

Statement on the Initial Assessment Report (IAR) issued regarding the specific instance submitted for the activities of a multinational enterprise of the United States of America and Peruvian companies

1. On December 18, 2018, the OECD National Contact Point in Peru (NCP PERU) received the Specific Instance raised by FUNDACIÓN LUZ MARINA, on behalf of three citizens identified as part of an Indigenous People, who state they represent that ethnical group. The specific instance was submitted with regard to the activities carried out by the MULTINATIONAL ENTERPRISE of the hotel industry and three Peruvian companies (Hotel industry, real estate industry and construction industry) that, according to the claimants, would be business partners of the MULTINATIONAL ENTERPRISE in a hotel project in the city of Cusco, Peru; and did not comply with the OECD Guidelines for Multinational Enterprises (GUIDELINES)
2. After the evaluation made by NCP PERU, it was considered that the specific instance does not merit further assessment because it does not meet all the criteria provisioned in Section 25 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises.

In accordance with the provisions of the aforementioned section, for the IAR the National Contact Point must determine whether the issue that has been raised merits further consideration. In that sense, it must establish whether the specific instance submitted is in good faith (real and authentic) and if it is related to the GUIDELINES (within the scope of the Guidelines), for which the following criteria must be considered:

- i. The identity of the party concerned and its interest in the matter:
 - ii. If the issue is material and substantiated
 - iii. Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance
 - iv. The relevance of applicable law and procedures, including court rulings and how similar issues have been, or are being, addressed in other domestic or international proceedings
 - v. Whether the consideration of the specific instance would contribute to the purposes and effectiveness of the GUIDELINES:
3. It should be noted that the IAR aims to determine whether the issues raised deserve a more detailed examination and does not determine if the MULTINATIONAL ENTERPRISE has or has not performed according to the GUIDELINES.
4. In accordance to Item 7.1.7 of Directive N° 003-2015-PROINVERSIÓN - Attention of Specific Instances related to the Implementation of the OECD Guidelines, the NCP PERU issued the IAR detailing the reasons for which it considered that the specific instance does not merit further consideration according to the analysis carried out by the NCP PERU in accordance with the criteria set forth in Section 25 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises. Also, according to the same Item, this IAR was written in such a way that the identity of the parties is protected, the Specific Instance is closed, and the IAR published on the NCP PERU Web Page.
5. In accordance with the provisions of paragraph C-4 of the Procedural Guidance of the Implementation of the GUIDELINES, the information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure of such information or views or when the non-disclosure is contrary to the provisions established in national legislation.
6. The NCP PERU is grateful for the support provided by the NCP USA throughout the development of this specific instance.

7. Finally, even if this specific instance did not merit further examination since it did not comply with the criteria mentioned in Item 2, the NCP PERU recommends companies to carry out their activities within the framework of the legislation in force and with respect to the requirements established for each sector specifically. It is specially recommended that companies who develop activities in area with high level of cultural, historical and archeological context, to carry out a due diligence process and incorporate responsible business conduct into policies and management systems.
8. The NCP PERU reiterates its willingness to be a forum for debate and dialogue between the business sector and non-governmental organizations, that seek to resolve specific instances, in accordance with the applicable legislation and the GUIDELINES.



César Martín Peñaranda Luna
NATIONAL CONTACT POINT - PERU