Thousands of children, some as young as eight years old, work in this industry and use mercury. The government recognizes the health threats that mercury poses to artisanal miners, and in 2009 developed a National Strategic Plan for Mercury Management. Among other goals, the plan aims to raise awareness on the hazards of mercury, seeking to minimize intentional mercury use.^[xvi] However, the plan has never been implemented.

Another situation Human Rights Watch has researched is in Ghana.^[xvii] Ghana allows mercury use in mining and an estimated one million small-scale gold miners in the country regularly use it. During the course of our research, Human Rights Watch spoke to an 18-year-old pregnant woman working in artisanal gold mining, who was not aware that her fetus was highly vulnerable to the effects of mercury exposure.^[xviii]

The new Minamata Convention on Mercury – named after one of the worst mercury poisoning disasters in history, in the Japanese town of Minamata – addresses the use of mercury in small-scale gold mining: it requires governments to draw up national action plans that include steps to inform artisanal gold miners and affected communities about the harmful effects of mercury, raise awareness through health facilities, promote mercury-free mining methods, and protect children and women of childbearing age, among other measures.^[xix] Action is needed to ensure that information reaches mining communities now—before the convention enters into force—and to ensure governments ratify the convention promptly, and develop national action plans.

Information should be timely

Information regarding threats to public health in relation to environmental pollution should be provided in a timely manner. This is fundamental to ensure that people potentially affected are able to take adequate precautions and access medical care and treatment if and when required.

In 2012, Human Rights Watch interviewed residents of Fukushima, Japan, approximately one year after an earthquake and tsunami led to the meltdown of three nuclear reactors at the Fukushima I nuclear power plant.^[xx] Providing accurate and complete information in a crisis of this magnitude inevitably presents a massive challenge. But one year after the crisis, Human Rights Watch found that local residents did not receive consistent or accurate information about their health and the levels of radiation in their food and the environment. For example, one person explained: “On the one hand the government will announce that tap water is safe for everyone to drink, and on the other it will suggest that children drink only bottled water. Parents can’t get a clear answer on what the level of risk really is.”^[xxi] The staff member of a local nongovernmental organization providing supplies to local residents told Human Rights Watch: “In terms of information, I don’t think the prefecture government offered reliable information in a timely way. People’s trust in government information is now completely damaged. I understand citizen’s feelings that they can’t believe the government’s information and they are not sure what information they can believe.”^[xxii] Human Rights Watch called on the government to make testing for radiation exposure available and accessible to all Fukushima residents at risk, and to create a transparent and consistent process both for testing food, water and milk, and for disclosing the results.

In Zamfara State in Nigeria, artisanal gold mining, combined with naturally high levels of lead in the soil, led to thousands of children suffering from lead poisoning, and hundreds dying from acute lead exposure.^[xxiii] The Zamfara State government largely failed in educating people about the risks of lead prior to the rapid increase of deaths in 2010, and the state and federal government reacted slowly to remediate the widespread lead contamination and put in place safer mining techniques.

In Kenya, the Kenyan government failed to properly regulate a lead smelter in an urban district outside Mombasa, exposing thousands of residents to potential harms from lead.^[xxiv] The smelter began its operations in 2007 and operated almost continuously until it was closed in 2014. Although Kenya’s Environmental Management and Coordination Act specifies that an environmental impact assessment must be undertaken before operations in new facilities can begin, the owners of the smelter did not conduct the assessment until after it began operations.

It took two years of pressure from the local media and human rights organizations for the central government to begin an investigation, finding that the facility was violating numerous laws and endangering the health of workers and nearby residents. However, no efforts were made to mitigate the exposure to lead that had occurred. When Human Rights Watch interviewed local residents in 2014, they said they were still living in contaminated homes and children had not been tested for lead poisoning; they also reported that workers exposed to high concentrations of lead had not received medical treatment, nor had the families of those workers who died received any compensation.

Information relating to a potential development initiative or project that may impact human rights or the environment should be shared in advance of any decision being made, with sufficient time to influence the decision. The appropriate timeframe of any consultation period will depend on the complexity of the information available and the project or activities that are proposed.^[xxv] When a decision is reached, the reasons for that decision should be published and should display how the outcome of the public participation was taken into due account.^[xxvi] Information about a known health risk in the environment—including in the water, air or soil—should be communicated to a community with maximum expediency and in a format that is accessible to all.

Where information is unavailable, states, international financial institutions, development agencies, and businesses should conduct research on exposure and risk

States should conduct research on hazardous waste and the impact of such waste on the environment and human health, as a part of their obligation to protect and fulfill the right to the highest attainable standard of health. International financial institutions, development agencies and businesses also have responsibilities to monitor and

report.

In Bangladesh, Human Rights Watch research published in 2012 found that many employees working in the tanneries of the Hazaribagh neighborhood in the capital, Dhaka, had little or no information about the risks of chemicals used in the tanning process.^[xxvii] Chemicals used in tanning can be harmful for human health if proper safety precautions are not taken; some are known to be confirmed or potential human carcinogens, the effects of which can only be observed years after exposure. However, Department of Environment officials told Human Rights Watch that the department does not regularly monitor effluent from the tanneries flowing through the neighborhood, seeping into the ground, pooling in stagnant ponds, or making its way into Dhaka's main river. The same officials explained that the department does not monitor air or soil quality in Hazaribagh (or take legal action against tanneries in Hazaribagh for violating environmental laws).

The National Institute of Cancer Research and Hospital, a state-supported research institute established by the government of Bangladesh, has kept a registry of cancer patients since 2005. However, when asked by Human Rights Watch for data on the prevalence of cancer in Hazaribagh and by profession among hospital patients, the director said that the institute "does not keep this sort of data."^[xxviii]

In the Indian state of Goa, environmental impact assessment (EIA) reports commissioned by mining companies are the basis for state regulation.^[xxix] However, EIA reports often contain false data, undetected by government regulators, and often devote just a few paragraphs to community impact considerations. The Goa state government has not set standards on how the data regarding health impacts should be generated, with the result that it is often lacking or false. Residents of mining affected communities in Goa told Human Rights Watch they were afraid that dust emissions from passing ore trucks could be the reason for respiratory diseases they experienced in their communities; however, sufficient data did not exist to measure the extent of the health risks involved. Neither the state nor central governments have carried out any studies to obtain that data on possible health damage caused by dust emissions. In 2010, India's Ministry of Environment and Forests declared its intention to commission a study on the environmental impacts of the mining sites in Goa, but at the time Human Rights Watch's report was published (2012), the study had yet to be performed.

The necessary information will often go beyond environmental impact assessments. While environmental impact assessments often highlight the use of hazardous substances and wastes, they rarely translate this information into the impact on health and other human rights. For instance, in a Sustainable Management of Mineral Resources Project supported by the World Bank in Tanzania, while the environmental and social framework highlighted the use of mercury in artisanal mining, it did not highlight the problem of child labor and the health effects of mercury on children.^[xxx] Human rights impact assessments, carried out in conjunction with or following environmental impact assessments and with the active participation of affected communities and civil society, can be an important source of information when made publicly available in a timely and accessible manner.

National human rights institutions can play an important role by maintaining a list of accredited independent human rights experts (as environmental departments often do for EIAs) and in ensuring that the requisite standards of human rights impact assessments are met. As discussed further below, this shortcoming in World Bank financed projects should be remedied through the bank's ongoing review and update of its safeguard policies by explicitly requiring analysis of human rights impacts in social and environmental impact assessments.^[xxxi]

Information should not be withheld from the public

Human Rights Watch research shows that in some situations, governments and non-state actors (such as businesses) have withheld information regarding the environmental or health effects of hazardous waste.

In Papua New Guinea, where the company Barrick Gold owns and operates the Porgera mine, Human Rights Watch reported in 2011 on the company's consistent failure to make public key data that could allow for an assessment of the impact of riverine tailings disposal.^[xxxii] The tailings, waste by-products of the gold extraction process, are discharged into the Porgera River, and the long-term environmental and health impact of this practice could be serious for communities downstream. Barrick Gold also withheld its periodic environmental reports to the Papua New Guinea government from the public. Barrick Gold had also not been transparent about its claim that in the case of the Porgera mine, there is no viable alternative to riverine tailings disposal. Since there were not alternative independent sources of data, Barrick Gold's reports were fundamental to the public affected by the company's activities. Barrick has since committed to greater transparency around environmental data related to the Porgera mine, but the problems described above are an all-too common feature of mining industry operations around the world.

In China, many residents living in the regions of Henan, Shaanxi Hunan, and Yunnan are affected by serious lead poisoning due to the widespread presence of lead smelters and battery factories.^[xxxiii] Human Rights Watch reported in 2011 that thousands of children in these provinces are affected by lead poisoning. The government, in an effort to ease public fears about industrial pollution, had instituted legislation that called for increased transparency about environmental pollution issues in 2008.^[xxxiv] However many parents interviewed reported that the results of tests for lead poisoning were withheld by local authorities. In Yunnan, one mother explained: "The doctor told us that some of the results were a little bit higher than normal and [the children] should drink more milk. They wouldn't give us the results."^[xxxv] In other cases, parents reported that they were allowed to see the results from initial testing, but were prevented from seeing the results from follow-up testing. A grandmother who Human Rights Watch spoke to in Shaanxi, speaking about her 4-year-old granddaughter's follow-up lead tests, said: "Her first test, done at the hospital in our local town was 18 micrograms per deciliter. We went back for another test, which we had to pay for ourselves. The doctor said her results were fine. We didn't believe him so we asked to see the results but he wouldn't give them and just said the results were fine. We don't have any power to force him to give them to us so we don't know what her true result is now."^[xxxvi]

As noted above, Human Rights Watch reported on the withholding of health information from residents of Lower Klity Creek in Thailand in 2014. [xxxvii] Not all the individuals tested by provincial and district public health authorities received the results of their blood tests, and there was no medical care provided following up from test results when communicated to the villagers. Minh, a mother in her late 20s, told Human Rights Watch: “When my son was much younger he had a blood test. I asked about the results when they came back about a year later but they said the results weren’t ready. Other villagers didn’t get results either.” [xxxviii] Kamthorn, a farmer living in Lower Klity Creek, explained he hadn’t been tested for lead poisoning since 2008, and he never got the results of the tests he received before then. As noted above, since 2008, provincial and district public health authorities have ceased testing blood lead levels among villagers in and around Klity Creek.

Free, prior, and informed consent for activities affecting indigenous peoples’ lands and resources

States have a duty, and companies have a responsibility, to consult and cooperate with indigenous communities in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources. [xxxix] The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” [xl] While these rights are most clearly enunciated in the UNDRIP and in the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, they stem from existing international law. [xli] Under these conventions and declarations, states are to obtain the consent of the indigenous peoples concerned when adopting new legislation or administrative policies or undertaking projects affecting their collective land and resource rights, including mining and other utilization or exploitation of resources. [xlii]

In Karamoja, Uganda, private sector investments in the mining sector have started transforming the region, with a potential for harm for local communities. Residents in Karamoja voiced concern about potential environmental damage and a general lack of information. Interviewed by Human Rights Watch in 2014, community members lamented an exclusion from the decision-making process, with the government not securing free, prior, and informed consent before granting companies exploration licenses and companies not securing free, prior, and informed consent before starting operations on communal lands.

African regional institutions have significantly advanced the right to free, prior, and informed consent and do not limit its application to indigenous peoples. [xlili] The right to development similarly requires active, free, and meaningful participation in development choices, free of coercion, pressure, or intimidation. [xliv]

The need for international financial institutions to respect and protect the right of access to information with respect to hazardous substances and wastes

As discussed above, the World Bank and other international financial institutions do not routinely respect and protect the right of access to information with respect to hazardous substances and wastes. We encourage you to highlight in your report the obligations of international financial institutions to respect and protect this right and to utilize ongoing policy reviews to institutionalize these necessary protections. This can be achieved by explicitly requiring:

- (a) Respect for human rights;
- (b) Due diligence to identify and address potential human rights impacts of proposed development initiatives, particularly those that stem from environmental impacts; and
- (c) Integrating specific standards in high-risk areas such as lead and mercury exposure.

Such requirements should apply to program, policy, sectoral and budget support programs as well as projects, as such programs often provide an opportunity to support a government in systematically addressing risks related to hazardous substances and wastes (e.g. mineral resources projects). [xlv]

I thank you for the opportunity to provide this information and we are ready to answer any further questions you or your staff may have.

Sincerely,

Richard Pearshouse

Senior Researcher, Health & Human Rights Division

Human Rights Watch

[i] Universal Declaration of Human Rights, art 19. Adopted December 10, 1948.

[ii] International Covenant on Civil and Political Rights, art 19(2). Adopted March 23, 1976.

[iii] United Nations, Committee on Economic, Social, and Cultural Rights, General Comment 14, The right to the highest attainable standard of health. Twenty-second session, 2000.

[iv] “Constitution of the World Health Organization,” 1947,

http://whqlibdoc.who.int/hist/official_records/constitution.pdf (accessed March 18, 2015).

[v] World Health Organization, “Everybody’s Business: Strengthening Health Systems to Improve Health Outcomes,” 2007,

http://www.who.int/healthsystems/strategy/everybodys_business.pdf (accessed March 18, 2015).

[vi] UN Human Rights Council, “Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt,” January 31 2008, http://www.who.int/medicines/areas/human_rights/A_HRC_7_11.pdf (accessed March 18, 2015).

[vii] United Nations Economic Commission for Europe (UNECE), Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Adopted June 25, 1998.

[viii] Ibid.

[ix] United Nations, Rio Declaration on Environment and Development. June 3-14, 1992.

[x] Human Rights Watch, *Toxic Water, Tainted Justice: Thailand’s Delays in Cleaning Up Klity Creek*, December 2014,

https://www.hrw.org/sites/default/files/reports/thailand1214_web.pdf.

[xi] World Health Organization, “Lead poisoning and health fact sheet N°379,” <http://www.who.int/mediacentre/factsheets/fs379/en/> (accessed March 12, 2015).

[xii] Human Rights Watch, *Kosovo: Poisoned by Lead - A Health and Human Rights Crisis in Mitrovica’s Roma Camps*, June 2009,

https://www.hrw.org/sites/default/files/reports/kosovo0609web_0.pdf.

[xiii] Human Rights Watch interview with an employee of Norwegian Church Aid (name withheld), Mitrovica, November 27, 2008, in Human Rights Watch, *Kosovo: Poisoned by Lead - A Health and Human Rights Crisis in Mitrovica’s Roma Camps*.

[xiv] Human Rights Watch interview with Argentina Gidzic, a local Roma, Ashkali, and Egyptians activist (engaged in the past as a health facilitator for all the camps), Gracanica, November 30, 2008, in Human Rights Watch, *Kosovo: Poisoned by Lead - A Health and Human Rights Crisis in Mitrovica’s Roma Camps*.

[xv] Human Rights Watch, *Toxic Toil: Child Labor and Mercury Exposure in Tanzania’s Small-Scale Gold Mines* August 2013,

https://www.hrw.org/sites/default/files/reports/tanzania0813_ForUpload_0.pdf.

[xvi] National Strategic Plan for Mercury Management in Tanzania.

[xvii] Juliane Kippenberg, “Mercury, Ghana’s Poisonous Problem” *The Daily Graphic*, October 10, 2014,

<https://www.hrw.org/news/2014/10/10/mercury-ghana-s-poisonous-problem>.

[xviii] Ibid.

[xix] Minamata Convention on Mercury. Adopted January 19, 2013.

[xx] Human Rights Watch, *Fukushima- One Year On*, 2012, <https://www.hrw.org/features/fukushima-oneyear>.

[xxi] Human Rights Watch interview with a staff member of the nongovernmental organization, Bridge for Fukushima. Fukushima, 2012, in Human Rights Watch, *Fukushima- One Year On*.

[xxii] Human Rights Watch interview with a local resident, Fukushima, 2012, in Human Rights Watch, *Fukushima- One Year On*.

[xxiii] Human Rights Watch, *Nigeria: A Heavy Price. Lead Poisoning and Gold Mining in Zamfara State*, 2012, <https://www.hrw.org/features/a-heavy-price>.

[xxiv] “Kenya: Toxic Lead Threatening Lives,” Human Rights Watch news release, June 24, 2014, <https://www.hrw.org/news/2014/06/24/kenya-toxic-lead-threatening-lives>.

[xxv] See, for example, Compliance by Lithuania with its Obligations under the Convention, ECE/MP.PP/2008/5/Add.6, secs. 69-70.

[xxvi] See, for example, Findings and recommendations concerning compliance by Spain sec. 100.

[xxvii] Human Rights Watch, *Toxic Tanneries: The Health Repercussions of Bangladesh’s Hazaribagh Leather* October,

2012, <https://www.hrw.org/sites/default/files/reports/bangladesh1012webwcover.pdf>.

[xxviii] No monitoring of effluent, air or soil: Human Rights Watch interviews with Mahmood Hasan Khan, director of air quality management, Department of Environment of the Ministry of Environment and Forests, Dhaka, June 7, 2012; Md. Abul Monsur, director of Dhaka region, Department of Environment of the Ministry of Environment and Forests, Dhaka, June 11, 2012. No legal action against tanneries in Hazaribagh: Human Rights Watch interviews with Mahmood Hasan Khan, director of air quality management, Department of Environment of the Ministry of Environment and Forests, Dhaka, June 7, 2012; anonymous official, Dhaka, June 17, 2012. In Human Rights Watch, *Toxic Tanneries: The Health Repercussions of Bangladesh’s Hazaribagh Leather*.

[xxix] Human Rights Watch, *Out of Control: Mining, Regulatory Failure, and Human Rights in India*, June 2012, https://www.hrw.org/sites/default/files/reports/india0612ForUpload_0.pdf.

[xxx] Centre for Energy, Environment, Science & Technology (CEEST), “Environmental and Social Management Framework and Initial Scoping Study for the Strategic Environmental and Social Assessment for the Sustainable Management of Mineral Resources Project (SMMRP),” April 2009, <http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/20...> (accessed June 26, 2013), p. 72-84. Under section 1.12 on the “Identification, Assessment of Impacts and Proposed Mitigation Measures,” the Management Framework fails to identify the impact of child labor.

[xxxi] For more discussion, see Human Rights Watch submission to the World Bank’s review and update of its safeguard policies, Phase 2 [not yet published].

[xxxii] Human Rights Watch, *Gold’s Costly Dividend: Human Rights Impacts of Papua New Guinea’s Porgera Gold Mine*, February 2011, <https://www.hrw.org/sites/default/files/reports/png0211webwcover.pdf>.

[xxxiii] Human Rights Watch, “*My Children Have Been Poisoned*”: *A Public Health Crisis in Four Chinese Provinces*, June 2011, https://www.hrw.org/sites/default/files/reports/china0611WebInside_0_0.pdf.

[xxxiv] Huang Zheng, “China’s Environmental Protection Law Lays Groundwork for Greater Transparency,” post to Notes from the Field, Asia Foundation blog, May 28, 2014, <http://asiafoundation.org/inasia/2014/05/28/chinas-environmental-protection-law-lays-groundwork-for-greater-transparency/> (accessed March 5, 2015).

[xxxv] Human Rights Watch interview with Feng, Yunnan 2010, in Human Rights Watch, “*My Children Have Been Poisoned*”: *A Public Health Crisis in Four Chinese Provinces*.

[xxxvi] Human Rights Watch interview with Bao, Shaanxi, 2010, in Human Rights Watch, “*My Children Have Been Poisoned*”: *A Public Health Crisis in Four Chinese Provinces*.

[xxxvii] Human Rights Watch, *Toxic Water, Tainted Justice: Thailand’s Delays in Cleaning Up Klity Creek*.

[xxxviii] Human Rights Watch interview with Minh, Klity Creek, 2014, in Human Rights Watch, *Toxic Water, Tainted Justice: Thailand’s Delays in Cleaning Up Klity Creek*.

[xxxix] The indigenous peoples’ right to own, use, develop, and control their traditionally occupied lands and resources has been affirmed in the United Nations Declaration on the Rights of Indigenous Peoples and the African Commission on Human and Peoples’ Rights (ACHPR).

[xl] Declaration on the Rights of Indigenous Peoples, September 13, 2007. http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf.

[xli] These indigenous rights are integral elements of the right to take part in cultural life, which is interdependent of the right of all peoples to self-determination and the right to an adequate standard of living, protected in both the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, arts 1, 11, and 15. Banjul Charter, arts. 17(2), 21, 22, and 24. See also CESCR General Comment 21. Within the ICCPR, the right of all peoples to self-determination, which encompasses the right to freely determine their political status and freely pursue their economic, social, and cultural development, and the right of ethnic minorities to enjoy their own culture provide a broad basis for the right to free, prior, and informed consent: International Covenant on Civil and Political Rights (ICCPR), adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, arts. 1(1), 27. As early as 1992, the UN Human Rights Committee has emphasized that the enjoyment of the protected cultural rights “may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them,” UN Human Rights Committee, CCPR General Comment No. 23: Article 27 (The rights of minorities), April 8, 1992, para. 7.

[xlii] United Nations Office of the High Commissioner for Human Rights, “Free, Prior and Informed Consent of Indigenous Peoples,” September 2013, <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConse...>

[xliii] See, for example, ACHPR, “224: Resolution on a Human Rights-Based Approach to Natural Resources Governance,” May 2012, <http://www.achpr.org/sessions/51st/resolutions/224/> (accessed December 31, 2013); ACHPR, “155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)/ Nigeria,” October 2001, http://www.achpr.org/files/sessions/30th/communications/155.96/achpr30_1... (accessed December 31, 2013); ACHPR, “276/03 Center for Minority Rights Development (Kenya and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya,” May 2009, http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_2... (accessed December 31, 2013), paras. 162 and 291; African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v The Republic of Kenya*, Order of Provisional Measures, Application No. 006/2012, March 15, 2013, http://www.african-court.org/en/images/documents/Orders-Files/ORDER_of_Provisional_Measures_African_Union_v_Kenya.pdf; ECOWAS, “Directive C/DIR. 3/05/09 on the Harmonization of Guiding Principles and Policies in the Mining Sector,” Abuja, May 26-27, 2009, http://www.comm.ecowas.int/sec/en/directives/ECOWAS_Mining_Directives.pdf (accessed December 31, 2013).

[xliv] United Nations Declaration on Development, art. 2(3); ACHPR, “276/03 Center for Minority Rights Development (Kenya and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya,” May 2009, paras. 278, 279, and 283; Arjun Sengupta, “The Right to Development as a Human Right,” Francois-Xavier Bagnoud Centre Working Paper No. 8, (2000), p. 8, available at http://www.hsph.harvard.edu/fixcenter/working_papers.htm 2000; Antoanella-Iulia

Motoc and the Tebtebba Foundation, Preliminary working paper on the principle of free, prior, and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that they would serve as a framework for the drafting of a legal commentary by the Working Group on this concept. U.N. Doc. E/CN.4/Sub.2/AC.4/2004/4 (2004), para. 14(a).

[xlv] See, for example, Human Rights Watch, “*How Can We Survive Here*”: *The Impact of Mining on Human Rights in Karamoja, Uganda*, February 2014 https://www.hrw.org/sites/default/files/reports/uganda0214_ForUpload.pdf, pp. 96-99.

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