

HUMAN RIGHTS AND THE ENVIRONMENT: WATER POLLUTION, WATER SCARCITY AND FLOODS

SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON ENVIRONMENT AND HUMAN RIGHTS

13 NOVEMBER 2020

Amnesty International presents its submission in response to the call for contributions issued by the United Nations (UN) Special Rapporteur on environment and human rights ahead of his upcoming report on human rights, the environment and associated obligations related to water pollution, water scarcity and floods. It focusses on the three key questions.¹

1. Please provide examples of ways in which water pollution, water scarcity and floods are having adverse impacts on human rights.

Amnesty International South Africa is conducting joint research into the human rights impacts of mining on rural communities. According to the WWF, South Africa is the 30th driest country in the world.² Due to South Africa's generally arid to semi-arid climate, less than 9% of annual rainfall ends up in rivers, and only about 5% recharges groundwater in aquifers.³ This puts parts of the Western and Southwest region of the country at risk of severe drought. Owing largely to the poor conditions of waste-water treatment facilities, excessive amounts of raw sewage is contaminating water sources and severely affecting the quality of water.⁴ Flooding frequently occurs in Southern and Eastern parts of the country which often results in fatalities. In 2019, floods and mudslides in Kwazulu-Natal province resulted in over 70 people losing their lives and over 1000 people being displaced.⁵ In rural communities, floods often destroy informal housing which are never replaced or compensated for.

Amnesty International has documented the human rights impacts of water pollution related to mining activities in a number of countries. The following are some examples of Amnesty's findings.

On 17 April 2020, Amnesty International published a public statement urging the authorities in the Central African Republic (CAR) to suspend operations of four gold mining companies near Bozoum and to launch as a matter of urgency an independent investigation into the human rights and environmental impacts that these companies may have had.⁶

¹ <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/EnvironmentWater.aspx>

² See https://www.wwf.org.za/our_work/water/

³ South Africa Department of Environmental Affairs, Climate Change and the Water Sector, <https://www.sanbi.org/sites/default/files/documents/documents/ltas-factsheetclimate-change-and-water-sector2013.pdf>

⁴ Edokpayi, J. N. (2017, January 18). Impact of Wastewater on Surface Water Quality in Developing Countries: A Case Study of South Africa. *IntechOpen*. / <https://www.intechopen.com/books/water-quality/impact-of-wastewater-on-surface-water-quality-in-developing-countries-a-case-study-of-south-africa>

⁵ BBC, South Africa floods: death toll after Durban rains raises to 60, 24 April 2019, <https://www.bbc.com/news/world-africa-48036252>

⁶ Amnesty International, *Central African Republic: Urgent Need for Government to Suspend Gold Mining in Bozoum* (Index: AFR19/2031/2020), <https://www.amnesty.org/download/Documents/AFR1920312020ENGLISH.PDF>

Amnesty's analysis of three official reports published in 2019, as well as of recent satellite imagery, photographs and videos, revealed that the four gold mines have caused profound changes to the Ouham River, upon which several thousand people rely for drinking water and for fishing and farming.

Amnesty International identified the following allegations which the government must independently investigate:

- Risks to human rights due to diverting and excavating the river
- Risks to the right to health due to mercury contamination
- Risks to the rights to livelihood and water due to communities' reliance on river with turbidity and pollution

In late April 2020, the four mining companies that were operating in Bozoum left the area. However, according to media reports, confirmed by Amnesty's local contact, seven people died in river at the abandoned mining sites along the Ouham River over a seven-day period.⁷ These deaths may have been caused by the condition in which the river was left after the mining companies abandoned the sites and increased the need for an independent investigation into the allegations raised by Amnesty International, as well as the need to hold the perpetrators to account and ensure effective remedy for the harm they caused.

Amnesty International South Africa is currently conducting a joint research project with rural mining communities that looks at the human rights impacts of mining on such communities. Issues include the impact of mining on the availability and quality of water in mining communities due to acid mine drainage, contaminant leaching and the appropriation of water sources.⁸ Without access to clean water, communities are unable to farm for both sustenance and profit which leads to starvation and unemployment. Additionally, given the lack of access to healthcare facilities, drinking contaminated water can often be fatal. As a result of the water in rivers not being safe to drink, communities have to spend a significant part of their income on buying water or have to travel significant distances to collect clean water from other areas.⁹

Over the past six years, Amnesty International has monitored the impact and aftermath of a toxic mining disaster in Canada.¹⁰ The 2014 Mount Polley copper mine tailings breach in British Columbia released 25 million cubic meters of mine waste-water and slurry into surrounding creeks and lakes, affecting fish habitat and raising fears about the long-term impacts on wild salmon stocks which are a vital resource for Indigenous and non-Indigenous peoples in British Columbia. In 2017, the former Provincial government approved a permit that allows the company to discharge filtered but otherwise untreated mine waste into the western basin of Quesnel Lake, further compounding pollution in the lake. The organization Concerned Citizens of Quesnel Lake has launched an appeal to the BC government of the company's discharge permit and is awaiting a hearing date.¹¹ Communities and Indigenous peoples harmed by the Mount Polley mine disaster continue to raise concerns about the impact of the breach on wild salmon stocks, clean water, food security for those who rely on local waterways and forests, socio-economic impacts and health impacts.¹² In September 2017, the UN Committee for the Elimination of Racial Discrimination called on Canada to provide remedy and reparations for Indigenous peoples harmed by the disaster.¹³ In June 2018, the UN Working Group on Business and Human Rights called on

⁷ Amnesty International, Central African Republic: Chinese Mining Companies have moved on but need For Investigation, Accountability, and Remedy Remain, (Index: AFR 19/2708/2020), <https://www.amnesty.org/download/Documents/AFR1927082020ENGLISH.PDF>

⁸ Safewater, Mining and Water Pollution, Factsheet, <https://www.safewater.org/fact-sheets-1/2017/1/23/miningandwaterpollution>

⁹ Caroline Sweetman & Louise Medland (2017) Introduction: gender and water, sanitation and hygiene, *Gender & Development*, 25:2, 153-166, DOI: 10.1080/13552074.2017.1349867

¹⁰ Amnesty International Canada, A Breach of Human Rights: The Human Rights Impact of the Mount Polley Mine Disaster, 2017, https://www.amnesty.ca/sites/amnesty/files/FINAL_May%2024_Mount%20Polley%20briefing.pdf

¹¹ Concerned Citizens of Quesnel Lake, Technical Memorandum: Review of Mount Polley Monitoring Data EMA permit 11678, https://7162651a-32d3-418b-93ad-614527488a6a.filesusr.com/ugd/0a5bd8_7a64df74203a4c869b78866492220069.pdf

¹² Hamilton, A. K., Laval, B. E., Petticrew, E. L., Albers, S. J., Allchin, M., Baldwin, S. A., Carmack, E. C., Déry, S. J., French, T. D., Granger, B., Graves, K. E., Owens, P. N., Selbie, D. T., Vagle, S. (2020). Seasonal turbidity linked to physical dynamics in a deep lake following the catastrophic 2014 Mount Polley mine tailings spill. *Water Resources Research*, 56, e2019WR025790 <https://doi.org/10.1029/2019WR025790>

¹³ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada; 31 July-25 August, 2017; Articles 19, 20, 40

Canada to hold those individuals responsible for the disaster to account.¹⁴ In December, 2019, the UN CERD expressed its dissatisfaction with Canada's response to its 2017 recommendations and called on Canada to assess and publicly report on the health impacts of the disaster on Indigenous peoples and publish the results of its criminal investigation.¹⁵

In the fall of 2017, the United States and Canadian sections of Amnesty International began to examine the human rights impact of the proposed NorthMet copper mine in northeastern Minnesota in the United States. The proposed mine operator is the Canadian company, PolyMet. Amnesty International has documented concerns about the effects the proposed NorthMet Mine could have on the way of life, economic and cultural traditions of the Indigenous peoples living downstream from the proposed mining site. Given the toxic nature of sulfide and the sensitivity of fish and wild rice to water quality, the presence of a copper sulfide mine upstream from Fond du Lac could create a significant threat to wild rice, fish, and other culturally significant aquatic resources.¹⁶ Amnesty wrote to PolyMet in July and November in 2018 with inquiries about the company's human rights due diligence practices and human rights risk assessment of the NorthMet project. The focuses of the inquiries included the right to health, Indigenous Peoples' rights, environmental harm and the right to a remedy. To date, we have not yet received a substantive response.

2. How has climate change exacerbated water-related problems?

In South Africa, community members in the Mpumalanga region explained to Amnesty International South Africa that in the 1980s they would have consistent seasonal rainfall whereas now they barely receive rain and it is unpredictable.

Climate change has also had the following impacts on the rights to water, health and healthy environment in South Africa:

- Less available water for consumption and use due to increasing water temperatures, lessened rainfall and drought. Following its driest three consecutive wet seasons, Cape Town suffered a 3-year long drought from 2015 to 2018 and only narrowly managed to avoid 'day zero' which would have seen the city run out of water.
- Increased air and water temperatures leads to an increase in the incubation and transmission of water-borne diseases. For example, the transmission of cholera is linked to rainfall and temperature and is likely to be affected by climate change induced changes in rainfall and temperature regimes. Non-climatic factors such as water insecurity, lack of proper sanitation and population density also influence cholera transmission.¹⁷
- Increased fish mortality due to reduced oxygen concentrations in aquatic environments and mortality of temperature-sensitive fish species.¹⁸
- Poor water quality due to increased salt concentrations in dams, wetlands and soil/plant systems from enhanced evaporation rates.
- Human health and ecosystem impacts, associated with increased rainfall intensities, flash floods and regional flooding including overflowing sewers due to sewage pipes blocked with washed-off debris, damage to sewerage infrastructure resulting in raw sewage discharges into rivers, scouring and erosion of urban streams, increased sediment and pollutant overflow and damage to low lying water and wastewater treatment works disrupting drinking water supplies.¹⁹

3. To protect a wide range of human rights, what are the specific obligations of States and responsibilities of businesses in terms of addressing water pollution, water scarcity and floods?

¹⁴ United Nations Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada; Article 61, p.15; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/116/38/PDF/G1811638.pdf?OpenElement>

¹⁵ Follow-up letter sent to State party: Canada, 13 December 2019, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_FUL_CAN_40898_E.pdf

¹⁶ A. Fletcher and Z. Christian, The Value of Nature's Benefits in the St. Louis River Watershed, Earth Economics (June 2015), 5

¹⁷ Department of Environmental Affairs, & D.E.A.D.W.A.G.I.Z.S.A.N.B.I. (2013). LTAS PROGRAMME TECH REPORT: CLIMATE CHANGE IMPLICATIONS FOR THE WATER SECTOR IN SOUTH AFRICA. Department of Environmental Affairs, <https://www.sanbi.org/wp-content/uploads/2018/04/ltaswater-tech-report2013high-res.pdf>

¹⁸ Department of Environmental Affairs, & D.E.A.D.W.A.G.I.Z.S.A.N.B.I. (2013). LTAS PROGRAMME TECH REPORT: CLIMATE CHANGE IMPLICATIONS FOR THE WATER SECTOR IN SOUTH AFRICA. Department of Environmental Affairs

¹⁹ Department of Environmental Affairs, & D.E.A.D.W.A.G.I.Z.S.A.N.B.I. (2013). LTAS PROGRAMME TECH REPORT: CLIMATE CHANGE IMPLICATIONS FOR THE WATER SECTOR IN SOUTH AFRICA. Department of Environmental Affairs. <https://www.sanbi.org/wp-content/uploads/2018/04/ltaswater-tech-report2013high-res.pdf>

In addition to the relevant human rights treaties that elaborate respective state obligations, in relation to the above-mentioned case in the Central African Republic:

- Article 7.2 of the Minamata Convention on Mercury, which the Central African Republic has signed but not yet ratified,²⁰ states: “Each Party that has artisanal and small-scale gold mining and processing subject to this Article within its territory shall take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the emissions and release.”²¹
- In 2015, the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCC MC) published guidelines for Chinese companies to follow in order to source minerals responsibly.²² This was based on principles established by the UN Guiding Principles and was in line with similar guidance issued by the OECD.²³ The guidelines specifically warned of risks linked to gold mining²⁴ as well as the environmental impact of mercury, which it lists as a “Type 2” risk, indicating risks associated with serious misconduct in environmental, social and ethical issues”.²⁵

On South Africa:

- Constitution of the Republic of South Africa, Chapter 2, Section 24: “Everyone has a right to an environment that is not harmful to their health or well-being” and section 27 (1)(b): “Everyone has the right to have access to sufficient food and water”
- Water Services Act 108 of 1997: “Everyone has the right to access basic water supply and sanitation services; Every water services institution must take steps to realise these rights; Every water services authority must, in its water services development plan, provide for measures to realise these rights”.²⁶
- National Water Act, 1998: “National government must manage water resources through various water boards; Municipalities are responsible for the delivery of water and sanitation services and must draw up plans for delivery, including informal communities”.²⁷
- Water Services Regulations RG7079 vol 432 8 June 2001: No consumer can be without water for more than 7 days per year, at a flow rate of not less than 10 litres per minute within 200 metres of a stand”.²⁸

²⁰ UN Environment Program, Status of Signature, and ratification, acceptance, approval or accession, <http://www.mercuryconvention.org/Countries/Parties/tabid/3428/language/en-US/Default.aspx>

²¹ Minamata Convention on Mercury: Text and Annexes, 17 September 2017, <http://www.mercuryconvention.org/Portals/11/documents/Booklets/COP1%20version/Minamata-Convention-booklet-eng-full.pdf>

²² CCCMC, Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, 2015, <https://mneguidelines.oecd.org/chinese-due-diligence-guidelines-for-responsible-mineral-supply-chains.htm>

²³ OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, 3d edition, 2016, www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf

²⁴ CCCMC, Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, 2015, p. 10

²⁵ CCCMC, Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, 2015, p. 20

²⁶ https://www.gov.za/sites/default/files/gcis_document/201409/a108-97.pdf

²⁷ http://www.energy.gov.za/files/policies/act_nationalwater36of1998.pdf

²⁸ https://www.gov.za/sites/default/files/gcis_document/201409/223550.pdf