

Foreign Affairs, Trade and Development Canada

[Home](#) > [Trade](#) > [Opening New Markets](#) > [Other Types of Agreements and Initiatives](#)

> [Initial Assessment of the Specific Instance under the OECD Guidelines for Multinational Enterprises relating to Corriente Resources' Mirador Mine in Ecuador](#)

Initial Assessment of the Specific Instance under the OECD Guidelines for Multinational Enterprises relating to Corriente Resources' Mirador Mine in Ecuador

The Request for Review *Regarding the mining activities by Corriente Resources Inc. and CRCC-Tongguan Investment (Canada) Co. Ltd. (Corriente-CRCC) in the province of Zamora Chinchipe, Ecuador*, was submitted July 25th, 2013, by the International Federation for Human Rights (FIDH), the Ecumenical Human Rights Commission of Ecuador (CEDHU), and MiningWatch Canada on behalf of a group of nine affected people (the Notifiers).

2. The Request for Review centers on the Mirador copper mine project of Ecuacorriente. Ecuacorriente is a subsidiary of Corriente Resources Inc., and the Request for Review is addressed to two companies, Corriente Resources Inc. and CRCC-Tongguan Investment (Canada) Co. Ltd. In 2010, Corriente Resources was purchased by CRCC-Tongguan (Canada), retaining the name Corriente Resources Inc. (the Company), and subsequently delisted from the stock exchange. Corriente Resources is registered and headquartered in British Columbia, and is a wholly owned subsidiary of the China-based CRCC Tongguan which is itself a joint venture of the Chinese Railway Construction Company, a public company listed in both the Hong Kong and Shanghai Stock Exchanges, and Tongling Nonferrous Metals Group, a state-owned enterprise. The Canadian National Contact Point was asked by the Notifiers to review the specific instance as Corriente Resources is registered in Canada. Neither Ecuador, the country where activities occurred, nor China, the host country of CRCC Tongguan, are adherents to the OECD Guidelines. The Notifiers had previously contacted both the Ecuador-based company and the China-based company on the issues outlined in the Request for Review.

3. Between July 2013 and February 2014, the Canadian NCP reviewed the Request for Review and subsequently requested and received supplementary documentation from both the Notifiers and the Company. A significant portion of the documents submitted by both the Notifiers and the Company were originally presented to the NCP in Spanish and Chinese. Given Canada's procedural guidance which states that only materials submitted in either French or English will be reviewed by the National Contact Point, the Notifiers and the Company were contacted and asked to provide translated text in full or in part, for consideration by the NCP, as per the stated policy, to contribute to the Initial Assessment. Not all materials were fully translated. Translated materials were provided by the Notifiers within six weeks, and by the Company within 3 months. Though the NCP strives for short initial assessment periods, this timeframe reflects the time needed to obtain translations, to conduct legal research on the status of the Company, undertake appropriate outreach, and allow for fulsome responses and engagement by all Parties. The Company provided its substantial response to the NCP's initial invitation to respond within three months.

4. The Canadian OECD National Contact Point has reviewed all the information presented in the initial submission of the Request for Review, as well as the supplementary materials presented by the Company and the Notifier, and assessed against the criteria listed in the Canadian NCP Procedures (see section [OECD Guidelines and the NCP Mandate](#)), upon which the NCP made its determination.

5. The issues raised in the Request for Review covered a range of topics that the NCP did not find merited and substantiated, which is outlined in the section [Initial Assessment Considerations](#). In addition, the operational status of the Company was also taken into consideration by the Canadian NCP, as it determined whether the Canadian NCP had a mandate with regards to the Specific Instance. And while not a part of the determination as to whether the Request for Review was merited and substantiated, the Parties' positions on whether to engage affects the NCP's ability to offer its good offices. While Corriente Resources is incorporated in Canada, all on-site decision-making powers for the Mirador Mine are held by Ecuacorriente, a company based in Ecuador. Additionally, the project is managed by CRCC-Tongguan, a company based in China. Corriente Resources has confirmed that it is a foreign-owned Canadian holding company, with no management role or function of the Mirador Project in Ecuador. The NCP process is primarily focussed on assisting the Notifier and a Canadian company to resolve a dispute through facilitated dialogue, should they so wish. Considering that Corriente Resources is incorporated in Canada, the NCP explained in its outreach to the company that should the initial assessment find merit to the Request for Review, the goal of the NCP process is to engage the Parties in dialogue-facilitation. Corriente Resources outlined in its response to the NCP that it would decline engagement in dialogue facilitation with the Notifiers under the auspices of the Canadian NCP.

6. Based on the Canadian NCP's consideration of the materials submitted against the OECD guidelines and Canadian NCP's Procedures, the NCP's initial assessment relating to the Mirador mining project is that the issue does not merit further examination by the Canadian NCP. In addition, the Company has indicated that it would not engage in dialogue-facilitation with the Notifiers through the NCP.

Issues Raised:

7. The Request for Review was submitted on July 25, 2013, and the Notifiers resubmitted translated substantiating materials on September 3, 2013. The Request for Review raised a number of distinct issues, alleging that the Company was not observing the following provisions of the OECD Guidelines with respect to four broad areas: a) Human rights; b) Lack of meaningful consultations; c) Due diligence and local policies; and, d) Environmental impacts. The following are the OECD Guidelines' articles and sections referred to in the Request for Review:

A) Human Rights: Chapter IV Human Rights, Article 1: "...enterprises should: 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."

Article 2: "...enterprises should: ... Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur."

Article 6: "...enterprises should: ... 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."

Commentary on Human Rights Paragraph 40: "Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention... enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; persons belonging to national or ethnic... minorities;"

B) Lack of Meaningful Consultations: General Policies, Article 14: "Enterprises should: ... Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities."

C) Due Diligence and Local Policies: Chapter II General Policies, Article 10: "Enterprises should: ... Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation."

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

Article 12: "Enterprises should: ... 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."

Commentary on General Policies, Paragraph 19: "If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm."

(Additional referral to Commentary on Human Rights Paragraph 40)

General Policies Preamble Paragraph: "[Enterprises should] take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders."

Chapter I Concepts and Principles, Article 1 and 2: "some matters covered by the Guidelines may also be regulated by national law or international commitments." And "Obeying domestic laws is the first obligation of enterprises."

D) Environmental Impacts: Chapter VI Environment, Preamble Paragraph: "Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development."

Article 2 a) "...enterprises should: ... provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance;"

Article 2 b) "enterprises should: ... engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation."

Commentary on General Policies, Paragraph 3: "There should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development, and the Guidelines are meant to foster complementarities in this regard. Indeed, links among economic, social, and environmental progress are a key means for furthering the goal of sustainable development."

8. The Request for Review alleged that Corriente Resources, through EcuCorriente's activities: 1) lacked respect for right to prior consultation of general population based on environmental risks and lack of free, prior and informed consent of Indigenous population and inadequate environmental consultation; 2) violated community rights to property, indigenous peoples' rights to lands and territories, and the right not to be forcibly displaced; 3) violated Indigenous peoples' rights and created social divisions; 4) involved the Company in state repression of social protest and violence against those opposed to the introduction of large scale mining; 5) risked impacts on biodiversity and ecological integrity in the Condor mountain range, violated the right to water and the rights of nature; and 6) caused poor working conditions.

9. Pursuant to the process outlined in the Procedural Guidance of the OECD Guidelines and the Canadian NCP's Procedures Guide, the NCP obtained legal research to clarify and confirm the relationship between the companies and subsidiaries involved in order to determine the Company's ties to Canada, and to determine which company to approach as both Corriente Resources and CRCC Tongguan (Canada) were listed in the Request for Review, and neither are listed as publically traded companies. Once the relationship between the companies and Corriente Resources' registration in Canada were confirmed, the NCP wrote to the Company on October 11, 2013, requesting a reply in relation to the content of the Request for Review submitted by the Notifiers. Over a period of three months, the Canadian NCP approached Corriente Resources for additional information. In the course of those communications, the NCP noted that should the specific instance be found to be merited and substantiated, the goals of the process are to engage in dialogue-facilitation between the Parties. Corriente Resources submitted its response in a series of emails from December 17th to 23rd, 2013, and translations of documents on March 25th, 2014.

10. The Company outlined several considerations in their response to the Request for Review, including:

- Corriente is a 100% foreign controlled entity with an office in Vancouver, Canada;
- Canada is not the Multinational Enterprise's home country;
- the Multinational Enterprise's home country is not an adhering country to the OECD Guidelines (nor is it a member of the OECD);
- no shared management of the Ecuador-based operations exists in any material sense and thus Corriente Resources Inc. is not involved in the management of any affairs in Ecuador;
- the Company had previously engaged with many of the Notifiers and there were several court cases through the Ecuadorian system, where decisions had previously been rendered on the property and related issues;
- the Company had engaged in public outreach and consultations with local communities, the basis of the human rights complaints in the Request for Review; and,
- several of the issues outlined in the Request for Review were directed at state actions, not Company actions.

Given these elements, the Company concluded that it was not willing to engage in further dialogue, under Canadian NCP auspices, with the Notifiers.

11. On April 6, 2014, the Notifiers also submitted a supplementary summary of the report by the Comptroller General's office in Ecuador regarding its audit of the Mirador project. The NCP also reviewed these documents as part of the Initial Assessment.

OECD Guidelines and the NCP Mandate:

12. The Procedural Guidance chapter of the OECD Guidelines provides that NCPs shall make an initial assessment by considering "whether the issues raised merit further examination". In the Canadian NCP's *Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises*, the Initial Assessment process outlined therein notes that in determining whether the issues raised merit further examination, the NCP will determine whether the issues are bona fide and relevant to the implementation of the Guidelines. In this context, the NCP will take into account a number of factors, as outlined below:

- *the identity of the party concerned and its interest in the matter;*
- *whether the issues are material and substantiated;*
- *whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;*
- *the relevance of applicable law and procedures, including court rulings;*
- *how similar issues have been, or are being, treated in other domestic or international proceedings; and*
- *whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.*
- *the request(s) and solution(s) that the notifier(s) is seeking and whether these are possible within the mandate of the NCP; and*
- *what the notifier(s) have indicated about their willingness or unwillingness to participate in a facilitated dialogue with a view to resolving the matter.*

13. As per the Procedures, the NCP may also review other open source information and consult relevant government departments with knowledge of the issues raised.

14. The mandate and procedures of the NCPs are outlined in the procedural guidance chapter of the OECD Guidelines, and the associate commentaries. These documents may be obtained through the links on the Canadian NCP's website at www.ncp-pcn.gc.ca

Initial Assessment Analysis and Considerations:

15. The NCP reviewed all valid material presented by the Notifiers and the Company between September 3, 2013, and April 6, 2014.

16. Merit and Substantiation: The Request for Review largely rests on human rights issues as they relate to property law, and with the obligation to consult with indigenous and non-indigenous peoples. The Notifiers indicated in the Request for Review that, in their view, the company's information meetings and environmental studies did not constitute an adequate consultation process, for lack of free, prior and informed consent. However, the Notifiers and Company both noted EcuCorriente's efforts to engage stakeholders. The OECD Guidelines do not include a requirement for free, prior and informed consent. The Notifiers and Company noted court proceedings that took place in Ecuador in line with the issues raised in the Request for Review. Since the court cases preceded the Request for Review, as per the fourth and fifth factors noted in the [OECD Guideline and the NCP Mandate](#) section above, the NCP took into consideration the relevance of the court rulings and how the issues were treated in the context of Ecuadorian domestic proceedings. The documentation provided by the Company noted that the Ecuadorian courts rejected the claims. Prior decisions rendered by a court in the same jurisdiction, on the same issue(s) brought forward in the request for review, were taken into account in determining whether there is merit and

substantiation to the specific instance. The Notifiers also raise issues of alleged forcible displacement, state repression of social protests and violence against communities, and linked these to policies and actions undertaken by the Government of Ecuador. A clear link to the Company's policies and actions was not established. The OECD Guidelines are aimed at improving company behaviour, and applying the OECD Guidelines to state actions is beyond the mandate of the Canadian NCP. The Notifier also raised concerns over future risks to the environment. The NCP found this inadequately substantiated given that the excerpts of the environmental assessments that were provided with the Request for Review did not raise those concerns. Finally, the Notifiers raised concerns over poor working conditions. However, they failed to provide substantive information on the company's labour policy that would substantiate those concerns.

17. Operational Status of the Company: given the facts regarding the relationships of the companies at issues and the complex nature of the corporate structures of the companies named in the Request for Review, the NCP undertook legal research to confirm the status of the Corriente Resources. While the Company is legally registered in Canada, Corriente Resources does not consider itself to be a Canadian-owned independent company as it is a wholly foreign-owned subsidiary by CRCC-Tongguan. According to the company, those functions based in Canada are not part of the management structure responsible for the affairs of the Ecuador-based company. The company explains that on-site decision-making powers for the Corriente Resources Inc. are held by Ecuacorriente based in Ecuador, and the project is managed by CRCC-Tongguan based in China. That the key players in this case are based outside of Canada is further reflected in the Request for Review and its supplementary materials, as the Notifiers first, and separately, engaged with the Ecuador and China based companies as the decision makers prior to submitting the Request for Review.

18. However, given that the focus of the Request for Review was based on allegations of insufficient stakeholder engagement, and that Corriente Resources is incorporated in Canada, the NCP acted in good faith to approach the Company and explain that the NCP process is designed to encourage meaningful dialogue to help the Parties find resolution to the issues raised in the Request for Review. The Canadian NCP strongly supports the perspective that stakeholder engagement should be a continuous process throughout the life span of a project. For these reasons, the Canadian NCP was willing to offer the services of its good office in this case, if the Request for Review was deemed to be merited and substantiated, even though an Ecuador or China-based dialogue process would be more appropriate and effective. While the Notifiers stated in the Request for Review that they were willing to engage in dialogue facilitation, the Company has declined to engage in such a process.

Conclusions:

19. The NCP is dedicated to the objective of contributing to the resolution of issues that arise in the implementation of the OECD Guidelines. However, based on the NCP's review of the documentation provided by the Notifiers and the Company, and the NCP's subsequent analysis, the NCP does not find the specific instance to merit further examination. Furthermore, in light of the Company's position that it does not wish to engage in dialogue facilitation, the NCP finds that it is unable to proceed further.

20. The Canadian NCP considers the Specific Instance closed.

Date Modified: 2014-07-24