

Final Statement

CODELCO & NATURAL PERSONS (2022)

Non-official English translation

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CHILE'S NATIONAL CONTACT POINT FOR RESPONSIBLE BUSINESS CONDUCT | RESPONSIBLE BUSINESS
CONDUCT DEPARTMENT | UNDERSECRETARIAT OF INTERNATIONAL ECONOMIC AFFAIRS

FINAL STATEMENT

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I. Introduction

1. Chile's National Contact Point for Responsible Business Conduct (NCP), implementing body of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (Guidelines), located in the Head of the Responsible Business Conduct Department of the Undersecretariat of International Economic Affairs (SUBREI), hereby issues its Final Statement, in the specific instance "CODELCO & Natural persons (2022)".
2. The Final Statement describes the process and the results of the analysis of the specific instance to which it refers. It is based on information received from the parties and the steps taken by the NCP. If there was confidential information submitted to the NCP in the course of the procedure, it has not been disclosed in this statement. According to the NCP's rules of procedure (RdP), the NCP will always issue a Final Statement, which is public, whether or not it has been preceded by an Initial Statement or good offices.
3. If the NCP offers its good offices or, in its Final Statement, makes recommendations to the company, this must not be interpreted under any circumstances as a statement that the multinational enterprise in question has breached the Guidelines.
4. In accordance with the principle of transparency governing the functions of the NCP, final statements are published on the NCP's website, translated into English, reported, and sent to the OECD Working Party on Responsible Business Conduct.
5. Before the Final Statement is issued, the parties are given the opportunity to comment on its draft, bearing in mind that the wording of the statement is always the responsibility of the NCP, which will determine the final version of the document.
6. The Final Statement marks the closure of the NCP procedure, without prejudice to the possibility of a follow-up stage.

II. Parties

a) Identification of the submitter

7. Group of individuals, relatives of an employee of a contractor company of CODELCO, who died in the course of his duties.

b) Identification of the company

8. The National Copper Corporation of Chile (CODELCO or the Company), a Chilean state-owned mining enterprise.

III. Issues raised

a) Summary of the specific instance request

9. On 17 November 2022, the submitter submitted a specific instance request to the NCP, identifying alleged breaches of the Guidelines by CODELCO in the context of a worker's death in a workplace accident.
10. On 20 July 2022, the worker was in the Chuquicamata underground mine, a CODELCO site, where he was assigned duties as an electrician. While moving through a tunnel, he was struck by a mobile unit weighing over seven tonnes. The submitter states that the accident area lacked crossings and proper safety markings, and that on the day of the

incident, the heavy mobile equipment was operating without lights or sirens while in motion. It is noted that this is particularly serious given the tunnel's structure, which creates blind spots, making it possible for individuals moving through them to be aware of mobile traffic only through the use of such lights and sirens. Furthermore, it is indicated that the worker was performing his duties alone, without direct supervision from a superior.

11. The submitter also asserts that, once the accident occurred, the rescue protocols were allegedly inefficient. The medical teams reportedly took a long time to arrive at the scene, and the care provided to the worker was inadequate.
12. The submitter states that the President of the Intercompany Mining Union, who works at Chuquicamata, allegedly declared: "The working conditions were not adequate, and there was pressure from the companies and from the principal, CODELCO, to hurry and finish quickly".
13. The submitter attaches a report from the National Service of Geology and Mining (SERNAGEOMIN), which states the following:
 - a) The tunnel lacked an alarm system to warn workers of a vehicle exiting through the tunnel.
 - b) There was a facility or office located in the shared transit area between workers and machinery. This installation obstructed workers from noticing that a vehicle was moving along the shared route.
 - c) The traffic plan of the contractor company, validated by CODELCO, did not ensure the protection of workers in shared transit routes.
 - d) CODELCO must remove all types of offices from shared transit areas and review and validate the contractor company's new traffic plan, with a focus on safeguarding pedestrians moving within the mine.
14. The submitter identifies alleged breaches by the company of the following chapters of the Guidelines:

Paragraphs 4 c) and 5 of Chapter V: Employment and Labour Relations.

15. The expected outcome by the submitter through the NCP procures is as follows:

Agree on comprehensive reparation for the material and non-material damages caused to the submitter.

b) Summary of the company's response

16. On 22 May 2023, a response was received from the company, in which it communicated its decision not to participate in the process before the PNC, in order to allow the judicial proceedings initiated by the family of the deceased worker to proceed properly.
17. This refers to the following parallel proceedings, also mentioned in the company's response:
 - a) Claim for damages filed against CONSORCIO OSSA PIZZAROTTI 140 SpA and CODELCO Chile Chuquicamata Division, dated 14 November 2022, before the 22nd Civil Court of Santiago, Case Number C-13174-2022. This claim was concluded by withdrawal of the claimant, accepted by court resolution on 25 September 2023.

- b) Claim for compensation for direct damages suffered by the worker due to a workplace accident, filed against CONSORCIO OSSA PIZZAROTTI 140 SpA and CODELCO Chile Chuquicamata Division, dated 14 November 2022, before the 2nd Labour Court of Santiago, Case Number O-6986-2022. This claim was concluded by withdrawal of the claimant, accepted by court resolution on 25 September 2023.

IV. NCP evaluation of the specific instance

a) Preliminary issues

- 18. The preliminary issue is whether the NCP has jurisdiction to hear the case.
- 19. For this, two requirements must be verified: (1) the requested company must be a multinational enterprise, and (2) that the alleged breaches occurred in Chilean territory or, if they occurred in a foreign country without an NCP, the multinational enterprise must be Chilean.
- 20. Regarding the first requirement, the requested company is multinational in nature because it has entities in different countries and can coordinate its activities in all of them. Therefore, the first requirement is met. As to the second requirement, the events occurred in Chilean territory. Therefore, both requirements are met.
- 21. Thus, the NCP is competent to hear the case.

b) Initial assessment

- 22. In accordance with the Guidelines and RdP, in determining whether the issue raised merits further consideration, the NCP must establish whether the issue is bona fide and whether it relates to the Guidelines. In this context, the NCP takes into account the following criteria:

- a. The identity of the party concerned and its interest in the matter.

In this regard, there is sufficient available information to be certain of the identity and interest of the submitter in the case.

- b. Whether the issue raised in the specific instance request is material and justified.

The NCP considers that the issue raised in the specific instance request is sufficiently significant and well-founded for the purposes of an initial assessment. The issue is supported by sufficient and credible information.

- c. Whether the company's activities are linked to the issues raised in the specific instance.

The NCP considers it clear that there is a link between the company's activities and the issue raised in the specific instance.

- d. The relevance of concurrent legislation and procedures to the case, including court decisions.

Domestic law and internal procedures, including court rulings, may provide useful guidance to the NCP regarding existing expectations based on the applicable legal framework and how issues relevant to a specific instance have been assessed by other bodies. However, in this case, there is no judicial ruling addressing the civil and labour claims filed by the submitter.

When conducting an initial assessment, the NCP is not expected to determine whether domestic law was complied with, as its decision must be made in light of the Guidelines and its RdP, and solely to decide whether the issue merits further consideration.

- e. How similar or the same issues have been, or are being, addressed in other local or international processes.

In this regard, the NCP has taken note of the withdrawals of the claims filed by the submitters before the courts of justice.

- f. Whether the review of the specific instance will contribute to the purpose and effectiveness of the Guidelines.

Regarding the “purpose” of the Guidelines, their Preface states that they “aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide.” It then states that the Adhering Governments seek “to encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations.” (Guidelines 2011, page 7).

On the other hand, regarding “effectiveness”, the Guidelines state that “Adhering countries shall set up National Contact Points to further the effectiveness of the Guidelines [...] contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances.” (Decision of the Council on the OECD Guidelines, paragraph I.1). In this regard, it should be noted that participation in the process before the NCP is voluntary, and the company communicated its decision not to participate. Furthermore, the issue raised appears to have already been resolved, as evidenced by the submitter’s withdrawal of the claims filed before the courts of justice.

- 23. Therefore, after analysing the available information and holding bilateral meetings and communications with the parties – in order to obtain more details about the issue raised and greater clarity on the expected outcomes – the NCP concluded that there are no grounds to give further consideration to the issue raised.

V. Conclusion

- 24. In light of the above, the NCP issues this Final Statement, concluding the specific instance and making recommendations to the company, based on the circumstances and available information.

a) NCP Observations and Recommendations

25. Recommendations for the company:

- a) Always provide a safe and healthy working environment in accordance with the ILO Declaration on Fundamental Principles and Rights at Work (paragraph 1 f, Chapter V, Guidelines 2023 edition). This includes the prevention of accidents and health damage arising from, related to, or occurring during work, by minimising, as far as reasonably possible, the causes of risks inherent in the working environment (paragraph 60, Commentary to Chapter V, Guidelines 2023 edition).
- b) Always maintain the highest standards of safety and health at work (paragraph 4 c, Chapter V, Guidelines 2023 edition), aiming to improve the level of outcomes in safety and health at work across all sectors of its operations (paragraph 63, Commentary to Chapter V, Guidelines 2023 edition).

- c) Encourage, as far as possible, business partners, including contractors, to apply standards of responsible business conduct and implement risk-based due diligence processes, in accordance with the Guidelines—particularly Chapter V (paragraph 13, Chapter V, Guidelines)—and the OECD Due Diligence Guidance for Responsible Business Conduct.

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