



COMPLIANCE MONITORING REPORT

*IFC Investments in Minera Yanacocha S.R.L (Project #2983, 4449, 9502)
Complaints 09 &10*

*December 7, 2020
Office of the Compliance Advisor Ombudsman (CAO)*

Monitoring Report of IFC's Response to:

**CAO Investigation of IFC's Environmental and Social
Performance in Relation to its Investments in Minera
Yanacocha S.R.L.**

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about CAO, please visit www.cao-ombudsman.org

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Introduction and Background

CAO's compliance function conducts investigations of IFC/MIGA's environmental and social (E&S) performance to assess compliance with relevant requirements and to improve institutional E&S performance. Where CAO makes findings of non-compliance, CAO monitors actions taken by IFC/MIGA until such actions demonstrate that its compliance findings are being addressed.

Minera Yanacocha S.R.L ("Yanacocha" or "the Company") operates open pit gold mines near Cajamarca, Peru. IFC made equity and loan investments in 1993 to support the Company's first open pit mine development. IFC made additional loan investments in 1994 and 1999 to finance project expansion (collectively "the project"). In 2005, the Company completed repayment of IFC's loans. In 2017, IFC sold its equity in Yanacocha, ending its investment relationship with the Company.

This compliance monitoring report relates to CAO's investigation of IFC's investments in Yanacocha ("the compliance investigation").¹ CAO's compliance process was triggered by two complaints (Yanacocha-09 and Yanacocha-10) received between January and May 2017 from groups of current and former workers of Yanacocha.² The Complainants claimed they suffer from heavy metal poisoning and related health conditions due to alleged workplace exposure to toxic gases and heavy metals, and that chronic and acute exposure have induced long-term negative impacts to their health. The Complainants asserted that the Company did not provide them with adequate PPE. They stated that they have not been able to access their own employment medical records including the medical examinations, such as blood and urine testing for the presence of heavy metals. They claim the medical information from heavy metal testing was not included in the annual medical exams. As shown in the documentary "Open Pit,"³ the Complainants alleged that the Company concealed information such as medical records from the workers. They are concerned that not all workers in operations such as refinery and smelting were required to undergo testing for heavy metals. They noted they were only tested for mercury, while they were exposed to other heavy metals from the mining operations. They also question the monitoring of ambient gases at the company's operations. The more than 22 Complainants provided to CAO copies of lab results of heavy metal testing they had undertaken on their own as well as medical assessments by a toxicologist. They also provided to CAO numerous documents, photos, and videos to support their claims.⁴

CAO released a compliance investigation report in response to the complaints in February 2020. The investigation made several non-compliance findings in relation to IFC's review and

¹ The CAO investigation, IFC's response to the investigation and related materials are available on the CAO website. See <https://bit.ly/Yanacocha-09>.

² The Yanacocha-11 complaint raised concerns in relation to environmental conditions at Yanacocha's mines, specifically regarding the alleged discharge of cyanide solutions into local water sources. The CAO appraisal report concluded that the environmental concerns raised in the complaint did not warrant a compliance investigation, and as such, the case was closed.

³ Converso, Gianni, 2011, *Open Pit*. Available at <https://goo.gl/v1Dccn>.

⁴ Approximately one thousand documents and other material were provided by the Complainants to support their claims, among them were: results (mineralograms) of hair testing for heavy metals; results of urine and blood testing for mercury and lead; individual medical reports for the Complainants; photographs of the Complainants' health impacts; photos of the plant and equipment; videos of testimony by the Complainants; video clip of a documentary on impacts caused by the company's operations; letters from EarthRights International on behalf of the Complainants to request medical records; correspondence between the Complainants, SUNAFIL (National Superintendence of Labor Inspection), and Peruvian members of congress; internal company documents including urine test results for mercury and materials related to a reliability centered maintenance (RCM) investigation; a thesis on the geological study of Cerro Yanacocha; and Complainants' comments on the 2011 Second Modification to the EIA.

supervision of occupational hygiene risks at the Company. A summary of the investigation findings is included in Annex A.

A management response from IFC was released together with the investigation report. IFC's response indicated improvements made at the level of policies, procedures, practice, and knowledge, as well as a project-level action that was initiated following a review of the draft version of CAO's investigation report.

While the Company's ongoing occupational hygiene performance falls outside the scope of IFC's responsibility post-divestment, this monitoring report has considered measures taken by IFC to address the findings of the compliance investigation at two levels: firstly it reviews systemic actions that IFC has taken as relevant to CAO's non-compliance findings, and secondly it considers measures taken by IFC to ensure that the Complainants have access to their occupational medical records.

This monitoring report documents IFC's response to the compliance investigation for the period August 2019–October 2020.⁵

Observations from CAO Monitoring (August 2019–October 2020)

This section first presents CAO's investigation findings. It then summarizes IFC updates to CAO on actions taken to address the project-level and systemic investigation findings since the completion of the investigation report in August 2019. Finally, a summary of the Company's actions and complainant views are presented.

CAO Investigation Findings Not Subject to Monitoring

CAO's compliance investigation made a series of findings regarding IFC's pre-investment review and risk mitigation measures, investment structure, and supervision, as listed below. The Company's ongoing occupational hygiene performance falls outside the scope of IFC's responsibility post divestment, and as such, it is not subject to CAO monitoring.

IFC's pre-investment review and risk mitigation measures:

- For each of its investments, IFC did not document an adequate pre-investment review of the Company's occupational hygiene risk identification and mitigation framework, or track record, despite identification of occupation hygiene as a potential area of project risk and reference to appropriate standards.

IFC investment structure:

- IFC's 1993 and 1994 loan agreements required the Company to operate in accordance with more stringent 1992 requirements from the WBG's draft *Occupational Health and Safety (OHS) Guidelines Mining and Milling - Open Pit* in addition to the corresponding mining guidelines in the then-applicable 1988 World Bank OHS Guidelines. This is an application of good practice.
- The 1992 Procedure provided for IFC to include appropriate E&S requirements in its investment agreement. The lack of E&S requirements in IFC's equity agreement with the Company left IFC in a position where, once all loans were repaid, IFC did not have any formal right to supervise the project or require compliance with IFC's E&S requirements.

⁵ The CAO investigation report was completed in August 2019.

- IFC policies and procedures required IFC to supervise the Company to ensure compliance with its E&S conditions throughout the life of an investment. IFC's failure to agree E&S conditions and a formal process for ongoing monitoring during the period 2006-2017 (after loan repayment but while IFC held equity in the Company) although offered an opportunity to do so by the Company, represents a material failure of supervision. The lack of such an agreement had a negative impact on IFC's ability to supervise the Company's occupational hygiene performance.

IFC supervision:

- IFC has not adequately supervised the Company's occupational hygiene performance nor retained information necessary to assess the status of compliance with IFC's occupational hygiene requirements.
- IFC did not take any action to respond to serious and specific allegations of occupational health impacts as necessary to assure itself of the Company's compliance with relevant IFC's occupational hygiene requirements.

CAO Investigation Findings Subject to Monitoring

Two additional compliance findings regarding IFC supervision are subject to CAO monitoring. These are the following:

- Once IFC became aware of the Complainants' allegations that the Company had not provided the Complainants access to their medical records, there is no evidence that IFC took action to assure itself that the Company had: (a) systems in place to provide and explain relevant medical information to workers; or (b) provided the Complainants with their medical records.
- CAO has insufficient evidence to verify the Complainants' claims of adverse health impacts caused by the project. At the same time, CAO finds that shortcomings in IFC's supervision of the project contributed to this lack of evidence.

IFC's Actions in Response to CAO Investigation Report

Systemic response

IFC Management's Response outlines a series of systemic actions that IFC has taken over the years to improve its E&S performance as relevant to CAO's non-compliance findings. Since 1999, IFC has developed its document filing and storage systems and procedures, including documentation concerning pre-investment E&S review as well as E&S supervision. With regard to E&S contractual requirements in IFC investment documentation, since 2009, IFC has consistently included uniform E&S requirements in all equity investments. In order to improve the quality and documentation of monitoring, in 2010 IFC appointed Regional Team Leads to oversee E&S portfolio monitoring and in 2016 IFC started to conduct dedicated E&S quarterly portfolio reviews.

IFC Management's Response also includes commitments to systemic actions. IFC is engaged in continuous and ongoing updates of the WBG Environmental, Health and Safety (EHS) Guidelines in order to reflect evolving good international industry practices. The expected completion date of the updated General EHS Guideline, which is relevant to avoiding and monitoring worker exposures, is December 2021. In May 2019, IFC commissioned dedicated OHS expert resources to support specialists on projects with high occupational hygiene risks. With the recent creation of a new Environmental & Social Risk & Policy Department, IFC will pilot and roll out new

procedures that require teams to engage proactively with clients early in CAO's complaint process and respond proactively to complaints received directly by IFC.⁶

Project-level response

With regard to the two investigation findings that are subject to CAO monitoring, following a review of a draft version of the investigation report, in May 2019, IFC engaged with the Company and spoke to their medical doctor who has been with Yanacocha since 2007. The doctor explained that local legislation requires employers to have their employees undergo annual medical exams from the start of employment until retirement. Medical records are filed with "Susalud" the National Superintendent of Health, where they are kept for 40 years from when an employee retires and are accessible to employees. Electronic copies are also retained by the Company. According to Yanacocha's medical doctor, an employee is given a copy of his/her medical results at the time of the exam, and such an employee can request a complete copy (except x-rays) that are delivered free of charge in one to three weeks. Employee requests for copies of their medical records are filed/kept by the Company's human resources department along with evidence that such records had been provided. Yanacocha notes this system has been in place for over 12 years and is outlined in the Peruvian mining regulations.⁷

In August 2019, IFC management sent a letter to the Company to request that: (a) the Company ensures that all individual medical records be provided to former employees upon request; and (b) where medical examinations were conducted as part of an employee's work and records are retained by a third party, that Yanacocha ensures that former employees have full access to these records.

In April 2020, IFC shared with CAO examples of receipts that indicate that Yanacocha provided medical records to employees during the course of their employment. The receipts, which include some of the Complainants, evidence that since as early as 2010, active employees signed company forms indicating they received their medical records.

Company Update

Yanacocha provided CAO with a communication it had disseminated in July 2020 to current employees and former employees where it had contact information. The communication ("July 2020 Company procedure", see Annex B) advised current employees and former employees that they could make a request to the Company's Labor Relations Human Resources department for copies of their occupational health records retained by the company since 2002, per national law. The Company advised CAO that requests could be made by email or by letter, and for requests made for records prior to 2002, the Company would provide this information where available.

Complainants' Update

The Complainants state that they have not contacted the Company after publication of the CAO investigation report.

When asked whether they used the July 2020 Company procedure to request their medical records, the complainant representative asserted that the question was irrelevant since they previously made such a request to the Company and to IFC. The complainant representative reiterates his view that CAO is trying to dodge and delay the process in order to benefit IFC, and that CAO is colluding with and partial to IFC and the Company by concealing and disregarding information, such as the SUNAFIL sanctions against the Company. The Complainants claim that

⁶ IFC Management Response, September 2019. Available at <https://bit.ly/Yanacocha-09>.

⁷ IFC Management Response, September 2019. Available at <https://bit.ly/Yanacocha-09>.

the compliance investigation did not take into account all the information provided by the Complainants, questioning the qualifications of the individuals working on the case. Moreover, the Complainants have repeatedly expressed frustration at the lengthy CAO process. They have informed CAO that they are pursuing other avenues of recourse.

The Yanacocha-10 complainant representative asserted that they no longer want to be involved in the CAO process and that they will pursue a judicial process.

Conclusion

Since receipt of a draft version of CAO's investigation report for factual review and comment in May 2019, IFC has documented engagement with the Company in order to address allegations by the Complainants that they do not have access to their medical records. Specifically, IFC received evidence from the Company that it provided medical records to active workers. After IFC divested from the Company, IFC management formally requested the Company to provide former employees with access to their medical records. In an update to CAO, the Company noted that in July 2020 it had a procedure for former workers to request and receive their medical records and that this had recently been communicated to workers.

The Yanacocha-09 complainant representative maintains that the former workers have still not received access to their medical records, however, it is unclear whether they made a request to the Company since completion of the CAO compliance investigation. The Yanacocha-10 complainant representative asserted that they no longer want to be involved in the CAO process preferring to pursue a judicial process.

Considering IFC no longer has an investment in the Company, IFC did not have a mechanism to require a response of the Company regarding access to medical records. IFC management formally requested that former workers be provided access to their medical records, and IFC obtained evidence that the Company provided medical records to active employees. In August 2020, the Company announced a procedure to provide former workers access to their medical records. CAO finds IFC's response to this compliance investigation at the level of the project is satisfactory.

At a systemic level, IFC has documented improvements in its approach to assess and supervise occupational hygiene risks. IFC has allocated further resources to this field and expects to update its WBG EHS Guidelines by December 2021 in order to reflect evolving good international industry practices. CAO finds that IFC's response to this compliance investigation at the level of policies, procedures, practice and knowledge is satisfactory.

While it remains unclear whether the Complainants have obtained their medical records, CAO has decided to close its monitoring of the investigation considering the actions reported by IFC and the Company and considering that IFC no longer has an investment in the Company.

Annex A: Summary of Investigation Findings

CAO FINDINGS

IFC's Pre-investment Review and Risk Mitigation Measures

- For each of its investments, while identifying occupational hygiene as a potential area of project risk, and referring to appropriate standards, IFC did not document an adequate pre-investment review of the Company's occupational hygiene risk identification and mitigation framework, or track record.

IFC Investment Structure

- IFC's 1993 and 1994 loan agreements required the Company to operate in accordance with more stringent 1992 requirements from the draft OHS Guidelines Mining and Milling - Open Pit in addition to the corresponding mining guidelines in the then-applicable 1988 World Bank OHS Guidelines.
- The 1992 Procedure provided for IFC to include appropriate E&S requirements in its investment agreement. The lack of E&S requirements in IFC's equity agreement with the Company left IFC in a position where, once all loans were repaid, IFC did not have any formal right to supervise the project or require compliance with IFC's E&S requirements.
- IFC policies and procedures required IFC to supervise the Company to ensure compliance with its E&S conditions throughout the life of an investment. IFC's failure to agree E&S conditions and a formal process for ongoing monitoring during the period 2006-2017 (after loan repayment but while IFC held equity in the Company) although offered an opportunity to do so by the Company, represents a material failure of supervision. The lack of such an agreement had a negative impact on IFC's ability to supervise the Company's occupational hygiene performance.

IFC Supervision

- IFC has not adequately supervised the Company's occupational hygiene performance nor retained information necessary to assess the status of compliance with IFC's occupational hygiene requirements.
- IFC did not take any action to respond to serious and specific allegations of occupational health impacts as necessary to assure itself of the Company's compliance with relevant IFC's occupational hygiene requirements.
- Once IFC became aware of the Complainants' allegations that the Company had not provided the Complainants access to their medical records, there is no evidence that IFC took action to assure itself that the Company had: (a) systems in place to provide and explain relevant medical information to workers; or (b) provided the Complainants with their medical records.
- CAO has insufficient evidence to verify the Complainants' claims of adverse health impacts caused by the project. At the same time, CAO finds that shortcomings in IFC's supervision of the project contributed to this lack of evidence.


Annex B: Communication by Yanacocha regarding Access to Medical Records

COMUNICACIÓN INTERNA

COMUNICADO

A TODOS NUESTROS TRABAJADORES Y EXTRABAJADORES

- De acuerdo con la comunicación interna enviada hace unas semanas ([Ver aquí](#)) sobre la posibilidad de acceder a los exámenes médicos ocupacionales por pérdida u otro motivo, estos pueden solicitarse por carta o vía correo electrónico a nuestra área de Recursos Humanos.
- El proceso se realiza de la siguiente manera:



- ✓ La solicitud debe estar dirigida a la gerencia de Relaciones Laborales Recursos Humanos, precisando los exámenes médicos que se requieren y definiendo los años.
- ✓ El área Médica ubicará los exámenes requeridos en los archivos centrales, y entregará lo solicitado a un representante de Recursos Humanos designado por la gerencia de Relaciones Laborales.
- ✓ Este trámite puede durar de 3 a 5 días útiles.

- Las áreas indicadas proporcionarán los documentos siempre de acuerdo con sus registros y con los años en los que se realizaron los exámenes. Recordemos que la legislación peruana estableció la entrega de estos resultados a partir del año 2002.
- Agradecemos su atención y reiteramos nuestra disposición constante para que cada trabajador tenga siempre acceso a los reportes de sus exámenes médicos.

Compartir con colaboradores que no cuentan con correo electrónico.

Yanacocha