



CAO ASSESSMENT REPORT

**Regarding concerns raised in the tenth complaint relating to
IFC's Yanacocha project (# 2983) in Cajamarca, Peru**

September 2017

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

About 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), members of the World Bank Group. 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
OHS	Occupational Health and Safety

1. OVERVIEW

In May 2017, CAO received a complaint from a group of four individuals, current and former employees (the “Complainants”) of Minera Yanacocha S.R.L (the “Company”). At the time of finalization of this report the Complainants are: Mr. Alejandro Rafael Becerra Palomino and Mr. Teofilo Terrones Coronel; being Mr. Alejandro Rafael Becerra Palomino the representative for both.¹ They raised concerns about occupational health and safety conditions, as well as health impacts that they believe are connected to their employment by the Company. The complaint met CAO’s three eligibility criteria,² and CAO carried out an assessment of the complaint. This complaint was assigned the nomenclature of: Peru/Yanacocha-10/Cajamarca. In January 2017, a complaint was filed with CAO by a former employee of the Company, on behalf of himself and a number of other current and former employees raising concerns related to occupational health and safety conditions at the mine during their employment. CAO found the January complaint eligible for further assessment in March 2017 and begun an assessment of the complaint. The complaint filed in January received the nomenclature of: Peru/Yanacocha-09/Cajamarca.

The Yanacocha-10 was in essence raised during the assessment of the Yanacocha-09 complaint.

2. BACKGROUND

2.1 The Project

The Company operates an open-pit gold mine, located in the Province and Department of Cajamarca, approximately 800 kilometres’ northeast from Lima, Peru.³ They have been engaged in the exploration and production of gold since the mine opened in 1993. The Company is jointly owned by Newmont Mining (51.35%), Company of Minas Buenaventura (43.65%), and Internacional Finance Corporation - IFC⁴ (5%).⁵

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-percent ownership stake in the Company. Only the equity investment was active at the time of the complaint.

¹ Initially the complaint was filed by a group of four individuals. At the end of the assessment phase only two of them have expressed interest in continuing with CAO’s Compliance function. The other two complainants – José Noe Chavez Vasquez and Juan Lorenzo Chavez Vasquez – decided to withdraw from the complaint.

² The complaint relates to an IFC or MIGA project; the complaint raises social and environmental issues; and the complaint is filed by an individual and/or community directly affected by the project, or filed by their representative(s).

³ Consult: <http://www.newmont.com/operations-and-projects/south-america/yanacocha-peru/overview/default.aspx>. Last accessed on August 15, 2017.

⁴ IFC, a member of the World Bank Group, is the largest global development institution focused exclusively on the private sector in developing countries.

See: http://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/About+IFC_New/ Last accessed on August 27, 2017.

⁵ See: <https://disclosures.ifc.org/#/projectDetail/SPI/9502> Last accessed on August 15, 2017.

2.2 The Complaint

The Complainants raised concerns in relation to occupational health and safety (OHS) conditions at the mine during their employment. They contend that the Company failed to protect them from exposure to toxic gases and heavy metals and that this led to long-term negative impacts on their health.

CAO received this complaint as a separate complaint whilst concluding the assessment phase of the Yanacocha-09 complaint.

A more detailed summary of issues is presented in Section 3.

3. ASSESSMENT PROCESS

3.1 Methodology

The aim of a CAO assessment is to clarify the issues and concerns raised by the Complainants, gather information on the views of different stakeholders, particularly the Company, and determine whether the Complainants and the Company would like to pursue a dispute-resolution process facilitated by CAO, or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

CAO does not gather information during the assessment to make a judgment on the merits of a complaint.

In this case, CAO's assessment of the complaint included:

- a desk review of IFC's project documentation;
- telephone conversations and a meeting with the Complainants in Cajamarca, Peru;
- telephone conversations with representatives of the Company in Cajamarca, Peru, and corporate representatives in Denver, Colorado, USA; and
- meetings with IFC's project team.

3.2 Summary of Views

CAO heard divergent opinions from the Complainants and the Company about the concerns raised in the complaint regarding occupational health and safety (OHS) and impacts on the Complainants' health. The following section summarizes the main concerns as expressed to CAO by each party.

Complainants' perspective

The Complainants' main concern is related to health impacts and health conditions that they believe are linked to exposure to heavy metals and toxic gases during their employment. The Complainants state that they worked in several mine operations where heavy metals, including mercury, lead, arsenic, cadmium, silver, thallium and others, were present. Over time, these working conditions led to chronic and acute exposure, which they allege has had an irreversible negative impact on their health.

The Complainants informed that they have consulted both legal and medical experts about a series of health conditions, and have been told by these experts that the conditions are associated with exposure to heavy metals. They present medical lab analyses done by The

Great Plains Laboratory Inc. (USA), toxicological medical reports, besides visible health damages, which they consider as evidence that supports their case.

The Complainants are concerned that their health conditions and the high cost of medical treatment has made it difficult for them to provide for their families. They are also worried about access to healthcare and the high cost of treatment, which places an additional burden on them and limits their ability to provide for their families.

The Complainants indicate that during their period of employment (in some cases of more than 10 years) they witnessed several gaps in the Company's OHS procedures. They contend that the Company did not protect workers sufficiently, even though some of these issues were identified and raised by workers. They showed a video and pictures of the Company's working conditions at the beginning of mining activities. In general terms, the gaps they described to CAO include the following:

- There was no compliance with safety standards that minimize the risk of toxic exposure, including exceeding permissible temperature levels in the processing areas that protect from the release of toxic gases, or not adequately management of storage and disposal of toxic elements.
- There was no adequate monitoring of safety standards and risk mitigation. The Complainants specifically cited a lack of properly certified and well-maintained Jerome monitors to measure mercury levels in the working areas; a lack of proper PPE monitoring and worker OHS training; monitoring and testing only for mercury and lead, but no other elements; not addressing issues raised by workers or identified in internal reviews; and a working environment that discouraged workers from complaining or raising issues. The Complainants placed specific emphasis on the Reliability-Centered Maintenance (RCM) review conducted by the Company in 2010, which they say identified several gaps in safety procedures that were never addressed.
- There was no appropriate Company response to medical issues, including lack of investigation when incidents were reported, improper diagnosis or minimization of conditions, and poor follow-up of medical treatment and medical coverage.
- The Complainants indicated that their complaint is founded on the fact that Newmont Mining Corporation has experience since the 1950s and they have been doing mining exploration in all the world, and did not establish rules and safety controls as in other projects in the USA.
- Equally they express that their complaint is guided to call the attention of the World Bank Group since they made a commitment for social and environment responsibility that ought to be complied.

In relation to each individual case, Mr. Alejandro Rafael Becerra Palomino⁶ describes some of the situations from his perspective before CAO, as part of the safety and health problems:

- At the beginning of the exploration and before July 1993, during the construction phase of the project Personal Protection Equipment (PPE) was not provided according to the exposure risks to heavy metals. For instance, the Company did not provide PPE in a permanent fashion or they only give dust masks of low quality (with only a simple paper filter) instead of gas masks. They show pictures of workers with tennis shoes and without masks working in the PAD of Carachugo.
- Also points out that there were no safety signs in risky and dangerous zones, and no safety sheets for any product. The Complainant states that there were no specialized security personnel, and there was just a security engineer from the Company, who supervised or managed the contractor Zublin-Josa Association, which was in charge of loading and hauling the material for both cases the mineral to the leaching PAD and dismantle (argillized material which is highly toxic in contact with water) to the dump.

⁶ A person who declares to have a professional training as a civil engineer and has had a supervisor role in the field.

- He indicates that the contractor's offices lack of water supply in the bathrooms and hygienic conditions to eat.
- There were no chemical bath for personnel in the operational zone (loading and hauling). The personnel had to meet their biological needs in the pit and material deposits, walking over dangerous material. Moreover, they refer that there was a serious accident in 1998. One machine operator of a giant front loader tried to hide between the front loader bucket and the slope of the pit while having her physiological needs attended, a rock detachment occurred and fell in one of her legs. As a result she had an amputation of the leg due to the seriousness of the exposed fracture.
- Also he expresses that in February 1994 one side of the Carachugo's PAD failed, which caused a cyanide solution spillage, due to which they stopped the operation in that zone and begun working in order to fix these problems; removing deposited material in the fault zone. During the operation the personnel was never protected even though the Company was asked to provide rubber boots and proper masks for personnel that were going to stay during the extraction of the mineral in this area. The fixing of the bottom of the leaching PAD last, according to the Complainants, approximately 15 days.
- The illness that he suffers, which have left irreversible damages, happened on March 30 of the very same year of 1994, after gas exposure due to reparations in the Carachugo PAD.
- The Complainant indicates that at the initial stages of the Company's operations there were no doctors. They only had nurses, and a professional midwife⁷ at the medical topic at the San José Camping area to assist with all kinds of illness.
- The Complainant states that when his health was affected he should had received emergency assistance. On the contrary, he points out that he received a negligent medical assistance in the city of Cajamarca from a doctor who used to work for the Company. Because of this, he needed to go the next day to another doctor, by his own means, looking for a specialized medical assistance given the worsening of his health and the risk for his life.
- Supposed safe and clean environment was neither safe nor clean, especially during those early years of the mine. For instance, many workers indicate that during the early years of their labor, there were no warning signals for dangerous material, they did not supply PPE, and there were no dining room for personnel. Workers from operation area (loading and hauling) had to eat in the loading zone or in the argylic dumps and inside of their trucks or equipment in zones where nitrous gas emanated (which are lethal gases because of the combination of gold and the explosive) caused by blasting; even in the zone the leaching PAD, where mercury and arsenic evaporate mainly.
- He also states that occupational health and safety was affected due to the lack of radio equipment for communication during supervision of operation tasks. Thus, communication to remove the equipment had to be done from the floor under the rain and extreme cold weather conditions at early morning.
- Likewise, he indicates that when he worked for the Company through the contractor company ANGELES MINERIA Y CONSTRUCCION (December 2002 – July 2006) there was a visit from medical experts on occupational health, while workers were removing deposited material from Company's North PAD for leaching them again. He says that these doctors made several remarks on the PPE, including: for all workers at the PAD overalls should had hoods and sealed in the boots, of the TIBEX kind or impermeable and not of fabric material (as it is still used). Moreover, they remarked that overalls should be changed and not used to return home, and that the so-called

⁷ A person whose medical training is oriented to assist only during pregnancies, births, normal and pathologic.

highly efficient mask filters were not suitable because they were only for dust and not for gas. These remarks were never addressed and fixed, they only gave gas masks to controllers who worked for the Company, but not to the rest of the personnel, such as the contractors.

- The Complainant states that since 2000 he did verbal complaints but the Company did not look after them. He indicates that, on the one hand, they blocked him access to the Company's offices and, on the other hand, they informed him that they would give support for his medical treatment, and rehabilitation and worked, and that they would improve safety standards. After some time, in December 2002, he is relocated to Angeles Minería y Construcción, a contractor for the Company on those days.
- He showed a video where he indicates there is evidence of inadequate working conditions, lack of PPE, and other documents by which the Company bought splints, shoes, air plane and bus tickets, and medical and rehabilitation assistance. He indicates that this proves that the Company accepts the responsibility of the damage he suffers.
- He mentions that these complaints over his health and safety were informed to high-level officials since the beginning of his illness (March 1994) and upon not been heard he sends a notarial letter on April 27, 2009, to the South America Regional Vicepresident of Newmont (showing the letter sent and the acknowledgment of receipt by the Company)
- The Complainant argues that the Company has been denying him access to all annual medical tests run on him.

In relation to the individual situation of Teofilo Terrones Coronel,⁸ who worked for the Company between 1994 and 2012, the following are some of the issues that he describes, from his perspective before CAO, as part of the safety and health problems:

- He states that inside the improvised facilities of the laboratory, during the early years of his job, there were no warning signals for dangerous material. They did not supply adequate PPE, and there were no dining room for personnel. Workers from the process area (analytical laboratory) had to eat in the processing zone where they used to work, they had to make room in the same place where they were analyzing minerals, which were product of blasting and emanated nitrous gas (highly lethal). They even had to eat where they had samples in the leaching PAD.
- The Complainant points out that at the beginning they worked in an improvised laboratory without the necessary conditions in term of both space and height, and without the necessary conditions for storage of samples and air venting. He says that they also used as laboratory facilities the office at PAMPA LARGA where they found a close environment without air venting. They say that in these areas samples were burned at high temperatures and analyzed for 34 elements (precious metals: gold, silver; and toxic metals: arsenic, thallium, mercury, cadmium, lead, etc.).
- He expresses also that his worker's rights have been infringed because he encountered impediments during his labor activities which led to his dismissal and being subject to questioning in order for him to sign a settlement in which the Company obliged him not to make any further complaint for any illness.
- Likewise he argues that the Company has been denying him access to all annual medical tests run on him.

One of the Complainants stated that, when he has made efforts to access relevant information regarding OHS conditions regarding their own medical records, the Company has responded by denying them access to this information or covering up the existence of documentation. The

⁸ A person who indicates to have a technical title iv grade 6-laboratory analytical processes.

Complainants place high importance on receiving information about medical lab analysis records and medical treatment related to their cases, which they believe is in the Company's possession and to which they believe they have a legal right. The Complainants believe that IFC, as a shareholder of the Company, should request and provide this information as part of its Access to Information Policy.

The Complainants also expressed concerns over the Company'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. The Complainants feel particularly aggrieved by this since, from their perspective, they have given years of service to the Company while their medical needs were ignored. Furthermore, they feel the Company has ignored them in their several attempts to settle through direct dialogue. They believe the situation is becoming worse each day that this is not addressed.

The Complainants expressed their interest in pursuing a dispute-resolution process with the Company to try to resolve the issues at stake expeditiously.

Company's perspective

The Company stated that they take employee health and safety very seriously, and that they have advanced safety procedures in place at the mine to ensure worker health and safety, with a series of checks and balances to prevent worker endangerment. They contend that their processes are compliant with best practice and are designed in accordance with the level of risk to which their workers are exposed. They noted that the Company has received several certifications and awards in recognition of their OHS standards, and their processes are being reviewed and improved on a continuous basis.

Given their understanding of the chemical processes involved in the operations and of the safety procedures, the Company questions the credibility of claims related to heavy metal poisoning caused by exposure at the mine. They contend that the Company does not use some of the heavy metals that are allegedly having health impacts on the Complainants, and for those metals that are naturally present in the ore (mercury, for example) or used in the metallurgic process, they have specific controls in place to protect employees, and to monitor and respond to any exposure that may exceed the norms.

The Company's team reviewed the details of each individual case and indicated to CAO that, from their medical team's point of view, the claims have no medical basis. They question some of the information that the Complainants have brought forth, and they attribute most of the expressed medical conditions to other factors (lifestyle, non-occupational conditions, other sources of exposure). They indicated that some of the Complainants were not working in positions or areas that would expose them to heavy metals. The Company noted that those who were working in exposure areas had all the elements for personal protection and that workers were monitored as per standard practice, and any health issues would have been picked up via the medical examinations the Company requires of workers regularly, including exit medical examinations when they left the Company.

The Company also stated that it has an open-door policy whereby workers can raise concerns, which are addressed on an individual basis, and that each worker can request and receive medical records from the Company about procedures or treatments that were provided to them by the Company's medical staff. When it comes to information held by third parties, such as clinics or hospitals, the Company indicated it does not have access to that information due to the confidential nature of those records as established by Peruvian law, and that workers should request those materials directly from the third party.

The Company expressed concern over the complainant group because, from their point of view, some of the Complainants have gone from one forum to another to present law suits, and, in some cases, they have already received settlements. They are also concerned that some of the Complainants chose to go to litigation, thereby making it difficult for the Company to engage with them in dialogue.

In terms of the CAO process, and after reviewing the individual cases, the Company indicated their preference for the complaint to be handled by CAO Compliance function.

4. NEXT STEPS

While the Complainants expressed interest in pursuing a CAO-facilitated dispute-resolution process, the Company has indicated unwillingness to engage in a dialogue process with the Complainants given the reasons mentioned above. Given the voluntary principle guiding CAO's dispute-resolution process, CAO is referring the complaint to its Compliance function. In accordance with its Operational Guidelines, CAO will conduct a compliance appraisal of IFC's environmental and social performance related to the project.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

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) of the World Bank Group. 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 initial 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 reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,⁹ the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgment** 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**: Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating Settlement**: If the parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed dispute-resolution approaches, leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving 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 affected.¹⁰

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question, to determine whether a compliance investigation of IFC's/MIGA's performance related to 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 conduct an in-depth investigation into

⁹ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

¹⁰ 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.

IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow up**

Step 6: **Conclusion/Case Closure**