

National Contact Point of Switzerland

Final Statement

Specific Instance regarding Holcim AG submitted by Twerwaneho Listeners' Club and Clouds Fm

Berne, 16 July 2024

Executive summary

The Swiss National Contact Point for Responsible Business Conduct (hereafter "NCP") received a written submission on 3 August 2023 to consider a specific instance under the OECD Guidelines for Multinational Enterprises for Responsible Business Conduct (hereafter "OECD Guidelines") regarding Holcim AG (hereafter "Holcim" or "responding Party"), headquartered in Switzerland. The specific instance was raised by the organisations Twerwaneho Listeners' Club and Clouds Fm (hereafter "TLC" and "CFm" or "submitting Parties").

The submission concerns Holcim's responsibility in relation to its shareholding in the company Hima Cement Ltd (hereafter "Hima Cement") in Uganda. According to the submitting Parties, mining activities in connection with cement production are causing environmental damage and thus affecting the agricultural yields and health of the local population. Furthermore, the submission alleges tax avoidance through failure to declare the quantities of raw materials as well as a lack of environmental and human rights due diligence and community engagement.

In its detailed response Holcim states that it is not in breach of any of the recommendations of the OECD Guidelines and outlines what it states to be missing information or misleading or false allegations made in the submission by the submitting Parties. According to Holcim, the submission is not about Hima Cement but only about distribution conflicts between different Hima Cement stakeholders involved in its pozzolana supply chain.

The NCP accepted the specific instance for further consideration on 31 January 2024.

Following acceptance of the specific instance, the NCP was informed on 7 March 2024 of the conclusion of the divestment by Holcim from its investment in Hima Cement. As a result, the basis for a mediation between Holcim and the submitting Parties on future-oriented solutions no longer exists. Nevertheless, before concluding this procedure the NCP contributed to an exchange of information regarding the restoration of pozzolana quarries in order to clarify open questions between the Parties.

The NCP welcomes the constructive engagement and the exchange of comprehensive information by both Parties in this specific instance procedure. This report concludes the procedure.

1. Submission and Initial Assessment

The OECD Guidelines represent a set of principles and standards for responsible business conduct, addressed as recommendations by the governments of the 38 OECD member and 13 other adhering States to multinational enterprises operating in or from their territories. The NCP has the mandate to raise awareness and promote observance of the OECD 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 mediation, assisting parties concerned to deal with these issues and providing recommendations regarding the implementation of the OECD Guidelines.

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The submission concerns Holcim's responsibility in relation to its shareholding in the company Hima Cement Ltd in Uganda. According to the submitting Parties, mining activities in connection with cement production are causing environmental damage and thus affecting the agricultural yields and health of the local population. Furthermore, the submission alleges tax avoidance through failure to declare the quantities of raw materials as well as a lack of environmental and human rights due diligence and community engagement. In its detailed response Holcim states that it is not in breach of any of the recommendations of the OECD Guidelines and outlines what it states to be missing information or misleading or false allegations made in the submission by the submitting Parties. According to Holcim, the submission is not about Hima Cement but only about distribution conflicts between different Hima Cement stakeholders involved in its pozzolana supply chain.

The NCP accepted the specific instance for further consideration (see report of 31 January 2024 on the [Initial Assessment](#)).

2. Proceedings of the Swiss NCP

Since the receipt of the submission on 3 August 2023 the NCP took the following steps:

10.8.2023	Confirmation to acknowledge receipt of the submission to the submitting Parties.
10.8.2023	The submission was forwarded to the responding Party.
10.9.2023	Constitution of ad hoc Working group including representatives from the State Secretariat for Economic Affairs, the Federal Department of Foreign Affairs and the Federal Office of Environment according to the Specific Instances Procedure of the NCP ¹ .
8.9.2023	Receipt of a written statement of the responding Party, which was forwarded to the submitting Parties.
23.10.2023	Virtual exchange of the ad hoc Working group with the submitting Parties to exchange on the procedure of the specific instance.
26.10.2023	Virtual exchange of the ad hoc Working group with the responding Party to exchange on the procedure of the specific instance.
15.11.2023	The responding Party informed the NCP that Holcim issued a media release on the signing of agreements to divest its Uganda investment and business to a third party.
18.12.2023	Draft Report on Initial Assessment was sent to the Parties for comments on possible misrepresentations of factual information.
15.01.2024	Receipt of written comments by both Parties.
31.01.2024	Publication of Initial Assessment
7.03.2024	Holcim informs the NCP on its completed divestment from all activities in Uganda. The information was forwarded to the submitting Parties.
21.03.2024	Virtual Exchange between the submitting Party and the NCP
25.03.2024	The NCP asks Holcim questions about the divestment and specifically about the restoration of pozzolana quarries.
12.04.2024	Holcim sends answers to questions of NCP, which were forwarded to the submitting Party.

¹ www.seco.admin.ch/ncp

18.06.2024	Draft Report on Final Statement was sent to the Parties for comments on possible misrepresentations of factual information.
1.07.2024	Receipt of written comments by both Parties.

3. Outcome

Following the acceptance of the specific instance, the NCP was informed on 7 March 2024 of the completion of Holcim's divestment of all activities in Uganda. Accordingly, Holcim¹ sold the totality of its shares of Hima Cement to Sarrai Group headquartered in Kampala, Uganda.² The NCP was informed of the signing of agreements to sell the investment in Hima Cement by being provided with the relevant Holcim press release prior to the publication of the initial assessment. For this reason, the NCP stated in the initial assessment that the situation would have to be reassessed once the sale had been completed.

The OECD Guidelines make specific recommendations on disengagement, but not on divestment.³ The present case relates to a divestment. As a result, Hima Cement, the former investment of Holcim, became a subsidiary of the Sarrai Group. According to the information available to the NCP, Hima Cement will continue its activities after the change of ownership. With the sale, the rights and obligations of the previous owner were transferred to the new owner. As the submitting Parties intended to negotiate meaningful, forward-looking solutions to the issues raised in this submission, the basis for a mediation with Holcim no longer exists. However, the NCP took note of the submitting Party's position that, in its view, Holcim should be held liable for remediation even after the sale of its shares.

The NCP was of the view that the submitting Parties should be heard by Holcim despite the completed divestment and that the NCP should help to clarify any open questions in a pragmatic way. The NCP therefore reached out to both Parties. Whereas the submitting Parties shared the opinion that forward-looking solutions could not be discussed anymore with Holcim, they were interested in understanding the status of the restoration of the pozzolana quarries. They referred in particular to the Saka Quarry in Kicwamba sub-county owned by Hima Cement but non-operational since the year 2021 and the Harugongo pozzolana quarry operated by suppliers of Hima Cement (Gems International Ltd.; Abasi Balinda). The NCP took up these questions with Holcim. In its answer, which was forwarded to the submitting Parties, Holcim referred to the confirmation by Hima Cement that the landscaping and road rehabilitation works at the Saka Quarry in Kicwamba were completed in October 2023. If there should be a disagreement between the submitting Parties and Hima Cement regarding the degree of rehabilitation, Holcim refers to the relevance of the mining permit issued to Hima Cement and applicable Ugandan laws. Regarding the Harugongo quarry operated by suppliers of Hima Cement, Holcim confirmed that, before the divestment, the operation of the quarry was considered as part of the supplier onboarding and due diligence which was evidenced by the unannounced inspections conducted by Hima Cement at this quarry. With regard to activities after the divestment, Holcim pointed out that it no longer had access to Hima Cement's procurement strategies and referred to Hima Cement's competence.

4. Conclusions

The NCP welcomes the constructive engagement and the comprehensive exchange of information by both Parties in this specific instance procedures. The NCP believes that it has contributed to a better mutual understanding between the Parties by supporting the exchange of information. However, due to the new ownership in Hima Cement, the NCP does not consider that it can provide further support to the Parties.

With this Final Statement, the NCP concludes this specific instance procedure.

¹ Legally the shares were held by two subsidiaries of Holcim (Cementia Holding and Bamburi Cement)

² <https://ugbusiness.com/2023/11/companies/mergers-acquisitions/ugandas-sarrai-buys-hima-cement-from-swiss-holcim-group>

³ OECD Guidelines (2023), Commentary on Chapter II: General Policies, Para. 25; "When deciding to disengage, enterprises should do so responsibly including by seeking meaningful consultation with relevant stakeholders in a timely manner and where possible, by taking reasonable and appropriate measures to prevent or mitigate adverse impacts related to their disengagement."