

National Contact Point of Switzerland

Final Statement

Specific Instance regarding ACC Limited and Ambuja Cement Limited (Holcim Group) in India

Berne, 18 December 2014

Background

1. The OECD Guidelines for Multinational Enterprises (OECD Guidelines) represent a set of principles and standards for responsible business conduct, addressed as recommendations by the governments of the 34 OECD member and 12 other adhering states to multinational enterprises operating in or from their territories. The National Contact Point of Switzerland (NCP) for the OECD Guidelines has the mandate to raise awareness and promote observance of the Guidelines. The NCP also contributes to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances by offering a forum for discussion, assisting parties concerned to deal with these issues and providing recommendations regarding the implementation of the OECD Guidelines.

Proceedings of the NCP

2. The NCP of Switzerland received a written request dated on January 7, 2012 to consider a specific instance under the OECD Guidelines for Multinational Enterprises regarding the possible violation of Chapters II (General Policies), IV (Human Rights) and V (Employment and Industrial Relations) of the Guidelines, involving the Indian companies ACC Limited and Ambuja Cement Limited, controlled by Holcim Group [henceforth referred to as “Holcim”], which is headquartered in Switzerland.
3. The specific instance has been raised by Pragatishheel Cement Shramik Sangh (PCSS) [henceforth referred to as “PCSS”], a trade union representing Indian workers. On January 25, 2012, the International Federation of Chemical Energy, Mine and General Workers’ Union sent a letter to the Swiss NCP in order to join the specific instance. This Federation has since changed its name to IndustriALL Global Union [henceforth referred to as “IndustriALL”].
4. In the submission to the NCP, PCSS and IndustriALL make the following claims:
 - that the two concerned plants rely heavily on contract workers which represent according to PCSS and IndustriALL approximately 80% percent of the total workforce in both plants. According to PCSS and IndustriALL, several activities carried out by temporary workers represent core activities of the plants, therefore these activities can be considered a form of disguised employment.

- that the two plants engage in discriminatory practices against contract workers who do not enjoy the same conditions as the permanent employees of the plants (wages, pension schemes, health and safety provisions, food and housing benefits, overtime wages).
- Moreover, PCSS and IndustriALL state that the activities of ACC Limited and Ambuja Cement Limited do not provide for enough employment for local people (local preference in employment). They state that the activities impact the human rights of the communities living around the two plants, as they affect the livelihood of the communities (use of water and public land, damages to neighboring villages through blasts related to the mining activities of the Ambuja Cement Limited plant).

5. According to the submission, the enterprise is not in compliance with the following chapters of the OECD Guidelines:

Chapter II: General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

- 1. *Contribute to economic, social and environmental progress with a view to achieving sustainable development.*
- 4. *Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.*
- 9. *Refrain from discriminatory or disciplinary action against workers who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.*

Chapter IV: Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

- 1. *Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*
- 2. *Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*

Chapter V: Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

- 1. b) *Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such*

representatives with a view to reaching agreements on terms and conditions of employment.

- *1. d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.*
- *1. e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.*
- *3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.*
- *5. In their operations, to the greatest extent practicable, employ local workers [...].*

6. The expectations of the submitting party of the NCP proceedings can be summarized as follows:

- that the NCP offers its good offices to resolve the issues raised in an effective and timely manner
- that the company immediately and unconditionally employs the concerned workers on a direct basis
- that the company offers employment to local communities affected by the plant
- that the company engages in good faith negotiations with PCSS in order to resolve the issues raised in the submission.

7. Statement of the concerned enterprise

Holcim submitted a written statement to the NCP dated February 10, 2012 concerning the issues raised in this specific instance. In its letter, the enterprise states that it took partial ownership of the two concerned plants in 2006. According to the enterprise, many allegations of possible violations of the OECD Guidelines date back to before 2006, for which the enterprise cannot be held responsible under the OECD Guidelines.

According to Holcim, it is standard practice and in line with Indian law to outsource both core and non-core activities to independent contractors who employ contract workers on an as-needed basis. The company however states that contract workers are subject to the same safety regulations as direct workers and are not prevented from joining unions. The company has issued guidelines for contract workers¹ which the NCP and the submitting parties have received.

According to Holcim, both plants are heavily unionized. The management of the plants negotiates with the major unions, which represent both direct as well as contract workers. Those unions are not part of the specific instance submitted to the NCP. The company claims that PCSS misrepresents the figures of its membership, as it has few members in the ACC plant and no members working at the Ambuja Cement Limited plant. PCSS is

¹ Holcim Position Paper on Contractors:

http://www.holcim.com/fileadmin/templates/CORP/doc/SD13/Contractor_Position_Paper.pdf

not accepted by ACC as a partner in work related negotiations due to the almost total lack of PCSS members amongst the workers in the ACC plant.

Holcim moreover states that several allegations made by PCSS refer to so called third party service providers (e.g. transportation or electricity infrastructures), which are neither considered own personnel nor subcontracted personnel.

8. The parties informed the NCP about a planned joint visit of Holcim, PCSS and IndustriALL to the concerned plants on March 20, 2012. The NCP awaited the outcome of this joint visit before proceeding with the Initial Assessment. The joint visit was however cancelled on short notice.
9. Following this, the NCP separately invited representatives of both parties involved for informal bilateral meetings in order to explain the role and proceedings of the NCP. Those meeting took place at the premises of the NCP in Berne respectively on April 12 and April 24, 2012.
10. The NCP also created an ad-hoc group with other agencies of the Swiss federal administration (Federal Department of Foreign Affairs, Labour Directorate) and consulted with the Swiss Embassy in New Delhi.
11. On July 19, 2012, the Swiss NCP concluded its confidential Initial Assessment and informed parties concerned that it found the issues raised to be relevant under Chapters II, IV and V of the OECD Guidelines, and to merit further examination. At the same time, the NCP recalled that accepting this specific instance did not mean that it considered the enterprise to have acted inconsistently with the OECD Guidelines. Pursuant to the process outlined in the "Information on Specific Instances Procedure" of the Swiss National Contact Point (version of October 2011), the NCP offered its good offices to facilitate a dialogue between both parties with the aim of reaching a mutually acceptable outcome.
12. The NCP suggested to both parties to have the dialogue facilitated by a professional external mediator contracted by the NCP. The parties accepted this proposition. With the agreement of both parties, the mediator was provided by the NCP with all the documents relevant to this specific instance.
13. With the consent of the parties, the NCP proceeded to organize a meeting in November 2012. Because of open issues relating to the modus of the meeting (parties could not agree to a videoconference-based dialogue), this first meeting had to be postponed.
14. Subsequently the NCP mandated the mediator to carry out a pre-mediation assessment based on bilateral contacts with the involved parties. For this report, the mediator used amongst others videoconferencing in order to guarantee the inclusion of representatives of PCSS from India in the NCP proceedings.
15. Based on this pre-mediation, the NCP drafted in June 2013, in close consultation with the mediator, the Terms of Reference for the first mediation meeting. Both parties agreed in principle in July 2013 on the Terms of Reference, including the date and format of the meeting.
16. As laid out in the Terms of Reference, the main objective of the dialogue facilitated by the NCP was to contribute to the resolution of the issues raised in the specific instance through discussion between the parties and mutual agreement.

Outcome of the 1st mediation meeting

17. The two parties met on September 23, 2013 at the premises of the NCP in Berne for a thorough discussion of their views and positions on the issues raised in the specific instance. As laid out in the Terms of Reference, the meeting was facilitated by an external mediator. A representative of the NCP assisted the mediator. This meeting took place in a particularly constructive atmosphere and all the involved persons engaged in the process in good faith. They provided thorough insights into their ability to act, their expectations and proposed themselves pragmatic solutions for next steps. Both sides were very well prepared and were keen to find solutions for some of the pressing issues. The participation of representatives of PCSS from India, next to the representative of IndustriALL from Geneva, proved to be very useful. The participation of the Area Manager India and the Head Sustainable Development of Holcim, next to other representatives of the headquarters in Switzerland, was also particularly useful for the dialogue.
18. The parties agreed on concrete follow-up steps which included:
 - examination of the legality of certain measures and practices of ACC and Ambuja, including a discussion of the results with PCSS.
 - a dialogue between the parties on the local level in India in January 2014, including an agreement on place and participation. Holcim and IndustriALL agreed to act as guarantor of the meeting. Following this first meeting, the parties decided that more bilateral meetings were necessary to address all the open issues at the local Indian and on the plant level.
 - to clarify other open issues, including concrete follow-up steps on information and disclosure regarding stakeholders, on information exchange by the parties of their understanding of the state of the parallel legal cases and the dismissals of workers in Ambuja, and on bilateral discussion of a specific incident at the Ambuja plant.
19. Since then, five meetings have taken place between the parties in India. Three of these meetings in January, March and May 2014 took place on the national level, two further meetings in June and August 2014 were organized on the level of the individual plants. These meetings provided the opportunity to address the issues of the specific instance to the NCP between the directly concerned parties. The parties used these meetings to inform each other of planned measures and to decide on follow-up steps, including the organization of further meetings.
20. On June 12, 2014 PCSS addressed a letter to the NCP asking for a second mediation meeting in Switzerland. In this letter, PCSS expressed its concern that the positive thrust triggered by the NCP proceedings was at risk because of organizational changes within the Holcim Group on the international and national level.
21. The NCP agreed to organize a second meeting and proceeded to set up the Terms of Reference for this follow-up meeting with the agreement of both parties.
22. The Terms of Reference for the second mediation meeting were established by the NCP and agreed by the parties.
23. A public event in Berne with the involvement of members from PCSS, which was announced for the day after the second mediation meeting caused irritation prior to this mediation meeting.

Outcome of the 2nd mediation meeting

24. The two parties met on October 22nd, 2014 with the objective to assess the progress made following the first mediation meeting and to contribute to the resolution of the issues raised. The meeting was facilitated by two members of the NCP and organized at the premises of the NCP in Berne. The agenda was based on the issues lined out in the Terms of Reference established by the NCP prior to the meeting in close coordination with the parties.
25. The parties recalled the progress in this specific instance since the NCP proceedings had started, such as:
 - local discussions on adequate remuneration schemes for contract workers;
 - discussion between the parties on the local level on a planned external skills-assessment for contract workers who are working in skilled or semi-skilled jobs in view of a proposal by Holcim of a salary and benefit framework;
 - while there remains a disagreement on the payment of bonus to contract workers, silver coins have been handed out to contract workers as gifts;
 - 26 former employees whose wages had not been paid anymore have received the arrears for 39-40 months of salary.
26. A confidential agreement between the two parties furthermore states the agreed outcome and the next steps envisaged by the parties. Its specific focus is on the issues discussed in the ongoing dialogue at national and plant level in India and it confirms that Holcim supports this local process. Holcim moreover commits to insist in its contact with the Indian plants that agreed follow-up measures and deadlines need to be respected.

Conclusions and recommendations of the NCP and follow-up

27. The NCP is aware that some of the issues of the specific instance have been pending for over 30 years, dating back long before Holcim took partial ownership of the two concerned plants in 2006.
28. The first mediation meeting at the NCP allowed for a first meeting of all the involved parties from India and Switzerland at one table. This meeting gave the parties the possibility of a frank and constructive discussion about the main issues at stake. It also launched the meetings between the directly involved parties on the national level and paved the way for a constructive engagement of the local plants. For these meetings, Holcim and IndustriALL were acting as guarantor of the meetings, while the NCP's assistance was limited to setting the agenda of the first meeting in India.
29. Upon receipt of the letter of PCSS in June 2014, the NCP took note that PCSS representatives were concerned about organizational changes of Holcim in India and what they perceived to be a lack of engagement of the international management of Holcim in the local proceedings. The NCP was therefore willing to support, with the approval of Holcim, the local proceedings by organizing a second mediation meeting in Berne.
30. The NCP is aware that the irritation caused by discussions among the parties in the context of the second mediation meeting about a public event with the participation of PCSS and about the absence of a local representative of the company's plants in India complicated an open exchange during this meeting. The NCP recognizes that the parties however agreed to certain follow-up steps during this meeting. These follow-up steps comprise, but are not limited to, Holcim management expediting and supporting the on-

going local proceedings. Furthermore, Holcim management will take up contact with the local management in order to expedite the transmission to PCSS of missing information and documentation.

31. The NCP also takes note of the willingness of the parties to continue their contacts at the local level. Given the changes in the management of Holcim, the company indicated the new persons who are responsible in the future for contacts with PCSS. The NCP insisted that in the future parties should inform the other party within one month if a change of contact persons occurs. In the view of the NCP, it is crucial that the responsibilities for further contacts on the local level remain clear.

32. The NCP welcomes:

- the ongoing dialogue in India and the extensive discussions on the issues of the specific instance. The NCP would like to congratulate both parties for their engagement in these local discussions.
- the engagement of Holcim to support and expedite the local dialogue.
- the overall constructive engagement of both parties in the NCP proceedings and in particular the involvement of the Head Sustainable Development and the Area Manager India. Their presence has been particularly helpful for advancing the NCP proceedings and finding pragmatic solutions for the issues raised in the specific instance.
- the participation of local representatives of PCSS, who were willing to travel far to attend the NCP proceedings.
- that the management of Holcim is now informed and sensitized for the concerns of PCSS regarding the upcoming changes in one of the production sites in India.

33. The NCP recommends:

- that the parties continue their dialogue on local level in good faith and on a constructive and output-oriented level, also in view of the upcoming major changes regarding one of the production sites.
- that parties need to better respect agreed upon follow-up steps and deadlines. This being said, the NCP also values the steps that have been taken on the local level and the engagement of the local parties as seen in the five meetings, which have been organized in India over a time span of only seven months.
- that the parties need to avoid in the future any ambiguity of responsibilities: the parties need to regularly communicate the persons in charge and their responsibilities in order to enable the continuation of regular contacts between the parties.
- Holcim Group to closely follow the situation of contract workers at the company's plants in India and to take into consideration the concerns of these workers.
- Holcim plants to co-operate with the directly involved subcontracted personnel and employees of third-party service providers in implementing the policies of the company such as described in the "Holcim Position Paper on Contractors".

34. The NCP will follow-up on this specific instance with the following measure:

- the NCP will ask the parties to report on progress six months after the closure of the specific instance. The NCP expects parties to submit a written report to the NCP, which can be shared with the other party. The NCP will decide upon receipt of these reports about necessary further steps in consultation with the parties.

35. With this Final Statement the NCP closes the specific instance.