

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes ; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the human rights to safe drinking water and sanitation

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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 ; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of migrants; Special Rapporteur on extreme poverty and human rights; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 45/17, 37/8, 42/16, 43/14, 43/16, 43/6, 44/13 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information received concerning the long term and continuing exposure of residents in the city of Arica in northern Chile, to huge amounts of hazardous waste, containing toxic chemicals produced by a Swedish company called Boliden Mineral AB and deposited in the vicinity of the community in 1984-1985.

According to information received,

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

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

Already before the first shipment, the 1972 Stockholm Declaration on the Human Environment reflected the general international law principle that a State has the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States. However, neither Sweden's Environmental Protection Agency, which was aware of Boliden Mineral AB's shipments taking place, nor any other Swedish public/governmental agency reacted to the shipments at the time.

Prior to the first shipment, the Organisation for Economic Co-operation and Development (OECD) had adopted a Decision-Recommendation on transfrontier movements of hazardous waste (C(83)180) of 1984, which established legal obligations for Sweden as an OECD member state. Through this legal instrument the OECD Council decided that the member countries shall control the transfrontier movements of hazardous waste and, for this purpose, shall ensure that the competent authorities are provided with adequate and timely information concerning such movements.

In this regard, the Chilean competent authorities received false information concerning the contents of the hazardous wastes. The application for the importation permit presented by Promel Ltda. to Chilean authorities asserted the wastes were "not toxic." Any proper due diligence by Sweden's Environmental Protection Agency or by Boliden Mineral AB would have revealed this falsehood.

The OECD Decision-Recommendation also provided that the countries should require that the generator of the waste reassume responsibility for the proper management of its waste, including if necessary, the re-importation of such waste, if arrangements for safe disposal or recovery cannot be completed (article 3). Countries should also apply their laws and regulations on control of hazardous waste movements as stringently in the case of waste intended for export as in the case of waste managed domestically (article 4). The shipments also took place against the background of preparations of new Swedish waste regulations, with increasing demands for stricter regulations for shipments of waste internationally.

Four years before the first export, Boliden Mineral AB had sought a patent for a new technology for arsenic extraction, which they claimed was the only appropriate detoxification procedure available at the time. According to the patent, "depositing residues with high levels of arsenic is associated with grave inconveniences", and such residues "constitute a huge environmental problem". The patent application went on to state that "no method for reprocessing residues rich in arsenic has yet been successful". The patent application also indicated Boliden's awareness at the time of the environmental dangers posed by arsenic.¹

¹ "Access to legal remedies for victims of corporate human rights abuses in third countries", Policy Department for External Relations, Directorate General for External Policies of the Union (PE 603.475), February 2019, p.49, available online at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf)

Out of the 19,139 tonnes of Boliden's hazardous waste, Promel Ltda. processed some very small quantities that were manually taken by workers using wheelbarrows and placed into an oven. The processing operations were unsuccessful and discontinued.

Despite unsuccessful attempts to process early shipments and the precarious storage condition of the hazardous material, Boliden Mineral AB continued to send their toxic smelter waste to Arica. In 2018 a Swedish District Court noted in this respect how "remarkable and negligent of Boliden Mineral to have continued the relationship with Promel after realizing that any exported waste would end up in an uncovered pile in close proximity to already populated areas - despite knowing this would never be acceptable in Sweden."²

The highly hazardous waste pile remained at the site, next to the community, uncovered and without any protective measures for 14 years, until 1998. The surrounding community was not duly informed that the material was toxic, and some families even allegedly used abandoned material to build or extend patio areas for their houses. Local children started to use the waste pile as a playground.

In 1997, toxicology samples taken from the site revealed the presence of high levels of arsenic (including weapons-grade arsenic), mercury, lead, cadmium, zinc and copper, amongst other heavy metals. According to some estimates the waste pile contains approximately 17 percent arsenic, 4,5 percent of lead, 3,000 ppm of mercury and 0,05 percent of cadmium, combined with some other heavy metals and toxics.

Subsequent actions by Chilean authorities

In the spring of 1998, the Chilean State relocated the waste pile from Sitio F to a location known as Quebrada Encantada, also in the vicinity of Arica and approximately 650 metres away from the neighbourhood of Cerro Chuño. This was intended as a temporary relocation, until a safe alternative for storage could be identified. However, to this date, the waste has not been collected from Quebrada Encantada. The waste remains exposed to nature's elements, including the heavy rains that have been falling on Arica. It also remains accessible to the public, posing security concerns, including for drinking water systems, given the high content of arsenic and other dangerous chemicals in the wastes and the potential threat that material from the dump could be picked up and used in what would be a terrorist attack by poisoning the drinking water supply of the city.

Some of the residents of the area have since been rehoused by the Chilean State, although many others are still living there. Where families have been relocated, their empty houses were afterwards occupied by vulnerable Chileans, migrants, asylum seekers and indigenous persons in the Cerro Chuño sector, including among them children, adolescents, women, elderly people, people with deteriorating health conditions, and disabilities, most of them in socio-economic

² Judgment, cited in the EU Parliamentary report, *ibid*, p.49.

conditions below the poverty line, without any state protection against surrounding dangers and exposure to toxic waste. According to the information received, hundreds remain in the informal settlement Cerro Chuño despite the risks to their health, due to the lack of alternative accommodation or effective resettlement.

Over the years, the waste site(s) have caused and continue to have a detrimental impact on the health of affected populations and the surrounding environment. In 1998, the Chilean Government estimated that approximately 5,000 people had been exposed to dangerous toxins.³

In 2007, the Chilean Supreme Court ordered Promel Ltda. to remediate the site, in a civil lawsuit brought by 960 residents against Promel Ltda. and the Health Authority of Arica for the damage they had suffered. However, Promel Ltda. went bankrupt during the legal proceedings, and restoration of the site was never undertaken. The Court also ordered the award of compensation of 8,000,000 Chilean pesos (approx. 9,900 euros) to each of 357 people, who received those payments in 2008. The 603 individuals who were not compensated have taken their case to the Inter-American Commission, but to date there has been no resolution of their petition.

In 2009, the Chilean Government acknowledged that the area was heavily contaminated by toxic heavy metals, and initiated a program that included the destruction of 1,880 homes in the vicinity of Sitio F, restoration of the contaminated sectors, and an assessment of the scale of existing health problems. An array of illnesses and health conditions within the community, which included cancers, pains in the joints and bones, chronic cough and respiratory difficulties, allergies and anaemia. Some of the women of reproductive age who played on the waste pile as children have been unable to conceive. They also experience high rates of miscarriage, and when they manage to conceive, their children suffer from significant birth defects, including neurological disorders, hydrocephalus and spina bifida.⁴ Today, an estimated 12,000 people have been affected. Many have since lost their lives due to their medical conditions.⁵

A law was also enacted in 2012 ([Law 20,590](#)) to provide specific assistance to victims in the areas of health, environment, education and housing.

In practice, however, an audit by Chile's General Comptroller of 2019 concluded the terms and objectives of Law 20,590 have not been met. Environmental contamination is still widely present. The Chilean state lacks toxicology specialists and health professionals to provide adequate treatment to those in need. The medical condition of current and former residents is not being systematically monitored. The Chilean Government has conducted very few biological samples on residents to detect chromium, mercury or cadmium in

³ http://www.serviu15.cl/opensite_20130822152329.aspx

⁴ <https://ejatlas.org/conflict/contaminacion-plomo-arica>

⁵ Ibid.

their bodies. The local community is in urgent need of funding of medical and hospital facilities.

Efforts to seek remediation and justice in Sweden

Over the years, the community has made requests for help and remediation to Boliden Mineral AB. While the company has offered to make its experts available, they have allegedly done so on the basis that the community would pay for their services, including their business class flights to Chile. Due to lack of resources, these offers have been turned down by the community.

In September 2013, 796 Arica residents brought a legal case against Boliden Mineral AB in Swedish courts. During the lawsuit, the representatives of the community argued that Boliden Mineral AB never really intended to process the waste but simply to get rid of it. These accusations were denied by the company. In March 2018, despite finding Boliden Mineral AB negligent in continuing to send waste to Arica, a District Court in Sweden concluded that the victims had failed to establish a causal link between the high levels of arsenic in their bodies and the exported toxic smelter sludge.

On 27 March 2019, the six-year lawsuit came to a conclusion when the Court of Appeal for Northern Norrland, Sweden, determined that the claims of the victims were time barred. The Court considered that Swedish law, rather than Chilean law, should apply to the case. In making this determination, the court examined the sequence of events which led to the alleged damage. Unlike the district court's conclusion, the Court of Appeals held that the Swedish mining company's alleged negligence had its centre of gravity in Sweden and therefore Swedish tort law should be applied.

The Court thus considered that the 10 years provided in Sweden's statute of limitations should count from the time of the negligent act that gave rise to the alleged harm; and that the relevant "act" was the decision of Boliden Mineral AB to export the waste. The Court reasoned that even if the negligent act were Boliden's failure to take preventive measures, this would place the statute of limitations' critical date at some time in 1999, which would render the claims time barred in any event.

The Court of Appeal for Northern Norrland's interpretation results in a denial of justice to the Arica Victims, in violation of their right to a fair trial protected in the European Convention on Human Rights. In a situation where the harm resulting from exposure to the toxic wastes had not manifested at the time, or within 10 years of, Boliden Mineral AB's negligent acts, the interpretation of the Court of Appeals renders the right of access to justice meaningless.

The ground-breaking judgement of the European Court of Human Rights, *Howald Moor and others v. Switzerland* of March 2014, established that the application of the statute of limitation in a similar case (of health damage due to asbestos exposure) had in fact restricted the applicants' access to a court to the point of breaching Article 6 § 1 of the European Convention on Human Rights (right of access to a court). The Court reasoned that the rules on limitation

periods infringed upon the rights of persons suffering from diseases (such as asbestos-related diseases) that could not be diagnosed until many years after the events. The Court considered that in cases where it was scientifically proven that a person could not know that he or she was suffering from a certain disease, that fact should be taken into account in calculating the limitation period.

Chronic arsenic poisoning occurs as a result of long-term exposure, where health impacts may take up to 25 years to manifest themselves. As a result of the Swedish Court's decision, any legal action in Sweden became time-barred before many of the victims of the toxic dumping were even born. The Supreme Court of Sweden refused to hear the victim's case. As a result, the affected Arica residents did not receive relief in Sweden in respect of the rights that had been violated.

Boliden Mineral AB sought to recover their financial expenses in court proceedings from the victims, in a sum which according to different estimates varies between 3 and 3.5 million Euros. The association that was formed by the victims to bring the action in Sweden was unable to pay the costs, and it is now bankrupt.

In February and June 2019, letters signed by neighbourhood leaders and 2,700 residents of Arica were delivered to the Swedish Embassy in Santiago. In these letters, the community asked that a Swedish Government representative based in Chile visits the site and meets with the victims; that the Swedish authorities participate in the development and delivery of an effective healthcare programme, pay reparations to the community in recognition of Sweden's role in permitting the export of the toxic waste from Sweden to Chile and repatriate the waste, in order for it to be adequately and safely processed in Sweden.

In September 2019, the Swedish ambassador visited Arica. During that meeting, community leaders reiterated demands for repatriation of the waste, support for healthcare and the payment of reparations for the State's role in permitting the exports in the mid-1980s. To this date, no actions have followed the visit of the Ambassador and several letters sent by the community to the Embassy since still remain unanswered.

Actions by Boliden Mineral AB against lawyers representing victims

In addition, on 2 September 2020, in a letter informing Mr. Johan Öberg and Mr. Göran Starkebo, (two of the three lawyers representing Arica victims in Swedish courts) about a complaint filed by Boliden Mineral AB against them before the Swedish Bar Association, Boliden Mineral AB, represented by the law firm Mannheimer Swartling Advokatbyrå AB, has stated:

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

The approach of Boliden Mineral AB amounts to a threat against the lawyers of the Arica Victims to silence and intimidate them in relation to the case. Moreover, this threat appears intended to silence and intimidate the lawyers and others from trying to bring similar lawsuits against Boliden Mineral AB or other companies for damage caused overseas. Boliden Mineral AB's threat is known as a SLAPP (Strategic Lawsuit Against Public Participation), which has never been applied in Sweden before.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reports of long standing and ongoing violations of human rights to life, to the highest attainable standard of health, to access to information, access to adequate housing, the human right to safe drinking water, access to justice and to a safe, clean healthy and sustainable environment suffered by residents of Arica in Chile.

Many members of the community have been provided over decades to the toxic wastes dumped by Boliden Mineral AB and Promel Ltda. in Arica, and many residents continue to suffer from medical conditions as a result. Yet, the community lacks the means of ensuring adequate medical care for those in need.

Additionally, we wish to express deep concerns about the lack of remedies, which should have been offered to the residents of Arica over the years. Accountability is a fundamental principle of human rights.

States must ensure access to justice for those whose rights have been violated. States and businesses alike have an obligation to provide effective remedies and restitution to victims of violations occurring as a result of exposure to hazardous chemicals. Access to justice is essential for victims of toxic exposures to claim the entire range of rights they hold, including access to an effective remedy. This is underscored by the territorial and extraterritorial obligation under the international human rights framework to protect against human rights abuse by business enterprises. This requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations, and adjudication.

The dumping of hazardous waste, especially by industrialised countries in developing countries, is of the most serious character. Illegal traffic of hazardous waste is considered as one of the most serious violations of human rights. This is illustrated by the fact that the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal considers that illegal traffic in hazardous wastes or other wastes is criminal and commits its Parties to prevent and punish such criminal activity.

Back in 1995, the then Commission on Human Rights of the United Nations adopted resolution 1995/81, driven by the growing practice of the dumping of hazardous and other wastes in Africa and other developing countries by transnational corporations and other enterprises from industrialized countries. The Commission noted that the increasing rate of illicit dumping of toxic and dangerous products and wastes in developing countries continued to affect adversely the human rights to life and health of individuals in those countries.

Against this background, it is particularly dismaying to note that to this date, the Special Rapporteur on toxics and human rights and other relevant UN human rights mechanisms continue to address situations where the dumping of toxic waste and/or failure to eliminate the consequences of such action dating back to the mid-1980s, continues to have grave, sometimes tragic, consequences on the enjoyment of human rights.

The fact that the hazardous waste generated in Sweden was dumped in Arica in the mid-1980s, does not in any way undermine the need for addressing the issue today, and as a pressing matter. The responsibility to prevent the ongoing exposure and fully repair the health and environmental harm inflicted on Arica residents will become more acute with the passage of time. This is because of the latency periods of the hazardous substances in the toxic waste, which manifest their full deleterious impact on human health after years of chronic exposure. The growth of the city of Arica, and the risks posed upon future generations only aggravates this responsibility.

Urgent measures should be taken to repatriate the hazardous wastes to Sweden and/or ensure the disposal of the hazardous wastes in an environmentally sound manner. Urgent measures should be taken to secure effective remedies to current and former Arica residents for the harm they have suffered over the years, including adequate health care, reallocation and access to adequate housing in an area that is not contaminated and that can secure conditions for a dignified life.

We also express our concern that the letter sent by Boliden Mineral AB to the lawyers of the victims of contamination in Arica appears to be aimed at hindering the legitimate and peaceful work of those who defend human rights through their professional activities. The letter could be seen as a deliberate attempt to produce a wider chilling effect of silencing and intimidating other lawyers and human rights defenders who may consider bringing similar lawsuits.

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 the details on measures that your Excellency's Government has taken or is planning to take to protect the rights to life and physical and mental health, right to adequate housing, safe drinking water and sanitation, of communities in Arica threatened by the environmentally unsound disposal of hazardous substances and wastes.
3. Please specify any of your Excellency's Government's plans to ensure accountability of those responsible for human rights abuses allegedly occasioned.

4. We would be equally interested to know whether Your Excellency's Government considers the possibility of repatriating the waste and managing its disposal in Sweden in an environmentally sound manner. Have any steps of cooperation with Chilean authorities been initiated in this direction?
5. Please provide information on any measures, including policies, legislation, regulations and adjudication that your Excellency's Government has put in place to prevent, investigate, punish and redress human rights abuses by businesses operating within the territory and/or jurisdiction of your Excellency's Government.
6. Please indicate any legislative or policy gaps, identified through court cases, including the case of Arica Victims KB v Boliden Mineral AB, in providing effective remedies to victims, and any steps taken to address them.
7. Please indicate the measures taken by the Government to ensure the implementation of the UN Guiding Principles on Business and Human Rights, including any guidance provided to business enterprises on how to respect human rights throughout their operations. It would be particularly useful to learn about measures taken to ensure that business entities apply human rights due diligence throughout their operations, do not undertake any actions which could qualify as intimidation or threats against human rights lawyers and defenders, including operating overseas and the extent to which they have applied it. Please also provide information on the measures taken to provide victims of human rights abuse by business entities with effective remedies and illustrate such cases.

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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

We would like to inform your Excellency's Government that a letter addressing allegations concerning waste disposal has been shared with the Government of Chile,

and another letter addressing allegations regarding intimidation of lawyers, as mentioned, above has been sent to Boliden Mineral AB.

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

Marcos A. Orellana

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

David R. Boyd

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

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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Olivier De Schutter

Special Rapporteur on extreme poverty and human rights

Pedro Arrojo-Agudo

Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law

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

- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Rights of the Child;
- The UN Guiding Principles on Business and Human Rights.

We wish to draw attention to your Excellency's Government's obligations under international human rights instruments to guarantee the right of every individual to life, liberty and security and not to be arbitrarily deprived of life, 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), ratified by your Excellency's Government on 6 December 1971. We would like to call the attention of your Excellency's Government to General Comment No. 36 (2018) of the Human Rights Committee which affirms that the right to life should not be interpreted narrowly, and that it concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity (para 3). Further, it recognizes that implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.

In addition, Article 6 of the Convention on the Rights of the Child (CRC), which your Excellency's Government has ratified on 29 June 1990, recognizes that every child has the inherent right to life and requires States parties ensure to the maximum extent possible, the survival and development of the child. It further requires States Parties to take all effective and appropriate measures to diminish infant and child mortality.

We would like to remind your Excellency's Government of the explicit recognition of the human right to safe drinking water by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of International Covenant on Economic Social and Cultural Rights (ICESCR), ratified by your Excellency's Government on 6 December 1971. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights (CESCR) clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses; and that States parties should ensure that natural water resources are protected from contamination by harmful substances.

We would like to draw your attention to Article 12 of the ICESCR, 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 a part of the UDHR Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting health of the individual, and in terms of health services. Also, Article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health and to facilities for the treatment of illness and rehabilitation of health, and further mandated that States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures to among other objectives, "ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care".

Reference is made to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) which describes the normative content of Article 12 and the legal obligations undertaken by the States Parties to the ICESCR to respect, protect and fulfil the right to health. In its paragraph 11, the CESCR interprets the right to health 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, to comply with their international obligations in relation to ICESCR article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating this right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law (CESCR, General Comment No. 14. par 39).

General Comment No. 15 of the Committee on the Rights of the Child provides that States should regulate and monitor the environmental impact of business activities that may compromise children's right to health. Maintaining disaggregated information is necessary to understand specific events in the realization of the impact of particular actions on various groups including workers and children. The CESCR has in relation to various country evaluations recommended States to improve national statistics and data collection and disaggregation.

Furthermore, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights states that a State is considered in breach of its obligations under the Convention on the Rights of the Child where it fails to respect, protect and fulfil children's rights in relation to business activities and operations that impact on children.

ICESCR in its Article 11(1) 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 United Nations Committee on Economic, Social and Cultural Rights has underlined that the right to adequate housing should not be interpreted narrowly. Rather, it should be seen as the right to live somewhere in security, peace and dignity. Adequate housing must provide

more than four walls and a roof. A number of conditions must be met before particular forms of shelter can be considered to constitute “adequate housing.” For housing to be adequate, it must, at a minimum, meet several criteria some of which deserve to be highlighted. Housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards. Housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if located in polluted or dangerous areas.

Also relevant to the case brought to your Excellency’s Government’s attention is Article 2 of ICCPR which stipulates, inter alia, that states should ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 19 of the ICCPR stipulates that everyone shall have the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The Special Rapporteur presented a report to the thirtieth session of the Human Rights Council in September 2015 (A/HRC/30/40), which stated, that the right to information on hazardous substances and wastes is central to the enjoyment of human rights and fundamental freedoms. Such information should be available, accessible and functional for everyone, consistent with the principle of non-discrimination. The Special Rapporteur affirmed that in order to protect human rights affected by hazardous substances, States are duty-bound to generate, collect, assess and update information; effectively communicate such information, particularly to those disproportionately at risk of adverse impacts (...). States should also ensure that individuals and communities, especially those at risk of disproportionate impacts, have information about hazardous substances in their environment, bodies, food and consumer products, including the adverse effects that may result from exposure.

As regard to the impact of the above allegations on vulnerable population, including the migrant persons, we refer to the report of the Special Rapporteur on toxics and human rights on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes (A/75/290) in which he highlighted that the human rights that everyone should enjoy in relation to freedom from toxic pollution are unfortunately treated as a privilege of the few, not as a right of all. In this regard, the Expert highlighted in his report that what originated from the problem of waste flows from wealthier to poorer countries is now illuminated as a situation of the most vulnerable suffering the insidious impacts of toxic substances through the life cycle of consumption and production, both within and between borders. From air pollution to water and food contamination, the most vulnerable in society continue to find themselves on the wrong side of a toxic divide, under an invisible weight of systemic injustice and discrimination where the poor, workers, migrants and minorities, among others, are more often than not legally poisoned (para. 85). The Special Rapporteur recalls that in the face of widespread and insidious environmental injustice around the world, all States have a duty to prevent exposure to toxics and to uphold the right of every person to live in a healthy environment and recommended States to apply criminal sanctions more readily against individuals and entities that expose people to substances that are known and should be known to be toxic.

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) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. 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.”

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” This obligation requires that a State takes appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” In addition, this requires, inter alia, that a State should “provide effective guidance to business enterprises on how to respect human rights throughout their operations”. (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. 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. 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”.

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.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse

human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19). Moreover, where business enterprises “identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Furthermore, business enterprises should remedy any actual adverse impact that they cause or contribute to. 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).

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

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

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

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