

**Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

Ref.: AL CHN 7/2022  
(Please use this reference in your reply)

16 September 2022

Excellency,

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; Working Group on the issue of human rights and transnational corporations and other business enterprises and Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, pursuant to Human Rights Council resolutions 45/17, 44/15 and 46/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning four spills of toxic substances from the Veladero mine from 2015 to 2022 in the San Juan province in Argentina.

According to the information received:

The communities Rodeo and San José de Jáchal in the province of San Juan, which are located downstream of the Veladero mine, have been affected by four spills of toxic substances from the mine between 2015 and 2021. Minera Argentina Gold SRL, the company in charge of operating the mine, and a subsidiary of the Chinese company Shandong Gold, has not alerted the government or the population in a timely manner about the spills.

The Government of China has not taken adequate steps to regulate and provide oversight to the activities of companies domiciled in its territory.

*The Veladero mine*

The Veladero mine is a polymetallic deposit that also contains high levels of mercury. It is a large industrial mine that uses cyanide heap leaching processing to separate gold and silver.

The Veladero mine is operated by Minera Argentina Gold SRL, a subsidiary of Canada's Barrick Gold and China's Shandong Gold. In 2021, Veladero produced 172,000 ounces of gold, resulting in revenues of \$382 million, and has declared a reserve of 3 million ounces of gold.

The Veladero mine is located approximately 374 kilometers northwest of the city of San Juan, in the department of Iglesia, San Juan province. The mine is located in the Andes Mountains, and the site elevations range from 3,800 to 4,800 meters above sea level. The Rodeo and San José de Jáchal communities comprise 2,393 and 21,018 inhabitants, respectively, and are located downstream of the mine along the Jáchal River.

The Jáchal River basin has a nival, glacial, and periglacial regime, which means that the basin is fed by snowfall in the Andes Mountains and by contributions from glaciers and periglacial areas.

The mine is located in the San Guillermo Biosphere Reserve, created under the "Man and Nature" program of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Only low-impact human activities or activities with controlled impacts in time and space are allowed in this protected area. Activities in the reserve must be compatible with the reserve's vision of preservation and conservation. However, the industrial activities of a large-scale gold mine are not low impact, and the various spills of hazardous substances from the Veladero mine alter the balance of the ecosystems in the reserve.

#### *Hazardous substance spills from the Veladero mine*

The heap leaching process used at Veladero allows the mining company to extract gold and silver from low-grade ore by rinsing the crushed ore with a cyanide solution. However, this form of gold extraction can be extremely hazardous to downstream communities and ecosystems if cyanide and other heavy metals in the leach solution are released into the environment. There are countless cases around the world of serious and persistent contamination caused by the cyanide heap leaching process.

According to the information received, the communities along the Río Jáchal have faced four toxic spills from the Veladero mine between 2015 and 2022.

In September 2015, a valve failure in a leach heap pipe released millions of litres of water contaminated with cyanide and heavy metals into local watersheds, polluting at least five rivers. The spill was described by the press as the worst environmental mining disaster in Argentina's history. The company was fined by the provincial government and paid US\$10 million for the accident. It is worth mentioning that, faced with this first major spill, the company sought to detect only cyanide and mercury in the Jáchal River, and no other chemical elements.

The following year, in September 2016, ice damaged a pipe carrying crushed ore saturated with leaching solution. Although the company claimed that the toxic solution did not leave the mine, community groups confirmed the presence of 0.0020 milligrams per litre of mercury in the Jáchal River through water analysis conducted by the National University of Cuyo in Mendoza and the Catholic University of Cuyo in San Juan, funded by the Municipality of Jáchal. The Government of San Juan and the San Juan courts of justice suspended mining operations on September 15 and 22, respectively, after the spill. In October 2016, following, among others, the completion of certain urgent works required by the province of San Juan and a judicial inspection of the mine, the San Juan provincial court lifted the suspension of mining operations.

On March 28, 2017, another pipeline carrying solution from the gold extraction process ruptured. Again, the company claimed that any

contamination was contained at the mine site. However, downstream analysis conducted on March 30 by the National University of Cuyo in Mendoza found 0.0030 milligrams of mercury per litre of water. The company suspended cyanide use at the mine until June 2017, and paid \$5.6 million in fines for spills in September 2016 and March 2017. According to the information received, the communities do not know if the company or the Government of San Juan have taken measures to carry out environmental remediation after this spill.

In June of this year, an independent Argentine journalist published a report revealing data on a fourth spill at the mine that occurred in February 2022. Basing her analysis on water samples collected by the National University of Cuyo, the journalist showed that levels of mercury, aluminum, manganese, arsenic and lead were above World Health Organization (WHO) and Argentine drinking water standards. Alarming, arsenic levels were 33 times higher than WHO standards, lead levels were 16 times higher and aluminum levels were 485 times higher. These levels are even higher than those recorded after the major spill of 2015.

#### *Impacts on communities and the environment*

The spills and the lack of timely action on the part of the government and the company are putting communities and the environment at serious risk. Water that rural communities use for crop irrigation has been contaminated by mercury and other heavy metals. Communities are uncertain whether their drinking water is contaminated, because neither the company nor the government has reported on environmental remediation measures after the spills. For example, after the 2015 spill, the company delivered bottled water to the communities, but gave no explanation.

In addition, mercury goes through the food chain, so rural populations, and especially children, could be affected. In 2017, dead fish appeared on the banks of a reservoir in Rodeo, which is located less than two kilometers from the Jáchal River.

Despite the spills, the Government of San Juan has not conducted health studies on the population in the affected areas.

On two occasions in 2020, the communities have filed complaints with the Jáchal Court for the detection of mercury in the domestic water distribution network in the city of Jáchal and for abuse of authority by the Jáchal Deliberating Council. However, the cases ended up filed.

#### *Company response*

According to the information received, after the spills, the communities do not know if the company has adopted environmental remediation measures. The company has not informed the communities if it has determined the damage caused by the spills or if it has conducted an analysis of the possible remediation. The company has not informed the communities whether it has made a deposit for remediation in the Environmental Compensation Fund (Art. 28, General Environmental Law).

Rather, the company continues to deny that a spill occurred in February 2022. From February through June, the company refused to comment on the spill despite public outcry from local organizations. Only after the case received international and national coverage did the company speak out publicly to deny the allegations in the press.

In 2015, the company also denied the spill, until criminal complaints were filed by community organizations and the San Juan State Attorney. After the complaints were filed, the company acknowledged that there had been a spill. The company has filed a request for reconsideration with the San Juan provincial mining authority on the fines related to the 2016 and 2017 spills. This request is still pending.

### *Violation of laws*

The National Constitution establishes that mines are the property of the Provinces, which may grant concessions for their use. The Mining Code governs mining activities in Argentina.

According to the Mining Code, if a company commits three serious violations in a mine, it must proceed to the definitive closure of those operations (article 264, paragraph "e"). However, the Code does not define what constitutes a serious violation. The Mining Code also establishes the amounts for penalizing infractions (article 243).

In addition, according to the information received, Veladero's mining activities would have violated: the law on glaciers and the law on hazardous waste, as well as the provisions of the Minamata Convention on Mercury.

With respect to Law 26,639 on minimum protection budgets for the preservation of glaciers and periglacial environments, the glaciers in the Veladero mine area (Almirante Brown Glacier and Toro 1 Glacier) were not included in the Argentine glacier inventory, thus allowing activities related to the Veladero mine on the Almirante Brown Glacier. A trial is currently pending against three former environmental officials and the former director of the Argentine Institute of Nivology, Glaciology and Environmental Sciences, who are accused of non-compliance with the glaciers law for enabling Barrick Gold's mining projects in prohibited areas.

With respect to Law 24,501 on hazardous waste and Decree 831/1993 on guideline values, the values of heavy metals (mercury, manganese and aluminum) detected in the Jáchal River basin after the 2015 and 2022 spills exceeded the maximum permitted values.

According to the information received, the events would also be in violation of the provisions of the Minamata Convention on Mercury, particularly articles 12 (which establishes guidelines for contaminated sites, indicating that each Party shall endeavor to develop appropriate strategies to identify and assess mercury-contaminated sites), 16 (which establishes guidelines for health-related aspects, encouraging Parties to promote the development and implementation of strategies and programs that serve to identify and protect populations at risk) and 18 (which establishes guidelines on public

information, awareness and training). This Convention was ratified by Argentina in May 2017 through Law 27,356.

In addition, it is worth mentioning that Article 41 of the Argentinian National Constitution establishes that the obligation to remediate is a priority, but the communities do not know if the company has taken remediation actions after the spills.

In this context, the Argentine government has allegedly not conducted assessments and identifications of the mercury-contaminated Jáchal River basin, despite the fact that the river is used for fishing, for drinking livestock and for crop irrigation. In addition, the subway basin of the Jáchal River is used for human consumption. Following the spills, the Government of San Juan has not promoted the development and implementation of strategies and programs to identify and protect at-risk populations, especially vulnerable populations, related to exposure to mercury and mercury compounds, the establishment of targets for the reduction of mercury exposure, as appropriate, and public education, with the participation of the public health sector and other stakeholders. It is also worth mentioning that the Government of San Juan has not undertaken public information, awareness and education efforts.

#### *Response from the Chinese Government*

According to the information received, the Chinese Government has not taken any actions regarding these spills.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our grave concern about the impact on human rights caused by spills of cyanide, arsenic, mercury and other hazardous substances from the Veladero mine. The lack of effective response by the Chinese State exacerbates these impacts. Hazardous substance spills require human rights-based responses with a differential approach, including comprehensive accountability and reparation mechanisms on the part of the State and the company, as well as prevention measures and guarantees of non-repetition.

We are also concerned about the company's failure to report these spills in a timely manner. The lack of timely information hinders the adoption of protective measures for the populations exposed to toxic substances in the spills and the environment. We are also concerned that the Chinese Government is violating the rights of residents to access information.

We are also concerned that the mine spills are affecting the preservation and conservation of the San Guillermo Biosphere Reserve, where only low-impact human activities are allowed or with controlled impacts in time and space. This undermines the cooperation of the international community, through UNESCO, for the conservation of sites of particular natural and cultural significance.

We are particularly concerned that these spills severely affect the right to life, the right to the highest attainable standard of health, the right to food, the right of access to information, the right to environmental justice, the right to safe drinking water, the right to work and safe working conditions, and the right to a clean, healthy and sustainable environment free of toxic substances.

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 information on measures that your Excellency's Government has taken to assist and cooperate with the Government of Argentina ensure to identify and respond to the human rights and environmental impacts caused by the above-mentioned spills.
3. Please specify the measures taken by your Excellency's Government to assist and cooperate with the Government of Argentina to ensure the public's right to receive timely and accessible information on the health and environmental effects of the spills.
4. Please provide information on concrete progress in requiring or encouraging companies domiciled in your territory and/or jurisdiction to implement human rights due diligence processes.
5. Please provide information on the measures that your Excellency's Government plans to take to prevent the recurrence of an ecological disaster at the hands of a company domiciled in its territory.
6. Please provide information on the measures that your Excellency's Government is taking or considering taking to ensure that persons affected by activities occurring outside your territory by business enterprises domiciled in your jurisdiction have access to remedy in your country, through State judicial or extra-judicial mechanisms.

This communication and any response received from your Excellency's Government 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.

Pending your response, we would like to urge your Excellency's Government to take all necessary measures to protect the rights and freedoms of the above-mentioned person(s) and to investigate, prosecute and impose appropriate sanctions on any person or company responsible for the alleged violations. We would also like to urge you to take effective measures to prevent such occurrences, if any, from recurring.

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 Excellency's Government's to clarify the issue/s in question.

Please note that letters expressing similar concerns have been sent to the Governments of Argentina and Canada, as well as to Minera Argentina Gold SRL, Barrick Gold Corporation, y Shandong Gold Mining Co.

Please accept, Excellency, the assurances of our highest consideration.

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

Fernanda Hopenhaym

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David R. Boyd

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## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include the following:

- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Rights of the Child;
- Maastricht Principles on Extraterritorial Obligations;
- United Nations Declaration on the Rights of Peasants;
- United Nations Framework Principles on Human Rights and the Environment; and,
- United Nations Guiding Principles on Business and Human Rights.

We wish to draw the attention of your Excellency's Government to the obligations under international human rights instruments, to which Argentina is a party, recalling Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the right of every individual to life, liberty and security.

The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance.

We would also like to draw your attention to the Human Rights Committee's General Comment No. 36 on the right to life. According to the HRC, the duty to protect life also implies that State parties should take appropriate measures to address general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including environmental degradation (para. 26). The implementation of the obligation to respect and ensure the right to life, and in particular to life with dignity, depends, inter alia, on the measures taken by State parties to preserve the environment and protect it from damage, pollution and climate change caused by public and private actors (para. 62).

We would also like to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is also guaranteed as part of the Universal Declaration of Human Rights, Article 25, which is read in terms of the individual's potential, the



social and environmental conditions affecting the individual's health, and in terms of health services. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights describes the normative content of article 12 of the International Covenant on Economic, Social and Cultural Rights and the legal obligations undertaken by States Parties to respect, protect and fulfil the right to physical and mental health. In General Comment No. 14, paragraph 11, the Committee on Economic, Social and Cultural Rights interprets the right to health as "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".

Furthermore, the Committee on Economic, Social and Cultural Rights affirmed that "corporate activities can adversely affect the enjoyment of Covenant rights", including through adverse effects on the right to health, standard of living and the natural environment, and reiterated "obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities" (E/C.12/2011/1, para. 1).

Furthermore, it should be noted that, based on international law, the Maastricht Principles aim to clarify the content of States' extraterritorial obligations to realize economic, social and cultural rights in order to promote and give full effect to the purposes of the Charter of the United Nations and international human rights. [...] All States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially. Each State has the obligation to realize the economic, social and cultural rights of all persons within its territory to the maximum extent of its capabilities. All States also have extraterritorial obligations to respect, protect and fulfill economic, social and cultural rights.

Article 24 of the Convention on the Rights of the Child recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health and the concomitant duty of the State to provide adequate nutritious food and safe drinking water, taking into account the dangers and risks of environmental pollution.

In addition, we would like to recall the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. In accordance with article 1, paragraph 2, the Declaration applies to any person engaged in small-scale or artisanal agriculture, crop planting, animal husbandry, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area. It also applies to dependent family members of farmers. In addition, article 18.1 of the Declaration states that "peasants and other people working in rural areas have the right to the conservation and protection of the environment and the productive capacity of their land, and of the resources that they use and manage". Furthermore, article 18.2 provides that "States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment".

We would like to recall the duty of all States to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes to the United Nations General Assembly (A/74/480). This obligation derives implicitly, but clearly, from a range of rights and duties enshrined in the global human rights framework, under which States are obliged to respect and fulfil recognized human rights, and to protect those rights, including from the consequences of exposure to toxic substances. These rights include the human rights to life, health, food and drinking water, adequate housing and safe and healthy working conditions. The duty to prevent exposure is reinforced by national and regional recognition of the right to a safe, clean, healthy and sustainable environment, including clean air. The existence of the State's duty to prevent exposure is reinforced by the right to full respect for the bodily integrity of the individual, which contributes to a context in which everyone should have the right to control what happens to his or her body (see A/HRC/39/48). Likewise, the 2022 report of the Special Rapporteur on human rights and the environment, with the collaboration of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, which places the non-toxic environment among the substantive elements of the right to a safe, clean, healthy and sustainable environment (A/HRC/49/53). Read together, international human rights clearly establish the duty of your Excellency's Government to prevent exposure to hazardous substances and wastes.

We would also like to draw the attention of your Excellency's Government to Article 25 of the Universal Declaration of Human Rights, which recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and his family, including food". Article 11 (1) of the ICESCR further recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

The ICESCR requires States to "take appropriate steps to ensure the realization of the right to food" (article 11.1). According to General Comment 12, the obligation to respect existing access to adequate food requires States Parties to refrain from adopting any pressure that would result in preventing such access. The obligation to protect requires the State to take measures to ensure that enterprises or individuals do not deprive people of their access to adequate food. The obligation to fulfill (facilitate) means that the State must proactively undertake activities aimed at strengthening people's access to and utilization of resources and means to secure their livelihoods, including their access to land to ensure their food security (para. 15). Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have an obligation to fulfill (facilitate) that right directly.

Furthermore, both the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. In this regard, we would like to draw the attention of your Excellency's Government to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The Principles provide that States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfill human rights

(principle 1); States must respect, protect and fulfill human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2); and States must ensure effective enforcement of their environmental standards against public and private actors (principle 12).

In addition, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultations with governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These Guiding Principles are based on the recognition of:

- a) "The existing obligations of States to respect, protect and fulfill human rights and fundamental freedoms;
- b) The role of business enterprises as specialized bodies or corporations performing specialized functions, which must comply with all applicable laws and respect human rights;
- c) The need for rights and obligations to be matched by appropriate and effective remedies when they are violated."

The obligation to protect, respect and fulfill human rights, recognized in conventional and customary law, entails the duty of the State not only to refrain from violating human rights, but also to exercise due diligence to prevent and protect individuals from abuses committed by non-State actors (see, for example, Human Rights Committee General Comment No. 31, para. 8). Consistent with these legal obligations, Guiding Principle 1 reiterates the State's duty to "protect against human rights abuses within its territory and/or jurisdiction by third parties, including business enterprises." In addition, Guiding Principle 3 reiterates that States should take appropriate measures to "prevent, investigate, punish and redress such abuses through effective policies, laws, regulations and adjudication". Furthermore, this requires, inter alia, that a State "provide business enterprises with effective guidance on how to respect human rights throughout their operations". Finally, in accordance with recognized conventional and customary international law (see, for example, article 2(3) of the International Covenant on Civil and Political Rights), the Guiding Principles reiterate that States should ensure that victims have access to an effective remedy in cases of adverse human rights impacts related to business activities.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide remedies when they have caused or contributed to adverse impacts. The Guiding Principles have identified two main components of the corporate responsibility to respect human rights, which require that "enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities and address those impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly related to operations, products or services by their business relationships, even if they have not contributed to those impacts." (Guiding Principle 13). The commentary to Guiding Principle 13 notes that business enterprises may be affected by adverse human rights impacts, either through

their own activities or as a result of their business relationships with other parties. (...) The "activities" of business enterprises are understood to include both actions and omissions; and their "business relationships" include relationships with business partners, entities in their value chain and any other non-State or State entity directly linked to their business operations, products or services.

States may be considered to have breached their international human rights law obligations when they fail to take appropriate measures to prevent, investigate and remedy human rights violations committed by private actors. While States generally have discretion in deciding on such measures, they must consider the full range of permissible preventive and remedial measures.

The full texts of the above human rights instruments and standards are available at [www.ohchr.org](http://www.ohchr.org) or can be made available upon request.