



CAO ASSESSMENT REPORT

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

May 2013

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

TABLE OF CONTENTS

TABLE OF CONTENTS 3

LIST OF ACRONYMS 3

1. OVERVIEW..... 4

2. BACKGROUND.....4

 2.1. Project.....4

 2.2. Complaint.....4

3. ASSESSMENT SUMMARY.....4

4. NEXT STEPS.....6

LIST OF ACRONYMS

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

1. OVERVIEW

In November 2012, CAO received a complaint from the Pajares family regarding compensation for lands around the Yanacocha mine site in Cajamarca, Peru. 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 complainants and Yanacocha have agreed to participate in a voluntary dispute resolution process. 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 the Company. Only the equity investment remains active.

2.2 The Complaint

In November 2012, CAO received a complaint from an individual in Cajamarca on behalf of his family who claim that the company has never compensated them for lands acquired since 1992, which used to be owned by their father/grandfather. The complainants contend that the company never provided compensation as had been promised, and that this has led to economic and health hardships for the family. The complainants further note that the company has initiated legal proceedings against the 19 heirs in order to have complete ownership of said lands. 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 relevant other 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 (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 Pajares family; and
- conducting meetings with Yanacocha representatives.

Perspective of the Pajares family

Based on the original complaint and further stakeholder discussions undertaken prior to and during CAO's assessment trip, below is a summary of concerns raised by the complainants:

The complainants seek respect for their rights by asking for compensation for land acquired by Yanacocha for its mining operations, which overlaps with two stretches of land (fundos) known as Puruay and Huacataz that their father Mr. Gonzalo Pajares owned. Mr Pajares was deceased at the time of the company's land acquisition (which started in 1992), leaving behind a wife and 19 sons and daughters.

According to the family's account, conversations were held with Yanacocha at the time about the estates, and the family was told to regularize the line of inheritance and paperwork in order to be compensated. The family approached the company again in 2010 once they had regularized their situation, and feel frustrated that they still have not received any compensation. While the family acknowledges that their father had sold portions of this land, especially in the southern more fertile lowlands, they state that the company has not paid them due compensation for lands in the northern areas, which they believe had not been sold by Mr Pajares. The family has further expressed concerns about possible expansion plans by the company that may again overlap with the former Puruay and Huacataz estates.

The complainants believe that lack of compensation for, or benefits from their father's lands has led to economic hardship among its members, including the inability adequately to take care of sick members of the family.

Finally, the complainants expressed great concern about legal proceedings that the company has initiated against each of the 19 heirs for a certain number of parcels of land. The family views this process as a strategic attempt to deny the family's due compensation. They view the lawsuits as an economic and psychological burden which they cannot shoulder.

Perspective of Yanacocha

The company holds that they have undergone a proper land acquisition process and legitimately own the Puruay and Huacataz lands that fall within their project site.

They state that the land acquisition was complicated by the fact that while private land sales with private documentation are common, particularly in rural areas, Peruvian law does not require these private land sales and ownership transfers to be publicly registered. The company asserts that they underwent a diligent process to identify the actual owners of each parcel, who, they note, often have not been reflected in the public registry as a result of private land sales. Once identified, the company says, these owners were duly compensated.

In the case of the Pajares land, the company states that they signed purchase agreements with the landowners who were living on the land and had private documents showing that they had purchased the land from either Mr. Pajares directly, or as a result of a chain of sales transactions or as a result of an administrative formalization proceeding. The company states that most of these purchase agreements are duly registered into the Public Registry. The company notes that under Peruvian law, one of the mechanisms to get a land title is a legal mechanism known as adverse possession, which sets out that an entity can own, title and register land after being in its possession for at least 10 years. The company states that in some cases, they are seeking to regularize the titles to land that the company has rightfully acquired, and which has been the company's possession for more than 20 years. Using this

adverse possession mechanism, the company seeks to register this land in the company's name, and the company has started legal proceedings in regards to several parcels that the Pajares family claims.

Areas of agreement

While there is a difference of opinion about the rightful ownership of relevant lands within the former Puruay and Huacataz estates, and by extension about whether compensation is due to the Pajares family, both the Pajares family and the company agree on the following points:

- They prefer to engage in a collaborative process to establish the rightful ownership of lands, and any compensation that may be due to the Pajares family, which will be determined by mutual agreement of the parties.
- The importance first to define the boundaries of the two estates according to the family's original titles, as well as how these overlap with the lands that Yanacocha holds, so as to define the lands in question and have the same basis for discussion.
- The need to find a mechanism by which the documentation about land ownership can be reviewed on a neutral and objective basis, and facts can be established about the actual ownership, in a way that is trusted by, and credible to both sides.
- That some land was sold by Mr. Pajares prior to the company's land acquisition process. The exact location and boundaries of this land need to be determined.
- That if the parties agree, compensation should be paid for any lands that were legitimately owned by Mr. Pajares, and where evidence shows that Gonzalo Pajares Goicochea did not sell such land.
- The process should be guided by agreed ground rules and principles such as acting with respect, participating in good faith, ensuring that representatives from both sides have decision making authority, and being open to considering information on an objective and factual basis.
- That a collaborative process can only work if both sides put aside an adversarial mindset for the time being. Yanacocha has agreed to temporarily suspend its lawsuits against the Pajares family members, for a period of 60 days. In case procedural regulation allows it, the company is willing to extend this period for as long as necessary, if a constructive dialogue is underway and requires more time. On their side, the Pajares family has agreed to abstain from making media statements in relation to their complaint while the dialogue is taking place.

4. NEXT STEPS

The complainants and Yanacocha have agreed to engage in a voluntary dispute resolution process. The CAO will facilitate this process and, as a preliminary step, will engage with the parties to agree ground rules to guide the process. This will include agreement regarding representation and confidentiality, among other aspects. The parties will also need to agree on the scope of the dispute resolution process.

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