



**October 22, 2018**

*Office of the Compliance Advisor Ombudsman (CAO)*

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## **COMPLIANCE APPRAISAL: SUMMARY OF RESULTS**

*Yanacocha (IFC Project #2983, 4449, 9502), Complaint 11  
Peru*

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Minera Yanacocha S.R.L. (“the Company”) is a Lima-based joint venture. The Company was established in 1992 to develop gold deposits in the Department of Cajamarca, Peru. Since its establishment, the Company has developed four open pit mines named Carachugo, Maqui Maqui, Yanacocha and La Quinoa. Until December 2017, IFC held a 5% equity stake in Minera Yanacocha S.R.L., which it sold to its project partners, Newmont and Buenaventura.

On December 06, 2017, CAO received a complaint [Yanacocha-11] from current and former workers pertaining to project environmental performance, in particular air and water pollution emissions from the Company’s La Quinoa operations, and concerns for occupational health and safety at the Company’s various operations. Following CAO’s assessment, the complaint transferred to the CAO compliance function for a compliance appraisal.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding environmental and social (E&S) outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised, results of a preliminary review of IFC’s E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC’s requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

As the concerns for occupational health and safety (OHS) raised in the Yanacocha-11 complaint are the same as those raised in Yanacocha-09 case, and the complainants in Yanacocha-11 are the same as Yanacocha-09, OHS issues are not addressed in this compliance appraisal. CAO notes that the issues raised by the complainants are serious in nature and community concern for potential project environmental impacts has been a long-standing source of community–company tension.

As part of this appraisal, CAO considered the conclusions of a 2003 study of project impacts on water, subsequent company reporting to IFC and national regulator, IFC’s supervision records, and external reports related to the Company’s operations. The 2003 water study, commissioned by CAO, concluded that the Company’s operations did not present a serious risk to human health in the short term. A follow up participatory monitoring report in 2005, noted improvement in water quality. Subsequently, IFC and the Company continued to monitor project E&S performance—extending the scope of air and water pollution monitoring over time and improving the Company’s internal E&S policies. Where exceedances of air and water standards were identified, IFC’s supervision documentation records that these were the result of (a) naturally occurring environmental factors, (b) animal and human waste contamination or (c) mining operations. Where exceedances in air and water standards were considered to relate to the Company’s operations, IFC raised the issue with the Company and noted resolution through its site

supervision visits. Where reports of water pollution have been raised in the public domain, these have reviewed by the national authorities and corrective actions provided. Reports of the national authorities do not detail serious impacts to human health due to the Company's operations.

CAO has determined that the environmental concerns raised in the Yanacocha-11 complaint do not merit a CAO compliance investigation. In making this determination CAO finds that there is a lack of evidence to support a conclusion that the Company's operations have resulted in significant adverse environmental outcomes as a result of air and water emissions as alleged by the complainants. Issues raised by the complainants regarding impacts on their health as a result of their employment for the Company were not considered as part of this appraisal as they are being considered under CAO's ongoing investigation of the Yanacocha-09 & -10 complaints.

## **About the 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. The CAO reviews complaints from communities affected by development projects undertaken by the two private sector lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about the CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

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## Acronyms

<b>Acronym</b>	<b>Definition</b>
AMR	Annual Monitoring Report
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
EHS	Environmental Health and Safety
FEROCAFENOP	Federation of Rondas Campesinas Femeninas of Northern Peru
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
OEFA	Organization for Environmental Assessment and Oversight
SUNAFIL	Superintendencia Nacional de Fiscalización Laboral

## **I. Overview of the Compliance Appraisal Process**

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation. A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

To decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## II. Background

### **IFC Investment History**

Minera Yanacocha S.R.L. (“the Company”) is a Lima-based joint venture comprised of Newmont Mining (54.05%) and Minas Buenaventura (45.95%).<sup>1</sup> Minera Yanacocha S.R.L. was established in 1992 to develop gold deposits in the Department of Cajamarca, Peru.<sup>2</sup> Since its establishment, the Company has developed four open pit mines: Carachugo, Maqui Maqui, Yanacocha and La Quinoa (combined “the project”). Two additional mines, Cerro Quilish and Minas Conga, were planned, however, development of these mines has not commenced.

IFC made its first investment in the Company in 1993 when it purchased a five percent equity stake and provided a US\$26 million loan to support the development of the Carachugo mine. In 1994 IFC provided a US\$15 million loan to support the development of the Maqui Maqui mine. In 1999 IFC provided a US\$100 million loan to support the development of La Quinoa mine and associated infrastructure.<sup>3</sup> All loans were fully repaid by 2005. In December 2017, IFC sold its five percent equity stake the Company to Newmont and Buenaventura following a regular review of IFC’s portfolio of investments.<sup>4</sup>

As disclosed by the IFC, the project had an E&S risk categorization of A, indicating that it has potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible or unprecedented.<sup>5</sup>

### **Summary of Community Concerns regarding the Company’s Environmental Performance**

Throughout its history, the Company’s operations have been subject to public criticism. Since 1992, local people reported degradation and contamination of their water sources, affecting irrigation practices and food supply.<sup>6</sup> In 1999, an assembly of the Federation of Rondas Campesinas Femeninas of Northern Peru (FEROCAFENOP) organized demonstrations attracting 10,000 people against a project expansion plan.<sup>7</sup>

In June 2000, the project garnered international attention following a mercury spill along a 41 km section of highway that passed through three villages, San Juan, Choropampa and Magdalena.<sup>8</sup> The context and outcomes of this incident were raised as a complaint to CAO (see Yanacocha-01 complaint below). The spill resulted in a lawsuit filed in the United States, the location of

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<sup>1</sup> Yanacocha website (n.d), available at <https://goo.gl/F8R15J>. Accessed August 10, 2018. As of December 2017, IFC is no longer a shareholder in Yanacocha. Accordingly, Yanacocha ceased to be IFC’s client as of December 2017. The term ‘Company’ is used rather than ‘client’ (as used in previous reports), as at the time of writing Yanacocha is not IFC’s client.

<sup>2</sup> IFC. 1999. “Summary of Project Information (SPI) [Project Number 9502].” *IFC Project Information Portal*. Available at: <https://goo.gl/AFSPUj>.

<sup>3</sup> *Ibid.*

<sup>4</sup> IFC’s sale of its equity stake in Minera Yanacocha S.R.L. occurred after CAO received the Yanacocha-11 complaint. According to CAO’s Operational Guidelines, complaints received prior to IFC’s or MIGA’s exit from a project are eligible for CAO review. Refer to: IFC. n.d. “IFC Completes Engagement with Peru’s Yanacocha Gold Mine.” Available at: <https://goo.gl/pPrHdh>.

<sup>5</sup> IFC. 1999. “Summary of Project Information (SPI) [Project Number 9502].” *IFC Project Information Portal*. Available at: <https://goo.gl/AFSPUj>; Also refer to: IFC. n.d. “Environmental and Social Categorization.” Available at: <https://goo.gl/xKHKKY>.

<sup>6</sup> Langdon, Shannon [Project Underground]. 2000. *Peru’s Yanacocha Gold Mine: The IFC’s Midas touch?*, page 2. Available at: <https://goo.gl/qLmip8>.

<sup>7</sup> *Ibid.*

<sup>8</sup> CAO. 2000. *Investigation into the Mercury Spill of June 2, 2000 in the Vicinity of San Juan, Choropampa, and Magdalena, Peru*, page 1. Available at: <https://goo.gl/Ry6XQf>.

Newmont's headquarters, on behalf of approximately 1,000 local inhabitants. This case was settled in exchange for the plaintiffs waiving any civil or criminal claims against the Company.<sup>9</sup>

At varying times between 2002 and 2004, communities and farmers organized protests of the Company's plans to expand project operations to the Cerro Quillish deposit near Cajamarca. Protestors raised concerns that Company operations were polluting local water sources.<sup>10</sup> In 2004, the Cerro Quillish expansion was suspended.<sup>11</sup>

Another planned expansion of the Company's operations in 2011, the Conga mine (ca. 60km from Cajamarca), led to violent protests, including one incident in which three people were killed. Protestors asserted that the Conga mine would lead to the loss of four mountain lakes and alleged that mining operations would contaminate water in the area.<sup>12</sup> The Company suspended the Conga project indefinitely.<sup>13</sup>

In March 2014, project operations came under investigation from the Peruvian Ministry of Environment following a report of water pollution on a river near the village of San José, located below the Chaupiloma Sur mine (operated by the Company from 1997 to 2000). In 2014, Organization for Environmental Assessment and Oversight (OEFA), the national regulator for environmental compliance, issued a report observing that acidity levels of the river exceeded the maximum allowable limit despite the mine's closure plan which claimed the waste deposit carried no risk of generating acid drainage. OEFA requested Yanacocha to collect the affected water for treatment and to install controls to improve the environment, conduct air and water monitoring of the river and a technical study to determine if there are filtrations into subterranean water from the waste deposit.<sup>14</sup>

### **Prior Yanacocha Complaints to CAO**

Prior to receipt of the complaint subject to this appraisal [Yanacocha-11], CAO handled nine eligible complaints related to the Yanacocha gold mine.

*Yanacocha-01:* CAO received its first complaint in 2000 from local community members who were concerned about health impacts the mercury spill.<sup>15</sup> CAO conducted meetings with relevant parties in an effort to instigate an Independent Health Evaluation to ease certain concerns raised by the complaint. CAO closed this case in November 2003 due to lack of institutional and social support.

*Yanacocha-02:* In 2001, CAO received a second complaint from local farmers raising concerns for project impacts to water, air, and livelihoods in surrounding villages, and inadequate

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<sup>9</sup> Quiroz, Luiz Yañez [Oxfam and Cooper Accion]. 2015. Opportunities and Missteps: Lessons from the International Finance Corporation (IFC) Investment Policy in Peru. Available at: <https://goo.gl/fXqvCJ>.

<sup>10</sup> Reuters News Service. "Newmont scales back at blockaded Peru gold mine [September 17, 2004]." Available at: <https://goo.gl/6Zx1b9>. Also refer to: Berenson, Lori. "The Cajamarca Protest." Available at: <https://goo.gl/2h7gz3>.

<sup>11</sup> Robert Kozak, Dow Jones Newswires. 2004. "Newmont's Yanacocha Gives Up On Peru's Quillish" Available at: <https://goo.gl/mPwVj1>.

<sup>12</sup> Hallman, Ben and Roxana Olivera. 2015. "Gold Rush: How the World Bank Is Financing Environmental Destruction," *HuffPost and ICIJ*. Available at: <https://goo.gl/E5XSPj>; Bajak, Frank and Carla Salazar. 2011. "Newmont Mining Corp. Suspends \$4.8 Billion Peru Gold Mine Operation After Violent Peasant Protests Over Water Supply." Available at: <https://goo.gl/iFcEFH>; Ejolt. 2015. *The Yanacocha Mine Case*. Available at: <https://goo.gl/v2Jh41>.

<sup>13</sup> Hallman, Ben and Roxana Olivera. 2015. "Gold Rush: How the World Bank Is Financing Environmental Destruction," *HuffPost and ICIJ*. Available at: <https://goo.gl/E5XSPj>.

<sup>14</sup> OEFA, Ministerio del Ambiente, Peru. 2014. *Cedula de Notificacion No. 052-2014 Cédula De Notificación N° 052 - 2014 and Resolución Directora N° 018-2014-OEFAIDS*. Available at: <https://goo.gl/ETASm1>.

<sup>15</sup> CAO case: Yanacocha-01. Available at: <https://goo.gl/C9nAQg>.

community consultation.<sup>16</sup> In response to these complaints, CAO facilitated a multi-stakeholder dialogue (*La Mesa de Dialogo y Consenso*) and facilitated a study of water quality (see further discussion below). In February 2006, CAO exited its involvement in this case.

*Yanacocha-03*: In 2006, 30 canal users filed a complaint with CAO regarding water quality issues.<sup>17</sup> The petitioners agreed that their concerns in relation to water quantity be addressed through a CAO-facilitated information-sharing workshop. The complaint was closed in 2006.

*Yanacocha-04, -05, & -07*: Between 2012 and 2014, CAO received three complaints raising distinct land disputes involving the Company. As a dispute resolution process was not possible in these cases, they were transferred to CAO's compliance function for appraisal.<sup>18</sup> While CAO noted questions regarding IFC's due diligence and supervision of the land acquisition process, CAO decided an investigation was not merited.

*Yanacocha-06*: In 2014, CAO received a complaint from a former worker who raised concerns regarding his dismissal and alleging work related health impacts.<sup>19</sup> CAO's 2015 compliance appraisal acknowledged the seriousness of the issues raised. However, on the basis of an individual complaint, CAO concluded that there was insufficient evidence of substantial concerns regarding the E&S outcomes of the project or issues of systemic importance for IFC to merit a compliance investigation. On this basis, CAO decided not to proceed with an investigation and closed the case.

*Yanacocha-09 & -10*: In 2017, CAO received two complaints from current and former employees of the Company raising concerns related to occupational health and safety conditions, project impacts on workers' health, and the Company's alleged withholding of workers' medical information.<sup>20</sup> These complaints were referred to CAO's compliance function and a joint compliance appraisal report was released in November 2017. Noting questions as to the adequacy of IFC's appraisal and supervision of occupational health and safety risks, CAO concluded that these complaints merited a compliance investigation. The compliance investigation was ongoing at the time of writing this appraisal report.

### **Yanacocha-11 Complaint**

The Yanacocha-11 complaint was filed in December 2017 by a former employee of the Company on behalf of himself and a number of other former employees (the "complainants").<sup>21</sup> The complaint raises a range of concerns regarding Minera Yanacocha S.R.L.'s environmental performance as well as concerns about project impacts on workers' health.<sup>22</sup> As concerns regarding workers' health were presented by the same complainants in the Yanacocha-09 complaint, and as there is an active investigation ongoing into these issues, this compliance appraisal focuses on the environmental concerns raised in the Yanacocha-11 complaint.

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<sup>16</sup> CAO case: Yanacocha-02. Complainants were represented by the Federation of Rondas Campesinas. Available at: <https://goo.gl/GVy5TH>.

<sup>17</sup> CAO case: Yanacocha-03. Available at: <https://goo.gl/CCxMjU>.

<sup>18</sup> CAO case: Yanacocha-04, -05 and -07. Available at: <https://goo.gl/2pJzoE>.

<sup>19</sup> CAO case: Yanacocha 6. Available at: <https://goo.gl/5TXKcs>.

<sup>20</sup> CAO case: Yanacocha 9 and 10. Available at: <https://goo.gl/6zEr5x>.

<sup>21</sup> Some of the complainants in the Yanacocha 11 complaint are also complainants in the Yanacocha 09 complaint

<sup>22</sup> For further details on the complaint and CAO's Assessment Reports for the Yanacocha-11 complaint, refer to: <https://goo.gl/ttcqAP>.

### *Complainant Perspectives*

The complainants state that Minera Yanacocha S.R.L. is damaging the environment in the Cajamarca area by polluting local water supplies and degrading and depleting natural resources resulting in health impacts to the complainants. The complainants specifically note concerns with pollution originating from operations at the La Quinoa mine and processing plant. The complainants claim that the environmental harms they are experiencing derive from improper handling of effluents from the Company's mining operations, including discharges of cyanide solutions, heavy metals, and other chemicals as well as emissions of gases containing heavy metals and chemical elements.

The complainants believe that they were exposed to toxic gasses due to improperly ventilated storage systems. The complainants also allege that they were exposed to toxic chemical solutions. They raise concerns about the design of leaching pads, which they allege lack adequate soil insulation and overflow controls—allowing rainwater to wash tailings and sediment into the local soils and contaminating the downstream watershed. The complainants also allege that the La Quinoa plant directly discharges cyanide-laden overflow water (wastewater) into local watersheds. The complainants express further concern about the drilling that Minera Yanacocha is doing in the subterranean rivers that supply water to Cajamarca. The complainants refer to water quality studies at the dikes that accumulate water coming out of the Company's Rejo dam and the Gallito Ciego dam, not owned by the Company, as evidence of the accumulation of cyanide solutions.

Since submitting their complaint to CAO, the complainants provided CAO with additional documents, videos, and personal medical examinations. This included a 2013 thesis of water contamination in the region as a result of mining activities (see below), letters to the national regulator, and videos which the complainants allege evidence water and air pollution by the Company.

### *Company's Perspective*

The Company asserts that its environmental due-diligence practices ensure effective risk management and timely impact mitigation, and that its operations comply with applicable laws and regulations of Peru as well as with international best practices. The Company notes that it undertakes annual monitoring and performance reviews as required by IFC that address, *inter alia*, environmental performance, occupational health and safety and industrial hygiene. According to the Company, IFC conducted a total of nine supervision visits between 2002 and 2015 and numerous visits prior to 2002.

In response to concerns that waste rock disposal areas are not isolated and do not have an acid water collection system, the Company reports that waste rock disposal areas are built with low-permeability soil liners, underneath which is a drainage collection network. Waters collected is reportedly conveyed to acid water treatment plants. Following treatment and prior to discharge, the Company reports that waters are analyzed for compliance with applicable water quality standards.

In response to complainants' concerns of cyanide pollution from the La Quinoa heap leach pad, the Company asserts that its Emergency Discharge Plan for extreme climate events was prepared in coordination with Peruvian regulators. The Company notes that data is reported to the national authorities every three months and audited by national regulators. Emergency discharges are also reported to authorities.

The Company further claims that the solution ponds at La Quinoa have never discharged to the environment or had emergency spills. All excess water or process solutions are reportedly transferred to the Yanacocha plant for treatment, and all discharge waters monitored by the regulator. The Company further notes that it constructed an additional water treatment plant for the La Quinoa operation in 2015-2016.

### III. IFC Policy Framework

IFC's initial investments in the project were made in the context of its 1992 *Internal Procedure for Environmental Review of IFC Projects* (1992 Procedure).<sup>23</sup> The 1992 Procedure outlines the steps of IFC's environmental review and requires all IFC projects to meet the World Bank safeguard policies and guidelines or internationally accepted standards when no appropriate World Bank policies or guidelines exist.<sup>24</sup> IFC's 1999 investment was made in the context of the 1998 *Procedure for Environmental and Social Review of Projects* (1998 Procedure),<sup>25</sup> which required compliance with IFC Environmental and Social Safeguard Policies and relevant World Bank Group Environmental, Health and Safety (EHS) guidelines. These policies and guidelines establish requirements for IFC and its clients on how to prevent and mitigate undue harm to people and their environment. Additionally, the following World Bank Group guidelines are considered relevant for this appraisal: i) safeguard policies (1998); ii) *General EHS Guidelines* (2007); and iii) *EHS Guidelines for Mining – Open Pit* (1995 and 2007).

In April 2006, IFC approved its *Policy on Social and Environmental Sustainability, Performance Standards on Environmental and Social Sustainability and its Policy on Disclosure of Information Policy* (collectively referred to as the 'Sustainability Framework'). In 2012, IFC updated the Sustainability Framework. The IFC *Policy on Social and Environmental Sustainability* is applicable to IFC's ongoing supervision of its investments. The Performance Standards, however, were not included in investment agreements as there were no new investments in the Company post implementation of the Sustainability Framework. Therefore, they do not constitute legal obligations for the Company.

Although IFC's loan agreements contained references to IFC environmental and social policies and operational guidelines, no similar requirements were included for the equity investment. IFC noted that its practice at the time did not provide for E&S requirements to be included on equity investments for publicly-listed companies. Since the repayment of the loans in 2005, the Company therefore has had no legally-binding environmental and social obligations to IFC. At the same time, CAO notes: (a) that the Company agreed to ongoing environmental and social supervision from IFC, and (b) IFC continued to supervise the project with reference to its current environmental and social requirements.

### IV. Air and Water Emissions Supervision

This section presents a summary of: (a) water quality and quantity assessments conducted during CAO's prior complaints; (b) IFC's supervision of the Company in relation to air and water emissions; (c) summary of other assessments of emissions and regulatory reporting.

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<sup>23</sup> IFC. 1992. *Internal Procedure for Environmental Review of International Finance Corporation Projects* [IFC/SecM92-189, December 11, 1992].

<sup>24</sup> *Ibid.*, paragraph 2.

<sup>25</sup> IFC. 1998. *Procedure for Environmental and Social Review of Projects (ESRP)* [December 1998].

## **Summary of the 2003 Report on the Independent Assessment of Water Quantity and Quality**

Commencing in 2001, in response to the Yanacocha-02 complaint, CAO helped establish *La Mesa de Dialogo y Consenso* (the Mesa)—a voluntary group of stakeholders with an interest in the economic, social and environmental consequences of the Company's operations.<sup>26</sup> As part of the Mesa process, CAO commissioned a study to assess potential impacts of the Company's mining activities on water quality and availability. Specifically, the study asked whether mine operations resulted in changes to surface water flow that could adversely affect water quality in the Municipality of Cajamarca and water used of irrigation, agriculture, and potable water for rural use. CAO retained Stratus Consulting to conduct this study. Field sampling activities took place between September 2002 and April 2003, and the report was complete in October 2003.<sup>27</sup>

The study concluded that although the mine's operations had resulted in changes to water quality, water in all streams and canals flowing from the mine was safe in the short term for all human uses. The report noted that standards for drinking water, livestock watering, and irrigation were exceeded in some samples collected from assessment streams, but the frequency and magnitude of the exceedances were far below levels that would cause immediate threat to health or viability of humans, livestock, crops, or pastures. The report recommended further study of long-term water use from locations where standards were exceeded, as long-term usage could be problematic. The study noted that although the quality of water at intakes for the city of Cajamarca was affected by the mine on occasion, the kind of treatment used at the city's water treatment facility is equipped to remove these substances, and thus, the study concluded that drinking water in the city of Cajamarca had not been affected by the mine. The report also noted that the most immediate threat to human health was bacteria in water. This was caused primarily by animal and human waste, not by mining operations.

Following the 2003 Stratus Consulting report, the Mesa defined a framework for ongoing participatory monitoring water quality in Cajamarca. The monitoring team published their first monitoring report in December 2005, noting improvements in water quality compared to the 2003 findings and offering recommendations for future monitoring.<sup>28</sup> Between March 2005 and April 2006, the monitoring team visited local communities to engage stakeholders on their findings.<sup>29</sup> In spite of growing interest in continuing the water monitoring, challenges in Mesa leadership ultimately led to its closure.<sup>30</sup>

## **Summary of IFC Supervision**

La Quinoa mine commenced operations in 2000. Between then and 2013, IFC received annual reports from the Company detailing its approach to air and water management and providing monitoring data for air and water emissions. The Company also annually publishes sustainability reports summarizing related E&S management practices.<sup>31</sup> IFC's supervision included regular reviews of the Company's annual monitoring reports (AMR) as well as site supervision visits. The last site supervision visit was conducted in 2015.

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<sup>26</sup> CAO 2004, *Informe Preliminar De La Mesa De Dialogo Y Consenso CAO – Cajamarca*. Available at <https://goo.gl/vu5hDE>.

<sup>27</sup> Stratus Consulting Inc. 2003. *Report on the Independent Assessment of Water Quantity and Quality near the Yanacocha Mining District, Cajamarca, Peru – Final Report [SC10328]*.

<sup>28</sup> Atkins, David, Carlo Calderon, Eduardo Montoya, Elizabeth Morales. 2005. *Evaluation of the Quality of Water in Cajamarca, Peru – Annual Monitoring Report, 2004-2005*. Available at: <https://goo.gl/BSTcgC>.

<sup>29</sup> CAO. 2007. *Building Consensus: History and Lessons from the Mesa de Dialogo y Consenso CAO-Cajamarca, Peru*, page 16-17. Available at <https://goo.gl/k9qvmn>.

<sup>30</sup> *Ibid*, pages 35-36. Available at <https://goo.gl/k9qvmn>.

<sup>31</sup> Yanacocha's sustainability report is available at: <https://goo.gl/FsDAAf>.

IFC's supervision documentation in 2002 and 2003 raised concerns regarding the potential impact of the Company operations on the environment. Specifically, IFC noted concerns regarding potential impacts on ground water and noted there were three fish kills connected to the Company's operations. In response, and as reviewed by IFC during site visits in 2002 and 2004, the Company implemented additional controls, improved leach pad liners to mitigate risks of cyanide seepage, constructed a series of dams to control sediments and constructed a reverse osmosis water treatment facility. In this regard, IFC considered the Company to be operating at the leading edge of the industry.

In analyzing the Company's annual performance data of air and water quality against applicable national and IFC standards, IFC identified exceedances at the La Quinoa mine and other project operations. IFC's supervision records noted that these exceedances related to various factors including mining operations as well as activities not related to Company operations and conditions naturally occurring in the environment.

IFC supervision documentation evidences on-going attention to the Company's air and water emissions. Of relevance to the issues raised in the complaint, IFC noted that the Company obtained International Cyanide Management Code certification in 2008, and, in 2009 and 2010, the Company expanded the number and scope of variables assessed in its air and water monitoring programs. In reviewing the dilute cyanide solution the Company uses to process ore, IFC's supervision documentation notes that its low concentration was not toxic to humans or animals.

As part of a 2012 site visit, IFC noted the Company recorded exceedances in treated waste water for Nitrogen and Phosphorous. This was raised with the Company and a resolution was noted in a subsequent site supervision visit in 2015. Other exceedances in water monitoring data noted in IFC supervision documentation (e.g. copper, zinc, arsenic and lead) were attributed to conditions naturally occurring in the environment and rainfall events. In regard to air emissions, in 2010 IFC noted that while there was no national or IFC standard for mercury air emissions from precious metal refining, IFC reviewed the Company to other relevant international standards for metal refining. IFC recommended the Company apply additional controls to reduce mercury air emissions due to its refining process and establish a mercury air emission standard for its operations. In subsequent site supervision visit in 2014, IFC reviewed mercury air emissions data from 2012 and 2013 and noted resolution of this issue.

### **Summary of the 2013 Thesis on Environmental Impacts of Mining in the Region**

The complainants highlight a 2013 PhD thesis which studied environmental impacts of mining activity in the Andean region.<sup>32</sup> This thesis reviewed data from previous studies (including the 2003 Stratus Consulting water study and national regulator data<sup>33</sup>) and collected primary data at locations near to the Company's mine site as well as locations near to Sipán S.L. Mine, not owned by the Company. The thesis noted that the closure of the Sipán S.L. Mine site and the cessation of extraction in the Rejo sub-basin in 2005 decreased potential impact on human health from water ingestion in the area.<sup>34</sup> At the same time, the thesis noted that levels of chromium and

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<sup>32</sup> Yacoub, Cristina. 2013. *Developing tools to evaluate the environmental status of Andean basins with mining activities*. Available at <https://goo.gl/Q5vy3R>.

<sup>33</sup> The thesis refers to the collection of data by the Peruvian government's "Dirección Ejecutiva de Salud Ambiental" (DESA) from 15 monitoring sites distributed within the basin in almost every month from 2003 to 2008. (Yacoub 2013, page 24).

<sup>34</sup> Yacoub 2013, page 11. Mining operations in the Rejo Basin include the Quinoa operations, the Yanacocha operations, and maintenance facilities. For further details see Stratus Consulting Inc. 2003.

arsenic in the water samples reviewed during the study indicate potential for adverse effects to human health.<sup>35</sup> The thesis did not compare collected water samples to national or IFC standards.

### **Summary of National Regulatory Reports**

The complainants provided CAO with copies of OEFA reports from 2017 detailing OEFA supervisory actions in response to alleged environmental contamination and health impacts to Yanacocha workers from cyanide solutions originating from the La Quinoa processing plant. Between 2010-2017, OEFA has made 33 site visits to the La Quinoa mine. On five occasions, OEFA noted infractions regarding the operations at La Quinoa. This included improper storage of waste and materials, and spillage of acidic water into a ravine. On two of these occasions, corrective measures were required, however, no fines were administered to the Company.

The Company provided CAO with a sample of quarterly water monitoring reports submitted to the national regulator for the period 2013 and 2015. These reports conclude that the results of the Company's surface water and ground water monitoring do not show significant variation with respect to recorded historical variables. Where exceedances were reported, the Company noted that they were infrequent and resulted from (a) natural characteristics of the area, as identified by the mine's environmental impacts assessment, and (b) rainfall events leading to sediment disruption.

The Company also provided CAO with reporting documentation submitted to the regulator concerning an emergency discharge of water from its facilities to a river in 2015. The documentation shows that the Company advised the regulatory in advance that it would have to make an emergency discharge due to an extreme rainfall event. The Company also provided the regulator with water quality reports conducted parallel and post discharge to demonstrate that it did not exceed national water quality standards.

## **V. CAO Decision**

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

In this case, the complainants allege that Yanacocha's operations have negatively impacted the environment resulting in health impacts. The complainants are especially concerned with the operations at the La Quinoa mine, alleging that the mine mishandles effluents, including discharges of cyanide solutions, heavy metals, and other chemicals to local water sources as well as gaseous emissions containing heavy metals and chemical elements. The Company asserts that its environmental risk management practices comply with applicable laws and regulations of Peru as well as with international best practices. Where exceedances of water standards have been recorded, the Company has reported them to the national regulator and maintains that they are, for the most part, as a result of natural characteristics of the area. Where the Company has reported exceedances of water standards due to its activity, the Company reports that these are infrequent and due to rainfall events.

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<sup>35</sup> Yacoub 2013, page 73.

The issues raised by the complainants are serious in nature. Further, community concern of the Company's potential environmental impacts have been a long-standing source of community-company tension. At the same time, these issues were previously the subject of a water study commissioned by CAO (2003) which concluded that the Company's operations did not present a serious risk to human health in the short term. Where water quality did exceed national standards, the study noted that the frequency and magnitude of the exceedances were below levels that would cause immediate threat to health or viability of humans, livestock, crops, or pastures. A follow up monitoring report in 2005 noted improvements in water quality. Subsequent Company emissions reporting to IFC and the national regulator infrequently record exceedances of national and IFC standards. Where exceedance are reported, IFC has raised the issue with the Company and noted from site supervision visits that they are as a result of either natural characteristics of the area or seasonal rainfall events. In general, IFC's supervision documentation between 2002 and 2015 indicates increasingly robust Company implementation of air and water monitoring programs (including groundwater, surface water, mine effluent discharge and domestic wastewater).

CAO has determined that the environmental concerns raised in the Yanacocha-11 complaint do not merit further investigation. In making this determination CAO finds that there is a lack of evidence to support a conclusion that the Company's operations have resulted in significant adverse environmental outcomes to the complainants as a result of emissions outside of the Company's boundaries. Issues raised by the complainants regarding impacts on their health as a result of their employment for the Company were not considered as part of this appraisal as they are being considered under CAO's ongoing investigation of the Yanacocha-09 & -10 complaints.