

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL OTH 30/2018

12 June 2018

Dear Mr. Glasenberg,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/7, 37/8, 36/15, 33/9 and 33/10.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning **environmental pollution and human exposure to extremely high amounts of heavy metals in the region of Pasco, Peru. This exposure is allegedly due to decades of mining in the Pasco region, which continues to this very day, through Volcan Compañía Minera SAA, activities which only further aggravate the environmental situation.**

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

According to the information received:

Mining activities in Pasco from 1999 – 2011 were conducted by Volcan Compañía Minera S.A.A. (Volcan). In 2011 these activities were then managed by a subsidiary of Volcan, the company administrator, Empresa Administradora Cerro S.A.C. Glencore plc is a majority shareholder of Volcan since 2017.

Scientific studies about pollution

Scientific research published in 2017,² conducted in the city of Cerro de Pasco, Paragsha and Carhuamayo, showed high levels of heavy metal contamination. The studies analysed the quality of the water in the basin of the rivers that surround the mining town, and analyzed the exposure of children of the town of Paraghsa to the pollutants emitted by mining activities. The studies consisted of samples of blood and bioaccumulation of metals in human tissues, specifically in hair. The samples were analyzed by a certified laboratory and each sample was compared with national and international normative references on water, mining, and environment.

As early as 2007, the Peruvian Ministry of Health had reported the presence of high levels of pollution in the waters of the basin of Cerro de Pasco. Studies have shown that water pollution may influence the direct and indirect contamination of animal tissues (and likely human tissues).

Environmental damage and access to drinking water

The PH levels of pollution in the lagoons of Quiulacocha and Yanamate, are around 2 (10,000 times higher than the limit to ensure environmental preservation and human security). These lagoons also contain high levels of arsenic, cadmium, lead, chromium, iron, copper, manganese and zinc. In addition, the concentration of iron is 6,000 times higher than the legal limit (Decree 010-2010); and the level of manganese is 2,200 times greater than the legal limit. The pollution caused to both lagoons has resulted in them no longer being used as a direct water source by local communities and has affected the aquifer of the area. The level of contamination of the Yanamate lagoon is so high that barriers were built to prevent people from entering the site.

It is alleged that water used for mining production is directly poured into the rivers in the area. It is due to these allegations, that there is a suspected link between the polluting of the rivers and high concentrations of lead that were found in all samples taken, all of which, exceeded the maximum permissible limits established by the World Health Organization. High levels of heavy metals were detected in the rivers Tingo, San Juan and Huallaga, making it impossible to use them for domestic and agricultural purposes. Samples of waste water from several mines located in the area near the Paraghsa mining plant contained aluminum, iron,

² Source Internacional, Biomonitorio de los metales en niños del centro poblado de Paraghsa, Peru, 2017

arsenic, lead, and zinc. It is alleged that the waste waters from the mines are directly poured into the rivers without being purified or treated.

Due to the contamination of the water ways, individuals from the areas have started to use alternative sources of water, and some residents have started using shallow wells. However, in 2009, aluminium, arsenic, lead and tin were detected in these alternative water sources and in 2017 samples were taken from these small wells, and analyses showed that aluminium, iron and manganese were present in the water.

Subsequently, it has been reported that access to drinking water has been limited to bottled water which is too expensive for average Peruvian families to afford. Recognizing the gravity of this crisis, State officials have repeatedly committed to providing drinking water for residents but their efforts in supplying water to their citizens have not been consistent or sufficient.

The contamination of these areas continues because some clearings which contain mining waste, such as Quiulacocha-Excelsior and Rumillana, have not been properly maintained for decades. Therefore the risk of contamination persists through the air in times of drought, and through water in times of rain. The national fund on mining legacies has the responsibility for remediation of impacts caused by legacy mining, but to date has not implemented the necessary actions needed to mitigate adverse impacts.

Identification of responsibility for environmental damage

It is reported that the system of monitoring and identification of responsible parties for environmental damage resulting from mining activities has often been inefficient. This inefficiency has led to a continuous and deteriorating environmental situation. The Environmental Assessment and Control Agency (OEFA) has repeatedly sanctioned Volcan for violating environmental rules. However, the sanctions imposed on Volcan have not been enforced.

It has been reported that Volcan has faced 60 disciplinary proceedings from 2010 to 2014, for failure to respect the maximum limits for pollutants in the overflows from its operations. A large part of these environmental violations (that are considered serious according to national environmental standards), have ended up in the courts, but 85% of the fines levied against Volcan remain unpaid. It was also reported that a decision of the environmental Court of 2013 which lowered the criteria for the maximum levels of pollutants in the areas has hindered the attribution of responsibility to the company for the serious ongoing damage.

Damage to health

According to analyses, there is a high level of bio-accumulation of heavy metals in the human tissues of the residents of the area. Pollution related to open pit mining,

as in the case of Cerro de Pasco and in particular the town of Paragsha, can be transmitted easily from soil to plants and thus enter the food chain and affect humans.

As part of a study published in 2017, samples of hair and blood were collected from 82 boys and girls, aged between 5 and 14 years old, residing in the town of Paragsha, a community near the open-pit mine and mining plants. Samples of hair and blood were also collected from boys and girls living in the District of Carhuamayo, a rural community situated far from the mining area. The main chemical elements found in these biological samples from Paragsha contained high levels of concentration of aluminum, manganese, lead, nickel and chrome.

The following effects have been reported:

- 100% of the children involved in the study had extremely high levels of lead with an average concentration of 3.6 mg/Kg, 4 times greater than the level measured in Carhuamayo, 0.9 mg/Kg, and 36 times more than the average concentration in German children, 0.3 mg/Kg.
- 97% of the children had elevated levels of manganese. The average concentration of manganese is 2.12 mg/kg, twice the average concentration than in Carhuamayo.
- 96% of children had elevated levels of aluminum. The average concentration of aluminium in Paragsha children's hair was 21.7 mg/Kg, much higher than in children of Carhuamayo and 3 times more than children in Germany.
- 92% of children had high levels of chromium and iron. The level of chromium, 0.27 mg/Kg, was double that of children in Carhuamayo and in Germany.
- 86% of children had elevated levels of arsenic. The level of arsenic, 0.4 mg/Kg, was greater than the level in children of Carhuamayo and double the level of children in German.
- Finally, 34% of children of Paragsha had low concentrations of essential elements such as selenium, chromium and zinc, displayed through symptoms of malnutrition.

Studies have found that Paragsha is a community with a higher percentage of reported cases of diseases, many of which relate to the digestive and respiratory systems. In 2009, research showed that the mortality rate for congenital malformations in Paragsha, which accounted for 15% of deaths, was higher than the national average of 1%. The insufficient number of well-trained health service providers who can provide detoxification in the area, and the insufficient assistance to those already directly affected by intoxication, exacerbate the situation for those who are currently suffering adverse impacts.

The Ministry of Health has collected data that has confirmed a disproportionately high cancer rate in the affected areas. The Pasco region had a mortality rate of 128.2 cancer-related deaths per 100,000 inhabitants in 2013, while the national average was 107. The mortality rate for prostate cancer (often linked to contamination by toxic metals) in Cerro de Pasco is the highest in the country and colon cancer mortality (also often related to pollution) is the second highest in the nation.

Moreover, the absence of specialized oncological medical services hampers the treatment of victims of cancer.

Civil society requests for assistance and responses from the authorities

Affected community members living in these areas have mobilized on several occasions to report the situation and the adverse health impacts they have suffered. They have also been calling for urgent access to water and medical assistance. In 2015, hundreds of people participated in what was called “the March of Sacrifice”, walking from Pasco to Lima to protest against the lack of assistance received from the Government authorities responsible for public healthcare and environmental issues. Further protests took place in June 2017 when the results of new surveys, showing high levels of pollution, were disseminated. A group of relatives of those affected by contamination chained themselves to the gates of the Ministry of Health to call on the authorities to support individuals suffering from serious diseases.

On various occasions, the authorities have made commitments to those affected by pollution, to clear toxic substances from the area and to provide healthcare to those in need. However, these commitments have not been forthcoming, which led to the Presidency of the Council of Ministers declaring an environmental emergency in four localities of Simón Bolívar in May 2012 (R.M. No. 117-2012). In that same year, the authorities approved an immediate and short term plan of action (90-day) with 32 actions, including measures such as the conduct of health programs to assist affected populations, the neutralization of affected waters and other remediation to remove harmful substances from the environment.

A series of high-level dialogue roundtables were organized where commitments were reaffirmed by the Government. However, progress has been very limited. In June 2017, another health emergency was declared in the districts of Simón Bolívar and Chaupimarpa, located in the region of Pasco, to provide specialized care to the population affected by the exposure to heavy metals (D.S. N20-2017).

In February 2018, as part of the reaction to protests of 2017 amid the publication of new reports about the high degree of contamination, the authorities of the Ministries of Health, Environment and Energy, and the regional and municipal departments signed a new document which reaffirmed commitments to take remediation measures in collaboration with the company, including (i) a Declaration of the State of emergency; (ii) the provision of specialized medical treatment; (iii) the construction of a specialized clinic; and (iv) the resettlement of families affected by the pollution.

Despite these commitments, concerns persist regarding the allocation of the necessary resources and the implementation capacity of authorities both at the national and local level. Impacted individuals and communities also are concerned that there are no appropriate participatory mechanisms that will involve relevant stakeholders in a meaningful way in the decision-making process. Such processes

should include a simple and transparent way for all to access information related to business activities, health studies and measures taken to mitigate, prevent and remedy negative impacts, as well as their follow up and assessment.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the alleged serious impacts on the health and environment of affected communities resulting from the mining activities of Volcan in the Pasco region. It is of concern that, despite having scientific confirmation of widespread contamination for over a decade, the company allegedly still contaminates the environment, without implementing the minimum necessary measures to identify, prevent, mitigate and remedy these negative impacts; such as decontaminating water reserves and clearing mining wastes accumulated in lands during these years of activity, therefore aggravating this reported situation. We are also concerned by the severe limitation of access to drinking water resulting from this situation, and by the absence of affordable alternatives for the affected population. In addition, we also express our great concern with regard to the health impacts on children and adults resident in the Pasco region and the aggravation of the situation due to the absence of medical assistance for treatment of the diseases and insufficient detoxification of boys, girls and adults.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the process of human rights due diligence undertaken by your company in order to identify, prevent, mitigate, and remedy the negative human rights and environmental impacts that Volcan could have caused, contributed to or been directly linked with, as set out in the United Nations Guiding Principles on Business and Human Rights.
3. Please provide information on the measures taken by Volcan to implement the action plan adopted in February 2018.

We would appreciate receiving a response within **60 days**. Your company's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please be also informed that a letter on the same subject has also been sent to the Government of Peru, the Government of Switerland, and other companies allegedly also involved.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release would indicate that we have been in contact with your company to clarify the issue/s in question.

Sincerely,

Anita Ramasastry

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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Léo Heller

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), after years of consultations involving governments, civil society and the business community.

The Guiding Principles have been established as the global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and / or willingness of States to meet their own human rights obligations and does not reduce those obligations. It is an additional responsibility to comply with national laws and regulations for the protection of human rights. "The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."(Guiding principle 13).

To fulfill their responsibility to respect human rights, business enterprises should have in place:

- “(a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”(Guiding Principle 15)

We wish to draw your company’s attention to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and General Comment No.14 of the Committee on Economic, Social and Cultural Rights (CESCR) which interprets the right to health as “an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information”. The CESCR has previously stated that “corporate activities can adversely affect the enjoyment of ICESCR rights”, including through harmful impacts on the right to

health, standard of living, the natural environment. The Committee has reiterated that business enterprises are required to respect the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, noting that the private business sector has responsibilities regarding the realization of the right to health (para. 42).

In addition, we would like to refer to the provisions of article 11 of the International Covenant on economic, social and cultural rights, which recognizes the right of everyone to a standard of living adequate for himself and his family, including food, dress and housing adequate and continuous improvement of the conditions of existence. The human right to water means that everyone has the right to one sufficient amount of water, quality, acceptable, physically accessible and affordable for personal and domestic uses. In this sense, the Committee on economic, social and cultural clarified in its observation General n ° 15 (2002) that the water supply of each person should be continuous and sufficient for personal and domestic uses, safe for consumption and others uses personal, accessible to all people in close proximity to their homes, accessible financially and acceptable services culturally guaranteeing the privacy and the dignity of all persons.