



May 29, 2015

Office of the Compliance Advisor Ombudsman (CAO)

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## COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*Yanacocha (IFC Project #2983), Complaints 04 - 07*

*Peru*

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### Executive Summary

Minera Yanacocha S.R.L. (“the client”) operates the largest open-pit gold mine in Latin America located in the Andes Mountains in the Department of Cajamarca, Peru. In 1993, IFC agreed to lend up to US\$26,000,000 to the client. A condition of disbursement of the loan was the subscription and issue of shares to IFC which constituted a five percent equity investment by IFC. All of the client’s loans to IFC have been repaid, and only the equity investment remains active.

The purpose of a compliance appraisal, as set out in CAO’s Operational Guidelines, 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 or MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the significance of the environmental and social concerns raised in a complaint, results of a preliminary review of IFC’s environmental and social performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response.

This appraisal deals with three separate complaints related to the client’s purchases of land for the project and one complaint from a former employee regarding labor issues.

The three land-related complaints can be summarized as follows:

- Yanacocha-04 (November 2012): Complaint from a family regarding lack of compensation for land acquired by the client in 1992.
- Yanacocha-05 (May 2013): Complaint from descendants of former landowners claiming lack of compensation and lack of due process in relation to acquisition of land overlapping with the IFC client’s Conga mine (Minas Conga).
- Yanacocha-07 (March 2014): Complaint from a family who raised concerns about unfulfilled commitments, including insufficient compensation for land sold to Minas Conga.

CAO notes that the Yanacocha-04, -05 and -07 complaints relate to three distinct land disputes involving the IFC client; each with its own history and each raising particular issues of fact and law. While CAO’s appraisal process has identified questions as to IFC’s due diligence and supervision in relation to its client’s approach to land acquisition, it is not apparent from the material at hand that the land disputes raised in these complaints are indicative of substantial concerns regarding the environmental and social outcomes of the project or issues of systemic importance for IFC such that would merit a compliance investigation in accordance with CAO’s Operational Guidelines.

The labor-related complaint can be summarized as follows:

- Yanacocha-06 (February 2014): Complaint from a former employee working at the client's La Quinoa mine. The Complainant raises concerns about the circumstances around his employment including allegations of wrongful termination and negative effects to his health due to the working conditions at the project site.

CAO acknowledges the seriousness of the issues raised by the complaint at an individual level. However, after careful consideration of the information at hand, it is not apparent that the labor issues raised by the Yanacocha-06 complainant are indicative of substantial concerns regarding the environmental and social outcomes of the project or issues of systemic importance for IFC that would merit a compliance investigation in accordance with CAO's Operational Guidelines.

On the basis of these considerations, CAO has determined to close the four complaints at appraisal and without further investigation. In reaching this conclusion CAO stresses that it makes no finding on the merits of any ongoing disputes between the complainants and the IFC client.

## **About 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.*

The Office of the Compliance Advisor Ombudsman (CAO) is an independent post that reports directly to the President of the World Bank Group. CAO responds to complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

## Table of Contents

Acronyms.....	5
I. The Compliance Appraisal Process .....	6
II. Background.....	7
Investment.....	7
Complaints .....	7
<i>Land-Related Complaints: Yanacocha-04, 05 &amp; 07</i> .....	7
<i>Labor-Related Complaint: Yanacocha-06</i> .....	8
III. Analysis.....	9
IFC Policy Framework .....	9
IFC's Pre-Investment Review and Supervision of the Project .....	10
<i>Land-Related Complaints: Yanacocha-04, 05 &amp; 07</i> .....	10
<i>Labor Related Complaint: Yanacocha-06</i> .....	11
IV. CAO Decision.....	11

## Acronyms

<b>Acronym</b>	<b>Definition</b>
AMR	Annual Monitoring Report
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
EHS	Environmental, Health and Safety
EIA	Environmental Impact Assessment
ESRP	Environmental and Social Review Procedures
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
OD	Operational Directive
OHS	Occupational Health and Safety
PS	Performance Standards
TOR	Terms of Reference

## I. The Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project and it is found eligible, the complaint is referred for assessment to determine whether CAO's Dispute Resolution or Compliance function is the appropriate response.<sup>1</sup> If the parties are not willing or able to reach a facilitated solution, or prefer a compliance process to address the issues, the case is referred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO Vice President, senior management of IFC/MIGA, 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/MIGA business activities, including direct investments, investments through financial markets, and advisory services work. In its compliance function, 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 IFC/MIGA 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.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal 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 compliance 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 may close the case or initiate a compliance investigation of IFC/MIGA.

Once CAO concludes a compliance appraisal, CAO advises IFC/MIGA, the president of the World Bank Group, and its board of the results. CAO also advises complainants that the compliance appraisal has been completed. A summary of all appraisal results is made public. If CAO initiates a compliance investigation as a result of the appraisal, CAO will draw up Terms of Reference (TOR) for the compliance investigation in accordance with its Operational Guidelines.

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<sup>1</sup> The process as set out here is summarized from CAO's Operational Guidelines (2013), paras. 4.1 & 4.2. <http://www.cao-ombudsman.org/howwework/2012OperationalGuidelinesUpdate.htm>

## II. Background

### Investment

Minera Yanacocha S.R.L. (“the client”) runs the largest open-pit gold mine in Latin America, located in the Andes Mountains in the Department of Cajamarca, Peru.

Since 1993, IFC has committed three loans to finance the capital expenditure programs for three of the client’s open-pit mines, Carachugo, Maqui Maqui, and La Quinoa. IFC simultaneously bought five percent of the company’s shares. IFC and the client subsequently signed amendments to the loan agreements in 1993 and 1994 and another amendment to the equity agreement in 1997. As disclosed by the IFC this 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.

In 1999, IFC disbursed an additional loan to finance the construction and development of the La Quinoa mine. All loans were fully repaid by 2005. IFC’s equity investment in the client remains active today.

In addition to its existing operations, the client is pursuing the development of a new mine, Minas Conga, which it acquired in 2001.

### Complaints

This compliance appraisal deals with four separate complaints received by CAO between 2012 and 2014, three relating to land disputes and one relating to labor issues. The section below summarizes the positions of the parties as set out in the complaints and CAO’s assessment reports. Given the purpose of a compliance appraisal and CAO’s mandate in relation to IFC’s compliance with its environmental and social policies, this report reaches no conclusion as to the merits of the particular disputes between the complainants and the IFC client.

#### ***Land-Related Complaints: Yanacocha-04, 05 & 07***

##### *Yanacocha-04*

In November 2012, CAO received a complaint (Yanacocha-04) from an individual on behalf of his family. The complainants acknowledge that the family sold some portions of their land to the IFC client. However, they claim that the client is using other portions of their land, acquired in 1992, that the company did not rightfully purchase, and which should have remained the property of the family. The complainants also allege that the client has initiated legal proceedings against them in relation to ownership of the land.<sup>2</sup>

As set out in CAO’s assessment report for the Yanacocha-04 complaint, the client holds that they are able to document the purchase of the land in question. The company claims that its purchase agreements in relation to most of the parcels purchased have been duly registered in accordance with Peruvian law. The company also notes that Peruvian law provides for adverse possession of land after 10 years and states that in some cases they are seeking to regularize titles that they rightfully acquired have had in their possession for over 20 years.<sup>3</sup>

##### *Yanacocha-05*

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<sup>2</sup> Yanacocha-04/Cajamarca Complaint: <http://goo.gl/c1K7s7> (Accessed May 19, 2015)

<sup>3</sup> CAO. Assessment Report: Yanacocha-04 (May 2013): <http://goo.gl/IYVmqh> (Accessed May 19, 2015)

In May 2013, CAO received a complaint from the descendants of two brothers in the Cajamarca region (Yanacocha-05) claiming they had inherited land from their father which was in part acquired in the course of a government agrarian reform process and in part sold, while other parcels remained the family's property. The family claims IFC's client is using these remaining parcels, but has not compensated the family. The descendants claim economic hardship and seek compensation for the land acquired by the client. The family has initiated several court proceedings in relation to the issues most recently in 2011.<sup>4</sup>

As set out in CAO's assessment report for the Yanacocha-05 complaint, the client states that the land in question is within the boundaries of its Conga project site and that, it has documentation to show that it was legitimately purchased from the rightful owners. According to the client the dispute with the Yanacocha-05 complainants stems from a different understanding of the boundaries of the disputed parcels. According to the company, there is no overlap between the land that the complainants own and its Minas Conga site.<sup>5</sup>

#### Yanacocha-07

In March 2014, CAO received a complaint (Yanacocha-07) from a family within the Sorochuco campesino community. The complainants acknowledge that the community of Sorochuco voluntarily sold lands to Minas Conga in 1995, 1997 and 2001, before Minas Conga was acquired by the IFC client. The complaints further allege that the IFC client has not recognized or fulfilled some commitments made by its predecessor at the time the land was acquired. Specifically, the complainants understood that they would receive additional benefits including: (a) a price adjustment should the land become part of a mining project; and (b) infrastructure and community development projects, including a medical post and a school. The complainants raise concerns that these commitments, which they state were documented in minutes of a meeting held on December 17, 1995, have never been recognized by the IFC client. The complainants note that they are not opposed to the Minas Conga project and would support it moving forward, but that the commitments made must first be fulfilled. They state that they believe in private sector development, but as original land owners they would like to see more tangible benefits for their community.<sup>6</sup>

As set out in CAO's assessment report for the Yanacocha-07 complaint, the client states the land in question was legitimately bought from the Sorochuco campesino community by its predecessor. According to the company, minutes of a meeting on December 12, 1995 are attached to the registered deed for the sale of the land and mention only one specific commitment to be fulfilled by the company, which is the construction of a road, a condition which the client states was completed by Minas Conga. The client further states that it could not form an opinion on the legitimacy of the December 17, 1995 minutes and does not recognize any commitments beyond those that were registered when the land was sold. On this basis, and noting that the price paid at the time was above market value, the client has declined to consider a price adjustment on the compensation paid to the Sorochuco campesino community.<sup>7</sup>

#### ***Labor-Related Complaint: Yanacocha-06***

In February 2014, CAO received a complaint (Yanacocha-06) from a former employee of IFC's client who raised concerns about his employment and termination at La Quinua. He also raised concerns that his employment negatively affected his health. More specifically, the complainant

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<sup>4</sup> Yanacocha-05/Cajamarca Complaint: <http://goo.gl/b4IQNe> (Accessed May 19, 2015)

<sup>5</sup> CAO Assessment Report: Yanacocha-05 (October 2013): <http://goo.gl/hHVlkk> (Accessed May 19, 2015)

<sup>6</sup> Yanacocha-07/Cajamarca Complaint: <http://goo.gl/1NM6d0> (Accessed May 19, 2015)

<sup>7</sup> CAO Assessment Report: Yanacocha-07 (July 2014): <http://goo.gl/fUtJ2p> (Accessed May 19, 2015)



reported that he was unfairly terminated in 2012 after more than 14 years of service and that his health has been affected from exposure to different chemicals, including cyanide and mercury. He also stated that other employees have suffered health impacts, particularly to the liver and lungs, after employment at Yanacochoa.<sup>8</sup>

As set out in CAO's assessment report for the Yanacochoa-07 complaint, the client asserts that the complainant's termination of employment followed due process and was for cause. The client also states that it is company policy and a legal obligation that all employees go through regular medical examinations and that they see no evidence that the complainant's examinations flagged a medical problem. The client also noted that the complainant had initiated legal proceedings and that it would prefer to see the issues addressed through the ongoing judicial process.<sup>9</sup>

### III. Analysis

This section presents an analysis of 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).<sup>10</sup> 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 (1992 Procedure, para. 2).<sup>11</sup>

IFC's 1999 investment was made in the context of the 1998 Procedure for Environmental and Social Review of Projects<sup>12</sup> (1998 Procedure), which required compliance with IFC Environmental and Social Safeguard Policies.<sup>13</sup> These provide guidelines for IFC and its clients on how to prevent and mitigate undue harm to people and their environment.

In April 2006, following fundamental restructuring and revision, IFC approved its Policy on Social and Environmental Sustainability (2006 Sustainability Policy). In January 2012, IFC approved a new Sustainability Framework, incorporating an updated Sustainability Policy and Performance Standards (2012 Sustainability Framework).

The 2006 and 2012 versions of the Sustainability Policy are treated as applicable to IFC's supervision of its investment from April 30, 2006 and January 1, 2012 respectively. However, these newer frameworks are not enforceable with respect to the client as they were not included in the relevant investment agreements.

While IFC's loan agreements contained references to IFC's environmental and social requirements, no similar requirements were included for the equity investment. As a result, since the repayment of the loans in 2006, the client has no substantive environmental and social obligations with respect to IFC. At the same time, CAO notes: (a) that the client agreed to ongoing

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<sup>8</sup> Yanacochoa-06/Cajamarca Complaint (Confidential): <http://goo.gl/bCHcen> (Accessed May 15, 2015)

<sup>9</sup> CAO. Assessment Report: Yanacochoa-06 (July 2014): <http://goo.gl/SYingB> (Accessed May 15, 2015)

<sup>10</sup> Internal Procedure for Environmental Review of International Finance Corporation Projects, IFC/SecM92-189, December 11, 1992

<sup>11</sup> 1992 Procedure, para. 2

<sup>12</sup> IFC Procedure for Environmental and Social Review of Projects (ESRP), December 1998

<sup>13</sup> IFC Environmental and Social Safeguard Policies, November 1998

environmental and social supervision from IFC, and (b) that IFC has continued to supervise the project with reference to its current environmental and social requirements, even though these are not binding on the client.

### **IFC's Pre-Investment Review and Supervision of the Project**

#### ***Land-Related Complaints: Yanacocha-04, 05 & 07***

In 1993, as today, IFC's main policy standard on land focused on "involuntary resettlement".<sup>14</sup> Though the wording of the policies has evolved, a key aspect of their application is the involuntary nature of the process. As articulated in the current IFC Performance Standards, involuntary resettlement does not apply in the case of market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation.<sup>15</sup>

IFC's initial review of the investment did not identify land acquisition as an issue. The project's Environmental Assessment (February 1992) states that the project would be developed in a sparsely populated area without dwellings and/or displacement of family units. IFC therefore determined that the land acquisition did not involve expropriation, and did not apply Operational Directive (OD) 4.30 to the project. At this time, and in relation to IFC's subsequent investments with the client in 1994, 1997, and 1999, IFC maintained the view that the land for its client's mines had been acquired voluntarily and, as such, no involuntary resettlement had occurred.

Through the client's acquisition of Minas Conga S.R.L. in February 2001, IFC became an equity owner of Minas Conga. CAO has not found any documentation to suggest that IFC required the client to conduct due diligence regarding the land acquired by the Minas Conga prior to its purchase by the IFC client.

Subsequently, IFC became aware of a range of grievances from former landowners in the area of the mine, and has acknowledged shortcomings in its client's approach to land acquisition, particularly raising questions as to whether the classification of land purchases as "willing buyer – willing seller" was generally applicable as earlier assumed. In this context, IFC recommended a number of measures for the client to address concerns from landowners. These included the preparation of: (a) a former land owners support program; (b) a retrospective social baseline; (c) an external audit of the company's land acquisitions; (d) a new land acquisition policy, following the requirements of the IFC Performance Standards, and (e) a community grievance mechanism.

IFC's most recent supervision documentation for the project from 2014, notes that the client has developed a resettlement framework to govern future land acquisition. IFC also notes that the client has implemented a former land owner's support program designed to ensure that former land owners were not left worse off due to the project's acquisition of land. To ensure effective completion of the former land owners support program, IFC recommended that the client document the assistance provided with a view to: (a) providing assurance that affected people have not been left worse off due to the project's acquisition of land; and (b) targeting additional assistance to vulnerable households as needed. In relation to the Yanacocha-07 complaint, IFC's supervision documentation notes that legacy environmental and social issues typically become the responsibility of the new owners and recommends following up with the client with a view to better understanding the situation.

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<sup>14</sup> The applicable policy at the time of IFC's initial investment in Yanacocha was processed according to the World Bank 1990 Operational Directive 4.30.

<sup>15</sup> IFC. 2012. Performance Standard 5 on Land Acquisition and Involuntary Resettlement.

### ***Labor Related Complaint: Yanacocha-06***

When IFC conducted its initial environmental review of the project in 1992, it did not identify either labor or Occupational Health and Safety (OHS) issues as concerns. At this point, IFC had OHS standards. However, a broader labor standard for IFC projects did not exist until the development of Performance Standard 2 on Labor and Working Conditions in 2006.

In 1999, while presenting the La Quinoa project to its Board of Directors, IFC noted that the client's safety record was consistent with international standards. In addition to new environmental and social requirements, the IFC client was required to carry out its activities in compliance with the Environmental Impact Assessment (EIA) and an updated set of Environmental, Health, and Safety Guidelines, which included OHS requirements. IFC also noted that an action plan by the client adequately addressed OHS and emergency response programs and facilities.

CAO notes that IFC's reporting on OHS issues in its early supervision documentation is limited, but generally positive. In 2002, IFC noted that the client's OHS performance had improved in recent years. 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). In a review of the client's performance in 2005, IFC concluded that its client was implementing an effective hazmat management program that was in compliance with IFC guidelines.

Starting in 2007, however, IFC's supervision documentation noted that OHS data was missing in the client's Annual Monitoring Reports (AMRs), which was a new requirement under the 2006 Performance Standards. Accordingly, IFC requested more detailed information from the client. When relevant data was not reported in subsequent AMRs, IFC included a focus on OHS issues in its supervision of the client. Through 2014, IFC noted questions regarding the adequacy of the client's OHS reporting. Relevant to the issues raised by the complainant, CAO notes that IFC's supervision documentation from 2008 raises concerns regarding mercury emissions exceeding applicable standards. However by 2014, IFC reported that this issue was being managed adequately by its client and in line with good international industry practice.

In summary, IFC has raised ongoing concerns regarding the adequacy of the client's reporting on OHS, and worked with the client to improve performance in this regard. However, IFC has not engaged with the client on the specific OHS or labor concerns raised by the Yanacocha-06 complainant as these were considered to be beyond the scope of IFC's typical supervision responsibilities.

## **IV. CAO Decision**

The purpose of a compliance appraisal as set out in CAO's Operational Guidelines 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 or MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the significance of the environmental and social concerns raised in a complaint, results of a preliminary review of IFC's environmental and social performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response.

This appraisal considers three separate complaints (Yanacocha-04, 05 and 07) related to the client's purchases of land for the project, and one complaint (Yanacocha-06) from a former employee regarding labor issues.

With regard to the three land complaints, CAO notes that these relate to three distinct land disputes involving the IFC client, each with its own history and individual context, and each raising particular issues of fact and law. CAO's appraisal process has identified questions as to the adequacy of IFC's due diligence and supervision in relation to its client's approach to land acquisition. However, it is not apparent from the material considered in the course of this appraisal that the land disputes raised by these three complaints are indicative of substantial concerns regarding the environmental and social outcomes of the project or issues of systemic importance for IFC such that would merit a compliance investigation in accordance with CAO's Operational Guidelines.

With regard to the labor complaint, CAO acknowledges the seriousness of the issues raised at an individual level. However, after careful consideration of the information at hand, is not apparent that that the labor issues raised by the complaint are indicative of substantial concerns regarding the environmental and social outcomes of the project or issues of systemic importance for IFC such that would merit a compliance investigation in accordance with CAO's Operational Guidelines.

On the basis of these considerations, CAO has determined to close the four complaints at appraisal and without further investigation. In reaching this conclusion, CAO stresses that it makes no finding on the merits of any ongoing disputes between the complainants and the IFC client.