

March 15, 2014

**Re: Universal Periodic Review of the Plurinational State of Bolivia**

*Bolivia has not yet addressed human rights violations arising from severe downstream contamination of water and soils from the Kori Kollo gold mine, which is causing ongoing violations of rights to water, food, subsistence, health, livelihood, access to information, access to justice, and a healthy environment.*

**I. SUMMARY**

The now-closed Kori Kollo gold mine has caused severe contamination of downstream ground water, surface water and soils that indigenous communities depend upon for daily life. The government of Bolivia has not yet fulfilled its human rights obligations to downstream communities affected by the mine.

We urge the UPR to recommend that Bolivia address these violations by reforming mining laws and enforcement practices to hold mining companies, including former owners, fully responsible for mine closure, cleanup, and restoration, reclamation bonds, and long-term environmental monitoring.

**II. KORI KOLLO CASE (FACTS)**

- 1) Kori Kollo is a massive open pit gold mine operated by Inti Raymi Mining Company, located in the ecologically sensitive high desert plateau (altiplano) of central Bolivia. The mine area is next to the Desaguadero River, one of the altiplano's most important sources of water. The area polluted by the Kori Kollo mine is the traditional homeland of approximately 63,000 Quechua, Aymara, and Uru indigenous peoples who live a subsistence-based existence by owning small herds of dairy cows or sheep, as well as by fishing and hunting. Over 75% of the people downstream from the mine have no access to purified water and rely on wells, rivers, and streams for their daily water supply.
- 2) US-based Newmont Mining, one of the largest gold producing companies in the world, acquired 88% of the stock of Inti Raymi (including Kori Kollo) in a buyout of another US mining company in 2001. Newmont actively mined the site for two years, then began closure procedures. However, ore continues to be transported from a second Inti Raymi mine site (Kori Chaca) and processed at Kori Kollo.
- 3) Newmont and Inti Raymi claim to have used only state-of-the-art best practices for zero emissions to the environment from the mine.<sup>1</sup> However, since mine closure, Bolivia's Ministry of Environment and Water received 990 complaints of negative impacts downstream from the mine, with over 10,000 signatures from four provinces.<sup>2</sup> These

complaints include contamination of river water, ground water, Lakes Uru Uru and Poopó, as well as impacts to soils, crops, livestock, and human health.<sup>3</sup>

- 4) In response to community complaints, the Bolivian government ordered an environmental audit of Kori Kollo (“Government Audit”). In 2009, the Bolivian Ministry of Environment finally began the audit using funds (\$US 1.25 million) from Inti Raymi. The final report was released nearly two years past the proposed deadline and three years after the audit began.<sup>4</sup> Local communities were given only 15 days to comment on the final report despite their formal request for an extension of the comment period.<sup>5</sup> The final report was released as an incomplete, 676-page, 20 MB, highly-technical document available only on CD-Rom in a 65 megabyte file that cannot be easily printed or shared. A 20 page table on negative impacts from the mine is printed in 8 point font, so small it is nearly unreadable, and buried in a section of the document without page numbers. Annexes with critical data on water, soil and plant toxicity results by location have never been released. Local communities denounced the audit as a violation of their right to information on impacts of the Kori Kollo mine. Affected communities insist that they have had extremely poor access to information, and no ability to participate in decisions that affect their lives.
- 5) The Government Audit, the first completed report on a post-closure environmental audit of a mine in Bolivia, confirmed acid mine drainage; severe salinization of ground water; contamination of ground water with cyanide, cadmium, zinc and copper; and an estimated \$US 4 million in local crop damages, among many other impacts. (See Annex 1 for details of water, soil and livestock contamination.) The mine also damaged four archaeological sites: those at San Andres and Chapi Kollu were totally destroyed, while those at Chuquiña and Titina partially destroyed.<sup>6</sup> The legal analysis concluded that Inti Raymi has violated several laws and is responsible for destruction and displacement of soils; modification of terrestrial habitats; high concentration of cadmium, zinc, lead in terrestrial and aquatic plants, reptiles and rodents; pollution of fauna and flora; processes of erosion; pollution of soil; changes in the quantity and quality of water; changes in the recharge of aquifers; emission of air pollutants; and changes at landscape level.<sup>7</sup>
- 6) However, the audit provided no information on when or how the mine site will be fully closed and restored, whether the pollution can be mitigated, or whether the impacted communities will be compensated for their loss of freshwater, healthy soils, crops, fish stocks, and forage for livestock.
- 7) Within months of the start of the audit in 2009, Newmont Mining sold its 88 percent shares of Inti Raymi (and with it, all liabilities) to a Bolivian company.<sup>8</sup> Newmont established a \$US 13 million fund for closure and reclamation when it sold its shares.<sup>9</sup> Even considering the cost differentials between US and Bolivian economies, the amount set aside is shockingly low, given the levels of pollution. (If the mine had been in the United States, Newmont could have been required to establish a financial guarantee of between \$US 292 million and \$US 876 million for the Kori Kollo mine alone.<sup>10</sup>)
- 8) Bolivia has taken no law enforcement actions against Inti Raymi, even 1.5 years after reaching these conclusions. No communities have been provided compensation for damages

to soil, water, flora and fauna, crops or livestock. Former owner Newmont Mining has been allowed to walk away from liability, while still profiting from Inti Raymi's mining activities through ongoing royalties.

- 9) An Independent Audit was also conducted in 2011-2013 by a team of scientists and mining engineers from Oruro Technical University.<sup>11</sup> This audit documented impacts similar to those found in the governmental audit. It concluded that downstream water was unfit for human or animal consumption or crop irrigation, and that soils downstream no longer allow cultivation of food plants due to toxicity and extremely poor yields. It also found the mine had caused severe salinization of soils as well as changes to the course of the Desaguadero River directly downstream from the mine.
- 10) In the previous UPR of Bolivia, human rights concerns from environmental issues were mentioned only once in the recommendations.<sup>12</sup> Bolivia responded by noting the importance of the protection of Mother Earth, the environment<sup>13</sup> and biodiversity and accepted several recommendations about ensuring indigenous rights, full participation and consultation<sup>14</sup>, and one recommendation for "swift implementation of the legislation and regulatory framework for the new Constitution".<sup>15</sup> Nevertheless, in the area of mining law and regulations, Bolivia still falls short of its commitment to prevent environmental harms that violate human rights, indigenous rights, and the rights of Mother Earth.<sup>16</sup>

### **III. VIOLATIONS OF RIGHTS NOT ADDRESSED**

Given the facts above, and details presented in Annex 1, we conclude that in the case of Kori Kollo, Bolivia has not yet addressed violations of the right to water, food, means of subsistence, and livelihood, to cultural integrity, access to information, public participation and consultation, access to justice for affected communities, or corporate liability.

### **IV. RECOMMENDATIONS**

1. Bolivia should comply with its obligations to protect the human rights of local and indigenous communities including the right to water, food, subsistence, access to information, public participation, consultation, access to justice, as well as the rights of the Mother Earth (Pachamama).
2. Bolivia should take action to mitigate environmental harms from the Kori Kollo mine, including legal action against Inti Raymi, providing the public with full access to audit information, seeking compensation for affected communities, providing clean water, and demanding full disclosure from Newmont and Inti Raymi about closure funds and processes.
3. Bolivia should develop and enforce laws and regulations related to mining and other extractive industries consistent with the new Constitution and highest international standards like the Framework for Responsible Mining (2005), including:<sup>17</sup>

- a. Environmental Audits and Monitoring. Require pre-licensing environmental impact assessment and post closure audits that include upstream (control) and downstream (affected) areas. Require ongoing monitoring at likely sources of contamination and downstream, both throughout the active mining period and after operations cease. Future audits elsewhere would be especially useful if done by companies with environmental audit experience and no ties to the existing mine.
- b. Information transparency and participation in decisions. Develop laws and regulations to inform affected populations and to allow effective participation in decisions impacting indigenous rights and other human rights. Publish proposed and final concession licensing agreement terms and conditions in accessible ways, with adequate time for affected communities to respond. Develop mechanisms for meaningful and effective response, and extend the period of public comment from 15 days to at least 60 days. Publish plans and outcomes for ongoing monitoring and audit results in a form understandable by local residents. Provide technical assistance for local communities to understand these processes. In the case of Kori Kollo, provide documents that have been inaccessible to the public, including the mining concession license, terms of sale approved by the government when Newmont left Bolivia, and all annexes from the government audit.
- c. Financial Guarantees/Reclamation Bonds. Require pre-licensing independently held financial guarantees that will fully cover the costs of reclamation, monitoring and long-term waste treatment and disposal even in the case of bankruptcy or transfer of ownership.<sup>18</sup>

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- 1 See website of Empresa Minera Inti Raymi, <http://emirsa.com/> (last accessed September 2013) Environmental Management: "Operation works in a closed circuit, ie no product effluent is discharged to the environment."
  - 2 Ministerio de Medio Ambiente, P.C.A. Consultores, Auditoría Ambiental de las Operaciones Minera de Kori Kollo , Informe Fase III (Sept. 2012) (Auditoría Ambiental Kori Kollo Informe Fase III), at 19; 9-1 to 9-14. 990 Claims: PCA Audit (2012) from 9-1 to 9-14.
  - 3 Ministerio de Medio Ambiente, P.C.A. Consultores, Auditoría Ambiental de las Operaciones Minera de Kori Kollo , Informe Fase III (Sept. 2012) ("PCA") at 19 and 9-1 to 9-14.
  - 4 PCA at 1.
  - 5 CORIDUP, Solicitud de Ampliación de Termino para la Presentacion de Observaciones (25 Sept. 2012).
  - 6 PCA, Chapter 6 Matrix at 21.
  - 7 PCA, Informe Legal IL-PCA F3 02/2012 at 6.
  - 8 Newmont website (accessed September 18, 2013) <http://www.newmont.com/south-america>. "On July 23, 2009, Newmont announced the transfer of its interest in Empresa Minera Inti Raymi S.A., which owned the Kori Kollo gold mine and Kori Chaca gold mine, to Compania Procesadora de Minerales S.A. ("CPM"), a company controlled by Newmont's long-time Bolivian partner Jose Mercado."; Newmont Mining Corporation, The South American Region (accessed April 1, 2013) <http://www.newmont.com/south-america1>.
  - 9 Newmont Mining, Kori Kollo Sold (Dec. 9, 2009, accessed Sept. 13, 2013) <http://www.newmont.com/features/our-business-features/Kori-Kollo-Sold> "As part of the transaction, a reclamation trust fund will be established with the proceeds to be made available exclusively to pay for closure and reclamation costs when operations eventually cease. The buyer assumed all obligations of the operation and agreed to pay Newmont a nominal royalty from future production. With this sale, Newmont has no remaining operations in Bolivia."; See also Newmont Mining, 2009 Annual Report, [http://newmont.q4web.com/files/doc\\_downloads/2009\\_Annual\\_Report.pdf](http://newmont.q4web.com/files/doc_downloads/2009_Annual_Report.pdf) at 60. "In July 2009, we sold our interest in the Kori Kollo operation in Bolivia. As part of the transaction, a reclamation trust fund was established with the proceeds to be made available exclusively to pay for closure and reclamation costs when operations eventually cease. We recorded a \$13 [million] liability for the trust fund and recognized a \$16 [million] charge, net of tax benefits."
  - 10 Mining reclamation bonds vary greatly among US states. According to mining experts at Kuipers and Associates, hard rock mines operating in the United States with mine features similar to the Kori Kollo mine have reclamation and closure costs estimated between US\$20,000 and US\$60,000 per acre, or more, to complete reclamation and closure tasks including earthworks, water treatment and long-term care and maintenance. Mine examples with costs in this range include Questa (NM), Chino and Tyrone (NM), Golden Sunlight Mine (MT), Zortman Landusky Mine (MT), Beal Mountain Mine (MT), Pogo Mine (AK). See also Kuipers 2000, *supra*, at 47-48. Earthjustice calculated a disturbance area of 14,608 acres for Kori Kollo's mine from the 2012 environmental audit of the Bolivian Ministry of Environment and the 2003 Kori Kollo Closure and Reclamation Plan.

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- 11 Juan Carlos Montoya Choque y Richard Silver Mendieta Cardenas, Evaluación ambiental de la mina Kori Kollo (EMIRSA) en el área de influencia de Kori Kollo,(Empresa Minera Inti Raymi), Oruro Technical University Institute for Development and Environment (June 27, 2013 (“Montoya et al.”).
  - 12 United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Bolivia (Plurinational State of), 15 March 2010, A/HRC/14/7.
  - 13 United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review, Bolivia (Plurinational State of), A/HRC/14/7,at 96.
  - 14 *Id.* particularly at 98.45, 98.74, and 98.76.
  - 15 *Id.* at 98.17; United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review, Plurinational State of Bolivia, Addendum, particularly at 18, 19.
  - 16 See e.g. La Patria, *Cerca del 80% de las cooperativas mineras no tienen licencias ambientales*, (March 12, 2013) <http://www.lapatriaenlinea.com/?t=cerca-del-80-de-las-cooperativas-mineras-no-tienen-licencias-ambientales&nota=137547>. “Según informes de la Secretaría de Medio Ambiente del Gobierno Autónomo Departamental de Oruro (Gador), cerca del 80% de las cooperativas mineras no tienen licencias ambientales, por tanto no realizan la mitigación ambiental pertinente.... Indicó que esto es un punto débil que se tiene en la Ley del Medio Ambiente, que no exige la mitigación ambiental a las actividades mineras que tienen su producción menor a 300 toneladas por mes, a pesar que de igual forma contaminan el ambiente.”
  - 17 Marta Miranda, David Chambers, and Catherine Coumans, *Framework for Responsible Mining: A Guide to Evolving Standards* (2005), <http://www.frameworkforresponsiblemining.org/index.html> (“Framework”),
  - 18 Anaya, James. Report of the Special Rapporteur on the rights of Indigenous peoples: Extractive Industries and indigenous peoples, 1 July 2013, A/HRC/24/41, <http://unsr.jamesanaya.org/annual-reports/report-to-the-human-rights-council-a-hrc-24-41-2013>; Framework, at 40; James Kuipers, *Hardrock Reclamation Bonding Practices in the Western United States*, National Wildlife Federation (2000) [http://www.earthworksaction.org/files/publications/hardrock\\_bonding\\_report.pdf](http://www.earthworksaction.org/files/publications/hardrock_bonding_report.pdf) at 2.