

Mandates of the Special Rapporteur on the human rights to safe drinking water and sanitation and the Working Group on the issue of human rights and transnational corporations and other business enterprises

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23 June 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights to safe drinking water and sanitation and Working Group on the issue of human rights and transnational corporations and other business enterprises, pursuant to Human Rights Council resolutions 51/19 and 44/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged violation of the human right to safe drinking water in the departments of Montevideo and Canelones because of the water crisis that has affected the availability and safety of water for human consumption and use in those areas. This situation allegedly constitutes a threat to the rights to life, health, and food of the population living in those areas. Despite this crisis and its serious impact on the enjoyment of the human rights to safe drinking water, productive and commercial use of water resources reportedly continue being prioritized. In this regard and as per the information received, the activity of UPM Kimmene Oyj, a company domiciled in the territory of your Excellency's Government has continued business as usual without taking any measures to reduce the large amounts of water consumption.

According to the information received:

A considerable increase in salt levels in water sources would be affecting the human right to drinking water, putting at risk the right to life and the right to health of the impacted population residing in Montevideo, its metropolitan area, and Canelones. Approximately two million people, 60% of the country's population, live there. Under the justification of water scarcity, high levels of chlorine and sodium have been authorized in the water, posing an imminent human rights risk to the population.

The risk has been recognized by the Ministry of Public Health itself, urging pregnant women, lactating women, children, or people with chronic kidney disease, heart failure, or cirrhosis to drink bottled water. According to medical groups, in addition to the population indicated by the Ministry of Public Health, people with undetected hypertension would also be at risk, noting that in Uruguay, one in three inhabitants suffers from hypertension, which may lead to cardiovascular problems.

On 4 May 2023, the Ministry of Public Health increased the allowed values of chloride and sodium in the water that is provided by networks to the aforementioned areas. Decree 237/014 regulates the maximum values allowed for drinking water based on parameters established in the UNIT ISO 833:2008,

and it determines that the allowed levels of chloride cannot exceed 300 mg per liter and the levels of sodium 200 mg per liter. As of 4 May 2023, in accordance with the modification authorized by the Ministry of Public Health, the parameters were changed, allowing values of 720 mg of sodium chloride per liter of water and 440 mg of sodium per liter of water. The same Decree determines that drinking water is water that does not pose health risks throughout the consumer's lifetime.

According to the information received, this would be a de facto water privatization since the population at risk would be forced to pay for access to safe drinking water. In relation to this point, civil society organizations that provide food to people in conditions of extreme food vulnerability have expressed their concern about the consequences that the measures are having on this especially vulnerable sector of the population.

In that context, according to the information received, although the authorities have issued recommendations and promoted incentives to reduce water consumption in homes, nevertheless, no measures have been promoted to reduce water consumption by large consumers, such as industries that use water for extraction or manufacturing, as well as irrigators that use water to produce goods for agricultural exports. It is particularly worrying that the State continues to prioritize productive and commercial uses of water, generally in large quantities, by not reducing productive and commercial activities despite the alarming situation.

In this sense, it has been alleged that, although the drought has aggravated the water situation, and in the context of the development model applied in the country for several years, experts have been warning about the extension of concessions to industries with high water consumption that have been linked to specific situations of contamination or water scarcity in some parts of the country. These industries are particularly focused on the production of rice, soybeans, meat, and pulp. At the same time, according to the information received, impacted individuals and communities were not able to exercise their right of to participate in decision-making regarding water management, in contradiction with relevant national regulations promoting and protecting participation of rights holders. This has also occurred despite article 47 of the Constitution of the Republic defines access to quality drinking water as a human right and requires the participation of people in water management through the Commissions and Regional Councils, Comisiones de Cuenca and Consejos Regionales de Cuenca.

UPM Paso de los Toros

Due to the prioritization of productive and commercial activities, information received points out the activity of a company domiciled in the territory of the

Government of your Excellency. Despite the water crisis that Uruguay is facing, the UPM Paso de los Toros pulp mill located in the department of Durazno in central Uruguay and operated by the Finnish company UPM Kimmene Oyj, a company domiciled in Finland, has continued its activities normally without taking any measures to reduce the large amounts of water for its activities.

According to the information received, the pulp industry represents a key sector in the water crisis that Uruguay is currently facing due to the high levels of water use required for its operations. In particular, we have received information about the contract between the government of Uruguay and the company UPM Kimmene Oyj., domiciled in Finland, in the department of Durazno in central Uruguay. The contract provides for the construction of two plants: a chemical plant and a manufacturing plant with the objective of producing 2,100,000 tons of cellulose annually. To achieve the objective, the plants estimate to extract daily approximately 136 million liters of water and to discharge 107 million liters in the Río Negro. According to the information received, for the safe discharge, the Rincón del Bonete dam would be required to ensure a minimum water flow of 80 cubic meters per second.

In 2017, the Committee on Economic, Social and Cultural Rights (CESCR), in the framework of the Concluding Observations on the seventh periodic report of Finland, expressed its concerns regarding the project of the company UPM Kimmene Oyj in Uruguay, indicating the lack of analysis of the impact on human rights of the project. In addition, the CESCR noted the limitations of the Finnish National Action Plan on Business and Human Rights, which does not require businesses under the State jurisdiction to exercise human rights due diligence. Furthermore, the CESCR recommended the development of a regulatory framework on human rights due diligence that obliges companies domiciled in Finland or under its jurisdiction to identify, prevent and address human rights violations related to their activities, including the ones abroad.

On the other hand, the National Institution of Human Rights of Uruguay (INDDHH), in its Resolution No. 766/019 of 2019, concerning the UPM Paso de los Toros Project, recommended that environmental impact assessments carried out by the Ministry of the Environment would be carried out cumulatively to consider the impacts that would be generated by the confluence of the different activities included in the Project. However, despite the recommendations in Finland's periodic report by CESCR and the INDDHH Resolution, the Uruguayan Ministry of the Environment decided to conduct environmental impact assessments for each infrastructure work separately, not having the evaluation of environmental impact carried out cumulatively.

According to the information received, at the time that the company UPM Kimmene Oyj began construction works on the pulp mill in the department of

Durazno in 2021, it did not have the pertinent environmental permits to analyze the impacts of water use for the plant, it only had the Environmental and Social Impact study carried out by the company itself in 2019, which established that the impacts pulp mill could generate in terms of water availability are of “high significance”.

In March 2023, the CDESCR received information from Finland on the follow-up to the concluding observation on the CDESCR’s seventh periodic review, where the Government of your Excellency included a statement requested by the Government of Finland to UPM Kymmene Oyj in which the company referred to the Environmental and Social Impact Assessment above mentioned, and mentioned that, in 2018, it commissioned an independent human rights advisory organization to support the assessment of salient human rights issues for the operations of the company in Uruguay.

In addition, according to the information received, in April 2023, contrary to the provisions of the National Water Policy Law No. 18.1610, the Ministry of Environment granted the environmental authorization to UPM Kymmene Oyj in the department of Durazno, after the construction of the pulp mill was finalized in December 2022. In accordance with the said law, the viability of the project should have been analyzed prior to the start of the construction of the pulp mill, in addition to the conduct of an environmental evaluation before the Regional Council of Water Resources of the River Basin, which did not happen either.

Despite the issues related to water consumption for productive and commercial uses, on 10 June 2023, the Paso de los Toros pulp mill was inaugurated. Consequently, the use of large amounts of water for the exploitation of the pulp mill has continued normally despite the crisis, with negative impacts on human rights to drinking water and sanitation, the right to life, and the right to health of the affected communities.

The Ministry of Environment of Uruguay is the authority responsible for guaranteeing the conservation and preservation of natural resources in the country. According to information received, the Ministry has carried out the environmental evaluation while the construction of the plant was undergoing at the same time, thus seriously compromising the Río Negro, its ecological processes, and the rights to health and to life of the people affected.

Without prejudging the accuracy of these allegations, we express our deep concern regarding the effects that the situation of violation of the human right to drinking water could have on the health of the population, especially the population whose health is vulnerable to salt consumption, who cannot access the purchase of bottled water. In addition, we express our deep concern about prioritizing productive and commercial activities amid this water crisis, as is the case of the Paso de los Toros

pulp mill of UPM Kymmene Oyj Company, whose activity has not been reduced despite the alarming situation. Finally, it is extremely worrying, considering the term implications, how this situation could leave the population without drinking water.

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 the measures the Government of your Excellency has taken or is considering taking to ensure that business enterprises domiciled in its territory and/or jurisdiction respect human rights in all their activities, including investment activities.
3. Please provide information on concrete progress made by the Government of your Excellency in requiring or encouraging business enterprises domiciled in your territory and/or jurisdiction to implement human rights due diligence processes.
4. Please provide information on the steps the Government of your Excellency is taking or considering taking to ensure that individuals affected by the activities of business enterprises domiciled in your jurisdiction have access to remedy in your country through judicial or extrajudicial State-based mechanisms.
5. Considering the information sent by the Government of your Excellency on the follow-up to the concluding observations on the seventh periodic report of CESCR, including its commitment to promote compliance with and OECD Guidelines for Multinational Enterprises, what specific actions has your Excellency's Government taken to address the environmental impact of Finnish business operating overseas?

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 be informed that a letter on this subject matter has been also sent to the business enterprise involved UPM Kimmene Oyj, as well as to the Government of Uruguay.

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

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

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the provisions of the International Covenant on Economic, Social and Cultural Rights, in its article 11 on the right to an adequate standard of living, the Human Rights Committee Economic, Social and Cultural in its general comment 15 has established that the right to water clearly falls into the category of essential guarantees to ensure an adequate standard of living, particularly because it is one of the fundamental conditions for survival. The Committee establishes that the human right to water is the right of everyone to have sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use and establishes that the right to water is inextricably associated with the highest level of health and adequate nutrition. In the same way, it is particularly relevant that the Committee establishes that priority must be given to the use of water for human use, personal and domestic purposes over other purposes. Priority must also be given to the water resources needed to prevent starvation and disease.

In addition, on 28 July 2010, resolution 64/292 of the United Nations General Assembly adopted a resolution that explicitly recognizes the human right to safe drinking water and sanitation and establishes that clean drinking water is essential for realizing all other human rights. In September 2010, the Human Rights Council (resolution 15/9) expressly reaffirmed that drinking water and sanitation is a human right that derives from the human right to an adequate standard of living, which is closely related to the right to the maximum level of physical and mental health and the right to life and human dignity.

Likewise, and given its relevance to this case, it is noteworthy that the Convention on the Rights of Children establishes in its article 2 that the States Parties must adopt the appropriate measures to combat diseases and malnutrition and that this implies the supply of drinking water healthy. Along these lines, the United Nations Committee on the Rights of the Child in its general comment 7 of 2006, has emphasized that States have the responsibility to guarantee access to safe drinking water and that this access is particularly essential for the health of children. little ones.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Finland on 19 August 1975, provides an explicit basis for extraterritorial obligations. All rights recognized by the ICESCR should be understood in conjunction with its article 2, para. 1, which reads, "Each State Party to the present Covenant undertakes steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." Thus, it explicitly establishes an

obligation of international cooperation.

In addition, the Committee on the Economic, Social and Cultural Rights has indicated that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.” (General Recommendation 24 (2017)).

We wish to draw the attention of Your Excellency's Government to the right to a clean, healthy and sustainable environment as recognized by resolutions A/HRC/RES/48/13 and A/RES/76/300. We also wish to highlight 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).

We would also 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. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfill 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, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

The obligation to protect, respect and fulfill human rights recognized under treaty customary law entails a duty on the part of the State not only to refrain from violating human rights but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “Prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations, and adjudication” (guiding principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (guiding principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights (...)” (guiding principle 3). The Guiding principles also require States to ensure that victims have access to effective remedy when adverse human rights impacts linked to business activities occur. Finally, in accordance with the law recognized in conventional and customary international law (see, for example, article 2, paragraph 3 of the International Covenant on Civil and Political Rights), the Guiding Principles reiterate that States must ensure that people have access to effective redress mechanisms in cases where there were detrimental effects on human rights related to business activities.

The Guiding Principles also make it clear that companies have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to companies on how to fulfill their responsibility to respect human rights and to make redress or contribute to redress through legitimate means where they have caused or contributed to causing negative consequences. The Guiding Principles have identified two main components of the corporate responsibility to respect human rights, which require that “businesses: 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). The commentary to guiding principle 13 notes that companies may be implicated in negative human rights consequences, either through their own activities or as a result of their business relationships with other parties. (...) It is understood that the "activities" of companies include both their actions and their omissions; and that its "business relationships" encompass relationships with business partners, entities in its value chain, and any other non-state or state entities directly related to its business operations, products, or services."

Moreover, principle 6 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and

other relevant barriers that could lead to a denial of access to remedy”.

States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While states generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.