



CAO ASSESSMENT REPORT

**Regarding the 11th complaint in relation to
IFC's Yanacocha project (# 2983) in Cajamarca, Peru**

May 2018

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

1. OVERVIEW

In December 2017, CAO received a complaint from a group of former employees of Minera Yanacocha S.R.L (the “Company” or “Yanacocha”), raising concerns about environmental impacts they believe are connected to mining activities by the Company. The complaint met CAO’s three eligibility criteria, and CAO carried out an assessment of the complaint. The complaint is being referred to CAO’s Compliance function for an appraisal of IFC’s performance on the environmental and social due diligence of the project. 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

The Company operates open-pit gold mines in the Andes mountains in the Department of Cajamarca, Peru, where they have been engaged in the exploration and production of gold since 1993. From 1993 to 1999, IFC committed two 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 five-percent ownership stake in the Company.¹ Only the equity investment was active at the time of receiving the complaint. However, in December 2017, following 24 years of engagement with Minera Yanacocha as a lender and equity investor, IFC sold its five-percent stake back to the Company.

2.2 The Complaint

The complaint was filed in December 2017 by a former employee of the Company on behalf of himself and a number of other former employees (the “Complainants”). As per information provided by the Complainants, the overall period in which they worked for the Company was between 1995 and 2017, varying per individual. The Complainants raise concerns in relation to environmental conditions at the La Quinoa mine and potential negative environmental conditions at the proposed Conga mine. They contend that the Company has contaminated local water sources by discharging cyanide solutions into the local sources of water, resulting in damaging conversion of wetlands and impacts on farming and livestock activities. They claim that these negative impacts to the environment pose risks to workers, former workers, and the community at large.

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

3. ASSESSMENT PROCESS

3.1 Methodology

The aim of the 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 the complaint.

¹ See: <https://disclosures.ifc.org/#/projectDetail/SPI/9502>

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

- a desk review of project documentation;
- telephone conversations with the Complainants;
- 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, the impact on the complainants' health, the community at large and the impact to the environment. The following section summarizes the main concerns as expressed to CAO by each party.

Complainants' perspective²

The Complainants state that the environmental damage in the Cajamarca area consists of the depletion of resources resulting from pollution and degradation perpetrated by Minera Yanacocha. The Complainants are concerned about the damage to the environment that this is causing, to its components and to the quality of life of each of the former workers, current workers, and local community members. They state that these negative impacts to health and quality of life constitute an illegal act, directly caused by the environmental damage.

They add that the harm caused to the workers can be observed in the 21 mineralograms³ that are attached to this complaint. The Complainants allege that they are contaminated with up to ten heavy metals or chemical elements. The Complainants state that they had medical exams performed in private clinics, given that the Company did not share with the workers the results of the blood and urine tests that they performed on them to check for the presence of metals, nor did they attach results of all the monthly and annual exams that the Company performed on the workers. The Complainants add, by way of example, the case of Mr. Alan Richard Herrera Galvez, who did not have his health problem registered by the Company, despite the allergies that he suffered from for six consecutive months. They emphasize that the relevant information is only to be found in his private clinical record, and not in the annual medical exams that the Company conducted for them, despite his reporting them to the medical specialist in the annual checkup.

In terms of environmental damages, they explain that these have been caused by discharges of cyanide solutions by the Company and the presence of heavy metals or chemical elements that are discharged into the environment during Company operations. From their perspective, this has caused harm to the safety and health of the company's workers from 1993 to 2017.

² The Claimants attached to this complaint a series of documents, videos, and medical exams. The videos address subjects relating to: the results of the mineralograms of 21 workers conducted at private clinics; the results of exams by the Sierra Nevada laboratory in the United States; results of the emanation of gases in the Presoak, Intermedia and Super Rica tanks; and the discharge of cyanide solutions into the environment; among other things. Furthermore, they have attached a series of documents, among them, presentations made before SUNAFIL; *Informe médico-auditoria de Experto Internacional en Toxicología y Salud Ocupacional* (Medical-Audit Report by an International Expert in Toxicology and Occupational Health), August 2016; *Tesis sobre la Represa de Gallito Ciego* (Thesis on the Gallito Ciego Dam) by Licenciada Natalia Ríos Perales, Universidad Pontificia, Universidad Católica del Perú, Faculty of Sciences and Engineering, May 2013; *Tesis sobre el Desarrollo de herramientas para evaluar el estatus medio ambiental de las cuencas Andinas con actividades mineras* (Thesis on the Development of tools to evaluate the environmental status of the Andean basins as a result of mining activities), by Cristina Yacoub López, Universidad Politécnica de Catalunya, Department of Chemical Engineering.

³ The mineralogram test is a non-invasive study of the state of minerals and trace elements in the body.

The Complainants allege, moreover, that there are emissions of gases containing heavy metals and chemical elements coming from tanks that should have been contained in the cylindrical duct or piping systems of the Company's operations. Without such a system, the gases are not condensed and are released into the environment and the areas where workers are working 24 hours a day. They state that the lack of a system such as Seal Pot⁴ threatens both local residents and the environment.

The Complainants state that another of their concerns has to do with the degree of pollution in the rivers, stretching as far as the Gallito Ciego Dam.⁵ They allege that the river pollution comes from the Company's facilities, specifically the Quinoa Plant. The Complainants explain that toxic solutions – generally containing heavy metals, chemical elements, and cyanide – that release cyanhydric gas, are discharged from the leaching pad itself,⁶ and go directly into the environment. They state that the workers are then exposed to these solutions. From their point of view, the workers' medical results reflect constant allergies for consecutive periods, which result from contamination by metals such as mercury, thallium, arsenic, silver, cadmium, lead, titanium, uranium, and aluminum, among others. Furthermore, they add that studies have been done on water quality coming from the dikes that accumulate water coming out of the Rejo dam, and Gallito Ciego dam, showing an accumulation of cyanide solutions containing metals.

The Complainants allege that the Yanacocha operations in the Company's various projects do not have soil insulation for their waste rock, and that these waste rock, in turn, are impacted by rainwater that washes out the ore, causing the gathered sediment in the tailings to overflow in many directions. The effluent solutions from the tailings are acid solutions that are not equipped with the "herringbone" system used in the leaching pad for the purpose of capturing acid solutions containing metals. They add that these solutions coming out of the tailings are not controlled, given the lack of a treatment plant for acid waters, and are lost in the sub-soil and soil.

According to the Complainants, another source of contamination occurs when the overflow of ponds for operations, minor events, and storm water at the Quinoa Plant seeps into the environment, and cyanide solutions are discharged directly into the ravine that flows into the environment. They add that Minera Yanacocha does not have a treatment plant for overflow water at the Quinoa Plant. As they indicate, this problem is caused by over-production, which is used to obtain more gold; although the maximum working capacity of the carbon columns for treating rich solutions is only 2,800 m³/hour, the company is treating as much as 3,200 m³/hour. The Complainants say that the Company only reduces the excess flow when there is an audit.

The Complainants state that another major concern has to do with the drilling that Minera Yanacocha is doing in the subterranean rivers that supply Cajamarca with water. They say that these waters are contaminated by the same metals and chemical elements noted above.

From the Complainants' point of view, the contamination by the Company's mining activities began with the mercury contamination of Choropampa, Cajamarca. This contamination, they state, has caused harm to the flora and fauna, and has impaired the health and quality of life of the people who live in the areas near the mine. To this, the Complainants add what is, in their opinion, bad safety management policies, a lack of oversight of commitments assumed in the environmental impact study, improper procedures in the purchase of lands and water use, extrajudicial transactions lacking transparency and/or that infringe basic rights, and a

⁴ The Seal Pot system keeps the liquid level constant in impulse pipes.

⁵ Situated in the locality of Tembladera, Yonán district, Contumazá province, Department of Cajamarca.

⁶ This is the first stage in the process of metals recovery (52 elements). The pads are ore accumulations brought from the mine slopes. This ore is sprinkled with a cyanide solution in order to recover gold, silver, copper, aluminum, cadmium, thallium, titanium, uranium, lead, and arsenic, among others.

general lack of government intervention. According to the Complainants, in 1993, when the Company was establishing its operations, it acquired land from residents for very low prices. The Complainants add that the Company offered jobs in the mines in exchange, and because of the local people's lack of schooling, paid them wages below those paid to other workers. Some of the Complainants state that they sold their land holdings, and after working for the Company for 24 years, ended up contaminated with heavy metals. The Complainants add that this is the case of the former worker and complainant before the CAO, Mr. Juan Castrejón Chilón.

The Complainants state that they have presented their concerns to the Peruvian Government through complaints filed before the National Superintendent of Labor Enforcement⁷ (SUNAFIL - *Superintendencia Nacional de Fiscalización Laboral*) in Lima. Despite the government's ruling in favor of the former workers with regard to contamination, they state that there is a lack of a ruling on how to indemnify the workers now suffering from severe damage to their health and quality of life. The Complainants express frustration at the failure of the government, chiefly to protect the workers' lives. From the Complainants' point of view, they have been contaminated with ten metals, and they conclude that the degree of contamination that they have absorbed qualifies as poisoning, and directly affects the workers' families, community residents, and the environment, all basic rights that are protected by Peru's Political Constitution.

The Complainants state that they do not understand how the IFC, in its role as a shareholder and part of the General Council of Shareholders', in its oversight duties, has not pressed for Minera Yanacocha to fulfill its international, environmental, and social responsibilities, and its commitment not to contaminate the environment or harm the health and quality of life of workers, residents of the city of Cajamarca, and the environment.⁸ They add that they do not understand how the Company says that it has an open-door policy when the Complainants state that they have sought out the Company to share their concerns, and such opportunities were not provided. The Complainants indicate that they do not understand how the Company has obtained different certifications regarding the environment and the health of its workers.

The Complainants have expressed their desire to have the case be handled by CAO's Compliance function for an appraisal of IFC's due diligence.

Company's perspective

The Company expresses that the following information is presented to illustrate Yanacocha's commitment to environmental, social, and health and safety management over the many years of the Company's operation. The examples represent many of the due diligence practices the Company has historically employed or currently employs to ensure legal compliance with applicable laws and regulations of Peru, international best practices, and effective risk management, along with timely mitigation as required.

Yanacocha indicates that it cannot respond to all aspects and issues raised in the current complaint as from their point of view those complaints are of a vague nature. But rather they will try and provide, through examples, the inaccuracies of the complaint and lack of factual information presented by the Complainants. If required through CAO's process, Yanacocha is willing to provide data and reports to address all aspects of the complaint.

Environmental, Community Relations, and Health and Safety and Monitoring

⁷ See: <https://www.sunafil.gob.pe/>

⁸ See *Reporte de Sostenibilidad Yanacocha* (Yanacocha Sustainability Report), 2016: <http://www.yanacocha.com/wp-content/uploads/2017/08/Yanacocha-GRI-2016-FINAL.pdf>

Yanacocha states that it has completed annual monitoring and performance reviews, as required by the International Finance Corporation (IFC), including the environmental, community, and health and safety (including Industrial Hygiene) reviews from 1994-2008 on a mandatory basis and from 2009-2013 on a voluntary basis. According to the Company, reports were submitted to the IFC and served as a basis to guide site supervision visits conducted by the IFC's technical experts. A total of nine supervision site visits were conducted between 2002 and 2015, and numerous visits occurred prior to 2002.

In addition to annual monitoring reports, the Company indicated that the following are examples of information that was regularly generated and submitted to regulatory authorities related to environmental performance:

- Air Quality: No exceedances to the Emission Control Area (ECA);
- Gaseous Emissions generated from Process areas and Generators: No exceedances with Maximum Permissible Limits;
- Ground Water: Ground water quality standards do not exist in Peru and there have been no deviations from natural water quality associated with local geology or normal surface water quality;
- Surface Water: No exceedances with applicable water quality criteria or natural characteristics associated with local geology or normal surface water quality;
- Mining Effluents: No exceedances with Maximum Permissible Limits or historic and natural conditions;
- Domestic Effluents: No exceedances with Maximum Permissible Limits and consistent with historical levels;
- Sediment Measurement in Rejo and Grande Reservoirs: No exceedances and >95% compliance with TSS = 50 mg/L, annual average of 25 mg/L;

Yanacocha indicates that they have also complied with all reporting requirements as specified under operation permits and conditions stemming from numerous Environmental Impact Assessments approved by the Government of Peru between 1993-2017. Additionally, they state that Yanacocha's operations have regularly been subjected to government-led audits, inspections and reviews across the environment, community, and health and safety areas.

Independent Water Quality Studies and Dialogue Table

In 2001, a complaint was filed with CAO's office alleging water quality contamination in the streams and waterways draining from the Yanacocha mining complex. A formal dialogue process was established in 2001, and an independent water quality study was commissioned in 2002. The study was completed in 2003, and the participatory monitoring process established during the study continued for a number of years. The Company provides a summary and conclusions from the water quality study and ongoing monitoring process:

- Collected over 1,000 water quality samples between 2004-2005 from 112 locations in the Porcon, Rejo, Honda, and Chonta watersheds. In addition, 120 duplicate samples were collected.
- All streams sampled in Porcon (20) complied with Peru Class II standard and 15 irrigation Canals complied with Peru Class III standards. Potable water for the city of Cajamarca complied with the Peru drinking water quality standards.
- Rejo River basin surface water quality in streams and in the three canals met Peru Class III standards.
- Honda River basin surface water in streams met Peru Class III standards. The quality of surface water in two of the three canals meets Class III standards.
- Chonta River basin surface water quality in streams and in the 10 canals met Peru Class III standards.

- Fecal coliform levels resulting from animal and human waste often exceeded Peru Class II and III standards and is a concern in all basins; however, these exceedances were not attributed to Yanacocha, but rather external causes consistent with many rural scenarios in Peru.
- Comparisons with World Health Organization (WHO) and EPA international guidelines indicated there was no imminent risk to people, animals, or plants, or to drinking water, cattle, or irrigation. The quality of drinking water coming from the treatment plants for the city of Cajamarca does not exceed the values of international guidelines. In all streams and canals as a whole, the water quality in the basins of the Porcon, Rejo, Honda, and Chonta Rivers generally does not exceed the values of international guidelines for irrigation water. The water quality in the basins of the Porcon, Rejo, Honda, and Chonta Rivers generally does not exceed the values of international guidelines for cattle drinking water. Areas with exceedances are due to natural causes.
- Minera Yanacocha has implemented various measures to improve the quality of water since the water quality study of the Dialogue Table was completed in 2003. The water quality in the basins of the Honda, Rejo, and Grande Rivers, the sub-basin of the Porcón River basin, has generally improved after the implementation of these facilities.
- Concerns about water quality included the upper part of Quebrada Honda (Quebrada Pampa Larga, Canal Tual); some elements naturally exceeded values of international guidelines for livestock and irrigation: the upper part of the Grande River in the Porcón River basin (Quebrada Encajon, Quebrada Callejón, Tual, Encajón Collatán, Quishuar, and Llagamarca Canals), and the upper part of the San Jose River in the Chonta River Basin (San José River and La Shacsha canal).

Accusations of Environmental Contamination

The Company explained about some of the environmental monitoring, regulatory oversight, and operational considerations associated with their facilities, which have been mentioned in the complaint, and provided the following information:

- Accusation of cyanide discharge - La Quinoa heap leach pad:

Yanacocha has prepared and implemented an Emergency Discharge Plan (that does not contain any form of cyanide) in coordination with Peruvian regulators during extreme climate events. The plan involves the discharge of water at sump 1 from La Quinoa Pad to a nearby water channel. A permanent monitoring system is located downstream of sump 1 in a location called control point 6 (CP6) and has never reported any exceedances. All emergency discharges that have occurred historically, due to rainy conditions (El niño effect), have been communicated to all competent authorities - National Water Authority/Autoridad Nacional del Agua (ANA)⁹, Agency for Environmental Assessment and Enforcement/Organismo de Evaluación y Fiscalización Ambiental (OEFA)¹⁰, Ministry of Energy and Mine/Ministerio de Energía y Minas (MEM)¹¹, Supervisory Body for Energy and Mining Investment/Organismo Supervisor de la Inversión en Energía y Minería (OSINERGMIN)¹². These emergency discharges took place on March 25, 2015, September 29, 2015, and in December 2015, due to el Niño Costero event and no exceedances were reported during the authorized discharge events.

- Accusation that waste rock disposal areas are not isolated and do not have acid water collection system:

⁹ See: <http://www.ana.gob.pe/>

¹⁰ See: <https://www.oefa.gob.pe/>

¹¹ See: <http://www.minem.gob.pe/>

¹² See: <http://www.osinergmin.gob.pe/>

Yanacocha indicates that has implemented an extensive system across the mining area to collect, pump, and treat acid rock drainage from waste rock disposal areas. The foundations of the waste rock disposal areas contain low permeability soil liners and a network of drainage collection underneath the Carachugo, Maqui Maqui, Yanacocha, and La Quinoa waste rock areas. Low pH waters collected from these facilities are conveyed to the Acid Water Treatment Plants (AWTP) in Pampa Larga and La Quinoa for treatment. Following treatment and prior to discharge, all waters are analyzed and met compliance with applicable water quality standards and discharged to the environment through multiple discharge points around the operation. The waste rock disposal area foundations, collection system, and water treatment plants are included as part of Yanacocha's environmental management system and approved by Peruvian authorities.

- Accusation that Rio Rejo Reservoir collects cyanide-containing solutions:

The Rio Rejo reservoir was designed to retain sediments from storm water (rainfall) runoff from areas under active mine/construction activity. Storm water runoff does not come in contact with any cyanide solutions. In the Company's view, this is demonstrated through the water monitoring that takes place at sampling location CP6, which is sampled for regulatory compliance. The monitoring results from CP6, adds the Company, are reported every three months to the national authority and are audited by national regulators, including the OEFA and ANA and results are in compliance with water quality standards.

- Accusation that solution storage ponds at La Quinoa discharge cyanide water directly to the environment:

Solution ponds located at the La Quinoa operations area have never discharged nor had emergency spills to the environment. Ponds at all facilities are monitored and controlled as part of the sitewide water balance. All excess water or process solutions are transferred to the Yanacocha plant for treatment and discharge to the environment. All discharge waters are sampled and results submitted to regulatory authorities for compliance.

Yanacocha expresses had constructed an additional water treatment plant during 2015/16 specifically to treat water at the La Quinoa operation. This plant was constructed to ensure water quality discharges were not affecting off-site waters outside of the company's facilities and at the same time comply with several new water quality standards promulgated by the Government of Peru.

Yanacocha indicates an ongoing commitment and openness to transparency and dialogue with stakeholders who have been both supportive and critical of the Company's performance. The Company states that an example of this is a direct dialogue and mediation they are currently undertaking with community members about a land dispute with the Company. Through the different cases filed with the CAO, the Company expresses that they had willingness to dialogue and engage with the various complainants individually not as a group, given that a number of the different complainants were party to completed legal proceedings or proceedings which were still in a judicial process. In this case, the Company has indicated a preference for the complaint to be handled by CAO's Compliance function for an appraisal of IFC's due diligence.

4. NEXT STEPS

As the Complainants and the Company have indicated their preference for the case to be handled by CAO's compliance 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,¹³ 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.¹⁴

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

¹³ 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

¹⁴ 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.

found to be merited, CAO Compliance will conduct an in-depth investigation into 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**