

Mandates of 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 issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL OTH 90/2021

23 March 2021

Dear Mr. Staffas,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes ; 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 situation of human rights defenders; Special Rapporteur on the human rights of migrants; Special Rapporteur on extreme poverty and human rights; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 45/17, 37/8, 43/16, 43/6, 44/13 and 42/5.

In this connection, we would like to bring to your attention information we have received concerning a letter, containing elements of threat and intimidation, sent by lawyers representing Boliden Mineral AB against two lawyers who have defended the interests of Chilean victims in Swedish courts in a case against your company.

According to the information received:

Mr. Johan Öberg and Mr. Göran Starkebo are two of the three lawyers that acted for Arica Victims KB, an association representing claims from 796 individuals who sued Boliden Mineral AB in the Swedish District Court of Skellefteå, where the company has its registered seat.

Between 1984 and 1985, the Swedish mining company Boliden Mineral AB has shipped 19,139 tonnes of toxic waste, containing high concentrations of arsenic, mercury, cadmium and lead, from its smelter in Sweden, to Arica, in northern Chile. The toxic waste was left outdoors and uncovered for years at a site known as Sitio F in Arica, only 250 metres from Sica Sica, a neighbourhood of low-income family housing. Today the toxic waste is in a site called Quebrada Encantada, also in the close vicinity of Arica, still exposed to the winds and rains, and posing risks to Arica residents.

Boliden Mineral AB's toxic sludge was imported into Chile through a subcontractor, Promel Ltda., a Chilean mining company. Boliden Mineral AB claimed that Promel Ltda. were to process the waste in Chile, and to extract gold, silver and arsenic from it for onward sale. However, Promel Ltda. lacked the capabilities to carry out that operation.

Boliden Group

In September 2013, 796 Arica residents brought a legal case against Boliden Mineral AB in the Swedish courts. In March 2018, despite finding Boliden Mineral AB negligent in continuing to send waste to Arica, a District Court in Sweden concluded that the victims had failed to establish a causal link between the high levels of arsenic in their bodies and the exported toxic smelter sludge.

On 27 March 2019, the six - year lawsuit came to a conclusion when the Court of Appeal for Northern Norrland, Sweden, determined that the claims of the victims were time barred. The Court considered that Swedish law, rather than Chilean law, should apply to the case. The Court thus concluded that the 10 years provided in Sweden's statute of limitations should count from the time of the negligent act that gave rise to the alleged harm, and that the relevant "act" was the decision of Boliden Mineral AB to export the waste.

In the court proceedings both parties claimed compensation for their procedural costs. Swedish legislation implies that the successful party is to get compensation from the losing party. Boliden Mineral AB sought to recover their financial expenses in court proceedings from the victims, in a sum which according to different estimates varies between 3 and 3.5 million Euros. The company that was formed by the victims to bring the action in Sweden was unable to pay the costs, and it is now bankrupt.

Boliden Mineral AB has since filed a complaint to the Disciplinary Committee of the Swedish Bar Association against lawyers Mr. Johan Öberg and Mr. Göran Starkebo, who are both members of the Bar, arguing that they had contravened the professional and ethical standards of the legal profession, as set out in the Ethical Code of the Bar Association. The case is currently subject to examination by the Disciplinary Committee.

On 2 September 2020, in a letter informing Mr. Johan Öberg and Mr. Göran Starkebo about the complaint to the Bar Association, Boliden Mineral AB, represented by the law firm Mannheimer Swartling Advokatbyrå AB, also wrote:

"Given the above [not being able to get compensation from the association Arica Victims KB due to bankruptcy] and the circumstances on which this Complaint is made, Boliden reserves the right to later make claims for damages corresponding to the aforementioned procedural costs [in all SEK 27,475,555, USD 1,468,034 and EUR 2,227] against each one of you personally and/or against Carat Advokatbyrå AB."

Boliden Mineral AB's threat is known as a SLAPP (Strategic Lawsuit Against Public Participation), which has never been applied in Sweden before.

While we do not wish to prejudge the accuracy of these allegations, we express our concern that the letter received by the lawyers appears to be aimed at hindering the legitimate and peaceful work of those who defend human rights through their professional activities. The letter containing elements of intimidation and threat could be seen as a deliberate attempt to try to silence the lawyers in relation to the case Arica Victims v Boliden Mineral AB.

The letter containing elements of intimidation and threat can also be seen as a deliberate attempt to produce a wider chilling effect of silencing and intimidating other lawyers and human rights defenders who may consider bringing similar lawsuits against Boliden Mineral AB or other companies for alleged health and environmental damage caused overseas.

The case of Arica was the first case ever in a Swedish court addressing liability for harm to health and to environment produced overseas by a Swedish company. The actions of your company against the lawyers that represented the Arica Victims thus can have far-reaching consequences in posing undue obstacles for other cases alleging grave human rights violations being brought to justice in the future.

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 comments that you may have on the above-mentioned allegations.
2. Please provide further information on the factual and legal grounds your company considered to file a complaint against the lawyers.
3. Has your company received any guidance from the Government of Sweden on its corporate responsibility to respect human rights, specifically on its expected due diligence process, in line with the UN Guiding Principles on Business and Human Rights?
4. How is Boliden Mineral AB meeting its responsibility to respect human rights in a way that complies with international human rights standards? Does it have a policy commitment (approved at the most senior level of the company) that is reflected in its operational policies and procedures?
5. Please explain what your company is doing to carry out its human rights due diligence in order to identify, prevent, mitigate and account for how it addresses adverse human rights impacts. How does the company track the effectiveness of its measures to prevent and mitigate adverse human rights impacts, including through consultation with affected stakeholders?

This communication and any response received from your company will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Please be informed that a letter on the same subject has also been sent to the Government of Sweden.

Please accept, Mr. Staffas, the assurances of our highest consideration.

Marcos A. Orellana
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Felipe González Morales
Special Rapporteur on the human rights of migrants

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of Boliden Mineral AB to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

As set forth in 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), all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Principles 11 to 24 and Principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have cause or contributed to adverse impacts. Moreover, the commentary of the Principle 11 states that "business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes".

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (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).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes".

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Government of Sweden on 6 December 1971, provides that "[e]veryone 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". Any restrictions to the exercise of this right to freedom of expression, in accordance with article 19(3) ICCPR, must be provided by law and necessary and proportionate.

As noted by the Committee on Economic, Social, and Cultural Rights, in its General Comment No. 24, the 'introduction by corporations of [civil] actions to discourage individuals or groups from exercising remedies, for instance by alleging damage to a corporation's reputation, should not be abused to create a chilling effect on the legitimate exercise of such remedies.'

In paragraph 23 of its General Comment No. 34, the Human Rights Committee has recognized that those "persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports", are "frequently subjected to threats, intimidation and attacks because of their activities."

We would like to refer you to the fundamental principles set forth in 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring your attention to the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; and
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.
- article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

We would also like to refer to Human Rights Council Resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13).

Finally, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. More specifically, principle 12, provides that States should ensure the effective enforcement of their environmental standards against public and private actors. As per principle 14, States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk

from, environmental harm, taking into account their needs, risks and capacities.