

Final Statement

COMPLEJO METALÚRGICO ALTONORTE (GLENCORE) &
RELATIVES OF CONTRACTOR'S EMPLOYEE (2020)

Non-official English translation

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

FINAL STATEMENT

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I. Introduction

1. Chile's National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (Guidelines), located in the Responsible Business Conduct Division of the Undersecretariat of International Economic Affairs (SUBREI), issues this Final Statement.
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, 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. 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

4. The submitters are natural persons, relatives of a worker who died while performing duties for Ingeras Mining, a company subcontracted by Complejo Metalúrgico Altonorte S.A. (Altonorte).

b) Identification of the company

5. The company is Complejo Metalúrgico Altonorte S.A., part of the Glencore group, which produces and sells copper anodes, sulfuric acid, and copper in PLS solution, in the Antofagasta region.
6. Glencore is a multinational company that produces and markets a wide variety of raw materials. The group's operations include numerous mining and metallurgical sites, oil assets, and agricultural facilities. The Glencore group has a global network of over 90 offices located in more than 50 countries.

III. Issues raised

a) Summary of the specific instance request

7. On 3 August 2020, the submitter submitted a specific instance request to the NCP, identifying alleged breaches of the Guidelines by the company, related to failures in occupational safety obligations, lack of oversight of the contracting company where the worker was employed, and insufficient regulation and training to mitigate risks to the worker's life and physical integrity.
8. The submitter, through their legal representative, states that the deceased person was a worker for Ingeras Mining, which provided services to the company.
9. The worker was performing maintenance tasks at the Altonorte Metallurgical Complex, in the man basket of a crane truck, positioned approximately 8 to 10 metres above the ground. Due to simultaneous operation from the control panel (handled by the supervisor) and the truck's remote control (handled by the operator), a sudden movement of the truck's boom occurred, causing the basket in which the worker was standing to fall, resulting in his death.

10. The submitter identifies alleged breaches by the company of the following recommendations of the Guidelines:

1. Chapter IV. Human Rights.

Paragraph 2:

"Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur."

Paragraph 3:

"Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts."

Paragraph 5:

"Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts."

2. Chapter V: Employment and Industrial Relations

Paragraph 4, letter c):

"Take adequate steps to ensure occupational health and safety in their operations."

Paragraph 5:

"In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities."

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

Open a negotiation with Glencore that allows, by mutual agreement with the company, for the reparation of both material and non-material damages caused, as well as the establishment of measures to prevent the recurrence of such a case. Specifically, the following reparative measures are requested:

(a) the implementation by Glencore, through its subsidiary Altonorte, of the measures for the protection of the life and health of workers from contracting companies working at its metallurgical complex in Antofagasta, as set out in the report by the Regional Directorate of Sernageomin, in relation to this specific case;

(b) the payment of compensation proportional to the material and non-material damage suffered by the complainant victims as a consequence of the worker's death; y

(c) the funding of mental health services for the victims, enabling them to cope with the circumstances of their relative's tragic death.

b) Summary of the company's response

12. On 10 December 2020, the company submitted its response to the submitter's submission. In it, the company stated that it has strictly complied with the safety regulations established by the Chilean legal framework and has therefore fully adhered to the Guidelines.
13. The company adds that, consequently, the accident is not attributable to it, and that the personnel exceeded their duties, causing the fatal workplace accident. Specifically, it states that the accident was caused by the reckless operation carried out by the supervisor employed by Ingeras Mining, who allegedly exceeded his responsibilities by operating machinery that was not under his charge.
14. The company adds that, notwithstanding the above, it has complied with the measures ordered by the relevant administrative authorities, thereby reaffirming its adherence to the Guidelines.
15. Finally, it states that the facts presented by the submitter are not sufficient to support the alleged breach of the Guidelines.

IV. NCP evaluation of the specific instance

a) Preliminary issues

16. The preliminary issue is whether the NCP has jurisdiction to hear the case.
17. 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.
18. 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.
19. As to the second requirement, the alleged breaches of the Guidelines occurred in Chilean territory. Thus, the second requirement is fulfilled and, as a result, the NCP is competent to hear the case.

b) Initial assessment

20. 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:
 1. The identity of the party concerned and its interest in the matter.
 2. Whether the issue raised in the specific instance request is material and justified.
 3. Whether the company's activities are linked to the issues raised in the specific instance.
 4. The relevance of concurrent legislation and procedures to the case, including court decisions.

5. How similar or the same issues have been, or are being, addressed in other local or international processes.
 6. Whether the review of the specific instance will contribute to the purpose and effectiveness of the Guidelines.
21. On 8 April 2021, before the NCP concluded its initial assessment, the submitter communicated the withdrawal of the specific instance, considering that an agreement had been reached with the company outside the NCP process.
22. Therefore, there are no grounds to give further consideration to the issue raised.

V. Conclusion

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

a) NCP Observations and Recommendations

24. Recommendations for the company:

- Implement risk-based due diligence processes in accordance with the Guidelines (particularly Chapters IV and V) and the OECD Due Diligence Guidance for Responsible Business Conduct. This should be done with special consideration of the provisions set out in paragraph 4(c) of Chapter V of the Guidelines: "Take adequate steps to ensure occupational health and safety in their operations";
- Encourage, where possible, their business partners and value chain to apply responsible business conduct standards and implement risk-based due diligence processes, in accordance with the Guidelines (particularly Chapters IV and V); and
- Maintain appropriate practices and protocols to ensure the health and safety of individuals present on their premises or who may be affected by their operations, regardless of whether or not there is a legal or commercial relationship with the company.

25. Recommendations for the company's workers or those of subcontracted companies that provide services to it:

- Promote and participate in risk-based due diligence processes in good faith and in an active manner;
- Strictly and consistently observe the practices and protocols to ensure the health and safety of individuals present on the company's premises or who may be affected by its operations; and
- Demand the maintenance of these practices and protocols.

If the NCP offers its good offices or, in its Final Statement, makes recommendations to the company, this should in no way be interpreted as an assertion that the requested multinational has failed to comply with the Guidelines.

The Guidelines state that confidentiality of the proceedings shall be maintained throughout its duration. Information and opinions provided during the proceedings shall be kept

confidential, unless the party concerned consents to the disclosure of such information or opinions or where non-disclosure would be contrary to the provisions of national law.

In accordance with the principle of transparency that governs the functions of the NCP, the final statements are published on the NCP's website and are translated into English and sent to the OECD Working Party on Responsible Business Conduct.

Before the Final Statement is issued, the parties are given the opportunity to comment on the draft statement, bearing in mind that the drafting of the statement is always the responsibility of the NCP, which will define the final version of the document.

Felipe Henríquez Palma

Chile's National Contact Point for the OECD Guidelines
Head, Responsible Business Conduct Division – SUBREI

Non-official English translation¹

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