

Statkraft AS
Lilleakerveien 6A
0283 Oslo
Norway

Norwegian National Contact Point
Postboks 8114
NO-0032 Oslo
Norway

RE: Complaint to the Norwegian National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct concerning Statkraft AS and its Chilean subsidiaries

To whom it may concern,

We refer to the complaint (the “**Complaint**”) filed with the Norwegian National Contact Point against Statkraft AS (“**Statkraft**”) and its Chilean subsidiaries, Empresa Eléctrica Pilmaiquén S.A. and Statkraft Chile Inversiones Eléctricas Ltda. (“**Pilmaiquen Electric Company**” and “**Statkraft Chile**” respectively), by – as indicated in the Complaint – the Mapuche-Williche communities of the Pilmaiken territory, represented by their autonomous organization Aylla Rewe of the Ngen Mapu Kintuantü and ancestral authorities, the Machi Millaray Huichalaf, spiritual authority of the Mapuche people, and the council of lonkos, representing more than 150 affected indigenous communities of El Roble Carimallín sector, Río Bueno comuna, located in the Ranco province, Los Lagos region in Chile, with the assistance and accompaniment of Manuela Royo Letelier, Andrea Pietrafesa, the Colectivo de Acción por la Justicia Social (CAJE) and the Initiative for Transnational Justice (ITJ) (collectively, the “**Complainants**”).

Statkraft would like to express its commitment to cooperating transparently and in good faith with the Norwegian National Contact Point, both with respect to the initial assessment and any eventual mediation. If the National Contact Point decides to accept the Complaint and proceed to mediation, Statkraft welcomes the opportunity to engage in structured and constructive dialogue with the Complainants. Statkraft Chile has engaged consistently and constructively with the many Mapuche-Williche communities and their representatives for many years since Statkraft first entered the Pilmaiquen River basin in 2015. In challenging circumstances, Statkraft Chile has been broadly successful in establishing trust, meaningful exchange and cooperation with a significant number of stakeholders and communities in the vicinity of its operations. However, there are a few communities and groups that have sometimes resisted dialogue and have opposed Statkraft’s operations in the Pilmaiquen River basin from the onset (including members among the Complainants).

In this response (the “**Response**”), Statkraft would like to set out its position with respect to certain fundamental elements of the Complaint. However, this Response is not a comprehensive answer to the many points raised in the Complaint.

OVERVIEW

1. Statkraft (and its Chilean entities) have been consistently committed to fostering economic, environmental, and social growth in the Pilmaiquen River basin and nearby urban areas since starting operations in the region in 2015. This has included creating jobs with ethical wages, engaging with local communities and indigenous groups, supporting educational and training programs, and implementing reforestation, irrigation and local tourism development measures.
2. Statkraft (and its Chilean entities) are committed to adhering to all applicable laws and regulations in the countries where they operate, sometimes exceeding legal requirements in order to maximize positive impact and minimize adverse effects on human rights and potentially affected communities, as guided by Statkraft's internal values and policies and international norms such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct ("**the OECD Guidelines**").
3. Statkraft is committed to respecting human rights and strives to continuously improve its human rights due diligence approach in line with best practice, integrating it into various business processes. Due to the social and political challenges of constructing hydropower plants in southern Chile, Statkraft Chile has taken a socially and politically informed approach to human rights, engaging in measures to identify and assess human rights-related risks, and seeking solutions when such risks have been identified.
4. Statkraft Chile, in line with evolving international standards, has consistently engaged in and pursued dialogue and consultation with local and indigenous communities in Chile. Statkraft Chile has proactively engaged with a wide number of potentially impacted indigenous communities, initiating ongoing processes of informed participation and transparent communication to build trust.
5. Statkraft Chile has sought to avoid, address, mitigate and remedy adverse human rights impacts of its operations in Chile, notably terminating the planned Osorno power plant project due to potential impacts that could not be adequately mitigated on the Mapuche-Huilliche communities. Despite challenges in identifying legitimate representatives of certain indigenous communities, Statkraft Chile has also made sincere efforts to return culturally significant parcels of land to the Mapuche-Huilliche communities.
6. Statkraft Chile has cooperated with relevant national authorities in Chile to resolve complaints transparently and fairly and is actively participating in consultation processes related to archaeological remains at the Los Lagos project site and the restitution of the Ngen Mapu Kintuante ceremonial center connected to the now terminated Osorno project.

SECTION I – INITIAL RESPONSE

1. Background

The Pilmaiquén River is a natural watercourse that extends for 68 km from its source, Lake Puyehue, to Río Bueno. This river is the border between the Los Ríos and Los Lagos regions in southern Chile. In the Pilmaiquén river basin, along its entire watercourse, there is varied economic activity, including two power plants, fish, livestock, and dairy farms, aggregate mining, and a wastewater treatment plant in the town of Entre Lagos.

Statkraft has been present in the Pilmaiquen River basin since 2015 when Statkraft acquired Pilmaiquen Electric Company with projects and operations in the Pilmaiquen River basin. At the time of acquisition, Pilmaiquen Electric Company was operating the Rucatayo hydropower plant on the Pilmaiquén River and had rights to develop two more hydropower projects on the river: the Osorno and Los Lagos hydropower plants, both with environmental approvals from the Chilean authorities. Through the acquisition, Statkraft also received the property rights to the land where the Ngen Mapu Kintuante ceremonial space is located. The environmental license was subject to social mitigation measures which had been implemented by the previous owner and approved by the Chilean authorities.

As of 2023, Statkraft Chile continues to operate the Rucatayo power plant and is currently also developing the Los Lagos hydropower project. There are at least fifteen companies in the same area as the Los Lagos project and the Rucatayo power plant. The land where the Los Lagos power plant is being built has been used for agriculture and livestock farming for several decades, as they are commercial properties.

Like the Rucatayo plant, the Los Lagos hydropower plant will be a “run-of-river plant” that will use the water of the Pilmaiquen river. To ensure safe and stable use of the power of the water for electricity production, it is necessary to have a limited reservoir. Therefore, a 35 meters height dam will be constructed, and the reservoir will cover an approximate area of 191,9 hectare. As a run-of-river plant, the movement of the Pilmaiquen river water will never be stopped because the water that passes through the Los Lagos plant continues to flow down the river, with the same quantity and quality.

Hydroelectric projects, including run-of-river plants like Los Lagos, are essential for mitigating climate change. Concerns about methane emissions are valid, but it's important to note that modern hydroelectric projects employ strategies to reduce methane release and run-of-river plants typically have lower emissions due to the absence of large reservoirs. While initial emissions from the project construction period and methane concerns from the operational period exist, the long-term benefits in terms of reduced carbon emissions and the carbon intensity of Chile's electric grid are substantial.¹

The ongoing construction of the Los Lagos hydropower project is carried out in line with Statkraft's requirements for human rights due diligence, and with a particular focus on, respecting Indigenous Peoples' rights. – Statkraft Chile has, in line with its internal requirements, made consistent efforts to engage with local stakeholders and communities throughout the years.

The international body of law and best practice has evolved significantly in the last 10 years since Statkraft acquired Pilmaiquen Electric Company and Statkraft has adapted its methodology accordingly. One such example is Statkraft Chile's approach to the Osorno hydropower project. Statkraft decided after careful assessment and integration of analysis of the human rights dimension and an understanding of best practice, not to exercise rights to develop the Osorno hydropower project. In that assessment Statkraft Chile leaned heavily on

¹ Chile has set decarbonization and carbon neutrality goals for 2040 and 2050, respectively. The Decarbonization strategy aims to close thermoelectric power plants by 2040.

the outcome of extensive consultation and dialogue with local and indigenous communities. This decision was taken - in line with international guidelines on human rights and indigenous people. The decision acknowledged the not insignificant risk that those communities could end up being adversely affected by the Osorno project had it been realized according to the plan although, as noted, the project was fully licensed.

2. Statkraft has, at all times since its involvement in the Pilmaiquen River basin, contributed to economic, environmental and social progress.

Since acquiring Pilmaiquen Electric Company, Statkraft has contributed positively to economic, environmental and social development within the Pilmaiquen River basin and surrounding urban areas. Such efforts have included numerous social and voluntary initiatives and programs developed in line with the environmental license requirements. Such efforts have included (for example):

- The creation of jobs and the implementation of local hiring quotas and an ethical wage for workers.
- Implementing and participating in various processes and mechanisms for structured dialogue and engagement with affected local communities and indigenous groups (including mechanisms for receiving complaints, engaging in collaborative monitoring and engaging in collective decision-making).
- Initiating and supporting numerous education and training programs for both local communities and on-site supply chain workers, related to, for example, environmental studies, leadership and entrepreneurship, technical skills and enhanced employability, human rights and indigenous rights and gender advancement.
- Implementing and supporting measures related to reforestation, irrigation and the development of local tourism.

3. Statkraft has consistently sought to comply with all national law, regulations and rulings, including all aspects of the environmental license granted by the Chilean authorities and has gone above and beyond these requirements to achieve outcomes that seek to maximize positive impact and minimize any adverse impacts on affected communities.

Statkraft (and Statkraft entities around the globe), shall comply not only with all applicable Norwegian laws and regulations, but also with applicable laws and regulations of countries where Statkraft operates. As recognized by the OECD Guidelines, this is the first obligation of a multinational enterprise.

Where differences exist between applicable laws and regulations and Statkraft's policies, Statkraft shall follow the highest standard. This commitment is embedded in Statkraft's Code of Conduct, which is guided by various international norms, including but not limited to, the OECD Guidelines.

Statkraft also believes that high ethical standards are good both for society and for business and is committed to high ethical standards in business culture and in all business activities. This commitment is also integrated into Statkraft's Code of Conduct, strategy, and business processes.

Statkraft has zero-tolerance for corruption. It is strictly prohibited to offer, give, accept, request, or receive bribes or other improper advantages. Statkraft works to ensure fair competition, avoid unethical business partners and prevent all forms of fraud. Statkraft applies these standards equally to our business partners and reporting of concerns is encouraged from both internal and external parties.

To be clear, these norms are also embedded within Statkraft's Chilean entities which have consistently strived to comply with all relevant laws related to, for example, environmental regulation, business ethics and lobbying, human rights and indigenous rights. In particular,

Statkraft's Chilean entities have carefully complied with the requirements of the environmental license, including with respect to engagement with and consultation of local communities and indigenous groups. However, at times, Statkraft Chile has exceeded the requirements of Chilean law and has, for example, applied a more rigorous approach to community engagement, consultation and collective decision making especially with respect to the Osorno and Los Lagos projects.

4. Statkraft respects human rights and has engaged in assessments and efforts with regards to human rights issues prior to and during its ongoing involvement in the Pilmaiquen River basin.

Statkraft seeks to comply with high international standards of corporate responsibility with a core focus within the company's sustainability strategy on human rights and an executive level commitment to human rights. In these efforts, Statkraft takes guidance from international principles and sustainability guidelines, such as the OECD Guidelines, the IFC Performance Standards on Environmental and Social Sustainability and the United Nations Guiding Principles on Business and Human Rights. Statkraft aims to conduct its business operations in a manner that is consistent with these norms. However, in challenging business environments, with multiple and heterogeneous stakeholders often with contrasting interests, how to interpret these norms is not always straightforward.

It is also important to underline that Statkraft works on the basis of a philosophy of continuous improvement with respect to the company's approach to human rights. Statkraft works broadly with both internal and external subject matter experts to continually learn from various sources including academic research, peer insights and Statkraft's own experiences over time.

With respect to human rights due diligence, Statkraft's approach has consistently evolved and improved in the past several years, becoming more rigorous in recent years to stay in pace with the emerging soft law guidelines on due diligence and to stay ahead of the new legislation in this area, such as the Norwegian Transparency Act. Statkraft's overall approach to human rights due diligence is risk-based and aims to create shared value. Statkraft conducts and works to integrate human rights due diligence into relevant business processes, such as strategic investments, partnerships, business development, construction projects, and market activities. These efforts are ongoing and both *forward-looking* and *backward-looking* and not only linked to e.g. acquisition processes. Statkraft continuously strives to identify and address human rights risks in the company's ongoing projects and operations, especially where it is felt that human rights due diligence for various reasons has not been carried out to a satisfactory degree prior to Statkraft's involvement in a project.

Constructing hydropower plants in parts of southern Chile is challenging due to a history of underlying conflict and tensions in the region connected with land and indigenous rights. Conscious of these challenges from the outset, and specifically also aware of the indigenous communities residing in the Pilmaiquen River basin, Statkraft and its Chilean entities have sought to take a socially and politically informed and risk-based approach to human rights in their operations in Chile (in line with the IFC Performance Standards and OECD Guidelines as were applicable at the relevant times), acting with a high degree of caution and sensitivity to the conditions of local workers and local communities. Statkraft was conscious of the risks because of preliminary stakeholder and social assessments it had undertaken and drew on lessons from previous experiences and international guidelines in determining how to address those risks. On this basis, from the outset, Statkraft Chile engaged in a number of measures seeking to better identify and assess human rights-related risks which have included, but were not limited to:

- Establishing an interdisciplinary group familiar with local customs, to better understand the cultural and sociological aspects of the Pilmaiquen River basin and the communities residing in and around the area.

- Commissioning and undertaking anthropological studies and stakeholder mapping exercises with respect to the potentially affected communities.
- Establishing inclusive, participatory and transparent monitoring and grievance mechanisms.
- Directly engaging with affected communities and indigenous groups in various consultative fora.

Statkraft Chile's efforts to identify and address human rights-related issues have included the scrapping of the Osorno project, as further described in item 6 below. Statkraft Chile continuously undertakes, in its on-going work on the Los Lagos project, to identify and assess human rights-related risks and issues and to seek solutions and implementation of appropriate measures when such risks are identified. Most recently, Statkraft and the sustainability team within Statkraft Chile have engaged external human rights specialists to conduct broad human rights due diligence encompassing both the Rocatayo plant and the Los Lagos project. A vital component of this due diligence process has been to listen to the interested parties and understand their perspectives. Through this process, interviews were held with representatives of the staff, contractors, suppliers, local communities, Indigenous Peoples, local authorities, among others. Findings from these due diligence studies reveal that there are areas where Statkraft Chile can improve, for example, with respect to tracking and monitoring the implementation of policy and better aligning certain practices with international standards. Addressing identified human rights risks and improving the approach to due diligence continues to be a priority for Statkraft Chile.

5. Statkraft has at all times since its involvement in the Pilmaiquen River basin engaged directly with Indigenous Peoples and with their representatives.

As with Statkraft's approach to human rights due diligence, Statkraft's approach to stakeholder consultation (in particular with respect to Indigenous Peoples) has evolved over the years in line with the evolving international standards. As a matter of corporate policy and aligned with international guidelines such as the IFC Performance Standards, Statkraft engages extensively in consultation processes with local communities - especially where Statkraft activities can potentially cause or contribute to adverse human rights impacts - and seeks to establish grievance mechanisms to address any complaints or concerns. Statkraft believes that a participatory assessment of potential social, spiritual, cultural and environmental impacts on Indigenous Peoples is the starting point, including for determining more specifically the scope of the consultation to be undertaken.

Statkraft Chile has consistently engaged in structured dialogue and consultation with those indigenous communities and their representatives that were and are open to dialogue. This has included both state-based channels for dialogue and consultation and processes led by the company itself.

At the time that the Chilean authorities initially approved the hydropower projects on the Pilmaiquen River in June 2009, several years before Statkraft's involvement, there was no legal obligation to conduct an indigenous consultation according to the standards of ILO Convention 169.² Statkraft recognized already from the outset, that the projects had been developed prior to Statkraft's involvement with limited interaction with stakeholders. As such Statkraft Chile sought to move rapidly to build trust through transparent communication and close dialogue with all stakeholders. Human and financial resources were allocated to these delicate and decisive matters. On taking ownership of these projects in 2015, Statkraft Chile voluntarily decided to initiate a process of informed participation with indigenous communities and relevant stakeholders in the territory, in order to make the project and its impacts known to the

² Although note that one of the key requirements of the Chilean authorities in issuing the license in 2009 was related to the provision of adequate mitigation measures to avoid potential impacts to a significant cultural site and the achievement of agreements with the neighboring indigenous communities. Mitigation measures were designed and agreements with five neighboring indigenous communities were reached by the previous owner in 2011.

communities. As mentioned above, this process started with a comprehensive social, environmental and economic analysis and has been ongoing since then. It has included, for example, visits from the communities, their organizations and leaders to the Rucatayo hydropower plant and the project sites, information sharing about Statkraft's operations and projects with the communities and numerous meetings over multiple years.³

It must be acknowledged that correctly identifying who are the "legitimate representatives" of certain indigenous communities and how decision making should take place within those communities is challenging from both an anthropological and a legal standpoint. Naturally, there may be a lack of consensus within the communities themselves about these points. CONADI (the "National Corporation for Indigenous Development" of Chile) has indicated that there are 15 communities in the "area of influence" of the projects (which is set according to the parameters of the national environmental authority). However, Statkraft Chile, identified more than 20 indigenous communities as potentially impacted by the projects and sought to proactively engage with these communities. The Mapuche-Huilliche identity predominates in the territory. Twenty-two legally constituted indigenous communities, one indigenous association and two sociological or natural communities, were identified in the first instance. In this context, as of September 2023, there have been more than 400 formal interactions documented in minutes or work records by Statkraft Chile, with various local actors in the basin. Over 35% of these interactions have been with indigenous organizations.

The information and concerns gathered from this extensive engagement has been subsequently integrated into the development of the Los Lagos Project and the design of the community relationship plan for that project.

6. Where potential or actual adverse human rights impacts have been identified, Statkraft has taken measures to prevent, address, mitigate and/or remedy those impacts.

Statkraft's general approach, informed by the OECD Guidelines, IFC Performance Standards and the UN Guiding Principles is to avoid, reduce and compensate direct or indirect adverse human rights impacts. That approach has been deployed directly across Statkraft's operations in the Pilmaiquen River basin. The original plan was to start the construction of the Osorno power plant before Los Lagos. However, despite having mitigation measures approved under the respective Chilean regulations, the company decided in October 2016 not to start this project, since the operation of the plant, as originally conceived, would impact the ceremonial site of Ngen Mapu Kintuante, deemed to be of cultural value for the Mapuche-Huilliche communities. Following guidelines on human rights and Indigenous Peoples, Statkraft decided to initiate a dialogue process with the communities and redesign the Osorno project but ultimately concluded the project needed to be scrapped to appropriately and adequately address the concerns of the communities. The halting of the Osorno project constituted a formal and irrevocable commitment by Statkraft not to construct the Osorno hydropower plant due to the adverse impact that this would have had, in particular, on the ceremonial site, which may have impacted the traditions and way of living of the Mapuche-Huilliche communities.

Statkraft Chile, aware of the importance and meaning of certain parcels of the land originally intended for the development of the Osorno hydropower plant, has subsequently made good faith efforts – commencing in 2016 – to return such land to the Mapuche-Huilliche communities. These efforts have unfolded through a collaborative and consultative process including members of the Mapuche-Huilliche communities and their representatives along with independent third parties.⁴ These efforts were significantly delayed however due to challenges in reaching collective agreement about the correct entity to which the land should be transferred to ensure that it would be kept and used for the benefit of the Mapuche-Huilliche communities

³ In addition, the Los Lagos project uses newsletters, periodic face-to-face meetings and letters to engage directly with project stakeholders and to provide information about actions taken to address concerns raised by external stakeholders. The newsletter is provided in Spanish and is physically distributed as well as sent via email to the community.

⁴ Alberto Hurtado University's Mediation and Conflict Resolution Program.

as a whole. Statkraft Chile made best efforts to identify and transfer the land to an entity that would legitimately represent the Mapuche-Huilliche communities (despite the significant anthropological and legal challenges in making such determinations, as noted above). In these efforts, Statkraft Chile took into consideration that certain communities may have been particularly or differently affected (for example, due to their residence in close proximity to the ceremonial sites and their celebration of certain traditions) and sought to ensure that the interests of those communities were adequately taken into consideration. Presently, the restitution of the land is in the hands of the State after a ruling by the Supreme Court of Justice that mandates the CONADI to implement a participatory process with all interested parties representing the indigenous communities involved. It should also be noted that Statkraft has not denied access to the relevant sites (to the impacted local and indigenous communities), despite Statkraft still legally owning the relevant land.

Separately from the measures related to the terminated Osorno project, Statkraft Chile will continue working on the construction of the Los Lagos Project - which is now more than 70% complete - and has been assessed to have a lower human rights risk profile,⁵ among other reasons, due to its further distance from implicated indigenous land and ceremonial sites. Although, as mentioned above, Statkraft Chile continues to make efforts to deal with the human rights and environmental risks that have been identified in relation to the Los Lagos project.

7. Statkraft has consistently collaborated with the designated national and regional authorities.

As mentioned, although Statkraft Chile has been successful in establishing trust and cooperation with most of the impacted communities in the vicinity of the projects, there are a few communities and groups that have opposed the projects from the onset. Seeking to resolve all outstanding complaints from such communities in a transparent, fair and expedient manner, Statkraft Chile has cooperated with relevant national authorities, including but not limited to, the Council of National Monuments (CMN), CONADI, the Chilean judiciary and the Chilean police and law enforcement bodies.

In particular, Statkraft Chile is collaborating in good faith in both the indigenous consultation process carried out by CMN with respect to the archaeological remains found during the construction of the Los Lagos plant, in order to consult the affected indigenous communities on the administrative measures that might be issued by CMN with respect to those sites and, separately, the process led by CONADI in regards with the restitution of the Ngen Mapu Kintuante ceremonial center. Statkraft Chile recognizes that the consultation process related to the Los Lagos project site has been substantially delayed. The process now has a delay of 21 months without concrete progress. The delay is not caused by Statkraft Chile, but primarily by resource constraints within the CMN. Statkraft Chile has formally communicated with the Chilean judiciary about its concern about the delay. As a result, the judiciary has now formally requested CMN to report on the status of the implementation of the project.

SECTION II – PRELIMINARY QUESTIONS FOR THE COMPLAINANTS

In order to be able to more fully understand the Complaint and how to effectively address the grievances of the Complainants, Statkraft would like to take this opportunity to address two questions to the Complainants which, it is hoped, can also assist the National Contact Point to better understand what should be the appropriate scope of the Complaint and any mediation in this regard.

⁵ At the Los Lagos site there is no indigenous land, and the project is inside two big agro-industrial farms, with no cultural or spiritual sites. This was also recognized in the context of the environmental assessment.

1. Statkraft would like to better understand the constituent members among the Complainants, in particular, those representing the Mapuche-Huilliche communities. The Complainants refer to “more than 150 affected indigenous communities”, while as noted above, CONADI has indicated that there are 15 indigenous communities in the “area of influence”, while Statkraft Chile identified 25 potentially affected indigenous communities. Statkraft would therefore kindly request the Complainants to provide more detail on their constituent members so that the company can better understand which of those members have or may not have been adequately consulted by Statkraft Chile. It would also be helpful to better understand the relationship between the different constituent members and the accepted structures for collective decision making.
2. Statkraft believes that its Chilean entities engaged in adequate, appropriate and timely consultations with the potentially affected indigenous groups that were open to dialogue, and that the views of such communities were sufficiently taken into consideration. However, Statkraft recognizes that despite Statkraft Chile’s best efforts, certain communities may nonetheless feel that they have been separately and differently affected (whether directly or indirectly) by the operations of Statkraft and its Chilean entities in the Pilmaiquen River basin. Statkraft therefore welcomes greater clarification from the Complainants about how Statkraft Chile’s operations may have directly or indirectly affected constituent members of the represented indigenous communities *in different ways and to different extents* (in particular, with respect to their use of the implicated ceremonial sites).

SECTION III – SCOPE

Statkraft would like to kindly request the National Contact Point to consider the appropriate scope of any eventual mediation process. As the Complainants have indicated in the Complaint, there are several ongoing parallel proceedings and investigations relating to:

- the archeological findings at the Los Lagos project site;⁶
- the transfer of the parcels of land at the former Osorno project site;⁷
- the potential review of the Los Lagos Environmental Impact Assessment;⁸ and
- the incidents of violence at the Los Lagos project site⁹.

⁶ See item 1 in the list of Important Rulings. Following unexpected archaeological findings at the Los Lagos site in 2019 and 2021, two communities requested an indigenous consultation from the Council of National Monuments to grant a characterization and rescue permit. The Ministry of Social Development initially deemed the consultation unnecessary, but a Supreme Court ruling in November 2021 mandated it. As such, the Council of National Monuments has ordered the beginning of a consultation process, based on ILO Convention 169, with Indigenous Peoples, called “Pilmaiquén Indigenous Consultation”, on the administrative measures that the Council of National Monuments could adopt regarding the unforeseen archaeological findings, within the framework of the construction works of the Los Lagos project. The consultation is to include all representative Mapuche Williche indigenous people, communities, associations and institutions, located in the radius of cultural influence of the project, in the communes of Río Bueno and La Unión, Los Ríos Region, and communes of Puyehue and San Pablo, Los Lagos Region, that are interested and could be affected by the adoption and execution of such measures. Statkraft has supported the conducting of the consultation with high standards and has offered resources to facilitate the process.

⁷ See items 2 and 3 in the list of Important Rulings. One of the main substantive issues discussed by the Complainants is the restitution of the land where the ceremonial site of Mr. Kintuante is located. However, by virtue of the Supreme Court of Justice Ruling of January 20, 2022, this is a matter under the jurisdiction of the national indigenous authorities (CONADI).

⁸ See items 4 to 9 in the list of Important Rulings. Mrs. Millaray Huichalaf Pradines and the indigenous communities Koyam Ke Che and Leufu Pilmaiquén Maihue initiated several legal proceedings in the Chilean judicial system seeking to trigger a review of the original 2009 environmental license and to establish the need for a new environmental impact assessment on the basis that two environmental variables have substantially changed in the intervening time i.e. aquatic fauna and archaeological finds. These efforts have not met with success at either the Environmental Court or the Court of Appeal. In a final attempt a disciplinary action has been initiated by the relevant claimants before the Chilean Supreme Court alleging gross negligence on the part of the judges in the Court of Appeals. This action can only be successful if the Court of Appeals has committed a serious abuse or fault when issuing a ruling. In Chile there have however been previous cases where the Supreme Court has rejected the complaint but modified the previous ruling using its ex officio faculties. Statkraft Chile is waiting for the Supreme Court to rule on this action.

⁹ The police investigations in relation to the recent incidents referred to in the Complaint are ongoing and Statkraft Chile is fully cooperating. Despite extensive outreach and mitigation and remediation measures and the implementation of a substantial social

In view of these on-going proceedings and investigations, it would be premature to pursue mediation with respect to issues that are to be decided within the scope of these ongoing proceedings. Therefore, any eventual mediation process should be appropriately scoped regarding its objectives. Separately, and in view of the questions raised above to the Claimants, Statkraft invites the National Contact Point to also consider - perhaps in coordination with the Chilean National Contact Point, as necessary - the appropriate personal scope of any eventual mediation process. Finally, Statkraft notes that the Claimants refer to several human rights related incidents taking place prior to Statkraft's involvement in the Pilmaiquen River basin. Statkraft therefore also invites the National Contact Point to consider the appropriate scope of any eventual mediation process in terms of the appropriate and most relevant timespan.

IMPORTANT RULINGS, LICENSES AND ACTIONS¹⁰

1. Supreme Court of Justice Ruling November 19, 2021, requiring the CMN to conduct an indigenous consultation process related to the archeological findings at the Los Lagos site with the objective of determining which administrative measures the Council of National Monuments can adopt regarding unforeseen archaeological finds.
2. Environmental National Authority Ruling N°202399101737 dated September 14, 2023, which formally establishes the dismissal of Osorno Project.
3. Supreme Court of Justice Ruling January 20, 2022, which establishes that it is CONADI who must decide to whom the implicated land at the Osorno site should be transferred.
4. Environmental License Los Lagos Project ruling 3573/2009.
5. Ruling 0906 SEA- August 29, 2019, which declares inadmissible the request to initiate an administrative procedure to review the environmental license RCA 3573- 2009. The interested parties were Machi Millaray Huichalaf, Koyam Ke Che Community and Leufu Pilmaiquén Community.
6. Ruling 1093 SEA- November 20, 2019, which declares the request submitted to the Committee of Ministers of the Environmental Evaluation Service inadmissible to review the environmental license of the Los Lagos project. The interested parties were Machi Millaray Huichalaf, Koyam Ke Che Community and Leufu Pilmaiquén Community
7. Environment Court Ruling January 29, 2021, denying an application seeking to trigger a review of the original 2009 Los Lagos environmental license and to establish the need for a new environmental impact assessment on the basis that two environmental variables have substantially changed in the intervening time.
8. Appeal Court of Justice Ruling July 27, 2023, denying an appeal seeking to trigger a review of the original 2009 Los Lagos environmental license and to establish the need for a new environmental impact assessment on the basis that two environmental variables have substantially changed in the intervening time.
9. Disciplinary action before the Supreme Court alleging gross negligence on the part of judges in the Court of Appeals.

investment plan, Statkraft has experienced negative incidents, including increasing attacks on its facilities and staff in recent years. As a result of the acts of violence, since the end of 2019, the Los Lagos project has had protective measures in place, issued by the Río Bueno Prosecutor's Office. Carabineros de Chile (the Chilean police force), an entity independent from the company, is legally in charge of implementing this measure, according to its available resources. It should be noted that Statkraft Chile has no interference in the decisions made by the Chilean courts of justice, nor in the actions of the Carabineros, an entity that is completely autonomous with respect to the actions it implements and its protocols for matters of public safety.

¹⁰ All rulings are available from the website: <https://oficinajudicialvirtual.pjud.cl/indexN.php>.

Statkraft looks forward to the conclusions of the initial assessment of the Norwegian National Contact Point and remains open to provide further information or clarification as necessary.

Yours sincerely,

A handwritten signature in blue ink that reads "Ingeborg Dårflot". The signature is written in a cursive, flowing style.

Ingeborg Dårflot

EVP – International

Statkraft AS




Statkraft AS - Norwegian OECD response - Chile_

Final Audit Report

2023-10-13

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