



November 10, 2017
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

Yanacocha (IFC Project #2983), Complaint 09-10
Peru

Minera Yanacocha S.R.L. ("the client") is a Lima-based joint venture in which IFC has a 5 percent equity investment. The client was established in 1992 to develop gold deposits in the Department of Cajamarca, Peru. Since its establishment, four open pit mines have been developed; Carachugo, Maqui Maqui, Yanacocha and La Quinoa. A fifth open-pit mine, Minas Conga, was planned, however, extraction of the mine has not commenced.

Between January and May 2017, CAO received two complaints [Yanacocha-09, Yanacocha-10] from seventeen current and former workers, on issues pertaining to operational health and safety at the client's various operations. Specifically, the complainants raise concerns related to long term health issues and illnesses that they allege are linked to both chronic and acute exposure to toxins in the workplace. Following CAO's assessment, both complaints were transferred to the CAO compliance function for appraisal. As both complaints raise similar issues, CAO decided to merge the complaints and prepare one compliance appraisal report covering both.

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.

While this appraisal makes no finding as to whether the complainants alleged afflictions were in fact caused by their employment with the client, CAO finds that these claims, coming from a group of current and former employees, raise concerns regarding the outcomes of the client's business activities that are substantial in nature, particularly considering risks of exposure to hazardous substances that are present in the mining sector.

Following a review of documentation, CAO has questions as to the adequacy of IFC's appraisal and supervision of OHS risks as relevant to the issues raised by the complainants. Prior to 2006, IFC's supervision generally presented a positive assessment of the client's OHS performance. However, based on available documentation it is unclear whether IFC had adequate support for this assessment. Thereafter, IFC noted the general absence of client OHS reporting. In this context, CAO has questions as to whether IFC's supervision activity, including site visits to the

client, provided a basis to assess the client's OHS performance against IFC standards. Further, it is unclear whether IFC has adequately assured itself of client performance considering the specific occupational health and safety issues raised in the complaints to CAO (e.g. Yanacocha 6, 9 and 10) in 2014 and 2017.

CAO thus concludes that these complaints merit a compliance investigation. The scope of the investigation will be defined in terms of reference in accordance with CAO's Operational Guidelines.

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

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Acronyms

Acronym	Definition
AMR	Annual Monitoring Report
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
EHS	Environmental Health and Safety
ESMS	Environmental and Social Management System
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
OHS	Occupational Health and Safety
OHSAS 18001	Occupational Health and Safety Assessment Series 18001: Occupational health and safety management systems
PS	Performance Standards (IFC)
PPE	Personal Protective Equipment
RCM	Reliability-Centered Maintenance

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

Investment

Minera Yanacocha S.R.L. (“the client”) is a Lima-based joint venture comprised Newmont Mining (51.35%), Minas Buenaventura (43.65%), and the International Financial Corporation (5%). Minera Yanacocha S.R.L. was established in 1992 to develop gold deposits in the Department of Cajamarca, Peru.¹ Since its establishment, the client has developed four open pit mines: Carachugo, Maqui Maqui, Yanacocha and La Quinoa (combined “the project”). A fifth open-pit mine, Minas Conga, was planned, however, extraction of the mine has not commenced.

IFC made its first investment in the client in 1993, when it purchased a five percent equity stake and provided a \$26 million loan to support the development of the Carachugo mine. In 1994 IFC provided a \$15 million loan to support the development of the Maqui Maqui mine. In 1999 IFC provided a \$100 million loan to support the development of La Quinoa mine and associated infrastructure.² All loans were fully repaid by 2005. IFC’s equity investment in the client remains active today.

As disclosed by the IFC, Yanacocha is a category A project, indicating that it has potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible or unprecedented.

Prior CAO work

Prior to receipt of the complaints subject to this appraisal [Yanacocha 09 and 10], CAO handled seven eligible complaints related to the Yanacocha gold mine.

CAO received its first complaint in 2000 from local communities who were concerned by health impacts of a mercury spill over a distance 41 kilometers, from the project site to the town of Choropampa. CAO conducted meetings with relevant parties in an effort to instigate an Independent Health Evaluation. CAO closed this case in November 2003 after lack of institutional and social support.³

In 2001, CAO received a complaint from local farmers raising concerns regarding project impacts on water, air, and livelihoods in surrounding villages and inadequate community consultation. In response to these complaints CAO facilitated a multi-stakeholder dialogue (*Mesa de Dialogo y Consenso*) to address immediate community concerns as well issues that emerged over time. CAO also organized a study of the water quality. Once the *Mesa* mechanism was established, CAO exited its involvement in February 2006.⁴

In 2006, CAO received a complaint 30 canal users who raised concern regarding water quality. In response CAO facilitated an information sharing workshop.⁵

¹ IFC. 1999. “Summary of Project Information (SPI) [Project Number 9502].” *IFC Project Information Portal*. Available at <https://goo.gl/AFSPUh>

² *Ibid.*

³ CAO case: Yanacocha 1. See <https://goo.gl/C9nAQg>

⁴ CAO case: Yanacocha 2. See <https://goo.gl/GVy5TH>

⁵ CAO case: Yanacocha 3. See <https://goo.gl/CCxMjU>

Between 2012 and 2014, CAO received three complaints raising three distinct land disputes involving IFC's client. As a dispute resolution process was not possible in these cases, they were transferred to the compliance function for an appraisal. While CAO noted questions regarding IFC's due diligence and supervision of the land acquisition process, CAO decided not to proceed with an investigation in relation to these complaints.⁶

In 2014, CAO received a complaint from one former worker who raised concern regarding that complainant's dismissal and health concerns. A compliance appraisal regarding this complaint was released in May 2015. CAO acknowledged the seriousness of the issues raised in that complaint at the individual level. 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 require a compliance investigation. On this basis, CAO decided not to move the case to investigation and closed the case.⁷

Complaint and CAO Assessment

This section summarizes the Yanacocha-09 and Yanacocha-10 complaints and subsequent CAO Assessment Reports considered for this compliance appraisal.⁸ As both complaints raise similar issues, CAO has decided to merge the complaints and prepare one compliance appraisal report.

The complaints

The Yanacocha-09 and Yanacoch-10 complaints are substantively similar. Both complaints come from groups of workers who raise concerns related to health issues that the complainants allege are linked to both chronic and acute exposure to toxic gasses and heavy metals including mercury, aluminum, cadmium, nickel, silver, titanium, thallium, uranium, lead, and arsenic. Complainants allege that both chronic and acute exposure have induced long-term negative impacts to their health, including loss of memory, heart conditions, tremors, hernias, neurological disorders, acute allergies, and several other issues. The total number of complainants engaged in CAO's assessment process was seventeen.

The complainants claim that they have consulted both legal and medical experts, who corroborate that their conditions are associated with exposure to heavy metals.⁹ As part of the complaint, the complainants submitted large amounts of supporting documentation, including lab analyses of hair samples of several complainants which they state confirm their exposure to high levels of heavy metals. The complainants assert they have had trouble finding alternative means of employment due to their health conditions and that the high cost of medical treatment makes it difficult for them to provide for their families.

The complainants allege harm caused by the client's approach to occupational health and safety (OHS) management during their period of employment with the company (in some cases, more than 10 years). Specifically, they note the following gaps and issues:

- Lack of Personal Protective Equipment (PPE);

⁶ CAO case: Yanacocha 4,5, and 7. See <https://goo.gl/2pJzoE>

⁷ CAO case: Yanacocha 6. See <https://goo.gl/5TXKcs>

⁸ For further details on the complaint and CAO's Assessment reports for Yanacocha 9 and 10, see <https://goo.gl/Sqtrtz> and <https://goo.gl/ydyVKm>

⁹ The complainants have provided CAO with medical documentation which they state supports their claim.

- Lack of a safe and clean working environment. In particular, the complainants assert that in the early years of the mine there was a lack of signage to identify hazardous materials and no cafeteria thus necessitating workers to eat in their work areas;
- Lack of compliance with safety standards for minimizing exposure risks, exceeding permissible temperature levels and inadequate storage and disposal of toxic chemicals;
- Lack of adequate monitoring of safety standards and risk mitigation measures. In particular, the complainants cite a lack of properly certified and maintained monitoring equipment; a lack of proper PPE monitoring and worker OHS training; and inadequate response to the 2010 Reliability-Centered Maintenance (RCM) review which the complainants assert identified several gaps in safety procedures;
- Lack of appropriate response to medical issues, including lack of investigation when incidents occurred or issues were raised. In particular, the complainants note that they made efforts to access relevant information regarding OHS conditions or their own medical records, however, they allege that the client has responded by denying them access to information or covering up the existence of documentation.

The complainants have expressed concern over the client'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.

Client's perspective

The client states that it takes employee health and safety very seriously and has advanced safety procedures in place at the mine to prevent worker endangerment. It contends that its processes are compliant with best practice and designed in accordance with the level of risk to which workers are exposed. The client notes that it has received several certifications and awards in recognition of occupational health and safety, and reviews and improves processes on a continuous basis.

The client questions the credibility of claims related to heavy metal poisoning caused by exposure based on a view to the chemical processes involved in operations. The client contends that it does not use some of the heavy metals that are allegedly impacting the health of the complainants (uranium for example), and that specific controls are in place to protect employees from exposure to metals that are naturally present in the ore (mercury for example) or used in the metallurgical process. The client states that it monitors and responds to any indicators of exposure that may exceed the norms.

The client states that its medical team has reviewed the details of each individual case and has found no medical basis for the claims. It questions some of the information provided by complainants and attribute most of the expressed medical conditions to other factors (lifestyle, non-occupational conditions, other sources of exposure). The client also asserts that some of the complainants were not stationed in positions or areas that would expose them to heavy metals. Of those who were working in areas where exposure was possible, the client states that they all had access to personal protective equipment and that workers were monitored as per standard practice. Any health issues would have thus been identified via the medical examinations, which the client requires regularly, including exit medical examinations.

The client further states that workers are free to raise concerns, which are addressed on an individual basis. Each worker can request and receive medical records about procedures or

treatments that were provided to them by the client's medical staff. The client indicated it does not have access to information held by third parties, such as clinics or hospitals due to the confidential nature of those records as established by Peruvian law. Workers would need to request those materials directly from the third party.

The client raised concern regarding the complainant group as, from the client's 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.¹⁰ 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.

While the complainants and the client expressed interest in engaging in a CAO facilitated dispute resolution process, agreement on who should participate was not reached. In accordance with CAO's Operational Guidelines, the complaint was transferred to CAO's compliance function for an appraisal.

III. Analysis

This section examines IFC's policies, procedures, and standards as applied to the project and as relevant to the issues raised by the complainants.

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).¹¹ 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.¹² IFC's 1999 investment was made in the context of the 1998 Procedure for Environmental and Social Review of Projects¹³ (1998 Procedure), 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) Occupational Health and Safety Guidelines (1988 and 2003); ii) Safeguard Policies (1998) iii) General EHS Guidelines (2007); and iv) EHS Guidelines for Mining – Open Pit (1995 and 2007).

In April 2006, following fundamental restructuring and revision, IFC approved its Policy on Social and Environmental Sustainability, Performance Standards on Environmental and Social

¹⁰ The Yanacocha 9 complainants noted to CAO that four individuals party to their complaint signed agreements with the client upon completion of their employment. These complainants allege that they did not have the opportunity to seek legal advice prior to signing an agreement and that they did not receive their exit medical exam either prior to or after signing an agreement.

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

¹² *Ibid.*, para. 2

¹³ IFC. 1998. *Procedure for Environmental and Social Review of Projects (ESRP)* [December 1998].

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 and therefore do not constitute legal obligations for the client.

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 client therefore has had no legally binding environmental and social obligations to IFC. At the same time, CAO notes: (a) that the client agreed to ongoing environmental and social supervision from IFC,¹⁴ and (b) that IFC has continued to supervise the project with reference to its current environmental and social requirements.

IFC's Pre-Investment Due Diligence and Supervision

IFC's initial environmental review of the project in 1992 did not identify specific risks related to labor or occupational health and safety. IFC's 1993 loan agreement required the client to operate in accordance with World Bank environmental and OHS guidelines. These requirements were not included in the equity investment.

In considering a second loan to the client in 1994, IFC noted that the project had been designed and would operate using engineering concepts and process normally applied in the United States of America. Based on a supervision visit to the Carachugo operations in the context of IFC's 1993 investment, IFC concluded that the project would comply with national regulations and World Bank environmental guidelines and policies.

In 1995, IFC required additional client reporting on OHS. Subsequently, IFC received a report from the client detailing its OHS practices and monitoring data for 1996.

In 1999, while considering a third loan to the client, to support the development of the La Quinoa mine, IFC noted that the client complied with Peruvian environmental regulations and IFC E&S requirements. IFC noted that specific measures taken by the client included an adequate OHS and Emergency Response program.¹⁵ IFC concluded that "Yanacocha's safety record is consistent with international standards and has improved over time."¹⁶ IFC required the client to ensure that operations were consistent with IFC's General Environmental Guidelines and Management of Hazardous Wastes (1998), General Health and Safety Guidelines (1998), EHS for Mining – Open Pit (1995) and Best practices for Storage, Handling, and Transportation of Cyanide in Mining Operations (1998). Further, the client was required to provide IFC with an annual report on health and safety at its operations.

¹⁴ Since 2005, the client has annually published a "Sustainability Report" of its Yanacocha operations. See <https://goo.gl/FsDAAf>

¹⁵ IFC. 1999. "Summary of Project Information (SPI) [Project Number 9502]." *IFC Project Information Portal*. Available at <https://goo.gl/AFSPUh>

¹⁶ *Ibid.*

IFC's review of OHS issues in its early supervision documentation is limited, but generally positive. In 2002, IFC noted that the client had significantly improved OHS performance through improved leak controls, improved PPE and installation of additional mercury detectors and exposure meters. In 2004, IFC was informed that the client was undergoing an audit by an accredited consultant with the intention of applying for an international OHS certification (OHSAS 18001:1999).¹⁷ In a review of the client's performance for 2004, IFC concluded that its client was implementing an effective hazmat management program in compliance with IFC guidelines.

Starting in 2007, IFC supervision flagged gaps in the client's OHS reporting. As a result, IFC requested that the client include further OHS data in subsequent reports. IFC supervision documentation provides little substantive analysis of the client's OHS performance. Relevant to the issues raised by the complainant, IFC's supervision documentation from 2010 raised concerns regarding mercury emissions and the absence of national threshold standards for mercury emissions.¹⁸ Accordingly, IFC encouraged the client to adopt an international standard. By 2014, IFC reported that this issue was being managed adequately by its client and in line with good international industry practice. In its 2015 AMR review, IFC noted that the client had a strong emphasis on health and safety awareness, prevention, training and management of risks and impacts.

In summary, IFC noted ongoing concerns regarding the adequacy of the client's reporting on OHS during the period 2007 to 2014. IFC raised concerns regarding the adequacy of OHS reporting with the client, and considered it to have been addressed in 2015. Since 2010, IFC has also worked with its client to ensure that mercury emission levels were in accordance with an international standard. However, from reviewing IFC's documentation, it is unclear to CAO whether IFC: i) adequately assessed the project against the relevant World Bank Group OHS requirements; ii) retained sufficient evidence to assure itself of compliance with World Bank Group OHS requirements; or iii) assured itself that the client was responding adequately to allegations of impacts upon workers' health due to exposure to mercury and other elements.

IV. 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

¹⁷ The client achieved OHSAS 18001:1999 certification in 2008. See: Yanacocha Annual Sustainability Report, 2008 (p. 43).

¹⁸ The World Bank Group Pollution Prevention and Abatement Handbook notes that "Mercury is a toxic heavy metal". The health impacts of exposure to mercury include impacts on "central nervous system and the areas associated with the sensory, visual, auditory, and coordinating functions. Increasing doses result in paresthesia, ataxia, visual changes, dysarthria, hearing defects, loss of speech, coma, and death" In most cases, the impacts are "irreversible because of the destruction of neuronal cells". For further details, see *World Bank Group Pollution Prevention and Abatement Handbook*, July 1998.

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 they have suffered adverse health impacts arising from their employment. They complain of similar symptoms and have provided medical documentation which they state supports their claim. While making no finding as to whether the complainants' alleged afflictions were in fact caused by their employment with the client, CAO finds that these claims, coming from a group of current and former employees, raise concerns regarding the outcomes of the client's business activities that are substantial in nature—particularly considering risks of exposure to hazardous substances that are present in the mining sector.¹⁹

Following a review of documentation, CAO has questions as to the adequacy of IFC's appraisal and supervision of OHS risks as relate to the issues raised by the complainants. Prior to 2006, IFC's supervision generally presents a positive assessment of the client's OHS performance. However, based on available documentation it is unclear whether IFC had adequate support for this assessment. Thereafter, IFC noted the general absence of client OHS reporting. In this context, it is unclear whether IFC's supervision activity, including site visits to the client, provided a basis to assess the client's OHS performance against IFC standards. Further, it is unclear whether IFC has adequately assured itself of client performance considering the occupational health and safety issues raised in the complaints to CAO (e.g., Yanacocha 6, 9 and 10).

CAO thus concludes that these complaints merit a compliance investigation. The scope of the investigation will be defined under Terms of Reference in accordance with CAO's Operational Guidelines.

¹⁹ There are known hazards in the mining sector that can pose potential risk to worker health and safety. Potential physical impacts include: injury from accidents; muscular disorder; noise induced hearing loss; skin-cancer; ionizing radiation and heat exhaustion. Exposure to hazardous substances can result in impact to worker health, including: skin disorders; acute pneumonia; damage to respiratory system from exposure to airborne chemicals; damage to internal organs from absorption of chemicals; and death due to inhalation of gases and vapors. See: International Council on Mining and Metals. 2012. *Good practice guidance on occupational health risk assessment*. Available at: <https://goo.gl/KizMjf>