

## FINAL ASSESSMENT REPORT

### **Specific Instance regarding the operations of DOE RUN PERÚ S.R.L. and THE RENCO GROUP INC.**

This Final Assessment Report is prepared with respect to the Specific Instance submitted by COOPERACION, MOVIMIENTO POR LA SALUD DE LA OROYA, FORUM SOLIDARIDAD, RED UNIENDO MANOS PERÚ, OXFAM AMERICA/PERU and OXFAM AMERICA/WASHINGTON, for the alleged breach of the Organization for Economic Co-operation and Development - OECD Guidelines for Multinational Enterprises, by the companies DOE RUN PERÚ SRL and THE RENCO GROUP INC.

#### **I. BACKGROUND**

1. Since July 26, 2008, Peru is a signatory of the OECD Declaration on International Investment and Multinational Enterprises and participates in the activities of the OECD Investment Committee. Also, in accordance with the Agreement of the Steering Council of the Private Investment Promotion Agency - PROINVERSIÓN, dated July 1, 2009, this entity has been designated as the National Contact Point of the OECD in Peru (NCP Peru), to promote and implement the OECD Guidelines for Multinational Enterprises (Guidelines).
2. On February 24, 2011, the NCP Peru received the Specific Instance raised by COOPERACION, MOVIMIENTO POR LA SALUD DE LA OROYA, FORUM SOLIDARIDAD, RED UNIENDO MANOS PERÚ, OXFAM AMERICA/PERU y OXFAM AMERICA/WASHINGTON, for the alleged breach of the Guidelines by the companies DOE RUN PERÚ SRL and THE RENCO GROUP INC., as a result of the operations carried out in La Oroya Metallurgical Complex, Peru.
3. On June 7, 2011, NCP Peru met with the **representatives of the claimants** in order to have them explain their claim in greater detail and learn about the procedures to be followed by NCP Peru. Likewise, on July 11, 2011, the claimants submitted complementary information to the Specific Instance.
4. On July 22, 2011, by Official Document N° 274-2011-DSI/PROINVERSIÓN, the NCP Peru informed DOE RUN PERÚ S.R.L. on the Specific Instance submitted by COOPERACION, MOVIMIENTO POR LA SALUD DE LA OROYA, FORUM SOLIDARIDAD, RED UNIENDO MANOS PERÚ, OXFAM AMERICA/PERU and OXFAM AMERICA/WASHINGTON. Also, NCP Peru invited DOE RUN PERÚ S.R.L. to a meeting in order to discuss the specific instance raised.
5. On September 21, 2011, NCP Peru held a meeting with the representatives of DOE RUN PERÚ S.R.L. to explain the procedure to follow and listen to their position in relation to the specific instance raised.



6. On October 7, 2011, DOE RUN PERÚ S.R.L. sent to the NCP Peru a document containing details of the arguments stated in the document of the Specific Instance.
7. On November 15, 2011, the NCP Peru contacted the NCP USA to keep it informed on the procedure. In this regard, the NCP USA stated that the competence of this case corresponded to NCP Peru.
8. On December 4, 2015, through Resolution of the Executive Directive N° 161-2015, PROINVERSIÓN approved Directive N° 003-2015-PROINVERSIÓN, for the "Attention of Specific Instances Relating to the Implementation of the OECD Guidelines" (Directive). It should be noted that, although the communications received by the parties involved in this Specific Instance, as well as the actions carried out by the NCP Peru, are dated prior to the issuance of the Directive, it was considered appropriate that this Specific Instance has a Final Assessment Report in accordance with the procedures established in the Directive.

## **II. The Specific Instance - arguments and facts stated by COOPERACION, MOVIMIENTO POR LA SALUD DE LA OROYA, FORUM SOLIDARIDAD, RED UNIENDO MANOS PERÚ, OXFAM AMERICA/PERU and OXFAM AMERICA/WASHINGTON**

1. Claimants COOPERACION<sup>1</sup>, MOVIMIENTO POR LA SALUD DE LA OROYA<sup>2</sup>, FORUM SOLIDARIDAD<sup>3</sup>, RED UNIENDO MANOS PERÚ<sup>4</sup>, OXFAM AMERICA/PERU<sup>5</sup> y OXFAM AMERICA/WASHINGTON (hereinafter THE CLAIMANTS) filed on February 24, 2011, the Specific Instance against DOE RUN PERÚ SRL (hereinafter DOE RUN PERÚ) and THE RENCO GROUP INC. (hereinafter THE RENCO GROUP) about the alleged violation of the OECD Guidelines and requesting the assistance of the NCPs to resolve disputes arising

<sup>1</sup> COOPERACIÓN is a Peruvian non-profit civil association, which since 1997 promotes the knowledge and exercise of social, environmental, political, cultural and economic rights; as well as the sustainable management of the territory with gender and intercultural approaches.

Source: <http://cooperacion.org.pe/acerca-de-nosotros/que-hacemos/>

<sup>2</sup> MOSAO is an organization formed by those affected by pollution in La Oroya.

Source: <https://www.ohchr.org/Documents/Issues/Business/ForumSession1/.../RosaAmaro.ppt>

<sup>3</sup> FORUM SOLIDARIDAD PERÚ is recognized as a promoting organization for change and for the empowerment of local actors. Their analysis and studies have been or are inputs for the lobbying and advocacy of these stakeholders.

Source: <http://www.psf.org.pe/institucional/presentacion-2018/>

<sup>4</sup> RED UNIENDO MANOS PERÚ is a network made up of different nonprofit civil society organizations that is registered in the Register of National Non-Governmental Development Organizations (NGDOs) Receiving International Technical Cooperation

Source: <http://www.apci.gob.pe/proyecto/ReporteServlet?accion=>

<sup>5</sup> OXFAM is an international confederation of 19 organizations that work alongside partner organizations and local communities in more than 90 countries.

Source: <https://peru.oxfam.org/qui%C3%A9nes-somos>



from the operations of THE RENCO GROUP and DOE RUN PERÚ at La Oroya Metallurgical Complex.

2. It should be noted that the Specific Instance was submitted by THE CLAIMANTS to the NCP Peru and the NCP of the United States of America, however, as indicated in Item 7 of the Background, the NCP USA considered that the competence of the Specific Instance submitted corresponded to the NCP Peru.

3. DOE RUN PERÚ (currently in liquidation<sup>6</sup>) is a metallurgical mining company that, in October 1997, acquired La Oroya Metallurgical Complex, located in the province of Yauli, department of Junín, after a public auction process. Within the framework of the process, the company DOE RUN PERÚ committed to invest US\$ 107.6 million in the Adequacy and Environmental Management Program - PAMA previously developed by Empresa Minera del Centro del Perú S.A. - Centromin Peru and approved by the Ministry of Energy and Mines of Peru. Likewise, since the beginning of 2007, DOE RUN PERÚ is a subsidiary of THE RENCO GROUP.<sup>7</sup>

4. As stated by THE CLAIMANTS in the Specific Instance, DOE RUN PERÚ and THE RENCO GROUP may have violated the following sections of the OECD Guidelines:

a) Chapter II, Section 1; Chapter II, Section 6; Chapter V, Section 8<sup>8</sup>: for not complying with its obligations in accordance with Peruvian and international standards on air quality, water and the protection of human health and the environment.

b) Chapter II, Section 7; Chapter V, Sections 1 (a), 2 and 3<sup>9</sup>: for not complying with the requirements of monitoring, collection and dissemination of information and self-management.

c) Chapter III, Sections 2, 4 (e), 5 (a) and (b)<sup>10</sup>: for not complying with the disclosure requirements.

d) Chapter II, Section 2; Chapter V, Sections 3 and 5<sup>11</sup>: for contributing to the violation of human rights.

5. In that regard, THE CLAIMANTS requested the NCP Peru to encourage significant improvements in the operations of DOE RUN PERÚ and THE RENCO

<sup>6</sup> SUNAT: <http://e-consultaruc.sunat.gob.pe/cl-ti-itmrconsruc/jcrS00Alias>

<sup>7</sup> THE RENCO GROUP INC. is a family-owned private investment company founded in 1975 by Mr. Ira Rennert, headquartered in New York and maintains a wide range of businesses that include mining and mineral recovery, defense equipment, metal product manufacturing and automotive supply.

Source: <http://www.rencogroup.net/history.php>

<sup>8</sup> According to the 2011 OECD Guidelines Review, Section 8 currently corresponds to Chapter VI

<sup>9</sup> According to the 2011 OECD Guidelines Review, Sections 1 (a), 2 and 3 correspond to Chapter VI currently

<sup>10</sup> According to the 2011 OECD Guidelines Review, Sections 2, 4 (e), 5 (a) and (b) have been modified and reordered but continue to belong to Chapter III

<sup>11</sup> In accordance with the 2011 OECD Guidelines Review, Sections 3 and 5 currently correspond to Chapter VI



GROUP in La Oroya Metallurgical Complex, in order to guarantee due compliance with the OECD Guidelines. Similarly, they requested assistance in the negotiation of an agreement with DOE RUN PERÚ and THE RENCO GROUP so that: (i) DOE RUN PERÚ and THE RENCO GROUP act immediately in order to comply with the OECD Guidelines, the provisions of the Adequacy and Environmental Management Program (PAMA, by its acronym in Spanish), other agreements signed by DOE RUN PERÚ and all Peruvian environmental and human health regulations; (ii) an updated agenda is established on the immediate compliance with the PAMA and (iii) DOE RUN PERÚ and THE RENCO GROUP adhere to the improved regulations on corporate social responsibility and demonstrate the good faith of their efforts to fulfill their legal obligations in La Oroya

6. According to the statements made by THE CLAIMANTS, the events were developed as follows:

- “La Oroya smelter began operating in 1922, owned by the American company Cerro de Pasco Corporation, with three metallurgical circuits that began operating in consecutive years (copper in 1922, lead in 1928 and Zinc in 1952). In 1974, the Peruvian government nationalized the complex and Central Peru Mining Company S.A. (CENTROMIN) took over the operations. In mid-1990s, on account of an agreement with the Ministry of Energy and Mines of Peru (MEM) CENTROMIN outlined the Adequacy and Environmental Management Program (PAMA by its acronym in Spanish) to address important environmental concerns caused by the operation of the complex. In 1997, Doe Run Peru bought La Oroya Metallurgical Complex and assumed the obligation to comply with the adequacy projects contemplated in the PAMA (by its acronym in Spanish).”
- “In 2000, the US Environmental Protection Agency (EPA) sent administrative orders to Doe Run, requiring the company to implement strict environmental improvements to reduce pollution in Herculaneum, Missouri, where the country's largest lead smelter is located. With less stringent environmental controls than those imposed in the United States, in 1998, the La Oroya smelter generated seventeen times more emissions than the Herculaneum smelter.”
- “Assessments conducted in 1999, 2000, 2001 and 2005 showed that the average level of lead, cadmium and arsenic in the blood of La Oroya residents were above the levels recommended by the World Health Organization and the US Centers for the Disease Control and Prevention”
- “The operation of La Oroya smelter generates serious and chronic exposure of the community population to highly toxic pollutants. Health effects on citizens of La Oroya are serious and include irreversible damage to the respiratory system, cancer, adverse effects on the reproductive system and damage to vital organs; the impact on the



physical and intellectual development of young children is really worrying. (...) Renco / DRP has not provided complete or adequate information to the citizens of La Oroya regarding the consequences of the contamination.”

- “In accordance with the purchase contract entered into Renco/DRP and the Peruvian government, Renco/DRP agreed to modernize and reduce emissions of acceptable levels by January 13, 2007. Renco/DRP committed to considerably reduce the environmental impact of the company and it was expected that changes necessary to meet the company's environmental objectives had an approximate cost of \$ 107.5 million. In exchange for assuming these obligations, Renco/DRP was insured by CENTROMIN, in accordance with the provisions of Supreme Decree N° 042-97-PCM, against all environmental liability arising from the pre-purchase operations of the complex.”
- "... Renco has frequently requested the extension of the PAMA and, since 2004, the company had invested only \$ 33.2 million of the \$ 174 million originally committed to be used for environmental cleaning. In February 2004, Renco / DRP submitted to the MEM a request for the extension of the PAMA deadline for the construction of sulfuric acid plants, which are necessary to reduce the harmful emissions of sulfur dioxide generated during the smelting process. Sulfuric acid plants would also significantly reduce emissions of toxic metal particles from the chimneys of the complex. On December 29, 2004, the government issued Supreme Decree N° 046-2004-EM, which allowed the extension of one or more PAMA projects under exceptional circumstances. The Decree allows the extension of the environmental terms of the PAMA for a period of three years. The Decree also offers the possibility of extending the term to a fourth year, if a health risk assessment considers it necessary. DRP requested an extension on December 20, 2005 and its request was approved on May 26, 2006, so the PAMA deadline was postponed until October 2009.”
- “Finally, in August 2009, the company requested the suspension of payments due to bankruptcy. Smelting activities were temporarily stopped in June 2009 after the company reported that the banks had frozen their finances; (...) In September 2009, DRP was granted another 30-month extension to comply with the PAMA.”

7. Additionally, THE CLAIMANTS alleged that:

- a) Until 2005, DOE RUN PERÚ and THE RENCO GROUP were sued in more than 198 lawsuits filed by the employees of DOE RUN PERÚ and THE RENCO GROUP for damages caused by industrial diseases.



b) The National Society of Mining, Petroleum and Energy of Peru (SNMPE, by its acronym in Spanish), a voluntary industrial association, suspended DOE RUN PERÚ in June 2009 for breach of the basic mining and environmental regulations.

### III. Arguments stated by DOE RUN PERÚ S.R.L. and THE RENCO GROUP INC.

1. After the meeting held in September 2011, DOE RUN PERÚ sent a document to the NCP Peru stating the following:
  - “On October 23, 1997, Doe Run Peru (DRP) acquired CMLO from the Peruvian Government. For the purposes of the sale, the Peruvian State, through Centromin Peru (CMP) prepared an Adequacy and Environmental Management Program (PAMA by its acronym in Spanish), which by Directorial Resolution N° 334-97-EM/DGM, of October 16, 1997, was divided into 2 PAMAs, a PAMA in charge of the Peruvian Government and another PAMA in charge of Doe Run Peru (CMLO acquiring company).”\*
  - “The PAMA in charge of DRP considered the execution of environmental projects with an investment of US\$ 107.6 million.”
  - “DRP complies with the OECD guidelines: Chapter II, sections 1 and 7, Chapter V. sections 1 (a), 3 and 8, referring to DRP's contribution to the economic, social and environmental development of La Oroya, the Central Region and the surrounding communities.”
  - “Doe Run Peru complies with its environmental commitments which are established in the Shares Transfer Agreement of La Oroya Metallurgical Complex (see Annex 1) and in the Adequacy and Environmental Management Program - PAMA, where DRP, in relevant manner, not only had to operate the CMLO using better environmental practices than its predecessors, but also had to pay US\$ 121.4 million for CMLO shares and invest US\$ 120 million in modernization and operational improvement projects during the first 5 years of CMLO administration, which was complied with and audited by the Peruvian Government (see Annex 4). ”
  - "... as part of the obligations provisioned in the Transfer Agreement, DRP had to execute an Adequacy and Environmental Management Program whose objective was to achieve the Maximum Permissible Levels (MPL) for liquid effluents and gas emissions with an investment of US\$ 107.6 million, in a 10 years term.”



\* CMLO means La Oroya Metallurgical Complex

- “For the execution of the PAMA projects already completed, the company used cutting-edge technology to ensure the achievement of environmental objectives. To date, DRP has invested, only in environmental projects, US\$ 315.6 million, tripling the amount of US \$ 107.6 million originally committed to the Government.”
- “DRP complies with the OECD guidelines: Chapter II, section 2, Chapter V, Sections 1 (a), 3, 5 and 8, on respect for human rights, evaluate and make appropriate decisions about foreseeable impacts on the environment, health and safety in the CMLO, as well as having and maintaining contingency plans for emergency responses.”
- “DRP has implemented occupational health and safety programs for its workers, after their successful outcome, it shared these experiences with the population through government institutions (Agreement with the Ministry of Health)”.
- “DRP has executed other projects, not contemplated in the original PAMA, aimed at minimizing environmental impacts on exposed workers and the population, such as: plant enclosures, repowering of dust collection systems (baghouses), paving of industrial areas inside the CMLO, laundry of truck tires, etc.”
- “DRP complies with the OECD guidelines: Chapter III, sections 2.4 (e), 5 (a) and (b), on the dissemination of environmental, non-financial, safety information, in accordance with the legislation in force and agreement with the workers.” “DRP complies with the guidelines: Chapter II, section 1.”
- “As a socially responsible company, DRP has shown a special concern for its workers, keeping 85% of the total number of workers on their payroll, without outsourcing them, and in working and salary conditions above the national average, especially in the mining sector, where many companies work primarily with contractors.”
- “DRP is a pioneer in encouraging social responsibility policies aimed at promoting the Sustainable Development of the city of La Oroya and surrounding communities. With the criterion of “the community promotes its development and DRP participates”, it has supported the execution of multiple initiatives of economic - social development (agriculture, livestock, afforestation, education, health, family welfare, etc.) that has represented an investment of US\$ 30 million in the Region of Junín (...).”
- “DRP complies with OECD guidelines: Chapter III, sections 2.4 (e), 5 (a) and (b), on the dissemination of environmental, non-financial, safety information, in accordance with the standards in force and agreement with the workers”. “Likewise, DRP complies with the guidelines: Chapter V,



sections 2 (a), 2 (b) and 3, referring to compliance with environmental standards.”

- “Finally, due to the insolvency proceeding in which DRP is involved, our company is promoting a integral solution with a restructuring plan that considers the restart of operations according to national and environmentally responsible policies that include the completion of the last PAMA project , keeping the work source and payment to creditors, unlike the alternative of liquidation that would lead to the socio-economic collapse of the city of La Oroya and of thousands of families living from this activity, and socio-economic abandonment of the Central Region of the country.”

#### IV. Procedure followed and scope of action of the NCP Peru

1. As established in the OECD Guidelines, they contain non-binding principles and standards for responsible business conduct compatible with applicable laws and internationally recognized standards<sup>12</sup>.
2. Similarly, it is established that the Guidelines “*are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the Guidelines by enterprises is voluntary and not legally enforceable.*”<sup>13</sup>
3. In this case, the NCP Peru reviewed the Specific Instance submitted by THE CLAIMANTS against the companies DOE RUN PERÚ and THE RENCO GROUP, referred to the possible breach of the Guidelines regarding environment; monitoring, collection and dissemination of information, self-management, disclosure; and violation of human rights.
4. In this regard, it should be taken into account that although the Guidelines do not include a precise definition of a multinational company, it is established that they are present in all sectors of the economy and that “*They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities)*”<sup>14</sup>.



<sup>12</sup> OECD Guidelines, Preface, Item 1.

<sup>13</sup> OECD Guidelines, Concepts and Principles, Item 1.

<sup>14</sup> OECD Guidelines, Concepts and Principles, Item 4

5. Likewise, the Guidelines mentioned that companies must “*Contribute to economic, environmental and social progress with a view to achieving sustainable development.*” and “*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*”<sup>15</sup>.
6. From the review of the Specific Instance, it can be noted that it involves issues of environment, human rights, information dissemination and disclosure. It should also be noted that similar issues have also been raised in other forums, such as the Court of First Instance of the Circuit Court of Missouri, St. Louis, and investor- State dispute settlement processes.
7. In this regard, it should be considered that the Guidelines establish that “*NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation.*”<sup>16</sup>.
8. In that sense, it is appropriate that the NCP Peru offers its good offices in order to provide the parties with a forum and opportunity for dialogue on the issues related to the Specific Instance. For the aforementioned, NCP Peru contacted the parties involved in order to meet and have a deeper knowledge of the facts and of the positions of both parties, carrying out the relevant coordination meetings, as stated in Items 3 and 5 of the Background of this report.

## V. Considerations of the NCP Peru regarding the Specific Instance

1. In accordance with the Guidelines, their objective is to ensure that the activities of multinational companies “*are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.*”<sup>17</sup>.
2. As provisioned in Item 5 of Section II of this report, in the submitted Specific Instance, THE CLAIMANTS requested the NCP Peru to encourage significant improvements in the operations of DOE RUN PERÚ and THE RENCO

<sup>15</sup> OECD Guidelines, General Principles, Literal A, Items 1 and 7.

<sup>16</sup> OECD Guidelines, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Item 26.

<sup>17</sup> OECD Guidelines, Preface, Item 1.



GROUP in La Oroya Metallurgical Complex, in order to ensure due compliance with the OECD Guidelines, as well as assistance in the negotiation of an agreement with DOE RUN PERÚ and THE RENCO GROUP to comply with the OECD Guidelines and other environmental and human health regulations, among others.

3. In relation to the Specific Instances, the Guidelines establish that *“The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.”*<sup>18</sup> For this, the NCP must offer its good offices so that the parties involved can settle the issue.
4. However, after the meetings held, in which the NCP Peru offered its good offices to the parties, the procedure of the Specific Instance was paralyzed because neither THE CLAIMANTS, DOE RUN PERÚ nor THE RENCO GROUP came forward nor contacted NCP Peru another time.
5. In that sense, after coordination with both parties and the Specific Instance; and, considering the time elapsed since the submission of the Specific Instance, the NCP Peru considered that its actions in the present Specific Instance should conclude.

## VI. Final Appreciations

1. The NCP Peru considers that it is important to have spaces for dialogue that allow the parties involved to solve matters of interest to them, through the good offices of the NCPs.
2. Notwithstanding, the NCP Peru considers that the steps it can take to generate opportunities for dialogue are limited by the decision of any of the parties, or both, of not continuing with a negotiation period, probably considering that the Issues raised can be settle in other forums.
3. Likewise, and within the framework of the Directive mentioned in Item 8 of the Background of this report, the NCP Peru considers it pertinent to issue this Final Assessment Report, which was sent to the parties involved to review whether the facts hereby included are correct as per the information submitted to NCP Peru.



<sup>18</sup> OECD Guidelines, Procedural Guidance, Literal C

4. Similarly, in accordance with said Directive and Commentary N° 31 on the Implementation Procedures of the Guidelines, this Report will be published on the NCP Peru website.
5. Finally, the NCP Peru reiterates its willingness to become a forum for debate and dialogue between the business sector and non-governmental organizations, that seek to settle specific instances, in accordance with the applicable legislation and the OECD Guidelines.

Lima, September 18<sup>th</sup> 2019



**César Martín Peñaranda**

**National Contact Point in Peru**