

# Final Statement

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FOREIGN MINING COMPANY & INDIGENOUS COMMUNITY  
(2021)

Non-official English translation

27 July 2023

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

## FINAL STATEMENT

### Foreign mining company & Indigenous community

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## I. Introduction

1. Chile's National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (Guidelines), located in the Responsible Business Conduct Division of the Undersecretariat of International Economic Affairs, 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. Indigenous community located near the company's operations (community or submitter).

### b) Identification of the company

5. Foreign mining company, a corporation with activities and investments in various countries and owner of a mining company in Chile.

## III. Issues raised

### a) Summary of the specific instance request

6. On 3 February 2021, the community submitted a specific instance request to the NCP, based on:
  7. i) **A purported approach by the company to the community with the sole purpose of obtaining a social licence to operate extractive projects in the community's ancestral territories, disregarding a prior offer of a long-term socio-environmental relationship, as well as the guidelines and principles that promote the sustainable development of communities and the intergenerational impacts of its extractive activity.** This is because the company allegedly provided resources to the community in order to prepare for the submission of the Environmental Impact Assessment (EIA) of one of its projects into the Environmental Impact Assessment System, and later failed to honour alleged commitments made to the community after withdrawing from the processing of said EIA, and
  - ii) **A purported violation of equal conditions in the formalisation of a socio-environmental agreement between the company and the community.** This is because an initial agreement signed between the company and the community met certain standards, allowing the community to access independent and multidisciplinary technical advice, which addressed both community engagement and socio-environmental technical aspects of a company project. However, a subsequent agreement reportedly did not provide the financial resources needed to access such advice, which allegedly left the community in a disadvantaged position during negotiations with the company

regarding the closure of certain operations. As a result, ancestral territories and the community's water resources could be affected. According to the submitter, this would violate the principles underpinning the safeguard of indigenous human rights.

In the specific instance request, the submitter identifies alleged non-compliance by the company with the following chapters of the Guidelines:

1. Chapter II. General Policies.
  2. Chapter IV. Human Rights.
  3. Chapter VI. Environment.
8. The expected outcomes by the submitter through the NCP procedure is as follows:
1. That the company fulfils its commitments to the community, which would oblige it to recognise its role, as an impacted territory, in the generation of the company's revenue.
  2. That the company once again respect the principles it allegedly violated in the community engagement process, namely good faith, reciprocity, and transparency.
  3. That the company fulfil its commitment to sign the pending socio-environmental agreement, which would be based primarily on the company's obligation to respect the international human rights system.
  4. That the company respond to the letter through which the community submitted a counterproposal for the closure phase agreement, with the aim of receiving a reasoned response to it.
9. Following the submission of the specific instance request, the NCP maintained communication with the submitter. Finally, on 28 April 2021, the submitter informed the NCP of the withdrawal of her specific instance request.

## b) Summary of the company's response

10. The company was not notified of the specific instance request, as the submitter withdrew it; therefore, there was no response from the company.

## **IV. NCP evaluation of the specific instance**

### a) Preliminary issues

11. The preliminary issue is whether the NCP has jurisdiction to hear the case. For this, two requirements must be verified: (1) the requested company must be a multinational enterprise, and (2) the events must have occurred in Chilean territory or, if they occurred in a foreign country without an NCP, the multinational enterprise must be Chilean.
12. 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.
13. As to the second requirement, the events occurred on Chilean territory. Thus, the second requirement is fulfilled and, as a result, the Chilean NCP is competent to hear the case.

### b) Initial assessment

14. 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.

15. On 29 April 2021, before the NCP concluded this initial assessment, the submitter communicated the withdrawal of the specific instance, on the grounds that an agreement had been reached with the company outside the NCP mechanism. This agreement was not shared with the NCP.

16. Therefore, there are no grounds to give further consideration to the issue raised.

## **V. Conclusion**

17. In light of the above, the NCP issues this Final Statement, concluding the specific instance and making recommendations to companies in the mining sector, based on the circumstances and available information.

### **a) NCP Observations and Recommendations**

18. Recommendations for companies in the mining sector:

1. Implement responsible business conduct standards and implement risk-based due diligence processes in accordance with the OECD Guidelines and the OECD Due Diligence Guidance for Responsible Business Conduct. These are ongoing processes that involve identifying, preventing, or mitigating the actual or potential negative impacts of the company's activities and business relationships, and communicating how such impacts are being addressed (Paragraphs 11, 12 and 13, Chapter II; Paragraph 5, Chapter IV; 2023 Guidelines).
2. Promote meaningful stakeholder engagement, in accordance with the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector.
3. 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.

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According to the Guidelines, if the NCP considers that, based on the results of its initial assessment, it would be unfair to publicly identify a party in a statement regarding its decision, it may draft the statement in a way that protects the identity of the party.

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.

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Non-official English translation<sup>1</sup>

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<sup>1</sup> In case of discrepancy, the Spanish version of this Final Statement shall prevail.