

**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**

Ref.: AL OTH 78/2023  
(Please use this reference in your reply)

23 June 2023

Dear Mr. Pesonen,

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.

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 the 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 the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your company's attention 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, your company has continued its business operation without taking any measures to reduce the large amounts of water consumption.

UPM Kimmene Oyj

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 buy 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 calculating 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 have not

been reduced 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*

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. UPM Kimmene Oyj has been developing the UPM Paso de los Toros project, located. The project consists of constructing two plants: a chemical plant and a manufacturing plant, both with the objective of producing 2,100,000 tons of cellulose annually. Daily there will be an extraction of approximately 136 million and a delivery of 107 million liters of effluent to the Río Negro. According to the information received, for the dilution of the effluents, 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 consider that businesses under state jurisdiction are not legally required 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 work 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 CESCR received information from Finland on the follow-up to the concluding observation on the CESCR’s seventh periodic review, where the Government included a statement requested to UPM Kimmene Oyj in which the company described 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 operation 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 Kimmene 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.

Even though UPM Kimmene Oyj contributes to the crisis by not taking specific measures to reduce water consumption for productive and commercial uses, the 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, as well as the affectation of human rights related to the 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. It is worrying, considering the long-time 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 any actions taken by your company or any specific actions that it is considering to ensure a reduction in water use, considering the water crisis that Uruguay is facing today.
3. Please provide information on the measures taken to consult with affected people in the design and implementation phases of the projects as an essential element of preventing human rights harm. Please provide information on the human rights due diligence policies and processes established by your company to identify, prevent, mitigate, and account for how they address their human rights impacts, including through regular monitoring, in accordance with the UN Guiding Principles on Business and Human Rights.
4. Please provide information on the measures that your company has taken or is planning to take to provide effective remedy to victims and to address the negative human rights impacts caused by its activities that contribute to the current water scarcity crisis Uruguay is facing and the contamination of Río Negro.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your company 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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt this situation and remedy it in order to respect individuals' human rights to water and sanitation.

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 this subject matter has been also sent to the Government of Uruguay as well as to the home-State of your company, the Government of Finland.

Please accept, Mr. Pesonen, 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 and standards

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

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. 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, 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 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.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, 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 commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. (...) Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

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 lay 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 non-repetition. 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).