



APPRAISAL REPORT

CAO Appraisal for Audit of MIGA

CAO Compliance

C-M-R9-Y08-F106

September 2008

**Minera Antamina
Peru**

Summary

The CAO Vice President requested CAO Compliance to initiate an appraisal with the objective of deciding on a subsequent audit of MIGA's involvement in Minera Antamina. MIGA had a series of guarantees related to Minera Antamina. Minera Antamina cancelled all guarantees with MIGA in early 2007; since then, MIGA has had no involvement with the project. The CAO received a first complaint related to the project in 2000, a second complaint in May 2005, and a third complaint in 2008. CAO Compliance concludes that there are no indications of any failures by MIGA to address social or environmental issues as part of its review process that resulted in outcomes that were contrary to the desired effect of the policy provisions. The CAO will close this appraisal with no further action.

Office of the Compliance Advisor/Ombudsman (CAO)
for the
International Finance Corporation (IFC)
Multilateral Investment Guarantee Agency (MIGA)
Members of the World Bank Group



Contents

1. Overview of the CAO Compliance Appraisal Process
2. Background and Concerns that Led to the Appraisal
3. Scope of the Appraisal for an Audit of MIGA
4. CAO Findings
5. The CAO Decision

About the CAO

The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

The CAO (Office of the Compliance Advisor/Ombudsman) is an independent post that reports directly to the President of the World Bank Group. The CAO reviews complaints from communities affected by development projects undertaken by the two private sector lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about the CAO, please visit www.cao-ombudsman.org



1. Overview of the CAO Compliance Appraisal Process

When the CAO receives a complaint about an IFC or MIGA project, the complaint is first referred to the CAO Ombudsman, which works to respond quickly and effectively to complaints through facilitated settlements, if appropriate. If the CAO Ombudsman concludes that the parties are not willing or able to reach a facilitated solution, the case will be transferred to the compliance arm of CAO, CAO Compliance, to appraise the concerns raised in the complaint for a compliance audit of IFC or MIGA. Alternatively, a compliance audit can be initiated by request from the President of the World Bank Group, the senior management of IFC or MIGA, or at the discretion of the CAO Vice President.

A CAO Compliance appraisal is a preliminary investigation to determine whether the CAO should proceed to a compliance audit of IFC or MIGA. Through CAO Compliance appraisals, the CAO ensures that compliance audits of IFC or MIGA are initiated only for those cases with substantial concerns regarding social or environmental outcomes.

A compliance audit is concerned with assessing the application of relevant policy provisions and related guidelines and procedures to determine whether IFC and MIGA are in compliance. The primary focus of compliance auditing is on IFC and MIGA, but the role of the sponsor may also be considered.

A compliance audit appraisal, and any audit that ensues, must remain within the scope of the original complaint or request. It cannot go beyond the confines of the complaint or request to address other issues. In such cases, the complainant or requestor should consider a new complaint or request.

The CAO compliance appraisal will consider how IFC/MIGA assured itself/themselves of compliance with national law, reflecting international legal commitments, along with other audit criteria. The CAO has no authority with respect to judicial processes. The CAO is not an appeals court or a legal enforcement mechanism, nor is the CAO a substitute for international court systems or court systems in host countries.

The appraisal criteria are set forth in CAO's Operational Guidelines. The criteria are framed as a series of questions to test the value of undertaking a compliance audit of IFC or MIGA. The criteria are as follows:

- Is there evidence (or perceived risk) of adverse social and environmental outcomes that indicates that policy provisions (or other audit criteria) may not have been adhered to or properly applied?
- Is there evidence of risk of significant adverse social and environmental outcomes that indicates that policy provisions, whether or not complied with, have failed to provide an adequate level of protection?
- Is there evidence (or perceived risk) of significant adverse social and environmental outcomes where policy provisions, standards, (or other audit criteria) were not thought to be applicable but perhaps should have been applied?



- Is there evidence that the application of some aspect of a policy, standard, guideline, or procedure resulted in adverse social and environmental outcomes?
- Can the cause of adverse social and environmental outcomes not be readily identified and corrected through the intervention of the project team without a detailed investigation of the underlying causes or circumstances?
- Could a compliance audit yield information or findings that might better inform the application of policies (or other audit criteria) to future projects?

During appraisal, CAO Compliance holds discussions with the IFC or MIGA project team and other relevant parties to understand the validity of the concerns and to explore whether an audit would be warranted.

After a compliance appraisal has been completed, the CAO can choose only one of two options: to close the case, or to initiate a compliance audit of IFC or MIGA.

The CAO will report and disclose the findings and decision of the CAO compliance appraisal in an appraisal report in order to inform the President of the World Bank Group, the Boards of the World Bank Group, senior management of IFC or MIGA, and the public in writing about its decision.

If the CAO decides to initiate a compliance audit as a result of the compliance appraisal, the CAO will draw up a Terms of Reference for the audit in accordance with CAO's Operational Guidelines.



2. Background and Concerns that Led to the Appraisal

The CAO Vice President requested CAO Compliance to initiate an appraisal with the objective of deciding on a subsequent audit of MIGA's involvement in Minera Antamina.

1. Minera Antamina is an open pit copper mine northeast of Lima, with deposits that in addition to copper include zinc, lead, bismuth, molybdenum, and silver.

2. The Antamina mine, mill, and related support facilities are located in the Andes mountains. In addition to the mine and related project facilities, the project includes a port facility near Huarney, on the coast, and a 302 km pipeline to carry concentrate slurry from the mine to the port facility near Huarney.

3. MIGA has had a series of guarantees with the partners and other financial backers involved in the Minera Antamina project. Specifically, MIGA had guarantees of equity with Rio Algom (A639), Noranda (A640), and Teck (A641). It had a guarantee of debt with Citicorp (A662) as an arranging bank and guarantees of equity and debt with Mitsubishi (A667 and A671, respectively). All guarantees were signed on June 30, 1999, with the exception of those for Mitsubishi, which were signed on October 26, 1999. Minera Antamina cancelled all guarantees with MIGA in early 2007. Since then, MIGA has had no involvement with the project.

4. After MIGA's initial review, Minera Antamina changed the design of the method for disposing of the water that carries the concentrate. Partly as a consequence of regulatory requirements, but also after studying similar disposal methods used in Chile, Minera Antamina decided to dispose of the water fraction of the concentrate arriving at the Huarney facility by treating it, and subsequently disposing of it, on land as an effluent. Treated water was applied to a plantation that was designed to evapotranspire the majority of the effluent. MIGA identified and addressed the issue of effluent disposal, and it was a topic during the 2002 site visit by MIGA staff. A monitoring program was implemented to monitor water levels and water quality of the ground water aquifer beneath and down gradient from the effluent disposal area.

5. The CAO received a first complaint related to the project in 2000, and conducted a compliance audit of MIGA's due diligence and application of relevant safeguard policies and operational procedures. The CAO audit found noncompliances in the application of policies relevant to indigenous people and resettlement, in addressing related social concerns, and the accessibility for the CAO to relevant MIGA documentation. The CAO closed the complaint in January 2005. See http://www.cao-ombudsman.org/html-english/complaint_antamina.htm for all CAO Ombudsman's reports related to Minera Antamina.

6. The CAO received a second complaint in May 2005, and conducted a field visit in November 2005. In December 2005, Minera Antamina notified MIGA that the ground water monitoring had identified a change in ground water conditions related to the effluent discharge.

7. In January 2006, the CAO Ombudsman challenged MIGA and asked specific compliance questions on how MIGA assured itself that:

- Assessments of potential project-related ground water impacts were adequate



- The project demonstrated compliance with applicable World Bank guidelines related to groundwater impacts
- The project demonstrated compliance with World Bank guidelines related to impacts to the marine environment at the port facility
- Assessments of potential social, economic, and health impacts on inhabitants of Puerto Grande were adequate
- The project demonstrated compliance with World Bank guidelines relevant to the potential social, economic, and health impacts.

MIGA provided the CAO with a written response shortly after (February 2006).

8. In May 2006, the CAO issued an assessment report stating that there is no evidence of adverse environmental impact on the bay where the port is located, and that the project's monitoring was effective in identifying changes in ground water quality before any negative impacts might occur. The CAO assessment report had nine statements as recommendations:

- "The parties should continue to work toward improving the functionality of the CMVFAH" (Comite de Monitoreo, Vigilancia y Fiscalización Ambiental de Huarmey)
- Minera "Antamina acknowledges that it should revise and clarify procedures for managing community concerns, including a clarification of its process for responding to complaints"
- Minera "Antamina has agreed to provide MIGA with all quarterly reports and EEM [Environmental Effects Monitoring] reports, and also to make these reports publicly available..."
- "The parties should work together to incorporate representatives of groups that have been critical of CMVFAH."
- "An initial task ... could be to design an applied research project to better understand the ecological impacts of the various human activities in Huarmey Bay..."
- Minera "Antamina has offered to enhance its engagement with community members and CMVFAH by facilitating discussions of future project designs and technical concerns related to marine water quality and ground water."
- "CAO encourages Antamina to continue participation in the planning, decision making, and disclosure of the ground water issue".
- "CAO encourages Antamina to continue its efforts to fully categorize ground water use in the region, and make public its findings and analyses"
- "CAO encourages the complainants to participate fully in the public and invited forums and workshops offered throughout the year by CMVFAH."

9. The CAO assessment report concludes that the CAO will facilitate a collaborative planning meeting to address concerns raised by the stakeholders, and that the CAO will return to the area to facilitate this meeting and formally close the complaint.

10. The CAO May 2006 assessment report also included a stand alone appendix: a detailed technical review of environmental conditions at the Minera Antamina port facility, prepared for the CAO by an independent consultant. This appendix summarizes the findings related to the groundwater as follows:

- The effluent disposal, or irrigation project, did not perform as planned because seasonal variations in the evapotranspiration rate was not accurately accounted for.



- The rising water table and degraded ground water quality beneath the areas used for effluent disposal present a potential risk to downstream ground water resources.
- It will be important that proposed changes to the effluent disposal/irrigation system minimize any potential risk of negative impacts on the Huarmey valley ground water resources.

11. In July 2006, the CAO hosted a capacity building workshop involving members of CMVFAH, representatives of Minera Antamina, and several governmental agencies. MIGA did not participate in the workshop, but did have a representative in Huarmey at the same time as the workshop. The CAO prepared a summary report of the workshop, which makes the following recommendations:

- Regulatory agencies, together with CMVFAH representatives, should consider roundtables aimed at standardizing collection and dissemination of environmental data.
- CMVFAH should identify possible funding sources separate from the funding provided by Minera Antamina.
- CMVFAH should produce a priority list of issues to work on.
- CMVFAH and Minera Antamina should work to resolve current funding problems as soon as possible.
- Minera Antamina should convene a working group to address findings on the ground water issues. Minera Antamina planned to deliver a ground water report by October 2006.

The CAO confirmed at the workshop in July 2006 that the CAO case was closed.

12. In November 2006, MIGA received the anticipated ground water study report from Minera Antamina. MIGA scheduled a site visit in early 2007 to follow up on the ground water issue. Minera Antamina informed MIGA in early 2007 that they had cancelled all MIGA guarantees. The planned MIGA site visit was therefore cancelled as well.

13. In June 2008, the CAO received a third complaint related to Minera Antamina and the ground water issue (complaint dated April 29, 2008). The CAO determined that due to the lack of commercial relationship between MIGA and Minera Antamina at that time, (the guarantees were cancelled in early 2007), the CAO could not accept the complaint, and therefore rejected it.



3. Scope of the Appraisal for an Audit of MIGA

14. The 2001 CAO audit of MIGA addressed the issues related to MIGA's review prior to issuing guarantees. This audit was closed by the CAO in 2005.

15. In January 2006, the CAO Ombudsman asked MIGA a number of questions related to MIGA's process of assuring itself of compliance, and MIGA provided a response. There was no further follow up by the CAO.

16. The recommendations in the CAO ombudsman assessment report and the report from the CAO-hosted workshop relates to Minera Antamina and stakeholders such as local interest groups and the public. The technical appendix identifies an incorrect judgment made by Minera Antamina of the rate of evapotranspiration in the proposed effluent disposal system. The technical appendix recommends that the groundwater beneath and down gradient of the site be further characterized to determine if there is a risk to downstream resources. The CAO workshop report states that Minera Antamina should convene a working group to address findings on the ground water issue. It further states that Minera Antamina planned to deliver a ground water report by October 2006.

17. MIGA took the following steps for review, monitoring, and follow up:

- MIGA acted on the findings of the CAO audit report in 2001. The CAO closed the audit.
- MIGA had environmental and social specialists visit the site. The scope of site visit 2002 included the effluent disposal system.
- MIGA's annual reporting shows a follow up of the identified issues.
- MIGA failed to identify that the effluent disposal system would not meet the performance objective due to an incorrect understanding of the effect of seasonal changes in evapotranspiration, but MIGA assured itself of the establishment of a monitoring program to assure itself that of potential impacts on ground water would be identified.
- The monitoring program did detect the impact of changing water levels, and MIGA acted through additional follow up when informed.
- MIGA responded swiftly to the CAO Ombudsman's questions on compliance in January 2006.
- MIGA was not part of the CAO-hosted workshop. None of the recommendations of the workshop or the assessment report relates directly to MIGA.
- MIGA followed up on the promised action of delivering a ground water report in October 2006, reviewed the report, and planned a follow up visit swiftly (within two months).
- MIGA officially lost the possibility to follow up when the guarantees were cancelled in early 2007.



4. CAO Findings

The appraisal finds the following:

18. MIGA may arguably have been remiss in not detecting Minera Antamina's incorrect judgment about the evapotranspiration rate. This is a technical design question, and the argument that MIGA assured itself of performance by verifying the monitoring program is valid. The monitoring program did detect the rise in ground water levels and changes in ground water quality.

19. MIGA followed up on the promised ground water report, reviewed the report, and planned a follow up visit swiftly (within two months). MIGA officially lost the possibility to follow up when the guarantees were cancelled.

5. The CAO Decision

The CAO concludes the following:

20. There are no indications of any failures by MIGA to address social or environmental issues as part of its review process that resulted in outcomes that were contrary to the desired effect of the policy provisions.

Based on the above, CAO Compliance will close this appraisal of a compliance audit of MIGA with no further action.