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November 28, 2022

Re: Allegation Letter to United Nations (“UN”) Special Rapporteurs Concerning Urgent Circumstances of 19 Liberian Environmental and Indigenous Defenders

Submitted to:

- UN Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, *David R. Boyd*
- UN Special Rapporteur on the Rights of Indigenous Peoples, *José Francisco Cali Tzay*
- UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Alice Jill Edwards*
- UN Special Rapporteur on the Situation of Human Rights Defenders, *Mary Lawlor*
- UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Fionnuala Ní Aoláin*
- UN Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes (Toxics and Human Rights), *Marcos A. Orellana*
- UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, *Nyaletsossi Clément N. Voule*
- UN Working Group on Business and Human Rights (UN Working Group) Chairperson, *Fernanda Hopenhaym*

Dear Special Rapporteurs Boyd, Cali Tzay, Edwards, Lawlor, Ni Aoiláin, Orellana, Voule, and UN Working Group Chairperson Hopenhaym:

We respectfully submit this general allegation letter concerning the urgent situation of 19 Liberian environmental and Indigenous defenders who continue to be arbitrarily detained by the Liberian government in retaliation for their opposition to the unlawful activities of MNG Gold. The following allegation letter documents these violations based upon a careful review of available court records and interviews with the detained defenders.

As detailed below, MNG Gold, a Turkish company that is a subsidiary of Avesoro Holdings Ltd,¹ has avoided accountability for its egregious behavior in the Indigenous and environmental human rights defenders' community of Bong County, including a massive toxic spill in 2016. Community demands for accountability were unmet, and in November 2018, protests erupted after a company contractor killed four people in a motor accident. The Liberian government responded with mass arrests of 73 people, 24 of whom were tried and convicted *en masse*. The trial was riddled with irregularities, including the refusal of the trial judge to permit individual defendants to present alibi witnesses. The 24 defenders were sentenced to ten years' confinement. Five were released on medical grounds, two of whom died shortly after their release. Two others are gravely ill but have not received appropriate medical care. All 19 living defenders proclaim their innocence.

We submit this general allegation letter to you jointly because it raises urgent and intersecting questions relevant to your respective mandates concerning the criminalization of environmental and Indigenous defenders who are courageously acting in the face of corporate corruption at the intersection of business, the environment, and human rights. We respectfully urge your collective action to intervene to investigate the arbitrary detention of the Liberian defenders and to urge the Liberian government to take immediate action to provide appropriate remedies to the defenders as well as to the Kokoya community due to actions by MNG Gold.

We stand ready to provide any assistance needed to proceed and greatly appreciate your time and attention.

Most respectfully,

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¹ See *Avesoro Holdings: An Emerging Gold Producer and Developer*, AVESORO HOLDINGS, <https://avesoroholdings.com/homepage/> (last visited Oct. 25, 2022).

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I. Summary

Since November 2018, the Liberian State has arbitrarily detained 19 Indigenous and environmental human rights defenders (“the defenders”) and other members of the community in violation of its commitments under international law. The Liberian National Police arrested the defenders and other community members for daring to speak out against the destruction of their ancestral lands and repeated violations by a foreign gold mining company of their rights to health and a healthy environment. Their case is emblematic of systemic State oppression of defenders who protest impunity for human rights violations and corporate corruption in extractive industries. This pattern of abuse can be seen not just in Liberia, but across the world.²

In September 2017, MNG Gold Mining Ltd. (“MNG Gold”), a Turkish mining company and concession-holder, spilled three million gallons of toxic chemicals, including cyanide, mercury, and lead in Bong County in Western Liberia.³ The spill had devastating health and environmental consequences for the Kokoya community, a group made up of primarily Kpelle and Bassa Indigenous peoples.⁴ MNG Gold, however, faced no accountability, besides the payment of a paltry settlement. The community was left to grapple with the destruction of their lands and contamination of their drinking water without adequate compensation or cleanup. The spill—and resulting impunity—followed a 2016 incident, in which one of MNG Gold’s trucks fell in another town, spilling chemicals and causing three people to become ill.⁵ In the aftermath of these incidents, community members tried to peacefully demonstrate against MNG Gold’s systemic infliction of harm and the lack of accountability.

The plight of the Kokoya community is not uncommon in Liberia; both before and after the civil war, the Liberian government has granted numerous mining concessions to foreign corporations to bring in capital and economic development. Many of these concessions displaced Indigenous communities and deprived them of land and natural resources that are intrinsic to their sustenance and livelihoods. In addition, mass mining activities by these companies have had severe environmental impacts. Addressing these issues is particularly challenging because of the endemic corruption and lack of transparency in Liberia’s extractive industries.

On November 5, 2018, a Chinese contractor for MNG Gold crashed with a motorcyclist, killing the driver, the passenger, and two bystanders. The incident propelled members of the community, who were already outraged by MNG Gold’s lack of accountability for the toxic spill, to peacefully protest at the MNG Gold site, demanding an immediate investigation into the deaths caused by the local contractor. The protests resulted in some property damage to the MNG Gold offices.

The Liberian National Police (“LNP”) responded with disproportionate force to suppress the protest. Both during and after the protest, they arrested, tortured, and charged 73 people, many

² See *infra* Part III.

³ MNG Report to the Senate from the Director-General of the National Bureau of Concessions, Annex C, at 1.

⁴ Selma Lomax, *MNG US\$450k Ransom Fund for Chemical Spillage Draws Controversy in Bong*, FRONT PAGE AFR. (Dec. 16, 2021), <https://frontpageafricaonline.com/county-news/mng-us450k-ransom-fund-for-chemical-spillage-draws-controversy-in-bong/>.

⁵ *Liberia — Bong Residents Suffering Aftermath of MNG Gold Cyanide Spillage*, FRONT PAGE AFR. (July 12, 2018), <https://allafrica.com/stories/201807120380.html>.

of whom were not in the immediate vicinity and had not participated in the protests, let alone in the destruction of MNG Gold property. The State then indicted 83 individuals and prosecuted 44 more for an extensive list of vaguely defined but serious crimes including armed robbery, arson, and “terroristic activity.” Such crimes are often used to criminalize defenders at risk.⁶

The prosecutions of the 44 defenders and other members of the community were fraught with procedural and evidentiary irregularities, which broadly violated the right to be free from arbitrary arrest and detention and the right to a fair trial. In November 2020, 24 of the 44 individuals were found guilty and sentenced to ten years in prison with five years’ probation. Two defenders died shortly after being released from prison on medical grounds. There is no medical information regarding the causes of their deaths. Three other defenders have been released on medical grounds. Two more defenders are currently critically ill, and the State is denying them urgent lifesaving medical care.

Through broad charges of terrorism and other grave offenses, the State has both silenced the defenders who spoke out against MNG Gold’s harm to the community and deterred others from doing the same in the future. The State is thus preventing affected communities from holding corporate and State actors accountable for violations of their rights.

In addition to their arbitrary and violent detention, Liberia has robbed these defenders of their dignity, with the prosecution, judge, and media vilifying them as terrorists, looters, arsonists, and criminals. The State has falsely depicted MNG Gold as the victim, while the company continues to harm the environment and community with impunity. To date, no one at MNG Gold or its foreign contractor has been held accountable for the four deaths that resulted from the accident involving the MNG Gold vehicle and expatriate staff.

Accordingly, we respectfully request that the Special Rapporteurs intervene and urge Liberia to release the detained defenders and provide further information to clarify its actions surrounding these events. Such an intervention would provide invaluable assistance and hope to the affected individuals in Bong County, Liberia. Moreover, the Special Rapporteurs would send a powerful message to Liberia and other States that international human rights law does not permit them to arbitrarily detain, systematically torture, and criminalize Indigenous and environmental defenders in order to shield a powerful foreign company from accountability for harms they inflict upon local communities.

II. The Special Rapporteurs and UN Working Group should prioritize the case of these Liberian defenders, which exemplifies concerning regional trends

a. This case is of critical importance to the mandates of the Special Rapporteurs and UN Working Group

⁶ Clément Nyaletsossi Voule, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association: Exercise of the Rights to Freedom of Peaceful Assembly and of Association as Essential to Advancing Climate Justice, U.N. Doc. A/76/222 (July 23, 2021), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/203/78/PDF/N2120378.pdf?OpenElement>; *see also infra* Part II.

This case touches on many of the intersecting priorities that the Special Rapporteurs and UN Working Group have set within their mandates. As a starting point, this case would provide the Special Rapporteur on Toxics and Human Rights with the opportunity to address the mandate's priority of "adverse consequences for persons and groups in vulnerable situations, including [I]ndigenous peoples."⁷ Similarly, this case would allow the Special Rapporteur on Indigenous Peoples to follow up on the former mandate holder's thematic report on the criminalization of Indigenous defenders.⁸ Since this case reflects the "drastic increase in acts of violence, criminalization[,] and threats to which [I]ndigenous peoples have been subjected in the course of their resistance to major business ventures,"⁹ we urge the Special Rapporteur to send a strong message to the Government of Liberia opposing such practices.

Additionally, these defenders fall under several of the categories that the Special Rapporteur on Human Rights Defenders prioritizes for her mandate: rural, isolated, and marginalized defenders, as well as defenders of the environment, land, and Indigenous peoples' rights in the context of business and human rights.¹⁰ Moreover, this case also fits within the Special Rapporteur's priority of addressing cases where defenders are subject to torture and ill-treatment, as well as long-term detention. The ways in which Liberia has used the tactics of arbitrary arrest, criminalization, and stigmatization to silence these defenders also fits squarely within the patterns of the suppression of the freedom to assemble that Special Rapporteur Voule describes in his report on environmental defenders.¹¹

Intervening in this case would thus provide an important platform for the Special Rapporteurs and Working Group to address issues that are of high priority to their mandates. This would also put Liberia on notice that it cannot get away with misusing its criminal justice system to silence environmental and Indigenous defenders.

b. This case is emblematic of a global and regional trend of corruption and oppression of Indigenous and environmental defenders in the natural resources sector

This case fits into a broader pattern of restrictions on protest and activism of Indigenous and environmental defenders, aimed at silencing communities that speak up against corporate abuses, specifically in the natural resources sector. The Special Rapporteur on Freedom of Assembly and Association reports that a rising global number of (often Indigenous) individuals, communities, and organizations¹² are protesting in support of climate justice, including in the

⁷ *About the Mandate: Special Rapporteur on Toxics and Human Rights*, UN, <https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights/about-mandate> (last visited July 24, 2022).

⁸ Report of the Special Rapporteur on the Rights of Indigenous Peoples, U.N. Doc. A/HRC/39/17 (Aug. 10, 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/246/34/PDF/G1824634.pdf?OpenElement>.

⁹ Voule, *supra* note 6, ¶ 43.

¹⁰ *Mary's Priorities*, UN SPECIAL RAPPORTEUR ON HUM. RTS. DEF., <https://srdefenders.org/the-mandate/the-special-rapporteur/priorities-of-the-current-mandate-holder/> (last visited July 24, 2022).

¹¹ Voule, *supra* note 6.

¹² There have been advocacy efforts by international non-governmental organizations working on environmental defenders as an indicator of its importance. *See, e.g.*, EARTH RTS. INT'L, *Resources for Defenders*, <https://earthrights.org/trainings-and-networks/resources-for-defenders/> (last visited Oct. 31, 2022); GREENPEACE INT'L, *About Us*, <https://www.greenpeace.org/international/explore/about/about-us/> (last visited Oct. 31, 2022); EXTINCTION REBELLION, *About Us*, <https://rebellion.global/about-us/>; NAT. RES. DEF. COUNCIL, *About Us*, <https://www.nrdc.org/about> (last visited Oct. 31, 2022).

natural resources sector.¹³ Such environmental defenders have been increasingly under attack, with pushback often led or influenced by powerful corporations in extractive industries.¹⁴ These attacks typically include: (1) excessive use of force,¹⁵ including physical attacks, killings and harassment;¹⁶ (2) criminalization and judicial harassment;¹⁷ and (3) vilification, smear campaigns,¹⁸ and disinformation.¹⁹ The Special Rapporteur on Human Rights Defenders equally acknowledges a pattern in which (again, often Indigenous) protesters defending environmental issues in the area of natural resources are particularly vulnerable and increasingly subject to arrest, detention, threats, and killings.²⁰ These actions are not just harmful to individual victims but are also aimed at and result in a dangerous chilling effect throughout the entire affected community. They are intentionally designed to silence and discourage current and future Indigenous and environmental defenders, deterring them from speaking up against harm caused by corporations operating in their community.²¹

This trend is particularly concerning in Africa. Non-governmental organizations in the region are increasingly focused on environmental advocacy and protection of environmental defenders,²²

¹³ Voule, *supra* note 6, ¶¶ 9-13.

¹⁴ *Id.* ¶ 18.

¹⁵ See Ainhoa Montoya & Rupert Knox, *Arbitrary Justice: The Fate of Environmental Defenders in Honduras*, NACLA (Sept. 1, 2021), <https://nacla.org/guapinol-environmental-defenders-honduras>; *Iran: Deadly Response to Water Protests*, HUM. RTS. WATCH (July 22, 2021), <https://www.hrw.org/news/2021/07/22/iran-deadly-response-water-protests>.

¹⁶ Voule, *supra* note 6, ¶¶ 20-21; see Max Binks Collier, *Evicting Lote Ocho*, THE INTERCEPT (Sept. 26, 2022), <https://theintercept.com/2020/09/26/hudbay-skye-canada-mining-guatemala/>.

¹⁷ Voule, *supra* note 6, ¶ 29; see, e.g., Emma Farge, *Activists Take Credit Suisse Climate Case to Europe Human Rights Court*, REUTERS (Nov. 8, 2021), <https://www.reuters.com/business/cop/activists-take-credit-suisse-climate-case-europe-human-rights-court-2021-11-05/>; Ainhoa Montoya & Rupert Knox, *Arbitrary Justice: The Fate of Environmental Defenders in Honduras*, NACLA (Sept. 1, 2021), <https://nacla.org/guapinol-environmental-defenders-honduras>; *Iran: Deadly Response to Water Protests*, *supra* note 15; *White Hat v. Landry*, 475 F.Supp.3d 532 (M.D. La. 2020).

¹⁸ These campaigns are supported by a broad set of actors, including high-ranking government officials and they can often be traced to powerful special interest groups, including fossil fuel companies, extractive industries, and others that exert pressure on governments. See, e.g., *Iran: Deadly Response to Water Protests*, *supra* note 15.

¹⁹ Voule, *supra* note 6, ¶ 22.

²⁰ Hina Jilani, Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council: Report Submitted by the Special Representative of the Secretary-General on Human Rights Defenders,” U.N. Doc. A/HRC/4/37 ¶ 41 (Jan. 24, 2007); Addendum to Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, U.N. Doc. A/HRC/4/37/Add.2 ¶ 23 (Dec. 19, 2006); see also Special Rapporteur on Hum. Rts. Defs., *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, at 79-80, <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf> [hereinafter *Commentary on DHRD*].

²¹ Voule, *supra* note 6, ¶¶ 20-21, 24; see, e.g., *White Hat*, 475 F.Supp.3d (noting that the legislation appears intentionally designed to discourage individuals from attending peaceful protests near pipelines).

²² See, e.g., *Climate Change*, THE GREEN BELT MOVEMENT, <http://www.greenbeltmovement.org/node/696> (last visited Oct. 31, 2022); *About Us*, ENV’T LIAISON CTR. INT’L, <https://www.elci.org> (last visited Oct. 31, 2022); *About AYICC*, AFR. YOUTH INITIATIVE ON CLIMATE CHANGE, <https://ayicc.org/> (last visited Oct. 31, 2022); *About Green Africa Foundation*, GREEN AFR. FOUND., http://www.greenafricafoundation.org/about_us/ (last visited Oct. 31, 2022); *About HOME*, HEALTH OF MOTHER EARTH FOUND., <https://homef.org/> (last visited Oct. 31, 2022); *About Us*, INT’L CTR. FOR ENV’T EDUC. & CMTY. DEV., <https://www.icenecdev.org/about.php> (last visited Oct. 31,

and cases of criminalization of peaceful protests and arbitrary detention of environmental defenders have reached African courts.²³ For African cases, however, it is often difficult to access specific court files to establish broader patterns. The case presented in this letter provides a unique opportunity to investigate a clear and well-documented case of oppression of Indigenous and environmental defenders in Africa.

The case also fits squarely into the global and regional pattern of corruption and collusion between the State and corporations in the oppression of Indigenous and environmental defenders. State agents, such as the police and military,²⁴ and State tools, such as legislation,²⁵ are increasingly being used at the service of private corporations managing natural resources with an aim to oppress Indigenous and environmental defenders.

III. Liberia criminalized defenders in Bong County, Liberia to protect the interests of a foreign mining company that spilled toxic substances in the community

a. This case reflects historical patterns of exploitation of Indigenous communities in Liberia and systemic corruption in favor of foreign investors

Liberia's origins can be traced back to the early 1800s when the American Colonization Society ("ACS") was founded to "deal with" the problem of a growing number of free Black people in the United States. The ACS and several other colonization societies resettled free Black Americans in Sierra Leone and Liberia ("Americo-Liberians").²⁶ From the time of this resettlement, however, the lives of local tribes living in the area were severely disrupted.²⁷ Americo-Liberians declared independence from the ACS in 1847, creating the independent State of Liberia²⁸ Throughout this period, the Americo-Liberians in power discriminated against Indigenous communities, who were denied full and effective participation in social, civic, and political life.²⁹

2022); *About Us*, DEFS. COAL., <https://defenderscoalition.org/> (last visited Oct. 31, 2022); *Climate Change and Environment Government*, CTR. FOR JUST. GOVERNANCE & ENV'T ACTION, <https://www.centerforjgea.com/index.php> (last visited Oct. 31, 2022).

²³ See, e.g., *Arbitrary Arrest and Detention of Human Rights Defender Maxwell Atuhura*, FRONT LINE DEFS. (June 1, 2021), <https://www.frontlinedefenders.org/en/case/arbitrary-arrest-and-detention-human-rights-defender-maxwell-atuhura>; *Judicial Harassment of Land Rights Defender Bob Micheni Njagi*, FRONT LINE DEFS. (Oct. 8, 2021), <https://www.frontlinedefenders.org/en/case/judicial-harassment-land-rights-defender-bob-micheni-njagi>.

²⁴ See, e.g., Collier, *supra* note 16 (describing violence by private security forces, but also police and military hired by companies).

²⁵ See *White Hat*, 475 F.Supp.3d (A Louisiana law defined pipelines as "critical infrastructure" protected from unauthorized entry under influence of a private oil and gas trade association, which enabled the criminalization of environmentalists protesting at pipeline sites, creating a chilling effect.).

²⁶ U.S. DEP'T OF STATE, OFF. OF THE HISTORIAN, *Founding of Liberia*, <https://history.state.gov/milestones/1830-1860/liberia#:~:text=In%201816%2C%20a%20group%20of,the%20world%20at%20that%20time>; Library of Congress, *History of Liberia: A Time Line*, <https://www.loc.gov/collections/maps-of-liberia-1830-to-1870/articles-and-essays/history-of-liberia/1820-to-1847/>.

²⁷ U.S. DEP'T OF STATE, OFF. OF THE HISTORIAN, *supra* note 26.

²⁸ *Settlement of Liberia and Americo-Liberian Rule*, PEACEBUILDING DATA, <http://www.peacebuildingdata.org/research/liberia/about-liberia/americo-liberian-rule>.

²⁹ U.S. DEP'T OF STATE, OFF. OF THE HISTORIAN, *supra* note 26.

Since Liberia became an independent republic, land has played a vital role in the economy, particularly among those who live and work in the natural resources sector, including mining and rubber.³⁰ During their rule, Americo-Liberians established settlements for themselves and for concessionaires and other settlers by forcefully acquiring Indigenous lands.³¹ A report by the non-governmental organization Rights and Resources Initiative notes that “customary tenure regimes that had previously been guided by Indigenous communities’ land governance were severely affected by the new Americo-Liberian government’s control of land.”³² In 1956, the Public Lands Law granted State ownership to customary lands, allowing agriculture and mining companies to take over those lands, exacerbating tensions between rural, Indigenous communities and the Liberian government.³³ Over the next fifty years, these tensions contributed to several periods of civil unrest and intense conflict.

Liberia placed renewed emphasis on concessions in crafting a strategy to recover from the devastating fourteen-year civil war that ended in 2003.³⁴ In 2008, President Ellen Johnson Sirleaf initiated a national Poverty Reduction Strategy, which focused on increasing foreign direct investment in order to address critical public needs, including funding shortages, unemployment, and lack of public infrastructure.³⁵ Since then, Liberia has signed natural resource concessions agreements with many foreign investors.³⁶ The United States Agency for International Development estimated that over 50% of Liberia’s land had been conceded to foreign investors as of 2013.³⁷ The Rights and Resources Initiative placed that estimate closer to 75%.³⁸

Today, the mining sector specifically is a key growth sector within the Liberian economy, attracting billions of dollars in foreign investment.³⁹ This reliance is rooted in a rich mineral resource base, primarily consisting of iron ore, gold, and diamonds, which historically resulted in the mining sector contributing a large share of exports and government export revenues before the conflict.⁴⁰ In order to recover from the impacts of the war, among other measures, Liberia adopted

³⁰ *Community Land Rights in Liberia: A Summary of 2020 Analyses*, RTS. & RES. INITIATIVE (Nov. 2021), https://rightsandresources.org/wp-content/uploads/Summary-of-2020-RRI-analyses-Liberia_Final-3.pdf.

³¹ *Id.*

³² *Id.* at 3.

³³ See generally Allard K. Lowenstein Int’l Hum. Rts. Clinic at Yale L. Sch., *Governance of Agricultural Concessions in Liberia: An Analysis and Discussion of Possible Reforms* (Mar. 13, 2017) [hereinafter Lowenstein Report]; see also Const. Net, *Renegotiating Rural Land Rights through Constitutional Reform in Liberia* (Oct. 29, 2014), <https://constitutionnet.org/news/renegotiating-rural-land-rights-through-constitutional-reform-liberia>.

³⁴ See *Poverty Reduction Strategy*, REPUBLIC OF LIBERIA (Apr. 2008) [http://siteresources.worldbank.org/INTPRS1/Resources/Liberia-PRSP\(Jul2008\).pdf](http://siteresources.worldbank.org/INTPRS1/Resources/Liberia-PRSP(Jul2008).pdf), at 18.

³⁵ *Id.*

³⁶ Copies of many of Liberia’s concession contracts are available at <http://www.openlandcontracts.org/countries/lr>.

³⁷ Chelsea Keyser, *Good Laws, Weak Implementation*, U.S. AGENCY FOR INT’L DEV. (Nov. 2013), http://pdf.usaid.gov/pdf_docs/PA00M7RK.pdf, at 1.

³⁸ *Who Owns the World’s Land? A Global Baseline of Formally Recognized Indigenous and Community Land Rights*, RTS. & RES. INITIATIVE (Sept. 2015), http://rightsandresources.org/wp-content/uploads/GlobalBaseline_complete_web.pdf, at 18.

³⁹ Kayla Casavant & Earnest Musinamwana, *Leaving A Trace: A Report on the Potential Economic Impacts of Mining in Liberia*, USAID & BUILDING MARKETS, AUSTRALIAN GOV’T DEP’T OF FOREIGN AFFS. & TRADE (July 2014) [hereinafter *Leaving a Trace*].

⁴⁰ *Id.* (stating that since 2006, the mining sector attracted over \$10 billion in foreign direct investment).

an open-door economic policy to attract foreign capital.⁴¹ One of the key objectives of the post-war economic policy was to ensure that concessionary agreements were not drafted to purely benefit the Americo-Liberians, as was the case before the war.⁴² This economic policy, however, is undermined by corruption and influence exerted by foreign corporations over the political, economic, social, and environmental spheres in Liberia—a trend that is observed in parts of Africa and in other parts of the world more generally.⁴³

Liberia has consistently ranked in the bottom quartile of global corruption indices.⁴⁴ Tackling corruption is considered one of the major challenges in Liberia.⁴⁵ The United States recently imposed sanctions on several high-ranking Liberian government officials in recognition of these officials' contributions to Liberia's "worsening corruption," including the Solicitor General.⁴⁶ The United States sanctioned these individuals under the Global Magnitsky Human Rights Accountability Act, which targets perpetrators of serious human rights abuse and corruption internationally.⁴⁷ Bong County, where the incidents described in this letter occurred, is known for significant corruption.⁴⁸ Of the specific State agents involved in this case, the Liberian police and judiciary are considered especially prone to corruption.⁴⁹ A study carried out by Human Rights Watch in 2012-2013, based on interviews with victims of police corruption, noted that police extortion takes place throughout the entire law enforcement process from the preliminary stages of an investigation to release from police detention.⁵⁰ Reports also indicate that the judiciary faces

⁴¹ Bronwen Everill, *When the Rubber Hits the Road*, FOREIGN POLICY (Nov. 6, 2021), <https://foreignpolicy.com/2021/11/06/liberia-firestone-rubber-capital-us-war-review-gregg-mitman/>. This policy included a Poverty Reduction Strategy, the goal of which was to open up the country to foreign direct investment; the Poverty Reduction Strategy took place under three phases: 2006-08; 2008-11 and 2012-18. The Poverty Reduction Strategy focused on (1) expanding small-holder agricultural production; and (2) revitalizing the natural resources sector to generate income and increase employment opportunities. See Agnieszka Paczynska, *Liberia Rising? Foreign Direct Investment, Persistent Inequalities and Political Tensions*, PEACEBUILDING (2016), at 7.

⁴² See Paczynska, *supra* note 41, at 7 (citing the government's agreement with Firestone Rubber as an example).

⁴³ See *supra* Part II.

⁴⁴ *Corruption Perceptions Index*, TRANSPARENCY INT'L (2021), <https://www.transparency.org/en/cpi/2021/index/lbr> (Corruption Perceptions Index: 29/100 (where 0 is highly corrupt and 100 is very clean) on the Corruption Perception Index, ranked 136/180 countries); *Rule of Law Index*, WORLD JUST. PROJECT (2019) (noting that Liberia obtained a low score on "absence of corruption").

⁴⁵ Gerald D. Yeakula, Anderson D. Miamen & Randall M. Makor, *State Of Corruption Report (Score) 202: Key Developments Plus Citizens' Views and Experiences of Corruption*, CENTAL & TRANSPARENCY INT'L (Sept. 2021), <https://www.cental.org.lr/index.php/documents/reports/state-of-corruption-report>, at 31 [hereinafter *State of Corruption Report*]; see Jim Wright, *Calls for Robust Fight Against Corruption in Liberia*, <https://www.usaid.gov/liberia/speeches/usaidliberia-mission-director-jim-wright-anti-corruption-day-calls-robust>. (Liberia is a signatory to the Economic Community of West African States Protocol on the Fight against Corruption, the African Union Convention on Preventing and Combatting Corruption and the UN Convention against Corruption).

⁴⁶ Ned Price, *Press Statement: Imposing Sanctions on Senior Liberian Government Officials*, U.S. DEP'T OF STATE (Aug. 15, 2022), <https://www.state.gov/imposing-sanctions-on-senior-liberian-government-officials/>.

⁴⁷ *Id.*

⁴⁸ *State of Corruption Report*, *supra* note 45, at 12.

⁴⁹ *Id.* at 24 (noting that according to the Afrobarometer in 2018, only 6% of Liberians think "none" of those in the police are corrupt); see Krista Lee-Jones, *Liberia: Overview of Corruption and Anti-Corruption*, U4 & TRANSPARENCY (Sept. 7, 2019), <https://www.u4.no/publications/liberia-overview-of-corruption-and-anti-corruption>, at 6 (overview on Liberian police corruption).

⁵⁰ "No Money, No Justice": *Police Corruption, Abuse and Injustice in Liberia*, HUM. RTS. WATCH (Aug. 22, 2013), <https://www.hrw.org/report/2013/08/22/no-money-no-justice/police-corruption-and-abuse-liberia>.

similar problems of corruption.⁵¹ Although formally independent, the Liberian judiciary is subject to undue influence from both the private sector and the government,⁵² and it is reportedly common for judges to accept bribes.⁵³ As will be described below, the central case in this letter is emblematic of the systemic issues in both law enforcement and the judicial process.

More specifically, corruption has become a prevalent problem in the natural resources sector, particularly in large-scale agriculture and mining. The corruption and lack of due diligence are linked to Liberia's economic dependency on foreign capital and result in foreign investors using their powerful position to influence and control corrupt State infrastructure, leading to corporate State capture. Among other measures, Liberia adopted an open-door economic policy of large land concessions, tax breaks, low wages, and low regulation, to attract foreign capital.⁵⁴ Many concession agreements are also often negotiated outside formal legal processes.⁵⁵ For instance, the law requires the government to release bids for concessions and then evaluate them based on proposals, but many bids have never been announced.⁵⁶ A report by the Center for Transparency and Accountability in Liberia, part of Transparency International's Mining for Sustainable Development Program, observes that collusion, extortion, facilitation payments/bribery, and abuse of power are key vulnerabilities in the mining sector.⁵⁷ Due diligence in the review of concession applications is also weak and ineffective.⁵⁸ Consequently, corporate corruption of the State infrastructure by mining companies happens at the expense of local community rights, specifically for marginalized Indigenous groups.⁵⁹

The context of corruption and exploitation in the agricultural and mining industries has had severe consequences for local communities. For instance, concession holders, although obliged to provide basic services and benefits (education, medical care, housing) to their employees, often

⁵¹ See Lee-Jones, *supra* note 49, at 6-7; *Rule of Law Index*, WORLD JUST. PROJECT (2019) (noting that Liberia's civil and criminal justice systems attain a poor score); *Global Competitive Index*, WORLD ECON. FORUM (2017-2018) (noting that Liberia ranks 97/134 countries and scores 3.3 on judicial independence (with a score of 1 not being independent and 7 being entirely independent)). For more on corruption in the judiciary, see *State of Corruption Report*, *supra* note 45, at 6-7, 37-41.

⁵² See Freedom in the World 2021: Liberia, FREEDOM HOUSE, <https://freedomhouse.org/country/liberia/freedom-world/2021> ("The constitution provides for an independent judiciary, but it is impeded by corruption, backlogs, and funding shortfalls."); *BTI 2022 Country Report: Liberia*, BERTELSMANN STIFTUNG (2022), https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_LBR.pdf.

⁵³ *Country Reports on Human Rights Practices for 2018: Liberia*, U.S. DEP'T OF STATE (2018). There are numerous reports of judicial corruption in the press. E.g., *Liberia: The Judiciary Is The Most Corrupt Sector, Associate Justice Kaba Discloses* (Nov. 11, 2021), <https://frontpageafricaonline.com/news/liberia-the-judiciary-is-the-most-corrupt-sector-associate-justice-kaba-discloses/>; Abednego Davis, *Widespread Corruption in Judiciary Due to Delayed Salaries*, LIBERIAN OBSERVER, (Aug. 13, 2021), <https://allafrica.com/stories/201908130278.html>; *Supreme Court of Liberia Slams U.S. Department of Treasury Allegations of Bribery Within The Judiciary* (Jan. 21, 2021), <https://frontpageafricaonline.com/news/supreme-court-of-liberia-slams-u-s-department-of-treasury-allegations-of-bribery-within-the-judiciary/>.

⁵⁴ Everill, *supra* note 41.

⁵⁵ Lowenstein Report, *supra* note 33, at 6.

⁵⁶ Paczynska, *supra* note 41, at 10.

⁵⁷ See generally Yeakula, Miamen & Makor, *supra* note 45.

⁵⁸ *Id.* at 9-10.

⁵⁹ Rachael Knight, Silas Kpanan Ayoung Siakor & Ali Kabar, *Protecting Community Lands and Resources: Evidence from Liberia*, NAMATI (2013).

fall short of those obligations of social responsibility.⁶⁰ Regular and irregular mining have also caused significant environmental damage.⁶¹ Deforestation due to the expansion of agriculture and mining among other activities has threatened Liberia's expansive contiguous forest cover, the largest in West Africa.⁶²

The prioritization of foreign investment over rural land use and management in the mining sector specifically has culminated in land disputes, poor rural tenure security, and a more general lack of political will to protect rural communities' land rights.⁶³ Systemic corruption coupled with corporate State capture has also dispossessed several communities of control over their land. For instance, in the agricultural sector, the central government often negotiates agreements with concessionaires directly without prior consultation from members of the communities impacted by those decisions.⁶⁴ Affected communities rarely receive adequate compensation when they are dispossessed of their lands or when their water supplies are restricted.⁶⁵ These dynamics have led to public demonstrations, protests, violent confrontations, and tension between concessionaires, protestors, and government security forces in the last fifteen years.⁶⁶

b. Liberia has allowed MNG Gold to have a destructive effect on the environment and health of the local community in Bong County, Liberia

1. MNG Gold's mining activities in Bong County, Liberia

In March 2002, Amlib United Minerals acquired a mining license to conduct exploration activities in the Jorquelleh and Kokoya Districts in Bong County.⁶⁷ In April 2014, Amlib sold the Kokoya Gold Mine to MNG Gold Holdings Ltd., which designed and constructed the mine. In May 2016, approximately two years after the acquisition, production commenced.⁶⁸ MNG Gold Holdings, now known as Avesoro Holdings, is part of the broader MNG Group founded by Mehmet Nazif Günal in the 1970s.⁶⁹ The MNG Group currently employs over 20,000 people in more than 70 trading companies across the construction, railway, tourism, energy production, media, finance, and air cargo sectors.⁷⁰ In 2013, Günal founded Avesoro Holdings to focus on

⁶⁰ *BTI 2022 Country Report: Liberia*, supra note 52, at 22; Yeakula, Miamen & Makor, supra note 45, at 22-27; see also Lowenstein Report, supra note 33.

⁶¹ *BTI 2022 Country Report: Liberia*, supra note 52, at 25.

⁶² *Id.*

⁶³ Knight et al., supra note 59; see also U.S. Agency for Int'l Dev., *Land Tenure & Property Rights: Liberia* (Jan. 2010), www.usaid.gov.

⁶⁴ Lowenstein Report, supra note 33, at 6.

⁶⁵ See *Large-Scale Land Acquisitions in Liberia: Case Studies and Some Legal Aspects on the Palm Oil Sector*, BREAD FOR THE WORLD—PROTESTANT DEV. SERV. (June 2013) (citing case studies in the palm oil sector).

⁶⁶ See *id.*; Paczynska, supra note 41; *Liberia—The Promise Betrayed*, SUSTAINABLE DEV. INST. (Jan. 2010); Klaus Deininger et al., *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?*, WORLD BANK (2011), at 98.

⁶⁷ *Liberia: Two Lawmakers Question AmLib United Minerals Legitimacy*, ALLAFRICA (June 5, 2012), <https://allafrica.com/stories/201206050995.html>.

⁶⁸ *Avesoro Holdings*, <https://avesoroholdings.com/homepage/> (last visited Oct. 31, 2022); *Transaction Completed with Amlib Holdings Plc for its Liberian Kokoya Gold Project*, MNG GOLD (Apr. 17, 2014), https://minedocs.com/17/MNG_Kokoya_PR_17042014.pdf.

⁶⁹ *Id.*

⁷⁰ *Id.*

privately-owned gold production, development, and exploration in West Africa and Turkey. To date, four mines have been acquired, three of which are still operating.⁷¹ These include the Kokoya Goldmine and the New Liberty Goldmine in Liberia.⁷²

MNG Gold's mining activities have had a disruptive effect on the local Kokoya community, particularly on the lives of the Kpelle and Bassa Indigenous groups. The Kpelle people are the largest of sixteen Indigenous groups in Liberia, a majority of whom reside in Bong County and surrounding parts of central Liberia.⁷³ In relation to MNG Gold specifically, large-scale gold exploration projects have resulted in the relocation of multiple Indigenous communities to accommodate their activities.⁷⁴

Mining has also had severe environmental impacts, particularly for the Kpelle and Bassa people in the region. MNG Gold in the Kokoya region qualifies as "mechanized" mining, thereby leading to more severe environmental degradation.⁷⁵ Early reports on the MNG Gold mine highlight local community complaints about the contamination of drinking water sources.⁷⁶ Many areas, including Sayweh Town and Davide Dean's Town in Bong County, have lost their vegetation as a result of the mining activities, which has consequently led to severe erosion and reduced groundwater, among other negative consequences.⁷⁷

When developing the Kokoya gold mine, MNG Gold made a series of social responsibility commitments towards the Kokoya Community.⁷⁸ The development of the project was said to be expected to produce many benefits, including "contribution to social, economic[,] and institutional development of communities within the greater Kokoya mining concession area."⁷⁹ MNG Gold claimed that it would create qualified human resources and new employment opportunities in all of its locations by effective use of local human resources, and the company planned a series of social actions after acquiring the mining license.⁸⁰

Conflicting information exists about whether the company has fulfilled its promises. Relatively recent media reports list expenditures made by the company to meet its social responsibility obligations towards the community, including contributions to the local education

⁷¹ *Id.*

⁷² *Id.*

⁷³ S. Tornorlah & S. Varspilah, *Indigenous Conflict Resolution Practices Among the Kpelle People of Bong County, Liberia, West Africa*, CAPSTONE COLLECTION (2003), <https://digitalcollections.sit.edu/capstones/873/>, at 873.

⁷⁴ *See, e.g.*, Leaving A Trace, *supra* note 39 (tracing MNG's purchase of Kokoya Gold project and Hummingbird Resources Dugbe Shear project).

⁷⁵ *Id.* The gold mining activities by MNG in Kokoya specifically use the "carbon-in-leach" processing method which involves the use of cyanide to "leach gold" from its ore.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Social Responsibility*, MNG GOLD, https://landmatrix.org/media/uploads/mnnggoldcomresimleruserfiles/mng_kokoya_appendix_enpdf.pdf.

⁷⁹ *Id.*

⁸⁰ *Id.* These include the rehabilitation of roads and bridges, bazaar site clearing, enhancement of social life, donations of desks and computers to government offices, delivery of material to fight with the Ebola virus, delivery of material for the bridge repair. In addition, a total of 96 bags of rice were presented to following towns as a Christmas gift.

system, distribution of food, and investment in transportation and police infrastructure.⁸¹ The reports similarly applaud the way in which the presence of MNG Gold has boosted local economic development in centers like David Dean’s Town.⁸² These same articles note that the company makes monthly payments directly to town chiefs and elders in key towns within the Kokoya District. The articles do not explain whether the company intends these payments for municipal uses or personal compensation; given widespread corruption in the region and in the absence of explanation, these payments raise concerns that MNG Gold is attempting to improperly influence local leadership.⁸³

It should be further noted that MNG Gold engaged in its social responsibility actions only after November 2018, when the protests described in this letter took place. Complaints from within the Kokoya community about exploitation by MNG Gold without proper compensation continue to emerge. In May 2022, chiefs and elders in Kokoya demanded a new memorandum of understanding between citizens of the district and the management of MNG Gold Liberia for the company’s potentially dangerous underground mining activities.⁸⁴ They threatened to lead a new protest at the MNG Gold mine if their demands are not met. According to Chief Jerry Flomo, “We are living here in this community, we have gold all over our land that we should be benefiting from, but these people keep ‘stealing’ it from us without a single benefit.”⁸⁵

2. MNG Gold actively harmed the Kokoya community by discharging toxic waste (2017) and destroying houses (2018) without accountability

On September 27, 2017, MNG Gold spilled three million gallons of diverse toxic chemicals into the company’s reservoir at its Tailing Storage Facility in Sayweh Town, Bong County.⁸⁶ The cyanide, mercury, and lead that MNG Gold spilled were highly dangerous to the health and

⁸¹ Forkpayea Taylor, *MNG Gold Liberia Embarks on Several Community Initiatives*, LIBERIA PUB. RADIO (Dec. 6, 2020), <https://liberiapublicradio.com/2020/12/06/mng-gold-liberia-embarks-on-several-community-initiatives/>; Emmanuel Mafela, *MNG Gold Liberia Gets Praises From Some In Bong County, Why?*, PUB. TRUST MEDIA GRP. INC. (Mar. 20, 2021), <https://newspublictrust.com/mng-gold-liberia-gets-praises-from-some-in-bong-county-why/> (reporting on donation of bags of rice to local high school and orphanage).

⁸² This is the largest community just about two miles outside the mining company in Kokoya District, Bong County. Residents rely on the company to boost their socioeconomic activities. *MNG Gold Presence Boosts Local Economy in Kokoya District*, LOCAL VOICES LIBERIA (Dec. 16, 2020), <https://localvoicesliberia.com/2020/12/16/mng-gold-presence-boosts-local-economy-in-kokoya-district-bong-county/amp/>.

⁸³ *MNG Gold Presence Boosts Local Economy in Kokoya District* (Dec. 16, 2020), <https://localvoicesliberia.com/2020/12/16/mng-gold-presence-boosts-local-economy-in-kokoya-district-bong-county/> (listing monthly payments of \$2,000 to local communities, payment of teachers’ salaries, and construction of high school and clinic worth \$1.2 million); Emmanuel Mafela, *MNG Gold Liberia Gets Praises From Some In Bong County, Why?*, PUB. TRUST MEDIA GRP. INC. (Mar. 20, 2021), <https://newspublictrust.com/mng-gold-liberia-gets-praises-from-some-in-bong-county-why/> (Kollie claims that “her valuable workers who are well[-]paid by MNG and are provided all the necessities as provided by decent work act.”).

⁸⁴ Joseph Titus Yekeryan, *Liberia: Kokoya Chiefs Want New MOU for MNG Gold*, THE NEW DAWN (May 17, 2022) <https://allafrica.com/stories/202205170599.html> (“They started from the surface and collected everything, they are now doing underground mining and our lives are at risk.”).

⁸⁵ *Id.*

⁸⁶ Lomax, *supra* note 4; MNG Report to the Senate from the Director-General of the National Bureau of Concessions, *supra* note 3, at 1-2 (stating that MNG was at fault for the spill, which was caused by the company’s “gross negligence and willful misconduct”).

livelihood of the community, as well as the local flora and fauna.⁸⁷ The ingestion of all three chemicals can cause severe medical conditions, both short-term and long-term, and may be deadly in large amounts.⁸⁸ Lead is particularly dangerous for children.⁸⁹

The spill has been devastating on the Kokoya community. In a period of just 24 hours that year, 30 people had to be hospitalized because of their exposure to toxic chemicals.⁹⁰ MNG Gold's response to the health crisis it created only exacerbated the community's suffering. According to Liberia's National Bureau of Concessions ("NBC"), although MNG Gold's Management knew that dozens of people directly affected by the spill were seeking medical treatment, they "took hours to put in place any treatment which could or should have been rushed in at the time of the spillage occurrence and its ongoing effects."⁹¹ Since many women and children were "left in unattended corridors of the basic medical/nursing facilities, with no interim emergency medical treatment provided," the NBC concluded that MNG Gold Management had demonstrated "wanton, reckless and inconsiderate dispossession of the emergency medical needs of the community."⁹²

Aware that their rights had been violated, members of the community filed a lawsuit against MNG Gold.⁹³ The Turkish company involved a former senator in the case and was able to convince the affected residents to settle out of court.⁹⁴ Although the community initially demanded \$11 million in compensation, MNG only agreed to pay them \$600,000, which it later reduced to \$450,000.⁹⁵ According to the NBC, mining companies in Ghana and Argentina had to pay fines of \$5 million and \$9.3 million respectively for comparable toxic spills.⁹⁶ In short, MNG Gold paid the community only a fraction of the money it needed to recover, far less than other mining companies did in response to similar incidents, and faced no serious accountability for the spill it caused.

On January 4, 2018, the activities of MNG Gold gave rise to another incident that significantly impacted the local community.⁹⁷ Members of the community claim that several of their homes were destroyed as a result of MNG Gold's blasting of rocks. In particular, the heavy shock is believed to have caused the destruction of over 240 houses in the region. After the residents demanded compensation, MNG Gold organized mediation talks attended by Bong County's Senator, the heads of the company, and representatives of the local community. They eventually agreed on an amount of compensation, which MNG Gold promised to pay to the

⁸⁷ MNG Report to the Senate from the Director-General of the National Bureau of Concessions, *supra* note 3, at 1.

⁸⁸ *Facts About Cyanide*, CTRS. FOR DISEASE CONTROL & PREVENTION <https://emergency.cdc.gov/agent/cyanide/basics/facts.asp> (last visited July 24, 2022); *Lead Poisoning*, WORLD HEALTH ORG. (Oct. 11, 2021), <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>.

⁸⁹ *Lead Poisoning*, *supra* note 88.

⁹⁰ Lomax, *supra* note 4.

⁹¹ MNG Report to the Senate from the Director-General of the National Bureau of Concessions, *supra* note 3, at 3.

⁹² *Id.*

⁹³ Lomax, *supra* note 4.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ MNG Report to the Senate from the Director-General of the National Bureau of Concessions, *supra* note 3, at 6.

⁹⁷ Joseph Titus Yekeryan, *Kokoya Residents Demand Compensation from MNG-Gold*, THE NEW DAWN (Jan. 4, 2018), <https://thenewdawnliberia.com/kokoya-residents-demand-compensation-from-mng-gold/>.

residents in less than one week. MNG Gold has, however, not kept that promise, once again escaping accountability for how its actions have impacted the community.⁹⁸

3. MNG Gold's sister company, Bea Mountain Gold Mining Corporation, has shown similar disregard for the local community in Liberia

The pattern of unfulfilled social responsibility commitments, damaging activities, and lack of accountability by Avesoro Holdings is not unique to the Kokoya Gold Mine. Avesoro Holdings similarly failed to live up to its promises to the community with its other mine in Liberia, New Liberty Goldmine, which is run by MNG Gold's sister corporation, Bea Mountain Gold Mining Corporation.⁹⁹ Avesoro Holdings denies any wrongdoing.¹⁰⁰ However, a month-long investigation by IRIN, Le Monde Afrique, and 100Reporters in 2017 revealed how gold mining has brought misery to the local community without adequate compensation.¹⁰¹

When New Liberty Gold was established, 325 families in two villages were forced to abandon their homes, farms, and artisanal mines that had previously provided them with income.¹⁰² They were moved to a new village that was carved out of the forest near the mine. The company made many promises in terms of corporate social responsibility, including the construction of new houses, a school, hand pumps, and a clinic.¹⁰³ The construction of the mine started in 2014.¹⁰⁴

In 2016, the New Liberty Goldmine also caused a toxic spill. An accident at the mine released cyanide and arsenic, byproducts of the mining process, into a nearby river that serves villages downstream.¹⁰⁵ In Jikando, where people use its water to fish, bathe themselves, and wash clothes, they began to see dead fish floating.¹⁰⁶ Soon, they started developing skin rashes themselves.¹⁰⁷ The accident harmed over 10,000 people in the local community. The 2017 report describes how this spill continued affecting the local community in 2017 and how MNG Gold failed to conduct proper medical tests.¹⁰⁸

By 2017, Avesoro Holdings had built a school and installed just a few water pumps, but most of the promises made by Avesoro Holdings remained largely unfulfilled.¹⁰⁹ A community

⁹⁸ *Id.*

⁹⁹ Lennart Dodoo, *Bea Mountain Mining Corporation and MNG Gold Liberia Inc. Condemns Media Report*, FRONT PAGE AFR. (Mar. 4, 2021), <https://frontpageafricaonline.com/front-slider/bea-mountain-mining-corporation-and-mng-gold-liberia-inc-condemns-media-report/>.

¹⁰⁰ *Id.*

¹⁰¹ Emmanuel Freudenthal & Alloycious David, *How a Gold Mine Has Brought only Misery in Liberia*, THE NEW HUMANITARIAN (Mar. 21, 2017), <https://www.thenewhumanitarian.org/investigations/2017/03/21/how-gold-mine-has-brought-only-misery-liberia>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Victims of Liberian Gold Mine Disaster See Groundbreaking Complaint*, INCLUSIVE DEV. INT'L (Aug. 9, 2021), <https://www.inclusivedevelopment.net/mining/victims-of-liberian-gold-mine-disaster-see-groundbreaking-complaint-against-development-banks-accepted/>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Freudenthal & David, *supra* note 101.

member testified how there was no hospital or even safe drinking water: “There are toilets right next to the water pump. It makes us sick,” she added. “We are suffering.”¹¹⁰ The promise for adequate housing for displaced people remains unfulfilled. Uprooted community members were placed in temporary huts as a stopgap measure before the company moved them into “improved houses.” The report narrates, however, how in 2017, “the unfinished shells of those houses stand in ordered rows, just a few hundred meters away. . . . Weeds now grow between the brick walls.”¹¹¹

These continued harms prompted the local community to take legal action. In August 2021, victims of the accident filed a complaint against German and French national banks for their links to the project.¹¹² In their complaint, community leaders spoke up against Avesoro Holdings for having “taken their homes and farms, polluted their water, and broken promises to provide jobs, schools, and other facilities.”¹¹³ A local community leader testified: “We have been neglected by the mining company. We were taken from our land without any good reward, and our land and water polluted while the company refused to fully address the problems.”¹¹⁴ He added that, since the spill disrupted their livelihoods, which consisted of farming and artisanal mining, the community was “suffering from food insecurity and unattended health problems.”¹¹⁵ In sum, members of the local community at the New Liberty Gold Mine have started to speak out against the harms MNG Gold has inflicted on their community.

- c. Liberia arbitrarily arrested, detained, and mistreated Kokoya defenders and community members in November 2018 to suppress community grievances against MNG Gold
 1. Protests began after an MNG Gold contractor’s vehicle struck and killed three members of the Kokoya community in 2018 and left their bodies out on the street

On November 5, 2018, a lethal accident took place between Sayweh Town and Dean’s Town, near the MNG Gold site.¹¹⁶ A Chinese contractor for MNG Gold crashed with a motorcyclist, killing the driver, the passenger, and two bystanders who belonged to the local community. One of the victims was a pregnant woman.¹¹⁷ Members of the community alleged that the driver was drunk when the accident happened.¹¹⁸

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² This is through investments in FirstRand, a South African commercial bank.

¹¹³ *Victims of Liberian Gold Mine Disaster See Groundbreaking Complaint, supra* note 105.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *See, e.g.*, Statement of Junior Gaye, Annex B, at 27; Statement of Sunnyboy Kollie, Annex B, at 24; Statement of Robert Johnson, Annex B, at 22; Statement of Morris Dolo, Annex B, at 19; Statement of Junior Bealai, Annex B, at 11; Statement of Henry Mulbah, Annex B, at 9; Statement of Abraham Suah, Annex B, at 2; Statement of Darius Kpor, Annex B, at 6.

¹¹⁷ *See* Statement Sunnyboy of Kollie, Annex B, at 24.

¹¹⁸ Statement of Junior Roberts, Annex B, at 14 (“While coming this fellow left from the fence with this Toyota pickup, he bought Red Devil liquor and he drank it. When ran and climbed one hill and climbed another one be met up with the children. He picked the children up.”).

Immediately after the accident occurred, several community members went to witness the site of the crash.¹¹⁹ As word of the accident spread across town,¹²⁰ the grieving community gathered at the scene of the accident to see who had been killed and how the contractor had abandoned the bodies in the street.¹²¹ A small contingent of the crowd, horrified at how the company had treated their community members, decided to march to the MNG Gold compound in protest.¹²² The protestors, many of whom were friends¹²³ or family¹²⁴ of the people killed in the accident, were particularly outraged that the company did nothing to take care of the bodies or apprehend the negligent driver of the vehicle. Adolphus Dolo, who was later arrested, explains that sentiment by stating that: “You can’t kill people like chicken[s] and refuse to even take their dead bodies from the road.”¹²⁵

A group of protesters entered the MNG Gold site to urge the company to take care of the bodies and to demand an immediate investigation into the deaths caused by the local contractor.¹²⁶ Defender Robert Johnson explained that “the citizens went there to inquire what happened because the dead bodies were lying down while the company was still working.”¹²⁷ As detainee Emmanuel

¹¹⁹ Statement of Junior Gaye, Annex B, at 27 (“My boss even went there and took photos and brought it back and started showing the photos on his phone.”).

¹²⁰ Statement of Abraham Suah, Annex B, at 2 (“The news hit us that accident took place. We all went there to see what happened and we came back.”); Statement of Adolphus Dolo, Annex B, at 3 (“We heard people saying we are hearing crying people say some people were killed in Sayheweh Town.”).

¹²¹ Statement of Morris Dolo, Annex B, at 19 (“We left there we heard the noise. After we heard the noise and the crowd coming. We heard car killed people on Sayheweh Town road. So, my boss man told me to not go there. The way the town was looking there was no peace. There was no understanding the town was upside down.”); Statement of Junior Roberts, Annex B, at 14 (“[T]he car broke the children into pieces. This made the town citizens angry.”); Statement of Henry Mulbah, Annex B, at 9 (“[W]e heard that the company car killed four persons. That is how we went in the town and we saw the group in the town. That’s how they started telling you never heard the thing that happened in [Sayweh] Town road, the people have killed some people from us. People started saying . . . [you] cannot go for the body.”).

¹²² See *supra* note 121.

¹²³ See, e.g., Statement of Junior Gaye, Annex B, at 27 (“My good friend Trokon Tumoue [sic] died in the accident.”); Statement of Sunnyboy Kollie, Annex B, at 24 (“My friend Trokon Tormue one of those who died and myself was together. He dropped me on motorbike and went to his town. As soon he left me after five minutes, I heard Trokon and others have been killed by car. . . . I went there because my friend who is like a Brother to me, was killed by the Company car few minutes after I was with him.”).

¹²⁴ Statement of Junior Roberts, Annex B, at 14 (“My sister was one of those that was killed.”); Statement of Emmanuel Kargar, Annex B, at 7 (“My sister was involved in the accident.”); Voluntary Statement of Oliver Roberts, Annex A, at 1948 (“[S]ome of the people that died in the accident are related to me, two of those that died were my relatives. I did not loot anything.”); see also Voluntary Statement of Edwin Greaves, Annex A, at 1920; Voluntary Statement of Glanyon Somah, Annex A, at 1933.

¹²⁵ Statement of Adolphus Dolo, Annex B, at 3; see also Statement of Morris Dolo, Annex B, at 19 (“The company has been doing many bad things to us. I spoke against what the company did, they killed four people and just dashed them just like they have killed dog. That was not good.”).

¹²⁶ Voluntary Statement of Stephen Karmo, Annex A, at 1943 (“I heard that one MNG car made accident in Sayweh town and four persons were lying dead in the town that was how I decided to go there and see the area. When I got on the scene, I saw the four bodies (dead bodies) lying in Sayweh Town, that was how the entire town citizens decided to march on the company’s fence.”).

¹²⁷ Statement of Robert Johnson, Annex B, at 22; see also Statement of Junior Roberts, Annex B, at 14 (“[T]he Youth chairman came and said let’s wait and see if the company will come and take care of the body. . . . We went . . . to tell them about what happened.”); Statement of Sunnyboy Kollie, Annex B, at 24 (“Nobody came from the company to touch the body. So, the people got angry and said let’s go in the fence and tell the company to give us body bag so that we can put the dead bodies in it.”); Statement of Junior Bealai, Annex B, at 11 (“[T]he body

Kargar noted, “the Elders called on the company to bring body bags for the dead bodies to be wrapped in.”¹²⁸

The total lack of response by MNG Gold further outraged the protesters. At some point during this commotion, some people (whose identity is still unknown) set the car that caused the accident on fire.¹²⁹ Defender Alexander Kuyon stated, “I went on the scene . . . [and] saw the car burning because the car killed some citizens and the company did not care to even cover the dead bodies with body bag[s]. That is how the people got [vexed].”¹³⁰

Communal outrage at the accident was intensified by existing widespread anger about the company’s refusal to account for the chemical spill or destruction of houses. According to one of the detained defenders, Sunnyboy Kollie, “this company car killed four people from us and they are still doing their work, so it is not fair.”¹³¹ Testimonies of the people who were later arrested clearly indicate that the broader pattern of MNG Gold’s impunity for damaging the community, including their lack of accountability for the toxic spill, incited the protest. Another defender, Ambraham Suah, stated that they “started complaining that the Company car has killed some citizens and did not care to even remove the dead bodies from the main road. The same way we used to complain about our drinking water.”¹³²

2. The Liberian State indiscriminately arrested, beat, and charged the defenders and other community members in response to the protests, effectively criminalizing and stigmatizing their activities

Instead of engaging in constructive dialogue with community members, MNG Gold called in the police.¹³³ In the chaos that followed, the LNP¹³⁴ indiscriminately arrested 73 community members using arbitrary and excessive force. This excessive use of force, in combination with the ongoing criminalization of the detainees and a smear campaign to stigmatize them, frame this case squarely within the global patterns of State oppression of protest by Indigenous and environmental defenders. In addition, the use of State police to protect MNG Gold’s private interests equally illustrates a broader worldwide trend of State corruption and capture by corporations managing natural resources.

First, the police carried out a mass arrest of a profoundly arbitrary and violent nature. Testimonies reveal how the police started indiscriminately arresting community members:

spent hour plus on the ground. The people called MNG but they were still working and angry crowd went. They went to the gate and from there they came back home.”).

¹²⁸ Statement of Emmanuel Kargar, Annex B, at 7.

¹²⁹ See Statement of Alexander Kuyon, Annex B, at 5.

¹³⁰ *Id.*

¹³¹ See Statement of Sunnyboy Kollie, Annex B, at 24.

¹³² Statement of Abraham Suah, Annex B, at 2 (“We started complaining that the Company car has killed some citizens and company did care to even remove the dead bodies from the main road. The same way we used to complain about our drinking water. We used to say we do not have water here to drink and the small water we have they have the company has spread chemical in our water.”).

¹³³ Statement of Emmanuel Kargar, Annex B, at 7; Statement of Junior Bealai, Annex B, at 11 (“[T]hat’s how they sent for [the Police Support Unit (PSU) and the Emergency Response Unit (ERU)].”).

¹³⁴ According to the defendants’ voluntary statements, this includes the ERU and the PSU. See Statement of Junior Gaye, Annex B, at 27; Statement of Junior Bealai, Annex B, at 11; Statement of Sunnyboy Kollie, Annex B, at 24; Statement of Kollie Sumo, Annex B, at 16.

“whether you know about it or not, you were arrested.”¹³⁵ The arrests took place at different times, including several days after the protests themselves, during the day and at night,¹³⁶ and at various locations. The police arrested people in their homes (often combined with an extensive and arbitrary search of the home),¹³⁷ on a football field, or in the street on their way to the market or to work,¹³⁸ without clear proof of their involvement in any property damage or even their presence at the site of the protests.¹³⁹ Jeremiah Womenpea, a relative of one of the victims, explained that he was grieving with his family in his own house the day after the accident, when a police officer came to his house, started searching it, and arrested him without cause.¹⁴⁰ He recalled how the police entered his home but found nothing they were checking for: “[w]hat they arrested me for, they said I was smoking cigarettes in my house.”¹⁴¹ Many of the arrested people claim they were not even in town when the protests took place.¹⁴² Several detainees claim that the police stole their

¹³⁵ Statement of Junior Bealai, Annex B, at 11; Statement of Alexander Kuyon, Annex B, at 5 (“After the incident that day, we saw pickups, trucks coming in the area. They started arresting people, anybody they see they will just arrest you.”).

¹³⁶ Statement of Henry Mulbah, Annex B, at 9 (“PSU started arresting people at night. I was at my house and my boss advised me not to go there. The next morning, they were still arresting people. In the morning, the boss told me to see whether people were going to work. When right in the main town, the PSU pickup came and said nobody make move, anybody move we will fire you. They arrested all of us and took us into the fence”).

¹³⁷ See, e.g., Statement of Emmanuel Kargar, Annex B, at 7 (“The next day, they came and started searching all the houses in the town. They came and searched our house. The ERU brought some things and brought it and parked it in front of our house.”).

¹³⁸ Voluntary Statement of Jefferson Dougbe, Annex A, at 1931 (“I went to Deans Town to buy food for my friends and myself. That was how I was arrested and detained[.]”); Voluntary Statement of Darius Kpor, Annex A, at 1935 (“I was arrested in front of my house while trying to take [a] bath.”); Voluntary Statement of Alex Gudugbah, Annex A, at 1941 (“[O]n Tuesday, November 20[,] 2018, during the evening hours I decided to go to the video club on Dean’s Town Broad Street. While walking, some plain clothes men arrested me[.]”); Voluntary Statement of Joshua Flomo, Annex A, at 1932 (“[O]n Thursday November 8 2018, I was arrested at the football field in the main town”); Voluntary Statement of Peter Tobi, Annex A, at 1994 (describing how he went into David Dean Town to sell palm nut when he was arrested by officers); Statement of Kollie Sumo, Annex B, at 16 (“[I]n the morning I left sitting the PSU came to my house and arrested me. They asked me are you one of the people who went into the company fence? I said no I don’t even know that place. They put me in jail at the Police station.”); Statement of Darius Kpor, Annex B, at 6 (“While going to take bath, I saw the people car coming, they said where are you coming from and you are dirty like this. I told them I came from fixing bricks. That’s how they arrested me[.]”).

¹³⁹ See, e.g., Statement of Abraham Suah, Annex B, at 2 (“I opened the door and they searched and did not find anything belonging to the Company. They still arrested me and said I should go with them into the Company fence where they will separate those who were part of the looting and those who were not part.”).

¹⁴⁰ Voluntary Statement of Jeremiah Womenpea, Annex A, at 1950.

¹⁴¹ *Id.*

¹⁴² See Voluntary Statement of Darling-boy Tartee, Annex A, at 1924-25 (“On Tuesday November 6, 2018 (07 00 am), I was arrested . . . They accused me of being part of the riot on Monday, November 5, 2018 . . . During riot on Monday November 5, 2018 time to be identified, I was in the bush on the Gold Field working.”); Voluntary Statement of Maxin Kollie, Annex A, at 1967 (“I don’t know anything concerning the incident that occurred at David Dean Town on November 5th 2018. I was not in the town when the incident occurred. I was in the bush working.”); Voluntary Statement of Moses Kermue, Annex A, at 1978 (“I was in David Deans Town, when I heard that an accident occur in Saywehtown. I did not go there because I wanted to stay from trouble. The next morning, while washing my face in front of my house, officers came and arrested me.”); Statement of Kollie Sumo, Annex B, at 16 (“[I]n the morning I left sitting the PSU came to my house and arrested me. They asked me are you one of the people who went into the company fence? I said no I don’t even know that place. They put me in jail at the Police station.”).

property and money when entering their homes. Detainee Stephen Karmo alleges that the police entered his house and stole DVDs, a motor bike, and three thousand Liberian dollars.¹⁴³

The police used excessive force and violence while carrying out these arbitrary arrests. Almost all detained community members narrated how the police severely beat them, chased them with guns, and handcuffed them.¹⁴⁴ Detainee Robert Johnson spoke about how “the beating was too much, my eyes w[ere] covered with blood,”¹⁴⁵ and his fellow detainee Maxson Kollie testified to the intentional cruelty of the violence by explaining how the police instructed him to stretch his legs so that they could inflict more pain by kicking him with their boots.¹⁴⁶ One detainee, Junior Bealai, even lost the ability to walk freely due to the beating, torture, and flogging with sticks on his back.¹⁴⁷ Adolphus Dolo, another detainee, is suffering from continued stomach problems due to similar violence at the hands of the police.¹⁴⁸ Besides the acts of physical violence, the police subjected them to further acts of dehumanization, including deliberately misleading the

¹⁴³ Voluntary Statement of Stephen Karmo, Annex A, at 1943-44 (“When the police ERU arrived They entered the house and made away with my DVD, my motor bike . . . and three thousand Liberian dollars.”); Voluntary Statement Emmanuel Daniels, Annex A, at 1981 (“ERU pick-up stopped by and arrested me after they told me do not move. . . . [They] grabbed me and put me in the car straight back to the fence and they took my 3 sims Samsung value 4,500 LD and brought us to Gbarnga.”).

¹⁴⁴ Voluntary Statement of Obediah Locula, Annex A, at 1939 (“I was also arrested slapping me left and right that I was part of the damages that went on in the camp fence at (MNG) GOLD I told them no still I was forced in the truck”); Statement of Emmanuel Kargar, Annex B, at 7 (“The whole night the ERU was shooting gun.”); Statement of Junior Roberts, Annex B, at 14 (“We went into the fence to tell them about what happened, when you went in the fence, they started driving us with guns. I went there, we went there for dead body bag, they took arms and started beating us.”); Statement of Francis Flomo, Annex B, at 25 (“[T]hey grabbed me and started beating me.”); Statement of Daddy Boy Tartee, Annex B, at 1 (“The Police beat on us They beat me severely, sore all over my body.”); Statement of Sunnyboy Kollie, Annex B, at 24 (“PSU came and started beating us. . . . I started running and they started shooting gun behind me. They chased me and arrested me. They beat me and stripped me naked.”); Statement of Robert Johnson, Annex B, at 22 (“I told them I was not part of the riot. They arrested us, beat on us I and my friends. . . . The beating was too much my eyes was covered with blood. Because this our first time getting in this problem, I was confused.”); Statement of Kollie Sumo, Annex B, at 16 (“They started beating us.”); Statement Junior Roberts, Annex B, at 14-15 (“They really beat me severely.”); Statement of Junior Flomo, Annex B, at 12-13 (“They really beat me where I was arrested. They beat me on the chest many times.”); Statement of Darius Kpor, Annex B, at 6 (“They arrested me and started beating me. Police Commander Francis Nippy, took stick and started beating me. They really beat me.”).

¹⁴⁵ Statement of Robert Johnson, Annex B, at 22.

¹⁴⁶ Statement of Maxson Kollie, Annex B, at 17 (“The ERU put me in the pickup and beat me, all my clothes were all blood. They will say stretch your legs, when I do that they will start stepping on me with their hard boot[is].”).

¹⁴⁷ Statement of Junior Bealai, Annex B, at 11 (“When they arrested me one of the guys pushed me, while waking up, he knocked the stick on my back. I was not able to walk that’s how they were four they took me and threw me in the truck. Right now, I am still feeling the pain on my back, I can’t walk goo[d]. The mark is till in the center of my back it is still very painful.”).

¹⁴⁸ Statement of Adolphus Dolo, Annex B, at 3 (“I saw six ERU men who said my man don’t go anywhere, you move we will shoot you. I said what I did. They said you are one of those who went to the MNG Compound. I said no, I don’t know what you are talking about, they started beating me. They threw me in the car, they took us to the fence and started beating us with hammock. They stepped in my stomach, right now I have stomach complain. . . . When the Police arrested me, they did not say anything to me, they just started beating me until I have stomach problem right now.”).

detainees,¹⁴⁹ stripping them naked,¹⁵⁰ tying them up,¹⁵¹ and denying them access to drinking water.¹⁵²

Second, Liberia criminalized the defenders. The basis for their arrest was their alleged violent participation in the protests, which was framed as illegal looting and rioting. While it is true that, at some point during the protests, some of MNG's property was damaged and stolen,¹⁵³ detainees claim that this damage was caused by the police themselves and not by the protesters. Indeed, one detainee has accused officers of the Liberian National Police of carrying out the looting to create a legal justification for the arrests. One defender even said the police ordered him to assist them to load mattresses and other materials looted by the police from the Compound of MNG Gold onto a police vehicle before he was arrested and later placed on the same vehicle.¹⁵⁴ Evidence tying the detainees to specific damages at the MNG Gold site is lacking, and no investigation into the alleged looting by the police has taken place.

Third, the detainees became the subject of a public smear campaign. They have been portrayed in the media as violent rioters and looters and are suffering from stigmatization as a result. Public sentiment against the detainees is generated through news articles and radio talk shows. This stigmatization is supported—if not engineered—by State agents. Local officials, including the county superintendent, have made derogatory statements against the detainees in the press.¹⁵⁵

In line with global and regional trends of oppression of Indigenous and environmental defenders, these actions not only severely harm the individuals involved, but also have broader structural implications. The violent and arbitrary arrests, criminalization, and stigmatization impact the broader Kokoya community. These disproportionate responses by the State have scared the defenders from speaking out again in the future. Francis Flomo explained that: “[T]his same company put chemical in our water, the same company car killed four citizens[,] and they beating and arresting [sic] us for the same company. I felt bad about the chemical that was spread into the water but what can we do[;] if we talk they will treat us the way they are doing now.”¹⁵⁶ Robert Johnson's statement illustrates a similar fear for speaking up in the future: “The only thing I want for the Government to do for me is to free me. We are appealing. I still believe the company did

¹⁴⁹ Voluntary Statement of Emanuel Gangar, Annex A, at 1956 (recalling how he was arrested after complying with a demand to help the police: “ERU officer to be identify called me to help[.] . . . I told him, I am afraid. He said . . . you did nothing. Just help us. I helped them[.] . . . The other ERU officer said I should get in the car. I got into the car and they carried us in the fence.”).

¹⁵⁰ Statement of Sunnyboy Kollie, Annex B, at 24 (“They beat me and stripped me naked.”); Statement of Henry Mulbah, Annex B, at 9 (“Police beat me on me and removed my clothes, I was naked.”).

¹⁵¹ Statement of Abraham Suah, Annex B, at 2 (“They took off my clothes and tied me with my clothes. They said we should get into the car. They arrested other people and tied our hands together. They tied our hands and told us to jump into the car. Because our hands were tied, every time we tried to jump into the car, we will all fall, and they insist that we climb in the car. Every time we tried to climb the car and dropped; they would kick us.”).

¹⁵² Statement of Henry Mulbah, Annex B, at 9 (“We were thir[s]ty they said they can't give us water.”).

¹⁵³ See Voluntary Statement of Alex Gudugbah, Annex A, at 1941.

¹⁵⁴ Statement of Alexander Kuyon, Annex B, at 5 (“I said no, you can't put me behind Mattress which I do not know about to take my picture. So, after I refused, the Police Commander, Francis Napy said they should beat me since I don't want them to take my picture.”).

¹⁵⁵ *Liberia: 55 Arrested for Allegedly Carrying Out Mass Looting at Mining Company's Facilities*, FRONT PAGE AFR. (Nov. 7, 2018), <https://frontpageafricaonline.com/front-slider/liberia-55-arrested-for-allegedly-carrying-out-massive-looting-at-mining-companys-facilities/>.

¹⁵⁶ Statement of Francis Flomo, Annex B, at 25.

wrong. We went to see what happened and I think if similar thing happens again, we will not go there.”¹⁵⁷

The defenders’ fears that MNG Gold and its agents will remain unaccountable appear to have been realized. To date, the individual who caused the death of four community members has not been held accountable, even though his actions constitute negligent homicide under Liberian criminal law.

3. The trial that ensued was biased against the defenders

From the start, judicial proceedings were biased against the defenders. First, the charges brought against each defendant were not responsive to their individual actions. All 73 individuals were charged with the exact same crimes: armed robbery, riot, arson, criminal mischief, burglary, terroristic threat, criminal conspiracy, and theft of property.¹⁵⁸ During and after their arrests, as well as during interrogations, the defenders report being denied the right to a lawyer.¹⁵⁹ Ten more individuals were then added to the group and were indicted without having originally been charged.¹⁶⁰ The defenders were initially taken to Gbarnga police station, prison, and court.¹⁶¹ However, they were transferred to Saniquellie prison, located in a different county, with no explanation.¹⁶² There, they faced trial without the support of their families, friends, and community.¹⁶³

Throughout the trial, the judge’s actions reflected a lack of impartiality. First, the judge decided to try the defenders *en masse* and refused their requests to present individualized defenses. The defendants each called an alibi witness to testify on their behalf.¹⁶⁴ With no justification, the judge reduced the number of witnesses in the subpoena from 27 to 10.¹⁶⁵ Even the witnesses who were allowed to testify had logistical trouble accessing the court due to its location far from Bong County and their lack of resources necessary to travel there.¹⁶⁶

Having initially requested that 27 witnesses be subpoenaed, and because of the judge’s unilateral action, these defenders were not given a fair chance to make their case. “The [d]efense lawyer said we needed to bring witnesses to talk for us but the judge denied it. We did not have witnesses to talk for us. We were surprise[d] some people who they saw in the video [showing the looting of the MNG Compound] they set them free. Even the man who they used as State witness was the main doer, when you see the video, you will see him in the video.”¹⁶⁷ Although, as defender Daddy Boy Tarte notes, there was a video clip exhibited where none of the currently incarcerated defenders were visible, “No witnesses came to talk for us even ourselves we could

¹⁵⁷ Statement of Robert Johnson, Annex B, at 22.

¹⁵⁸ Police Charge Sheet, Annex A, at 18-21.

¹⁵⁹ Statement of Morris Dolo, Annex B, at 19; Statement of Junior Flomo, Annex B, at 12; Statement of Junior Bealai, Annex B, at 11.

¹⁶⁰ Police Charge Sheet, Annex A, at 18-21.

¹⁶¹ Statement of Junior Flomo, Annex B, at 12.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*; Writ of Subpoena, Annex A, at 1694.

¹⁶⁶ Statement of Robert Johnson, Annex B, at 22.

¹⁶⁷ Statement of Junior Gaye, Annex B, at 27.

not explain ourselves.”¹⁶⁸ In contrast, “[s]ome of those they saw in the video were set free.”¹⁶⁹ Barred from presenting adequate witness testimony, the defenders were not given a fair chance to counter the weak evidence the State presented against them.

The judge also showed bias through his handling of evidence and the jury. The judge granted the prosecution’s request to allow the trial jury to visit MNG Gold’s facilities on the condition that one lawyer from both the prosecution and defense accompany the jurors to ensure the independence of the trial.¹⁷⁰ At the last minute, however, the judge changed the instructions and allowed the jury to visit MNG Gold with only the prosecution and MNG employees present. Defense counsel was not allowed to attend.¹⁷¹ Later in the trial, the judge sustained objections made by the prosecution to the defense’s important questions concerning the arbitrary decision to arrest the defendants.¹⁷² These questions were related to the number of persons or defendants seen entering MNG Gold facilities on November 5, 2018 and the total number of individuals arrested in possession of MNG Gold property.¹⁷³ Finally, the judge allowed one juror, who had been sick and was therefore replaced with an alternate juror in the interim, to rejoin the jury panel despite having missed days of the trial.¹⁷⁴

The defense claims that but for these biased decisions, “the outcome of this case would have been an acquittal of the co-defendants.”¹⁷⁵ Instead, they were sentenced to prison terms of ten years at Zwedru Correction Palace with five years’ probation.¹⁷⁶ All the defenders believe that their trials were unfair, as they were not given the chance to defend themselves in person or through witnesses. The defenders strongly believe that the trial was corrupt and that “[t]hey set some people free because these people had money to bribe the police and the judge.”¹⁷⁷ Some of the defenders also argue that: “The case at the Court, they did not judge it fair, because the Company bribed the judge and the jury and because we do not have money, they paid that money to lie on us.”¹⁷⁸ As defender Junior Roberts explains, “the company used money to get us to be in jail.”¹⁷⁹ While there is no definitive proof, the procedural irregularities in the trial indicate at the very least a strong bias against the defenders in favor of MNG Gold.

4. Credible evidence indicates the ill-treatment of arrested individuals in prison

Evidence indicates that in addition to being ill-treated at the point of arrest, those arrested were subjected to ill-treatment when transported to the Gbarnga Prison, at the Gbarnga Prison while in detention, and during their transfer to Sanniquellie Central Prison. Liberian police officers

¹⁶⁸ Statement of Daddy Boy Tartee, Annex B, at 29 (note that in some documents, including the consent form, his name appears as “Darling Boy Tartee”).

¹⁶⁹ Statement of Alexander Kuyon, Annex B, at 5.

¹⁷⁰ Co-Defendants/Appellants Bill of Exceptions, Annex A, at 1507.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Liberia v. Stephen Karmo et al.*, Court’s Final Ruling (Nov. 2019), Annex A, at 1522; Commitment upon Conviction, Annex A, at 1517.

¹⁷⁷ Statement of Alexander Kuyon Annex B, at 5.

¹⁷⁸ Statement of Maxson Kollie, Annex B, at 17.

¹⁷⁹ Statement of Junior Roberts, Annex B, at 14-15.

mistreated the defenders during their transfer to Sanniquellie Central Prison. For instance, Maxson Kollie states, “When the police arrested me, they did not allow me to talk to anybody, they just beat me. They were beating me to confess.”¹⁸⁰

The ill-treatment of the defenders is directly linked to the poor conditions in prison. In April 2022, when interviewed for this submission, many of the detainees appeared to be in poor health, attributed to congested prison conditions and police brutality during transport to the Sanniquellie Central Prison, among other reasons.¹⁸¹ There is a lack of access to adequate medical care. Many of the defenders stated that they had not been given access to referral hospitals despite injuries due to police brutality or minor illnesses.¹⁸² Moreover, there was a lack of routine medical care, with only intermittent visits from a nurse to treat minor illnesses. Importantly, of the 24 persons who were arrested, five were released on medical grounds, two of whom died shortly after release.¹⁸³ There is no information on the cause or nature of the illnesses while in prison.¹⁸⁴ Junior Gaye notes: “Some of our friends who were here with us left here and got sick almost to the point of death. Because they did not want the guys to die here, so they told them to . . . [g]o, only for them to die outside.”¹⁸⁵ This indicates an abdication of responsibility on the part of the prison for those who died upon release. Currently, no further investigation on the matter has been taken by any Liberian officials or authority.

In addition, many of the defenders have either had no (or limited) contact with their families while residing in prison. Junior Flomo says, “since I came here, no family has visited me, no phone call because I don’t have any of my family member number. I don’t know how’s life going on with my family people.” Junior Bealai expressed similar sentiments: “since I came to prison, nobody to visit me, only during the case my wife came here one time. But since my conviction she has not come here. I don’t know what is happening to my wife and children.”¹⁸⁶ Adolphus Dolo captures the state many of the defenders were in: “I was not given the opportunity to call anyone or talk to anyone. The police forced me to confess, and I said I do not know about it. They were beating me stepping on me and wasting water on me. They just kept beating me, water on me [sic], stepp[ing] on me. I was not able to sit and talk to any lawyer. I was just in jail getting sick. I had chicken pox.”¹⁸⁷

As of today, two of the 24 incarcerated defenders have died shortly after being released on medical grounds, after the Liberian State failed to adequately care for them while they were incarcerated. Three other defenders have been released on medical grounds. The other 19 remain in prison. Two are critically ill and are being denied necessary medical care.¹⁸⁸

¹⁸⁰ Statement of Maxson Kollie, Annex B, at 17.

¹⁸¹ The defenders’ statements read together imply that while the prison guards were calm and friendly, prison conditions were unfavorable and many of the defenders were in poor health. *See generally* Annex B.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Statement of Junior Gaye, Annex B, at 27.

¹⁸⁶ Statement of Junior Bealai, Annex B, at 11 (note his name appears in the consent forms as “Junior Belalai”).

¹⁸⁷ Statement of Adolphus Dolo, Annex B, at 3.

¹⁸⁸ This is based on information received from Green Advocates in April and July 2022.

IV. Liberia’s arbitrary detention and criminalization of the defenders violates Liberia’s international human rights obligations

a. Liberia has violated binding treaty obligations

Liberia is a State Party to seven of the nine core international human rights treaties.¹⁸⁹ Of particular relevance are the International Covenant on Civil and Political Rights (“ICCPR”) and the Convention against Torture (“CAT”). The ratification of these treaties obligates Liberia to respect, protect, and fulfill the rights articulated therein. Moreover, the interpretive guidance issued by the treaty bodies in the form of general comments and recommendations, among other documents, and principles articulated by UN working groups and committees, provide necessary and important information on the extent and limits of each of the rights. The following section refers to international human rights standards to which Liberia has an obligation to adhere, as well as other interpretive guidance, with a specific focus on relevant civil and political rights that have been violated, before, during, and after the incident on November 5, 2018.

b. Liberia’s detention of the defenders and other community members is arbitrary

The arrests of the community members following the events of November 5, 2018 constitute arbitrary arrest, a prohibited deprivation of liberty under Article 9 of the ICCPR.¹⁹⁰ An arrest is considered arbitrary if it falls within one of the specific categories of arbitrary arrest established by the Working Group on Arbitrary Detention (“WGAD”), which include (1) arrests resulting from the legitimate exercise of specific human rights, including freedom of assembly and expression;¹⁹¹ (2) arrests characterized by a grave total or partial non-observance of international norms relating to the right to a fair trial; and (3) arrests that qualify as discriminatory according to international standards.¹⁹² The deprivation of liberty in the case at hand satisfies each of these grounds.

1. Liberia’s detention of the defenders and other community members is arbitrary because it was based on the legitimate exercise of human rights (freedom of assembly and expression)

First, the arrested protesters were legitimately exercising their right to protest, as protected under freedom of assembly (Article 21 of the ICCPR) and freedom of expression (Article 19 of

¹⁸⁹ Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (Sept. 22, 2004); International Covenant on Civil and Political Rights (ICCPR) (Sept. 2, 2004); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (July 17, 1984); International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (Nov. 5, 1976); Convention on the Rights of the Child (CRC) (June 4, 1993); Convention on the Rights of Persons with Disabilities (CRPD) (July 6, 2012); *see Ratification Status for Liberia*, U.N. TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=98&Lang=EN.

¹⁹⁰ Article 9 of the ICCPR covers the arbitrary deprivation of liberty in all its forms, before, during, or after the trial and covers any situation in which a person is unable to leave at will. *See, e.g., About Arbitrary Detention*, UNHCR, <https://www.ohchr.org/en/about-arbitrary-detention> (last visited Nov. 3, 2022).

¹⁹¹ The specific articles listed are Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR.

¹⁹² For an overview of the categories, *see* JARED GENSER, THE UN WORKING GROUP ON ARBITRARY DETENTION: COMMENTARY AND GUIDE TO PRACTICE 16-17 (2019).

the ICCPR). Their arrest, motivated by the legitimate exercise of those human rights, qualifies as an arbitrary arrest under the first category of arbitrary detention.

The Declaration on Human Rights Defenders (“DHRD”) affirms that people have a right to defend their human rights and that the rights to freedom of assembly and expression are instrumental to that end.¹⁹³ The Commentary on the DHRD specifically elaborates on the right to protest,¹⁹⁴ which entails the State’s obligation not to interfere with, and even protect, peaceful protesters, particularly when they hold unpopular or controversial views or belong to minorities or other vulnerable groups.¹⁹⁵ Arbitrary arrest is a common violation of the right to protest,¹⁹⁶ and protesters in the area of natural resources constitute a particularly vulnerable group,¹⁹⁷ as is clear from the fact that a large proportion of defenders typically comes from Indigenous and minority populations.¹⁹⁸ These defenders in Liberia are even more vulnerable because of the remoteness of the areas in which they are active.¹⁹⁹ The arrested protesters in this case clearly fit into this category of vulnerable protesters. Not only was the protest linked to the community’s criticism of environmental harm by MNG Gold, the protesters also largely belong to Indigenous communities and live in remote areas, which increases their vulnerability.

The right to protest is not explicitly protected in international human rights treaties, but it can be protected under overlapping rights, including freedom of expression and assembly.²⁰⁰ Here, the arrested protesters were first and foremost legitimately exercising their right to freedom of

¹⁹³ See *Commentary on DHRD*, *supra* note 20, at 5.

¹⁹⁴ *Id.*, at 70-82.

¹⁹⁵ Hina Jilani, Report Submitted by the Special Representative of the Secretary-General on Human Rights Defenders, U.N. Doc. A/62/225 ¶ 97 (Aug. 13, 2007); *id.*, ¶ 56 (noting that the right to protest is considered an essential element of the right to participate in a democracy and restrictions must be closely scrutinized).

¹⁹⁶ *Id.*, ¶ 20; *Commentary on DHRD*, *supra* note 20, at 73.

¹⁹⁷ *Commentary on DHRD*, *supra* note 20, at 79-80.

¹⁹⁸ Hina Jilani, Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled Human Rights Council: Report Submitted by the Special Representative of the Secretary-General on Human Rights Defenders, U.N. Doc. A/HRC/4/37 ¶ 41 (Jan. 24, 2007).

¹⁹⁹ Addendum to Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, U.N. Doc. A/HRC/4/37/Add.2 ¶ 23 (Dec. 19, 2006).

²⁰⁰ *Commentary on DHRD*, *supra* note 20, at 70.

assembly (Article 21 of the ICCPR),²⁰¹ which is considered the main ground of protection for the right to protest.²⁰²

The protests at MNG Gold qualify as a protected freedom of assembly. Article 21 of the ICCPR includes protection for spontaneous protests,²⁰³ like the one that took place at MNG Gold.²⁰⁴ While it only protects peaceful protests, as opposed to riots and affrays,²⁰⁵ and there was some damage at the MNG Gold site during the protests, this does not undermine the protection of Article 21 of the ICCPR: individuals who merely participate in a protest that is characterized by some violent incidents fall within the scope of protection. The State should present sufficient²⁰⁶ and legitimate²⁰⁷ evidence that a specific detained individual committed a specific violent act. For the arrested protesters, the Liberian State has not presented sufficient and legitimate evidence that the arrested individuals engaged in acts of violence. As described above, the police indiscriminately arrested community members without proof of their involvement before charging

²⁰¹ ICCPR, Article 21 (ratified by Liberia in 2004) (“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”); *see also* African Charter on Human and People’s Rights (ratified by Liberia in 1992) (“Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”); UDHR, Article 20 (“Everyone has the right to freedom of peaceful assembly or association.”); DHRD, Article 5(a) (“For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: . . . a) To meet or assemble peacefully; . . .”); *id.*, Article 12 (“[T]ake all necessary measures to ensure the protection by the competent authorities of everyone . . . against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.”).

²⁰² It applies if no more specific right is applicable, such as Article 22 (if association involved), Article 17 (gathering of family/friends), and Article 18 (religious assemblies). SARAH JOSEPH & MELISSA CASTAN, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY* 645 (2013); MANFRED NOWAK, *U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY* 485 (2005).

²⁰³ It protects “any intentional gathering of more than one person for a specific purpose.” JOSEPH & CASTAN, *supra* note 202, at 645; NOWAK, *supra* note 202, at 484; Maina Kiai, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, U.N. Doc. A/HRC/20/27, at 29 (May 21, 2012); GENSER, *supra* note 192, at 159-60; JOSEPH & CASTAN, *supra* note 202, at 646.

²⁰⁴ The right to freedom of assembly has even been used to protect individuals who did not actively attend protests, but were involved in organizing them or other related activities (*e.g.*, members of the African National Congress were detained for voter education work in South Africa in the final years of apartheid, perhaps because voter education meetings were understood to be incorporated into voter education work more generally). *See* GENSER, *supra* note 192, at 160.

²⁰⁵ JOSEPH & CASTAN, *supra* note 202, at 646.

²⁰⁶ *See, e.g., Yao Fuxin v. China*, WGAD Opinion No. 15/2002, adopted Nov. 28, 2002, at 16 (The decisive question was whether Yao exercised his right to peaceful assembly or rather was engaged in violent conduct. Given contradictory claims regarding whether the detainee had engaged in violent acts, the failure of the Government to support its allegations with convincing evidence led the Working Group on Arbitrary Detention (“WGAD”) to conclude that the detainee’s actions could not be considered violent on a prima facie basis. The suggested acceptable documents would consist of “official records, witness statements in the criminal proceedings against Yao Fuxin, or court decisions pronounced against him.”); *see also* GENSER, *supra* note 192, at 161-62.

²⁰⁷ *See, e.g., Fernando de Araujo v. Indonesia*, WGAD Opinion No. 36/1993, adopted Sept. 29, 1993, at 7 (finding that the fact that indictment made no reference to the explosives, combined with a lack of any advocacy of violence in Mr. Araujo’s activism, constituted evidence that the explosives were planted); *see also* GENSER, *supra* note 192, at 162.

them with the same extremely broad and serious set of charges.²⁰⁸ For many detained individuals, there is not even evidence that they were present at the site of protest. Many were detained at random locations and times, and many of them claim to have been elsewhere when the protests occurred. Of the people that were at the site, many claim not to have partaken in any form of violence.²⁰⁹

In addition, the State is responsible for provocations that result in the non-peaceful character of protests.²¹⁰ This is the case if police exert disproportionate use of force during peaceful demonstrations that provoke violent reactions from an otherwise peaceful assembly or if State agents otherwise instigate violence in a protest to justify using violent means of repression.²¹¹ First, as established above,²¹² the police used excessive force and violence during (and after) the protests that could have provoked violent reactions. The police deliberately assaulted the (alleged) protesters physically, stole from them, and subjected them to further acts of dehumanization, including stripping them naked and denying them access to drinking water.²¹³ Second, detainees claim that the members of the police themselves caused the damage to MNG Gold's property, and not the protesters.²¹⁴ Protesters claim that the police carried out looting to create a criminal legal justification for the arrests, which would qualify this case as an instance in which State agents instigate violence in a protest to justify violent means of oppression.²¹⁵

Any limitation to the freedom of assembly, like the arrest of protesters, must be (1) in conformity with the law; (2) necessary in a democratic society; and (3) for a specific set of legitimate purposes.²¹⁶ The disproportionate, arbitrary, and violent arrests by the police following the protests at MNG Gold do not constitute a justified violation of freedom of assembly.²¹⁷ Although the arrests seem to be "in conformity with law"²¹⁸ and supposedly serve the legitimate purpose of national security, public safety, and public order, they cannot be considered "necessary in a democratic society." This condition refers to a requirement of proportionality, which implies a police obligation to differentiate between violent and non-violent protesters.²¹⁹ In the case of mass arrests following large demonstrations, the State should be particularly vigilant and present

²⁰⁸ See *supra* Part III.

²⁰⁹ *Id.*

²¹⁰ *Commentary on DHRD, supra* note 20, at 25; Hina Jilani, Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, U.N. Doc. A/61/312 ¶ 44 (Sept. 5, 2006).

²¹¹ *Commentary on DHRD, supra* note 20, at 25.

²¹² See *supra* Part III.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ ICCPR, Article 21 ("National security or public safety, public order, protection of public health or morals and the protection of the rights and freedoms of others"); see also DHRD, Article 17 ("[I]n accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order[,] and the general welfare in a democratic society."); GENSER, *supra* note 192, at 162-63.

²¹⁷ The WGAD considers disproportionate police behavior at a demonstration to be an unjustifiable violation of freedom of assembly that thereby amounts to arbitrary deprivation of liberty; JOSEPH & CASTAN, *supra* note 202, at 164-67.

²¹⁸ Under Article 21 of the ICCPR, it suffices that a law gives the police general authorization to intervene in protests and arrest and detain people to maintain order. See JOSEPH & CASTAN, *supra* note 202, at 647; NOWAK, *supra* note 202, at 489-90.

²¹⁹ JOSEPH & CASTAN, *supra* note 202, at 647; GENSER, *supra* note 192, at 163.

documented proof of violence for each individual.²²⁰ They cannot merely use the location of a protest to justify the detention of an individual.²²¹ As established above, the Liberian police cannot present evidence for each individual to prove their presence at the protest, let alone to prove they committed violent acts. Therefore, the arrests breach the principle of proportionality.

In addition, the systematic use of detention as a political tool to suppress demonstrations contributes to the lack of proportionality.²²² States, including Liberia, are indeed systematically silencing defenders who use peaceful assembly as a means of voicing political or social discontent.²²³ Given the context of community criticism against MNG Gold’s human rights violations and the corruption of the police and judiciary to the benefit of corporations like MNG Gold, the arbitrary arrests after the protests fit into this structural pattern of using detention as a political tool to oppress dissent.²²⁴

The arrests are not merely arbitrary because they limit the legitimate exercise of the right to freedom of assembly, but also because they result from the legitimate exercise of the right to freedom of expression. Freedom of expression is protected under Article 19 of the ICCPR²²⁵ and recognized in Article 6 of the DHRD. The public discussion of human rights abuses, such as speaking up against the human rights violations of corporations like MNG Gold, is a particularly important form of expression²²⁶ and its protection is pivotal to the advocacy functions of defenders. States typically use arbitrary arrests to prevent defenders from speaking up.²²⁷ Subjecting individuals to arrest, detention, trial, or imprisonment for reasons of the opinions they may hold violates their freedom of expression.²²⁸

²²⁰ GENSER, *supra* note 192, at 164.

²²¹ *Id.* at 167.

²²² The WGAD considers the arrest of protesters to be an arbitrary deprivation of liberty (and thus an unjustified limitation of freedom of assembly) if there is a structural pattern of using detention as a political tool to suppress demonstrations within the state. *Id.* at 167-68.

²²³ *See supra* Part II.b.

²²⁴ *See infra* Part IV.d. on the silencing effect on the community; *see also Muthana Al Ammari v. Yemen*, WGAD Opinion No. 13/2014, adopted Apr. 30, 2014 (“[T]he detention of an individual has far-reaching adverse consequences for his or her family and community, and society at large.”); GENSER, *supra* note 192, at 167-68; Voule, *supra* note 6, ¶¶ 9-13 (“Authorities have relied on trumped-up charges in their attempt to silence and deter climate justice activists and intimidate and pressure local communities into giving up the rights to their land and to a healthy environment. The use of such charges against climate defenders also serves as a form of public propaganda, enhancing the vilification campaigns discussed above; provides a distraction, thereby suppressing environmental defenders’ effectiveness, as they are forced to devote time and resources to their defence rather than to their fundamental cause; and creates a chilling effect, discouraging others from joining and participating in the climate justice movement. On other occasions, bail conditions, binding over orders and injunctions are used to limit climate activists’ ability to exercise their right to freedom of peaceful assembly.”).

²²⁵ ICCPR, Article 19 (“(1) Everyone shall have the right to hold opinions without interference; (2) 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”); *see also*, UDRH, Article 19.

²²⁶ *See* Hum. Rts. Comm., General Comment No. 34, Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 ¶ 11 (Sept. 12, 2011) [hereinafter General Comment No. 34, Article 19: Freedoms of Opinion and Expression].

²²⁷ *Commentary on DHRD*, *supra* note 20, at 60-65; *see also* General Comment No. 34, Article 19: Freedoms of Opinion and Expression, *supra* note 226, ¶ 10.

²²⁸ General Comment No. 34, Article 19: Freedoms of Opinion and Expression, *supra* note 226, ¶ 9.

The arbitrary arrests in this case were precisely aimed at oppressing the freedom of expression exercised by the defenders. The arbitrary and violent arrests served to limit the freedom of expression of defenders who had spoken up in the past. Some of the detainees were defenders who had previously been involved in advocacy against MNG Gold's human rights violations by publicly criticizing the corporation's damage to the community and their lack of accountability.²²⁹ Before the central incidents of November 2018, members of the Kokoya Community—including the detained defenders—started openly criticizing how MNG Gold handled the pollution of their water.²³⁰ One of the detainees, Junior Flomo, “was one of those that used to talk about the bad things the company is doing to our people. We used to say we do not have water here to drink because the Company has put chemical in our water.”²³¹ In addition, the arrests appear motivated by a desire to prevent defenders from legitimately exercising their freedom of expression in the future.²³² Similarly, community members were aware and speaking up against the corruption and collusion between the State and MNG Gold. Detainee Darius Kpor explains how community members had been talking about how “once the company has money, they will just use it against we the citizens.”²³³ The local community was thus clearly publicly voicing their criticism against MNG Gold when the Liberian government made the mass arrests.

Detention motivated by the exercise of freedom of expression is only justified under similar conditions as restrictions to freedom of assembly.²³⁴ It is incompatible with Article 19 to invoke overly severe criminal offenses to prosecute defenders for disseminating information of legitimate public interest that does not harm national security.²³⁵ As a result, the Liberian State cannot justify the arrests by invoking the exact same set of broad and severe offenses for each detainee, including “armed robbery, riot, arson, criminal mischief, burglary, terroristic threat, criminal conspiracy[,] and theft of property.”²³⁶

Furthermore, restrictions must be appropriate to achieve their protective function and proportionate to the interest to be protected. The least intrusive means of restriction should be chosen.²³⁷ The Liberian government fails to legitimate the arrest of the defenders who were previously engaged in public human rights advocacy efforts by reasons of national security or public order. In addition, the arbitrary and violent arrest of these defenders cannot reasonably be considered the least intrusive means to protect the rights that the Liberian government would purport to protect. Instead, these arrests were clearly motivated by a desire to silence²³⁸ defenders who had dared to speak up against MNG Gold's human rights violations.

²²⁹ See *supra* Part III.

²³⁰ Statement of Junior Roberts, Annex B, at 14 (“Me and other people used to talk about the ugly things the company is doing to us. You can't kill people like chicken and refused to even take their dead bodies from the road.”); Statement of Adolphus Dolo, Annex B, at 3 (“To tell you the true, we used to talk about it. We used to talk about our water which the company spoiled with chemical.”).

²³¹ Statement of Junior Flomo, Annex B, at 12.

²³² See *infra* Part IV.d. (discussing the silencing effect on the community).

²³³ Statement of Darius Kpor, Annex B, at 6.

²³⁴ GENSER, *supra* note 192, at 178.

²³⁵ See, e.g., *id.* at 178-88.

²³⁶ See *supra* Part III.

²³⁷ For common violations of freedom of expression of defenders, see *Commentary on DHRD*, *supra* note 20, at 59-65.

²³⁸ For more on the silencing effect on the community, see *infra* Part IV.d.

In sum, the arrests at MNG Gold qualify as arbitrary under the first category because they resulted from the legitimate exercise of the rights to freedom of assembly and expression. On the one hand, protesters were legitimately exercising their freedom of assembly. The arbitrary and violent arrests combined with a complete lack of proof of individual acts of violence by protesters in a context of mass protest makes these arrests a textbook case of disproportional police action. In addition, the systematic use of arrests as a tool of political oppression adds to the arbitrary nature of the arrests. On the other hand, arrests of known defenders and other community members indicate that the arrests were also a response to the legitimate exercise of freedom of expression. The arbitrariness and violence were aimed at oppressing existing defenders and dissuading future defenders from speaking up against human rights violations by the State and/or MNG Gold.

2. The total or partial non-observance of international norms relating to the right to a fair trial makes the detentions arbitrary

Arrests and detentions (deprivation of liberty) can also be considered arbitrary if there is a total or partial non-observance of international norms relating to the right to a fair trial.²³⁹ Article 14 of the ICCPR guarantees a broad range of fair trial rights, which includes equality before courts and tribunals. According to the UN Human Rights Committee, the “availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.”²⁴⁰ Moreover, Article 14(3)(b) of the ICCPR provides that accused persons must have adequate time and facilities for the preparation of their defense and to communicate with counsel of their choosing. The accused must be granted prompt access to counsel.²⁴¹ “Adequate facilities” must include access to documents and other evidence.²⁴²

In this case, the defenders and other individuals who were arrested were not informed of their right to counsel or granted the immediate opportunity to contact legal assistance upon arrest.²⁴³ Moreover, interviews with the defenders indicate that the public defender did not have resources to file exceptions in court, including resources to make copies of the relevant documents.²⁴⁴ The criminal justice system in Liberia does not provide for logistics or resources for public defenders’ investigations.²⁴⁵

Article 14 also provides for the right to a fair trial and public hearing by a competent, independent, and impartial tribunal. This requirement is an absolute right that is not subject to abrogation.²⁴⁶ The requirement includes a guarantee of actual independence of the judiciary from

²³⁹ Genser, *supra* note 192, at 16-17.

²⁴⁰ Hum. Rts. Comm., General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunal and to a Fair Trial, U.N. Doc CCPR/C/GC/32 ¶ 10 (Aug. 23, 2007) [hereinafter General Comment No. 32].

²⁴¹ *Id.*, ¶ 34 (citing *Khomidova v. Tajikistan*, Communication No. 1117/2002, ¶ 6.4; *Siragev v. Uzbekistan*, Communication No. 907/2000, ¶ 6.3; *Gridin v. Russian Federation*, Communication No. 770/1997, ¶ 8.5).

²⁴² See Concluding Observations of the Human Rights Committee: Canada, U.N. Doc. CCPR/C/CAN/CO/5 ¶13 (Apr. 20, 2006).

²⁴³ See *supra* Part III. Note S. 2.2(1), Criminal Procedure Law, Liberia (Jan. 1, 1969) provides for the right to legal representation.

²⁴⁴ This is based on an interview with public defender and Green Advocates.

²⁴⁵ *Id.*

²⁴⁶ General Comment No. 32, *supra* note 233, ¶ 19 (citing *Gonzalez del Rio v. Peru*, Communication No. 263/1987, ¶ 5.2).

political interference by the executive branch and legislature.²⁴⁷ The UN Human Rights Committee notes that “[a] hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defense, or is exposed to other manifestations of hostility with similar effects.”²⁴⁸ The procedural irregularities pertaining to the jury visit, as discussed in the section above, demonstrate that the State was in violation of this absolute right.

Article 14(3)(e) guarantees the right of accused persons to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them.²⁴⁹ The Human Rights Committee makes it clear that it is the right of such persons to have witnesses admitted that are relevant for the defense, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.²⁵⁰ By law in Liberia, there is no limit to the number of witnesses each defendant can have.²⁵¹ As discussed in the previous section, the number of witnesses allowed for the detained defenders fell drastically short of the requirements of Liberian law and international human rights standards.²⁵² Therefore, the irregularities cited above highlight the State’s violation of both domestic law and international human rights standards pertaining to witnesses, and the more general standards on fair trial rights.

3. The detentions were discriminatory and are thus arbitrary

The detentions can also be considered arbitrary under international law because of their discriminatory nature. The WGAD considers a deprivation of liberty to be arbitrary when it “constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights.”²⁵³ As this section will explain, both defenders and Indigenous peoples are protected classes for the purposes of discriminatory arbitrary detention. Since Liberia targeted both groups, these detentions are arbitrary under international law.

Although environmental and human rights defenders are not explicitly cited in the list of prohibited grounds of discrimination, the WGAD has recognized defenders as a protected group for arbitrary detention purposes. According to the WGAD, “human rights defenders are a protected group entitled to equal protection of the law under article 26 of the [ICCPR], falling within category V of the Working Group.”²⁵⁴ The WGAD suggests that human rights defenders are a protected group because targeting them for detention is “based on discriminatory grounds such as

²⁴⁷ *Id.*

²⁴⁸ *Id.*, ¶ 25.

²⁴⁹ *Id.*, ¶ 39.

²⁵⁰ *Id.*

²⁵¹ See Criminal Procedure Law, Liberia (Jan. 1, 1969).

²⁵² See *supra* Part III.

²⁵³ Working Group on Arbitrary Detention, *About Arbitrary Detention*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS. <https://www.ohchr.org/EN/Issues/Detention/Pages/AboutArbitraryDetention.aspx> (last visited Nov. 3, 2022).

²⁵⁴ Report of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/48/55 (Aug. 6, 2021), at 27.

their ‘political or other opinion’ or ‘status as a human rights defender.’²⁵⁵ The WGAD underscores its consistent view that “detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under Articles 2 and 7 of the UDHR and articles 2(1) and 26 of the [ICCPR].”²⁵⁶ A detention is, therefore, arbitrary if it is grounded in discrimination against them as a group.

The individuals who are detained are a mixed group, many of whom might not fall within the typical conception of a human rights defender. Nevertheless, the State decision to arrest them was motivated by the status of those who are defenders. As the DHRD clarifies, those who defend human rights in a “non-professional context” are just as much human rights defenders as those who defend human rights in a professional context.²⁵⁷ In the context of business and human rights, the Special Rapporteur on defenders has adopted a “broad and inclusive” definition of defenders, which includes “affected communities and individuals.”²⁵⁸ Examples of activities that qualify someone as a defender include gathering and disseminating information on human rights violations; supporting victims of human rights violations; and working to end impunity by securing accountability for human rights violations.²⁵⁹

Although the incarcerated individuals do not all see themselves as human rights defenders, this is precisely what many of them are. All the individuals who were detained and convicted are members of the affected Kokoya community. Three of them admit to publicly criticizing MNG Gold in the past for the way in which it failed to clean up their drinking water and to the killing of the four citizens.²⁶⁰ Even though not all the detained individuals were involved in advocacy efforts or protests, this detention was used to target and silence those who were. This case is thus, at its core, about discrimination against defenders.

The State targeted these individuals not just because of their status as defenders generally, but also because their advocacy concerned some of the most politically unpopular causes. According to the WGAD, additional factors suggest discrimination may underlie the detention of defenders, including deciding to target persons anew for belonging to “a group such as environmental defenders, whose work had been repeatedly criminalized by States.”²⁶¹ The WGAD underscores how defenders who “belong to marginalized groups themselves, or who seek to protect the rights of other marginalized people, are at significant risk of detention.”²⁶² Notably, the defenders the State targeted were Indigenous defenders.²⁶³ Discrimination against Indigenous peoples falls under the umbrella of ethnic discrimination prohibited under international human rights law and Category V arbitrary detention. As a result, the detention of the Kpelle and Bassa

²⁵⁵ *Id.*; see also Report of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/36/37 ¶ 49 (July 19, 2017).

²⁵⁶ Report of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/48/55, at 27 (Aug. 6, 2021).

²⁵⁷ *Commentary on DHRD*, *supra* note 20, at 8.

²⁵⁸ Report of the Special Rapporteur on Human Rights Defenders, U.N. Doc. A/72/170 (July 19, 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/220/75/PDF/N1722075.pdf?OpenElement> (last visited Nov. 3, 2022).

²⁵⁹ Special Rapporteur on Hum. Rts. Defs., *About Human Rights Defenders*, UN HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders> (last visited Nov. 3, 2022).

²⁶⁰ See *supra* Part III.

²⁶¹ Report of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/48/55 ¶ 48 (Aug. 6, 2021).

²⁶² *Id.*, ¶ 49.

²⁶³ See *supra* Part III.

defenders was also arbitrary for being discriminatory against Indigenous peoples who were fighting for the right to be treated with dignity in response to a toxic spill and the killing of community members on their ancestral lands, which Liberia and MNG Gold have taken from them.²⁶⁴

The facts of this case fit the patterns that the WGAD has observed for the criminalization of defenders. The WGAD has observed “with concern attempts to silence human rights defenders by sentencing them to lengthy imprisonment terms,”²⁶⁵ including through detention “under vague and overly broad national security and anti-terrorism provisions.”²⁶⁶ In this instance, the defenders were convicted of a broad “terroristic threat” offense.²⁶⁷ When not relying on national security or terrorism charges, authorities also tend to rely on “trumped-up charges in their attempt to silence and deter climate justice activists and intimidate and pressure local communities into giving up the rights to their land and to a healthy environment.”²⁶⁸ Even if the Defendants had participated in looting, which they were not given a fair chance to disprove, armed robbery, riot, arson, criminal mischief, burglary, terroristic threat, criminal conspiracy and theft of property carrying a sentence of ten years were not proportionate to the alleged offenses, as discussed above. In short, Liberia’s detention of the environmental and Indigenous defenders, as well as those who were caught up in the State’s attempt to silence them, is clearly discriminatory and thus qualifies as arbitrary under the WGAD’s fifth category of arbitrary detention, in line with typical patterns of the State criminalization of rural and Indigenous defenders.

c. Liberia has subjected the defenders and other community members to cruel, inhuman, and degrading treatment, as well as torture and poor prison conditions

The prohibition on torture is a *jus cogens* norm in international law and is a non-derogable right in international human rights law.²⁶⁹ Article 7 of the ICCPR guarantees the freedom from torture or cruel, inhuman, or degrading treatment or punishment. Article 7 is to be read with the positive obligations under Article 10(1) on the freedom of liberty.²⁷⁰ Liberia has also ratified the CAT,²⁷¹ which provides for an absolute prohibition on torture.²⁷² The duties and obligations under

²⁶⁴ *Id.*

²⁶⁵ Special Rapporteur on Hum. Rts. Defs., *About Human Rights Defenders*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders> (last visited Nov. 3, 2022).

²⁶⁶ *Id.*

²⁶⁷ *See supra* Part III.

²⁶⁸ Voule, *supra* note 6, ¶ 31.

²⁶⁹ Comm. Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2: Implementation of Article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 ¶ 2 (Nov. 23, 2007).

²⁷⁰ Hum. Rts. Comm., General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), U.N. Doc. CCPR/C/GC/20 ¶ 2 (Mar. 10, 1992).

²⁷¹ Liberia ratified CAT and the Optional Protocol to CAT on September 22, 2004. *See UN Treaty Body Database*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=98&Lang=EN.

²⁷² CAT, Article 1 (“[T]he term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”).

the treaties require States to promote a culture of accountability for police and law enforcement officials.²⁷³ For the purpose of the CAT, “victim” includes affected immediate family or dependents of the victim.²⁷⁴ Article 14 of the CAT also states that “each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.” Moreover, the article states: “In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.” The CAT thus establishes a State duty to provide effective remedies for torture.²⁷⁵

Credible evidence suggests that all the individuals who were arbitrarily detained were tortured or subject to cruel, inhuman, and degrading treatment while in police custody—at the time of arrest, while in detention, and during transfer to Sanniquellie Center Prison.²⁷⁶ All of those interviewed said they were beaten, abused, flogged, and tortured physically, emotionally, and psychologically and forced to confess to the events of November 5, 2018.²⁷⁷ In this case, therefore, Liberian law enforcement have violated the international standards on the prohibition of torture.

Several international human rights instruments dictate the standards pertaining to prison conditions and the obligations of State and non-State actors in that regard with the primary objective that prisoners and detainees must be treated with respect for their inherent dignity.²⁷⁸ For instance, the Standard Minimum Rules for the Treatment of Prisoners mandate that medical officers must see all prisoners who complain of sickness daily and report to the director of the institution if a prisoner’s physical or mental health has been or will be harmed by continued imprisonment or by a condition of imprisonment.²⁷⁹ Moreover, healthcare services must prepare and maintain medical files of each prisoner.²⁸⁰ As evidenced, the defenders did not have access to proper medical care, nor is there sufficient information on those who died shortly after being released from prison.²⁸¹ Standards also mandate that prisoners must be allowed adequate opportunity to communicate with their family,²⁸² which in this instance was not adhered to by Liberian officials. The treatment of the defenders upon arrest, in the custody of law enforcement,

²⁷³ UN Human Rights Council Res. A/HRC/46/L.27, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Roles and Responsibilities of Police and Other Law Enforcement Officials ¶ 18 (Mar. 15, 2021).

²⁷⁴ UN Committee Against Torture, General Comment No. 3: Implementation of Article 1 by States Parties, U.N. Doc. CAT/C/GC/3 ¶ 3 (Dec. 13, 2012).

²⁷⁵ *Id.* ¶ 2 (The term “redress” in Article 14 encompasses the concepts of “effective remedy” and “reparation.” Accordingly, “[t]he comprehensive reparative concept . . . entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention.”).

²⁷⁶ *See supra* Part III.

²⁷⁷ *Id.*

²⁷⁸ U.N.G.A. Res. A/RES/70/175, U.N. Standard Minimum Rules for the Treatment of Prisoners (Jan. 8, 2016) [hereinafter Nelson Mandela Rules]; U.N.G.A. Res. A/RES/43/173, Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (Dec. 9, 1988) [hereinafter Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment]; U.N.G.A. Res. A/RES/34/169, Code of Conduct for Law Enforcement Officials, (Dec. 17, 1979).

²⁷⁹ Nelson Mandela Rules, Rules 31 and 33, *supra* note 278.

²⁸⁰ *Id.*, Rules 25 and 26; *see also* Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 26, *supra* note 278.

²⁸¹ *See supra* Part III.

²⁸² Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principles 15 and 19, *supra* note 278.

and later in prison therefore evidence a violation of several human rights standards on torture, cruel, inhuman, and degrading treatment, and the condition of prisons.

- d. The arbitrary detentions and cruel, inhuman, and degrading treatment serve to silence the defenders and have a chilling effect on the community, enabling MNG Gold to continue violating the rights of the community*

The negative human rights impacts of Liberia's arbitrary and violent criminalization of these Indigenous and environmental defenders go beyond the grave issues of arbitrary detention and torture. Liberia has abused the criminal justice system to silence the strongest voices demanding that the State respect, protect, and fulfill the Kokoya community's rights to a healthy environment, water and sanitation, health, and access to their ancestral lands. In doing so, the State has not only violated the rights of those who are detained, but also of the community at large.

First, Liberia's human rights violations of those who were subjected to any part of the arbitrary arrests, charges, indictments, and trial, even if they were acquitted or never formally charged, are significant. The impacts on the families of the detained defenders are also significant. The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has underscored that the victims of the State's criminalization are not only those who were convicted: "Even when such sentences are not imposed, criminal prosecution and other forms of legal harassment impose serious financial burdens and generate significant social, economic[,] and psychosocial impacts for the accused and their families and communities."²⁸³ For instance, the detained defenders report a lack of visitation rights and difficulty keeping in touch with their families due to their isolated conditions.²⁸⁴

Crucially, the criminalization of the defenders also undermines their advocacy. The use of these charges against the environmental and Indigenous defenders serves as "public propaganda," enhancing "vilification campaigns" and distracting the public from their advocacy and stigmatizing them as criminals.²⁸⁵ The State's stigmatization campaign started the moment it arrested the defenders, publicly rounding up many and forcing them to partially undress.²⁸⁶ News accounts of the protests then showed photographs of the individuals in this state and described them as "angry citizens" who "vandalized" and looted MNG Gold's facilities.²⁸⁷ Without access to a fair trial, the defenders who were convicted were even further vilified and stigmatized.

The State has thus succeeded at rebranding community leaders as criminals whose prison sentences overshadow their advocacy. Moreover, given that the community's most prominent defenders are arbitrarily detained, they are focused on their defense and surviving their time in prison. The State has therefore succeeded at suppressing their effectiveness as defenders by forcing the defenders to focus their time and resources on something other than their fundamental cause.²⁸⁸

²⁸³ Voule, *supra* note 6, ¶ 29.

²⁸⁴ Statement of Junior Flomo, Annex B, at 12.

²⁸⁵ See Voule, *supra* note 6, ¶ 22.

²⁸⁶ *Liberia: 55 Arrested for Allegedly Carrying Out Mass Looting at Mining Company's Facilities*, *supra* note 155.

²⁸⁷ *Id.*

²⁸⁸ Voule, *supra* note 6, ¶ 32.

The chilling effect of the arbitrary and violent detentions, criminalization, and stigmatization of the defenders on the rest of the community is also powerful. By arbitrarily detaining the most effective community advocates, the State sends a powerful threat to anyone else who might have otherwise spoken out to defend that community's rights.²⁸⁹ Both the silencing of defenders and chilling effect on the community enable Liberia and MNG Gold to continue violating the rights of the Kokoya community. The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) assert, "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises."²⁹⁰ Doing so "requires taking appropriate steps to prevent, investigate, punish[,] and redress such abuse through effective policies, legislation, regulations[,] and adjudication."²⁹¹ Business enterprises also have a duty to at the very least respect human rights, meaning they must "avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."²⁹² States, however, bear the primary responsibility to "protect against business-related human rights abuses" and "must take appropriate steps to ensure, through judicial, administrative, legislative[,] or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy."²⁹³ Liberia is thus responsible for both its own and MNG Gold's human rights violations.

Having flooded the community's water supply with toxic substances, MNG's paltry settlement with the community did not constitute an effective remedy for the devastation it inflicted on the community through the toxic spill. In the case of the Kokoya community, Liberia failed to protect the community's rights. By silencing the defenders, Liberia is thus shielding itself from accountability for the impunity with which it allowed MNG to violate the community's rights to health and to a healthy environment.

The Special Rapporteur on the Freedom of Assembly and Association has emphasized that ensuring respect for the UN Guiding Principles "is of particular importance relative to [I]ndigenous peoples, as in many instances companies have been granted licences allowing them to enter and assume control over areas within indigenous peoples' ancestral lands, without their free, prior and informed consent."²⁹⁴ As then-Special Rapporteur on Indigenous Peoples noted, these attacks, "whether violent or legal," serve to "silence any opposition by indigenous peoples to business interests and to prevent indigenous peoples from exercising their rights."²⁹⁵ Accordingly, "[p]rohibiting indigenous peoples from protesting such ventures on their ancestral lands serves to compound the violations of rights perpetrated through use of such measures."²⁹⁶

²⁸⁹ *Id.*

²⁹⁰ *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. HR/PUB/11/04 (2011), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf, Principle 1.

²⁹¹ *Id.*

²⁹² *Id.*, Principles 11-12.

²⁹³ *Id.*, Principle 25.

²⁹⁴ Voule, *supra* note 6, ¶ 52.

²⁹⁵ Report of the Special Rapporteur on the Rights of Indigenous Peoples, U.N. Doc. A/HRC/39/17 (Aug. 10, 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/246/34/PDF/G1824634.pdf?OpenElement>.

²⁹⁶ Voule, *supra* note 6, ¶ 67.

Liberia’s criminalization of the Indigenous defenders shields it from accountability for allowing MNG Gold to displace the Kpelle and Bassa peoples and spill toxic chemicals on their ancestral lands. As the former Special Rapporteur on Indigenous Peoples observes, “The intensified competition over natural resources led by private companies, at times with government complicity, has placed indigenous communities seeking to protect their traditional lands at the forefront as targets of persecution.”²⁹⁷ Criminalization then arises “in most cases, when indigenous leaders and community members voice opposition to large projects relating to extractive industries, agribusiness, infrastructure, hydroelectric dams[,] and logging.”²⁹⁸ Liberia’s criminalization of the defenders in the Kokoya community fits this exact pattern.

In sum, Liberia’s criminalization of these environmental and Indigenous defenders exemplifies many of the State tactics and patterns of abuse that Special Rapporteurs have been observing with concern. The State’s human rights abuses in this case go beyond arbitrary detention and torture. Criminalization has devastating impacts on the lives and reputations of those who were persecuted and stigmatized. However, criminalization—and its subsequent chilling effect—also enable and prolong the human rights violations against which the defenders were protesting in the first place.

²⁹⁷ Report of the Special Rapporteur on the Rights of Indigenous Peoples, *supra* note 8, ¶ 27.

²⁹⁸ *Id.*, ¶ 28.

V. Conclusion and Requests for the Special Rapporteurs

The events and actions described in this letter expose a wide array of flagrant human rights violations that Liberia committed to protect the interests of MNG Gold). First, the Liberian authorities' disproportional reaction to suppress the protests on November 5, 2018, constitutes a clear violation of the State's duty to respect a set of basic human rights. The arbitrary arrests and detention of protesting and even non-protesting community members is a clear and direct arbitrary deprivation of liberty as prohibited under Article 9 of the ICCPR. In particular, the erratic arrests of human rights defenders and innocent members of the largely Indigenous community and the severely flawed and unfair legal proceedings that followed violate the right to freedom of assembly (Article 21 of the ICCPR), the right to a fair trial (Article 14 of the ICCPR), and the right to be free from discrimination (Article 26 of the ICCPR). By using excessive violence during the arrests, detention and imprisonment, the Liberian authorities in turn violate the right to be free from torture (Article 7 of the ICCPR).

The arbitrary and violent detention is not just a violation of the State's duty to respect human rights. They also constitute a way to silence human rights defenders and the community at large from speaking up against the Indigenous and environmental human rights violations committed by MNG Gold. While Liberia's actions constitute direct human rights violations in and of themselves, they are part of the wider regional effort to silence human rights defenders within local communities. In the Liberian context of endemic corruption and egregious corporate influence on (or capture of) the State, the police and judiciary are abused as tools to enhance the interests of large and powerful multinational corporations like MNG Gold. The local community members found the courage to speak up against the disruption of their community life and land by MNG Gold. They were vocalizing their concerns about the company's failure to meet its social obligations, including the lack of compensation after the toxic spill of September 2017, which poisoned them and impacted their right to a healthy environment.

The arbitrary and violent detention, criminalization, and stigmatization following the protests of November 5, 2018, were clearly aimed at silencing the community and discouraging human rights defenders from speaking up against MNG Gold. By doing so, the Liberian State enables the corporation to continue to violate the community's human rights, including their rights to health and to a healthy environment. Hence, the disproportionate reaction of the Liberian authorities to the protests also constitutes a violation of the State's duty to protect the community's human rights against violations by third-party MNG Gold.

These actions are inscribed in a broader pattern of the Liberian State's failure to fulfill their duty to protect local communities' Indigenous and environmental rights against violations by mining companies, including the State's inadequate assessment of companies before granting mining concessions, the unwillingness to enforce corporate obligations towards local communities and the total lack of accountability for the toxic spill that poisoned an entire community.

Green Advocates and the Lowenstein Clinic respectfully demand that all the Special Rapporteurs and UN Working Group addressed in this letter:

1. *Declare* the actions of the Liberian government leading up to and disproportionately responding to the protests of November 5, 2018 in violation of their duty to respect and protect the human rights of the Liberian citizens in Bong County;
2. *Urge* the Liberian government to take action to stop the ongoing human rights violations, to provide adequate remedies for the violations that have occurred and to create an environment to prevent such human rights violations in the future;
3. *Request* the Liberian government for additional information about the ongoing and past human rights violations described in this letter; and
4. *Request* information from the Liberian government about what, if anything, the Liberian State has done—or required MNG Gold to do—to remedy the violations of rights described in this report and what, if anything, the Liberian State plans to do regarding this company and other multinational extractive corporations operating improperly within the country; and
5. *Conduct* a country visit to Liberia, to the extent they have not already done so, including a visit to MNG Gold and the affected community in Bong County, to clarify the remaining information gaps.

Specifically **concerning the arbitrary and violent reaction to the protests that took place on November 5, 2018**, we first ask the *UN Special Rapporteur on the Situation of Human Rights Defenders (Mary Lawlor)* and the *UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (Clément N. Voule)* to:

1. *Declare* that the disproportional response on behalf of the Liberian State constitutes an arbitrary deprivation of liberty, as prohibited under Article 9 of the ICCPR, as well as a violation to respect the community members' right to freedom of assembly (Article 21 of the ICCPR), freedom of expression (Article 19 of the ICCPR), right to a fair trial (Articles 15-16 of the ICCPR) and their right to be free from discrimination (Article 26 of the ICCPR);
2. *Recognize* the background of systemic corruption and corporate influence;
3. *Recognize* that, against this background, the arbitrary and violent detention of protesting and even non-protesting community members is utilized as a tool to silence defenders and the community at large from speaking up against the gross human rights violations being committed by MNG Gold;
4. *Declare* that by silencing the community, these arrests also constitute a violation of Liberia's duty to protect individuals, particularly those from Indigenous communities, against the environmental human rights violations committed by MNG Gold;
5. *Urge* the Liberian government to release the detainees that remain incarcerated and to adequately compensate the victims of this arbitrary detention;
6. *Urge* the Liberian government to guarantee the right to defend rights to allow members of local communities to act as defenders against gross human rights violations by corporate actors like MNG Gold by:
 - a. immediately taking measures to strengthen the fight against corruption of the police and judiciary and their use by powerful corporations as instruments to silence human rights defenders;

- b. creating a safe and enabling environment for human rights defenders, in which a right to protest (including the freedom of assembly and expression) is guaranteed; and
 - c. publicly recognizing the legitimacy and importance of the work human rights defenders do in all contexts, including in the fight against corruption, environmental destruction, and disruption of Indigenous communities by extractive industries;
7. *Inquire* how the Liberian State plans to improve the national situation for human rights defenders, both in Bong County and across the country; and
 8. *Request* further information on the conditions of the arrests and the trial as well as the government's motivation to keep these individuals detained despite evidence of gross human rights violations.

Second, we ask the *UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (Fionnuala Ní Aoláin)* to:

1. *Declare* that justifying the disproportionate reaction of the Liberian authorities to the protests on the basis of maintaining public order and fighting terrorism is an illegitimate pretext; and
2. *Urge* the Liberian government to take step to counter the public narrative that wrongfully portrays the detainees as terrorists and criminals.

Third, concerning the allegations of torture and the death of three individuals in custody, we ask the *UN Special Rapporteur on Torture (Alice Edwards)* to:

1. *Declare* the violent actions of the Liberian government during the arrests and detention to be a violation of the prohibition of torture (Article 7 of the ICCPR);
2. *Urge* the Liberian government to stop these violent and torturous practices and provide adequate compensation for the victims of these practices;
3. *Request* the Liberian government for further information about the violent conditions of the arrests and imprisonment;
4. *Request* the Liberian government for additional information to investigate the conditions that caused the death of three individuals in custody; and
5. *Urge* the Liberian government to alter these conditions and adequately inform and compensate the families of those who died in custody.

Concerning the conditions and rights violations leading up to the events of November 5, 2018, for which the community was attempting to hold the State and MNG Gold accountable, we ask the *UN Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment (David R. Boyd)* and the *UN Special Rapporteur on Toxics and Human Rights, Professor (Marcos A. Orellana)* to:

1. *Declare* that the toxic spill and the encompassing wanton, reckless and negligent discharge of toxic chemicals into the local community that occurred at MNG Gold in September 2017 constituted a violation of the right to a healthy environment; and
2. *Urge* the Liberian government to provide adequate compensation for the damage suffered by the local community due to the toxic spill, which includes reassessing the value of damages and enforcing MNG Gold's obligation to compensate.

In addition, we ask the *UN Special Rapporteur on the Rights of Indigenous Peoples (Francisco Cali Tzay)* to:

1. *Recognize* that the mining activities of MNG Gold disrupt the local community and violate their Indigenous (land) rights; and
2. *Urge* the Liberian State to recognize and respect the Indigenous rights of the Kpelle and Bassa people, and all other Indigenous peoples in Liberia, which includes:
 - a. recognizing their identity as Indigenous people;
 - b. respecting their Indigenous rights; and
 - c. enforcing the respect of these rights by corporations like MNG Gold and providing a framework for adequate compensation in cases of violations of these rights.

In light of its recent country visit to Liberia, we specifically ask the chair and members of the UN Working Group Chair on Business and Human rights to:

1. *Recognize* that both Liberia and MNG Gold have failed to comply with their obligations under the UN Guiding Principles on Business and Human Rights;
2. *Urge* Liberia and MNG Gold to take both prospective and retroactive actions to align their conduct with their obligations under the UN Guiding Principles on Business and Human Rights; and
3. *Advocate* for the protection of environmental defenders throughout Liberia.

Finally, we ask all the UN Special Rapporteurs and the UN Working Group addressed in this letter to:

1. *Recognize* the systemic problem in Liberia of corporate State capture, a situation in which the endemic corruption that plagues the State is abused by powerful corporations, especially in the sector of natural resources and mining; and
2. *Urge* the Liberian State to take steps to end this corruption and the encompassing corporate impunity for human rights violations.

Most respectfully,

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Francis Kemaworlee Colee
Samwar Fallah
Green Advocates International

Justin Cole
Raaya Gomez
Abyssinia Lissanu
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