

# CAO

**COMPLIANCE ADVISOR/OMBUDSMAN** 2000-01 ANNUAL REPORT



**Compliance Advisor/Ombudsman**  
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MULTILATERAL INVESTMENT  
GUARANTEE AGENCY  
WORLD BANK GROUP

**International Finance Corporation**  
**Multilateral Investment Guarantee Agency**

## MISSION

The office of the Compliance Advisor/Ombudsman is committed to enhancing the development impact and sustainability of International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) projects by responding quickly and effectively to complaints from affected communities and by supporting IFC and MIGA in improving the social and environmental outcomes of their work, thereby fostering a higher level of accountability.

## Message from the Compliance Advisor/Ombudsman

In many parts of the world, people living in or near areas marked for development investment by the International Finance Corporation or the Multilateral Investment Guarantee Agency can be adversely affected by these projects. In some cases, whole communities must be relocated. In others, people lose access to the resources they need for survival, or the resources themselves are threatened by degradation or destruction.

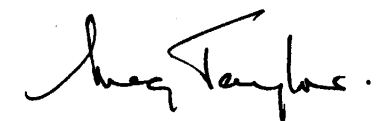
The IFC and MIGA recognize that the concerns of local communities and other stakeholders in the their development projects must be addressed and that those projects must be structured in ways that do no harm. This is not an easy task, but it is a necessary one if development is to sustain and improve the lives of the people it is intended to benefit. To address these issues, in the 1990s the World Bank put in place safeguard policies governing the environmental and social impacts of projects. In 1999 the Bank established the Office of the Compliance Advisor/Ombudsman (CAO) to help the IFC and MIGA address the complaints of people affected by projects in a manner that is fair, objective, and constructive.

In our first annual report after a year and a half of operation, I am pleased to announce that the CAO has achieved noteworthy progress in each of its three roles. With respect to the ombudsman role, our approach to resolving complaints in the Jordan Gateway matter, described more fully on page 8, has helped the IFC understand that who benefits from development—and how they benefit—is an ever more complicated set of questions, the answers to which depend on how carefully the project has been analyzed and designed at the outset. In our advisory capacity, CAO recommendations following the mer-

cury spill at Yanacocha, Peru, will help managers implement more stringent safety measures in extraction projects. Details of CAO involvement in convening and managing the independent commission's inquiry are provided in the story on page 11. And finally with respect to compliance, our specialists have addressed systemic issues in MIGA having to do with its management of social safeguard policies relating to indigenous people. The recommendations, outlined on page 15, can help MIGA address the identified weaknesses.

Helping communities find solutions to their problems has been a huge step forward for the IFC and MIGA. When people file a complaint with us, they are amazed that somebody bothers to come there, listen to them, and respond rapidly to their concerns. In carrying out our mandate, we have received invaluable guidance and support from our Reference Group, whose members come from the private sector, nongovernmental organizations (NGOs), academia, foundations, and other institutions. These stakeholder representatives, all of them extremely busy individuals, have given us invaluable feedback on how we should do our work and how to refine our roles. In 1999, we depended on them to help us launch the office and develop its operational guidelines. Today, we rely on them to help us stay focused on this vitally important work.

Meg Taylor



SEPTEMBER 2001

## Overview of the Compliance Advisor/Ombudsman's Office

The Compliance Advisor/Ombudsman (CAO) is an independent post that reports directly to the president of the World Bank Group. Its mandate is twofold: first, to help the IFC and MIGA address—in a manner that is fair, objective, and constructive—complaints made by people who have been or may be affected by projects in which the IFC and MIGA play a role; and, second, to enhance the social and environmental outcomes of those projects.

The CAO has three distinct roles:

**Ombudsman Role:** Responding to complaints by persons who are affected by IFC/MIGA-sponsored projects and attempting to resolve the issues raised by using a flexible, problem-solving approach.

**Advisory Role:** Providing a source of independent advice to the president of the World Bank Group and to the management of IFC and MIGA. The CAO provides advice both in relation to particular projects and in relation to broader environmental and social policies, guidelines, procedures, resources, and systems.

**Compliance Role:** Overseeing audits of the social and environmental performance of IFC and MIGA, both overall and in relation to sensitive projects, to ensure compliance with policies, guidelines, procedures, and systems.

Developing and balancing the three roles—compliance, advisor, and ombudsman—poses a unique set of challenges. The three roles together provide flexibility of response and a capacity to be proactive. Nevertheless, the ombudsman role clearly takes precedence when it is invoked. To clarify that the advisory role cannot cut across the role of the CAO as ombudsman or as auditor, the CAO draws a clear distinction between project-specific advice and policy and process-oriented advice.

The CAO has been working with management of IFC and MIGA to ensure that their staff include notification of the existence of the CAO in all their dealings with potential, new, and existing sponsors and clients. In addition, throughout the project cycle documentation, CAO has asked that the role of the CAO and information about its involvement or possible future involvement be



◀ CAO staff, from left, Rachel Kyte, Michelle Malcolm, Meg Taylor, and Paula Panton.

### THE CAO'S ADMINISTRATIVE STRUCTURE

The CAO's small professional staff of two senior specialists and two administrative staff make it possible for the office to operate responsively and efficiently by bringing a unique perspective to the intense degree of thinking, analyzing, and brainstorming involved in work that is regularly precedent-setting for IFC and MIGA and external constituencies. To manage their tasks more effectively, CAO staff have been trained in mediation, facilitation, and dispute resolution design. When specific expertise is required, the CAO hires short-term specialized consultants.

From the outset, the CAO has relied on the advice and expertise of the Reference Group whose members are listed on pages 18-20 of this report. This independent body of stakeholders from the private sector, the NGO community, academia, and other institutions has guided the development of operational guidelines for the CAO and the recruitment of the ombudsman. The Reference Group does not give project-based advice. Nevertheless, its diversity and expertise continue to help the CAO retain its focus and guide its evolution and growth.

included. As they prepare projects with IFC or MIGA assistance, project sponsors are responsible for revealing the existence of the CAO to people affected by the project through the processes of consultation or preparation of environmental and social impact assessments, or both. These attempts to integrate information about the existence and role of the CAO into the working and project cycle of IFC and MIGA are part of the CAO's efforts to spread the word to those who may need the services of the CAO so that they know of its existence and how to contact it.

There are some important limitations to the CAO's powers, but the broad mandate makes the three roles together very powerful. For example, although the CAO is not a judge, court, or the police, there are influential ways in which the office can define issues to be addressed in a complaint, make creative and practical proposals for settling an issue, and encourage the parties to engage in dialogue. Although the CAO cannot force outside bodies to change their behavior or to abandon existing practices, the office can call on the leverage of IFC and MIGA in urging the parties to adopt its recommendations.

The independence and impartiality of the CAO foster the trust and confidence of the project's sponsors, local communities, NGOs, and civil society generally. This trust and confidence are essential prerequisites for the CAO to be able to solve problems on the ground. Independence from the line management of IFC and MIGA also enables the CAO to provide objective advice to the two organizations and to help them do their work better.

Although confidentiality is important in some aspects of the ombudsman's role, disclosure of information is an important way to reinforce independence and impartiality. Disclosure is also important, on some occasions, to achieving solutions. The CAO is bound by IFC and MIGA disclosure policies that require the confidentiality of certain business information to be respected during communication with the parties involved. The CAO is also bound by the staff rules of the World Bank Group, which require that information be treated with discretion and not disclosed improperly.

As ombudsman, the CAO places the concerns of the complainant at the center of the complaint and resolution processes, and the presumption is in favor of confidentiality. Of course,

complainants are free to publicize their approach to the CAO or the details of the case if they so wish. With the consent of the parties, the details of a complaint resolution process may be revealed after the process is concluded, but not prior to or during the process, except in specific situations allowed for by the complainant and other parties.

Within the parameters of those constraints, the CAO endeavors to ensure maximum disclosure of reports, findings, and results of the CAO process by reporting results on its Web site and in reports. And, in many cases, there is no reason why disclosure of the CAO's reports should not be full and complete, subject to any limitations imposed at the request of an affected party.

Although the CAO is open and responsive to the views of all of those with an interest in the project, the views of local communities, minorities, and vulnerable groups must take precedence because these generally are the people with the greatest to lose from a project; and they are often the least well equipped to convey their interests and concerns.



▲ Fisherman of Huarmey, Peru, meet with CAO staff to discuss concerns that a MIGA-guaranteed mining project might destroy their fishing grounds.



# ombudsman

As ombudsman, the CAO's major objective is to provide an accessible and effective mechanism for handling complaints so as to help resolve issues raised about the environmental and social impacts of IFC- or MIGA-sponsored projects. When a complaint is received, the CAO appraises it against basic criteria, including whether the complaint and the complainant are genuine, whether the project in question is sponsored by IFC or MIGA, and whether the complaint is substantive and specific.

If the complaint is accepted, it is fully assessed, and the project team is notified and given clear guidance on the issues to which it should respond by a specified deadline (normally 20 working days). When the assessment phase has concluded, the CAO responds to the complainant with suggestions on how to move forward.

The complainant may choose to accept or reject these suggestions. If the complainant does not wish to further engage the CAO, the office prepares a report to the World Bank Group president. Once the report is received by the president, the CAO sends copies to IFC or MIGA management and project teams.

In addition to about 30 letters of inquiry, the CAO has received a total of 9 formal complaints since its founding in 1999. Seven of these complaints were accepted, and one, which related to a project that had not yet been approved, has been closed (see "The Jordan Gateway Project," page 8).

Common threads among these complaints were the community's right to know and to be consulted about projects with a potential impact on the environment or the social fabric of the community. The

◀ **Local women near San Marcos, Peru, discuss with the Senior Specialist, Ombudsman their fears of contamination of the local river. The project is guaranteed by MIGA.**

▼ **The Jordan Gateway site and surroundings lie beyond the Jordan River, viewed from the Israeli border.**

► **Ombudsman Meg Taylor consults with Ugandan NGOs on a complaint they have filed. The project may be financed by IFC.**

pattern of complaints relates to the presence of IFC and MIGA, the size and nature of their portfolios, and the potential complainants' awareness of the CAO's existence and role.

For all complaints handled by the ombudsman, the CAO's approach is to help communities, project sponsors, and the IFC and MIGA seek solutions that they can live with at the project level. Often, this entails designing dialogue processes and dispute resolution systems that are tailored to specific needs and circumstances.

The CAO increasingly has discovered attendant issues at the core of a complaint that speak to a broader context than the project itself—issues that relate to the role of the World Bank Group in the sector or the country or to the role of municipal or central government. Although these issues cannot be resolved through the ombudsman's role, the CAO has begun to raise them through the office of the World Bank President and with management in the World Bank Group.



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## THE JORDAN GATEWAY PROJECT

The creation of an industrial park for hi-tech and light industries along Jordan River promised to bring employment to communities nearby. The construction of a bridge that would carry these products across the river and to the Israeli port of Haifa promised to bolster trade for the region. Supported on both sides by Jordanians and Israelis committed to moving the peace process forward,

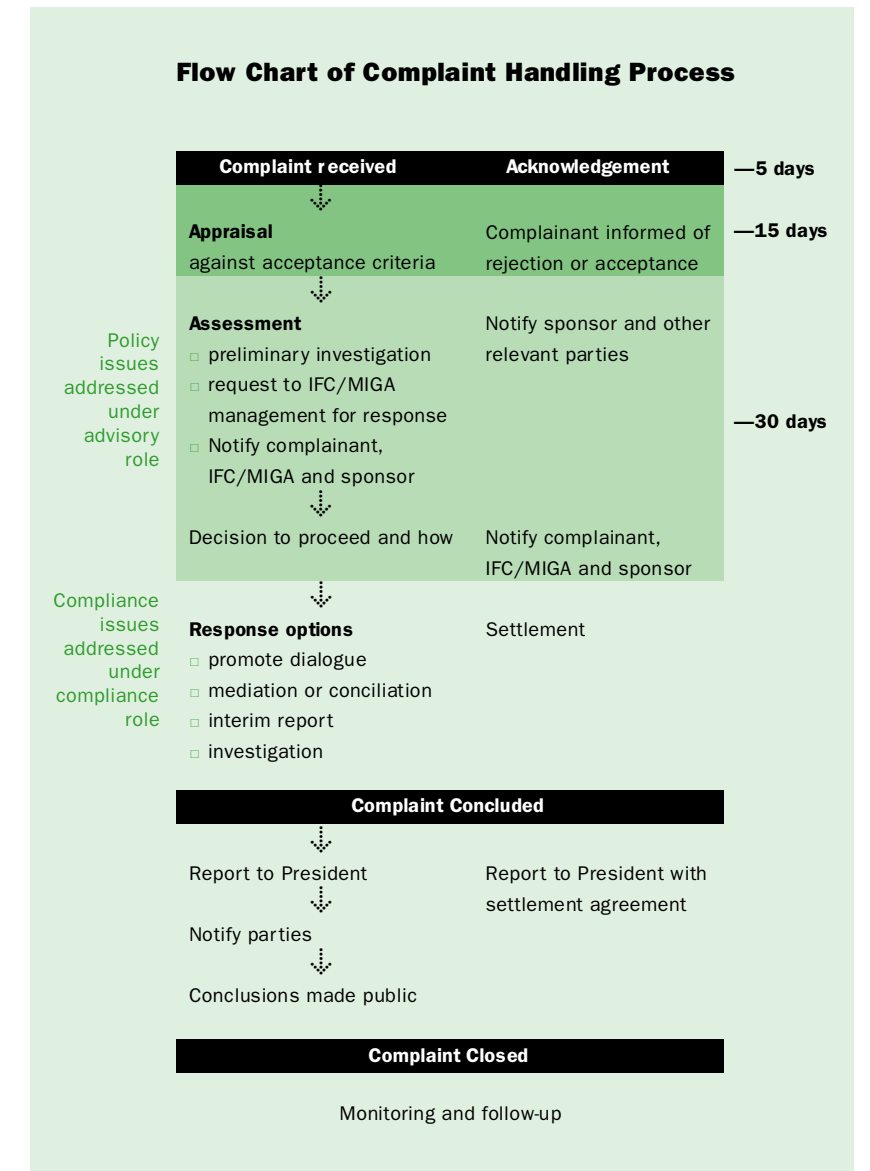
the project also had its detractors. In December 2000, the CAO received a complaint from an international environmental organization that the proposed IFC-sponsored project would further pollute the river, which the group wished to be designated as a World Heritage site, and severely degrade the habitat of migratory birds along the river's banks. The CAO then began to

receive letters from people living in Kibbutzim on the Israeli side of the river. They were concerned about the noise and pollution of trucks, the possibility of contamination on the project site, disruption to their lifestyle, and threats to migratory birds. These letters became the basis for a formal complaint accepted by the CAO in January 2001.

Shortly thereafter, the CAO sent an assessment mission to the project site. Although the CAO's presence initially fostered suspicion, the Kibbutz residents were pleased that the CAO specialist had come all the way from Washington just to listen. The specialist also consulted with the project's sponsors as well as several NGOs in Tel Aviv. All of that listening led to understanding of several misconceptions and differing opinions about the proposed project: The

Jordan River, far from pristine, was not yet a World Heritage Site. The site for the industrial park was chosen to minimize social impacts, and measures were being taken to minimize disruptions to migratory bird habitat.

Issued within a week of the site visit, the CAO's report recommended, among other things, that the company explain the project, in Hebrew and Arabic, to every person living near the park and that the Jordan Gateway Company also set up a community relations service to ensure the involvement of local communities. Partly with the assurance of the CAO's report, the board of the IFC unanimously consented to the project and recommended that the CAO's observations be written into a legal agreement between the IFC and the company.



# A dvisor



▲ **Members of the Independent Commission tour the Yanacocha gold mine.**

The CAO's major objective in its advisory capacity is to provide independent, timely, and objective advice to the president of the World Bank Group and management of the IFC and MIGA so as to address and help resolve potential problems. This advice relates both to particular projects and to broader environmental and social policies, guidelines, procedures, resources, and systems.

Although essential to the CAO's ability to inform institutional learning and systemic change, the advisory role does not—and will not—cut across or compromise the ombudsman and compliance roles. The CAO's policies, procedures, and strategy-oriented advice are often based on the insights and experience gained from the investigations and audits in its other roles. These are translated into advice on how IFC and MIGA conceive of and carry out their missions and mandates.

Advice can be sought by the president or the IFC or MIGA, or it can be offered at the CAO's initiative. In either case, the objectives are to address systemic issues and to identify potential problems early so as to reduce the likelihood of complaints or audits later on. And sometimes, the advice is sought by shareholders to protect their investments (see "The Yanacocha Mine Project," opposite).

To date, the CAO has formally advised on approximately 10 or 11 processes. In the last 13 months, the CAO has developed an important role as a formal advisor on processes and debates within IFC and MIGA above the individual project level. For example, it has advised the IFC on incorporating ideas of sustainability in its investment decisions so

that these decisions are framed in terms of doing good, rather than simply avoiding harm. The CAO has also tendered advice to the World Bank Group in its extractive industries review by recommending that the Bank consult widely with people likely to be affected by such projects as well as other interest groups. And, with respect to the World Commission on Dams, the CAO has proffered advice on how to use the commission's report to further its own management and oversight of dam development.



## THE YANACOCCHA MINE PROJECT

On June 2, 2000 a truck carrying mercury, a by-product from the Yanacocha gold mine in Cajamarca, Peru, to Lima, spilled 151 kg (more than 300 pounds) directly onto the road, which passes through three villages. Mercury has mystical and cultural values in Peruvian culture. People believe it is possible to turn mercury into gold, that a person who possesses mercury will find gold, and that mercury keeps bad spirits away. Of course, because it is used in artisanal gold mining, mercury also has a monetary value. The villagers picked up the mercury, stored it in vials and bowls, took it home with them, and either boiled it for alchemy or hid it. Within two weeks, 300 people were hospitalized with mercury poisoning.

The Yanacocha shareholders, including IFC, asked the CAO to conduct an investigation into the incident and its causes. The CAO negotiated the terms of the independent inquiry in line with the principles of the office: independence, transparency, and disclosure. The CAO put together an independent commission of experts on mine management and toxicology, headed by Colombia's former minister of the environment. The commission contracted with the Centers for Disease Control in Atlanta to provide independent health reports and, within two weeks, went to Peru.

Ten days after the commission had visited the site, it issued a report to the IFC shareholders, citing the facts of the incident, and then published the report in Spanish and English on the CAO Web site at [www.ifc.org/cao](http://www.ifc.org/cao). Paper copies were

distributed to the affected communities and relevant government departments in Peru. CAO staff and the commission's chairman also visited the spill site and talked about the report's recommendations with the local people. Key among the report's 19 recommendations were that the mine's emergency response plan cover the transportation of hazardous materials, not just what happens at the mine; that mine officials discuss the emergency plan with local people so that they would know what to do in the event of another accident; that the mine educate local communities about mercury; and that it monitor the ongoing health impacts of the spill that triggered the investigation.

# C ompliance

In exercising its compliance role, the CAO attempts to foster adherence to, and engender more positive interpretation of, IFC and MIGA policies and procedures so as to promote wider understanding of how compliance can enhance social and environmental outcomes and better performance.

The purpose of a compliance audit or review is to determine whether IFC or MIGA staff, and in some cases project sponsors, have complied with IFC and MIGA social and environmental policies, guidelines, and procedures. Because such guidelines are often susceptible to different interpretations, a compliance audit would not normally seek to set aside an otherwise reasonable interpretation or judgment. However, the audit can help draw attention to situations where reasonable interpretations of environmental or social policies have led to undesirable outcomes, and the CAO can recommend corrective measures.

Compliance audits can be triggered by ombudsman investigations or undertaken on a case-by-case basis at the request of management or at the CAO's own initiative. The findings of audits are conveyed to the president of the World Bank Group in a report. The report's delivery to the president is disclosed, and management is sent copies. Recommendations, once they have been accepted by the president and publicly disclosed, are then sent to the executive board of the IFC or MIGA for information.

► **A CAO official meets with NGOs in Kyrgystan to discuss concerns about the environmental record of the Kumtor mine. The mine is financed by IFC and guaranteed by MIGA.**





▼ **Close to Huarney, Peru, a state-of-the-art mining project exports its minerals from a pier onto tankers. The mineral is sluiced down a mineral duct, 300 km from the Andes to the coast. The project's investors are guaranteed by MIGA.**

The CAO has not yet conducted a formal audit since its founding in 1999. However, it has initiated a preliminary audit review, the findings of which were submitted to the president of the World Bank Group in April 2001 (see “Systems Compliance Review,” opposite).

In determining its approach to compliance, the CAO has encountered multiple interpretations of the safeguard policies within IFC and within MIGA. As a result, much more time than originally envisaged has been spent in coming to an operational understanding of how IFC and MIGA themselves approach compliance. The CAO is now developing a manual outlining the approach to compliance, its audit methodology, the different issues that can trigger an audit, and how each can be addressed.



## SYSTEMS COMPLIANCE REVIEW

In December 2000, the CAO initiated a preliminary audit review of the application, appropriateness, and effectiveness of due diligence of social safeguard policies and the supervision regime used to ensure compliance for the Minera Antamina open-pit copper mine in Peru. In 1999, the Multilateral Investment Guarantee agency agreed to a series of guarantees of equity and debt with the project's sponsors. In this particular instance, indigenous peoples living in the area where the copper mine was located had to be resettled elsewhere.

The CAO's review showed that, although the people had been equitably compensated for the resettlement, the manner in which the resettlement took place was not in the spirit of the World Bank Group's policies. The mine had apparently developed a complete plan for the resettlement, but, with changes in the construction and engineering schedule, the resettlement was accelerated. People were eventually moved with only days' notice. Many were given options of cash payments without support to manage the cash. At the time the guarantees were agreed to, MIGA did not have its own set of social safeguard policies, though it had referred the project's managers to the IFC's policies. The CAO's review also revealed that MIGA, although strong on environmental policies and safeguards, had no one



on its staff with the social science experience necessary to assure compliance with the Bank's social safeguard policies. Nor had it contracted for the provision of this expertise.

The audit report's recommendations focused on the need for MIGA to enhance its capacity in this area and to ensure that social development expertise was available. In June 2001, the audit findings, recommendations, and terms of reference were disclosed in English and Spanish on the CAO Web site at [www.ifc.org/cao](http://www.ifc.org/cao).

▲ **The children of Alisio Coronado in Cajamarca, Peru, play just a few kilometers from the largest gold mine in Latin**

**America. The CAO is working with local leaders and the mine to address environmental and social impacts.**



## Funding Message

In FY 2001, the CAO had an operational budget of \$1.3 million, of which IFC provided 80 percent and MIGA the remaining 20 percent. The CAO has an agreement with IFC/MIGA that additional funds will be made available upon request from their

respective contingency funds in the event of an unexpected volume of complaints and Ombudsman activity. For specific activities to be organized and/or managed by the CAO, the CAO has developed a procedure whereby funds may be contributed by the parties to a dispute

into an account to be managed by the CAO. This model was first used the case of Yanacocha. The CAO intends to disclose budget and spending information in similar cases where funding is provided from external sources.

## Independent Commission Report on the Mercury Spill in Peru

Funding for the Independent Commission's Report on the Mercury Spill in Peru was provided by the shareholders of Minera Yanacocha and managed by the CAO's office. The share-

holders provided \$172,000 for the investigation, of which \$80,363.70 was spent (see breakdown below). The CAO returned the balance of \$91,636.30 to the shareholders.

	In US\$
Independent Commission fees (Chair + 2 members) .....	52,607.06
Independent Commission expenses (travel, etc.) .....	13,565.30
Travel to Peru for 2 consultants plus per diem.....	5,240.62
Printing of Independent Commission Report .....	3,168.32
Translation of Commission Report into Spanish .....	5,782.40
<b>Total .....</b>	<b>80,363.70</b>

◀ Villagers in Choropampa, Peru, attend a public hearing about the impacts of the recent mercury spill on the health of the community.

## Compliance Advisor/Ombudsman Reference Group

*September 1999, March 2000,  
and May 2001 Meetings*

David McDowell  
Chair and CAO Consultant  
New Zealand

Motoko Aizawa  
International Finance  
Corporation  
Washington, D.C.

Ray Albright  
Asea Brown Boveri  
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S. Babar Ali  
World Wildlife Fund  
Pakistan

Ronald Anderson  
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Marcelo Andrade  
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Kathryn McPhail  
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Paraguay

Glenn Prickett  
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Andreas Raczynski  
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▲ **The fishing fleet sets sail from Huarmey, Peru. Already coping with the El Niño and La Niña weather cycles on their fish stocks, local fishermen want to know if port activity by a large mine will also affect their ability to earn a living.**

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The Industrialization Fund for  
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