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CHILEAN MINE DISASTER SPARKS REFORMS OF SAFETY AND LABOR REGULATIONS

Executive Summary

The recent collapse in a mine in northern Chile, where thirty-three miners remain trapped, calls into question mine safety standards in the country. Deficiencies in the enforcement of current safety regulations have contributed to the mine disaster. Both the executive branch and Congress are working on initiatives to increase funding for mine safety supervision and to improve the legal framework, in order to ensure that this type of accident does not happen again.

I. Background

On August 5, 2010, a mine collapsed in Chile—the world’s top copper producing nation—leaving thirty-three miners trapped 2,300 feet underground. The San José mine is located in Copiapo, in the northern part of Chile. Three weeks after the explosion, the miners were found alive. They are being aided and fed through bore holes. The rescue team has estimated that rescue efforts will take up to four months.¹

While the rescue teams, doctors, and experts work against the clock to plan and execute the rescue operation, mining safety standards in the country are in question. Discussions are ongoing on how this accident could have happened and how to prevent it from happening again, especially since the same mine had an explosion in 2007 resulting in the deaths of two miners.² The company’s records of inspections showed that the mine had already been reported for deficiencies, according to a report submitted by the *Asociación Chilena de Seguridad* (Chilean Safety Association) before the Commission on Investigations of Safety Measures in Mining Activities, headed by the Committee on Mining of the *Cámara de Diputados* (House of Representatives).³ Immediately after the explosion, the miners tried to use an emergency ladder, a piece of equipment that is required in every mine, but the ladder in the ventilation shaft was only available for one-third of the way. The Mining Minister reportedly stated that “the

¹ *Chile Mine Collapse Sounds Alarm on Safety Standards*, CHRISTIAN SCIENCE MONITOR, Aug. 24, 2010, <http://www.csmonitor.com/layout/set/print/content/view/print/321709>; *Comisión Investigadora de la Cámara dispuso sitio web para transparentar todos los antecedentes del caso Mina San José*, BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE (Aug. 30, 2010), available at <http://www.bcn.cl/de-que-se-habla/comision-investigada-mina-san-jose-copiapo>.

² CHRISTIAN SCIENCE MONITOR, *supra* note 1; BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE, *supra* note 1.

³ Informe de Prevención de Riesgos a la Compañía Minera San Esteban Primera, Período 2006-2010 (Aug. 26, 2010), <http://www.camara.cl/pdf.aspx?prmTIPO=MANDATOANTECEDENTE&prmID=124>.

evacuation exit was clear for 48 hours after the accident, and the miners could have gotten out if the ladder had been fully in place.”⁴

II. Current Regulatory Framework

The Regulation on Mine Safety⁵ (*Reglamento De Seguridad Minera*, RSM) provides the legal framework applicable to the Chilean mining industry for protecting the life and physical integrity of the mine workers as well as the infrastructure and facilities where mining operations are carried out.⁶

The SERNAGEOMIN (*Servicio Nacional de Geología y Minería*) is the government agency in charge of the control and inspection of mine workers’ conditions and labor accidents.⁷ According to the Regulation on Mining Safety,⁸ the SERNAGEOMIN has, among other duties, the responsibility for the control, inspection, and supervision of compliance with the requirements on mine safety under the law;⁹ investigation of any labor accident;¹⁰ compliance with any corrective measure resulting from the prior two powers;¹¹ and the proposal of rules, instructions, and any other activity of a preventive nature aimed at optimizing the safety standards of the mining industry.¹²

The RSM also regulates the mine owners’ responsibilities¹³ with regard to the safety of their workers, which include having their own internal regulation on order, hygiene, and safety to guarantee the physical integrity of the workers and the care of the facilities, equipment, machinery, and environment.¹⁴ Article 31 of the RSM is particularly relevant; it requires the mine owners to adopt all necessary measures to guarantee the life and integrity of the workers,¹⁵

⁴ *Poor Safety Standards Led to Chilean Mine Disaster*, GLOBALPOST, Aug. 28, 2010, <http://www.globalpost.com/print/5581516>; *Falta de Escalera en ducto de chimenea frustró escape de mineros 48 horas después del derrumbe*, EL MOSTRADOR (Chile), Aug. 23, 2010, <http://www.elmostrador.cl/noticias/pais/2010/08/23/falta-de-escalera-en-ducto-de-chimenea-frustró-escape-de-mineros-48-horas-despues-del-derrumbe/>.

⁵ Decreto Supremo 132, Reglamento De Seguridad Minera [RSM], Dec. 30, 2002, DIARIO OFICIAL [D.O.], Feb. 7, 2004, available at http://www.sernageomin.cl/pdf/reglamentos_seguridad_minera/DS132_Reglamento_SEGMIN.pdf.

⁶ *Id.* art. 1.

⁷ Decreto Ley 3525, Ley Orgánica del Servicio, Nov. 26, 1980, D.O., Dec. 20, 1980, <http://www.leychile.cl/Navegar/?idNorma=7160&idParte=0>; RSM art. 4.

⁸ Pedro Muñoz, *Las Lecciones de la Mina San José* (Sept. 2, 2010), available at the Senate website, http://www.senado.cl/prontus_galeria_noticias/site/artic/20100826/pags/20100826154715.html; RSM.

⁹ RSM art. 13.a.

¹⁰ *Id.* art. 13.b.

¹¹ *Id.* art. 13.c.

¹² *Id.* arts. 13.d., 16, 17,

¹³ *Id.* arts. 21-37.

¹⁴ *Id.* art. 25.

¹⁵ *Id.* arts. 31, 32.

including the provision of all of the safety equipment necessary based on the dangers to which they are exposed.¹⁶ The RSM provides for penalties for noncompliance with its standards, with fines of twenty to fifty times the *Unidades Tributarias Mensuales*,¹⁷ which are doubled in cases of recurrences of the violation,¹⁸ in addition to the temporary or indefinite closing of the mine, either partially or as a whole.¹⁹

III. Legislative Proposals

According to Chilean Senator Pedro Muñoz, Senator for the Magallanes Region in the southern part of the country and currently the president of the Senate Committee on Labor, the situation of the thirty-three trapped miners called attention to the precarious working conditions of too many Chilean workers. Muñoz has proposed that out of this tragedy, four aspects need to be immediately addressed:

The first is the need to amend and improve the labor law framework to facilitate unionization and collective bargaining. . . . These types of accidents do not occur in big mining operations not only because they have more resources, but also because their workers have very strong union organizations that allow them to report violations on a regular basis and voice their opinions. In order to improve the safety and working conditions for mining workers, a union presence is unavoidable.

The second is the need to perfect the inspections of mining working conditions, which have been recognized as insufficient for too long. The government has to provide sufficient funding, personnel, training, and equipment for inspectors to do an adequate job. I have proposed giving the Directorate of Labor more autonomy from the government to conduct inspections and establishing a management council inclusive of all parties at stake in mining, with transparency and efficiency in its processes. . . .

Thirdly, a systematic effort is needed to transfer best practices. The big mining companies should transfer their good practices model to the small companies, with government assistance as an incentive to production. There are companies in Chile that are technologically very advanced with safety standards that are top-of-the-line, but there are others, even in the same geographic sector, that are not. We must be able to facilitate the transfer of these experiences and equipment.

Finally, . . . it is necessary to encourage new ethics in the production process. There are many businesses that insist in reducing costs at the workers' expense. . . . The San José

¹⁶ RSM, *supra* note 5, art. 32.

¹⁷ The *unidad tributaria mensual* is the amount set by law and permanently updated that is used as a unit to measure taxes, fines, etc. In September 2010, 1 UTM was equal to CLP 37,454 (about US\$73), according to SII online, <http://www.sii.cl/pagina/valores/utm/utm2010.htm> (last visited Sept. 2, 2010).

¹⁸ RSM, *supra* note 5, art. 590.

¹⁹ *Id.* art. 592. Additional regulations on work safety are found in the Ministry of Health's Decree with Force of Law (DFL) 725/68, Jan. 31, 1968, CÓDIGO SANITARIO [HEALTH CODE] arts. 82-88, D.O., Jan. 31, 1968, <http://www.leychile.cl/Navegar?idNorma=5595&buscar=codigo+sanitario>; and Law 16744 on Norms of Labor Accidents and Illnesses, Jan. 23, 1968, art.76, D.O., Feb. 1, 1968, <http://www.leychile.cl/Navegar?idNorma=28650&buscar=ley+16744>.

mine tragedy showed that Chile needs a better labor law and adequate production standards and controls.²⁰

On September 14, 2010, Muñoz submitted a bill that would amend the Labor Code²¹ to include a paragraph in Article 171 giving mine workers the right to terminate their labor contracts with their employers, with the consequent right to compensation, when the mine owner does not comply with the mine safety regulations established under Article 32.1 of DSM No. 132, putting the workers' lives and physical integrity at risk.²²

Previously a bill was presented on September 7, 2010, by Senator Isabel Allende, who is also a member of the Senate Labor Committee, to add to Article 32.1 of the RSM²³ new grounds for the closing of mining operations that include a mine owner's noncompliance with the obligation to provide free personal protection and safety tools to the mine workers; and requirements for conducting studies to assess the real needs of the mine workers according to each of their assigned jobs and providing maintenance to safety equipment, as well as periodic reviews of the conditions of the workers' safety equipment.²⁴ This bill also reduces the minimum number of workers required for a mining company to be obliged to have a Department on Risk Prevention within its management, from the 100 currently required under the RSM²⁵ to twenty workers.²⁶

Senator Allende also noted that it is especially worrisome that Chile has signed but not ratified International Labor Organization (ILO) Convention 176 on Safety and Health in Mines,²⁷ considering that mining is one of the most important activities in the country.²⁸ The Convention requires the parties to adopt legislation that would allow a worker not only to report a violation of mine safety, but also to stop working if safety conditions are not proper, without being fired.²⁹

²⁰ Muñoz, *supra* note 8 (as translated and paraphrased by the author).

²¹ CÓDIGO DEL TRABAJO art. 171 (Legal Publishing, Santiago, 2008).

²² Proyecto 7210-13 Relativo al término del contrato de trabajo por faltas a la seguridad minera, submitted by Senators Allende y Rincón and Muñoz (Sept. 14, 2010), http://www.camara.cl/pley/pley_detalle.aspx?prmID=7612&prmBL=7210-13.

²³ RSM, *supra* note 5, art. 32.1.

²⁴ Proyecto 7190-08 Sobre Seguridad Minera, submitted by Senator Isabel Allende (Sept. 7, 2010), http://www.camara.cl/pley/pley_detalle.aspx?prmID=7590&prmBL=7190-08.

²⁵ RSM, *supra* note 5, art. 35, first para.

²⁶ Proyecto 7190-08, *supra* note 24.

²⁷ Convention Concerning Safety and Health in Mines (ILO No. 176), June 22, 1995, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C176>.

²⁸ Proyecto 7190-08, *supra* note 24.

²⁹ *Make Good on Concern for Worker Safety, Say Unions*, IPS NEWS, Aug. 30, 2010, <http://ipsnews.net/news.asp?idnews=52665>.

IV. Executive Actions

On August 23, 2010, President Sebastián Piñera announced the creation of the Commission on Workers' Safety,³⁰ which will conduct a diagnostic study within ninety days to generate proposals for improving work hygiene and safety.

The commission will address three aspects:

1. Institutional organization. It will evaluate the minimum safety and hygiene working conditions required by law and the way its compliance is being enforced and monitored; the evaluation will consider the roles of the workers, employers and their representatives, the public entities with responsibilities in labor safety, and insurance companies. The schedule of sanctions will also be studied, as well as the current conditions of insurance coverage.
2. Prevention. The subcommittee on prevention will analyze the obligations of businesses, workers, and their representatives, and the preventive role of the enforcement agencies.
3. Insurance. The subcommittee will assess the quality, timing, and efficiency of economic compensation under Law 16744 on labor accidents and illnesses, conditions to access insurance, compatibility with other social security benefits, coverage, and the financing of insurance.³¹

V. Further Recent Initiatives

More drastic criminal penalties against employers that do not meet the standards of hygiene and safety in mining activities are among the legislative measures that have been proposed by the Senate Committee on Mining, after the San José mine accident.³² Some mine owners have preferred to pay the fines, which are less costly than the expenses necessary to meet the requirements on equipment and safety.³³

On August 27, 2010, the Mining Minister announced the restructuring of the SERNAGEOMIN and the creation of the *Superintendencia de Minería*, which will have the exclusive authority to authorize mining exploitation and exploration activities and control over mine safety.³⁴ In addition, lawmakers have requested an increase in the number of inspectors;

³⁰ Government of Chile, Comisión para la Seguridad del trabajo, <http://www.gobierno.dechile.cl/especiales/comision-para-la-seguridad-en-el-trabajo> (last visited Aug. 31, 2010).

³¹ *Id.*

³² *Endurecerán las Sanciones Penales Contra Empresas Mineras Que Vulneren Normas de Seguridad* (Aug. 9, 2010), Chilean Senate website, http://www.senado.cl/prontus_galeria_noticias/site/artic/20100809/pags/20100809133828.html.

³³ *Id.*

³⁴ *Proponen Crear Superintendencia de Minería tras Accidente de Yacimiento San José*, TELESUR, Aug. 27, 2010, <http://www.telesurtv.net/noticias/secciones/nota/imprimir.php?ckl=77327>.

currently there are only eighteen, an insufficient number to perform supervisory and control duties efficiently.³⁵

On August 31, 2010, President Piñera signed a bill to add increments to the tax on mining, to increase the contribution of the larger mining companies towards better working conditions and development for the small and medium size companies, who are the ones with the highest percentage of accidents.³⁶

The Investigation Committee of the Chamber of Deputies on the San José Mine Accident has set up a special Web page dedicated to providing all the information and background related to the accident,³⁷ not only to conduct a thorough investigation at the congressional level but also to keep the country informed through a transparent process.³⁸ The site includes Resolution 2225/2010 of June 28, 2010,³⁹ from the Ministry of Health of the Atacama Region, ordering the reopening of the San José mine, which had been closed after the fatal accident in 2007.

The government, mine owners, and workers, as well as the whole country, hope that all thirty-three miners can be rescued. At the same time, efforts are being made to make sure that a country like Chile, with a very rich mining industry, provides its workers with the most advanced and efficient safety standards to prevent this tragedy from being repeated.

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³⁵ *Piden Ampliar Planta de Fiscalizadores en Sernageomin y resaltan Labor Cumplida por Equipos de Emergencia* (Aug. 24, 2010), Chilean Chamber of Deputies website, http://www.camara.cl/prensa/noticias_detalle.aspx?prmID=39078.

³⁶ *Presidente Firma Nuevo Proyecto de Royalty Minero*, DIARIOPYME, Aug. 31, 2010, <http://www.diariopyme.com/2010/08/pyme-mineras-demandan-recursos-del-royalty-para-mejorar-seguridad/>; *Pyme Mineras Demandan Recursos del Royalty Para Mejorar Seguridad*, DIARIOPYME, Aug. 30, 2010, <http://www.diariopyme.com/2010/08/pyme-mineras-demandan-recursos-del-royalty-para-mejorar-seguridad/>.

³⁷ http://www.camara.cl/trabajamos/comision_mandato.aspx?prmID=409 (last visited Sept. 2, 2010).

³⁸ *Comisión Investigadora de la Cámara Dispuso Sitio Web para Transparentar todos los Antecedentes del Caso Mina San José* (Aug. 30, 2010), Biblioteca del Congreso website, <http://www.bcn.cl/de-que-se-habla/comision-investigada-mina-san-jose-copiapo>.

³⁹ Resolution 2225/2010, Ministry of Health of the Atacama Region (June 28, 2010), <http://www.camara.cl/pdf.aspx?prmTIPO=MANDATOANTECEDENTE&prmID=81>.