

September 12, 2019

Mr. Osvaldo L. Gratacós  
Compliance Advisor Ombudsman  
International Finance Corporation  
2121 Pennsylvania Avenue, N.W. Washington  
DC 20433

**IFC Management Response to CAO Investigation Report in relation to Yanacocha S.R.L (IFC Projects # 2983, 4449 and 9502), Peru.**

Dear Mr. Gratacós:

Thank you for the opportunity to respond to the CAO compliance investigation report in relation to IFC's Investment in Minera Yanacocha S.R.L (IFC Project # 2983, 4449 and 9502), Peru.<sup>1</sup>

IFC held its equity investment in Minera Yanacocha S.R.L. (“Yanacocha” or the “Company”) over a 25-year period and has closely monitored the operator, Newmont, in its sustainable development of what has become one of the world’s largest open-pit mining operations. IFC’s engagement as a financier and shareholder in this highly complex project was instrumental in the development of a mine that contributed over US\$250 million in annual revenues to the Government of Peru, employed 5,700 full-time and contract employees and has helped generate over 18,000 additional jobs in Cajamarca’s agribusiness, tourism, forestry, and arts and crafts sectors. The Company’s investments in water, sewage, health services and infrastructure benefit nearly 225,000 people in the local area.

Through the years, IFC mobilized a multi-disciplinary team, including environmental and social specialists, who were able to monitor the client closely as it navigated the challenges of applying IFC’s Performance Standards (“PSs”) when the Company had no contractual obligations to comply with them<sup>2</sup>. On a project of this scale (250km<sup>2</sup>) and complexity, IFCs team seeks to monitor the clients performance on issues ranging from stakeholder engagement, land acquisition and compensation, biodiversity, workers occupational health and safety, community safety, air emissions, dust, water management, and hazardous materials and allocates their time and attention on a risk basis. IFC’s social specialists were involved in the Company’s formation of the *Asociación Los Andes de Cajamarca* (“ALAC”) foundation<sup>3</sup>, dedicated to promoting integrated community development projects in Cajamarca whilst our advisory teams have worked to support improvements in local transparency and management of mining royalties by the provincial government.

We concur with CAO’s observations that IFC’s equity investments should include the appropriate E&S requirements applicable at the time of commitment. These requirements have evolved over time, therefore,

---

<sup>1</sup> The information in this letter and its enclosures is provided solely in the context of the CAO process which is an independent office that reports directly to the President of the World Bank Group. The CAO is not a court or legal enforcement mechanism and nor is CAO a substitute for international court systems or court systems in host countries. Nothing contained herein nor in CAO's reports constitutes evidence or gives rise to any legal claims against IFC or is intended as a waiver of any of IFC's privileges and immunities under its Articles of Agreement or any other applicable law, and IFC reserves all rights.

<sup>2</sup> IFC’s original investment was made prior to the creation and adoption of the Performance Standards in 2006.

<sup>3</sup> ALAC was established in April 2004 as a corporate foundation and represents the social development arm of Yanacocha. ALAC was set up to build and improve the institutional capacities of local entities involved in the sustainable development of the region. ALAC focuses its resources on the development of human capital, especially in the areas of education and health, water management and infrastructure.

there are differences between the requirements applicable to an IFC equity investment on a project booked 25 years ago and the current procedures and standards. The practice at the time of IFC's investment in 1993 was that E&S requirements were imposed only on loans and not equity. In April 2006 IFC released its seminal "Policy and Performance Standards on Social and Environmental Sustainability", and it was not until 2009, with the operational roll out of IFC's template equity agreements, that IFC consistently included uniform E&S requirements in all our equity investments. We also concur with CAO's observation that an opportunity was missed to enter into formal agreements with respect to monitoring E&S performance when Yanacocha offered to do that back in 2006, once the loans were repaid. Nonetheless, IFC continued monitoring the E&S performance of the project against IFC PS requirements despite lack of such formal agreement.

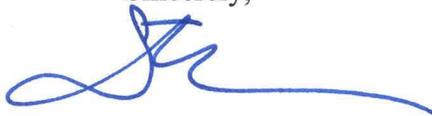
There are legacy issues facing an investment which spans over 25 years such as Yanacocha and IFC's policies, procedures and practices have evolved significantly over that period. As a result, IFC's journey as an investor in Yanacocha mirrors the enhancements it undertook at an institutional level, with IFC monitoring and supporting the Company as it continuously sought to align with good international industry practices. While there were some gaps in how IFC monitored Yanacocha's Occupational Health and Safety ("OHS") program, it was thanks to IFC's support and guidance that the Company was able to adopt adequate mercury emission standards, control the exposure to harmful substances in the workplace and reduce its mercury stack emissions. IFC's intervention has also transcended the project in that it has guided operator Newmont, a global mining major, to establish USEPA standards for mercury for its operations worldwide.

IFC concurs with CAO that there was sporadic reporting on the Company's OHS practices and that it could have been more consistent throughout the holding period. However, it is worth noting that in 2010, there was a thorough engagement by IFC to review the occupational hygiene performance of Yanacocha. As CAO's report acknowledges, measured concentrations of mercury in workplace air were below Threshold Limit Values ("TLVs")<sup>4</sup>. IFC's risk-based approach to monitoring meant that attention turned to resolving the issue of stack emissions.

To better understand the allegations made by workers that the Company denied them access to employment related medical records, the IFC team 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. When employees are provided a copy of their medical records, they must sign a receipt which is kept by Yanacocha's Human Resources department. As indicated in the tabulated annex, despite having fully exited the project, IFC continues to communicate with Yanacocha to seek confirmation that all complainants have obtained duplicate copies of their medical records with signed receipts as evidence that this has indeed happened.

IFC welcomes the feedback on its performance and, along with its client, remains committed to engage with the relevant project stakeholders. A complete and itemized response to the CAO's key investigation findings on IFC's compliance in this project is attached as an Annex to this letter

Sincerely,



Stephanie von Friedeburg  
Vice President and Chief Operating Officer

---

<sup>4</sup> Threshold limit values for chemical substances and physical agents

**Annex: IFC Tabulated Management Response: Yanacocha S.R.L (IFC Project # 2983, 4449 and 9502), Peru.**

	CAO Compliance Assessment	Nature of Compliance	IFC Response with Actions Taken or Proposed	Expected Timeline
<b>IFC's Pre-Investment Review and Risk Mitigation Measures</b>				
1.	For each of its investments, while identifying Occupational Hygiene (“OH”) 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 OH risk identification and mitigation framework, or track record.	Sufficiency of documentation of the diligence performed.	<p>IFC concurs with the observation that from the pre-investment review and throughout the period of IFC’s engagement (at least until 2010), the documentation of the monitoring performed by IFC on the client’s operational health risks, performance and mitigations was inconsistent.</p> <p><i>Systemic response:</i> Since 1999, IFC’s systems and procedures have significantly evolved to document filing and storage, including efforts with the investment enterprise systems, iDesk and more recently, iPortal, and the dedicated E&amp;S enterprise system, the E&amp;S Review Document or ESRD, now on its third version.</p> <p>The recent creation of a new Environmental &amp; Social Risk &amp; Policy Department will also contribute to improvements in documentation.</p>	<p>2006: ESRD first operational</p> <p>July 2019: New E&amp;S Risk &amp; Policy Department Created</p>

	CAO Compliance Assessment	Nature of Compliance	IFC Response with Actions Taken or Proposed	Expected Timeline
<b>IFC Investment Structure</b>				
2.	IFC's 1993 and 1994 loan agreements required Yanacocha to operate in accordance with more stringent 1992 requirements from the draft <i>OHS Guidelines Mining and Milling - Open Pit</i> in addition to the corresponding mining guidelines in the then-applicable 1988 World Bank OHS Guidelines.	CAO is acknowledging that this was an example of good practice.	<p>IFC welcomes the acknowledgment that this investment has been an example of good practice.</p> <p><u>Systemic response:</u>            IFC is engaged in continuous and ongoing updates of the WBG EHS Guidelines, so that they continue to reflect evolving good international industry practices. Relevant to avoiding and monitoring worker exposures is the current update of the General EHS Guideline, with completion estimated at the end of 2021</p>	December 2021
3.	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 Yanacocha 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.	Sufficiency of environmental and social contractual requirements in IFC investment documentation to support effective monitoring.	<p>IFC concurs with CAO's observation. At the time of IFC's equity investment in 1993 it was IFC's practice to include E&amp;S provisions in loan agreements, but not in equity agreements.</p> <p><u>Systemic response:</u>            In 2009, with the roll out of IFC's equity template documents, IFC consistently included uniform E&amp;S requirements in all our equity investments.</p>	2009

	CAO Compliance Assessment	Nature of Compliance	IFC Response with Actions Taken or Proposed	Expected Timeline
4.	<p>IFC policies and procedures required IFC to supervise the company to ensure compliance with its E&amp;S conditions throughout the life of an investment. IFC's failure to agree E&amp;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 OH performance.</p>	<p>Sufficiency of environmental and social contractual requirements in IFC investment documentation to support effective monitoring.</p>	<p>IFC concurs that the lack of formal written response to the 2006 letter from Yanacocha was an unfortunate missed opportunity but disagrees that this represents a material failure in supervision.</p> <p>The letter was a request to continue with IFC's monitoring of the Company's E&amp;S performance rather than a request to modify the shareholders' agreement or to open the door to renegotiate new E&amp;S requirements. IFC did not then and does not now have any internal procedure or policy requirement to impose legacy investees with additional E&amp;S standards and there was limited leverage at the time for IFC to introduce new requirements above and beyond the monitoring.</p> <p><i>Project-level response:</i> E&amp;S supervision of the project, including of mercury emissions and occupational health/hygiene continued throughout the 2006-2017 period despite of the lack of formal agreements and Yanacocha was responsive and cooperative: at least in part due to IFC monitoring, Yanacocha took actions that considerably reduced mercury emissions during this time.</p>	<p>Reductions in mercury emissions resulting from 2008 and 2010 monitoring visits</p>
<b>IFC Supervision</b>				

	CAO Compliance Assessment	Nature of Compliance	IFC Response with Actions Taken or Proposed	Expected Timeline
5.	<p>IFC has not adequately (A) supervised the company's OH Performance nor (B) retained information necessary to assess the status of compliance with IFC's OH requirements.</p>	<p>Sufficiency of monitoring and documentation thereof.</p>	<p>IFC concurs that its OH monitoring before 2008 was not aligned with its procedures. It was strengthened after 2008 and, in 2010 IFC monitored this issue particularly closely and documented evidence that workplace mercury concentrations were below TLVs.</p> <p>IFC concurs that its documentation was inconsistent. From 1992 to 2007 there are limited records to demonstrate adequate monitoring of the company's OH performance. Starting in 2008, documentation exists showing that IFC took tangible actions to investigate and respond to allegations of occupational health impacts once known by IFC.</p> <p><i>Systemic- level response:</i>            IFC appointed Regional Team Leads in 2010 to oversee E&amp;S portfolio monitoring and in 2016 began dedicated E&amp;S quarterly portfolio reviews to raise the quality and recording of monitoring.</p> <p>IFC has recently commissioned dedicated OHS expert resources to support specialists on deals with high OH risks.</p>	<p>2010 Regional Team Leads            2016 Quarterly portfolio monitoring initiated</p> <p>May 2019</p>

	CAO Compliance Assessment	Nature of Compliance	IFC Response with Actions Taken or Proposed	Expected Timeline
6.	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 OH requirements.	Sufficiency of monitoring focus in response to allegations.	<p>IFC's site supervision conducted in 2010 and actions that followed specifically addressed the Company's OH performance. In 2015 IFC had extensive discussions with the Company about the reported OH case and were satisfied with the Company's response.</p> <p><u>Systemic- level response:</u> With the recent creation of a new Environmental &amp; Social Risk &amp; 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.</p>	July 2020
7.	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.	Sufficiency of monitoring focus in response to allegations.	<p>IFC disagrees with this observation. IFC became aware of allegations from the complainants of lack of access to medical records when the complaint to CAO was communicated to IFC. Prior to this, IFC's monitoring of Yanacocha confirmed the Company was in compliance with Peruvian legal requirements which state the need for access to medical records by employees.</p> <p><u>Project-level response:</u> Despite having exited the investment, on receipt of CAO's draft investigation report, IFC carried out further</p>	May-August 2019

	CAO Compliance Assessment	Nature of Compliance	IFC Response with Actions Taken or Proposed	Expected Timeline
			<p>engagement with Yanacochoa’s medical team to confirm this prior understanding. As stated by Yanacochoa’s medical doctor who has been with the Company since 2007:</p> <ul style="list-style-type: none"> <li>(i) 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 (other than x-rays) that are delivered free of charge and take 1-3 weeks to be delivered;</li> <li>(ii) Employee requests for copies of their medical records are filed/kept by the Company’s HR Department along with evidence that such records had been provided;</li> <li>(iii) Yanacochoa knows of no reason why an (ex-)employee would claim that they can’t access their medical records held by the Yanacochoa doctors;</li> <li>(iv) This system has been in place for over 12 years and is meticulously laid out in the Peruvian mining regulations, including Annex 16 thereof.</li> </ul> <p>As a follow up, IFC requested via a letter with a copy to the CAO:</p>	

	CAO Compliance Assessment	Nature of Compliance	IFC Response with Actions Taken or Proposed	Expected Timeline
			<p>(i) that the Company ensures that all individual medical records be provided to former employees of the company upon request;</p> <p>(ii) Where medical examinations were conducted as part of an employee's work and records are retained by a third party, that Yanacocha ensure that former employees have full access to these records.</p> <p>IFC has communicated with Newmont and is progressing with collecting receipts that show that medical records were provided to employees upon request.</p>	
8.	<p>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.</p>	<p>Sufficiency of monitoring and documentation thereof.</p>	<p>IFC's concurs. IFC's monitoring is risk-based and its documentation reflects that approach.</p> <p>Based on the 2010 site visit, IFC was satisfied, through in-person observations and examination of client monitoring data that OH issues related to workplace air quality, were well managed. IFC's risk focus thus moved to measures to control point source mercury emissions.</p> <p>From 2010 until IFC's divestment in 2017, IFC closely monitored mercury emission levels at Yanacocha. Records</p>	

	CAO Compliance Assessment	Nature of Compliance	IFC Response with Actions Taken or Proposed	Expected Timeline
			<p>show that emissions were below the established international limit.</p> <p><i>Systemic response:</i>            Since 1999, IFC's systems and procedures have significantly evolved to document filing and storage, including efforts with the investment enterprise systems, iDesk and more recently, iPortal, and the dedicated E&amp;S enterprise system, the E&amp;S Review Document or ESRD, now on its third version.</p>	<p>2006: ESRD first operational</p>