



CAO Conclusion Report–Peru: Yanacocha-04/Cajamarca

Summary of CAO's dispute resolution process in relation to the IFC-supported Yanacocha project in Cajamarca, Peru.

BACKGROUND

The IFC investment

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 percent), Minas Buenaventura (43.65 percent) and IFC (5 percent).

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 percent ownership stake in the Company. Only the equity investment remains active.



The Yanacocha mine site

The complaint

In November 2012, CAO received a complaint from an individual in Cajamarca on behalf of his family, the Pajares. The family claimed that the company never compensated them for lands acquired since 1992, which used to be owned by their father/grandfather, Mr. Gonzalo Pajares. The complainants contended that the company

never provided compensation as had been promised, and that this has led to economic and health hardships for the family. They further noted that the company had initiated legal proceedings against the 19 recognized legal heirs related to the ownership of said lands.

CAO ASSESSMENT

After determining the case eligible, CAO began an assessment of the complaint in January 2013. The purpose of CAO's assessment is to clarify the issues and concerns raised by the complainants and to help the parties determine whether and how they might be able to resolve the issues in the complaint. CAO does not gather information in order to make a judgment on the merits of the complaint.

A CAO team travelled to Peru to meet both with the complainants and with Yanacocha representatives. This trip was followed by a series of separate conversations and meetings in order to clarify the process options available through CAO to address the complaint.

Through these discussions both parties expressed their willingness to engage in a dispute resolution (mediation) process. CAO facilitated bilateral discussions with the parties and Yanacocha agreed to temporarily suspend its lawsuits against Pajares family members for a period of 60 days, which would be extended if the mediation process required it. On their side, the Pajares family agreed to abstain from making media statements in relation to their complaint while the mediation took place.

The issue of representation was also discussed, particularly given the existence of 19 legal heirs. From Yanacocha's point of view, all 19 legal heirs needed to be in agreement about the process, both for the purposes of legally

suspending the lawsuits, as well as reaching what the company would see as full and final settlement through the mediation process. The family agreed and provided written consent to the CAO from each of the 19 heirs. Each side also designated a smaller group of representatives to participate in the mediation process.



CAO team meets with the complainants

DISPUTE RESOLUTION PROCESS

With the consent of the parties, CAO then initiated a dispute resolution process. In April 2013, CAO convened separate meetings with the Pajares and Yanacocha to assist them in preparing for the joint meetings. The first joint meeting took place in April 2013, in which the parties were able to exchange views and discuss the ground rules, and the interests that underpin their claims. A second joint meeting was held in May 2013, in which the parties started to discuss the substantive issues in the complaint.

After initial meetings in May, the mediation started in September 2013. Several rounds of mediation meetings took place between September 2013 and February 2014. A working group was convened, comprised of family and company representatives, to discuss the technical aspects of the disputed lands, with the aim to establish a joint understanding of the status of the lands, on the basis of which any compensation to the family could be discussed.

Neither the work of the working group, nor an attempt at direct negotiations led to an

agreement between the parties. The mediation finally came to an end in February 2014, before the work of the working group had been completed. CAO's dispute resolution process was therefore brought to a close.

NEXT STEPS

Per its Operational Guidelines, CAO will now refer this case to its Compliance function for appraisal of IFC's performance with regard to the project. More information on this case is available on CAO's website, www.cao-ombudsman.org.

OBSERVATIONS AND INSIGHTS

Challenges of addressing land claims many years later

The core of the complaint relates to land acquisition for the project in the early 1990s. Today, some twenty years later, many of those originally involved are no longer present, and the process cannot benefit from their first-hand information and perspective. On the family side, the original owner passed away, leaving his children and grandchildren to navigate a labyrinth of rights, titles, maps, sales documents, and verbal histories of past events. On the company side, staff turnover since the 1990s means that some institutional memory is lost, making verification of informal meetings about the issue, and verbal commitments, difficult. The passage of time also hardens positions, and enables misunderstandings as well as strongly felt grievances to accumulate, rendering mediation more challenging. Had the parties attempted to address claims around these lands earlier, it may have proven easier to reach better outcomes for both parties.

The importance of strong communication and decision making processes

This mediation involved a large group of geographically dispersed complainants. This case highlights that for mediation involving a large group, strong decision making mechanisms and communications processes need to be agreed up front, to support communications within the group and externally.