

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

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(Please use this reference in your reply)

16 September 2022

Mr. Bristow,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. 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. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) 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 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 the attention of your company 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

Barrick Gold Corporation

subsidiary of the Canadian company Barrick Gold, has not alerted the government or the population in a timely manner about the spills.

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 nivo, 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 information received, 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.

Minera Argentina Gold SRL 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.

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 your company 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 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 describe the measures that your company has taken, or is planning to take, to prevent recurrence of such situations in the future.
3. Please provide information on measures that your company has taken or plans to take to identify and respond to the human rights and environmental impacts caused by the above-mentioned spills, including environmental remediation measures.
4. Please provide information on the measures taken to consult with affected people and to monitor the effects of the spills on people and the environment.
5. Please provide information as to what human rights due diligence policies and processes have been put in place by your company to identify, prevent, mitigate and account for how you address adverse human rights impacts throughout your business operations, in line with the UN Guiding Principles on Business and Human Rights (UNGPs).
6. Please indicate the measures taken by the company to ensure the implementation of the UNGPs, including information on whether your company has established or participates in any operational-level grievance mechanisms, to provide access to remedy for affected individuals and communities.

7. Please specify the measures taken by your company to ensure the public's right to receive timely and accessible information on the health and environmental effects of the spills.

This communication and any response received from your company will be made public through the communications website within 60 days. They will also be made available subsequently in the report to be submitted to the Human Rights Council.

Pending your response, we would like to urge your company to take effective measures to prevent such occurrences, if any, from recurring.

We may publicly express our concerns in the near future, as we believe that the information received is sufficiently reliable to indicate that there is a matter that warrants immediate attention. In addition, we believe that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with your company to clarify the relevant issues.

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

Please accept, Mr. Bristow, 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

Fernanda Hopenhaym

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

David R. Boyd

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your company's attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.

According to the Guiding Principles, 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.

Principle 13 has 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".

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".

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of nonrepetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

The Guiding Principles on extreme poverty and human rights were adopted by the Human Rights Council by consensus on 27 September 2012, in resolution 21/11. The Guiding Principles recommend in particular that business enterprises "avoid causing or contributing to adverse human rights impacts through their activities, products or services, and to deal with such impacts when they occur", and that they "undertake a human rights due diligence process to identify and assess any actual or potential impacts on human rights posed by the company's own activities and by business partners associated with those activities" (paras. 100-101).

In the 2018 report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) to the General Assembly, the Working Group noted that "The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights and that in order to do so they are required to exercise human rights due diligence. Human rights due diligence refers to the processes that all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships". In addition, this involves (b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact; (c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working; (d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.