

OBSERVATIONS ON THE IRMA AUDIT PROCESS – ALBEMARLE

Presented by Securing Indigenous Peoples' Rights in the Green Economy (SIRGE coalition)

The purpose of this report is to conduct a critical analysis regarding the form and substance of how the audit conducted by IRMA and the certifying body contracted by them was carried out at the ALBEMARLE mine in Chile.

The main concerns identified in this letter are summarized here for ease of reading the document:

- The certifying body must clarify how they reached the conclusion that Albemarle "substantially complies" with national laws, given that the company has been sued for environmental damages. Furthermore, it is not clear how the certifying body took into account the causes and lawsuits against the company within the Chilean judicial system.
- We identified several concerns regarding the way the process of free, prior, and informed consent (FPIC) was assessed, which are summarized here:
 - The certifying body does not distinguish between a process of citizen participation (for example, agreements and communications with the CPA) and a process of free, prior, and informed consent. These are two different processes that should not be confused.
 - It did not evaluate free, prior, and informed consent according to national and international laws and standards, such as Decree No. 66 of the Ministry of Social Development of Chile and ILO Convention 169.
 - The certifying body interviewed few representatives of indigenous communities affected by the project, and we are concerned about the lack of representativeness of the interviewed group.
- Regarding the parts where it is mentioned that Albemarle "intends to comply" with a part of the standard, the intention to do something should not be rated in the same way as compliance.

- The improvement process for the company in the initial stage of the audit creates the possibility for the company to engage in greenwashing, especially because there is no public record of this process.

1. AUDIT INFORMATION

Key points from this information, which will allow us to evaluate audit processes.

- a) Number of employees: 250 employees and 455 contract workers at the time of the audit.
- b) Audit date: First stage: October 22nd to December 22nd, 2021, Second stage: April 25th to 29th, 2022, Follow-up evaluation: October 4th to 6th, 2022.

2. PROCESS DESCRIPTION

The process is divided into three stages:

Stage 1: The independent and external evaluation is a desktop review conducted by an IRMA-approved Certifying Body that assembles an audit team to verify the qualifications of the self-assessment and the evidence presented by the mine. During this stage, auditors may request additional information beyond what the mining company has provided. Mining operations may also choose to take time to make improvements to their practices before the start of Stage 2.

Regarding this situation, allowing mining operations to take some time to make improvements to their practices before the start of Stage 2: providing this opportunity without completing the audit process implies that mines may not show their real practices and may unfortunately prepare for an audit by engaging in greenwashing.

This also gives an advantage to the mining company, as they can review and rectify the results and conclusions of the audit before the final version is released, an opportunity not given to other stakeholders, such as affected communities, workers, etc.

Furthermore, IRMA should make this process transparent as part of the final audit report, by publishing the preliminary results, and the changes or rectifications that were accepted or rejected by the mining company.

Stage 2: Stage 2 is the site visit, which includes observations at the facilities and in the operation, an additional review of materials, interviews with mine personnel, workers, social actors, and meetings with affected communities.

Complaints Submission Process: The complaints process on the website lacks transparency regarding those received by audited companies; it is rather an individual methodology that lacks transparency.

For more transparency, complaints received should be published anonymously, and the response or lack of response from the company and/or IRMA should be made public.

OBSERVATION ON RESULTS BY REQUIREMENTS: CHAPTER 1.1—LAW COMPLIANCE

Chapter 1.1 - Law compliance	Bases for Assessment
1.1.1.1. Critical The operating company must comply with all applicable legislation of the host country regarding the mining project.	<p>IRMA recently modified its interpretation of this requirement, including guidelines for auditors to confirm the existence of a system that fulfills the following purposes:</p> <ul style="list-style-type: none">a) Identify all applicable laws of the host countries.b) Control compliance with those obligations. <p>Essential permits to access land and lithium resources are in force. Organizational permits related to environmental licenses and water resources were also provided. A meeting was arranged with the plant's lawyer, during which the legal situation of the company, two ongoing tax lawsuits, and evidence on how Albemarle handles the issue were discussed.</p>

- Given that it received a substantial compliance rating, it is not clear if the various lawsuits against the company in the host country are considered here. Considering that the company was cited for environmental damages (further information on the causes below), how did it achieve a substantial compliance level? Particularly for parts of the standard that IRMA has designated as "critical," it is important to conduct a rigorous assessment.

<p>11.4.1 The operating company will have to demonstrate that necessary measures are taken to ensure compliance with the IRMA standard by contractors involved in activities relevant to the mining project.</p>	<p>The justificatory evidence indicates that key contractors are aware that the organization intends to comply with IRMA principles. However, contractors must first understand the system implemented by the organization in order to document and record their compliance with IRMA standards. The organization is still implementing a system for its contractors to record compliance with IRMA principles. This must be implemented without exceptions to meet this IRMA criterion.</p>
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- Regarding contractor companies and the IRMA standard: there is a level of partial compliance; however, it is noteworthy that **"the intention to comply"** is considered partial compliance since mere intention is not sufficient to consider compliance if there are no actions aimed at implementing the IRMA standard.


CHAPTER 1.2— COMMUNITY AND SOCIAL ACTORS PARTICIPATION

<p>1.2.2.1 Social actors' participation should commence before or during the mine planning stage and continue throughout its lifespan. (Note: Existing mines do not need to...</p>	<p> The organization provided evidence that agreements were signed with the main communities (and the CPA). The evidence provided of regular meetings included ...</p>
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This form of participation is not related to the process of free, prior, and informed consent.

<p>demonstrate that their involvement with the community began before the mine planning stage.</p>	<p> virtual meetings that were organized during the COVID-19 pandemic for the MTP</p>
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Mine planning date. Does it count from when it became Albemarle or before that?

<p>1.2.1.3. The operating company must consult with social actors to design participation processes that are accessible, inclusive, and culturally appropriate, and must also demonstrate ongoing efforts to understand and eliminate barriers that limit the participation of affected actors (especially women, vulnerable groups, and marginalized).</p>	<p> The plant primarily engages with social actors through the MTP and the Atacameño Peoples' Council (CPA) as agreed upon with the communities. The agreements or treaties between the CPA and the plant originated from a participatory process that ensured participation methods aligned with their culture. However, the plant lacks a formal plan for engaging social actors beyond the provisions of the agreements, nor does it document how it has ensured that vulnerable populations establish or influence the CPA or the MTP. Some community members mentioned that additional forms of participation are needed besides the MTP and the CPA since many community leaders stated that these organizations do not represent their interests (despite being elected). The organization lacks explicit initiatives to involve other communities beyond the 18 with which agreements have been signed; however, the plant considers that these communities are not directly affected by the project.</p>
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Here, several issues that raise doubts about the proper application of FPIC are mentioned. If "community members mentioned that additional forms of participation are needed" and "many community leaders stated that [the MTP and CPA] do not represent their interests," it means that there are legitimacy problems with the agreements and treaties, and there has not been a proper FPIC process. It is not clear how the lack of FPIC was taken into account, as the company received a rating indicating that it partially complies with the design of participation processes.

Regulation and FPIC in Chile: Application by Albemarle:

Background:

1. Chile ratified International Labour Organization (ILO) Convention 169 through Supreme Decree 236 in 2008.
2. The consultation process mentioned in ILO Convention 169 is currently regulated by Supreme Decree No. 66 since 2013.
3. Prior to this, the consultation process was regulated by Supreme Decree No. 124 of the Ministry of Planning (MIDEPLAN) to implement the provisions of Article 34 of Law 19.253 "Indigenous Development Law".
4. Law No. 19.300 "On General Environmental Bases," which required the subsequent issuance of the Environmental Impact Assessment System Regulation through Decree No. 40 of the Ministry of the Environment.

The process of free, prior, and informed consultation established in Article 6 of ILO Convention 169, letter a, states the following: "*governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly*".

The importance of the beginning of this article lies in establishing the obligation to governments, that is, to the states; therefore, the consultation processes are not carried out through any other institution other than the representation of the state through its agencies.

This article is directly related to the environmental impact assessment processes carried out in Chile, through the environmental assessment service (representation of the state), which is the body responsible for implementing the FPIC process when an extractive project significantly affects indigenous peoples, according to what the law establishes.

The relevance of the above lies in the fact that a simple communication with a community regarding the extraction project, communication with a community about the establishment of the project, agreements carried out with a community in parallel or without a FPIC process, etc., are not considered FPIC (according to international and national standards).

That said, and in conclusion, the fact that Albemarle has relationships or even agreements with part of a community does not mean that there has been a FPIC process, and therefore it is not auditable and consequently it is not applicable to state that the FPIC process is fulfilled at 91%. Moreover, it is not necessary to look at national legislation to realize that this process was not properly applied. Additionally, it is not clear whether the communities had the opportunity to say "no" to the project, or if they were only invited to negotiate with the mining company about the conditions and details of the project. The right to say no to a project is an essential part of FPIC.

Below is an example of a project that is undergoing FPIC, as indicated on the public page of the Environmental Impact Assessment Service. In the first example, we see how a project subject to FPIC and citizen participation processes appears in the system. In the second example, corresponding to Albemarle's project, it can be seen that it was only subjected to citizen participation and not to a FPIC process.

Example 1: Project undergoing Free, Prior, and Informed Consent (FPIC) or consultation and citizen participation in the Environmental Impact Assessment System.

Ficha del Proyecto: Producción de Sales Maricunga

The screenshot shows a web interface for a project. At the top, there are three tabs: 'Antecedentes Generales', 'Expediente de Evaluación de Impacto Ambiental' (which is highlighted in blue), and 'Recursos Administrativos'. Below the tabs, there are two sub-tabs: 'Ubicación' and 'Plazos'. Under 'Plazos', there are four links: 'Expediente de evaluación de impacto ambiental', 'Participación ciudadana', 'Proceso consulta indígena', and 'Reunión con GHPII (art. 86)'. Below these links, there is a disclaimer: 'Estimado, los documentos con el ícono [icon] poseen firma electrónica. La versión disponible en este sitio web tiene validez legal. El significado de los demás símbolos puede verlo al final de esta página.'

Example 2: Albemarle's project in the system: It shows that it was only subjected to a citizen participation process in the Environmental Impact Assessment System.

Ficha del Proyecto: EIA Modificaciones y Mejoramiento del Sistema de Pozas de Evaporación Solar en el Salar de Atacama

The screenshot shows a web interface for a project. At the top, there are three tabs: 'Antecedentes Generales', 'Expediente de Evaluación de Impacto Ambiental' (which is highlighted in blue), and 'Recursos Administrativos'. Below the tabs, there are two sub-tabs: 'Ubicación' and 'Plazos'. Under 'Plazos', there are three links: 'Vista resumida del expediente', 'Expediente de evaluación de impacto ambiental', and 'Participación ciudadana'. Below these links, there is a disclaimer: 'Estimado/a usuario/a, los documentos con el ícono [icon] poseen firma electrónica. La versión disponible en este sitio web tiene validez legal. El significado de los demás símbolos puede verlo al final de esta página.'

Citizen participation process:

It is a requirement for all projects submitted to the Environmental Impact Assessment (EIA) system, in which indigenous communities may also participate, but not according to the regulations of a FPIC process, but rather they only have the right to raise observations on the project under evaluation. The project is obligated to respond to these observations; otherwise, an appeal may be filed with the Environmental Assessment Service.

The Albemarle Project received only 4 observations, and two of them were made by indigenous communities.

Regarding the participation of indigenous communities in this audit process:

1- The Albemarle database was used to define which communities would be interviewed. The national database is not used and no further examination of it is conducted, which could be requested from CONADI (National Corporation for Indigenous Development).

2- The number of indigenous people interviewed does not align with the representativeness of the affected indigenous peoples and communities:

First session of conducted interviews:

Atacameños Peoples Council: 2 representatives interviewed.

Peine Community: 1 representative interviewed.

Toconao Community: 7 interviewed

Talabre Community: 3 interviewed

Camar community: 2 interviewed

Total: 15 People from indigenous communities interviewed.

Second session of conducted interviewss:

Atacameños Peoples Council: 1 interviewed.

Toconao Community: 1 person interviewed.

Peine Community: 2 interviewed.

*** About these interviewees, it is not clear whether they are the same individuals who were previously interviewed or not.**

To the above, the Municipality of San Pedro is added: 1 person interviewed.

* Regarding this interview, it is not clear which part of the municipality was interviewed, whether it was the mayor, a council member, the person in charge of indigenous affairs, etc.

Total: 5 people from indigenous communities interviewed.

A process of FPIC, especially if there are divisions between communities or within communities, is very complex. It is not clear how the certifying body that conducted this audit, given that they are people from outside these communities and only spent 8 days in the host country, is qualified to analyze the level of FPIC in this case. This relates to the ethics of interviews with members of communities mentioned in the audit. There is no explanation of the qualifications of the Certifying Body to conduct these interviews, or their experience with FPIC processes or indigenous policy.

CAUSES AND LAWSUITS IN THE JUDICIAL SYSTEM INVOLVING THE COMPANY:

The company currently has three cases pending in various areas;

1- Judicial process with CORFO because they have different interpretations of the contract and what they are obligated to pay: Unfortunately, this audit did not inquire beyond what the company claims, as there are reasons to question whether the company is subject to these types of processes.

2- Judicial process with the Internal Revenue Service: According to the company, similar to the previous case, the company is in dispute regarding what it should pay. In this case, there was also no further investigation beyond what the company states. It is even stranger that a case involving this type of service was overlooked.

Lawsuit for environmental damage where the Council of State Defense sues Albemarle along with other companies for the damage and scarcity of water resources observed in the Salar de Atacama Basin. In this case, the company only cites as the reason for this lawsuit that all companies using water from this area are being sued. However, it is striking that there was no investigation, for example, into determining the permitted water extraction quota for the company and the actual amount being extracted.

Regarding the lawsuits, it is concerning that the audit does not seem to give them the importance they deserve. With three lawsuits, this is not a trivial matter. Additionally, two of these cases involve non-compliance with payment obligations, which suggests that two state agencies may

have made mistakes in charging the company.

Furthermore, while the principle of innocence should prevail until proven otherwise by the courts, a lawsuit from the Council of State Defense for environmental damage is alarming and should be treated with the seriousness it deserves.

<https://portal.sma.gob.cl/index.php/2022/03/11/tras-sobreextraccion-de-salmuera-sma-abre-procedimiento-sancionatorio-contraminera-albemarle/>

<https://www.soychile.cl/calama/sociedad/2023/07/24/820854/antofagasta-calama-mineria.html>

Conclusions:

1- Based on the aforementioned points, one could conclude that the investigation methodology employed by the auditors was rather brief and non-exhaustive, considering that the information-gathering period lasted only one month, from December 10th to December 11th, 2021.

2- In the section on Free, Prior, and Informed Consent (FPIC), it is clear that the auditors are not legally qualified to reach a conclusion of evaluating this crucial point at 91%. Merely reading the ILO Convention 169 would suffice to deduce that the company did not apply the international standard established in this convention.

3- Based on the previous point, it can be assumed that by not applying the International Standard, the company also fails to comply with National legislation because, according to Decree 66, which regulates this matter in Chile, FPIC has a series of established procedures in accordance with the Convention, with inherent principles such as Good Faith, informed, prior, and free consultation, which are clearly also stated in the Convention.

4- The expertise of the Certifying Body in Chilean laws and judicial processes is not clear. Since this team is composed of individuals from other countries, and they did not analyze various parts of the standard according to the citizen participation processes established by Chilean legislation,

nor did they consider the judicial processes that have taken place within the Chilean judicial system, we are interested in knowing: what qualifications or training are provided to the certifying body to enable them to conduct a well-founded analysis within the legal and judicial context of the country in which the mining company is operating, in this case, Chile?

5- Regarding the way the company intervenes with indigenous communities:

- a) The fact that the company made agreements with indigenous communities without a FPIC process leads us to think that what this company did was to carry out this type of pseudo-consultation to bypass this process within the Environmental Assessment Service and thus have its project approved by said service more quickly.
- b) By engaging in this practice, the company only works with communities willing to negotiate with them (part of their self-determination). Consequently, communities that do not agree do not participate in this negotiation, nor are they declared as affected parties by the company, and thus they are not included in the Consultation Process.
- c) It is not clear how the informed part of the FPIC process was verified. There is no mention of access to information from an independent entity other than the company to support communities in analyzing and discerning the information and data generated by the company. Furthermore, there are several instances where it is mentioned that the information shared with the CPA did not reach other members of the communities.