

# National Contact Point of Switzerland

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## Final Statement

**Specific Instance regarding PT Holcim Indonesia Tbk.**

**submitted by**

**the Institute for Policy Research and Advocacy (ELSAM), Solidarity of Blitar Villagers (SITAS-Desa), Aryo Blitar Farmers Association, Consortium of Agrarian Reform, Transformation for Justice, AURIGA and Fransiscans International**

Berne, 12 July 2017

## 1. Context

The OECD Guidelines for Multinational Enterprises (henceforth referred to as “OECD Guidelines”) represent a set of principles and standards for responsible business conduct, addressed as recommendations by the governments of the 35 OECD member and 12 other adhering states to multinational enterprises operating in or from their territories. The National Contact Point of Switzerland (henceforth referred to as “Swiss NCP”) for the OECD Guidelines has the mandate to raise awareness and promote observance of the OECD Guidelines. The Swiss NCP also contributes to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances by offering a forum for mediation, assisting concerned parties to deal with these issues and providing recommendations regarding the implementation of the OECD Guidelines.

On 19 March 2015, the Swiss NCP received a written request to consider a specific instance under the OECD Guidelines regarding the possible violation of the OECD Guidelines, involving PT Holcim Indonesia Tbk., controlled by Holcim Group<sup>1</sup> (henceforth referred to as “responding party” or “Holcim”) which is headquartered in Switzerland.

The specific instance has been raised by the Institute for Policy Research and Advocacy (ELSAM)<sup>2</sup> together with Solidarity of Blitar Villagers (SITAS-Desa), Aryo Blitar Farmers Association, Consortium of Agrarian Reform (KPA), Transformation for Justice (TuK Indonesia), AURIGA and Fransiscans International (FI Swiss), henceforth referred to as “submitting party”.

The submission concerns a conflict about land use in the Regency of Blitar, East Java, Indonesia. The submitting party states that in 1991, the Indonesian company PT Semen Dwima Agung (PT SDA) obtained a license from the Ministry of Forestry to exploit a forest area in Tuban, East Java, for a cement factory project, through a scheme of forest leasing. In its quality of the holder of the lease permit and in compliance with the national law, PT SDA had to give to the Ministry of Forestry a compensation land in return. PT SDA offered a plot of land, which was situated in the village of Ringinrejo, District of Wates, Regency of Blitar,

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<sup>1</sup> On 10 July 2017 Holcim Group and Lafarge merged to become LafargeHolcim.

<sup>2</sup> ELSAM is a human rights-focused civil society organization based in Jakarta, Indonesia.

East Java. According to the submitting party, this land, a former plantation, has been under the control and cultivation of the people of the village of Ringinrejo since 1996.

After PT SDA merged with PT Holcim Indonesia in 2012, the compensation land in Ringinrejo was designated as a forest area through a Decree of the Ministry of Forestry in 2013<sup>3</sup>. According to the submitting party, the designation of the compensation land will affect 826 households, or about 3000 persons, from the village of Ringinrejo.

The submitting party refers to the lease guidelines of the Indonesian Law<sup>4</sup>, stating that the holder of a lease is obliged to provide a compensation land that has no problems pertaining to objective conditions (de facto) and the legal status (de jure). In the view of the submitting party, the compensation land does have de facto problems since 826 households continue to control and cultivate it. Furthermore, the submitting party claims, that Holcim did not undertake negotiations with the concerned population of Ringinrejo, but instead with farmers, who do not live on the compensation land but cultivate it.

## 2. Proceedings of the Swiss NCP

Since the receipt of the submission the Swiss NCP took the following steps:

Time	Chronology
23 March 2015	Written confirmation to the complainants to acknowledge receipt of the submission.
30 March 2015	Written exchange with the complainants in order to clarify issues about confidential information in the submission.
30 March 2015	Preliminary discussions by phone with the responding party in order to explain the Swiss NCP proceedings on.
2 April 2015	The submitting party provided an adapted version of the submission, which was forwarded by the Swiss NCP to Holcim the same day.
8 April 2015	The Swiss Embassy in Indonesia was contacted for reasons of information and clarification about the submission.
14 April 2015	According to the Specific Instances Procedure of the Swiss NCP an ad-hoc working group was constituted, including representatives from the State Secretariat for Economic Affairs (SECO), the Federal Department of Foreign Affairs and the Federal Office for the Environment. This working group is involved in all steps of the procedure of the specific instance.
16 April 2015	The Swiss NCP received a written statement by the responding party in response to the submission. The statement was forwarded to the submitting party.
24 April 2015	Meeting between a representative of the Swiss Embassy in Indonesia and Holcim at the premises of the Swiss Embassy in Jakarta.
20 May 2015	Meeting between a representative of the Swiss Embassy in Indonesia and Holcim at the premises of the Swiss Embassy in Jakarta.
March-June 2017	For further clarification in this case, the Swiss NCP exchanged several times with both parties by email or by phone during the phase of the Initial Assessment. Written answers were shared between both parties.

<sup>3</sup> Ministry of Forestry Decision No. SK. 367/Menhut-II/2013

<sup>4</sup> Article 16, paragraph 3, Ministry of Forestry, Regulation P.13 / Menhut-II/2013 Lease Guidelines

30 June 2015	<p>The Swiss NCP concluded its Initial Assessment<sup>5</sup> and informed the parties concerned that the issues raised would be relevant under Chapters I, II, IV of the OECD Guidelines, and would merit further examination. At the same time, the Swiss NCP recalled that accepting this specific instance should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines and should not be equated with a determination on the merits of the issues raised in the submission.</p> <p>Pursuant to the process outlined in the “Information on Specific Instances Procedure” of the Swiss NCP, the Swiss NCP offered its good offices to facilitate a dialogue between both parties with the aim of reaching a mutually acceptable outcome. The Swiss NCP published the Initial Assessment on its website.<sup>6</sup></p>
2 July 2015	The submitting party accepted the offer of the Swiss NCP for mediation.
14 July 2015	The responding party accepted the offer of the Swiss NCP for mediation.
End of August 2015	The Swiss NCP suggested to both parties to have a mediation facilitated by a professional external mediator contracted by the Swiss NCP. The parties agreed to the appointment of Ms. Ursula König as the mediator of their dialogue.
16 November 2015	Both parties agreed on the Terms of References for the dialogue (TOR).
16 November 2015	<p>A mediation meeting took place at the premises of the Swiss NCP in Berne. Five persons represented each party.</p> <p>Members having decision-making power from the following organisations represented the submitting party: ELSAM, Paguyuban Petani Gondang Tapen (representative of the farmers, henceforth referred to as “RF”), Sitas Blitar and Fransiscans International.</p> <p>Members having decision-making power from PT Holcim Indonesia and LafargeHolcim (Switzerland) represented the responding party.</p> <p>An external professional mediator facilitated the meeting. Two members of the NCP secretariat assisted the mediator regarding procedural and logistical issues.</p>
21 January 2016	The Joint Conclusions of the mediation (see para. 3) were agreed.
February 2016 - January 2017	<p>The Swiss NCP followed up by phone and by email on the implementation of the agreed outcome. In this period, four meetings took place between the submitting and responding party in Indonesia.</p> <p>Furthermore, bilateral meetings between the parties involved in the specific instance with Indonesian stakeholders related to the specific instance (e.g. Ministry of Environment and Forestry<sup>7</sup>, local communities) took place.</p>
February 2017	Meeting between a representative of the Swiss Embassy in Indonesia with Holcim in Jakarta.
26 April 2017	Meeting between a representative of the Swiss Embassy in Indonesia with the submitting party at the premises of the Swiss Embassy in Jakarta.
June 2017	The Swiss NCP decided to conclude the specific instance with recommendations and follow-up activities.

<sup>5</sup> [www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Staemements\\_zu\\_konkreten\\_Faellen.html](http://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Staemements_zu_konkreten_Faellen.html)

<sup>6</sup> [www.seco.admin.ch/ncp](http://www.seco.admin.ch/ncp)

<sup>7</sup> Since late 2014, the Ministry of Environment and Ministry of Forestry was merged into Ministry of Environment and Forestry.

### **3. Joint Conclusions of the mediation process**

#### **3.1 Intention of the parties for the mediation**

Both parties agreed on the following reference for the process:

“Both parties seek for a mutual satisfying solution to settle the dispute, which:

- allows livelihood for the farmers;
- allows Holcim to continue its business activities;
- is in compliance with Indonesian laws and
- respects human rights”.

#### **3.2 Discussion of issues**

According to the Terms of Reference for the mediation, the following issues were discussed:

- a. Stakeholder engagement with the concerned population of Ringinrejo
- b. Number of persons/households concerned by the issues raised
- c. Human Rights Due Diligence / impact assessments related to the issues raised
- d. Agreements achieved until now
- e. Use of the land in question currently
- f. Future of persons/households concerned by the issues raised

For the purpose of an effective and successful mediation process, the issues were discussed in an interrelated way. The mediator assured that all topics were considered.

#### **3.3 Agreement on the basic data**

The parties agreed on the basic data as follows:

- The whole area of the land swap covers 854 hectares (ha). This surface is all cultivated and includes mountain areas as well as sugar cane cultivation. Additionally local communities inhabit this plot of land.
- There is no agreement concerning the exact number of the people inhabiting this plot of land. The RF represents 826 households. Those households include the following groups: Agusyuwono, Samin and Partu.
- The group of Gimun (not represented by the RF) including over 100 households accepted 12.4 ha.
- One more “group” is separated and deals with sugar cane. In addition, some farmers also rent out part of their land to cultivators of sugar cane.

An important question relates to the area needed for livelihood per family. Whereas the submitting party argued, that half of a hectare is needed to cover livelihood for a family, the responding party argued, that livelihood depends on other factors than the land. E.g. income can be generated through other sources than farming.

According to the explanation of the responding party, the origin of the land swap is 362 ha of land to be used in Tuban for their industrial activities/quarry for extraction of raw material. The Ministry of Forestry and Environment required double of this size (724 ha) as a land swap area (ratio = 2). The responding party purchased in the Blitar region 854 ha. After re-measuring, the purchased land corresponded only to 796 ha. The responding party is willing to provide 72.4 ha to the local authorities for the use of farmers. 12.4 ha of those 72.4 ha (in the southern part, Jolosutero area) were already accepted by Gimun, which represents 100

households who have occupied the Jolosutero area. The responding party stated that they do not have more land in this area.

As there were different views on the land deals between the different parties in 2008, 2009 and 2010 and the appropriate and fair participation process at that time and the validity of the agreements in the past, the parties agreed to discuss options for the future.

**3.4 Development of options**

The following options were discussed:

- Option 1: Enter in a joint dialogue (submitting and responding party) with the Ministry of Environment and Forestry in order to reduce the landswap ration from 1 to 2 (applied in the discussed case) to 1 to 1. This option would permit to have more land available for concerned communities, but less land for reforestation.
- Option 2: Offer of the submitting party to distribute around 700 m2 per household.
- Option 3: Offer of the submitting party to include the farmers in their community development programs (running for 3 years) allowing generating alternative income.
- Option 4: Integration of farmers in the process of reforestation as well being able to cultivate in reforested area.

The parties agreed to follow up with option 1 in first priority. A formal request for a joint meeting (submitting and responding party) with the Ministry of Forestry and Environment should be sent to the Ministry of Forestry and Environment. This request should consist of a letter by ELSAM, a support letter by PT Holcim Indonesia and an attachment of the Swiss NCP (summary of the outcome of the mediation meeting from 16 November 2015). It was agreed, that the Decree from the Ministry of Forestry no. 367/year 2013 on the designation of the compensation land in Blitar as forest area would not be reopened. The dialogue focuses therefore on the ratio of land swap.

**3.5 Follow-up of the mediation meeting**

The Swiss NCP was asked by the parties to monitor the dialogue between the parties and the implementation of the next steps agreed in the mediation meeting in Berne. Additionally, the Swiss NCP recommended that an independent mediator, hired and accepted by both parties in Indonesia, could support the dialogue. The mediator should work with the parties on building trust to form a basis to discuss options 3 and 4 (Community development programs as well as reforestation and cultivation) developed during the mediation meeting on 16 November 2015.

**4. Implementation of the Joint Conclusions**

The Swiss NCP followed up the implementation of the agreed Joint Conclusions via email and telephone. The main development are summarized below:

Time	Chronology
February to May 2016	Different letters were sent to the Ministry of Environment and Forestry to request a joint meeting with this Ministry, the submitting and the responding party.
7 April 2016	Meeting between the submitting and the responding party in Indonesia by request of the responding party: Discussion regarding how to approach the Ministry of Environment and Forestry in order to have a dialogue on

	the land swap ratio (option 1 of the joint conclusion).
29 April 2016	Meeting between the submitting and the responding party in Indonesia by request of the responding party: Discussion regarding the exchange with the Ministry of Environment and Forestry, furthermore ELSAM agreed to discuss about the community development programs (option 3).
10 May 2016	Written communication by the Ministry of Environment of Forestry / Directorate of Forestry Planology to Holcim: Legal suit filed by the RF regarding the cancellation of the Decree Number SK 367/Menhut-II2013 concerning compensation land in Blitar as Forestry Area was rejected by the state administrative court. Therefore, the decree is fully legally binding.
Until May 2017	The Ministry of Environment and Forestry didn't accept to conduct a joint meeting concerning the land use.
26 May 2016	Meeting between the submitting and the responding party by request of the responding party: Discussion about the community development program (Option 3 of the agreed Joint Conclusions).
10 October 2016	Submitting party shares by request of the responding party data about concerned farmers (list of approx. 850 persons).
1 December 2016	Meeting between the submitting and the responding party by request of the responding party: Further discussion about community development program for the Blitar community. Agreement to consult the concerned farmers regarding the community development program.
February 2017	Meeting between a representative of the Swiss Embassy in Indonesia and Holcim in Jakarta: Assessments of the situation in the field and progress.
26 April 2017	Meeting between a representative of the Swiss Embassy in Indonesia and the submitting party at the premises of the Swiss Embassy in Jakarta: Assessments of the situation in the field and progress.
June 2017	The Swiss NCP decided to conclude the specific instance with clear recommendations and follow-up activities.

## 5. Conclusions and follow-up

Both parties participated in the mediation meeting in Berne on 16 November 2015 with representatives having decision-making power. The parties demonstrated their willingness to seek for a mutual satisfactory solution to settle the dispute.

Both parties made efforts to implement the steps agreed in the Join Outcome of the mediation meeting and met several times in 2016.

Six months after the mediation meeting in Berne, the framework conditions changed. The Ministry of Forestry and Environment confirmed in a letter to Holcim dated 10 May 2016 that the state administrative law suit against the decision of the Minister of Forestry No. SK. 367/Menhut-II/2013 dated 22 April 2014 was deemed inadmissible (final and binding verdict at cassation). This legal suit was filed by the RF requesting the cancellation of the Ministry of Forestry Decree concerning the compensation land in Blitar as Forestry. In the written communication from 10 May 2016, the Ministry of Environment and Forestry/Directorate of Forestry Planology stated, that the above mentioned decree was fully legally binding. The scope to negotiate for option 1 ("change of landswap ratio") was subsequently limited.

The parties intensified the discussion about option 3 (Community development programs). Furthermore, the responding party reassured their commitment to distribute around 700 m<sup>2</sup> per household to the farmers (option 2).

After bilateral exchanges between a representative of the Swiss Embassy in Jakarta and both parties in February and April 2017, the Swiss NCP assessed the situation as followed:

- Confirmed legal situation: The Ministry of Forestry Decree Number SK 367/Menhut-II2013 regarding the compensation land in Blitar is legally fully binding after the state administrative lawsuit was deemed inadmissible. Subsequently the scope to continue discussions on option 1 (“change of landswap ratio”) is limited.
- Despite the ongoing dialogue between the parties, their positions regarding option 3 and 4 seem to be little compatible. 18 months after the mediation meeting in Berne, there is no substantial progress regarding the implementation of those options.
- Evolving role of ELSAM: In the beginning of the process, the role of ELSAM consisted in representing the local communities and farmers. During the handling of the specific instance, their function seems to have moved towards a facilitating role between Holcim and the local community. E.g. ELSAM was advocating the local community towards more realistic positions and openness to discuss the community development programs suggested by the responding party.
- Changing population in concerned area: New persons such as brokers of sugar cane are using the land reserved for the land swap in Blitar. New demands for land from their side might be the consequence.
- Change of use of the 72 ha offered by the responding party: the local government is planning to use part of the land foreseen for the local communities/farmers for the construction of a provincial road. Consequently, the surface for the use of farmers would decrease.

Based on this assessment, in particular the change of the framework conditions and the absence of substantial progress regarding the implementation of the agreed outcome, the Swiss NCP concludes, that it is not in a position to contribute further to the resolution of the issues and will close the specific instance.

The Swiss NCP welcomes:

- the engagement of both parties in the mediation meeting in Berne with representatives in decision making power functions;
- the ongoing dialogue in Indonesia between the parties and further stakeholders (among them the Ministry of Forestry and Environment);
- the agreement on the basic data, such as the size of the concerned area or the number of concerned households;
- the sharing of information, such as the data on the concerned farmers.

The Swiss NCP recommends that:

- the parties continue with all effort their dialogue on local level in good faith and on a constructive and output-oriented level, also taking into account the legal situation;
- the parties follow up on option 2, 3 and 4 in order to find mutual satisfactory solutions to settle the dispute. The solution should allow livelihood for the farmers and Holcim to continue its business activities, be in compliance with the Indonesian laws and respect human rights;
- LafargeHolcim Group in Switzerland closely follows the situation in Indonesia regarding the issues raised in the submission.

The Swiss NCP will follow-up on this specific instance with the following measure:

- the Swiss NCP will ask the parties to report on progress six months after the closure of the specific instance. The Swiss NCP expects parties to submit a written report to the Swiss NCP, which can be shared with the other party. The Swiss NCP will decide upon receipt of these reports about necessary further steps in consultation with the parties.

With this Final Statement, the Swiss NCP closes the specific instance.



Annex 1:

**Summary of outcome of mediation from 16 November 2015 by the Swiss NCP**

## **OECD Guidelines for Multinational Enterprises**

# **National Contact Point of Switzerland**

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25 January 2016

### **Background**

The OECD Guidelines for Multinational Enterprises (referred to as OECD Guidelines) are recommendations addressed by the governments of the 34 OECD member states as well as 8 other states to multinational enterprises operating in or from their territories. The National Contact Point (NCP) for the OECD Guidelines promotes the observance of the OECD Guidelines and discusses with the parties concerned all relevant issues in order to contribute to the resolution of any problems that might arise. In Switzerland, the NCP is located at the State Secretariat of Economic Affairs (SECO) at the International Investment and Multinational Enterprises unit. The NCP acts as an impartial mediator in order to support the parties to find future orientated solutions.

### **Submission**

The Swiss NCP received a written request to consider a case under the OECD Guidelines for regarding a land conflict in the Blitar region in Indonesia and a possible violation of the OECD guidelines involving PT Holcim Indonesia on 19 March 2015. The request was submitted by ELSAM<sup>8</sup>, Solidarity of Blitar Villagers, Aryo Blitar Farmers Association, Consortium of Agrarian reform, Transformation of Justice, AURIGA and Franciscans international.

In its initial assessment of 30 June 2015 (please see attached document) the NCP concluded that the issues raised against PT. Holcim Indonesia Tbk. merit further consideration. This conclusion should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines.

### **Mediation Meeting of 16 November 2015 in Berne, Switzerland and joint conclusion**

In the framework of the Swiss NCP, representatives of the NGOs and the concerned enterprise discussed the above mentioned case concerning a land conflict in the Blitar region during a mediation meeting in Berne, Switzerland, on 16 November 2015.

Both parties agreed on the following reference for the process: "Mutual satisfying solutions that settle the dispute and allows livelihood for the farmers and continue to conduct the business for Holcim and being compliant with the Indonesian laws and human rights".

During the mediation meeting, both parties agreed, that the whole area of the land swap covers 854 hectares (ha). This surface is all cultivated and includes mountain areas as well

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<sup>8</sup> ELSAM is a human-rights focused civil society organization based in Jakarta, Indonesia.

as sugar cane cultivation. According to the written request received by the Swiss NCP, the submitting party represents 826 households concerned by the land swap.

Throughout the mediation talks, it was noted, that the farmers concerned by the land swap need more land for the livelihood per family than the 72.4 hectares (ha) provided by PT Holcim Indonesia to the Ministry of Forestry. Therefore, both parties agreed to enter into dialogue about the land swap ratio (currently 1: 2) with the Ministry of Forestry in Indonesia.

It was agreed that a formal request for a joint meeting of both parties with the Ministry of Forestry will be sent to this ministry. The information given in this note from the Swiss national Contact Point is to be attached to the letter of request of ELSAM. Furthermore, the letter of request from ELSAM will also include a support letter from PT Holcim Indonesia.

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