



CAO ASSESSMENT REPORT

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

July 2014

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

About the CAO

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

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

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LIST OF ACRONYMS

- CAO Office of the Compliance Advisor Ombudsman
- IFC International Finance Corporation
- MIGA Multilateral Investment Guarantee Agency

1. OVERVIEW

In February 2014, CAO received a complaint from a former employee of Yanacocha about the circumstances of his employment termination and other work-related issues. The complaint met CAO's three eligibility criteria and CAO carried out an assessment of the complaint. Bringing to conclusion the CAO's assessment, the company opted for a Compliance process while the complainant opted for a dispute resolution process. Given the voluntary nature of dispute resolution processes, and per CAO's Operational Guidelines, this case will be referred to CAO Compliance for appraisal. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1 The Project

Located in the Andes mountains in the Department of Cajamarca, Peru, Minera Yanacocha S.R.L. is the largest open-pit gold mine in Latin America. With three active open pits, the company has produced over 26 million ounces of gold since its opening in 1993. Minera Yanacocha is jointly owned by Newmont Mining (51.35%), Minas Buenaventura (43.65%) and IFC (5%).

Over a period from 1993 to 1999, IFC committed three loans to finance the capital expenditure programs for three of the company's mines, Carachugo, Maqui Maqui and La Quinoa. In parallel, IFC made an equity investment for a 5% ownership stake in Yanacocha. Only the equity investment remains active.

2.2 The Complaint

In February 2014, CAO received a complaint from a former employee of Yanacocha who raises concerns about the circumstance around his employment termination and what he feels was a lack of due process. He also raises concerns that his employment at Yanacocha negatively affected his health. A more detailed summary of issues is presented in Section 3.

3. ASSESSMENT SUMMARY

The purpose of this CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on how the company and any other relevant stakeholders see the situation, and to determine whether the complainants and the company would like to pursue a dispute resolution process under the auspices of CAO Dispute Resolution, or whether the complaint should be transferred to CAO Compliance for appraisal of IFC's performance. (See Annex A for CAO's complaint handling process.) The CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

The CAO assessment of the complaint consisted of:

- reviewing project documents;
- conducting meetings with the complainant;
- conducting meetings with Yanacocha representatives; and
- conducting meetings with IFC project team.

Perspective of the complainant

Based on the original complaint and further discussions, below is a summary of concerns raised by the complainant.

The complainant claims that he was unduly fired from his employment in Yanacocha in 2012, after more than 14 years of service as a Process Technician. He contends that his dismissal was related to an incident in 2012, where Yanacocha suspected that certain employees were involved in the theft of gold chemical solutions. According to the complainant, he was verbally mistreated and unilaterally sent on leave upon refusing to formally accuse the employees in question during a police investigation. Although he never formally accepted his vacation time, he received a notarized letter from Yanacocha indicating his employment had been terminated for failing to attend work.

The complainant has initiated judicial action against the company with regard to his termination. He is seeking benefits, including severance compensation for time of service and damages.

The complainant also contends that his health is suffering due to exposure to the different chemicals, including cyanide and mercury, while working for the company. He reports being affected by allergies and other health problems that have required surgery, and that his latest test results show high levels of mercury. He has also stated that other employees have suffered health impacts, particularly to the liver and lungs, after employment at Yanacocha.

Perspective of Yanacocha

Yanacocha reviewed its case files and according to the company, the complainant's termination of employment followed due process and was for cause. Yanacocha also stated that it is company policy and a legal obligation that all employees go through medical examinations, and they see no evidence that the complainant's tests flagged a medical problem during his employment.

Yanacocha is of the view that since judicial processes have already been initiated by the complainant, and the matter is an internal labor dispute, it would prefer to see the issues addressed through the current judicial processes. It therefore declined to enter into a dispute resolution process with the complainant.

4. NEXT STEPS

While the complainant expressed his willingness to participate in a dispute resolution process with Yanacocha, the company prefers that the case be resolved through the judicial processes initiated by the complainant. Given the voluntary nature of the dispute resolution process, and per the CAO's Operational Guidelines, the complaint will be referred to CAO Compliance for appraisal of IFC's performance.

Annex A. CAO Complaints Handling Process

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

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

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance appraisal. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,¹ the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)

Step 3: **CAO assessment:** Assessment of the issues and provide support to stakeholders in understanding and determining whether they would like to pursue a collaborative solution through a facilitated process by CAO Dispute Resolution, or whether the case should be handled by CAO Compliance to appraise IFC/MIGA's social and environmental due diligence as it relates to the project. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the parties choose to pursue a dispute resolution process, this phase involves initiation of such a process (typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of dispute resolution approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected².

OR

Compliance Appraisal/Audit: If the parties opt for a Compliance process, CAO Compliance will initiate an appraisal of IFC/MIGA's social and environmental due

¹ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

diligence of the project in question to determine whether a compliance investigation of IFC/MIGA's intervention in the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will convene a panel of experts to conduct an in-depth investigation into IFC/MIGA's intervention. An investigation report with any identified non-compliances will be made public, along with IFC/MIGA's response.

Step 5: **Monitoring** and follow-up

Step 6: **Conclusion**/Case closure