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Grupo México Lawsuit (RE Toxic Spill in Mexico)

Abstract

Mexico's Secretary of Environment and Natural Resources Juan José Guerra Abud called the spill the worst environmental disaster by the mining industry in modern times.¹ The toxic leak has affected seven communities, home to more than 24,000 people. Although there have been a number of oil spill mishaps, the resilient stand taken by various environmental authorities and the Mexican government has been partially able to hold Buenavista del Cobre and Grupo Mexico accountable for their negligence resulting in fatalities and permanent damage to natural resources. While legal proceedings carry on, Buenavista del Cobre and Grupo Mexico are yet to fulfill its legal obligations.

Table of Key Facts

Case name	Grupo México lawsuit (re toxic spill in Mexico)	
Date	2014 – 2017	
Jurisdiction	Mexico	
Plaintiffs (supported by...): Federal Attorney's Office for Environmental Protection (PROFEPA)	Defendants: Buenavista del Cobre and Grupo Mexico	
Decision	Pending	
Prior procedures	On August 6, 2017, the First Tribunal of the Sonora State district ruled in favor of the plaintiffs in a lawsuit regarding the government's failure to attend to health problems caused by water contamination. However, the	

¹ "Mexico's 'Worst Environmental Disaster in Modern Times.'" *New Internationalist*, January 8, 2015. <https://newint.org/features/web-exclusive/2015/01/08/mexico-environment-disaster>.

	Supreme Court of Justice dismissed a case that named Buenavista del Cobre as one of the defendants and alleged failure to comply with environmental norms and lack of adequate regulations on treating hazardous waste. The court ruled that that the company could not be qualified as a responsible authority under the 2013 amparo law and held liable for human rights violations.
Subsequent procedures	Affected communities have argued that Grupo México and the Mexican government have not fulfilled their obligations under the trust fund in a lawsuit pending before the Supreme Court of Justice. The court is yet to decide if Fideicomiso Río Sonora can be tried in court for human rights violations under the 2013 Amparo law, as an entity composed of both public and private actors. Under the Amparo law ('amparo'), proceedings may be initiated in cases where acts or omissions of the authorities violate a human right recognised in either the Constitution or any of the international treaties adopted by Mexico. ²

Background

On 6 August 2014, Buenavista del Cobre, a subsidiary of Grupo México, spilled 40,000 m³ of copper sulphate and heavy metals into a stream leading to the Sonora River in Mexico. This environmental disaster affected approximately 22,000 people directly, including through its impact on livestock and crops, and 250,000 people indirectly, from seven municipalities located on the banks of the Sonora River: Arizpe, Banamachi, Huepac, Aconchi, San Felipe, Baviácora and Ures. It was reported that high concentrations of heavy metals, including iron, aluminium and zinc, were released in the copper sulphate solution. PROFEPA, Mexico's federal environmental protection agency, estimated that environmental damage from the accident would cost more than \$134m.

The damage caused due to the spill was not just restricted to contamination of water. Seven municipalities surrounding the river are mainly earn their livelihood by agriculture. The crops cultivated in those areas were considered dangerous for sale considering the likeliness of the crops to be contaminated too. Hundreds of people from these communities have been reporting a number of health concerns and side effects due to the contamination of Sonora river such as neurological impairment, post-traumatic stress disorders, stomach illnesses, genotoxicity and endocrine toxicity.

Realizing the gravity of the situation, Mexico's Ministry of Environment and Natural Resources and the office of the Federal Attorney for Environmental Protection found 55 irregularities in the activities of the mining company – ranging from not conducting proper health

² "New Amparo Law Brings Changes to Constitutional Challenge Proceedings." International Law Office, May 7, 2013.

<https://www.internationallawoffice.com/Newsletters/Litigation/Mexico/Chadbourne-Parke/New-Amparo-Law-brings-changes-to-constitutional-challenge-proceedings>.

and environmental assessments of the surrounding community to bribery and fraudulent accounting practices of the mining operation³ – and the company was handed a fine of 23 million pesos (about US\$ 1.8 million).⁴ Buenavista del Cobre came to an agreement with the Government in establishing a trust fund of 2 billion pesos (\$150 million) in order to ensure redress, reparation and compensation for economic and environmental damages and health problems caused in the communities affected by the spill. However, despite this seemingly positive development, there was no consultation with the affected communities about what should be the proper remedies, leading those in the community to feel that the determined compensation was arbitrary, as if done in a way to address the issue at a ‘bare minimum’ with no real concern for the human repercussions. In addition, Grupo México committed to take a number of measures, including installing 28 water treatment plants with technology to filter out heavy metals and building a clinic to treat those whose health was affected.⁵ No public consultation process was conducted by the Government before commencing the negotiation process with Grupo Mexico.

For context, the United Nations Working Group on Business and Human Rights (‘Working Group’) operates under the UN Office of the High Commissioner for Human Rights. The Working Group is composed of five independent experts and has a fairly wide mandate, including the following:⁶

- To promote the effective and comprehensive dissemination and implementation of the [Guiding Principles on Business and Human Rights](#): Implementing the United Nations “Protect, Respect and Remedy” Framework;
- To provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as, upon request, to provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights;
- To conduct country visits and to respond promptly to invitations from States;
- To continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas;
- To integrate a gender perspective throughout the work of the mandate and to give special attention to persons living in vulnerable situations, in particular children;

³ OECD. *OECD Reviews of Regulatory Reform: Mexico 2004: Progress in Implementing Regulatory Reform*. OECD Reviews of Regulatory Reform. OECD, 2004. <https://doi.org/10.1787/9789264017528-en>.

⁴ UN Human Rights Council, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico*, 27 April 2017, A/HRC/35/32/Add.2, available at: <https://www.refworld.org/docid/593aaf054.html> [accessed 15 April 2019]

⁵ Id.

⁶ “OHCHR | Working Group on Human Rights and Transnational Corporations and Other Business Enterprises.” Accessed April 15, 2019. <https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx>.

Of particular importance with respect to Grupo Mexico is the third bullet point, that the Working Group can “conduct country visits.” However, the National Human Rights Commission (NHRC) has consistently frustrated the efforts of the Working Group, claiming that it had no mandate to investigate the matter. The contention stems from back and forth over whether jurisdiction over the matter is at the state or federal level, and if it is the former then the Working Group has no mandate to investigate. However, the NHRC had requested the office of the Federal Attorney for Environmental Protection to file a criminal complaint against the company, but there had been no follow-up. The Federal Attorney’s Office, in turn, informed the Working Group that it had filed a criminal complaint with the Attorney General’s Office, and had assisted in providing expert advice and opinions, but that the follow-up of criminal cases was the responsibility of the Attorney General’s Office.

Affected communities raised a number of concerns related to a lack of consultation about the use of the trust fund.⁷ There was a perception that compensation was determined arbitrarily. For example, compensation was provided up to a maximum number of livestock, irrespective of the number of livestock affected; a lack of transparency about the level of contamination and plans for the recovery of the river; and the non-fulfillment of the company’s commitments to build water treatment plants and a health clinic. All of these mechanisms were believed to have been adopted without a credible explanation as to why such compensation was reached.

The state authorities also said that Grupo México had not fulfilled its obligations, confirming that only 1 of the promised 28 water treatment plants had been built and it was not fully functional, while the health clinic had never been completed, as the Working Group was able to confirm during its visit to the site.⁸

In April 2017, Working Group on business and human rights noted in its country visit report that the government and Grupo México failed to fulfill their obligations under the initial trust fund agreement, and that the Attorney General has not taken action on the petition to open a criminal investigation.⁹ In turn, the company claimed they could not fulfill their obligations regarding the construction of water treatment plants and health clinic “because the municipal authorities did not have capacity to operate them”. In August 2017, it was revealed that the trust fund had been closed. The government claimed that the remedial and compensation plans had been fully complied with. However, affected communities argue that the same has not been done under the trust fund in a lawsuit pending before the Supreme Court of Justice.

⁷ See section on ‘Impact’ regarding information about the complaint mechanism and forms of organization adopted by the communities.

⁸ UN Human Rights Council, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico*, 27 April 2017, A/HRC/35/32/Add.2, available at: <https://www.refworld.org/docid/593aaf054.html> [accessed 15 April 2019]

⁹ Id.

Timeline of Key Events

Date	Key Event
August 6, 2014	On 6 August 2014, 40.000 m ³ of chemicals from the Buenavista del Cobre mine, a subsidiary of Grupo México, spilled into the Sonora and Bacanuchi rivers leading to contamination of water and widespread health effects.
August 29, 2014	PROFEPA filed a petition at the Attorney General's Office requesting a criminal investigation in the case.
September 2014	Government authorities and Grupo México signed an agreement establishing a trust fund (Fideicomiso Río Sonora) with an initial balance of 2 billion Mexican pesos to cover the costs of environmental and agricultural remediation projects and provide compensation for economic damages and health problems to the community members affected by the spill.
April 2017	UN Working Group on business and human rights noted in its country visit report that the government and Grupo México failed to fulfil their obligations under the initial trust fund agreement, and that the Attorney General has not taken action on the petition to open a criminal investigation.
August 2017	The First Tribunal of the Sonora State district ruled in favour of the plaintiffs in a lawsuit regarding the government's failure to attend to health problems caused by water contamination.

Impact

The aftermath of the oil spill in 2014 has resulted in the Mexican Supreme Court issuing a ruling regarding Buenavista del Cobre's construction of a new copper tailings dam in Sonora. By way of brief background, tailings dams are used to store by-products of mining operations and, in the absence of somewhere to store them, production is compromised.¹⁰ On September 4, 2018 the Supreme Court order effectively directed the company to stop its construction of a tailing dam in Mexico. The basis of this ruling can be traced back to the response to the toxic spill on the Río Sonora, and the origins of the Grupo Mexico lawsuit. Immediately after the spill, the community felt that the Mexican government was slow to respond and the mining company lacked transparency in how it operated and that it failed to account for the environmental disaster.¹¹ On that, there have been some direct material impacts resulting from the lawsuit.

In response, members of the affected community – as many as 600 people – organized a movement demanding that officials do more to restore safety to their health, and that of the lands

¹⁰ Mexican Supreme Court ruling favors communities regarding new Southern Copper Corporation tailings dam: PODER, September 7, 2018:

<https://www.apnews.com/8b3d953bec96b45998b6a11b769f3267>

¹¹ "Impacts to Health, Livelihood Continue 1 Year after Toxic Mine Spill in Mexico." *Arizona Center for Investigative Reporting* (blog). Accessed April 15, 2019. <https://azcir.org/toxic-spill-sonora-river-mexico-health-problems/>.

they call home. As mentioned above, federal authorities in Mexico reached an agreement with Grupo México to establish a \$150 million trust fund, called the [Fideicomiso Río Sonora](#), to offer financial reparations to ranchers and other businesses impacted by the spill. In August 2015, the fund had disbursed more than [36,000 individual claims](#), some of which included multiple claims per person and vary from health to business reimbursements.¹²

While this is a quantifiable and ostensibly positive form of reparation, farmers in the community felt it was a hastily imposed form of compensation. For example, when divided among the farmers, the compensation in some cases only amounted to 25 percent of actual business losses, and the health response has been deemed just as inadequate. Some community members have complained of a lack of clean drinking water, as well as insufficient medical responses such as not running appropriate medical tests to check for toxins in the bloodstream.¹³

That notwithstanding, there are also a number of positive developments. More than 600 residents along the river formed the Río Sonora Basin Committees, uniting the communities that live along the river. With help from PODER, the group has filed the equivalent of seven class action lawsuits against Grupo México and the Mexican government. In response to [one of the lawsuits](#), a district judge in Sonora ordered CONAGUA, the federal agency responsible for monitoring water quality in Mexico, to re-test dozens of wells near the river. CONAGUA didn't respond to requests for comments about the October 2015 ruling.¹⁴ Additionally, many members of the affected community (as many as 300) are now receiving treatment at a government-run epidemiology treatment center as a result of the health problems tied to the spill.¹⁵

Also as a result of this case, for future environmental projects, communities in close proximity to the tailings dam must be consulted with while planning the construction, a complete turnaround from accepted practice before the toxic spill. The community of Bacanuchi, represented legally by PODER, claimed that there was no public participation prior to the Secretariat of Environment and Natural Resources (SEMARNAT) granting authorization to the company for the construction of the tailings dam.¹⁶

All of the aforementioned is fairly easy to see as a material impact of the case, but it is also worth briefly noting the non-material impact of the case. By definition, non-material impact is unquantifiable, but the case was a clear example of an increase in community empowerment and sense of self-agency as well as a shift in behavior and attitudes of Mexican policymakers towards corporate accountability in cases of environmental and human rights abuse. The movement started by the community (Río Sonora Basin Committees) was a perfect example of elevated community cohesion in the face of hardship and a successful display of holding those responsible to account.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Mexican Supreme Court ruling favors communities regarding new Southern Copper Corporation tailings dam: PODER: <https://www.globenewswire.com/news-release/2018/09/07/1568119/0/en/Mexican-Supreme-Court-ruling-favors-communities-regarding-new-Southern-Copper-Corporation-tailings-dam-PODER.html>

The case has also become part of a growing movement globally of the power of the rule of law and strategic litigation to end abuse at the hands of powerful corporations.

Strategic Elements

A clear innovative strategy adopted by the affected community entailed filing separate complaints against government agencies under the 2013 law on the constitutional complaint mechanism (amparo), in relation to the various damages caused by the spill, as well as regarding denial of access to information on the incident. When compared to other similar cases, this was the first time such a pressure tactic was used to acquire information about the oil spill.

Another important strategic element, and one that likely holds across all environmental abuse cases, is community cohesion and coalition building to generate support that drives a powerful movement to publicize these cases. Via the Río Sonora Basin Committees, the communities affected by the spill became a voice that was impossible to ignore, and generated the necessary momentum to bring these matters to court, achieve financial compensation, a higher standard of medical care, and augmented corporate practices with regards to monitoring how day-to-day corporate operations affect the communities located nearby.

Like other cases of a similar nature, the plaintiffs received backing from a well-known human rights organization (PODER) that gave institutional legitimacy to their cause and enabled them to more broadly publicize their claims vis-à-vis an aggressive media campaign.

Further Information

- Business and Human Rights Resource Centre Case Profile (<https://www.business-humanrights.org/en/grupo-m%C3%A9xico-lawsuit-re-toxic-spill-in-mexico>)
- Billionaire German Larrea's Grupo Mexico Failed Victims in Mining Disaster, UN Says (<https://www.forbes.com/sites/doliaestevez/2017/07/27/un-singles-out-tycoon-german-larreas-grupo-mexico-for-unfulfilled-pledge-in-ecological-disaster/#493c17bd1506>)
- In \$2 Billion Personal Lawsuit against Grupo Mexico CEO Germán Larrea, Courts Strike Down Larrea's Attempt to Share Blame with Grupo Mexico Subsidiary (<https://www.businesswire.com/news/home/20140319006130/en/2-Billion-Personal-Lawsuit-Grupo-Mexico-CEO>)