



Ministry for Foreign Affairs
Director-General for Legal Affairs

The Special Rapporteurs
signatories to
Joint Communication
AL SWE 2/2021

Office of the High
Commissioner
for Human Rights
Palace of Nations
CH-1211 GENEVA 10
Switzerland

Communication from Special Procedures

Reference: AL SWE 2/2021

Mesdames and Sirs,

1. I have the honour of referring to your letter of 23 March 2021, in which you bring to the attention of the Swedish Government information concerning the exposure of residents in the city of Arica in northern Chile to hazardous hydrometallurgical residues containing toxic chemicals.
2. In response to your invitation to submit observations on certain questions related to the abovementioned situation, I have the privilege, on behalf of the Swedish Government, to submit the following.
3. Initially, the Government wishes to express its genuine concern regarding the present situation in Arica, Chile. It is deeply regrettable that the area has not been cleared of hazardous hydrometallurgical residues. The situation underlines the importance of continued work on sustainable business and human rights, not least in order to increase knowledge concerning risks, and of developing innovative solutions contributing to reduced environmental impact and individuals' enjoyment of safe, healthy and sustainable living conditions.

4. At the same time, it should be clear from the outset that the Government respectfully disagrees with the assertion that Sweden is under any obligation to redress the situation in Arica. The Government notes that the present situation has been subject to review by national courts in Sweden as well as in Chile. In this context, the Government finds it pertinent to recall the fundamental principle that judicial power is independent of the Government's executive power. However, below the Government will outline its general position on the issues raised in the communication.

5. As you are aware, a considerable time has passed since the specific consignments of hydrometallurgical residues were made by a private (non-governmental) company, Boliden Mineral AB, to a Chilean company, Procesadora de Metales Ltda (Promel) in 1984 and 1985. The Government notes that the relevant legal framework governing waste management, as well as the assessment of materials classified as hazardous waste, has developed during this time. At the time of the consignments, no export licence was required since material with a metallurgical content similar to the hydrometallurgical residues were not classified as hazardous waste. However, what is considered to be hazardous waste under Swedish legislation was later expanded and now includes *inter alia* material with a metallurgical content similar to hydrometallurgical residues.

6. Likewise, there has over the years been a development of the relevant international instruments. When the consignments were made there were, for example, no specific international recommendations concerning exports of waste not classified as hazardous waste (cf. the cited OECD Decision-Recommendation on Transfrontier Movements of Hazardous Wastes of 1984).

7. Since 2006, it has been forbidden for Swedish operators to export hazardous waste to countries outside the European Union (EU) and the OECD. Transboundary waste shipments are regulated in EU Regulation (EC) No 1013/2006 on shipments of waste, which is based on the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the decision of the OECD Council concerning the Control of Transboundary Movements of Wastes destined for recovery operations. Under the EU regulation hazardous waste and certain non-hazardous waste may only be exported to countries within the EU and the OECD in accordance with certain control procedures.

8. Environmental matters, including waste management, are a high priority for the Government. Since 1999, the main legislation on environmental protection in Sweden is consolidated in the Swedish Environmental Code (*Miljöbalken*, 1998:808). The Code contains 32 chapters comprising almost 500 sections of environmental rules. More detailed provisions are also laid down in specific legislation, such as the Waste Ordinance and the Environmental Supervision Ordinance (*Avfallsförordningen*, 2020:614, and *Miljö tillsynsförordningen*, 2011:13). Accordingly, environmentally hazardous activities may not commence without a permit from a competent authority. The permit sets out the scope of the activity concerned and includes the conditions under which the activity may be carried out. The application for a permit on environmentally hazardous activities must, *inter alia*, include an environmental impact assessment (EIS), and the applicant is obliged to consult the County Administrative Board, the Environmental and Public Health Committee and other stakeholders, such as the general public in the area affected by the activity. If the competent authority deems the application to be complete, a public consultation follows.

9. Furthermore, under the Swedish Environmental Code there is a system of supervision, conducted by certain supervisory authorities. The term ‘supervision’ is broad and covers inspection, enforcement and issuing guidelines. The supervisory authority may issue an injunction and impose conditional fines if an operator is deemed non-compliant with a permit or the Code. The Code also includes penal provisions for various types of environmental offences.

10. As regards the specific issues of human rights and business raised by the Communication, the Government wishes to emphasise the following.

11. The adoption of the UN Guiding Principles on Business and Human Rights means that since 2011, there has been a global undertaking to promote respect for human rights within business. These guiding principles are fundamental to Swedish policy in this field and the Government’s view is that business and human rights should be mutually reinforcing.

12. In 2015, Sweden was the sixth country in the world to adopt a national action plan for business and human rights in line with the UN Guiding Principles. Business and human rights is also part of the Swedish Trade and Investment Strategy and the Platform for International Sustainable Business, both launched in 2019, in which the Government expresses a clear expectation on Swedish enterprises to respect human rights in their operations both in Sweden and abroad.

The Government has also taken several measures to implement the UN Guiding Principles and would especially like to mention the following.

- The Government has introduced new legislation on sustainability reporting for major companies, that is more ambitious than the corresponding EU directives, clearer sustainability criteria in the 2016 Public Procurement Act, and stronger legal protection for whistle-blowers.
- The Government has launched the Global Deal, a partnership of governments, businesses and employers' organisations, trade unions, civil society and other organisations, aimed at promoting social dialogue and good labour market relations, including freedom of association and collective bargaining, in order to create good working conditions, which in turn will strengthen business and human rights.
- The Government is currently participating actively in developing EU legislation on sustainable business. In February 2021, Sweden submitted its answer to the European Commission's consultation and expressed support for the development of broad, horizontal legislation aligned with the abovementioned UN Guiding Principles and the OECD Guidelines for Multinational Enterprises. The Government also expressed support for implementing a system for follow-up and enforcement, including effective access to remedy.
- The State-owned Swedish Export Credit Corporation (*AB Svensk Exportkredit*) is instructed to promote compliance with international guidelines on sustainable business with respect to the environment, anti-corruption measures, human rights, working conditions and business ethics. The Corporation's credit decisions include sustainability risks regarding human rights, and an annual assessment is made of the operations' risks of causing, contributing to, or being linked to violations of human rights. The Corporation also promotes cooperation with export companies in order to implement the UN Guiding Principles in different industries. The same requirements apply to the Swedish Export Credit Agency (*Exportkredittämnden*).
- Since 2002, Sweden has had an Ambassador for Sustainable Business. The Ambassador advocates for good CSR policy in the countries where Swedish companies have partners and suppliers. Furthermore, the Ambassador *inter alia* participates in meetings with individual companies (of all sizes) and civil society organisations to inform them of the Government's policies and expectations

of businesses, for example regarding the UN Guiding Principles, OECD Guidelines and human rights due diligence.

- Since 2015, several Swedish embassies have arranged meetings, seminars, and exhibitions about CSR, including business and human rights, to disseminate information about the Government's policies and the importance of these issues. A number of embassies have also established local sustainability networks for Swedish companies.

13. Accountability is crucial for ensuring that human rights are respected and complied with in practice. The Government therefore works to ensure that the legal system and supervisory authorities have the resources and expertise they need. According to the UN Guiding Principles, the state shall ensure that those subjected to violations by companies are able to have their cases tried in an efficient way. Companies are also responsible for establishing their own complaint mechanisms and compensating for any negative impact they may have.

14. If a company is believed to have breached the OECD Guidelines, this can be reported to the National Contact Point (NCP) for the guidelines. Sweden's NCP is a three-party collaboration between the state, industry organisations and trade unions, chaired by the Ministry for Foreign Affairs. The NCP cannot review court rulings but can issue recommendations and mediate between parties.

15. As regards access to domestic remedies more broadly, the Government wishes to emphasise that within the Swedish legal order the possibilities for a person from another country to act as a party before a court are in principle on an equal footing with that of Swedish citizens. A prerequisite for a foreign citizen to be able to bring an action in a Swedish court is that there is Swedish jurisdiction. Such jurisdiction may be based on the ground that the company against which the action is brought is domiciled in Sweden. If several persons claim that they have been the victims of rights violations, there is also the possibility to jointly bring a 'class action' before the Swedish courts. Swedish citizens and foreign citizens, who consider that they have been victims of a crime also have the possibility to report crimes to the Swedish police for further investigation.

16. In this context it should be mentioned that under the main rule in the Swedish Act on Limitations (*Preskriptionslagen*, 1981:130), a claim for damages is statute-barred after ten years counted from the time of the act that caused the damage or harm, unless the limitation period is discontinued before the end of the ten year

period. Under a special rule, the limitation period can be longer than ten years for a claim for damages due to a criminal offence.

17. The legal remedies in the Swedish legal system are deemed to be in line with the legally binding commitments on human rights that Sweden has signed. The system also ensures public participation, access to information and access to justice in a manner consistent with the UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (done at Aarhus, Denmark 1998).

18. If a potential human rights violation needs to be examined, there are various instances to turn to. The Government's public website has information on courts, various supervisory bodies, and other law enforcement organisations, e.g. the various ombudsmen, the National Board of Health and Welfare, the Health and Social Care Inspectorate, the Swedish Financial Supervisory Authority, and the Swedish Bar Association.

19. Furthermore, the Government would like to emphasise that it works actively to promote just, peaceful and inclusive societies by ensuring universal access to information and providing access to justice for all and building effective, accountable, and inclusive institutions. In the Swedish Government's *Drive for Democracy* in foreign policy, Sweden places particular focus on supporting human rights defenders and defenders of democracy, and supports and promotes a wide range of human rights defenders globally, including environmental human rights defenders, online as well as offline. Swedish missions abroad also conduct regular dialogues with local human rights defenders and other civil society actors.

20. In summary, the Government wishes to express its gratitude to the signatories of the present communication for raising awareness of the situation in Arica, Chile, and the question of human rights and business in a broader perspective. The environment, including waste management, access to justice and business and human rights, are priority issues for the Government and in this regard it has taken a number of measures in recent years. As the signatories of the present communication, you can therefore rest assured that Sweden intends to remain active on these issues.

21. Finally, the Government wishes to clarify that it remains at your disposal, should any further information be requested.

Please accept, Mesdames and Sirs, the assurances of my highest consideration



Carl Magnus Nesser
Ambassador, Director-General for Legal Affairs