



## National Contact Point - NCP

### FINAL REPORT

#### **KINROSS Gold Corporation/Association of Neighborhoods of Paracatu Allegation of Non-compliance NCP No. 01/2014**

#### **1. Summary of the claim.**

On 18 June 2013, Brazil National Contact Point (NCP) received a claim of nonobservance of the OECD Guidelines for Multinational Enterprises from Paracatu neighboring associations against Kinross Brasil Mineração, which is part of the Kinross Gold Corporation group, based in Toronto, Canada.

The complainant associations are composed of residents of the districts of Machadinho, rural community near Paracatu, and three urban districts, Bela Vista II, Alto da Colina, Amoreiras II. According to the allegation, the following conducts of the enterprise are in disagreement with the OECD Guidelines:

- a) *The use of explosives in the company's production process would have caused cracks in houses near the mine in Paracatu;*
- b) *Rural properties acquired by Kinross were transformed into dams or preservation areas, isolating the rural area of Machadinho, damaging resident's access to the city.*

According to the claimants, the aforementioned conduct would violate the caput and items 1, 2, 7, 11, 12 and 15 of Chapter II, General Policies; Items 1, 2, 3, 4, 5 and 6 of Chapter IV, Human Rights; and items 3, 4, 5, 6 (d) of Chapter VI, Environment, of the Guidelines:

#### ***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:*

*A. Enterprises should:*

- 1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.*



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*2. Respect the internationally recognised human rights of those affected by their activities.*

*7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.*

*11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*

*12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.*

*15. Abstain from any improper involvement in local political activities.*

### **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.*

*3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.*

*4. Have a policy commitment to respect human rights.*



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5. *Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.*
6. *Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.*

### **VI. Environment**

3. *Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.*
4. *Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.*
5. *Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.*
6. *Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:*
  - d) *exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.*



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In a preliminary analysis, this NCP, in accordance with the Brazil NCP Resolution No. 01/2012, concluded that the Allegation of Non-compliance was subject to the themes of the Guidelines. It contained a sufficiently defined focus and presented information that could be analyzed by objective criteria. Thus, this NCP decided to accept the claim and communicated this fact to Kinross, the OECD and Canada NCP.

On a first meeting with the representative of the Rural Community of Machadinho, he reported that Kinross had bought land properties surrounding the Community, modifying the access route of the remaining populations to the city of Paracatu. Because of this, the venal value of these lands would have been diminished.

In relation to the urban communities, the expansion of Kinross's mining activities took place in areas bordering the claimants' neighborhoods. In these regions, mining activities took place in the open and very close to residences. The detonation of explosives caused noise and vibration in the residences. The explosions usually lasted from four to six seconds. The expansion and approximation of mining activities in relation to the urban districts occurred concurrently with the appearance of cracks in the neighborhoods' houses.

Regarding the cracks, Kinross and the National Institute of Colonization and Agrarian Reform of Brazil - INCRA - carried out tests that verified that there was no causal link between the cracks and the activities of the mines. According to the report of the Kinross expertise, the houses had not been built according to rules of the Brazilian Association of Technical Standards - ABNT -, that is, the houses should have more solid structures.

In 2015, the company built acoustic and visual barriers to mitigate the effects of the explosions, but there was no further information on the effectiveness of these activities. According to Kinross, there is a daily relationship between the company and the members of these communities, who participate in monthly relationship forums to carry out different activities.

## **2. Meetings of mediation.**

### **A. First mediation meeting - September 2015.**

The claimants reported that, although the company had expanded its social action activities, concomitantly with the expansion and increase of the intensity of its activities, the residents of both urban and rural areas had not previously been informed about the company's expansion plans, nor on the necessity to have homes with more robust structures. These were the reasons that led them to seek advice from this NCP.



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The claimants also reported on a Kinross land regularization project in the region. The project had been conducted in partnership with the Paracatu City Hall. Kinross's Director of Licensing and Sustainability explained that the company seeks to provide a level of comfort to the affected community, and that was done when the use of explosives was introduced. He reaffirmed that, technically, detonations are not responsible for causing cracks in homes. That the company operates below the levels of vibration allowed by Brazilian law, and that these such levels do not cause crackings.

The director concluded that the company would be willing to engage with City Hall and Civil Defense to carry out the risk assessments of the houses but would refuse to admit causal link between the occurrence of cracks and the mining activities.

Kinross had asked the City Hall to carry out a survey of the houses at risk, but the representative of the Associations said he believed that this would not be done, since that was not that body's obligation. He also disputed the explanations given, stating that life is very difficult for those living near the areas of explosion, where there are large amounts of dust, which cause many limitations to domestic life in the region.

The claimants pondered that they were not dealing here with residences, but above all with the lives of those living in these areas. If there happens to be any collapse, he feared for the loss of their lives. The representative of the neighborhood associations also expected to receive compensation for the demolished structures in Machadinho, those of leisure and church. He would like the company to acknowledge its responsibility for the cracks in Paracatu, and that it would be important to resettle the families whose houses are damaged.

The first meeting was concluded with an agreement that the Neighborhood Associations would draft a compensation proposal, to be funded by the Kinross, which proposed a new round of talks for the presentation of the proposals. Proposals would not need to be drawn up by a professional, but it was essential that they be clear and well-structured.

### **B. Second mediation meeting - March 24, 2016.**

According to the first mediation meeting records, Kinross had proposed to pay for a technical survey on the cracks of the urban houses and to receive a compensation proposal for the Machadinho Community.

The Associations presented a budget proposal for the payment of the costs of preparing a study on cracks and another budget for the purchase of rural equipment for the Community of Machadinho. Both were delivered to Kinross earlier in Paracatu, later to be discussed in Brasilia during the second mediation meeting.

The proposal should address the needs of the neighborhood associations of Paracatu. One house served as a parameter, which should be applied to the rest of the houses.



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However, in this second mediation, in Brasilia, Kinross was against the proposals presented, arguing that each house had its own damage, so each house should be evaluated individually.

The company reiterated that this had been emphasized in the first mediation, and that the most important thing was that the study did not aim to establish responsibilities. The proposal presented also dealt with the houses of a single neighborhood, Alto da Colina, and Kinross needed studies for all three neighborhoods, and that they should be delivered together. The company was looking for a study that assessed the risk of each household, the number of people at risk, and what could be done to help these people.

The company requested that the other stakeholders, including the public sector, participate in this process. Kinross requested the inclusion of a body from the public sector because of the houses at risk, because they were dealing with human lives, suggesting the participation of the City Hall. Under the rules of the company, contracting would have to be done via bidding, with the presentation of at least three executors. However, that was not explained in the first meeting.

Kinross reported on other projects carried out in partnership with the City Hall and that it would like to fit the proposals presented in this claim into the existing programs underway with that body. The Generation of Work and Income Program is one these such programs, which is offered through an annual public notice. Thus, the public entity, City Hall, would be the intermediary manager of the proposals, and the rural community and urban associations could execute some of their projects through these programs.

The representative of the Associations reacted by saying that the pilot proposal in the Alto da Colina neighborhood had been treated in the first mediation. He believed that the City Hall would not be the ideal partner for this project because currently the City Hall was short in servants. He believed that they should work with the associations, an executing company and a representative of the public power. In addition, there would have been a major change of focus in this meeting in relation to what had been agreed in the first meeting. At the first mediation, the associations had been asked to provide an estimate of spending for the reform of one hundred houses, and the definition of which would be reformed. According to him, the discussion under way at this meeting had changed the conditions agreed in the first mediation meeting. That was the reason why the representatives of the other neighborhoods were not present at this meeting.

The NCP representative intervened, questioning whether the company would be ready to discuss the proposals presented objectively at this meeting, to which the company replied that it would only discuss a proposal for the three neighborhoods jointly, not just one of them. The company was there to settle the premises and then go on to a specific discussion. They proposed that this detailed meeting could take place in Paracatu in the future.



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Regarding the rural areas, the representative of the community of Machadinho would like to involve the community and the City in these surveys. He would like the community to be the protagonist, the manager of this process, not the City Hall.

Kinross requested that the rural areas should present proof of ownership of land. Their representative reported that they did not have the lands' registry certificates, and stated that the Community's lands were only listed in the Community's foundation document. He estimated that there were about forty families, prior to the expropriation and land acquisition by Kinross. Some land had been purchased by Kinross from these families.

The representative of the Neighborhood Associations of Paracatu reiterated that all compensation proposals were suggested by Kinross in the first mediation. However, today the company was saying that it did not recognize the demands of Machadinho. Kinross disagreed saying that the points raised today had been dealt with at the meeting in Paracatu. And that the premises presented at this meeting were so because of the proposal delivered in Paracatu. They said they understood that these would be the premises for the proposal to be examined in a later meeting.

At the end of the meeting, Kinross did not agree with the proposed compensation for the area of Machadinho, in the form presented. They would offer compensation within the possibilities offered within the already existing company's programs. The next program publication would be in December 2016. If Machadinho's proposal met the program's requirements, it would be evaluated and possibly approved. The NCP recommended that Kinross should help by giving guidance in drawing up a viable proposal for the Community to apply for the company's programs. Kinross accepted the recommendation.

The NCP concluded the meeting and proposed a third mediation meeting, which would have the purpose of dealing with the demands of Machadinho and the study on the houses of the three districts of Paracatu.

### **C. Third mediation meeting - September 23, 2016.**

In June 2016, two months after the second mediation meeting, Kinross informed the NCP that the Paracatu City Hall had accepted their partnership proposal. Also in June, they formalized a partnership agreement with the Civil Defense. However, due to the municipal elections of 2016, the city hall would not be able to execute new projects, until after the elections. The activities of this partnership were said to begin in 2017.

Kinross contacted the neighborhood associations leaders' directly in Paracatu, when the partnership project with the City Hall was presented to them. They proposed the project as a viable response to the lawsuits filed with the NCP. The Neighborhood Associations agreed to the partnership with the City Hall and a document was signed by





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them and sent to this NCP on 29 June 2016. The Associations informed Kinross that were willing to attend the third NCP mediation meeting in Brasilia to formally register this agreement. Mr. Rosival was not invited to sign or participate in that meeting.

Kinross then requested the third mediation meeting, and the NCP proposed and contacted the parties in June to schedule the third mediation meeting. Only in September did the parties find a common date, 23 September 2016. Surprisingly, on September 22, the Neighborhood Associations representative wrote to the NCP canceling the meeting, claiming that some neighborhood representatives were candidates for the coming election and that they were therefore be barred from attending the NCP meeting. This NCP was surprised by the cancellation and Kinross did not accept it. Kinross said that the tickets of its directors had been bought and the daily rates paid, and that they would show up to take part in meeting. The NCP agreed to hold the meeting. Among the representatives of the neighborhood, only Mr. Rosival attended.

On 23 September, to the surprise of those present, the representative of the Associations, Rosival, stated that only the day before he would have been informed about the legal impediment of representatives of some urban and rural districts. However, the candidacies of his associates should have been known to the him if he had been in contacted with these representatives since June.

Three Kinross directors, Alderman Rosival, NCP coordinator were. The meeting's agenda of the meeting was divided between the themes related to the region of Machadinho and the rebuilding of urban houses.

Kinross met in Paracatu with Machadinho's region representative to explain the operation of the Program Integrate and how the urban neighborhoods and Machadinho Community could participate in the Program, how support would be provided in formulating the proposal. The Program Integrate is directed to non-governmental organizations, with the objective of generating work and income, for the period of two years, and the possibility of contribution of up to 80,000 Brazilian Real.

The demand for proof of ownership of the rural lands requested by the NCP at the second mediation meeting was never met. Thus Kinross stated that it did not recognize that the rural Community of Machadinho, as the company could not assure who was entitled to compensation. The Kinross said the supposed owners were impetuous. They do not live in the region, they live in the city and have productive farms in the region.

The mediator concluded that, without proof of ownership of the land, Kinross would not be able to repair damages or provide compensation, as the allegation process could not appoint who had been harmed. Kinross held the meeting on the Program Integrate in Paracatu with the rural communities and confirmed its commitment to assist them in the preparation of social action projects by the end of 2016.

Mr. Rosival, as representative of the Machadinho residents' associations, despite the representatives not being present, said that they themselves had already acknowledged





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their demand as attended. That they understood that this part of the allegation of non-compliance would not be able to be resolved as demanded.

As for the urban neighborhoods residents demand on the consequences of the explosions, the company mentioned a study made by the research company Avalicon, which concluded that cracks were not the result of Kinross activities. Damage to houses occurred because they had not been built according to ABNT technical specifications (Brazilian Association for Technical Norms). Avalicon's report showed that there was no correlation between the explosions and the consequences in the houses. That is, the study found no causality link between the two actions. The analysis showed that the vibration would not have damaged the houses if they had been properly built.

Despite Avalicon's report on causality, Kinross confirmed its intent to repair the homes through a partnership project with City Hall, with the active participation of communities. The company reported that the City Hall has done this action to other neighborhoods of the city, through the "Urbanization Plan for Precarious Settlements."

However, because 2016 is an election year, works in the three neighborhoods cited in this allegation had not yet begun, as the city hall was prevented from starting new projects as of June. For other districts of Paracatu, which had processes previously initiated, the City Hall would already be carrying out the works.

Kinross clarified that the work of the City Hall is done in three strands. The selection of houses that are well, those that need renovation and those that can no longer receive improvements. Those in risk areas will have their residents transferred to other locations, for resettlement. In case of need of resettlement, the City Hall will seek the demanding neighborhoods' similar localities for the construction of new houses.

According to the proposal accepted by the associations, Kinross will transfer resources to the City Hall, which will use the structure of the Civil Defense, to reform the houses through the "Urbanization Plan for Precarious Settlements." City Hall civil servants will prepare the survey and a company will be hired to do the technical evaluations of the homes that have been considered sensitive. Based on this survey, a reform or resettlement plan will be draw.

The NCP questioned whether there would be a guarantee that this project will be executed, due to the dependency of the City Hall. Kinross said yes, that the guarantee is the agreement with the City Hall and the Letter of Intent that establishes the commitment to start in 2017 the "Plan of Urbanization and Precarious Settlements".

Mr. Rosival considered that the City Hall should be a partner, but not the executor of the project, because Kinross would be transferring its obligation to third parties. He complained that the initial proposal was that associations would indicate a company to



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survey housing needs. He also questioned whether the City Hall projects already underway would be working, as he did not know the program.

An important fact to note is that Mr. Rosival, the petitioner, had no knowledge of the signing of the Letter of Acceptance by the associations on 28 June 2016. In this third mediation, three months later, Mr. Rosival still did not know about the associations' agreement or about the signing of this document by the ones whom he represented.

The meeting mediator questioned the company whether City Hall would make such urban recoveries with or without Kinross's financial backing, as City Hall would be undertaking city-wide reforms. Kinross replied that this would be the second module of the City Hall program, and the associations had accepted compensation in this way, although this was not the form of reparation requested in the initial claim.

The copy of the letter of intent signed by the associations and sent by Kinross to the NCP on 29 June. The letter contains the signatures of all the members of the associations, Annex I of this document. The document is proof that the associations accepted the partnership between Kinross and the City Hall.

At the end of the meeting, Kinross requested the closing of the claim, saying that they have signed this project with the City Hall, which activities will start in 2017. They will transfer of resources, the same way the company does with their other partnership projects. Kinross understood that the offer was the viable form the company found to carry out compensation, addressing all the points demanded in the allegation. It may not have done so in the way requested, but due to several events, including political events, the best way the company can address these demands today is through the partnership with the City Hall. The company would not like to play the role of manager in this process, so they will finance the project and monitor its execution.

The mediator concluded the meeting, saying that the NCP's guidance in this process is to seek agreement between the parties. Although the associations were not present, they had signed an agreement with Kinross, and that fulfills the allegation requirements. On the other hand, the associations did not inform that they would not attend the meeting, and their absence would prevent them from modifying what had already been agreed. The NCP concluded by saying that this case was successful in finding an agreed solution through the mediation offered.

### **3. Proposals and recommendations.**

According to Kinross, the City Hall will make a diagnosis and a meeting with each association of the three urban districts. The City Hall is committed to informing Kinross about this meeting, and about the details of what will be agreed upon.



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The NCP asked Kinross to send information about the City Hall program to which they will join. The company responded that they will continue to feed the NCP with information about the implementation process of what has been agreed upon.

The NCP requested that Kinross forward a copy of the project document to be established for each area of Paracatu in 2017, for monitoring purposes.

The NCP recommended that Kinross should host the Machadinho community and give guidance in drawing up a viable proposal to apply for the company's programs.

This NCP recommends that Kinross informs residents of neighborhoods adjacent to their mines about their work and future plans that may interfere with residents' lives. That shall foster a relationship of trust between the company and the residents of Paracatu.

The NCP also recommends that Kinross conduct due diligence processes that assess the adverse effects of its mining activities, establishing a maximum distance between its mining operations and the home dwellings in the outlying districts of Paracatu.

### **4. Conclusion.**

This Brazil NCP concluded that the document of agreement signed by the associations in June with Kinross and City Hall responds to the demands presented in this allegation. The demands of the rural communities are not going to be addressed as they were not able to provide the requested property documents, which would confirm to whom compensation should be addressed.

Annex I document demonstrates that the allegation of non-compliance managed to get to an agreement between the parties. Kinross will repair the urban neighborhoods' residences, despite not having admitted causality between their mining activities and the cracks presented at the houses.

For all of the above, Brazil NCP provided its good offices and successfully found a negotiated solution for the case.

This allegation non-compliance with the OECD guidelines is now concluded. This NCP expects that the recommendations presented will be considered, and follow-up information and monitoring will take place.

**BRAZIL NATIONAL CONTACT POINT  
OECD Guidelines for Multinational Enterprises**

Brasília, 21 December 2016.