



CAO ASSESSMENT REPORT

**Regarding local community 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 March 2014, CAO received a complaint from the Cercado family within the Sorochuco *campesino* community. The complaint raises concerns about unfulfilled commitments that the community was promised in return for selling land for what is now Yanacocha's Conga project. The CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint. Bringing to conclusion the CAO's assessment, the company opted for a Compliance process while the complainants 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, MaquiMaqui and La Quinoa. In parallel, IFC made an equity investment for a 5% ownership stake in the Company. Only the equity investment remains active.

2.2 The Complaint

In March 2014, CAO received a complaint from the Cercado family, former landowners from the Sorochuco *campesino* community. They expressed concern that several commitments made to them by the exploration company that bought and then transferred their lands to Yanacocha for the Conga project have gone unrecognized and unfulfilled. The complainants contend that this situation has prevented the original landowners and their children from enjoying the economic benefits of their land assets. 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 referred to CAO Compliance for appraisal (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 members of the Cercado family, a larger group of former landowners, as well as community leadership;

- conducting meetings with Yanacocha representatives; and
- conducting meetings with IFC project team.

Perspective of the Complainants

Below is a summary of concerns raised by the complainants. The complainants are made up of the Cercado family, including sons and daughters of the original land owners, and a larger group of former land owners and their families.

The complainants explained that as a *campesino* community in Peru, the Sorochuco community holds communal title over their land, rather than individual legal titles. By law, if they want to sell land to an external entity, such a transaction requires approval by 2/3 majority of the community's General Assembly, and subsequently the community's Board of Directors can legally execute the sale. However, by internal practice of the community, they also recognize individual land users or "posesionarios", a practice that assigns discrete parcels of land to individual owners.

The complainants acknowledge that the community of Sorochuco sold lands to the company named Minas Conga – a then exploration company – in three separate transactions in 1995, 1997 and 2001 with willing participation of all land users. At the time of the land transfer, the former landowners had understood that the terms of the sale included a commitment to the following:

- A price adjustment in the land compensation paid to the community, should the land become part of a mining project. In this case, the compensation value that is paid to the community would rise. If no mining project was executed on their lands, the lands would be returned to the community for their use.
- Infrastructure and community development projects including road construction, a medical post, and a school.
- Commitments that the water sources of the community would not be affected by the mining development.

These commitments were documented in the minutes of the community's General Assembly, signed and dated by the *campesino* community and a representative of the CEDEMIN-Minas Conga Company on December 17, 1995.

The complainants understand that Minas Conga transferred the lands to Yanacocha in 2002, after which the complainants state they have on several occasions, both verbally and in writing, requested that Yanacocha uphold the commitments made at the time of the land acquisition. The complainants claim that Yanacocha never acknowledged the commitments that had been made, and never engaged with the former landowners on this issue, turning down requests for meetings.

The complainants raise concerns about the process undertaken by Minas Conga at the time, reporting that the representatives took advantage of the illiteracy or lack of education of the *campesinos*, offering very low prices for land, and appealing to them with trivial rewards to convince them to sell lands, and to do so at low prices. These lands were previously used by the community for residences and animal husbandry. They and their children feel they have seen little benefit from the selling of their lands, and feel deceived by the project and Yanacocha. Finally, the complainants also note that were they recognized as former land owners by Yanacocha, they would be able to access an array of benefits provided by the company under their Former Landowners Program. The complainants feel that promised benefits, including employment with the company and contracts for local business they set up in response to company plans to source locally remain unfulfilled. They recognize that some commitments including a road from Chorrera to Cruzpampa have been completed.

The complainants note that they are not opposed to Yanacocha's Conga project and would support it moving forward, but that the commitments made must first be fulfilled. They believe in private sector development, but as the original land users, they would also like to see tangible benefits for their community.

Perspective of Yanacocha

Yanacocha reviewed the complainants' claims and decided not to enter a dispute resolution process with the complainants, as the company believes that the complainants do not have a valid claim to additional compensation. Yanacocha indicates that this decision has been communicated to different members of the complainants and that this complaint has not been brought by the Sorochuco Community, former owners of the land.

Yanacocha confirms that land was bought from the Sorochuco *campesino* community by Minas Conga SRL, and then transferred to Yanacocha in 2001. The company stated that according to Peruvian law, for a land sale of *campesino* communities to be valid, the minutes of the General Assembly at which the land transfer is approved must be attached to the public deed, alongside the terms of the sale. Yanacocha states that with regard to the land in question, the minutes of a meeting of 12 December 1995 are attached to the public deed, which is when the General Assembly of Sorochuco approved the land transfer. According to the company, these minutes only mention one commitment to be fulfilled by Minas Conga, which is the construction of a road, a condition Yanacocha states has been completed by Minas Conga SRL.

Yanacocha states it could not form an opinion of the legitimacy of the December 17, 1995 minutes, as the company did not participate in those meetings, and does not recognize any commitments beyond those in the public deed, pointing particularly to the fact that these commitments were made by representatives of other companies before Yanacocha was established. The company therefore will not consider a price adjustment on the compensation paid to the Sorochuco community. Yanacocha also notes that the prices that were paid were above market price at that time.

Yanacocha recognizes that the Sorochuco *campesino* community is within its zone of influence, and the company notes that it has a formal engagement program through the community leadership to extend several community development programs to the community. The company notes that with respect to the land area involved in this complaint the complainants do not qualify as "land owners" for the Former Landowners Program, but states that some of them had qualified as former land owners as they transferred land directly to Yanacocha after 2001. Yanacocha reports that several community members, including some among the complainants, have been employed by Yanacocha at different periods, others have had contracts for their small businesses, and the community has agreements with Yanacocha to implement several projects.

Finally, Yanacocha recognizes that managing the significant expectations among community members to access benefits from the project has been challenging, in part because the Conga mining project has been delayed and many job opportunities and local contracts that were foreseen for 2011 and thereafter have yet to materialize.

4. NEXT STEPS

While the complainants expressed their interest and willingness to participate in a dispute resolution process with the company, Yanacocha prefers to deal with this case directly using its own communication processes with the involved parties, including the Directive

Committee of Sorochuco Community. Given the voluntary nature of the dispute resolution process, and per CAO's Operational Guidelines, the complaint will be referred to CAO Compliance for appraisal of IFC's role.

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 diligence of the project in question to determine whether a compliance investigation

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.

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