



CAO ASSESSMENT REPORT

**Regarding ninth complaint in relation to
IFC's Yanacocha project (# 2983) in Cajamarca, Peru**

July 2017

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
OHS	Occupational Health and Safety
PPE	Personal Protective Equipment

1. OVERVIEW

In January 2017, CAO received a complaint from a group of current and former employees of Minera Yanacocha S.R.L (the “Company”), raising concerns about occupational health and safety conditions, as well as health impacts that they believe are connected to their employment at the Company. The complaint met CAO’s three eligibility criteria, and CAO carried out an assessment of the complaint. The parties expressed interest in pursuing a dispute resolution process but were unable to agree on the terms of participation. Given the voluntary nature of CAO’s dispute resolution process, the complaint is being referred to CAO’s Compliance function for an appraisal of IFC’s performance on the environmental and social due diligence of the project. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1 The Project

Located in the Andes mountains in the Department of Cajamarca, Peru, the Company operates an open-pit gold mine in Latin America. The Company is engaged in the exploration and production of gold since its opening in 1993. The Company is jointly owned by Newmont Mining (51.35%), Minas Buenaventura (43.65%), and IFC (5%).¹

From 1993 to 1999, IFC committed three loans to finance the capital expenditure programs for three of the Company’s mines: Carachugo, Maqui Maqui, and La Quinoa. In parallel, IFC made an equity investment for a 5% ownership stake in the Company. Only the equity investment was active at the time of the complaint.

2.2 The Complaint

The complaint was filed in January 2017 by a former employee of the Company on behalf of himself and a number of other current and former employees (the “Complainants”). The Complainants raise concerns in relation to occupational health and safety (OHS) conditions at the mine during their employment. As per information provided by the Complainants, the overall period in which they worked for the Company is between 1995 and 2017, varying per individual. They contend that the Company failed to protect them from exposure to toxic gases and that this has led to long-term negative impacts on their health. The complaint also includes concerns about the Company’s response to the issues when they were raised by the Complainants, particularly related to access to information and the different approaches to individual cases.

A more detailed summary of issues is presented in Section 3.

3. ASSESSMENT PROCESS

3.1 Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainants, gather information on the views of different stakeholders, particularly the Company, and determine whether the Complainants and the Company would like to pursue a dispute resolution process facilitated by CAO, or whether the complaint should be handled by

¹ See: <https://disclosures.ifc.org/#/projectDetail/SPI/9502> Last accessed on June 22, 2017.

CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

CAO does not gather information during the assessment to make a judgment on the merits of the complaint.

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- telephone conversations and meetings with the Complainants in Cajamarca, Peru;
- telephone conversations and meetings with representatives of the Company in Cajamarca, Peru, and corporate representatives in Denver, Colorado, USA; and
- meetings with IFC's project team.

3.2 Summary of Views

CAO heard divergent opinions from the Complainants and the Company about the concerns raised in the complaint regarding occupational health and safety and the impact on the complainants' health. The following section summarizes the main concerns as expressed to CAO by each party.

Complainants' perspective

The Complainants' main concern is related to health impacts and health conditions that they believe are linked to exposure to heavy metals and toxic gases during their employment. The Complainants state that, they worked in several mine operations, which constitute different sub-areas of the Company's processes, where heavy metals including mercury, aluminum, cadmium, nickel, silver, titanium, thallium, uranium, lead, and arsenic. Over time, these working conditions led to chronic and acute exposure, which they allege has had a long-term negative impact on their health. The Complainants report a series of health conditions, including loss of memory, heart conditions, tremors, hernias, neurological disorders, acute allergies, and several others, which they do not believe correspond to normal conditions for workers their age. The Complainants said that they have consulted both legal and medical experts, who also indicate that these conditions are associated with exposure to heavy metals. As part of the complaint, the Complainants submitted lab analyses of hair samples for several complainants, showing results that were over the threshold levels for heavy metals.

The Complainants are also concerned that their health conditions and the high cost of medical treatment have made it difficult for them to provide for their families. They report having difficulty finding alternative means of employment or income, or taking on new jobs, due to ill health. They also cite limited access to healthcare and the high cost of treatment, which places an additional burden on them and limits their ability to provide for their families, who often depend on them as the sole income earners.

The Complainants indicate that, during their employment of 10 years or more, they witnessed several gaps in the Company's OHS procedures. They describe being subject to arduous working hours. They also contend that the Company did not protect workers sufficiently, even though some of these issues were identified and raised by workers or other internal reviews, as well as public external reviews. The gaps they described to CAO included the following:

- Lack of Personal Protective Equipment (PPE) provision, in line with the risks of exposure to heavy metals. For example, the Company did not provide PPE consistently, or only provided a dust mask instead of a gas mask, which was considered as a serious infraction by SUNAFIL, the labor authority, penalizing the Company for not giving PEE during 2010 and 2011.

- Lack of a safe and clean working environment, particularly in the early years of the mine. As an example, several workers indicated that, in the first few years of their employment, there was no signage for hazardous materials, no PPE provision, and no cafeteria; workers had to eat in the processing area where they worked, specifically in the refinery, the smelting, the chemical laboratory, the coal plant, and in the leach pad. These areas where workers ate, had presence of toxic gases and heavy metals 24 hours a day coming from the ovens, tanks and GAF external filters, in which the cyanide solution contained over 10,000 ppm of cyanide per cubic meter.
- Lack of compliance with safety standards that minimize the risk of toxic exposure, including exceeding permissible temperature levels in the processing areas that protect from the release of toxic gases, or not adequately providing for storage and disposal of toxic elements.
- Lack of adequate monitoring of safety standards and risk mitigation. The Complainants specifically cited a lack of properly certified and well-maintained Jerome monitors to measure mercury levels in the working area, a lack of proper PPE monitoring and worker OHS training, monitoring and testing only for mercury and lead, but no other elements, not addressing issues raised by workers or identified in internal reviews, and a working environment that discouraged workers from complaining or raising issues. The Complainants placed specific emphasis on the Reliability-Centered Maintenance (RCM) review conducted by the Company in 2010, which they say identified several gaps in safety procedures that were never addressed. They indicate that the Company did not request lab analysis for heavy metals within the annual medical tests. In addition, they say that monthly medical test in blood and urine for heavy metal presence were controlled internally and withheld.
- Lack of appropriate Company response to medical issues, including lack of investigation when incidents were reported, improper diagnosis or minimization of conditions, and poor follow up of medical treatment and medical coverage.

The Complainants stated that, when they have made efforts to access relevant information regarding OHS conditions or their own medical records, the Company has responded by denying them access to information or covering up the existence of documentation. The complainants place high importance on receiving information on medical lab analysis records and medical treatment related to their cases, which they believe are in the Company's possession and to which they believe they have a legal right. The Complainants believe that IFC, as a shareholder of the Company, should request and provide this information as part of its Access to Information Policy.

The Complainants also expressed concerns over the Company's response to their complaints, which they say have never been taken seriously and have been met with strategies to divide or isolate workers who complain. The complainants feel particularly aggrieved by this since, from their perspective, they have given years of service to the company while their medical needs were ignored. They believe the situation is becoming worse each day that it is not addressed.

The Complainants expressed an interest in pursuing a dispute resolution process with Yanacocha, but underlined the importance of engaging as one complainant group, include Newmont representatives in the dialogue process, and address issues expeditiously. They also argued that the reasons provided by the Company for not engaging with certain individuals because of questions about their behaviour are unproven arguments and have nothing to do with the health contamination that they allege workers have suffered for years.

Company's perspective

The Company stated that they take employee health and safety very seriously, and that they have advanced safety procedures in place at the mine to ensure worker health and safety, with a series of checks and balances to prevent worker endangerment. They contend that their

processes are compliant with best practice and are designed in accordance with the level of risk to which their workers are exposed. They noted that the Company has received several certifications and awards in recognition of occupational health and safety, and their processes are being reviewed and improved on a continuous basis.

Given their understanding of the chemical processes involved in the operations and of the safety procedures, the Company questions the credibility of claims related to heavy metal poisoning caused by exposure at the mine. They contend that the Company does not employ use of some of the heavy metals (uranium for example) that are allegedly having health impacts on the Complainants, and for those metals that are naturally present in the ore (mercury for example) or used in the metallurgic process, they have specific controls in place to protect employees, monitor and respond to any exposure that may exceeds the norms.

The Company's team reviewed the details of each individual case and indicated to CAO that, from their medical team's point of view, the claims have no medical basis. They question some of the information that the Complainants have brought forth, and they attribute most of the expressed medical conditions to other factors (lifestyle, non-occupational conditions, other sources of exposure). They indicated that some of the Complainants were not working in positions or areas that would expose them to heavy metals. Those who were working in exposure areas, the Company noted that they have all the elements for personal protection and that workers were monitored as per standard practice, and any health issues would have been picked up via the medical examinations the Company requires of workers regularly, including exit medical examinations when they left the Company.

When it comes to information or company response, the Company stated that it has an open-door policy whereby workers can raise concerns, which are addressed on an individual basis, and that each worker can request and receive medical records from the Company about procedures or treatments that were provided to them by the Company's medical staff. When it comes to information held by third parties, such as clinics or hospitals, the Company indicated it does not have access to that information due to the confidential nature of those records as established by Peruvian law, and that workers should request those materials directly from the third party.

The Company expressed concern over the complainant group because, from their point of view, some of the Complainants have gone from one forum to another to present law suits, despite some of their cases being struck down and, in some cases, there are already individual settlements. They are also concerned that some of the Complainants were dismissed from the Company for specific reasons and chose to go to litigation, thereby making it difficult for the Company to engage with them in dialogue.

In terms of the CAO process, and after reviewing the individual cases, the Company indicated a willingness to engage with a specific subset of Complainants to discuss the issues in the complaint. From their perspective, even though they have already subscribed settlement agreements with some of the Complainants, the Company is willing to engage in dialogue with those former workers whose conduct was not being questioned once the labor relationship ended.

4. NEXT STEPS

In principle, both parties expressed interest in engaging in a dispute resolution process facilitated by CAO to attempt to resolve the issues at stake. However, the parties could not reach agreement regarding the terms of who should be participating in the process.

Due to the inability of the parties to reach agreement on participation, and given the voluntary principle guiding CAO's dispute resolution process, CAO is referring the complaint to its

Compliance function. In accordance with its Operational Guidelines, CAO will conduct a compliance appraisal of IFC's environmental and social performance related to the project.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s), (2) gather information on how other stakeholders see the situation, and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,² the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgment** of receipt of the complaint.
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: **CAO Assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating Settlement:** If the parties choose to pursue a collaborative process, CAO's dispute-resolution function is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed dispute-resolution approaches, leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.³

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question, to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

³ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow up.**

Step 6: **Conclusion/Case Closure.**