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“2018 - YEAR OF THE 100TH ANNIVERSARY OF THE UNIVERSITY REFORM”

Ministry of Foreign Affairs and Worship

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

FINAL STATEMENT BY THE ARGENTINE NATIONAL CONTACT POINT (ANCP)

"Foro Ciudadano de Participación para la Justicia y los Derechos Humanos c/

Barrick Gold Corporation"

Buenos Aires, Argentina, 27 September 2018.-

The Argentine National Contact Point (ANCP) is charged with promoting the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD) and contributing to the resolution of issues related to their implementation. The *OECD Guidelines for Multinational Enterprises* are recommendations issued for multinational companies that operate in adhering countries or with headquarters in said countries. The Guidelines set forth voluntary principles and rules for responsible corporate conduct that is compatible with applicable legislations and internationally recognized rules.

The ANCP is the authority in charge of receiving claims involving non-compliance with or breach of the OECD Guidelines for Multinational Enterprises. The ANCP acts in compliance with its Procedure Manual and within the framework of the abovementioned Guidelines.

Request for specific instance: Foro Ciudadano de Participación para la Justicia y los Derechos Humanos c/ Barrick Gold Corporation

Claim:

On 8 June 2011, the Citizen Participation Forum for Justice and Human Rights (Foro Ciudadano de Participación para la Justicia y los Derechos Humanos, FOCO), represented by its Executive Director, made a submission to the Argentine National Contact Point (ANCP) requesting that a specific instance be initiated against Barrick Gold Corporation, Argentina branch, and claiming that its actions were contrary to the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD).

On 7 December 2011, FOCO made a new submission to the ANCP for the purpose of amending and supplementing the statement of the facts, the evidence and the final prayer of the claim previously filed. In this new submission, FOCO requested that the ANCP apply the provisions of section C.2 of the Guidelines authorizing it to offer good offices in order to help the parties involved to resolve the issues raised.

As regards the actual purpose of the claim, FOCO requested the ANCP to initiate a specific instance against Barrick Gold Corporation, Argentina Branch, for water, soil and air pollution in towns located in San Juan adjacent to mining operations; adverse effects on glaciers; adverse effects on biodiversity; and limited access to information on the environmental impact of mining projects, which constitutes a violation of the following chapters of the 2000 OECD Guidelines: Preface; Chapter II (General Policies); Chapter III (Disclosure); Chapter V (Environment).

On the basis of the foregoing, the complainant requested:

1. With a view to contributing to the creation of a space aimed at the establishment of a true relationship of mutual trust between the company and the towns affected by its business, which ensures permanent consultation with them and their active participation in the decision-making process regarding mining projects and their impact, the complainant requested that a round table for social dialogue be set up, which must necessarily include direct victims, social organizations with authority over the issue of Open-Pit Mining, the Argentine Office of the Ombudsman and the Argentine Secretariat for Environment and Sustainable Development.

2. That appropriate mechanisms be established to guarantee unlimited, free, efficient and simple access by the people of San Juan, especially those living in the communities affected by the mining activity, to the company's financial, structural and operating information, including exact details on the procedures required for extracting, processing, transporting and marketing ore, as well as on aspects of any inherent social and environmental impact.

3. In view of the evident shortage of sufficient Environmental Reports providing information on the actual impact of Veladero/Pascua-Lama and in accordance with the provisions of sections 19 to 21 of General Law No. 25,675 on the Environment, the complainant requested that an Interdisciplinary Team be formed, made up of professionals from the academic, political and civil society fields, with a view to analyzing, through such technical studies as may be necessary, the environmental impact of the mining projects on the water basins of Rivers Las Taguas, de la Palca, Blanco and Jáchal. In addition, upon personally visiting the area, the complainant requested that samples be taken from the watercourses of those rivers to determine their level of pollution.

4. The complainant also requested that the necessary medical studies be conducted in order to determine the etiology and characteristics of the different pathologies suffered—in terms of health— by the inhabitants of the towns adjacent to the areas of the mining operations, the

manifestations of which (cancer, breathing problems, skin conditions, etc.) are attributed to pollution from open-pit mining in the region. The complainant further requested that the cost of medications and treatment for victims be paid, thus ensuring redress of damages.

5. In accordance with the provisions of sections 3-5 and 15 of Law No. 26,639 and Regulatory Decree No. 207/11, the complainant requested that a comprehensive survey of the glaciers historically located in the Ecosystem present in the area of influence of the mining activities, as well as of the periglacial environments that have served as regulators of those watercourses, be conducted. The results of that survey were to be used to determine whether they have been affected and/or removed during the exploration and exploitation activities carried out by the transnational mining company. The procedure was to be conducted by the Argentine Institute of Nivology, Glaciology and Environmental Sciences (IANIGLA) and was to be supervised by the National Water Institute, the Secretariat for Environment and Sustainable Development, Social Organizations with authority over the issue and the Administration of National Parks, given that the "San Guillermo" National Park was affected.

The amendment to the complaint, made in December 2011, referred to the company's hiring, as a security officer, of an ex member of intelligence battalion 601 indicted for crimes against humanity in Argentina and for ordinary offences committed abroad, which allegedly constitutes a violation of Chapter IV (Human Rights) of the 2011 OECD Guidelines.

On the basis of the foregoing, the complainant requested:

That Barrick Gold prepare a Protocol for Hiring Security Staff for itself and/or for the companies to which those services are outsourced.

That the abovementioned Protocol expressly forbid the hiring of persons accused of, or indicted or convicted for crimes against humanity, either in Argentina or abroad. That the company guarantee full respect for the human rights of the people potentially affected by its business, especially any person who engages or participates in political acts opposing it.

That the company make available to the complainant a full list of the company's security staff (from 2006 to this date), either directly hired by Barrick Gold's subsidiaries or employed by third companies with a view to assigning them to such subsidiaries. That the company provide the corporate name of any companies hired, as well as a list of their Directors and members.

Furthermore, the complainant requested that the ANCP:

- a] Formally admit the specific instance;
- b] Serve notice of the complaint —as amended— to the companies allegedly liable
- c] Take the steps provided for in section C.2] of the Procedural Guidance for Implementation of the OECD Guidelines for Multinational Enterprises

The ANCP notified the General Directorate for Human Rights of the Ministry of Foreign Affairs and Worship, which in turn notified the Argentine Secretariat for Human Rights, with a view to requesting more background information on the abovementioned employee allegedly hired as a security officer by the company.

In view of the various aspects of the complaint, the Directorate for Legal Affairs and the Directorate for Legal Advice of the Argentine Foreign Ministry took the steps incumbent upon them with respect to formal admissibility.

Proceedings:

On 9 May 2013, the ANCP declared the Formal Admissibility of the specific instance with regard to the Preface and Chapters I, II, III, IV and VI on "Concepts and Principles", "General Policies", "Disclosure", "Human Rights" and "Environment" respectively and *prima facie* considered that the claim submitted by FOCO had been made in accordance with the formal requirements set in the OECD Guidelines for Multinational Enterprises

In this context, the ANCP offered its good offices to the parties in order to facilitate the dialogue process for them to reach an understanding that is beneficial to all parties involved.

Through the ANCP and as specified below, the parties exchanged various briefs containing their respective views in connection with the facts backing the claim, as well as the purpose of the proceedings relating to the OECD Guidelines for Multinational Enterprises. Throughout these proceedings, the ANCP held separate meetings with each party.

Briefs submitted and steps taken:

In December 2013, the company submitted its answer, claiming that most of the accusations were outdated and had already been solved.

In its June 2014 reply, the NGO stated that the accusations were still valid and requested that the parties be summoned to a mediation hearing, as established in the Procedural Guidance for Implementation of the OECD Guidelines. The ANCP suggested that the parties propose draft agendas so as to agree on the issues to be discussed at future meetings;

In April 2015, the company made a new submission ratifying its willingness to engage in dialogue with FOCO and stating that an analysis of the issues pending resolution, if any, was a prerequisite to holding a hearing

In May 2015, the NGO submitted a brief requesting that the parties be formally summoned to mediation, as it deemed the last submission made by the company unnecessary and reiterative;

In October 2015, the company made a submission establishing a number of requirements in order to hold a meeting with the NGO;

In November 2015, in response to a letter sent by the company in the previous month, the NGO sent a draft list of issues to be discussed at a future meeting; In December 2015, in light of the difficulties faced by the parties in engaging in dialogue within the framework of the proceedings under the Guidelines, the ANCP sent a notice to the parties stating that the specific instance was terminated;

In February 2016, the NGO expressed its disagreement with the decision made by the ANCP and requested that it be revised;

The new members of the ANCP, who took office in 2016, granted the NGO's request and notified the company of the submission made by the NGO in November 2015;

In 2016 and 2017, the ANCP held new separate meetings with each party and requested that new submissions be made in order for the parties to reach an agreement on the issues to be discussed at a future meeting, so that such meeting could finally be held;

In March 2018, the parties, for the first time, held a meeting in the presence of the ANCP, where it was evident that the parties could not engage in a constructive dialogue in connection with the issues on which the complaint was based or the matters of form relating to the proceedings under the Guidelines.

On 9 April 2018, FOCO sent a letter to the ANCP announcing that the organization had decided to withdraw from the proceedings and criticizing the performance of the ANCP with regard to the

general principles applicable to specific instances provided for in the Guidelines, as well as the terms of and actions taken in the mediation hearing.

On 6 June 2018, the ANCP notified the company of the abovementioned letter by the NGO, informing that, if the company had no observations to make, the specific instance would be terminated.

On 22 June 2018, the company sent a letter to the ANCP stating that it did not object to the termination of the specific instance. Furthermore, the company deemed that the ANCP had acted in accordance with the general principles applicable to specific instances provided for in the Guidelines and attributed the length of the specific instance to the lack of clarity and accuracy in the submission made by the NGO, while complaining that the organization's submission departed from the formal requirements and procedures established for claims based on non-compliance with the Guidelines.

Conclusion:

The ANCP has duly considered the arguments of the two parties involved and has acted within the framework of the powers and functions vested upon it by the OECD Guidelines.

In this respect, the ANCP has attempted to bring the parties together in order to foster dialogue between them, with a view to fulfilling the role assigned to it under the Guidelines -that is, the role to serve as a discussion forum for interested parties.

After the claim was Formally Admitted, the ANCP sent various written notices and held separate meetings with the parties. When a joint meeting was finally held with both parties, it became evident that they could not reach an agreement within the framework of the proceedings

established. This failure to reach an agreement was due to the completely opposite views held by each party with regard to the other party's motives and good faith.

The ANCP regrets that one of the parties decided to withdraw from the instance since, as a general rule and in line with the nature of specific instance proceedings under the OECD Guidelines for Multinational Enterprises (i.e. the achievement of dialogue and, if possible, agreements and consensus), the parties are encouraged to consider ways to generate the necessary conditions to work constructively on the resolution of the issues concerned.

In view of the foregoing, the ANCP hereby terminates the specific instance between the Citizen Participation Forum for Justice and Human Rights and Barrick Gold Corporation.

RUBÉN EDUARDO TEMPONE

AMBASSADOR

NATIONAL DIRECTOR FOR

MULTILATERAL ECONOMIC RELATIONS

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