



Government
of Canada

Gouvernement
du Canada

[Home](#) > [Global Affairs Canada](#) > [Trade](#)

> Yamana Gold (Minera Florida) and community members of El Asiento, Talami and Villa ...

Yamana Gold (Minera Florida) and community members of El Asiento, Talami and Villa Alhué (Chile)

(the latter represented by Chilean law firm Justicia y Reparación)

Final statement

25/10/2022

1. Executive summary

1.1 On February 24, 2022, the Canadian National Contact Point (NCP) received a Request for Review (RfR) from law firm *Justicia y Reparación* (the Notifier) representing 42 members purportedly from the El Asiento, Talami and Villa Alhué communities in Chile. The RfR was filed against Canadian company Yamana Gold (the Respondent) regarding the operations of its Chilean subsidiary Minera Florida (MFL).

1.2 The Notifier alleges that the Respondent infringed Chapters IV (Human Rights) and VI (Environment) of the Guidelines and requested the NCP to facilitate a dialogue to agree upon remedy measures.

1.3 On March 3, the Canadian NCP met with the Chilean NCP and, based on each NCP's capacity, it was agreed that the Canadian NCP would take the lead on this RfR, with the support of the Chilean NCP, if required.

1.4 The NCP Secretariat held separate conversations and had several email exchanges with both parties. The Notifier and the Respondent were given the opportunity to provide clarifications and supporting documentation and to do a factual check of the information used for the Initial Assessment.

1.5 The Working Group met on July 5, 2022, to examine the case and to formulate a recommendation to the NCP Committee.

1.6 Based on the Working Group recommendation, the NCP Committee concludes that it will not to offer its Good Offices but will make a recommendation and will actively follow-up on this case.

1.7 The Canadian NCP recommendation is for the parties to use the grievance mechanism put in place by the company, with the presence of the NCP as an observer. Should the parties not reach a common understanding of the issue at hand or, if the Notifier is dissatisfied with the functioning of the company-led grievance mechanism, the NCP remains open to reconsidering the case in order to determine whether to offer Good Offices.

1.8 The Initial Assessment does not determine whether the respondent violated the Guidelines, it determines whether the NCP can help the parties resolve their issues by offering good offices for dialogue.

2. Substance of the submission

2.1 The Notifiers are represented by the Chilean law firm *Justicia y Reparación*.

2.2 The Respondent is Canadian company Yamana Gold and its subsidiary in Chile, MFL.

2.3 The allegations brought forward concern the infringement of an existing environmental permit pertaining to the "Mirador" waste rock storage facility (WRSF) corresponding to the Pedro Valencia mine owned by Yamana Gold through its Chilean subsidiary, MFL. More specifically, the Notifier alleges that the company overflowed the "Mirador" WRSF by 2.34 hectares in surface and by 565,700 tons in volume, beyond the approved limit stipulated in the environmental permit. The Notifier also alleges that water quality standards and air quality standards have not been respected and, that loss of vegetation is associated with the expansion of the WRSF. Moreover, the Notifier alleges that the overflow has negatively impacted the environment which affected the human rights of the community members it represents.

2.4 The Notifier claims that the Respondent violated the Guidelines failing to observe the OECD recommendations concerning the Human Rights (IV) and the Environment (VI) Chapters.

2.5 The Notifier has asked the NCP to facilitate a dialogue with the Respondent for the purpose of resolving the issue through the following actions, and **we quote**:

- The Respondent is "to commit to strictly comply with the standards fixed by the existing environmental permit in all aspects of its mining operations in Alhué meanwhile a new RCA (environmental permit) is processed by the Chilean Environmental authorities".
- The Respondent is to "develop a plan to urgently stop the ongoing expansion of the waste dump "Mirador", adopting the necessary measures to mitigate the environmental harm caused

by this circumstance to the habitat of "Altos de Cantillana" in Alhué".

- The Respondent is "to pay a fair compensation for the damages suffered by my clients because of the company's violation of their rights to life, to health, and to live in a healthy environment".
- To appoint independent experts from Canada to reassess the harm caused to those represented and to the environment (this request was added later in the review process).

2.6 The Respondent reiterates its commitment to engage in a constructive dialogue with any party and states that Yamana delegates responsibility to its subsidiary (MFL) to develop and maintain relationships with local stakeholders. It also notes that the notifying party and those represented have not made attempts to engage with MFL, despite the company's existing local consultation process and grievance mechanism.

2.7 The Respondent acknowledges the breach of the environmental permit concerning the WRSF overflow – which was self-reported - but refutes that the breach has had significant and irreversible impacts on the environment based on the WRSF monitoring data.

2.8 The Respondent submitted an Environmental Impact Assessment (EIA) to the Chilean regulatory process to, in part evaluate potential impacts and to address existing non-compliance issues.

2.9 The Respondent claims there is no evidence of adverse impacts on the Human Rights of the community members accruing from the WRSF overflow based on the monitoring data and since the allegations brought forward do not identify specific impacts.

Concerning the four remedy actions requested by the Notifier, the Respondent asserts the first two (see paragraph 2.5) are dealt with because active waste deposition at the WRSF ceased in 2018 and MFL is in the process of addressing non-compliance by way of the EIA. The

third action, consisting of a request for a monetary compensation, is to the Respondent's view, not substantiated as there are no demonstrable environmental and human rights impacts.

3. Initial assessment by the NCP

3.1 The Initial Assessment was conducted based on the information and documentation submitted by the Notifier and the Respondent and desk research, as needed. The process timeline is found in Annex B.

3.2 The information provided by the parties was shared with the other party.

3.3 The process took more than the three-month indicative timeline to allow the parties to provide additional information.

3.4 The Specific Instance was examined in consultation with the Working Group and approved by the NCP Committee.

3.5 The Initial Assessment was conducted assessing whether the issues raised are bona fide and relevant to the implementation of the Guidelines, taking into account the criteria listed in the NCP Procedures Guide and the OECD Procedural Guidance. These criteria are cumulative, meaning that, if the case fails to meet one or more criteria, it is not accepted:

I) the identity of the party concerned and its interest in the matter;

Yes

The Notifier states that it represents 90 community members from Villa Alhué, Talami and El Asiento. The notarized representation agreement provided to the NCP identifies 42 individuals. The NCP considers that representation is authenticated for 42 individuals.

II) whether the issues are material and substantiated;

Partly

Concerning Chapter VI of the Guidelines, the environmental breach is material and substantiated based on the respondent's self-reporting, the reports provided by the Notifier and on-line reporting from the Chilean Environmental regulator. The reported water and air parameters have exceeded the authorized levels occasionally. The damage to trees is confirmed based on the Chilean regulator's sanction.

- In its third quarterly report for year 2021 the company reported that the water quality standards for manganese, lead, aluminium, vanadium, cobalt and copper in the well, downstream from the Mirador WRSF, exceeded Chilean standards.
- A report submitted to the Chilean regulator in December 2021, states that the monthly average concentration of Particulate Matter-10 was under the maximum allowed except for December 14, surpassing the standard by 116%.

Concerning Chapter IV of the Guidelines, the NCP found that the issue raised lacked substantiation. The extent of the environmental damages caused by the unauthorized expansion of the WRSF and its impact to human rights require additional evidence and scientific studies to be substantiated.

III) whether there seems to be a link between the enterprise's activities and the issue raised in the Specific Instance;

Yes

IV) the relevance of applicable law and procedures, including court rulings;

Yes

The Chilean applicable environmental legal framework and regulations provide useful orientation and is relevant for the review of this case.

The company provided the list of environmental and sectoral permits issued by the Chilean Government. The Notifier alleges the infringement of the environmental permit pertaining to the "Mirador" waste rock storage facility (WRSF).

The company self-reported the WRSF overflow on two separate occasions to the environmental regulatory authorities in EIA filings in 2019 and 2021.

The Chilean environmental authority is processing an EIA for the expansion of the Pedro Valencia mine and the extension of the WRSF, among other updates.

The Chilean Forestry Agency fined the company and reached an agreement on reforestation to compensate for the loss of vegetation caused by the WRSF expansion.

V) how similar issues have been, or are being, treated in other domestic or international proceedings (evaluating whether an offer of Good Offices could make a positive contribution to the resolution of the issues raised and if it could create prejudice for either of the parties in their proceedings); and,

Yes

Parallel proceedings are currently taking place. We note that, as stipulated by the OECD Guidelines, NCPs do not necessarily reject the offer of Good Offices solely because parallel processes are underway. The NCP is not in a position to determine whether an offer of Good Offices could prejudice the pending Chilean regulatory decision, therefore it cannot

rule out that offering its good offices could make a positive contribution to the resolution of the issues raised.

The issue of non-compliance with the existing environmental permit is currently being addressed with the MFL100 EIA submitted to the Chilean authorities in November 2021. The EIA includes a plan of mitigation, repair and compensation measures to compensate the adverse environmental effects of the project on the environmental component of the flora and fauna. Environmental remedy measures by the Chilean regulator remain to be determined.

VI) whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

No

Given the fact that the Notifier and those represented have not yet undertaken a dialogue with MFL, the NCP is of the opinion that an offer of Good Offices is premature at this time.

However, the NCP encourages the parties to engage in a dialogue with the NCP Secretariat as an observer.

4. Conclusion

4.1 The NCP concludes that this submission does not merit further consideration. It does however offer a recommendation for the following reasons:

4.2 Criteria II is only partly met. While the infringement of the existing environmental permit is fully substantiated, and self-reported by the company, the significance of the alleged human rights infringements, caused by the WRSF overflow, and the extent to which they are supported by sound information, does not meet the criteria.

4.3 Criteria VI is not met. At this stage, it is premature to offer NCP Good Offices. As noted above, the notifying party is seeking four specific actions for remedy.

- To commit to strictly comply with the standards fixed in the existing environmental permit in all aspects of its mining operations in Alhué meanwhile the new EIA is processed by Chilean environmental authorities.
- To develop a plan to urgently stop the ongoing expansion of the waste dump "Mirador", adopting the necessary measures to mitigate the environmental harm caused by this circumstance to the habitat of "Altos de Cantillana" in Alhué.
- To pay a fair compensation for the damages suffered by my clients because of the company's violation of their rights to life, to health, and to live in a healthy environment.
- To appoint independent experts from Canada to reassess the harm caused to those represented and to the environment (this request was added later in the review process).
- Regarding the first two actions we note that it is impossible to currently comply with the existing permit given the overflow has occurred. An EIA was submitted to the Chilean regulator in November 2021 and, according to the company, active deposition of waste rock at the Mirador WRSF ceased in 2018. The company indicated that it will only restart such activities if and when a new permit is issued following the ongoing evaluation of the MFL 100 EIA. We note that the Notifier claims that deposits continued after 2018, based on a Google Earth image taken in February 2022.
- Concerning the third action, consisting in a financial compensation for the harm done to the community members, the Canadian NCP does not make determinations regarding alleged violations of the Guidelines, which includes any opinions

regarding compensation. Accordingly, this action should be discussed in a dialogue between the parties, if they agree to do so under the auspices of MFL's grievance mechanism. The fourth action, consisting in the appointment of Canadian experts to assess the harm caused, is outside the NCP's mandate.

5. Recommendation

5.1 The notifying party submitted the RfR to the Canadian NCP choosing not to engage in a dialogue with MFL as it expressed a lack of trust in the company's grievance mechanism. It is the Canadian NCP's view that this lack of trust could be overcome if both parties engaged in good faith dialogue using the company's existing grievance mechanism, to clarify the issues at hand. More specifically, for the notifying party to substantiate, with evidence, the hardships caused by the WRSF overflow and, for the company, to explain how its due diligence and compliance policies are implemented, in light of the long standing non-compliance situation.

5.2 The Canadian NCP therefore encourages the notifying party and MFL to use the grievance mechanism put in place by the company. This will allow those represented to engage in a direct dialogue with the company, conducted in Chile and in Spanish. On an exceptional basis, the Canadian NCP has Spanish capacity and offers to observe the dialogue.

5.3 However, should the parties not reach a common understanding of the issue at hand or, if the Notifier is dissatisfied with the functioning of the company-led grievance mechanism, the NCP remains open to reconsidering the case in order to determine whether to offer Good Offices.

6. Next steps

6.1 The parties have accepted the NCP's recommendation and will initiate a dialogue between MFL and those represented by Justicia y Reparación, with the NCP as an observer.

6.2 The Canadian NCP will proactively follow-up with the Notifier within six months from the publication of this Final Statement. As noted above, should the Notifier be dissatisfied with the process of the company's existing consultation mechanism, the Canadian NCP remains open to re-opening this case and considering the offer of Good Offices.

Annex A

Input provided by the Notifier and considered in the Initial Assessment

Engagement in dialogue

1. The notifying party states that it represents 90 community members.
2. At the beginning of the process, the Notifier indicated that it had not communicated with MFL for lack of trust, believing a meaningful dialogue could not be conducted through the company's grievance mechanism. The RfR was submitted to the Canadian NCP to ensure impartiality.
3. Later in the review process, the Notifier presented a letter, dated October 5, 2021, where the Notifier invited MFL to dialogue. The Notifier claims the letter was left unanswered.
4. The Notifier prefers good faith dialogue to court litigation though it does not rule out legal recourse.

Environmental permit infringement

5. The environmental permit issued by the Chilean authorities stipulates the WRSF can operate within 7.3 hectares and collect a maximum of 2,450,000 tons of waste rock.
6. Google Earth Pro software images report that the WRSF surface has been exceeding the authorized limits since 2010.
7. Google Earth Pro software images dated 2015 show a greater expansion of the WRSF, showing the company continued to use the facility despite the overflow.
8. According to Google Earth images taken in February 2022, the surface of the WRSF is greater than images in 2018. Therefore, there is no certainty that the company suspended the use of the WRSF in 2018.
9. In 2019 MFL submitted a request to the Chilean authorities to expand the approved surface and volume of the WRSF. In its submission, the company informs the authorities that the WRSF exceeds the surface authorized in the environmental permit and that the volume also surpasses the approved limit. The reported measures in 2019 are 9.65 hectares and 3,015 tons.
10. MFL retrieved the request referred to above on July 30, 2019.
11. MFL and Yamana have infringed minimum standards of due diligence standards to comply with the environmental permit. Public registries do not show any company reporting since 2008 concerning the environmental permit (requirement for bi-annual reports).
12. The water quality standards for manganese, lead, aluminium, vanadium, cobalt and copper in well No 1 (groundwater), downstream from the Mirador WRSF, exceeded Chilean standards in 2021 as reported to the Chilean authority on December 2021, in the

Third Quarterly Report of Water Quality at the "Pedro de Valencia Mine Waste Rock Dump".

13. The lack of compliance with the WRSF parameters and water quality parameters has negatively affected the habitat, including a reptile, close to extinction, and has potentially endangered flora.

14. The Notifier reports an infraction of Chapter VI (Environment) by failing to comply with domestic standards regarding waste management for 12 years and reporting water quality parameters exceeding the permitted level.

15. The company's behavior is not consistent with the Guidelines which requires Multinational enterprises to be proactive and transparent and to assess, anticipate and mitigate environmental risks.

Human rights infringements

16. The company's infringement of the conditions established in the environmental permit, does not only affect the environment of Alhué, but also endangers the life and health of the people living in Talami and El Asiento.

17. The Notifier reports an infraction of Chapter IV (Human Rights). The parameters for water and air established in the 2008 environmental permit have been exceeded, therefore the company has infringed the human right of the community members to live in a healthy environment.

Input provided by the Respondent and considered in the Initial Assessment

Engagement in dialogue

1. The notifying party states that it represents 90 people but the information provided lists 42 individuals and only 20 of the 42 provide

information about their domicile.

2. The letter to MFL offices was allegedly delivered when COVID government restrictions meant that the office in Santiago was closed. Staff collecting correspondence confirm no such letter was received.

3. Although the notifying party and those it represents state they wish to engage in open dialogue they have not engaged with MFL either through the existing grievance mechanism or in advance of filing their submission to the NCP, nor did they provide direct feedback during the MFL100 public participation process.

4. Local stakeholders routinely avail themselves of the MFL grievance mechanism and trust that issues are investigated and resolved.

5. Yamana delegates responsibility to its operating locations and MFL is committed to engage in dialogue.

6. Good faith is important for a meaningful dialogue; it is possible that some of those represented are involved in ongoing litigation.

Environmental permit infringement

7. Active deposit of waste rock material ceased at the Mirador WRSF in 2018. The WRSF exceeds its permitted capacity and areal extent, a fact that MFL reported on two separate occasions to the environmental regulatory authorities in Chile in Environmental Impact Assessment (EIA) filings.

8. The situation is currently being adjudicated in an active EIA process known as MFL 100 project that began in 2021.

9. The MFL 100 was submitted to a six month virtual and face-to-face voluntary citizen participation process prior to its entry into the environmental assessment system.

10. The EIA process is expected to come to resolution within the next 18 months. It is possible that some regulatory enforcement may

follow from MFL's self-disclosure, if this occurs, MFL will comply.

11. Chile has a long-standing and well-established environmental regulatory framework to approve permits, oversee mitigation, enforce compliance and apply sanctions.

12. MFL has extensive monitoring programs in place for a range of media, including those to assess possible environmental impacts from the WRSF, such as surface and ground water quality, air quality and noise and reports these data regularly to the regulator in Chile.

13. There are no demonstrable impacts to the receiving environment from the Mirador WRSF beyond the direct impact of trees that were affected by the expansion of the WRSF beyond its permitted areal limit.

14. MFL has been sanctioned by the National Forestry Corporation (CONAF) for damage to trees outside the permitted area and is in discussions to provide an offset for impacted trees that will be considerably greater than the damage incurred.

15. Any impacts certainly fall very short of the "serious and irreversible environmental damage" mentioned in Chapter VI of the Guidelines.

16. Water for domestic consumption in the El Asiento community is sourced from a well located in the course of the Alhué river and was installed with the technical advice of the national drinking water company and other state agencies. It is monitored regularly to meet Chilean drinking water quality standards. Residents do not consume surface water, confirming there is no pathway for potential human rights impacts associated with water.

17. Water for domestic consumption purposes was trucked to Talami from a source 35 kilometers away until 2021. The topography between the WRSF and Talami, and the location of the Alhué river

between Talami and the WRSF means that Talami residents are physically, visually, and hydrologically isolated from the WRSF. Environmental and human rights impacts to residents of Talami from the WRSF are virtually impossible.

18. Air quality monitoring data demonstrates a high level of compliance with regulated levels. MFL has received one dust related grievance concerning the WRSF over the span of four years. The grievance was resolved and no comments were received related to dust during the MFL100 public participation process. The risk of fugitive dust is only incrementally increased by the extension of the facility beyond its permitted limits, which is the issue at hand. Health records are not available through government departments in Chile and thus we are unable to speculate about the incidence of disease in the Alhué region, but can say no cases have come to our knowledge.

Human Rights infringements

19. There is no link between the non-compliance involving the WRSF and any infringements of human rights, particularly since there are no identifiable environmental impacts to people from the WRSF. There is no serious and irreversible environmental damage and no pathway to human rights infringement related to the WRSF.

Other

20. There is a rigorous legal system in Chile through which technical violations such as this can be processed. We suggest that the NCP forum is not the appropriate mechanism for scientific determinations. There is no benefit to the NCP providing its "Good Offices" to attempt to bring the parties together to resolve the allegations of violation of the Guidelines.

Annex B

Process timeline

- February 24 Reception of Request for Review (RfR).
- February 25 The Secretariat acknowledges receipt of the RfR and requests proof of representation.
- February 28 Reception of proof of representation.
- March 3 The Canadian and Chilean NCP Secretariats meet to discuss the case – it is agreed Canada will lead, given Chilean NCP workload.
- March 7 The Notifier is informed the Canadian NCP will take on the case and is invited to a TEAMS meeting on March 9.
- March 14 TEAMS meeting with the Notifier.
- March 23 The Respondent is notified.
- March 23 The Secretariat requests authorization to share the names of the community members represented by the Notifier with the Respondent.
- March 25 The Secretariat holds a meeting with Yamana's SVP, Safety, Health and Sustainable Development and SVP, General Counsel.
- March 29 A reminder is sent to the Notifier for the authorization to share the names of the community members it represents.
- April 4 The NCP Committee members are notified of the RfR and invited to participate in the ad hoc Working Group.
- April 4 The Secretariat receives approval from the Notifier to share the names of the community members it represents.
- April 4 The list of community members is sent to the Respondent.
- April 5 The Respondent requests a five-day extension to provide its response. Extension granted to April 15.
- April 5 The Notifier is informed of the extension given to the Respondent.
- April 13 The Secretariat receives the Respondent's response.

- April 14 The Secretariat acknowledges receipt of the Respondent's response and requests a confirmation that their response can be shared with the Notifier.
- April 19 The Secretariat meets with the Respondent at its request.
- April 19 The Secretariat receives the written approval to share the Respondent's response with the notifying party.
- April 19 The Secretariat acknowledges receipt of approval to share the company's response.
- April 19 The Secretariat sends an email to the Notifier to seek a meeting on April 22 before sharing the company's response.
- April 21 The Secretariat receives documents in Spanish with information to support the allegations.
- April 22 Meeting with the Notifier.
- April 22 The Respondent's response is shared with the Notifier. Their comments are due May 6.
- May 3 Receipt of the Notifier's observations on the Respondent's response.
- May 4 The Secretariat acknowledges receipt of the observations and requests the authorization to share them with the Respondent.
- May 9 The Secretariat receives the approval to share the observations with the Respondent.
- May 10 The Notifier's observations are shared with the Respondent.
- May 16 Meeting with the Respondent.
- May 19 The Secretariat receives the Respondent's comments on the Notifier's response to the Respondent's response.
- May 24 The Secretariat acknowledges receipt of Respondent's comments and requests permission to share them with the Notifier.
- May 26 The Respondent provides the authorization to share its comments with the Notifier.
- May 27 The Secretariat shares the Respondent's comments with the Notifier.

- May 27 The case summary is sent to the parties for a factual check.
- May 30 The Respondent provides its factual check.
- June 1 The Secretariat confirms receipt of the Respondent's factual check.
- June 6 The Notifier provides its factual check.
- June 16 The Secretariat confirms receipt of the Notifier's factual check.
- July 5 The ad hoc working group meets to review the case and formulate a recommendation to the NCP Committee.
- July 19 The Initial Assessment and the working group recommendation are sent to the NCP Committee for its decision.
- July 26 The NCP Committee approves the decision not to offer good offices and the recommendation.
- July 26 The Chilean NCP is informed of the decision.
- July 28 Both parties are notified of the decision.
- July 28 The Respondent requests a meeting to discuss the Initial Assessment with the Secretariat.
- August 3 The Notifier confirms receipt of the NCP decision.
- August 4 The Secretariat proposes a meeting to the Notifier.
- August 10 The Notifier confirms its availability to meet on August 11 and to provide the Initial Assessment factual check on Monday August 15.
- August 12 The Respondent provides Minera Florida's grievance mechanism contact information.
- August 15 The Secretariat shares the contact information with the Notifier.
- August 15 The Secretariat informs the Respondent that the contact information was provided to the Notifier.
- August 16 The Notifier provides its fact check on the Initial Assessment and advises it will contact Minera Florida to initiate the dialogue.

Date Modified:

2022-10-25