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5 May 2020

Mr Baskut Tuncak  
Special Rapporteur on Toxic Wastes  
c/o OHCHR-UNOG  
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Switzerland

**By email:** [rtoxicwaste@ohchr.org](mailto:rtoxicwaste@ohchr.org)

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***The Sepik River is not ours. We are only vessels of the Sepik Spirit that dwells to protect it. We will guard it with our lives.<sup>1</sup>***

Dear Special Rapporteur Tuncak,

**Urgent communication on the proposed Frieda River gold and copper mine and associated tailings dam in Papua New Guinea**

## **INTRODUCTION**

We are Project Sepik. We urgently bring to your attention the threat to our Sepik way of life posed by the “Sepik Development Project” (**Project**). The Project is the largest mining project ever proposed for development in Papua New Guinea (**PNG**). It is to be located in the Sepik region, the region through which the Sepik River travels.

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<sup>1</sup> *Supreme Sukundimi, the River God declaration by the Haus Tambaran of the Sepik River.*

*The Supreme Sukundimi, the River God, declares that the River is the life of the Sepik and therefore it must be protected at all costs.<sup>2</sup>*

The Project includes a gold and copper mine and tailings dam located near and on the Frieda River. The Frieda River is a tributary of the Sepik River (which is why the Project is also known as the Frieda River Mine).

The construction phase of the mine involves the discharge of toxic material into the Frieda River. There will be a pipeline, spoil dumps and incinerators all carrying, storing or burning toxic waste materials. The Project will include one of the largest proposed dams in the world, to be used in part, to store toxic tailings in perpetuity. The dam will be constructed in a seismically active area and if the dam collapses it will be catastrophic, projected to kill thousands of villagers who live in the area and destroy the Sepik River.

Thus, this Project poses unacceptable risks to our ancestors, ourselves and that of our unborn children. It risks the spirit of all plants and animals of the river, the lakes, the tributaries and streams.

*It is our innate role to guard the River from exploitation and destruction by outsiders. Our future is in peril from this proposed Mine and therefore, we gather together as Guardians of the River to stand firm as one. We have the ultimate support from our ancestors who live with us in many forms.<sup>3</sup>*

We say in the strongest terms, the Sepik Development Project, like Ok Tedi (which is in close proximity), is a disaster waiting to happen. The Sepik River and its people will be destroyed if the Project is approved.

We respectfully submit that the Project falls within your mandate as it concerns actual planned exposure and risk of exposure to toxic waste, thus, threatening the human rights of the Sepik Peoples. We also raise concerns about the assessment and approval process, including lack of information about the Project and the lack of free, prior and informed consent.

The Sepik Development Project is currently making its way through PNG Government approval processes. The Project must not be approved. We must act early and we must act now. We have seen too many times where alarm bells have been raised only after it is too late and the damage has been done. We humbly request your assistance in our struggle against this Project and ask you to investigate and make representations on our behalf.

## **OUR COALITION**

Our communication is also joined by the Centre for Environmental Law and Community Rights. Further, our letter has benefited from consultations with Amnesty International and the Environmental Defenders Office, Australia.

## **Project Sepik**

Project Sepik is a community-based group that has been working in the Sepik region since 2016. Project Sepik's vision is for a local environment that is in balance with all life. It promotes environmentally sustainable practices and holds to account those that are exploiting the environment. Project Sepik advocates for the interests of a broad spectrum of

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

communities in the East Sepik Province, including villages along the Frieda River and the Sepik River.

In March 2020, Project Sepik visited more than 20 powerful Haus Tambarans or Spirit Houses along the Sepik River to discuss the Sepik Development Project with them. We spoke with Clan leaders from Swagap near Frieda River to the villages at the estuaries, mangroves and swamps near the mouth of the Sepik River.

These Haus Tambarans have been the parliament houses of each village before colonisation. This is where the Governance of Land and all Lifeforms has always come from.

The Haus Tambarans were unanimous in their opposition to the Project. Together they made the following declaration:<sup>4</sup>

*Supreme Sukundimi, The River God declaration by the Haus Tambaran of the Sepik River*

*We the collective voice of the Haus Tambaran of Sepik River, under the powers of the Supreme Sunkundimi, the River God, hereby declare,*

*The Frieda Mine Banned*

Project Sepik also has a “Save the Sepik” campaign website which can be viewed at <https://savethesepik.org>.

### **Centre for Environmental Law and Community Rights**

Centre for Environmental Law and Community Rights (**CELCOR**) is a PNG based not-for-profit, non-government organisation that uses the law and advocacy to promote and defend environmental and customary rights of Papua New Guineans. CELCOR’s vision is to see all Papua New Guineans living in harmony with the environment and culture in a just, holistic and sustainable way.

### **OVERVIEW OF THE SEPIK REGION**

The remote Sepik region is a magnificent area, rich in biodiversity and culture. It has been on PNG’s tentative list for World Heritage protection since 2006<sup>5</sup> and is to be designated for protection under the Convention of Wetlands of International Importance (or RAMSAR)<sup>6</sup>.

The Sepik River is 1126 km in length and covers an area of 7.7 million hectares and is one of the world’s greatest river systems. The Frieda River, near where the mine is to be located, contributes around 5% of water inflow to the Sepik River.

The Sepik River Basin is the largest unpolluted freshwater system in New Guinea and among the largest and most intact freshwater basins in the Asia Pacific. The diverse habitats of the Sepik River Basin rate as globally significant on a number of biodiversity indices. The area contains two Global 200 eco-regions, three endemic bird areas and three centres of plant diversity. Vegetation types, at altitudes from 0 to 3800 metres above sea level, include mangrove forest, herb swamps, tall lowland rainforest, cloud forest, and alpine heaths. The

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<sup>4</sup> Ibid.

<sup>5</sup> <https://whc.unesco.org/en/statesparties/PG> (accessed on 29 April 2020).

<sup>6</sup> <https://www.ramsar.org/news/the-sepik-river-soon-to-be-designated-as-a-ramsar-site-in-papua-new-guinea> (accessed on 29 April 2020).

Telefomin region is said to contain the greatest marsupial diversity on the planet. Threatened species such as the New Guinea Harpy Eagle, Victoria Crowned Pigeon and the Northern Cassowary remain common and a number of restricted range birds are represented. The Sepik River fish fauna reflects the Great Northern Fish province, sharing many species with the Ramu and Mamberano Rivers. Important waterbird and crocodile populations are supported by the 1500 lakes and other wetlands associated with the basin.<sup>7</sup>

The Sepik River is home to approximately 430,000 people who depend almost entirely on products from the rivers and forests for their livelihoods. This is perhaps the most linguistically and culturally diverse area on the planet with over 300 languages in an area the size of France. The area is famed for Haus Tambarans (the gabled spirit houses), one of the most dramatic examples of indigenous Melanesian architecture, and a very rich ceremonial carving and music tradition.<sup>8</sup>

## **BASIS OF OUR UNDERSTANDING OF THE PROJECT**

In developing our understanding of the Project, our coalition have had the assistance of independent experts who have reviewed the Environmental Impact Statement for the Project (EIS).

We have **attached** a summary of the Expert Reports for your information. This summary and each of the expert reports can be accessed via the following link: <https://savethesepik.org/expert-review-eis-high-level-summary/>. We draw your particular attention to the opinions provided by the following experts:

- Professor Amanda Reichelt-Brushett - Aquatic Ecotoxicology
- Michael Main, ANU - Geological and Social
- Assoc. Prof. Matthew Currell, School of Engineering, RMIT University - Groundwater
- Dr Ian Cordery, Associate Professor School of Civil and Environmental Engineering, UNSW - Surface Water
- Mark Chernaik, Environmental Law Alliance Worldwide – General review

A copy of the EIS can be found at: <http://friedariver.com/eis/>.

## **OVERVIEW OF THE PROJECT**

The Project is proposed by an unincorporated joint venture between:

- Frieda River Limited, a PanAust Limited subsidiary company. PanAust is a wholly-owned subsidiary of Guangdong Rising H.K (Holding) Limited, which is a wholly-owned subsidiary of Guangdong Rising Assets Management Co Ltd. The latter company is a China state owned company regulated under the State Owned and Assets Supervision Commission, Guangdong; and
- Highlands Frieda Limited, a subsidiary of Highlands Pacific Limited, which is wholly owned by Cobalt 27 Capital Corp, which is headquartered in Toronto Canada.<sup>9</sup>

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<sup>7</sup> <https://whc.unesco.org/en/tentativelists/5065/> (accessed on 29 April 2020).

<sup>8</sup> Ibid.

<sup>9</sup> <https://friedariver.com/the-project/company-profile/> (accessed 24 April, 2020) and <http://www.highlandspacific.com/current-projects/frieda-copper> (accessed 24 April, 2020).

(Referred to as the **proponent**.)

We understand that the joint venture is 80% in favour of Frieda River Limited and 20% in favour of Highlands Frieda Limited.

The Project, has a planned footprint of at least 16,000 hectares, primarily comprised of:

- Frieda River Copper-Gold Project (the mine), a 1,145 hectare, open-pit mine;
- Frieda Hydroelectric Project (hydroelectric project), a 12,700 hectare dam;
- Sepik Infrastructure Project (roads and airport and related infrastructure); and
- Sepik Power Grid Project (power lines and related infrastructure).

The hydroelectric project will act as both a hydroelectric project, primarily supplying electricity to the mine and as a tailings dam for the mine. For this reason, it is called an Integrated Storage Facility (or ISF) in the EIS. The ISF will discharge water into Frieda River as part of its operation as a hydroelectric project. While the ISF has been represented by the proponent as an electricity source for the public, only surplus electricity (if there is any) will be made available to the public during the life of the mine.

The EIS states that the mine is predicted to operate for a minimum of 33 years (the proponent expects the life of the mine to be extended) while the hydroelectric project will last for at least 100 years.

There are many ancillary projects and works which are part of the Project's infrastructure, such as:

- 325km pipeline;
- Ok Binai catchment waste dump;
- soil dumps;
- airport; and
- bridges and roads.

## **STATUS OF THE PROJECT**

The Project and its EIS is with the PNG Conservation and Environment Protection Authority (**CEPA**) for assessment under the *Environment Act 2000* (PNG). The public review and submission process closed on 31 March, 2020. Project Sepik and CELCOR each made submissions, urging CEPA to reject the EIS and the Project.

CELCOR also raised concerns with CEPA in a letter on 27 March and the submission about critical missing reports referred to in the EIS but not provided as part of the public review and submission process. We provide more information about these missing reports below.

As set out below, we believe there are significant and worrying concerns with the adequacy of the EIS in considering the impacts of the toxic waste caused by the Project as well as with the Project itself.

We believe that representations need to be made now before the Project is approved because of these significant deficiencies in the EIS process and the human rights and environmental consequences of the Project for the Sepik Peoples, if approved.

## PROJECT TOXIC WASTE ISSUES

The experts raise multiple issues with the EIS and the Project concerning the toxic issues arising from the Project. To discuss these issues, we have broken them into two:

- risk of failure of the tailings dam; and
- all other toxic waste issues arising from the hydroelectric/tailings dam, mine, waste discharge and associated infrastructure.

### Risk of failure of the tailings dam

The proposed tailings dam is massive with a footprint of over 12,000 hectares. It is to be located in the Frieda River catchment, 16km downstream from the mine. Moreover, the receiving environment is seismically active:<sup>10</sup>

*Two large regional faults are situated near the embankment site: the Frieda Fault is situated approximately 7 km to the south of the site while the Saniap Fault is situated 1 km to the north of the site. Potential Movement on these faults has been considered in the seismicity assessment for design of the embankment...*

The dam will be used to store construction spoil, mine waste rock and tailings, and for sediment control. The dam will store 1,450 Mt of waste rock (with 1,340 Mt potentially acid forming sulphide) and approximately 1,500 Mt of tailings. The EIS states that to limit the potential for generation of acid and metalliferous drainage, the dam is meant to provide a permanent water cover for the waste rock and process tailings material from the mine.

The proponent has admitted in the EIS that if the dam fails, it would be catastrophic and there will be loss of life.<sup>11</sup> There are more than 30 villages located downstream from the proposed dam along the Frieda and Sepik Rivers.

The EIS states that the likelihood of dam failure occurring is “very unlikely” due to having “appropriate controls in place, primarily relating to the application of conservative design standards and criteria and a specific ISF stewardship program incorporating a dam safety program, management oversight and an independent external review”.<sup>12</sup>

We reject this prediction and conclusion for the following reasons.

1. We have not been provided with all critical information about the tailings dam, especially regarding the probability and consequences of a dam break. Critically, what is referred to as the ‘dam break analysis’ is discussed in the EIS, however, has not been included in the EIS for public review. One of our experts, Michael Main, has said that the dam break analysis is probably the most important report in the whole EIS.

The EIS relies on reports that are critical to understanding the Project and the above risk prediction. This information was not made available during the public review and submission process, which closed on 31 March, 2020. We have listed these missing critical reports at Annexure A of this communication (**attached**).

CELCOR formally requested the reports at item 1 of Annexure A from CEPA on 27 March 2020 but the reports have not been provided to date. We have information that

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<sup>10</sup> Project EIS, Executive Summary, page 13: <http://friedariver.com/eis/>.

<sup>11</sup> Project EIS, Appendix 3b – Frieda River Hydroelectric Project Conceptual Closure Plan – Section 7.3.1 Dam Classification, Page 29.

<sup>12</sup> Project EIS, Chapter 11 – Extreme Natural Hazards and Incidental Events, Page 11-5

a villager requested the dam break analysis from the proponent during a 'consultation', but the proponent refused to provide this information.

2. The proposed location - is a seismically active area. The risk of major earthquake causing damage to the dam will persist for millions of years. There will never be a time when the tailings dam will not require maintenance and management. This has not been adequately accounted for in the EIS, as it only considers a 200 year timeframe. Moreover, the "stewardship program" is not available in the EIS and the EIS does not contain details about the monitoring, maintenance and oversight, which will be needed.
3. There is no discussion in the EIS of the capacity of the PNG Government to monitor dam's maintenance by the proponent during the life of the mine or to take on the maintenance itself in perpetuity at the end of the life of the mine. This is not a criticism of the PNG Government, but the reality of such an undertaking in circumstances where the PNG Government does not have the resources or expertise to maintain the dam. CEPA has previously made representations to RAMSAR and to the World Heritage Organization that it did not have the capacity to protect these sites without assistance. We question how CEPA or any other PNG authority will have the capacity to ensure the dam is maintained properly in perpetuity.

### **Other toxic waste issues**

We rely on the expert summaries which sets out the other toxic waste problems.

We have two broad concerns. The first is the lack of information in the EIS about how toxic waste risks are to be managed (i.e. deficiencies in the assessment process). For example, the 325km pipeline and the risk of leakage along difficult terrain as well as important wetlands and habitats has not been assessed.

The second is with the substantive toxic waste problems arising from the Project, including the discharge of toxic waste into the Frieda River and into the sea near the coastal town of Vanimo<sup>13</sup>.

## **THREATS TO THE HUMAN RIGHTS OF THE SEPIK PEOPLES**

### **Right to information and free, prior and informed consent**

PNG has an obligation to guarantee effective participation and access to information. These are important conditions to ensuring that the peoples living in the Sepik region can exercise their right to free, prior and informed consent (**FPIC**). These human rights are also protected in the *Constitution of the Independent State of PNG (PNG Constitution)* via the right to freedom of information (s.51) and protection of unjust deprivation of property (s.53). In the PNG context, customary rights to ownership of land and rivers are protected.

However, we are concerned that there has been no proper process of free, prior and informed consent. Where the mine, including the discharge of waste into Sepik Basin watercourses, affects the property rights of customary owners, free, prior and informed consent is fundamental to the legitimacy of the Project. Our concerns are based on the following.

- As exemplified by the above Haus Tambaran Declaration neither the proponent nor the State has obtained FPIC of those villages who rely on the Frieda and Sepik Rivers for their livelihoods.

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<sup>13</sup> Project EIS, Executive Summary, page 13: <http://friedariver.com/eis/>.

- Critical information about the tailings dam, including the dam break analysis, has not been made available to local customary landowners or the Public. We believe that this information must be disclosed.
- The EIS does not contain any written proof of landowner consent, which is a requirement for an EIS in PNG under guidelines. The EIS states that four villages will require relocation for the Project, representing at least 194 households and 1,316 people. There is no proof that any of these villages have exercised FPIC. Moreover, no resettlement plan has been released publicly, which reinforces our concern of a lack of FPIC.
- A recent research report undertaken by Project Sepik and Jubilee Australia documents a consultation process in the Sepik Basin marked by violence and police suppression.<sup>14</sup> Indigenous peoples in the Sepik Basin protested against the Frieda Mine during the consultation period. In response, local police and officers hired by the proponent engaged in intimidation and suppression tactics.

Both the landowners in the immediate footprint of the Project, which are to be relocated, and within the Projects' sphere of environmental impacts must consent to the Project. In circumstances where a Project will have a substantive impact on indigenous peoples' culture and livelihood, FPIC is determinative of whether the Project is to go ahead.

### **Right to life**

The Sepik Peoples have a right to life under the International Covenant on Civil and Political Rights, which PNG has acceded to and under s.35 of the PNG Constitution.

A failure of the tailings dam and the release of the toxic waste will be catastrophic resulting in loss of life and destruction of the receiving environment. The risk posed by the development of the Project to the lives of indigenous peoples is unacceptable. The Sepik Peoples should not be required to bear the costs of the Project in perpetuity.

Moreover, the PNG State is unable to guarantee this right, given it does not have the resources to oversee the proponent's maintenance of the tailings dam or to maintain it once the proponent has left.

The EIS contains no details of the kind of "monitoring, maintenance and oversight, which will be needed both during operations and after closure" into perpetuity.

There have been 11 major tailings dam failures in the last decade, and the rate of such failures is increasing, so to say the risk of failure is 'very unlikely' appears to be an inadequate characterisation from an empirical perspective.

Other impacts include:

- contamination of river and water sources;
- effects of contamination on biodiversity; and
- negative health impacts.

These other matters threaten indigenous life and the right to dignified life.

In effect, the Sepik People are being asked to bear the risk of a private development, where most of the profits will go overseas. While the proponent is promoting the tailings dam as a hydroelectric project (and thus will benefit the PNG public and its nation-building and development) we contest this characterization. It will only provide surplus electricity (i.e. what

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<sup>14</sup> <https://savethesepik.org/report-the-river-is-not-ours/>



the mine does not use, if there is any surplus) to PNG consumers along a narrow corridor. Moreover, even this is hypothetical because there will need to be third party investment in order to make this supply available to those consumers. This is to “consumers” who still live predominately self-subsistence lifestyles. There is no planned third-party investment. Further, we contest this public purpose characterisation because there is an alternative to the tailings mine, which the proponent has dismissed as uneconomic. The tailings dam is for the purpose of disposing of the tailings first and foremost. If a safer alternative course of action is uneconomic (which the proponent has said about the backfilling method) and the solution to the waste disposal problem puts a large and significant area at risk of catastrophic loss of life and environmental harm, it is not economic to proceed with the Project at all.

The Sepik Peoples have a right to life which should not be put at risk.

### **Right to culture**

The Project threatens the right to culture protected by Article 27 of the ICCPR and under the International Convention on the Elimination of All Forms of Racial Discrimination (see General Recommendation No.23).

The Project threatens the practice and development of the spiritual and cultural beliefs of the Sepik Peoples. These spiritual and cultural practices are dependent on a healthy environment.

### **Rights of the child**

The Project undermines the rights of Sepik children to a healthy environment; to life and to culture, including unborn generations.

### **Request for Investigation by the Special Rapporteur**

We ask that you, as the Special Rapporteur on Toxic Wastes, investigate the matters we have raised in this letter. In particular, we request that you undertake the following.

- a) Request further information from the Papuan New Guinean government with respect to processes undertaken to obtain free, prior and informed consent from all affected Sepik Peoples, including, the 4 villages planned for resettlement and the downstream villages which fall within the Project catchment and all the villages within the sphere of its environmental effects.
- b) Request from the Papuan New Guinean government the missing critical information in Annexure A (**attached**) from the Proponent or the Papua New Guinean government.
- c) Communicate to the Papuan New Guinean government your view that the issues raised by the independent experts be addressed in a supplementary EIS that is provided to the public for review and submissions.

In addition, we would request that you (or your successor in the mandate):

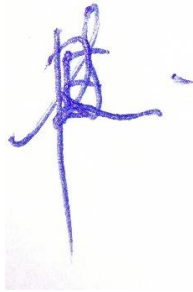
- a) Communicate recommendations on appropriate measures the Papua New Guinean government should take to ensure the Sepik Peoples have the opportunity to provide or refuse their consent.
- b) Consider requesting a country visit in order to investigate actual and potential violations of Indigenous Peoples’ rights in connection to the Project, including actions taken by police and private security forces.

- c) Continue to monitor this project so that appropriate scrutiny and accountability is maintained during the Project's application and development process to ensure the full and effective protection of the rights of the Sepik Peoples.

We propose to write separately to the Special Rapporteur on the Rights of Indigenous Peoples about this matter focusing on issues within their mandate.

Should you require further information, please do not hesitate to contact the writer ([penimanu@gmail.com](mailto:penimanu@gmail.com)) or Mr Peter Bosip, Executive Director, CELCOR ([pbosip@gmail.com](mailto:pbosip@gmail.com)).

Yours sincerely,



**Emmanuel Peni**

Coordinator

Project Sepik



**Peter Bosip**

Executive Director

CELCOR Inc

## ANNEXURE A – FRIEDA EIS MISSING REPORTS

	Environmental Impact Statement missing reports	EIS reference
1.	<ul style="list-style-type: none"> <li>a. SRK 2018 Frieda River Hydroelectric Project Dam Break Analysis (if different from the next document).</li> <li>b. SRK 2018 Frieda River HEP SPS Design- Dam Break Assessment, Document number PNA009_Frieda River HEP SPS Design - Dam Break Assessment_Rev0.</li> <li>c. Al Atik, L and Gregor, N, 2016. Seismic Hazard Assessment for the Frieda River Tailings and Waste Integrated Storage Facility, Papua New Guinea.</li> <li>d. Bechtel Australia Pty Ltd, 2010. Probabilistic Seismic Hazard Analysis and Development of Design Spectra; Document Number 25534-OFS-30R-K01-00001, November 1, 2010.</li> <li>e. SKM, Pöyry, SMEC, 2010. Seismotectonics of Papua New Guinea and in the Project Area, part of Frieda River Power Generation Extended Pre-Feasibility Study, Document No: FRP02-2200-EC-RP-0003, 11 Feb 2010.</li> </ul>	<p>Reports are referred to in Appendix 2a (The SPS - Selection Phase Study)</p>
2.	<ul style="list-style-type: none"> <li>• Embankment optimisation</li> <li>• Hydroelectric power scheme design</li> <li>• Wave size assessment</li> <li>• Site wide water and load balance</li> <li>• Multiple accounts analysis (MAA)</li> <li>• Implementation</li> <li>• Risk analysis</li> <li>• Basis of Estimate</li> <li>• Forward works plan.</li> </ul>	<p>The following reports referred to in Appendix 2a on page xii as “supporting documents” that are missing from the EIS</p>
3.	<p>ACIL Allen Consulting. 2018. Sepik Development Project Economic Impact Assessment. October 2018. Prepared by ACIL Allen Consulting for PanAust Limited. Brisbane, Australia.</p>	
4.	<p>Resettlement Plan</p>	