

National Contact Point of Switzerland

Initial Assessment

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

Berne, 31 January 2024

Executive summary

The Swiss National Contact Point of 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 is 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 submission of 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 refers to alleged tax avoidance due to missing declaration of quantities of raw materials as well as a lack of environmental and human rights due diligence and community engagement. In the view of the NCP, the information provided and issues raised in the submission regarding in particular Chapter II (General Policies), Chapter IV (Human Rights) and Chapter VI (Environment) of the OECD Guidelines are material and sufficiently substantiated. This view is not based on conclusive research or fact-finding but mainly based on the written submission by the submitting Parties, and does not represent a conclusion as to whether these allegations are true or not or whether Holcim observed the OECD Guidelines or not.

In November 2023, Holcim announced publicly its decision to divest itself from Uganda and sell its shares in Hima Cement. As it is currently unclear whether and when the divestment will be completed, the NCP considers that by accepting this specific instance and offering a confidential mediation, it could contribute to the dialogue between the Parties and help them to reach a better mutual understanding of the issues raised and a mutually acceptable outcome. However, once and if the divestment should be completed, whether before the beginning or during the mediation, the situation would have to be reassessed. Furthermore, it is important to obtain more clarity about the stakeholder representation of the submitting Parties by means of a stakeholder analysis assisted by the NCP at the beginning of the mediation.

1 Submission and alleged violations of the OECD Guidelines

The Swiss NCP received a written submission by the submitting Parties on 3 August 2023 to consider a specific instance under the OECD Guidelines regarding Holcim AG, headquartered in Switzerland. This specific instance has been raised by the organisations Twerwaneho Listeners' Club and Clouds Fm. The submission concerns Holcim's responsibility in relation to its shareholding in the company Hima Cement Ltd in Uganda. According to the submitting Parties, the mining of the volcanic rock pozzolana in connection with cement production causes severe environmental damage and thus affects the agricultural activities of the local population.

The submitting Parties claim the violation of a number of recommendations of the OECD Guidelines by the responding Party including Chapter II (General Policies), Chapter III (Disclosure), Chapter IV (Human Rights), Chapter V (Employment and Industrial Relations), Chapter VI (Environment) and Chapter XI (Taxation). Some of the allegations are documented in the submission. For example, the submitting Parties refer to impacts of stone quarrying activities on the local geography, to noise and dust pollution caused by the stone quarries, the failure to decommission used-up quarries as well to the impact of pozzolana quarrying on access to water. Furthermore, the submitting Parties claim the responding Party has not conducted an environmental and social impact assessment, due diligence or meaningful engagement and consultations with local communities. Furthermore, TLC and CFm allege that the responding Party and its suppliers commit acts of retaliation targeting community members who speak out against the company operations or operations linked to the company supply chain. The submitting Parties also raise concerns regarding declared mineral quantities and alleged tax avoidance.

In its submission, TLC and CFm refer to alleged violations of human rights, national environmental policies and mining policies by a number of companies including M/S Gems International Ltd, Great Lakes Ltd., Abas Balinda Transporters Ltd, Royal Transit Ltd., M Capital Ltd., Sea Horse Ltd. and Hill Max Uganda. According to the submitting Parties, these companies have been contracted by Hima Cement over the years to mine and supply pozzolana as a raw material to the Hima Cement factory plant. The submitting Parties further elaborate that local activists have held peaceful demonstrations at various local government administration units, at the Hima Cement factory plant, submitted complaints to the Ministry of Energy and Mineral Development and held countless dialogue meetings with the company since 2016 without positive outcome. Furthermore, in the submission it is stated that in 2018, a community member and landowner sued Sea Horse International Ltd regarding the proper closing of the quarry pits, leading to a decision in favour of the community member.

The submitting Parties expect through the NCP's good offices to be able to engage directly with Holcim managers in a decision-making position, to get Holcim to respect the OECD Guidelines and due diligence towards its subsidiary Hima Cement, and to facilitate communication between the parties in order to negotiate meaningful forward-looking solutions for the issues raised in this submission. Furthermore, the submitting Parties expect the NCP to conduct a mediation process between Hima Cement in Uganda and the local population. In addition, the submitting Parties ask the NCP to encourage Holcim to disclose documents such as audit reports, environmental and social impact assessments and engagement action plans with the communities in Harugongo.

2 Statement of the responding Party

On 8 September 2023, the responding Party submitted a written statement to the NCP concerning the issues raised in this specific instance. 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 in the Kabarole District in the Western Region of Uganda, in particular the Harugongo and Kicwamba sub-counties. The responding Party further requests a clarification regarding which communities are represented by TLC and CFm and whether they have a mandate to represent them. In Holcim's view there are different groups of community members with diverse interests and there are doubts that the submitting Parties have the legitimacy to represent a critical proportion of the local community.

The responding Party further elaborates on Hima Cement's involvement regarding the sourcing of pozzolana. According to Holcim, Hima Cement purchases today pozzolana only in the Harugongo sub-county from independent suppliers. The sourced material is solely used for the production of pozzolana cement. Pozzolana excavated in the mentioned counties is also used for construction by parties other than Hima Cement, in particular for the building of small houses. Hima Cement only owns one pozzolana quarry in the Western Region of Uganda, the Saka quarry in the Kicwamba sub-county. Operations in this quarry were terminated at the end of 2020 and its restoration was completed in the fourth quarter of 2023. Holcim therefore refutes the claim that Hima Cement still operates pozzolana quarries in Western Uganda today. Hima Cement only sources pozzolana for its Kasese cement plant from two suppliers Gems International Ltd. / Harugongo pozzolana quarry and Abasi Balinda Transporters Ltd / Harugongo pozzolana quarry. According to the responding Party, each of these two quarries only operated for around 30 days in 2023 during day time. The Holcim Code of Business Conduct for Suppliers forms part of the contracts between Hima Cement and the mentioned two suppliers. Holcim also disagrees with the claim made by the submitting Parties of a lack of environmental impact assessment, as either such assessments were done and filed with the competent authorities or were not required by the Mining Act of 2003 which excludes holders of so-called location licenses of this duty.

The responding Party further elaborates on Hima Cement's key processes and initiatives such as, among others, human rights reviews, supplier onboarding and engagement as well as community engagements. In addition, Holcim provides an overview of what it considers to be factual errors in the submission. These submitted factual errors include, among others, allegations regarding the avoidance of meaningful involvement of community members, alleged unlawful mining activities at the Saka quarry, the allegation that open excavation destroys cultivable land thus causing severe hunger and famine within the community, the alleged absence of personal protection equipment in the quarries in Kicwamba and Harugongo sub-counties, the alleged evasion of payments of royalties to governments, the allegedly unresolved historic allegations of child labour as well the alleged involvement in or being aware of community retaliation. All these allegations are disputed by the responding Party. In addition, Holcim states that, contrary to the allegations of the submitting Parties, the company was not

part of the Sea Horse litigation, and is transparent on its Business Conduct and has a grievance mechanism available.

3 The proceedings of the Swiss NCP up to date

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 will divest in Uganda by selling its activities to another company.
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.

4 Considerations and decision of the Swiss NCP²

Based on the Specific Instances Procedures of the NCP, the NCP considers the following points in its initial assessment:

a) Identity of the submitting Parties concerned and its interest in the matter

The NCP comes to the conclusion that the submitting Parties have provided sufficient information regarding their interest in the issues raised. In the past, the submitting Parties have been advocating for the concerns of some local communities in a variety of fields, e.g. regarding the topic of environmental protection, working conditions or the prevention of child labour. However, it was not possible for the NCP to conclusively clarify which local communities are represented by the submitting Parties. Before beginning a possible mediation,

¹ www.seco.admin.ch/ncp

² As the submission is based on the 2011 OECD Guidelines, the criteria were assessed accordingly on this version.

a stakeholder analysis assisted by the NCP would need to be carried out to provide more clarity with regard to the local community groups and their interests.

b) Responsibility of the Swiss NCP

As the Guidelines are addressed by adherent countries to enterprises operating “*in or from*” their territory, NCPs may receive specific instances regarding issues taking place or concerning enterprises established in their country. As Uganda, where the alleged breaches of the OECD Guidelines have arisen, is not an adherent country to the OECD Guidelines and Holcim is headquartered in Switzerland, the Swiss NCP is competent for this submission.

c) Scope of application of the OECD Guidelines and materiality of the specific instance

Holcim is a Swiss company headquartered in Zug, Switzerland, active in sustainable building solutions in around 70 countries. Hima Cement in Uganda is not a wholly owned subsidiary of Holcim but indirectly controlled by Holcim. Accordingly, Holcim is a multinational enterprise within the meaning of the OECD Guidelines. On 15 November 2023, Holcim announced to divest its business in Uganda by selling its shares in Hima Cement to the Sarrai Group. According to Holcim, the completion of the transaction is subject to obtaining the respective regulatory clearances.³

The extent to which the various allegations in the written submission by the submitting Parties are substantiated varies greatly. The environmental impacts of stone quarrying activities (e.g. noise emissions, dust and water pollution) as well the missing timely decommission of used up quarries are documented. According to the NCP's understanding, they occur at the level of third-party suppliers of Hima Cement and their supply chain. Consequently, according to the OECD Guidelines, they fall in the scope of the due diligence process of Holcim. The allegations regarding not having conducted meaningful stakeholder engagement are substantiated by the submitting Parties through information on reprisals by third parties against community members, thus preventing meaningful engagement. Based on the information submitted, the mentioned allegations are material, substantiated and plausible related to the application of the OECD Guidelines, in particular Chapter II (General Policies), Chapter IV (Human Rights) and Chapter VI (Environment). However, this view on the application of the OECD Guidelines does not represent a conclusion of the NCP whether the allegations are true or not or whether Holcim observed the OECD Guidelines or not.

The allegation regarding tax avoidance seems to refer mainly to sourcing activities from Hima Cement from allegedly illegal suppliers of pozzolana and incorrect declarations of pozzolana volumes. In the view of the NCP, these allegations lack sufficient information in the submission in order to be sufficiently substantiated.

d) Legal context and parallel proceedings

The NCP will take into consideration ongoing parallel proceedings, including court rulings. According to the Specific Instances Procedures of the NCP, already concluded or ongoing parallel proceedings will not necessarily prevent the NCP from pursuing a specific instance.

³ www.holcim.com/media/media-releases/uganda-tanzania-divestment

However, in each individual case the NCP assesses whether or not an offer to mediate would make a positive contribution to the resolution of the issues raised or if it would prejudice either of the Parties involved in other proceedings.

The NCP received information, among others, on a petition against one of the respondent Party's suppliers, Gems International Ltd, signed by some community members from the Harugongo sub-county to the Commissioner Geological Surveys and Mines in Uganda from August 2021 alleging human rights abuses and environmental depletion. According to the submitting Parties, this petition did not lead to the results the petitioners desired. The responding Party submitted that the relevant Harugongo community leadership in August 2021 wrote a rebuttal to the Commissioner Geological Surveys and Mines with the request to dismiss the petition. The submitting Parties subsequently decided to address the concerns of the petitioners to the NCP. As no further activities are expected as a result of the petition, it does not prevent the NCP from pursuing this specific instance.

e) Contribution to the purpose and effectiveness of the OECD Guidelines

The role of the NCP is to offer a forum for discussion and to assist the Parties concerned to address the issues raised. The submitting Parties have emphasized their interest in a forward-looking solution to the issues raised. Since the divestment of Holcim of its activities in Uganda has been publicly announced, the question arises whether the parties of this specific instance are the right actors for a dialogue to achieve a forward-looking solution. On the other hand, it is not clear at this stage whether and when the divestment can be completed.

As the divestment has not been completed, the NCP therefore considers that by accepting this specific instance and offering a confidential mediation it could contribute to the dialogue between the Parties and help them reach a better mutual understanding of the issues raised and a mutually acceptable outcome. However, once and if the divestment should be completed, whether before the beginning or during the mediation, the situation would have to be reassessed. Furthermore, it is important to obtain more clarity about the stakeholder representation of the submitting Parties by means of a stakeholder analysis assisted by the NCP at the beginning of the mediation.

f) Conclusion

The NCP accepts the specific instance and offers its good offices to the Parties for further consideration as it is not clear to date, if and when the announced divestment will be completed. Should the divestment be completed before the beginning or during the mediation, the situation would have to be reassessed. The NCP accepting this specific instance does not mean that a conclusive assessment has been made of the issues raised or that a breach of the OECD Guidelines has occurred. Furthermore, it is important to obtain more clarity about the stakeholder representation of the submitting Parties by means of a stakeholder analysis assisted by the NCP at the beginning of the mediation.

5 Next steps

The NCP will offer its good offices to the Parties and ask them to confirm whether they are willing to accept this offer with the aim of reaching a mutually acceptable outcome. From the

NCP's point of view, it will make sense to involve representatives from Holcim, Hima Cement and the submitting Parties in such a dialogue.

If the Parties reach an agreement and find a solution to the issues raised, the NCP will make publicly available a final statement with the results of the proceedings. Information regarding the contents of the discussions and the agreement will only be published with the express consent of the Parties involved. If no agreement is reached or one of the Parties is not willing to take part in the proceedings, the NCP will also make this information publicly available in a final statement. The latter will include a summary of the reasons why no agreement was reached.

The NCP may draw up recommendations for implementation of the OECD Guidelines, which will also be included in the final statement. In addition, the NCP can envisage specific follow-up activities, for which the NCP will provide support following completion of the specific instance procedure. Final statements are published on the Swiss NCP website and are referenced in the OECD Database on Specific Instances for the OECD Guidelines. Before the statement is issued, the NCP gives the Parties the opportunity to comment on a draft statement. If there is no agreement between the Swiss NCP and the Parties about the wording of the statement, the NCP makes the final decision.

In order to establish an atmosphere of trust, the Implementation Procedures of the OECD Guidelines foresee that the Parties may not disclose publicly or to a third party, during or after the proceedings, facts and arguments shared by the other Parties or the NCP during and after the proceedings, unless the sharing party agrees to their disclosure, such facts and arguments are already in the public domain, or not disclosing would be contrary to the provisions of national law. To this end, special requirements concerning the treatment of confidential information can be agreed upon by the Parties involved in this specific instance.

The Swiss NCP will publish its report on the initial assessment on the NCP website.