

FINAL STATEMENT

Chile's National Contact Point OECD Guidelines for Multinational Enterprises

Non-official English translation

In Santiago, on 14 April 2015, Chile's National Contact Point for the OECD Guidelines for Multinational Enterprises (hereinafter, the NCP), having taken into account the specific instance request and available information submitted by a municipality located in northern Chile (hereinafter, the Municipality or the submitter), with the aim of initiating a specific instance for alleged violations of the OECD Guidelines for Multinational Enterprises (hereinafter, the Guidelines) by a mining company (located in Chile) owned by various foreign companies, and also considering the information provided, hereby states the following;

I. OECD Guidelines for Multinational Enterprises

The Guidelines are recommendations addressed by governments to multinational enterprises operating in or headquartered in adhering countries. They contain non-binding principles and standards for responsible business conduct in a global context, consistent with applicable laws and internationally recognised standards.

Their objective is to promote the positive contribution of enterprises to economic, environmental, and social progress worldwide, reflecting the shared values of the governments of countries that are the source of a significant portion of global foreign direct investment and are home to many of the world's largest multinational enterprises.

In this context, and with the aim of promoting and implementing the Guidelines, the governments of adhering countries have committed to establishing National Contact Points.

Among their responsibilities, National Contact Points are tasked with assisting enterprises and stakeholders in taking appropriate measures to promote the implementation of the Guidelines, serving as a platform for mediation and conciliation to resolve practical issues that may arise.

II. Procedure of the NCP

Any person (natural or legal) currently affected by a multinational enterprise's non-compliance with the Guidelines may submit a formal complaint to the NCP.

Analysis of the submission

Every submission, along with its supporting documents, will be reviewed by the NCP and its Executive Secretariat. Based on this assessment, the NCP may conclude:

1. That it must request additional information from the submitter.
2. That it must request clarification on one or more points of the submission.
3. That it must request the submitter's authorisation to share the submission with the multinational enterprise.
4. That it is appropriate to inform one of its counterparts of the submission.

Information exchange

Once authorised, the NCP will share the information contained in the submitter's submission (complemented and clarified, where applicable), forwarding all relevant materials to the multinational enterprise. The enterprise will be given a non-extendable deadline to respond, which must also include a statement on whether it accepts or declines the Chilean NCP's good offices. This deadline will be determined on a case-by-case basis, taking into account the merits of the available information provided by the submitter(s).

Once the response from the multinational enterprise has been received, both the response and the supporting information will be reviewed by the NCP and its Executive Secretariat. Based on this assessment, the NCP may conclude:

1. That additional information regarding its response must be requested.
2. That clarification on one or more points of its response must be requested.

Assessment of the specific instance

Once the non-extendable deadline set by the NCP has passed, the following situations may arise:

1. The deadline has passed and no response has been received from the multinational enterprise.
2. A response has been received within the given deadline in which the good offices of the Chilean NCP are rejected.
3. A response has been received in which the good offices of the NCP are accepted.

In the event that either of the situations outlined in points 1 or 2 occurs, the process must proceed to the next stage, referred to as the Conclusion of the Process.

Once the response has been received (complemented and clarified, where applicable), the NCP, together with its Executive Secretariat, will assess whether it is appropriate to initiate a Specific Instance, through which mediation or conciliation may be carried out.

Conclusion of the Process

Every submission to the NCP will conclude with the preparation of a Final Statement, which will indicate, as applicable:

1. The agreements and commitments adopted by the Parties.
2. The timelines and actions for the follow-up of those commitments.
3. The reasons why the Parties were unable to reach an agreement, along with the comments and proposed actions of the NCP.
4. The rejection of the NCP's good offices by the company concerned (whether by failing to respond within the deadline or by explicitly declining the offer of good offices).
5. The reasoning on the basis of which the NCP considered that the issues raised did not merit further consideration.

III. Submission of the specific instance request

On 6 November 2014, the submitter requested this NCP's good offices for the implementation of a specific instance based on the alleged breach of the Guidelines by the mining company, due to actions related to the violation of the chapter concerning the environment. The claim was supported by a study carried out by a consulting firm contracted by the company for that purpose.

Identified impacts of the mining company's operations on the environment of the municipality

1. Significant impact on air quality;
2. Significant degradation of agricultural soil resources;
3. Significant impact on groundwater quality;
4. Significant decrease in the water table level;
5. Significant impact on local flora and vegetation;
6. Significant impact on local fauna, as an indirect effect of the impact on flora and vegetation;
7. Significant impacts on road infrastructure;
8. Soil contamination due to irregular disposal of tyres in areas not authorised by the project;
9. Increased seismic risk due to the undetermined modification of the stability of tailings deposits as a consequence of the irregular disposal of used tyres;
10. Impact on vehicular traffic during peak hours;
11. Significant reduction in river flow in the area;
12. Significant impacts on the area's scenic value;
13. Impacts on local noise levels and road traffic;
14. Significant impacts on the local climate;
15. Reduction in daylight hours in the locality; and
16. Soil subsidence in the locality.

Impact receptors

1. Local population;
2. Farmers;
3. Flora;
4. Fauna; y
5. Other water users.

Principles of the Guidelines allegedly breached

- Principle N° IV. Environment.

IV. Solution expected by the submitter of the specific instance

On 24 November 2014, the Municipality sent a letter to this NCP identifying the actions that the mining company should undertake as mitigation, remediation, and compensation measures. These are:

Mitigation measures to be implemented

1. Implementation and monitoring of additional measures to ensure effective control of dust emissions from mining operations;
2. Implementation and monitoring of control measures in the mining process to prevent any contamination of groundwater in the locality;
3. Cessation of all groundwater extraction in the locality; Impact on vehicular traffic during peak hours;
4. Implement a maintenance plan for infrastructure and road signage;
5. Cessation of the irregular disposal of tyres in the mining industry sector;
6. Adjustment of truck transit schedules in accordance with environmental permits and in coordination with the municipality;
7. Halt to the disposal of tailings in locations visible from the locality;
8. Implementation and monitoring of additional measures to control noise pollution and vibrations, for example, through the preparation of a noise study proposing mitigation measures; and
9. Conduct a study on the impact of tailings on climate and daylight hours, and immediately halt the disposal of tailings in areas that could affect the local climate.

Remediation measures to be implemented

1. Conduct a study on metal concentration in urban and agricultural soils near the mining company, identifying the soils where contamination exceeds risk thresholds;
2. Carry out a survey of the flora affected by the operations of the mining company, and reforest with a defined number of specimens, ensuring their growth for at least ten years;
3. Implement a decontamination and monitoring plan for groundwater in the area;
4. Inject desalinated water into the sector until the original levels of the groundwater table are restored;
5. Carry out a survey of the fauna affected by the mining company's operations, and implement a reproduction and repopulation plan for the affected species;
6. Repair all affected infrastructure and remove sedimented dust that impacts the commune's road infrastructure;
7. Conduct a study on soil contamination caused by the irregular disposal of tyres on waste rock slopes, proposing possible remediation measures;
8. Conduct a slope stability study due to the irregular disposal of tyres on waste rock slopes. If any risk is identified, remove the tyres or implement measures to improve slope stability;
9. Remove the waste rock that affects the landscape and climate of the area, or financially compensate for the irreparable scenic damage and the impact on the local climate; and
10. Implement public lighting in the area, in a location and with an extent to be agreed upon with the Municipality.

Compensation measures to be implemented

1. Conduct a survey of pollution sources (atmospheric emissions) and implement a replacement programme for non-polluting alternatives;
2. Pave roads, at a location and length to be agreed with the Municipality, according to their impact on air quality;
3. Provide financial compensation to individuals who are ill or deceased due to respiratory illnesses and water contamination resulting from mining operations, in cases where the soil has been classified as hazardous;
4. Financial compensation for soil that has increased levels of heavy metals but is not yet classified as hazardous, and for crop damage caused by the mining company's operations;
5. Financial compensation for ongoing damages until each repair measure is completed;
6. Compensation for damages to each type of user affected by the deterioration of groundwater quality;
7. Compensation for the additional costs of pumping water from greater depths for all affected users, and for other damages to each user type due to deeper water tables and higher pumping costs;
8. Road infrastructure improvements in the area;
9. Possible compensation for soil contamination due to irregular tyre disposal;
10. Creation of a fund to compensate for any future damages resulting from changes in slope stability due to irregular tyre disposal;
11. Compensation for noise impacts and traffic congestion experienced by residents due to the mining company's environmental non-compliance;
12. Compensation for damage to local infrastructure and for disturbances to the community caused by vibrations from unauthorised or environmentally unapproved underground excavations;
13. Financial compensation for reduced daylight hours in the area;
14. Compensation for all damages caused by land subsidence resulting from mining operations affecting homes and other infrastructure in the area;
15. Compensation to local residents and payment of the necessary indemnities to fully repair the damages caused

V. Competence of the NCP regarding the specific instance request submitted

On 9 December 2014, the submitter requested that the specific instance not proceed, given that the new owners of the mining company had opened the possibility of establishing a joint working group to address the environmental issues raised before this NCP.

In light of the above and the time that has passed, this NCP has deemed it appropriate to consider the submission withdrawn. However, this does not in any way prevent the specific instance request from being resubmitted, since, in the opinion of the undersigned, a proper specific instance has not yet taken place.



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¹ In case of discrepancy, the Spanish version of this Final Statement shall prevail.