



CAO ASSESSMENT REPORT

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

October 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

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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 May 2013, CAO received a complaint from several members of a family in Cajamarca who are concerned about lack of compensation for lands around Yanacocha's Conga 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 parties have opted to pursue a dispute resolution process in order to address the issues in the complaint. 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 May 2013, CAO received a complaint from several members of a family in Cajamarca who are concerned about lack of compensation for lands which they claim belonged to their family. The complainants raise concerns about what they see as a lack of due process for land acquisition connected to Yanacocha's Conga site in Cajamarca, and their family's lands in particular. The complaint states that this situation has prevented the family from enjoying the economic benefits of its land assets. 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 complainant family;
- conducting meetings with Yanacocha representatives; and
- conducting meetings with IFC project team.

Perspective of the Cerna family

Based on the original complaint and further discussions undertaken prior to and during CAO's assessment trip, below is a summary of concerns raised by the complainants. The complainants are made up of direct descendants of two brothers of the Cerna family, who had initially acquired lands in the Cajamarca region in 1946, and registered them in the Public Registry.

The complainants seek compensation for land acquired by Yanacocha for its Conga mining operations, which the family states overlaps with two land estates owned by the family known as Coñicorgue and Yanaquero, originally purchased by the Cerna brothers in 1946. The Cerna brothers were deceased at the time of the company's land acquisition.

According to the family's account, certain sections of their land were affected by agrarian reform, a smaller portion (approximately 200 hectares) was sold by their fathers, and the remaining parcels in two different estates are legitimately owned by them (approximately over 1000 hectares of land). About these remaining parcels the complainants state that they were never approached by Yanacocha regarding acquisition and possession of the lands. The family reports making several attempts to engage with Yanacocha about these lands, both through the judicial process as well as through direct engagement. At one point, the family reports providing land title documents and having had meetings with Yanacocha, including site visits with company engineers to map the area and discuss compensation for these remaining parcels. These conversations came to naught, and have not been picked up since. The family has no records showing Yanacocha's recognition of the 1000+ hectares, and they attest that the company often acts informally and through verbal promises that cannot be followed up.

The family is quite concerned about what they perceive as irregularities on Yanacocha's part in order to claim ownership of said lands. The family believes that Yanacocha works primarily by buying land from third parties, and not by approaching the registered owners. The family also believes that the company helped local farmers (*campesinos*) title parcels that they may not legitimately own, so that it can subsequently buy the lands from the *campesinos* well below market price. The complainants also state that the company uses adverse possession (*prescripción adquisitiva*) as another way to claim ownership over lands; this despite one of the family members residing on the land for approximately 30 years. One of the family members has initiated several court proceedings to contest these perceived irregularities. The last of these was initiated in 2011.

Finally, the family is quite concerned about an incident that occurred on a court-ordered site visit, stemming from the family filing suit against Yanacocha in 2011. As part of the court proceedings, the judge visited the site along with representatives of the family as well as company representatives. Per the family's account, *campesinos* in the area had been alerted to the site inspection and were told that the site visit was meant to take away their lands. Despite not living in the area claimed by the Cerna family, the *campesinos* were present to obstruct the roads, block access and ultimately ended up attacking and harming one of the family members. According to the family, the incident happened in the area of the claimed land which at the moment is part of Yanacocha's property and is accessed by road passing company checkpoints.

Perspective of Yanacocha

The company recognizes that land acquisition in Peru is complicated by the fact that while a public registry of lands exists, private land sales and the corresponding private documents are common, particularly in rural areas, and Peruvian law does not require that private land

sales and subsequent ownership transfers 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.

After reviewing its internal files for the lands under dispute with the Cerna family, Yanacocha holds that the land was legitimately acquired and that all documentation is in order. The company therefore believes it legitimately owns the contested land that fall within their Conga project site.

The company believes that the dispute with the Cerna family regarding the Coñicorgue and Yanaquero estates purchased by the Cerna brothers in 1946 stems from a different understanding of the location of the estates. From Yanacocha's perspective, the estates are located outside of the Conga Project zone. Based on the company's understanding of said delineations, the company contends that there is no overlap between the Cernas' estates and the lands acquired and currently held by the company for its Conga project. From the company's perspective, the lands that are being claimed by the Cerna family that lie within the project site never belonged to the estates bought by the Cerna brothers in 1946.

Based on its documentation on the case, the company also contends that the Coñicorgue and Yanaquero estates, as well as another Cerna estate denominated Huangashanga, were fully affected by land reform in 1975, and were subsequently designated and registered to the Comunidad Campesina de San Juan de Huangashanga by the government. The company states, and the complainants also recognize, the Quilinsa estate was sold by one of the Cerna brother to a third party in 1980.

Areas of agreement

While there is a difference of opinion about the correct delineations of the Coñicorgue and Yanaquero estates and by extension the rightful ownership of relevant lands within Yanacocha's project site, and any compensation that may be tied to said ownership, both the Cerna family and the company agree on the following points:

- The parties would like to pursue a dispute resolution process that would allow them to discuss the issues, exchange information, and come to a resolution by mutual agreement of the parties.
- It is important firstly to establish and agree on 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.
- It is also important to establish if and how the Coñicorgue and Yanaquero estates were affected by land reform.
- If an overlap does indeed exist and land reform did not affect the total area of the estates, the parties need to find a mutually agreeable mechanism by which 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.
- If the result of this process shows that the Cerna brothers legitimately owned land parcels at the time of Yanacocha's acquisition, compensation should be paid to the Cerna family. The amount of compensation would need to be discussed and agreed by the parties.
- The process should be guided by a set of common ground rules and principles such as 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.

4. NEXT STEPS

The Cerna family 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, role of advisors, and the scope of the process, among other aspects. The CAO will also provide some capacity building to both sides prior to the first joint session of the parties.

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