Perhimpunan Bantuan Hukum & Advokasi
Rakyat Sumatera Utara (Bakumsu)

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July 7, 2020

Subject: Community concerns regarding Dairi Prima Minerals (DPM) mine, North Sumatra

Dear Chairman Liu Lange,

We are writing as legal representatives of residents of Batak Toba communities in the Dairi Regency of North Sumatra, Indonesia. BAKUMSU is a legal service for communities in North Sumatra. The people we represent are concerned about the establishment of a mine by a company, Dairi Prima Minerals (DPM), which we understand is owned 51% by China Nonferrous Metal Industry's Foreign Engineering and Construction Co., Ltd (NFC) and 49% by Bumi Resources Minerals (Indonesia).

In late 2019, two communities in Dairi filed a formal complaint with the Compliance Advisor/Ombudsman (CAO) of the International Finance Corporation (IFC) regarding their well-founded fear of environmental and social harms likely to ensue from the mine's development. They filed the complaint based on research showing that the IFC is linked to the project through its investment in Postal Savings Bank of China, which in turn has a financial relationship with China Nonferrous Metal Mining Group Co Ltd. **In late March 2020, CAO found the complaint to be eligible and will soon commence its assessment process.**

We believe that Bank of China may have been or will potentially be approached to provide finance for the DPM project. We write to alert you to this complaint, and to request your assistance in addressing community concerns.

Firstly, there are concerns about the DPM mine's compliance with national laws. We are in the process of conducting a detailed legal analysis of the mine (which we can share with you when completed), but already we believe the mine is not in full compliance with Indonesian laws.

Environmental Approval

Regulation #27 of 1999 with regard to Environmental Impact Assessments (EIA, or AMDAL in Indonesian) states in Article 25 that it is illegal to develop a project that deviates from that described in the approved EIA/AMDAL. In 2002, DPM initiated a pre-feasibility study to determine the viability of the *Anjing Hitam* resource near Sopokomil. The results identified resources of 6.3 million tonnes (MT) of ore. In 2004/5, DPM produced an Environmental Impact Assessment and an environmental impact management plan and were given approval to mine and to explore further. Since then the reserve estimates have grown. In June 2011 a DPM press release[12] stated:

> *"PT Bumi Resources Minerals Tbk. ("BRMS") is pleased to announce a significant increase in the resource and reserve tonnage for the Anjing Hitam, Lae Jahe, and Base Camp deposits within the PT Dairi Prima Mineral's concession ("DPM") … The updated estimate of the combined resources (inclusive of reserves) at the 3 deposits shows a 25% increase from previously 20.1 million ton to 25.12 million ton at 10.1% Zn and 6% Pb."*

This is a significantly larger mine than approved in 2005. On 10 January 2019, the Indonesian Ministry of Environment and Forestry informed DPM that this change in the project size required new environmental approval.[13] In a letter to an NGO staff member and resident of Parongil, dated 16 March 2020, the Ministry's Public Relations Office confirmed that DPM still had not obtained new

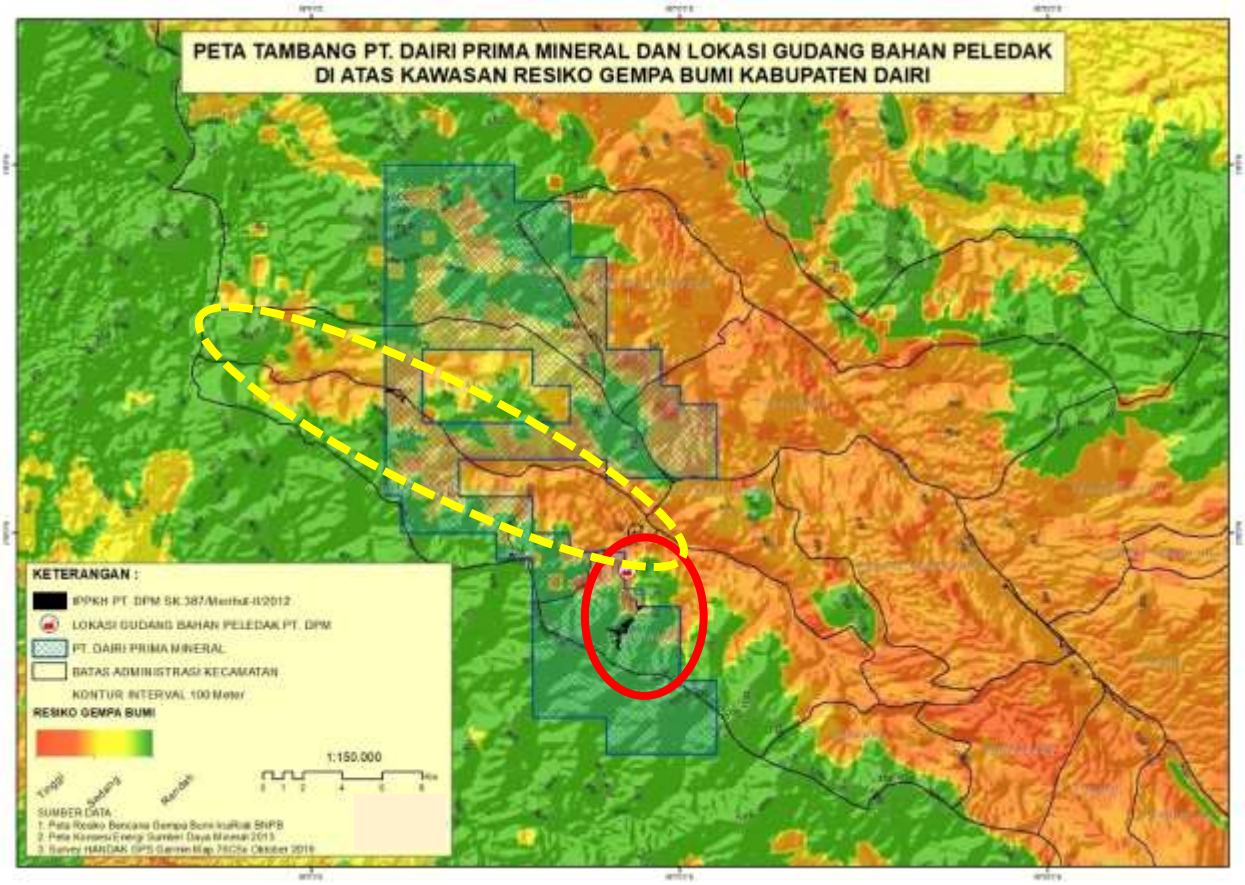
[12] http://www.bumiresourcesminerals.com/

[13] Letter from the Head of the Public Relations Office of the General Secretariat of the Ministry of Environment and Forestry, dated 30 July 2019, in response to an inquiry from a resident of Dairi.

environmental approval. Despite this lack of approval, DPM has continued to construct mine haulage roads, purchase land, conduct earthworks, construct explosive storage facilities, and commence digging the entrance to the underground mine. We also have information that DPM has entered into a US$50 million contract with JCHX Mining Management for underground mining works.[14]

Disaster risk

Article 40 of the 2007 Indonesian Law on Disaster Management requires anyone conducting a high risk activity (which includes mining exploration or construction of tailings dams) must collaborate with the National Disaster Risk Management Authority to undertake risk analysis so that proposed activities can be approved by the Ministry of Energy and Mineral Resources. The map below has been produced by the Indonesian National Disaster Management Agency (BNPS).[15] We have added to this the DPM exploration license area. The red line shows the area of the mine. The yellow dashed line shows the downstream area where communities are located.



On 27 February 2020, at a public dialogue requested by people from Pandiangan Village, close to the mine, residents asked the representative of the Dairi Regency Disaster Risk Management Authority if

[14] https://wap.stockstar.com/detail/IG2019111900000478

[15] On 23 July 2019, President Joko Widodo (Jokowi) asked the ranks of the Meteorology, Climatology and Geophysics Agency (BMKG) to clearly map risk areas, so all large infrastructure developments can refer to those maps. https://finance.detik.com/berita-ekonomi-bisnis/d-4635629/jokowi-minta-bmkg-tegas-ke-pemda-soal-lokasi-infrastruktur

there had been a risk analysis for the DPM mine. The representative said he did not know. On 25 February 2020, community representatives sent letters to the National and Provincial and Regency Disaster Risk Management Authority. They have not yet been answered. We have concerns that DPM has not conducted a proper risk analysis, nor obtained all necessary approvals for work in a high disaster risk zone.

We regard this as extremely serious. An expert in this field, Mr. Richard Meehan of Stanford University, has noted in an attached memo:

> *"The mine is located in one of the most active earthquake regions in the world, along the Sumatra subduction megathrust apparently near a triple plate junction which produced in 2004 and 2005 earthquakes of magnitude 9 and 8+ respectively."*
>
> *"Unlike most earthquakes these levels of magnitude 9 on the offshore megathrust produce strong ground shaking that persists over many minutes. This repetition or longevity of shaking can completely destroy structures including dams that would otherwise survive a short-duration quake with only partial collapse …"*
>
> *"Although the offshore subduction zone mega earthquake poses a threat to long-period structures like tailings deposits, a more dangerous type of earthquake can be expected from the Great Sumatra fault which breaks ground only 15 km to the east of the Dairi site."*
>
> *"The western side of Sumatra is one of the rainiest places in the world with rainfall at the site in the range of 3000-5000 mm. Analysis of local rainfall stations show daily rainfall of 300 mm to be common"*
>
> *"In summary, **the proposed Dairi Mine is located in one of the highest risk areas in the world.** I cannot avoid the conclusion that within a few decades after the "closure" of the deposit there will be an earthquake-induced sudden failure, with a disastrous breach sending a wave of liquid mud downstream to the north."*

Dr. Steven Emerman, a United States university professor of hydrology and geophysics for 31 years (at a variety of Universities, but notably at Utah Valley University), has reviewed the basic information available about the mine and has stated in a memo to our organization (attached):

> *"I am not confident that there has been an adequate assessment of the physical data. I am not confident that DPM has an adequate mining plan, that they have the financial ability and willingness to carry out the mining in a manner that protects human life and the environment, and that they have the willingness to follow the direction of the regulatory agency."*

The communities we represent include those downstream from the proposed mine who would potentially experience acid mine drainage and live constantly under threat of tailings dam failure. These and other communities would also be exposed to toxic dust from the mine, including high levels of zinc, lead and probably arsenic. These impacts would likely be long lasting. As Richard Meehan states:

> *"Note that the hazard here does not go away in time; a failure is as likely to occur 100 years from now long after the project has been 'closed'".*

We are aware that the Chinese government has been actively revising standards for tailings dams in China in wake of the Brumadinho dam disaster of 25 January 2019. In that disaster a tailings dam at the Córrego do Feijão iron ore mine, Minas Gerais, Brazil, suffered a catastrophic failure and over 250 were killed. We commend the Chinese Government for revising its domestic standards for tailings dams (which include prohibiting dams in some situations) and we urge NFC to apply these guidelines to the proposed DPM mine in North Sumatra.

Explosives Facility

With regard to the explosives storage facility, we note that the Project Layout map in the 2005 EIA/AMDAL does not include explosives storage facilities. The text of the EIA/AMDAL also did not refer to an explosive storage facility. However, in February 2019 DPM commenced construction of an explosives storage facility.

With regard to the explosives facility, we also note that Indonesian regulations (Ministry of Energy and Mineral Resources Regulation 309.K-30-DGB-2018, dated 21 November 2018) state that even small sized explosive storage facilities must be located at least 60-meters from residences (and larger facilities much further away). There is information at the site indicating the facility is for storing the following materials:

- Ammonium Nitrate, 100 ton
- Dynamite, 5000 kg
- Detonators, 200 pieces

This suggests that it is not a small explosives facility, yet it is located just 50 meters away from houses in the settlement of Sopit (a sub-village of Longkotan village):

On 02 March 2020, concerned local people questioned DPM staff about the approvals for the explosives facility. DPM called for a meeting about the explosives facility and attended with a police and military escort. Following requests from local people and the village chief, the DPM public relations staff present could provide no proof of the explosives facility being approved by government.

Local people from Dairi also sent letters about this issue to Ministry of Energy and Mineral Resources in February 2020, but no replies have been received. These issues are particularly concerning as in Zambia in 2005 at least 46 people were killed in a blast at an explosives factory on the premises of an NFC mine.[16]

Social issues

The communities we represent also have concerns about the social impacts of the mine. These communities identify as Batak Toba, an indigenous group with distinct culture and beliefs. As such, the rights of indigenous peoples, as defined by the United Nations Declaration of the Rights of Indigenous Peoples apply, including the right to decide what happens on their territories and the right to maintain their culture.[17]

The Batak Toba people claim they have been deprived of their right to freely give or withhold their consent to the mine. Furthermore, DPM has brought in outside workers including many Chinese people. This has left the Batak Toba people feeling alienated on their own lands. A series of conflicts have arisen as the company builds infrastructure. DPM has blocked people's access to their lands and construction work has resulted in people's houses being flooded with mud.

Other issues and risks

NFC purchased its 51% stake in Dairi Prima Mineral through its subsidiaries. The company's wholly owned subsidiary NFC (Hong Kong) Metal Resources Company Ltd. is the direct holder of the Indonesia stake.[18] NFC's board of directors voted on the investment in Dairi Prima Mineral in 2018, before the deal was finalized. It is notable that two of NFC's nine board members, Han Youhong and Feng Limin, abstained from the vote (the other seven voted in favor.) The two board members cited the following risks as reasons for their abstention: primarily high financing costs, and secondarily Indonesia's unstable mining policy, other country-specific risks, and the U.S.-China trade war.[19]

After the deal was signed, NFC filed a disclosure with the Shenzhen Stock Exchange elaborating on the

[16] https://www.nytimes.com/2005/04/21/world/africa/blast-kills-46-at-a-copper-mine-in-zambia.html
[17] UNDRIP is available at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf. Article 3 states: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 23(2) states: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."
[18] NFC, "China Nonferrous Metal Construction Co., Ltd.
Announcement on the Issuance of Preferred Shares by Overseas Subsidiaries," September 4, 2018.
http://www.nfc.com.cn/upload/accessory/20192/201922513183014621.PDF
[19] Ibid.

project's risks. The disclosure cited macro risks such as public safety, political and policy risks, and market risks; and project-specific risks such as logistical risks, resource risks, land acquisition risks, labor risks, concentrate export policy risks and the risk of failing to obtain project financing.[20] It is notable that, as far as we can tell, NFC has not highlighted the full extent of the disaster risks we outline above, nor an apparent excess of zinc supply on the global market.

The declaration of risks also did not highlight that, in 2014, the Indonesian government banned mining companies from exporting unrefined metal ore, a move intended to increase the value added of the country's mining sector. In 2017, after industry outcry, the government announced a grace period that gave companies until 2022 to begin refining metals domestically.[21] Still, however, we understand that no zinc refineries have been built in Indonesia.

Commitments to standards

We wish to bring this project to your attention, as we know that Bank of China plays an important role in financing Chinese projects in Indonesia. If Bank of China has been approached to finance this project, we would like you to be aware of the serious environmental and social impacts. We have seen and applaud your commitment to green finance in overseas investments, and understand that Bank of China has adopted internal environmental and social guidelines for overseas projects. As stated in your CSR report for 2018: "We also advocated environmental protection, consistently refined credit structure, promoted green finance and supported eco-environmental improvement projects, steadfastly practicing and promoting green development." Given the high risks associated with the project, it will be extremely challenging to ensure that these commitments and guidelines are followed.

We believe that the project may fail to meet the policies and guidelines established by the Chinese government to promote mutual benefit and manage risks in overseas projects. For example, the project does not adhere to the *Guidelines for Environmental Protection in Foreign Investment and Cooperation*, issued by China's Ministry of Commerce and Ministry of Environmental Protection in 2013, which require Chinese companies to apply environmental protections, fulfill social responsibilities, and promote sustainable development. This project risks failing to uphold the fundamental principles of mutual respect and "win-win cooperation" that are the foundation of the State Council's 2006 *Nine Principles on Encouraging and Standardizing Outbound Investment*, and which are repeated in many other policy documents and administrative measures.

With regard to investment and financing from Chinese financial institutions, we note the *Green Credit Guidelines* (China Banking Regulatory Commission, 2012) and *Guidelines on the Construction of Green Financial System* (People's Bank of China et al, 2016), among other state guidance issued by the China Banking and Insurance Regulatory Commission regarding green credit. These guidelines call for strengthening and expansion of China's green finance in order to promote increased investment in

[20] NFC, Announcement on Fixed Assets Investment of Holding Subsidiaries, April 18, 2019. http://www.cfi.net.cn/p20190418003055.html

[21] PWC, Mining in Indonesia, May 2018. https://www.pwc.com/id/en/publications/assets/eumpublications/mining/Mining-Guide-2018.pdf. Then, in August 2019 an Indonesian official told media that the government was considering moving forward the export ban well before 2022 (Reuters, "Nickel Rally Resumes amid Indonesia Ore Ban Fears," August 11, 2019. https://www.reuters.com/article/global-metals/metals-nickel-rally-resumes-amid-indonesia-ore-ban-fears-idUSL4N2580BE).

green industries and control investment in polluting projects. These guidelines make clear that banks bear responsibility for the way a project that they fund is implemented on the ground. Under the *Green Credit Guidelines*, banks are responsible for identifying, assessing, monitoring and controlling social and environmental impacts associated with projects that they finance. Due to its serious risks, this project does not appear to be consistent with these guidelines.

Our request

It is apparent that the risks associated with this project are particularly high, and that the communities have well-founded concerns about the harmful impacts they will face for years to come as the mine is developed and even after the metals have been extracted.

We would therefore like to request that you confirm whether or not the Bank of China is involved in financing this project. Secondly, we request that if you are approached to provide financing to NFC that could be used for this project, or are already considering to do so, you consider the concerns included in this letter, and the risks the project poses to local people, the environment, and the reputation of the Bank of China.

As this is an extremely important issue for our clients, we hope to receive a response from you and would welcome dialogue with you. Please feel free to request further information from us if you require.

Manambus Pasaribu
Executive Secretary, BAKUMSU

Attached:

- Memo by mining expert Dr. Steven Emerman
- Memo by mining and dam stability expert Mr. Richard Meehan

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中国银行

[redacted]

2020 年 7 月 7 日

[redacted]

主题：当地社区对达尹里矿业公司（DPM）在北苏门答腊矿山建设的担忧

尊敬的刘连舸董事长，

我们是北苏门答腊一家社区法律服务机构，名为 BAKUMSU，在此作为达尹里县 Batak Toba 社区居民的法律代表，给您写信。 我们代表的人民，对达尹里矿业公司（DPM）建设的矿山很担忧。我们知道，中国有色金属建设股份有限公司（中色股份 - NFC）拥有 DPM 51%的股份， Bumi Resources Minerals （印尼）拥有 49%。

2019 年后期，达尹里的两个社区向国际金融公司（IFC）的合规顾问 / 检察员正式投诉，表达了他们基于事实、合情合理的对矿山可能导致的环境和社会危害的恐惧。 他们之所以向 IFC 投诉，是因为研究表明，IFC 在中国邮政储蓄银行有投资，而该银行与中国有色矿业集团有财政关系，从而使得 IFC 与该项目有关。2020 年 3 月， **IFC 合规顾问 / 监察员决定，这一投诉符合接受条件，不久将开始对其评估过程。**

我们认为，DPM 项目可能已经或将会到中国银行寻求资金。写这封信，是为了让您知道这一投诉案件，也是为了请求您帮助应对社区的担忧。

首先，人们质疑 DPM 矿是否符合印尼国家法律。我们目前正在对该矿进行详尽的法律分析（完成以后可以与您分享），但基于现有事实，我们相信，该项目不完全符合印尼法律。

环境审批

有关环境影响评估（简称 EIA，在印尼也叫 AMDAL）的 1999 年第 27 号法规第 25 条声明，项目实际开发，如果偏离获准 EIA / AMDAL 中描述的内容，是非法的。DPM 于 2002 年开启可行性前研究，确定 Sopokomil 附近的安靖潭资源的可行性。 研究结果确定了 630 万吨的矿

石资源。 2004/5 年，DPM 制定了环境影响评估及环境影响管理计划，并获准进行开采和进一步勘探。此后，矿藏估值得到了增长。2011 年 11 月，DPM 的一个新闻发布稿[1] 中这样声明：

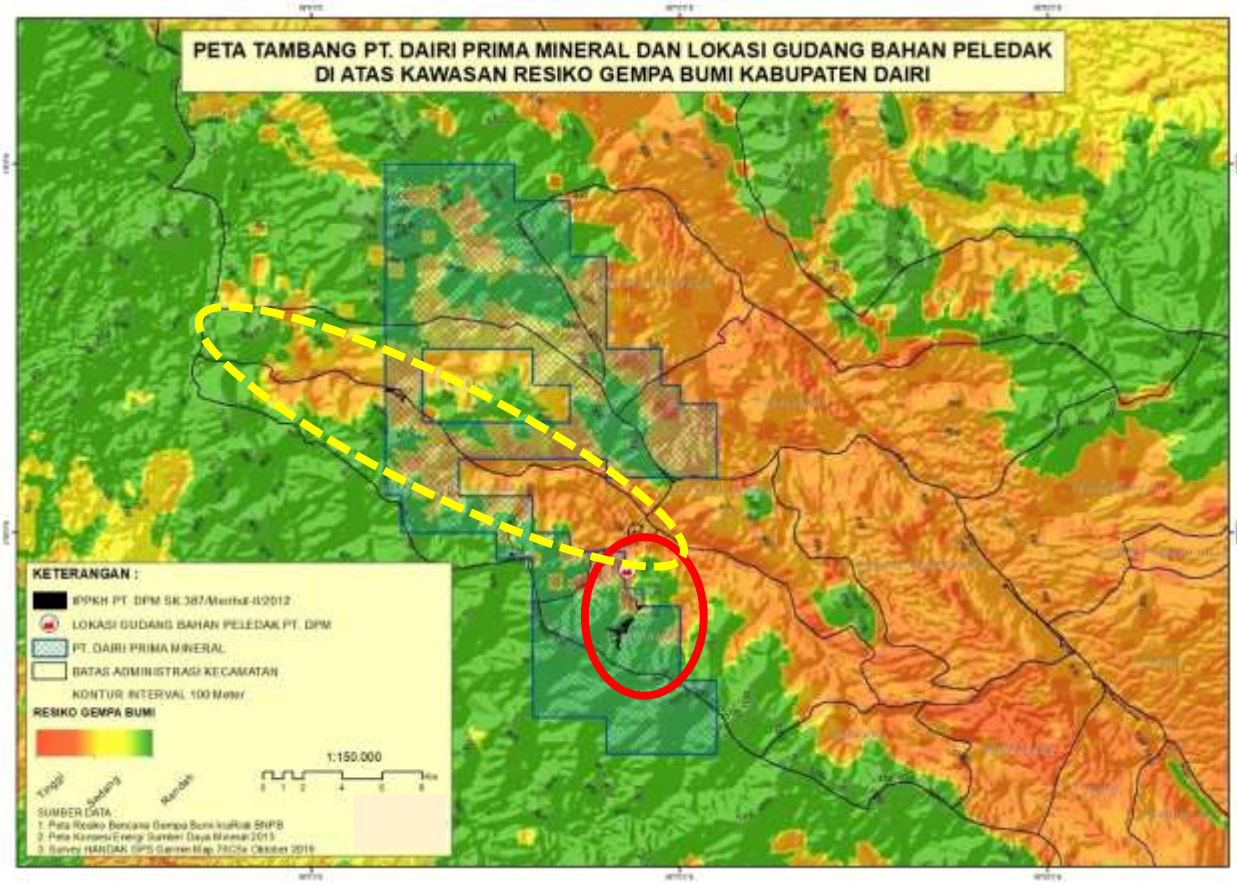
> *“PT Bumi Resources Minerals Tbk.（“BRMS”）很高兴地宣布， 在达尹里矿业公司特许经营区内的安靖潭、 莱城热河、和基地三处，发现的资源和矿藏量有很大提高 … 据最新估计，这三处矿层资源总和（包括可开采部分），超过了以前估值25%，从先前的2010万吨增加到了2512万吨， 其中含锌10.1%， 含铅6%。”*

这与2005获准矿山相比，大出了很多。2019年1月10日，印尼环境与林业部通知DPM，鉴于项目规模变化，需要进行新的环境评估[2] 。在写给NGO员工和Parongil居民的、日期为2020年3月16日的信函中， 环境与林业部的公共关系办公室确认， DPM仍未获得新的环境许可。 然而，虽然没有新的许可，DPM 继续进行矿山运输道路建设、土地购买、土方工程、爆炸物仓库修建，并开挖进入地下矿的入口。此外，我们还有信息表明，DPM已与 JCHX 采矿管理公司就地下采矿业务签署了价值5000万美元的合同[3]。

灾难风险

2007年印尼灾难管理法第40条要求，从事高风险活动（包括开采勘探或尾矿建设）的任何人，为了获得能源与林业局对拟从事活动批准，都必须与国家灾难风险管理署合作进行风险分析。下面的地图，是由印尼灾难管理署制作的[4] 。在此图上，我们标出了DPM获得勘探许可的区域。红线实线显示的是矿区，黄色虚线显示的是社区所在的下游地区 。

[1] http://www.bumiresourcesminerals.com/
[2] Letter from the Head of the Public Relations Office of the General Secretariat of the Ministry of Environment and Forestry, dated 30 July 2019, in response to an inquiry from a resident of Dairi.
[3] https://wap.stockstar.com/detail/IG2019111900000478
[4] On 23 July 2019, President Joko Widodo (Jokowi) asked the ranks of the Meteorology, Climatology and Geophysics Agency (BMKG) to clearly map risk areas, so all large infrastructure developments can refer to those maps. https://finance.detik.com/berita-ekonomi-bisnis/d-4635629/jokowi-minta-bmkg-tegas-ke-pemda-soal-lokasi-infrastruktur



2020 年 2 月 27 日，在矿上附近 Pandiangan 村人民要求举行的一次公开对话会上，居民们问达尹里县灾难管理机构的代表，DPM 矿是否做过风险分析，代表说不知道。 2020 年 2 月 25 日，社区代表们给国家、省、县灾难风险管理机构写了信，迄今尚未得到答复。 我们担心，DPM 还未对项目做出恰当的风险分析，也没有获得在一个灾难高风险区从事活动必需的所有许可 。

我们认为，这是一个极为严重的问题。这一领域的一位专家，斯坦福大学的 Richard Meehan 先生，在附上的备忘录里这样写道：

“矿山坐落在世界上最活跃的地震区域，沿苏门答腊隐没带的巨型断逆层，很明显是在2004和05年分别发生了9级与8级地震的一个三板块交界处的附近。”

“与大多数地震不同，这些在海上巨型断逆层的 9 级地震，产生的地面震动很强烈，并延续很多分钟。这种重复或长期震动，可以完全摧毁在地震时长较短时只会部分坍塌，能够幸存的结构，包括堤坝…”

“虽然海上断逆层超级地震对诸如尾矿设施等长期结构构成了威胁，大苏门答腊断层可能会产生更为危险的地震，而该断层距离达尹里矿山东部只有 15 公里 。”

“苏门答腊西部是世界上最多雨的地区之一，矿址一带降雨量在3000-5000 毫米。对当地降雨量的分析显示，300毫米日降雨量很常见。”

*“总而言之，拟建的达尹里**矿坐落在世界上地震风险最高的地区之一。我不得不做出结论，在尾矿设施“关闭”后几十年里，** 会发生由地震引发的突然溃败，从而释放宏大的泥石流波浪，冲向在下游的北方，导致灾难。”*

Steven Emerman博士是美国一位有着31年经验的水文学和地球物理教授。他曾在在多所大学任职，尤其值得指出的是在犹他谷大学。Emerman博士对DPM矿的现有基本信息做了审核，在给我们机构的一份备忘录（参见附件）中，他这样说：

“对于项目物理数据评估的充分性，我没有信心；对于DPM采矿计划的充分性和以保护人命和环境的方式进行采矿的财力与意愿，及其遵守监管机构指引的意愿，我没有信心 。”

我们代表的社区包括拟建矿下游社区，他们有可能遭受尾矿酸性浸出液的影响，并一直生活在尾矿坝随时破裂的威胁之下。他们和其它社区也将会接触采矿产生的有毒粉尘，包括高浓度的锌、铅，也许还有砷。 这些影响会是长久性的。正如 Richard Meehan 所指出的：

“请注意，隐患不会随着时间的推移而消失。即便再过100年，项目早已“关闭”之后，同样的溃败风险依然存在。”

请注意，这样的隐患不会随着时间消失。100 年后， 项目“关闭”很久以后，同样的溃败风险依然存在 。

我们知道，继2019年1月25日Brumadinho 坝灾难后（在那场灾难中，巴西米钠斯吉拉斯的Córrego do Feijão 铁矿尾矿坝发生了灾难性溃败，导致250多人死亡），中国政府一直在积极修订中国国内尾矿坝标准。 我们赞扬中国政府对标准的修改（包括禁止在有些情况下的大坝建设），并敦促中国有色金属建设股份有限公司，把这些指导原则也用于在北苏门答腊拟建的DPM矿。

爆炸物仓库

就爆炸物仓库，我们注意到，项目 2005 年 EIA/AMDAL 中的平面图里，不存在这样的仓库，EIA/AMDAL 文字也未提及。然而，2019 年 2 月， DPM 开始建设这一仓库。

我们还注意到，印尼法规（能源与矿产资源部法规 309.K-30-DGB-2018 号，日期为 2018 年 11 月 21 日）规定，即便是小型爆炸物仓库，也必须距离居民区至少 60 米（大型仓库需要更远距离）。DMP 仓库所在地有信息表明，仓库是为了存储以下材料：

- 硝酸铵 - 100 吨
- 炸药 - 5000 公斤
- 雷管- 200 个

说明这不是一个小型爆炸物仓库。然而，仓库距离 Longkotan 村庄下 Sopit 小村的民居只有 50 米：

2020 年 3 月 2 日，当地人们出于担忧，质问 DPM 员工修建这一仓库是否得到了许可。DPM 就此举办了一个会议，但由警察和军人陪同来参会。继当地人民及村长要求后，在场的 DPM 公共关系员工拿不出证据表明爆炸物仓库获得了政府批准。

达尹里当地人民在 2020 年 2 月也就此问题给能源与矿产资源部写了信，但迄今为止尚未得到答复。 鉴于 2005 年在赞比亚，中色股份的矿山曾发生一起爆炸物工厂爆炸事件，导致至少 46 人丧生 [5]，这一问题尤其让人堪忧。

社会问题

我们代表的社区，对于DMP矿的社会影响也很担心。这些社区的身份认同是 Batak Toba，一个具有鲜明文化和信仰的土著民族。因此，《联合国土著民族权利宣言》中规定的土著居民权利，包括自主决定在其领土上发生什么、以及维护其文化的权利，都适用于他们[6] 。

Batak Toba 人民声称，他们被剥夺了自由给予或保留同意开矿的权利。此外， DPM 从外部带来了工人，包括很多中国人，使得 Batak Toba 人民觉得在自己的土地上被异化。基础设施建设开始后，企业与社区发生了一系列冲突。DPM 阻碍了当地人民去自己土地的自由，建筑工程也导致泥流冲入了民居。

其它问题和风险

中色股份通过子公司购买了 DPM 51%的股份，其全资拥有的子公司 中色股份（香港）金属资源责任有限公司，对该印尼企业直接控股[7] 。在这笔交易完全达成之前，中色股份董事会曾在 2018 年就投资 DPM 进行投票。值得注意的是， 九名董事中有两位 - Han Youhong 和 Feng Limin，在投票中弃权（其他七位投了赞成票）。这两位董事指出，他们弃权的原因在于以下风险： 首先是很高的融资成本，其次是印尼不稳定的采矿政策、在印尼投资的其它风险、以及中美贸易战等[8]。

交易达成后，中色股份向深交所提交了有关项目风险的信息披露文件。文件指出了宏观层次风

[5] https://www.nytimes.com/2005/04/21/world/africa/blast-kills-46-at-a-copper-mine-in-zambia.html
[6] UNDRIP is available at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf. Article 3 states: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Article 23(2) states: “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”
[7] NFC, “China Nonferrous Metal Construction Co., Ltd.
Announcement on the Issuance of Preferred Shares by Overseas Subsidiaries,” September 4, 2018.
http://www.nfc.com.cn/upload/accessory/20192/201922513183014621.PDF
[8] Ibid.

险，比如公共安全、政治和政策、市场风险，以及项目具体风险，比如物流、资源、土地征收、劳工、浓缩物出口政策和项目融资风险[9]。值得注意的是，根据我们的调研，中色股份文件没有突出我们上述灾难性风险的程度，也没有指出全球锌市场很明显的过度供应状态。

风险披露文件中，也没有突出这样一个事实，即在 2014 年，印尼政府为了提高本国矿业部门生产附加值，下令禁止采矿公司出口未经冶炼的金属矿石。2017 年，鉴于采矿业的不满，政府宣布了一个宽限期，允许企业到 2020 年再开始在国内进行金属冶炼[10]。但据我们所知，印尼迄今尚未建设任何炼锌厂。

对标准的承诺

我们就此项目给您写信，是因为我们知道，中国银行在为印尼的中国项目方面出资方面，起着重要作用。如果该项目已向贵行寻求资金，我们想让您知道其严重的环境和社会影响。我们已经看到并赞赏贵行在境外投资中致力于绿色金融，知道贵行针对境外项目设立了内部环境和社会准则。如同贵行 2018 年 CSR 报告中所述，“我们倡导了环境保护，对信贷机构进行了一贯细调，促进了绿色金融，支持了生态环境改善项目， 并坚定不移地实践和推进了绿色发展”。鉴于项目的高风险，要确保遵循这些承诺和指南将极为困难。

我们认为，该项目有可能不满足中国政府制订的促进境外项目双赢互利和风险管理的政策与指南。比如，项目没有遵守中国商务部和环保部 2013 年发布的《对外投资与合作环境保护指南》，指南要求中国的企业进行环境保护、承担社会责任、并促进可持续发展。该项目也有可能没有坚持相互尊重、双赢合作的基本原则，这一原则是 2006 年国务院《关于鼓励和规范我国企业对外投资合作的意见》的基础， 在很多其它政策文件和行政措施中也都得到多次重申。

至于中国金融机构投资和贷款，在中国银保监会发布的国家有关绿色信贷的指导原则中， 我们注意到《绿色信贷指引》（中国银监会2012年）和《绿色金融系统建设指引》（中国银行等，2016年），都呼吁加强和扩大中国绿色金融，促进在绿色产业更多投资，控制在污染产业的投资。这些指引明确指出，银行对其出资项目的实际落实方式负有责任。依照《绿色信贷

[9] NFC, Announcement on Fixed Assets Investment of Holding Subsidiaries, April 18, 2019. http://www.cfi.net.cn/p20190418003055.html

[10] PWC, Mining in Indonesia, May 2018. https://www.pwc.com/id/en/publications/assets/eumpublications/mining/Mining-Guide-2018.pdf. Then, in August 2019 an Indonesian official told media that the government was considering moving forward the export ban well before 2022 (Reuters, “Nickel Rally Resumes amid Indonesia Ore Ban Fears,” August 11, 2019. https://www.reuters.com/article/global-metals/metals-nickel-rally-resumes-amid-indonesia-ore-ban-fears-idUSL4N2580BE).

指引》，银行有责任就其出资项目确定、评估、监督并控制社会和环境风险。鉴于DPM矿存在的严重风险，似乎与这些指导原则不符。

我们的请求

很明显，DPM矿的风险特别高。社区对于矿山开发以及金属被提炼出以后他们很多年可能都要面临的危害性影响的担忧，也很有道理。

我们因此请求您确认中国银行是否参与了对该项目出资。其次，如果有人到贵行为中色股份申请贷款，用于该项目，或者贵行已在考虑为其贷款，我们请求您考虑我们信件中表达的这些担忧，以及项目对当地人民、环境、以及贵行声誉构成的风险。

因为这是对我们客户极端重要的一个问题，我们希望能够得到您的答复，并欢迎与您的任何对话。如果您需要更多信息，请随时向我们提出。

Manambus Pasaribu

Executive Secretary, BAKUMSU

附件：

- 采矿专家 Steven Emerman博士的备忘录
https://www.inclusivedevelopment.net/wp-content/uploads/2020/07/DPM-Professional-Opinion-December-2019-Chinese.pdf

https://www.inclusivedevelopment.net/wp-content/uploads/2020/07/DPM-Professional-Opinion-December-2019-English.pdf

- 采矿与坝稳定性专家 Richard Meehan先生的备忘录
https://www.inclusivedevelopment.net/wp-content/uploads/2020/07/DPM-Mine-site-risks-and-Tailings-disposal-safety-April-2020-Chinese.pdf

https://www.inclusivedevelopment.net/wp-content/uploads/2020/07/DPM-Mine-site-risks-and-Tailings-disposal-safety-April-2020-English.pdf