

## Chapter 10

# **Southern Green Victimology: A Look at the Cycle of Environmental Harms, Resistance and Over-criminalisation**

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### **Abstract**

Building upon the working notion of Southern green victimology, the presentation explores the case of Andalgalá, Province of Catamarca, Argentina, where international corporations have been trying to develop a mining project that would affect the environment and the health of the local population. Facing the lack of support from the state, the organised local community tried to prevent their actual environmental victimisation and they committed to stop this damaging undertaking. Following these intents, the Argentinean criminal justice system acted to the detriment of these local actors (over-criminalisation) and favour mining corporations that can cause irreparable damage to the local water and air resources (under-criminalisation). In short, the case study will shed light on the common features of Southern green victimisation: (1) attempts to consolidate corporate investments involving extensive environmental harms in forms already banned in the Global North, (2) a committed resistance by the local environmental groups, (3) the harsh selectivity of the criminal justice system, and (4). immunity of corporate environmental harms/crimes.

*Keywords:* Southern; green victimology; environmental harms; resistance; Argentina; criminalisation

The burgeoning research of green criminology in/from/on the Global South builds upon Southern perspectives within criminological research (Carrington et al., 2016, 2019; Travers, 2019), and it seeks to expand Northern perspectives on environmental harms and environmental criminalisation. In particular, this literature looks at geopolitical inequalities and highlights the scope of Global Northern exploitation in the Global South (e.g. Northern actors taking resources on a scale that threatens local food security, the transfer of waste from North to South, or fracking investments).

Following this perspective, it is possible to argue that environmental/green victimisation is not only targeting specific populations but also entire parts of the globe located in the South. In this regard, environmental/green victims have been defined as ‘those of past, present, or future generations who are injured as a consequence of change to the chemical, physical, microbiological, or psychosocial environment, brought about by deliberate or reckless, individual or collective, human act or omission’ (Williams, 1996, p. 35). However, to this shall be added that environmental victimisation is often shaped by what might be referred as ‘environmental selectivity’, that is, how race, ethnicity, gender, class, and religious membership but also glocalisation play a relevant role in conditioning whose wellbeing is more likely to be affected by environmental hazards (more on selectivity in Vegh Weis, 2017).

To this is added that the usual environmental victims do not only face structural marginalisation and specific green crimes/harms but, on top, they are usually ignored within scholar and public policy work. Indeed, ‘the most notable absentees from the vast majority of work carried out in relation to environmental victimisation so far are the voices of environmental victims themselves’ (Hall, 2014b, pp. 139–140). As a result, ‘almost no empirical research has been carried out which takes into account the perspective of environmental victims themselves’ (Hall, 2014b, p. 135), undermining the development of political and policy strategies from below. In particular, ‘poor people are usually excluded from the environmental decision-making process, and once a policy is made, they are usually powerless to change it’ (Lee, 2022, pp. 3–4).

Against this background, critical scholars call academics to ‘take a stand’ and embrace research as praxis, putting knowledge at the disposal of activism. This position involves, following the lessons of left realism, understanding that victims’ rights are not the exclusive incumbency of right-wing representatives. Moreover, taking a stand also means going beyond the focus on individual environmental victims and helping develop victims’ movements and engaging with workers, the poor, and indigenous peoples in the management and defense of high-value natural resources (Brisman & South, 2013). From a Southern perspective, the literature supports this call and aims to raise (resistant) Southern voices, including those of local populations (Goyes, 2020; Natali, 2014), radical environmentalists (O’Brien, 2016), environmental groups taking action both online and offline (Ronco & Allen-Robertson, 2021), feminists (Massé et al., 2021), and Indigenous groups (Puerta Peña, 2021).

Following this call, and linking the contributions from Southern criminology, green criminology and environmental/green victimology, this chapter explores

a *Southern green victimology* perspective that can shed light on the specific features of environmental victimisation, resistance and criminalisation in the Global South, with a focus on the experiences of those engaged in resistance strategies. In this regard, a Southern perspective within environmental/green victimology can help avoid the danger of treating green/environmental victims as if they were a uniform group and acknowledging, instead, different crime impacts and reactions in different parts of the globe (Hall, 2014b) based on actually listening and analysing their experiences and actions.

Moreover, following this logic, a Southern perspective can contribute to highlighting the fact that actors in the South are more affected by environmental harms and have, nevertheless, fewer possibilities to confront and overcome the consequences of environmental disasters in the global debate. To exemplify, the 1992 UN Framework Convention on Climate Change (FCCC) recognises that climate change does not have a geographical even impact but that particularly vulnerable are the 'low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems' (Hall, 2014b). However, Global North countries along with national and international NGOs are the ones directing the environmental global efforts. Moreover, local NGOs in the South may be increasingly influenced by state and corporate funders from the North and therefore may have a difficult time challenging practices that go against the Northern agenda (Stretesky & Knight, 2013).

A Southern perspective within environmental/green victimology can also shed light on the resistance movements that spread throughout the South to face both corporate harms/crime and the lack of response (or even complicity) of state agents and international organisations. Moreover, a Southern perspective can also point out how, when victims resort to protest to confront the spread of impunity, the criminal justice system reacts especially hard, including the use of deadly force and the over-criminalisation of those exercising the constitutionally granted right to protest. In this vein, the excessive (and even deadly) use of force by law enforcement in relation to environmental protest is a common feature in large parts of the Global South. In Brazil, 71 leaders and members of social movements were killed in 2017 alone (Lacerda & Rolemborg, 2021). In South Africa, the residents of the township of Mpumalanga resisted an initiative to install a flat rate for their water services which would have led to the privatisation of the access to this basic right. As a response, the government called the military to intervene, the protests were banned and police fire was employed (Pauw, 2003). In Bolivia, similar protests against the privatisation of access to water culminated in an eight-day blockade and state of siege in April 2000, during which at least six people were killed (White, 2003).

Building upon this working notion of *Southern green victimology* and the specific features described above, this chapter explores the case of Andalgalá, Province of Catamarca, Argentina, where international corporations have been trying to develop a mining project that would affect the environment and the health of the local population. Facing the lack of support from the state, the organised local community tried to prevent their actual environmental victimisation and

they committed to stop this damaging undertaking. Following these intents, the Argentinean criminal justice system acted to the detriment of these local actors (over-criminalisation) and favour mining corporations that can cause irreparable damage to the local water and air resources (under-criminalisation). In short, the case study will shed light on the common features of Southern green victimisation: (1) attempts to consolidate corporate investments involving extensive environmental harms in forms already banned in the Global North, (2) a committed resistance by the local environmental groups, (3) the harsh selectivity of the criminal justice system, and (4) immunity of corporate environmental harms/crimes.

### Open-Pit Mining and Environmental Victimisation

About 2.7 million square kilometres in Argentina have mineral deposits. Reservoirs of lead, zinc, tin and silver are located along the 4,500 kilometres of extension of the Andes Mountains, whereas the South region is known for borates, lithium and potassium salts, and to the West is rich in copper, gold and silver. Catamarca, a province in north-western Argentina located 245 kilometres from the provincial capital city, is known for its copper, molybdenum, gold and silver resources. Andalgalá, the third-largest city in Catamarca, has the largest gold and copper mine in the country and one of the most important in the world (Coria, 2007).

Andalgalá's resources were identified by the Argentine State in 1970 when the Dirección de Fabricaciones Militares (Directorate of Military Fabrications) carried out the so-called Plan Cordillerano Norte (Northern Cordillera Plan) intending to identify the existing mineral resources in the extreme north of the Argentine mountain range.<sup>1</sup> The information gathered was sent to the Secretaría Nacional de Minería (National Mining Secretariat) and then passed on to transnational companies interested in investing in the extraction of national mining resources (Cornejo Torino, 2003). Through a contract signed on 3 March 1972, the state authorised the US company Cities Service International to exploit the mining *Mi Vida* (My Life, today known as Agua Rica, Rich Water) for 50 years in exchange for a payment of 2 million dollars, free of taxes and with full freedom to transfer remittances abroad (Pastoriza, 2008). The Australian company BHP and the Canadian transnational Northern Orion completed a feasibility study to start the exploitation of the mine. However, because of the low international price of copper, no progress was made on the project (el Ancasti, 2005, 2016).

In 1997, the mining corporation Bajo La Alumbrera was finally established in the region with a construction cost of 1,200 million dollars. The consortium, conformed by Xstrata (Switzerland, 50%), Goldcorp (Canada, 37.5%) and Yamana Gold (Canada, 12.5%), is one of the world's top 10 copper mines and one of the top 15 gold mines and has an annual turnover of 680 million dollars. Locally, it decided to develop a three-stage extraction process (prospecting,

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<sup>1</sup>See <http://www.alumbrera.com.ar/institucional.asp> and <http://www.atlas.catamarca.gov.ar/PDF/idades%20tematicas/territorio%20y%20medio%20ambiente/division%20politica/departamentos/Andalgala/andalgala.pdf>.

exploration and exploitation) (Lamallice & Klein, 2016). This mega-project was the first large-scale transnational strip-mining project in the country. Exploration and exploitation rights were held by Yacimientos Mineros de Agua de Dionisio, which included the Government of Catamarca (60%), the National University of Tucumán (20%) and the national government (20%) (Berea, 2013).

The residents of the towns of Andalgalá, as well as those of Belén and Santa María, expressed their opposition, denounced the false promises of economic and social progress, and made explicit the negative impact that the mining process would have on the region's natural and cultural assets (Gallego Zapata, 2018). This was not an isolated reaction: throughout Latin America, mega-mining projects are often confronted by local communities generating a total of 209 social conflicts by 2014, according to the Latin–American Mining Conflict Observatory. Only in Argentina, there are 26 social conflicts within the 157 mining planned projects, 42 of which have already started.<sup>2</sup>

The first mining conflict in the country was in the province of Chubut in the Patagonia region. The local community of Esquel organised a referendum and 81% of the population voted against the project. The outcomes were not limited to stopping the project but also a law was passed banning any future open-pit mining project. Following this model, environmental social movements in eight other provinces engaged in legal battles to pass similar laws banning mining projects when they included the use of leaching methods and chemicals (Marin, 2009). These provinces were Río Negro (2005 but nullified in 2011); Mendoza (2007); La Rioja (2007 but nullified in 2008); Tucumán (2007); La Pampa (2007); Córdoba (2008); San Luis (2008) and Tierra del Fuego (2011).

The overall consequences of the extractive model and, specifically of the open-pit mining system, were made public through the documentary film *Las Fuentes del Jardín de tus Arterias* by German Ciarí,<sup>3</sup> in which the environmental liabilities, social conflict and environmental destruction were exposed. Indeed, in line with the analysis of the film, Bajo La Alumbra destruye an average of 340,000 tonnes of rock per day to obtain, for each ton, approximately six grams of gold and six kilograms of copper. The destruction of the mountains alters the geology and can cause subsequent landslides and avalanches. In addition, the process involves the use of 66,000 litres of water per minute (la Vaca, 2007) and tons of chemicals that remain partly in a tailings dam – a dam that stores the remaining solids from the ore processing – as well as in the atmosphere – as part of the suspended dust generated by the rock explosions. In turn, the tailings dam sits on the Vis-Vis River basin, contaminating the water (Möhle, 2018). Community members denounced that their homes are located 2 kilometres downstream of the dam where polluting material is discharged and they argued that ‘the quality of the water caused stomach pains, diarrhoea, diarrhoea with fever and vomiting’ and that ‘the animals, mainly goats, died’.<sup>4</sup>

<sup>2</sup>See <https://www.ocmal.org/>.

<sup>3</sup>See [https://www.youtube.com/watch?v=SDDYbAe\\_DFU](https://www.youtube.com/watch?v=SDDYbAe_DFU).

<sup>4</sup>See Conflicto Minero: Bajo Bajo La Alumbra acusada de contaminación, [https://mapa.conflictosmineros.net/ocmal\\_db-v2/conflicto/view/20](https://mapa.conflictosmineros.net/ocmal_db-v2/conflicto/view/20).

## **Environmental Victims Resistance**

The first milestone in the resistance to mining took place in September 2006, when residents and socio-environmental organisations began a protest in front of the municipal sports centre. As soon as the demonstration began, the protestors were repressed by the provincial police and the Gendarmerie. Many were beaten, shot with rubber bullets, and gassed, while some were arrested. In other words, repression was accompanied by the environmental over-criminalising of those resisting the mining project. The community filed criminal complaints about the repression before the Prosecutor's Office of the 2nd District of Andalgalá, but environmental under-criminalisation of the repressive actions of the security forces was the solo response they obtained. None of the law enforcement agents was charged for their actions.

Years later, the situation intensified when a threatening official document was disclosed: it stated that the corporation Billington had the right to move the whole city of Andalgalá:

The area of the mine practically covers the city of Andalgalá, a situation that is normal and commonplace, since according to the Mining Code the two properties can coexist, both the mining and surface properties can coexist, the mining, in this case, being for Prospecting and Exploration purposes, which in the case of exploitation, has the greater public interest and the state must prioritise its development. (Christel & Gutiérrez, 2017)

Protests escalated since then. In December 2009, a resident and lawyer of Andalgalá, Sergio Martínez and his friend Aldo Flores went together trying to disrupt traffic on the road El Potrero in Chaquiago, which is the road that leads to the Agua Rica deposit. The goal was to prevent the supply of mining inputs. The radio spread the word and community members started to gather to support the initiative. That day la Asamblea El Algarrobo (The Carob Tree Assembly) was formed. The name was chosen in honour of the carob tree that gave them shade on the side of the road during the hot summer days. Simultaneously, on 2 January 2010, the community organised the first of the more than 600 weekly Caminatas por la Vida (Walks for Life), a non-violent protest that gathers thousands of families in the main town of the city. Eduardo, an Andalgalá resident, explains his motivation to take part in the Saturday demonstrations:

Just as there are people who go to Mass on Sundays, I go to the walk on Saturdays ... I want my children to continue living here, that they can learn the things I have learned, that they can see the magic of planting a seed and seeing the plant grow. That is why I walk. Because I feel worthy when I walk. (Tierra Viva, 2021)

From then on, the community started a double strategy. On the one hand, they engaged in a legal struggle with the support of activist lawyers from the

community, such as Sergio Martínez, and with lawyers from the human rights organisation Servicio Paz y Justicia, SERPAJ (Service Peace and Justice).<sup>5</sup> One of the first legal battles started as soon as January 2010 when the recently confirmed assembly presented a constitutional complaint against the corporation Agua Rica and its subsidiary Yamana Gold and LLC. They demanded the immediate suspension of all the work in progress aimed at preparing for the exploitation of the mine. They argued that the mining project will violate the rights to a healthy and balanced environment, the right to health, the right to life, the protection of their physical integrity and the property of the inhabitants of the region (Christel & Gutiérrez, 2017). On the other hand, the blockade and the weekly walking became two permanent features of the city. For the blockade, neighbours organised themselves into shifts and guards so that there would always be someone on-site, preventing the corporation from accessing the mining camp with heavy machinery. The local civil tribunal dismissed the constitutional complaint arguing that the case demanded a broader discussion on the provided evidence. As a response, the community lawyers presented an appeal before the Supreme Court of Justice, with the hope that a non-local tribunal might show a less biased performance when evaluating the actual harms associated with the mining project.

### **The Harsh Selectivity of the Criminal Justice System: Over-criminalisation of Peaceful Local Resistance and Under-criminalisation of the Violent Repression by Law Enforcement Agencies**

Meanwhile, the local criminal court did engage in the conflict, now for the second time, in a strategy of environmental over-criminalisation: the attorney general opened a criminal case against four community members for the crime of hindering the operation of land transport (art. 194 of the Criminal Code). The statute of limitations prevented the case to progress, but the judge delayed the dismissal of the proceedings and left the case open. This exposes how, even when

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<sup>5</sup>SERPAJ was created in 1974 as part of a continental Christian-ecumenical non-violent movement committed to liberation theology and the principles of civil disobedience developed earlier by Gandhi and Martin Luther King Jr that met in Medellín, Colombia. The common grounds were commitment to the oppressed peoples and a non-violent orientation. In 1975, as a response to the increasing violence of the Triple A, right-wing squads acting with the support of the democratic government, SERPAJ initiated a campaign to disseminate the Universal Declaration of Human Rights and habeas corpus templates. SERPAJ's goals are the promotion of peace, non-violence and a culture based upon human rights. Its leader is Adolfo Pérez Esquivel, who was a victim himself, detained and tortured during the dictatorship. Pérez Esquivel was awarded the Nobel Prize in 1980. After the transition to democracy in 1983, SERPAJ started to also intensively collaborate with communities fighting against environmental harms and particularly with Indigenous Peoples (Author's interview with Adolfo Pérez Esquivel, SERPAJ offices, 10/7/19).

the criminal procedure rules are there to protect the constitutional rights of the defendants, the selective criminal justice system can manipulate the cases to prolong the subjection of the community members to the detriment of their constitutional rights.<sup>6</sup>

Less than two months later, the judge intervening in the case issued two simultaneous rulings, reinforcing the under-criminalisation of the heads of the mining corporation and the over-criminalisation of the community members. On the one hand, he rejected a precautionary measure<sup>7</sup> that would stop the mining company's actions. He did so based on a formal argument (*Asamblea El Algarrobo*, 2010d; *el Trece*, 2010) that was so weak that it would later be revoked by the Supreme Court of Justice. On the other hand, the judge accepted the request issued by the *Agua Rica* corporation and the attorney general office to evict the road where *El Algarrobo Assembly* was located.<sup>8</sup> The operation was led by a special and militarised law enforcement group (*Grupo Kuntur*) that belongs to the *Catamarca* police force. They were armed as a combat force and fired rubber bullets at those who were peacefully demonstrating on this rural road, thus guaranteeing that the company could pass machinery to its camp.<sup>9</sup>

Notably, the judge ordered the police to clear the area, even though violence was likely to take place because of the features of this law enforcement group, which is specially trained to intervene in highly conflicting situations, pre-under-criminalising the violence through the judicial authorities to act. The state-corporate symbiosis in the case was clear in the fact that this judge was the former Director of *Yacimiento de Agua in Dionisio*. The violence occurred, and, in response, community members filed a complaint against the mayor, the attorney general, the judge and the police personnel.<sup>10</sup> However, in another example of environmental under-criminalisation, the facts were never investigated and the judge in charge dismissed the case (*McEvoy*, 2019). In contrast, the criminal justice system did intervene but did so by fostering the environmental over-criminalisation of the community members, charging them for damaging public property during the protest. Once again, exposing the state-corporate symbiosis, the charges originated in a complaint filed by a local businessman who was providing supplies to the *Agua Rica* mining company and an active promoter of the mining industry in the region.<sup>11</sup>

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<sup>6</sup>Exp. 03/2010 s/simple threats, minor injuries and damage in ideal competition.

<sup>7</sup>The 'precautionary measure' is a precautionary decision taken by the judge to avoid irreparable damage being caused during the judicial process. The 'medida de no innovar' refers to not moving forward in the mining process until the final judicial decision is taken.

<sup>8</sup>Expte. No. 23/10 s/ilícito penal -*Chaquiago Andalgalá*.

<sup>9</sup>Expte. No. 19/10 s/ilícito penal -*Chaquiago Andalgalá*.

<sup>10</sup>Exp. No. 40 s/instigators of damage and aggravated theft.

<sup>11</sup>The optional referendum is a mechanism for direct public consultation so that the population can vote directly on a specific issue of great relevance, in this case on mining.

In turn, trying to dispute the charges presented against them within the environmental over-criminalisation process, community members once again engaged with activist lawyers and together they devised a creative and peaceful strategy. They agreed upon refusing to be notified of the criminal charges against them, arguing that the summons did not comply with articles 173 and 175 of the provincial Criminal Procedure Code, which state that these notifications must contain the object and/or motive of the judicial process and the full name of the person to be notified. This strategy was disseminated in the community through the radio program of El Algarrobo Assembly so all members would be aware of how they could better defend their right to due process. Interestingly, this experience shows that the selective functioning of the criminal justice system forced ordinary citizens who oppose the mining industry to learn about Criminal Procedure provisions to avoid being over-criminalised.<sup>12</sup>

A month later, following grassroots pressure from the population of the town, the government called for an optional referendum (Asamblea El Algarrobo, 2010a). The citizens of Andalgalá would be entitled to vote if they wanted or not mega-mining developments in their hometown. However, the attorney general challenged the constitutionality of the referendum and called for the democratic consultation process to be suspended. A group of residents decided to gather anyway in the main square on the day of the referendum to demonstrate against the suspension of the referendum.

In this context, one of the community members approached a local bar, where he found the aforementioned judge sitting with his family. A group of neighbours then approached the bar to peacefully repudiate the judge's presence in the area. The state response was further environmental over-criminalisation: disregarding the right to dissent and the freedom of expression that all citizens should enjoy on a constitutional basis, the attorney general filed a criminal complaint about the crime of threat against the person who noticed the presence of the judge in the bar (Meganoticias, 2010). In the absence of evidence of a threat, the case could not proceed. However, the courts again resorted to the strategy of leaving the case open and delaying the dismissal.

Months later, in July 2010, the residents of Andalgalá issued an ultimatum: 'Agua Rica must leave on the first week of September because the people do not want to continue bearing the eternal delays of the justice system and the government' (Asamblea El Algarrobo, 2010c). From August onwards, a group of assembly members set up a tent where they began a collective fast to reinforce and make visible the seriousness of the ultimatum.<sup>13</sup> Moreover, a procession of all faiths and religions took place to unite wills and overcome ideological differences under the slogan 'Peace, respect and love for life' (Lamallice & Klein, 2016).

In response to the ultimatum, more police were sent to protect the mining company, escalating the tension. During one of the Walks for Life, protesters

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<sup>12</sup>Exp. 133/10 s/coercion.

<sup>13</sup>Exp. No. 205/10 s/aggravated damage, illegal deprivation of personal liberty and coercion.

denounced that the streets adjacent to the mining company's headquarters were fenced off and inaccessible, even if there was no legal authorisation to do so. However, instead of applying sanctions against the mining company for having fenced off a public road, the security forces proceeded to over-criminalise twenty-three neighbours for the crime of aggravated damage and attack on authority, alleging that they had tried to dismantle the installed physical barriers. Once again, the justice system was not able to gather evidence for these accusations and the charges against the community members were finally dismissed.

In the same month, August 2010, a group of members of the El Algarrobo Assembly held a demonstration at the door of the City Council during a session devoted to the discussion on glaciers and periglacial environments. Unsurprisingly, the action ended with criminal charges being brought against five members of the El Algarrobo Assembly for the crimes of damage and unlawful deprivation of liberty (due to the situation of the members of the Deliberative Council who 'could not leave' the Council and go home) in a new instance of environmental over-criminalisation. Again, the lack of evidence was clear, and the charges did not go forward, but the case has not yet been closed (Carrizo et al., 2012).

Interestingly, women represent two-thirds of those over-criminalised in the protests against mega-mining initiatives in the province of Catamarca (Lamalice & Klein, 2016) and they became, as in many other places, a central pillar of the struggle (Carrizo et al., 2012). In Andalgalá, a group of female community members decided to create the group *Mujeres del Silencio* (Women of Silence). In mid-September, this group carried out a new form of demonstration to make visible the over-criminalisation of the right to protest and the extensive violence deployed by law enforcement. Every Wednesday, these women began to walk silently, walking from the square, passing by the town hall, the judiciary and the attorney general office, to end up before the headquarters of Agua Rica and its bigger supplier, Mafap. The women stopped for a few minutes before each place, in silence, with their mouths covered, their hands tied and holding signs saying that they were defending the Aconquija, their 'Nature Sanctuary'. The banners stated: 'We are daughters and mothers of Andalgalá, is this also a crime?' (Veneranda, 2012).

In turn, teenagers from the community also organised themselves under the name *Los Nuevos Defensores* (The New Defenders). They give talks on environmental issues in schools to raise awareness among their peers. Likewise, a meeting of the *Unión de Asambleas Ciudadanas* (Union of Citizen Assemblies) was held in Andalgalá to exchange, articulate and strengthen links among assemblies from all over the country (Asamblea El Algarrobo, 2010b). Following these efforts, several socio-environmental assemblies began to protest along with Indigenous communities in the province at the beginning of 2012. Altogether, they carried out blockades to obstacle the transport of mining supplies to the Bajo La Alumbrera corporation (Asamblea El Algarrobo, 2012). The response was, once again, repression followed by the under-criminalisation of this excessive use of force by police agents and the over-criminalisation of community members under fake allegations of threat and damage to private property.

In the town of Tinogasta in Catamarca, the repression included the deployment of rubber bullets and dogs that caused serious severe injuries to the protesters. In the town Amaicha del Valle in the province of Tucuman, the police repressed and besieged protesters on a plot of land without a warrant. In Belén in Catamarca, protesters were arrested and charged with offences under the Anti-Terrorism Law (Indymedia, 2012). By then, 44 members of the El Algarrobo Assembly have been prosecuted under criminal charges.<sup>14</sup> All these cases ended up being dismissed after long periods of distress for those accused. The trick deployed by the judges to maintain the cases open for a long time in this opportunity was to argue that, as it was a small town, they had personal links with the accused, which allowed them to self-inhibit from issuing a decision and to transfer the case to another judge in a vicious circle.

In turn, the state protection of the mining corporations continued. Agua Rica was benefitted from an extension of the original concession<sup>15</sup> and plans were drawn up to open another mining site known as Bajo el Durazno (Under the Peach) next to Bajo La Alumbreira. Meanwhile, the provincial Secretariat of Mining approved the Environmental Impact Report for the exploration of another project known as Cerro Atajo, presented by the mining corporation CAMYEN SE, associated with Yamana Gold (Catamarca Actual, 2016). All of this was done without complying with the existing legal obligation that establishes the duty to allow local citizens to express their opinion on the acceptance or rejection of mining exploitation projects in their hometown.

### **Immunity of Corporate Environmental Harms/Crimes**

Meanwhile, the appeal which had been filed by the residents of Andalgalá back in 2010 against the mining corporations and which was supposed to be resolved by the Supreme Court was still pending. In November 2014, the community members decided to stop waiting passively and raised funds to travel to the capital city of the country, Buenos Aires, where the Supreme Court is located. Once there, they set up a camp in Plaza Tribunales, in front of the Supreme Court and a few blocks from the attorney general's office. The action was supported by national social and human rights organisations, among them SERPAJ, the Sindicato de Trabajadores del Estado (the Union of State Workers), the social organisation Conciencia Solidaria (Solidary Consciousness), public intellectuals, individual citizens, and students' networks such as Visión Sostenible (Sustainable Vision). These organisations offered cultural activities to the public and the turnout

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<sup>14</sup>Exp. No. 273/12 for aggravated damage in ideal concurrence and real concurrence with aggravated minor injuries as co-perpetrators and Exp. No. 54/13 for a double aggravated attack on authority in ideal concurrence with damage and real concurrence with aggravated minor injuries as co-perpetrators.

<sup>15</sup>Interlocutory Ruling No. 1/2015, Fs. 345 in case No. 271/08 'Minera Agua Rica s/Minera El Portezuelo, Dpto. Andalgalá'.

increased. Press conferences were held, documentaries were screened, and political representatives and prominent personalities were received in the tent settled by Andalgalá community members. In addition, the Walks for Life were now held around the courthouse, while holding a long Argentinean flag (Resumen Latinoamericano, 2016).

The neighbours of Andalgalá were able to meet with public servants from the attorney general office. The attorney general ended up ruling in favour of the people of Andalgalá, stating that ‘the defendants (Yamana Gold and the Provincial State) would be in a position to carry out operations or actions that could result in damage to the environment and health that, due to their magnitude and the factual circumstances, would be irreversible’. Furthermore, the attorney also argued that ‘the Judiciary of Catamarca (Court of Guarantee, Court of Appeals and Court of Justice) did not act on the basis of the existing law’, since ‘the judges violated the constitutional rights of the residents of Andalgalá (...)’.<sup>16</sup> The attorney highlighted that art. 41 of the Constitution, indicates that ‘the issues under debate involve the human right of all inhabitants to enjoy a healthy, balanced environment, suitable for human development and that productive activities must satisfy current needs but without compromising those of future generations’.<sup>17</sup>

This statement was sent to the Supreme Court, which incurred new delays. El Algarrobo Assembly decided to organise a campsite for the second time in the same place. This time the slogan was ‘Sentencia YA’ (Sentencing now). Finally, on 2 March 2016, the Supreme Court of Justice ruled on the case, upholding the community’s claim and deciding that the constitutional complaint was an appropriate remedy because the authorisation to operate that was granted to the mining company was likely to produce a level of environmental damage that, due to its magnitude and factual circumstances, could be late, insufficient or impossible to repair at a later date. Furthermore, the Supreme Court stated that:

in environmental matters, when the protection of a collective good is under discussion, the prevention of future damage is the absolute priority ... carrying out an environmental impact study before the start of activities does not mean that the commencement of the mining activities will be prohibited, but rather an instance of reflexive analysis on a scientific basis and with citizen participation is needed.<sup>18</sup>

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<sup>16</sup>PGN, Opinion of 03 December 2014, exp. No. 1314/2012 T° 48 Letras M, titled ‘Sergio Martínez y Otros c/Minera Agua Rica LLC Suc. Argentina y su propietaria Yamana Gold Inc. y otro s/acción de amparo’.

<sup>17</sup>PGN, Opinion of 03 December 2014, exp. No. 1314/2012 T° 48 Letras M, titled ‘Sergio Martínez y Otros c/Minera Agua Rica LLC Suc. Argentina y su propietaria Yamana Gold Inc. y otro s/acción de amparo’.

<sup>18</sup>CSJN. Judgment of 2 March 2016, Case 1314/12 entitled ‘Recurso de Hecho. Sergio Martínez y otros c/Minera Agua Rica LLC Sucursal Argentina y su propietaria Yamana Gold Inc. y otros s/acción de amparo’. The full ruling can be retrieved at <http://esdocs.com/doc/1798669/archivofallocompletosobremineraaguarica>.

This was the first legal victory in favour of the community and the environment. However, the case went back to the local judge who supported the arguments of the community members and prohibited any further mining activity in the region. In June 2016, the corporation announced the closure of Bajo La Alumbrera mining project and on 8 September, the Municipal Ordinance 029/2016 was passed, prohibiting metalliferous and nuclear mineral (uranium, thorium, etc.) mining activities in any form, whether through open pit or galleries, in deposits discovered or to be discovered, in all its stages, in the entire upper basin of the Andalgalá River (Aranda, 2016; Diario Judicial, 2020; Marcha, 2016). The ordinance is being challenged by the Agua Rica company and the Government of the Province of Catamarca, to which the Assembly responded by intervening as an interested third party.<sup>19</sup>

Contrary to the provisions of the injunction, the mining company did try to enter machinery into the Agua Rica deposit in December 2016. In response, a group of neighbours presented charges against the company's managers and the CEO for judicial disobedience against the ordinance prohibiting mining activity. Furthermore, the community members also presented charges against the Secretariat of Mining for breach of duty about the lack of compliance with its obligations of protecting the environment. To investigate the case, the general attorney ordered an inspection of the mining site. The forensic experts hired by the mining company stated that there was no activity while those hired by the community members argued that there was. In 2019, the court dismissed the case against the company managers, the CEO and the Secretariat of Mining, in a new instance of environmental under-criminalisation.

Finally, in mid-August 2019, a network of social organisations linked to *El Algarrobo Assembly* became aware of the fact that *Agua Rica* and *Bajo Bajo La Alumbrera* were going to merge into one and that this was being discussed at the National University of Tucumán, given that the university was a shareholder of another related company, *Yacimiento de Agua Dionisio*. Community members demanded access to public information and asked the university representatives to visit Andalgalá to show them that the exploitation of the Agua Rica deposit was environmentally, socially and economically unviable. A commission from the university visited Andalgalá and issued a report in which they stated that:

The town of Andalgalá presents itself as a society split in two and a burden of anguish is verifiable by direct observation (...). A high level of social stress is observed, which is at least partially linked to the project.<sup>20</sup>

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<sup>19</sup>Exp. 133/2016. Gobierno de Catamarca c/Municipalidad de Andalgalá s/Acción de Inconstitucionalidad and Exp. 143/2016, Minera Agua Rica LLC c/Municipalidad de Andalgalá s/Acción de Inconstitucionalidad.

<sup>20</sup>Adm. Exp. 1091-19 on Formal Offer on Integrated Project Minera Agua Rica and Resolution 2372/2019.

Based on this document, a unanimous vote was taken to reject the merge of Agua Rica and Bajo La Alumbra. The dispute is ongoing.

## Conclusions

This chapter puts forward the working notion of *Southern green victimology* to shed light on the particularities of environmental victimisation in the Global South. *Southern green victimology* identifies the particularities of environmental/green victimology in the Global South, highlights the limited capacity of Southern actors in terms of shaping environmental governance regulations at a global scale, and is attentive to the experiences of those grassroots actors engaged in resistance strategies. Concerning the latter, *Southern green victimology* sheds light on the vicious circle in which resistance movements that spread throughout the South to face both corporate harms/crime face the lack of response (or even complicity) of state agents, how they must resort to protest to stop the environmental-threatening investments, and how the criminal justice system reacts especially hardly, including the use of deadly force and the over-criminalisation of those exercising the constitutionally granted right to protest while ensuring corporate immunity.

Looking at these features, the chapter analysed the case of Andalgala in Argentina. The case shows how environmental under-criminalisation protects corporations, even when they cause irreparable environmental damage and systematically break the law. In this vein, it has been shown how courts, particularly at the local level, tend to dismiss the most severe social harms caused by mining corporations against the environment and under-criminalise corporate representatives, even when they fail to follow specific rulings. Environmental under-criminalisation also protects law enforcement agencies, who are not subjected to criminal prosecution even though their actions are harmful and can affect the physical integrity of unarmed residents exercising their constitutional right to protest. This means that, particularly at the local level, the criminal justice system tends to under-criminalise law enforcement agencies even when they engage in excessive use of force against non-violent protesters. Finally, environmental under-criminalisation also benefits those members of the judiciary who act in symbiosis with corporations and to the detriment of the environment and the rights of the citizens that they should protect, with the result that no charges were brought against them. On the other hand, the case study exposes that environmental over-criminalisation displays against those who demand the respect of their fundamental rights through non-violent means. Moreover, local prosecutors were unable to gather sufficient evidence against the community members in all the criminal cases filed against them. Nevertheless, these processes were not dismissed immediately but remained open, distressing the defendants entitled to a due and expedited process. Interestingly, this phenomenon also exposes that environmental over-criminalisation occurs particularly at the level of law enforcement actions while charges are unlikely to be sustained due to the lack of evidence when the cases are already in court.

Overall, the case study allows to shed light on the fact that those communities resisting environmental damage are doubly affected by the process of criminal selectivity: they are over-criminalised for their direct protest actions against the corporations and later re-victimised on a triple basis: when the courts reject, in the vast majority of the cases, their legal petitions aimed at stopping the environmental damage caused by corporations; when the courts dismissed the cases against law enforcement agents who attacked to the community members' physical integrity; and when judges and prosecutors remain unpunished despite their collusive collaboration with the corporations.

Finally, the chapter also sought to expose that the process of bottom-up resistance through non-violent protest and the legal tools deployed by lawyers who belong and are daily engaged in the grassroots organisation became a unique tool to confront state-supported mining activity. As Hall (2014a) points out, given the relevance of political activism, it is essential to look at what works and what does not in terms of resistance to environmental harms. The experience of Andalgalá shows that success was due to the commitment and consistency of the vast majority of the community members acting united and involved in cooperation networks with committed lawyers as well as with members of other towns struggling against mining as well as with national social and human rights organisations. The combination of legal strategies with protest and blockades both in their hometown, where the mining corporation was located, as well as in the capital city, where the highest court functions, was proven to be a successful strategy. Moreover, peaceful, and creative protest strategies such as the women of the community marching in silence and the framing of clear and catching slogans became a crucial component of the struggle. As it is written on banners throughout the town of Andalgalá, the message of the community is clear: 'Drinking water gives us life. Awareness-raising gives us water and that is why the Aconquija snow-capped mountains are not to be touched!'

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