



Update on Grupo México lawsuit (re toxic spill in Mexico)

Following one of the plenty constitutional protection measures (*amparos*) presented since 2014, a new *amparo* presented by 42 people in Sonora, specifically from the rural community of Bacánuchi, entered under review in 2018. The main focus of this legal claim was related to the lack of consultation with the communities about a new tailings dam being built by Grupo México's subsidiary Buenavista del Cobre, S.A. de C.V., (responsible for the spill in 2014) near their residences, farming, and grazing land. Following dismissal at the lower court level (*Juez de Distrito*), the plaintiffs presented an appeal and the intermediary court (*Tribunal Colegiado*) decided to send it to the Supreme Court in Mexico City, where the Court's Second Wing (*Segunda Sala*) accepted the case.

During its useful lifetime, the New Tailings Dam Project, located in the Cananea municipality, Sonora, will be able to store up to 2,040 million liters of mining waste (equivalent to 816,000 Olympic-size swimming pools), in an area covering 6,535.06 hectares and measuring 175 meters high. The Preventive Report to authorize the project, states that "the tailings are not dangerous from a toxicity perspective and were classified as not being potential producers of acid."¹ However, it does not take into account the potential risk of toxicity from such a large-scale accumulation of mining waste, and it doesn't contemplate the huge risk that a new spill would imply for the population and the environment.

What is at stake is the right to **public participation in environmental matters**, a right not explicitly recognized by the Mexican Constitution, and which needs to be developed through judicial decisions. The Court in this matter has the opportunity to create an important precedent with regards to a constitutional right. The closest thing to this right under Mexican law is the right to consultation, which is insufficient given that, in general, this right is only conferred to indigenous populations.

Also at stake is **whether or not mine tailings are considered toxic waste**. The definition has a series of legal implications regarding how the substances are handled and, from a human rights perspective, the rights of communities affected by these substances. Although Mexican law deals with mine tailings in technical regulations (Official Mexican Regulations, or NOMs), the classification of these tailings remains unclear.

On 22 August 2018, the Court was expected to decide on the case, but it decided to postpone its ruling until 29 August 2018.

1 Centro de Estudios Servicios y Consultorías Ambientales ("CESCA"), «Preventive Report for the Project "New Tailings Dam for Buenavista del Cobre, S.A. de C.V." to be located in the Cananea municipality, Sonora», July 2013.