

Yanacocha Gold Mine

Applying Lessons Learned to Avoid Negative Impacts on Children in Future Bank-Financed Mining Projects



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INTRODUCTION

Local communities in Cajamarca, Peru have been profoundly impacted by the World Bank-funded Yanacocha mine, and the violence associated with its proposed expansion project, known as Conga, for over twenty years. While Yanacocha serves as a major source of employment for many people in the region, entire families have seen their lifestyles completely upended through the sale and abandonment of their lands to make way for the projects. The capital of the Cajamarca Region, also called Cajamarca, has had a marked population growth in recent years that has impacted the development process by increasing the cost of living and leading to the proliferation of bars and brothels that employ teenagers, usually informally. Many believe the Yanacocha mine has also resulted in extensive water pollution, and are concerned that the Conga mine will further hinder their access to clean water. The actual and perceived impacts associated with the mines have contributed generally to a lack of a “social license” for the Conga project, and have resulted in significant social unrest and violence in communities around the proposed expansion.



While much work has been done over the years to document impacts to the local communities associated with Yanacocha, the largest gold mine in South America, and Conga, projected to be Peru’s largest mining investment ever, the effects of the mines on the rights of children have been largely overlooked. The purpose of this report is to identify and analyze the direct and indirect impacts of the projects on the rights of children and adolescents, and to offer recommendations for addressing those impacts. It also explores whether or not the policies of the World Bank Group (WBG) are sufficient to avoid and mitigate such impacts on children, and provides suggestions where they fall short. While many of these policies were not in place at the time of the project’s inception, they will be used to measure the mining company’s progress in developing socially and environmentally responsible projects that are financed by the WBG in the future. The report does not assign responsibility to the Bank or the company for the negative impacts that have occurred in the region, but rather attempts to draw lessons learned in order to suggest ways to protect and promote child rights in future projects—both for implementing companies as well as for the WBG.

This report includes an introduction to child rights, where they come from and why they are important for development and the WBG’s mission. The report then identifies some of the most significant impacts on children associated with the project. Finally, the report offers recommendations for the WBG on how to avoid, address, and mitigate impacts on children in the projects it finances.

CHILD RIGHTS

Human Rights

Human rights are inherent to each person and are universal. All human rights—civil, political, economic, social and cultural rights—are indivisible, interrelated and interdependent. The progress of each facilitates the advancement of the rest; just as a violation of each right adversely affects the rest. Both state and non-state actors (including businesses) have a duty to comply with the legal obligations established by international human rights law.

In 2011, the UN approved the Guiding Principles on Business and Human Rights to “improve standards and practices in relation to business and human rights in order to achieve tangible results in people and affected communities, and contribute to socially sustainable globalization.” Respect for human rights demands activity not passivity, and requires companies to adopt processes and policies in line with their responsibilities. According to the UN’s Guiding Principles, this duty is manifested at three levels: through political commitment approved at the highest management level of the company (public and widely disseminated, both internally and externally); a process of due diligence to identify, prevent, and mitigate impacts on human rights; and procedures that enable reparations of any negative consequences.

Child Rights

Children and adolescents have the same basic human rights as adults, as well as the rights articulated in the United Nations Convention on the Rights of the Child (CRC). The CRC has been ratified by all WBG borrowing countries, and stipulates that children must be regarded as bearers of human rights and fundamental freedoms. The Convention also entitles children to special measures of protection. The rights enshrined in the CRC fall into four main categories, which are considered guiding principles of the Convention: non-discrimination, the right to participate, the right to life, survival and development, and adherence to the best interests of the child.

The best interests of the child principle is described by the Inter-American Court of Human Rights as a "regulating principle...based on the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development, making full use of their potential, as well as on the nature and scope of the Convention on the Rights of the Child".¹ It is often interpreted to mean that laws and actions affecting children should put their best interests first and benefit them in the best possible way. Survival and development rights include the rights to resources and skills to assist in a child’s development, and the rights to food, clean water, and education. These rights require both the means to fulfill them as well as access to those means. The principle of participation includes the right of children to express opinions, and to have a say in matters that impact their lives. This principle also includes the right of children to have their opinions taken into account.

Both states and non-state actors have duties to adopt positive measures to ensure full respect for children's rights. While the CRC is primarily applicable to states, non-state actors also have obligations under international human rights law. In its General Comment 16, the Committee on the Rights of the Child states that, “duties and responsibilities to respect the rights of children extend in practice beyond

¹ Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 (August 28, 2002), *available at* http://www.corteidh.or.cr/docs/opiniones/seriea_17_ing.pdf.

the State and State-controlled services and institutions and apply to private actors and business enterprises.” In addition, the Committee notes that companies “should not undermine the States’ ability to meet their obligations towards children under the Convention.”² The General Comment also directly addresses international organizations, including the World Bank, and states that they “should have standards and procedures to assess the risk of harm to children,” “take measures to mitigate risks of such harm,” and “put in place procedures and mechanisms to identify, address and remedy violations of children’s rights in accordance with existing international standards including when they are committed by or result from activities of businesses linked to or funded by them.”

World Bank Group Policies and Child Rights

The World Bank Group (WBG) represents an important source of financial and technical assistance to many developing countries around the world. Its stated mission is to reduce poverty and boost shared prosperity. The WBG has publicized that it intends to do so by providing resources, delivering knowledge, building capacity and forging partnerships between the public and private sectors. For many years, the WBG has relied on a robust set of social and environmental policies to avoid causing harm to people and the environment through its development projects. In 2011, the WBG completed an extensive review of the policies that govern its private investments, known as the Performance Standards (PSs), and has just completed a review of the “safeguard” policies applicable to its public investments, known as the Environmental and Social Framework (ESF). While many of these policies were not in place during the early stages of the Yanacocha project, as the IFC continues to monitor Yanacocha and the development of Conga—and as it considers further investments in the projects—these policies will play an important role in determining how Yanacocha and Conga are evaluated and implemented and will be used to measure the company’s progress in developing socially and environmentally sustainable projects in the future.

WBG policies incorporate many issues relevant to human rights such as the right to adequate housing, land tenure, and voluntary principles on security. For example, the existing PSs and the final draft of the ESF require projects to take into account the effects each project will have on the health and safety of the surrounding community. Under both the ESF and PSs, project proposals are subject to a social and environmental assessment, during which potential impacts are identified and corrective action measures are proposed. During the evaluation process, the WBG identifies other policies that are applicable to a particular project. If the WBG decides to invest, it monitors project performance in relation to those policies. Borrowers are responsible for conducting assessments, while the relevant arm of the WBG is responsible for ensuring full compliance with the policies. The safeguards in particular have been considered the industry standard for development finance policy, and other financial institutions have long followed the WBG’s example when it comes to social and environmental protection,

Despite the fact that children are particularly vulnerable to risks associated with WBG projects, the existing PSs do not require assessments to consider differentiated impacts on their rights.³ However,

² UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State Obligations Regarding the Impact of Business on Children’s Rights, *available at* <http://resourcecentre.savethechildren.se/library/general-comment-no-16-2013-state-obligations-regarding-impact-business-childrens-rights>.

³ The IFC requires clients to “identify individuals and groups that may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status” under PS1 and in a footnote to that sentence states that, “The client should also consider factors such as gender, age, ethnicity, culture, literacy, sickness, physical or mental disability, poverty or economic disadvantage, and dependence on unique natural resources.”

proponents of child rights have been promoting better protections for children through the ongoing safeguards review, and the final draft of the ESF indicates that borrowers will, for the first time, be required to assess unique impacts of projects on children. With respect to human rights or child rights more generally, the policies do not include an obligation to protect or respect human rights.

The Yanacocha project predates the latest version of the IFC PSs, so it was not held to the standards the IFC now requires of its borrowers. According to interviews with IFC staff and the U.S. government, the IFC requires regular supervision reports from the mining company, in line with the latest requirements in the PSs, and while the company is not bound by these policies, the IFC uses them as a normative baseline for monitoring the company’s activities in the region. Furthermore, under the IFC’s Policy on Environmental and Social Sustainability—which outlines its responsibilities vis-a-vis social and environmental sustainability—the Conga mine should be held to the Performance Standards because, if it moves forward, it would represent a material change to the company’s current activities around Yanacocha.⁴ However, even if the current policies are applied, impacts on children could continue to be overlooked or ignored if the WBG does not change its policies to better take child rights into account.

YANACOCHA PROJECT: BACKGROUND

The Minera Yanacocha company (CMY) is located between 3,400 and 4,120 meters above sea level and 45 km north of the city of Cajamarca, with field offices located at 24 km. It includes six open pit mines: Carachugo, Maqui Maqui, San José, Cerro Yanacocha, La Quinoa y Cerro Negro⁵, four leach pads, and three gold recovery plants. Their activities impact four watersheds: Quebrada Honda, Río Chonta, Río Porcón and Río Rejo.

CMY was established in 1992 and started operations in the area of Carachugo in August 1993. In 1999 it became a commercial company with limited liability (LLC), and is currently a "joint venture" that operates gold mines in the department of Cajamarca, participating in ownership with the following legal entities:

| Stockholder | Participation | Origen |
|--|---------------|---------------|
| Newmont Second Capital Corporation | 51.35% | United States |
| Compañía Minera Condesa S.A.6 | 43.65% | Peru |
| International Finance Corporation (IFC) | 5.00% | International |

Peru is the seventh largest producer of gold in the world and CMY, alone, is responsible for nearly half of the annual gold production from Peru and just over 50% of the annual production of mercury—a highly

⁴ International Finance Corporation’s Policy on Environmental and Social Sustainability (Jan 12, 2012), available at http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES.

⁵ The information presented in this section came from CMY’s website, at <http://www.yanacocha.com/wp-content/uploads/2013/11/GESTI%C3%93N-DEL-AGUA-FINAL.pdf> and from “Informe Anual de Monitoreo 2004-2005” prepared for: Compliance Advisor/Ombudsman (CAO); Washington, Diciembre 2005 at <http://www.cao-ombudsman.org/cases/document-links/documents/EvaluaciondeCalidaddelAgua2004-2005.pdf>.

⁶ Property of Buenaventura, a Peruvian mining company.

toxic substance that is commonly associated with gold mining projects,⁷ and which causes neurocognitive deficits, and neuromotor disabilities in children. Yanacocha is also the largest gold mine in Latin America and produces about 2% of world production of this metal.

The Yanacocha Mining District contains several open pits that extend below the water table. These pits must be drained to be mined. Two acidic water treatment plants, Quinoa and Yanacocha Norte, treat acidic groundwater from dewatering wells and filtered slag to raise the pH and precipitate metals. The treated water is discharged into Pampa Larga in Honda Basin and Quebrada Callejon in the upper Rio Grande in Porcón Basin.

By 2012, nearly 48% of the territory of Cajamarca was allocated for metallic and non-metallic mining. There were 2,786 mining concessions occupying 15,765 km² of the region's total 33,044 km². CMY owns a total of 675 concessions, which represents 216,872 hectares and is 14% of the regional territory. This immense space occupied by CMY was originally dedicated to agriculture and livestock, and was subdivided into small plots owned and operated by subsistence farming families. These families include a large number of children and adolescents and the plots were their ancestral lands and only source of livelihood.

Conga Expansion

The Conga project is located approximately 24 km northeast of the Yanacocha mining operation and involves the development of a new mine for gold and copper. Conceptually, the project involves the development of two open pits, and the construction and operation of a copper concentrator plant. These would be located in the ecoregion of Jalca, within the districts of Sorochnuco and Huasmín (Celendin province) and Encañada (Cajamarca province), at an altitude ranging from 3700 to 4262 meters, and at the headwaters of five river basins.

From the open pits, 180,000 tons of rock is to be extracted daily, and 92,000 tons daily will be processed for an annual production of between 155 to 235 million pounds of copper and 580,000 and 680,000 ounces of gold for 19 years. The area of influence of the project in the Cajamarca region covers the provinces of Celendin, Hualgayoc and Cajamarca and the districts of Sorochnuco and Huasmín (Celendín), Bambamarca (Hualgayoc), and Encañada (Cajamarca). It would involve the draining of four high altitude lakes, which would be replaced with artificial reservoirs.

After violent protests in 2011 and 2012, the Peruvian government announced the suspension of the Conga project.⁸ Although CMY halted progress toward developing the mine, it simultaneously committed to continuing development of the reservoirs to serve the surrounding communities. The IFC has not taken a position on the project, citing its indefinite suspension, but local opposition to the project, as well as CMY's activities around the reservoirs, remains ongoing.

⁷ Mercury can be used to extract gold and silver from ore, and is a byproduct from the mining and refining of these and other metals. Although once commonly used in gold processing, large-scale and industrial mining have replaced it with more efficient and less damaging processes such as cyanide leaching. See Mercury Use in Gold Processing, Miningfacts.org, <http://www.miningfacts.org/environment/does-mining-use-mercury/>.

⁸ Cecilia Jamasmie, Mining.com, "Peru Abandons Newmont's \$4.8 billion Conga," <http://www.mining.com/peru-abandons-newmonts-4-8-billion-conga-project-66180/>.

IMPACTS OF YANACOCHA & CONGA ON CHILDREN

The most significant impacts on children can be loosely grouped in four categories: access to water and healthy environment, issues associated with land tenure, trafficking and sexual exploitation, and social conflict. Some of these impacts can be attributed to the high level of poverty in the region, but many people in the region believe the presence of the Yanacocha mine and the specter of Conga have caused or exacerbated many of the conditions outlined in this report. Despite the profits earned by the company from the Yanacocha mine, many in the surrounding communities have not received corresponding benefits, and see Conga as perpetuating the current state of conflict between the people and the company—all of which has contributed to the lack of “social license” to move forward with the Conga mine expansion.

Access to Water

The city of Cajamarca has a population of 260,000 and 316,000 inhabitants.⁹ The proposed Conga mine would be located at the source of five river basins that sustain the lives of surrounding communities. It is also important to note that the land surrounding the Yanacocha mining district is used largely for agriculture and supports about 29,000 people living in farming communities. Many irrigation canals to support these farms begin on the property of the mine or flow around it. Since the mining project began, many people have reported less water for personal use and to provide for their animals. In addition, many complain that the water that is available is contaminated and that cows and fish needed for subsistence have been found dead.

CMY has denied water problems related to its operations. In September 2015, CMY stated that “the presence of the World Bank, which is one of our shareholders, guarantees through CAO the existence of the highest standards in safety, environmental and social responsibility.”¹⁰ However, many residents in surrounding areas have expressed different opinions in recent interviews. Six days before CMY issued the above statement, Mr. Vicente Lopez Castrejon, resident of the village of La Shoclla, stated that the main problem confronting the people in this area “is the decrease in the amount of water that comes from nearby springs.” In another testimony collected from the hamlet of La Apalina near the mine, Mr. Raul Castrejón Yopla said that “the principal problem we have in the community of La Apalina is the decrease of water flow from 50 liters per second to 5 liters per second. Furthermore, the mine failed to deliver a [promised] drinking water project for the area in 2008.”

Access to safe water and adequate sanitation facilities is a human right and essential for children to enjoy their right to survival and the highest possible level of health (including access to clean water, proper hygiene and food), according to the CRC. Water shortages and poor water quality pose a greater risk to the growing minds and bodies of children, which is of particular concern in a region that continues to rank consistently low in terms of malnutrition, anemia, low birth weight and disease in relation to the national average.

The WBG PSs highlight the unique needs of children when it comes to child labor and trafficking, but with regard to water consumption they are silent. PS3 on Resource Efficiency and Pollution Prevention requires that borrowers who are “significant consumer[s] of water...adopt measures that avoid or reduce water usage so that the project’s water consumption does not have significant adverse impacts

⁹ 2007 Census.

¹⁰ September 11, 2015, Statement of Manager of Government Affairs for the CMY

on others.”¹¹ Similarly, the proposed ESS3 on Resource Efficiency and Pollution Prevention Management, applicable to public sector projects, does not mention the unique needs of children with regard to water. In that provision, however, there is a direct reference to the need for borrowers to address the cumulative impacts of water use on communities within the environmental and social impact assessment—which will be required to assess the needs of children separate from other “vulnerable groups.” Nevertheless, these policies should be updated to highlight the importance of access to water for children and adolescents, and require that borrowers analyze and address this issue prior to commencing a project.

The location of the proposed Conga mine and its potential impact at the headwaters of five river basins will undoubtedly be significant to the children in the surrounding communities. Given the importance of access to clean water to the growing minds and bodies of children, in addition to the enjoyment of the rest their rights, CMY should include this issue in its due diligence efforts going forward. The company is currently taking a “water first” approach while the Conga project is suspended in order to ensure communities they will have access to safe and clean water, but many in surrounding communities have interpreted the company’s efforts to build reservoirs as a way to continue work on the project despite the suspension—further exacerbating tensions.

Access to a Healthy Environment

On June 2, 2000 a truck carrying mercury from Yanachoca spilled 120 kilograms of the toxic metal, contaminating the town of Choropampa and its surroundings. Although initially 47 people were poisoned, in the following days the number of people treated for mercury poisoning in the various health centers around the area rose to 755. Before the company took steps to remediate the damage, many people—including children—were exposed to the toxic substance because they did not know what it was, or did not understand the dangers associated with handling it, and collected it from the streets voluntarily. Many required hospitalization, including children and adolescents.

A report by the CAO of the IFC delineated the responsibility for the spill among CMY, its contractor RANSA Commercial, and the authorities of the Ministry of Energy and Mines. Additionally, an Ombudsman’s report stated that “CMY had violated the environmental rights of the people of Choropampa, Magdalena and San Juan when they failed to take appropriate measures to prevent damage to the environment.”¹² Criminal justice proceedings, however, ultimately exonerated the officials of CMY of criminal responsibility.

Since the spill, CMY has taken steps to address the circumstances that led to it as well as its consequences, in order to avoid such incidents in the future. However, while CMY insists that there are “no risks of future health problems as a result of the accident,” it is important to note that children are incredibly vulnerable to health effects from exposure to mercury and other toxic substances associated with mining projects. Mercury is highly toxic, and it is unknown whether any safe level of exposure actually exists.¹³ For children, exposure is particularly concerning as there are specific periods in their development when their growing systems are uniquely susceptible to associated impacts, including

¹¹ IFC Performance Standards on Environmental and Social Sustainability, Performance Standard 3 Resource Efficiency and Pollution Prevention, ¶ 9, available at http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES.

¹² DEFENSORÍA DEL PUEBLO. Informe Defensorial N° 62, pg.67, [on file with the author].

¹³ Stephen Bose-O’Reilly, MD et al, “Mercury Exposure and Children’s Health,” *Current Problems in Pediatric and Adolescent Health Care* (September, 2010).

neurocognitive deficits, and neuromotor disabilities.¹⁴ From a development perspective these types of impacts could be devastating to communities where large numbers of children are exposed and face permanent impacts that affect their ability to grow and thrive.

While exposure in this case may not have reached the level where permanent impacts on children occurred, given the potentially devastating impacts on entire generations, it is vitally important that companies engage in outreach to communities through which toxic substances will be transported to explain the potential hazards if they are exposed. The WBG can also play a positive role in such outreach efforts, as it can require action to protect communities—regardless of criminal responsibility of its clients. As in all community outreach efforts, children must also be involved as they are most often at higher risk for permanent injury due to exposure and have the right to participate and have their opinions heard and considered around potential plans for avoiding or mitigating damage from such accidents.

Both the PSs and the proposed ESF contain requirements for consulting with affected communities, and both mention—to differing levels of specificity—the importance of including children in such engagement.¹⁵ However, the WBG has produced very little guidance for borrowers on *how* to consult with children—a process which involves similar but unique concerns to engaging with adults. It is therefore important that the Bank develop and provide, along with a requirement to consult with children, detailed guidance for borrowers that address concerns associated with children’s relative lack of power, greater vulnerability, and issues around their protection. In addition, the WBG should provide dedicated, additional financing to carry out robust, meaningful engagement with stakeholders. Partnering with local organizations that already understand the local context and customs, as well as the unique issues children face, in their region is essential in both developing such guidance as well as implementing it.

Issues Associated with Land Tenure

Many people in Cajamarca feel that the payments they received for their lands from the mining company were insufficient to rebuild their lives elsewhere at the same standard of living. Others who did not want to sell their lands felt pressured to do so. According to a recently published study by LATINDADD, a network of human rights and environmental organizations, beginning with CMY’s first explorations in 1992, land owners were not informed that gold was under the surface and that it was the reason they would be displaced. The report indicates the decision not to inform landowners was deliberate, resulting from the company’s interest in purchasing the land at low prices. The situation continued when the company faced resistance from landowners to sell their land, and CMY appealed to the government to expropriate the land.¹⁶ The report also indicates that, as a result of misinformation and expropriation pressure, farmers received on average a tenth of the real value of their land, and that the State contributed to this situation. This led to estimated economic damages of more than US \$10 million to the families involved.

¹⁴ Id.

¹⁵ It is important to note that, while current and proposed policies of the WBG include these requirements, they were not in place at the time the mercury spill in Choropampa occurred. However, the IFC continues to monitor the Yanacocha and Conga projects, and these are important policies with which to measure CMY’s current progress in developing community engagement processes.

¹⁶ Wiener Fresco, Raúl y TORRES POLO, Juan; *La Gran Minería: ¿paga los impuestos que debería pagar? El Caso Yanacocha*; LATINDADD; Lima, 2014.

Landowners have continued to dispute the legality of the process with which their land was acquired by CMY. In addition to initiating local court proceedings,¹⁷ some landowners filed complaints with the CAO of the IFC. In a decision that essentially dismissed the complaints, the CAO questioned the adequacy of the IFC's due diligence and supervision vis-a-vis the land acquisitions at issue, but declined to conduct a full compliance investigation because the land disputes were not "indicative of substantial concerns regarding the environmental and social outcomes of the project or issues of systemic importance for IFC."¹⁸ The decision by the CAO also referred to the IFC becoming aware of grievances from landowners after CMY acquired Minas Conga in 2001—and that it never required the client to conduct due diligence around the land it acquired. When it became aware of the grievances, IFC raised questions about the purchases and made recommendations for measures to address landowners' concerns, including a former landowner support program, a new land acquisition policy in line with the PSs, and a community grievance mechanism.¹⁹

Land and property play a significant role in family and community wellbeing, not just in economic terms but also as an element of cultural and ancestral integration and perpetuity. Loss of land, voluntary or otherwise, has a profound and immediate impact on children and adolescents, whose families are forced to move to cities, in this case Cajamarca or other cities of neighboring regions, to find other sources of income, new social relations, other cultures, and often precarious living conditions. These families are left with the remembered stability their land gave them, and few resources to rebuild their lives or find new livelihoods. Parents may be unable to provide a standard of living adequate for their children's physical, mental, spiritual, moral and social development. In this context in which livelihoods were lost, the rights of the children involved are directly impacted.

The PS 5 on Land Acquisition and Involuntary Resettlement recognizes the impacts of both physical and economic displacement, as well as the consequences when projects involving involuntary resettlement are mismanaged, including "long-term hardship and impoverishment." However, the policy does not mention the unique needs of children in the context of resettlement. Similarly, ESS 5 on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement in the proposed ESF does not explicitly require borrowers to take the rights of children into account when addressing the needs of resettled communities.

Despite the lack of specific language on child rights in current and proposed policies, CMY should take into account the unique impacts resettlement can have on children, and take measures to avoid negative impacts on children. Such measures should include ensuring parents have sufficient resources to provide an adequate standard of living for their children, and that the ability of children to grow and develop is not compromised when they are forced to move from their ancestral lands. Not only would such efforts be consistent with CMY's obligations under international human rights law, but also they would address some of the most significant issues underlying the tenuous relationships the company currently has with many communities in the region.

¹⁷ Scott Cardiff, Earthworks, "New lawsuit filed against Newmont in Peru over land," https://www.earthworksaction.org/earthblog/detail/new_lawsuit_filed_against_newmont_in_peru_over_land_rights#.VxIBHtQrLIV.

¹⁸ Compliance Officer Ombudsman, Compliance Appraisal: Summary of Results: Yanacocha, *available at* http://www.cao-ombudsman.org/cases/document-links/documents/CAOAppraisalofYanacocha_May292015_forweb.pdf.

¹⁹ *Id.* at pg 10.

Exploitation of Children

The exploitation of children is an unfortunate consequence of large mining projects where an influx of outside workers or rapid migration to cities, loss of livelihoods, and lack of social services collide. Few current studies exist on the situation in Cajamarca, and local authorities are often unwilling to address the problem.²⁰ The reality of exploitation is therefore an invisible problem, although a few organizations have been able to collect information and testimony from children and adolescents that are impacted.

According to the Provincial Municipality of Cajamarca in 2009, the city of Cajamarca is one of the cities in Peru with the most nightclubs, and there are more than 220 local business engaged in sexual exploitation and prostitution. Testimonies of children and adolescents collected by the Movement of Working Adolescents and Children who are Children of Christian Workers of Cajamarca indicate sexual exploitation of children is prevalent in the area, including prostitution, sex tourism, pornography and similar activities. It is exacerbated by the increase in the male population employed by or linked to the extractive industry and mining projects, especially among men not native to Cajamarca. This informal sector allowed for an increase in organized crime and the establishment of locations that allow the sexual exploitation of girls under the facade of nightclubs. Likewise, ambiguity in legislation allows these facilities to remain in operation, despite the illegal nature of the activities occurring in them, and also aids in the proliferation of so-called "employment agencies" that are often traps for the exploitation of children and adolescents in search of employment and livelihoods in urban areas of the region.

The Urban Roundtables of Cajamarca, meanwhile, have also noted in their statements to nightclubs that it has continually found minors between 13 and 15 years old exploited in child prostitution.²¹ According to UNICEF, the number of clubs in Cajamarca engaged in commercial sexual exploitation has gone from 2 to 25 in the last five years.²²

Given the size and potential need for large numbers of workers to operate and manage the Conga mine, CMY should take measures to assess the risk of trafficking and sexual exploitation of children associated with the proposed expansion. Measures should be taken to ensure that the conditions leading to such impacts are avoided and mitigated, and that proper social services are in place to address harms as they occur.

Both PS2 on Labor and Working Conditions and the proposed ESS2 on Labor and Working Conditions notes that "women and children are particularly vulnerable to trafficking practices" and that children may not be employed in "hazardous work", or work that is likely to "interfere with the child's education or be harmful to the child's health or physical, mental, spiritual, moral or social development." However, situations in which children are victims of human trafficking or sexual exploitation as a result of the inevitable influx of workers in a city that is unable to address such issues are not addressed in either the PSSs or the proposed ESSs. Such risks must be assessed prior to an agreement to fund a project, and detailed mitigation measures should be required in communities within the area of influence of all mining projects.

²⁰ OIT/IPEC, Asociación Vía Libre Imperdonable. Estudio sobre la Explotación Sexual Comercial de la Infancia y Adolescencia en Perú: Cajamarca, Cusco, Iquitos y Lima Lima, Oficina Internacional del Trabajo, pgs. 49-50 (2007), http://white.oit.org.pe/ipecc/documentos/estudio_esci_pe.pdf.
21 Statements by Fernando Chuquilín, president of the Comité Descentralizado de Rondas Urbanas de Cajamarca. Radio Programas del Perú: 1/25/2014.

²² UNICEF, Explotación Sexual Comercial Infantil (ESCI). La situación en el Perú http://www.unicef.org/peru/_files/notas_prensa/carpetasinformativas/explotacion_sexual_comercial_infantil.pdf.

Social Conflict

Social conflict in the region around Yanacocha erupted in 2011 in violent protests as a consequence of a significant portion of the population rejecting the proposed Conga expansion. These incidents had indirect impacts on children and adolescents in the region compromising the inherent right of children and adolescents to life, their right to moral, mental and physical integrity, development and wellbeing, and the right to education.

In 2012, the Ombudsman's Office of Peru²³ issued an exploratory diagnosis on potential impacts (physical, psychological and social) of social conflicts on children and adolescents occurring in the Cajamarca region. The study aimed to diagnose how the State had fulfilled its duty to ensure and restore public order and protect the various fundamental rights at risk—either as a result of the actions of protest or the restoration of law and order—and, to that extent, provide for the general welfare "especially of those who are particularly defenseless or vulnerable to suffer a loss or damage, as would be the case of minors."

The Ombudsman's report presented the following incidences as evidence of violations of child rights during the conflict in Celendín, a city in Cajamarca, in July of 2012: the death of César Medina Aguilar, a 16 year old, who was hit by a deadly projectile weapon during the use of force by police and armed forces; 24 total casualties were recorded, 3 of them minors (16 and 15) and 5 were between 18 and 20 years old; physical abuse of pregnant women by police at check points; an increase of acute respiratory diseases among children due to excessive use of tear gas by police which were reported to have been "launched near medical tents and educational institutions;" an interruption in the ability for children to attend school and classroom hours lost. Children were also affected by food shortages, lack of attention to public agencies such as health centers, schools, civil registries, disruption of social programs, lack of power supplies and water, and provision of services like transportation, among others.

Fear was identified "as the most concrete reaction in children and adolescents who experienced the acts of social unrest in Celendín." According to the report, the conflict resulted in 4 widows and 14 orphans, 12 people permanently disabled, 3000 injured and 36 people in criminal proceedings. In addition, people and authorities gave testimony that the central government blocked the accounts of regional and municipal governments after the conflict, which impeded payments and paperwork for citizens.

While the violent deaths and injuries to children that occurred as a result of the protests in this case were caused by the security forces, the longstanding issues with land tenure, water, pollution, and other issues associated with the existence and proposed expansion of the mine were contributing factors to the escalation of violence. Companies like CMY should therefore include analysis of such impacts that are frequently associated with mining in their due diligence processes. Similarly, the WBG should explicitly require that social assessments carried out by its borrowing governments and private companies assess the contributing factors to and direct impacts of potential social unrest on children. If and when companies encounter difficulties in obtaining a "social license" they should address the root

²³ The Ombudsman's Office of Peru was created by the 1993 Constitution (articles 161 and 162), as a constitutionally autonomous body whose mission is to defend the fundamental rights of citizens, monitor the performance of the duties of the state administration and the efficient delivery of public services throughout the country. The Ombudsman attends to complaints, inquiries and petitions of citizens throughout the country who, for some reason, have experienced a violation of their rights. It does not issue fines or penalties, but produces reports with recommendations or appeals to authorities, and gains compliance through the powers of persuasion and the strength of technical, ethical and legal arguments.

causes of social unrest so that the effects of conflicts—including foreseeable violence—do not inevitably impact the rights of children and adolescents.

In 2012, CMY admitted responsibility for creating the conditions that led to such a poor relationship with surrounding communities in an open letter accompanying a report entitled, “Listening to the City of Cajamarca.” It cited its own failures to “earn [their] trust” and its limited success in applying lessons learned. Yet, there was no acknowledgement or specific plan to address specific impacts on children. In the coming years, the efforts it has committed to in order to “rebuild relationships and trust with the people of Cajamarca” should include a concerted effort to identify and address the devastating impacts on children that have been—and continue to be—associated with this project and its proposed expansion.

Labor

In May 2015, the IFC’s CAO released a Compliance Appraisal Report on several complaints associated with the Yanacocha project, including one that alleged violations related to labor. The labor-related complaint was submitted by a former employee of CMY who denounced his dismissal as without just cause and alleged harm to his health arising from exposure to chemicals such as cyanide and mercury. The complainant also said that other employees had suffered damage to their health after working at Yanacocha. Although the IFC adopted PS2 on Labor in 2012, in this case the CAO did not find that the issues raised bore “substantial concerns about the environmental and social performance of the project, or issues of systemic importance to [IFC] that warrant an investigation into compliance in accordance with the Operational Guidelines for CAO.” After issuing this statement, CAO closed the matter and the complaint.

During interviews for this report, multiple claims of diseases resulting from work carried out at CMY came to light that were inconsistent with the CAO’s finding that such labor complaints were too few or insignificant to trigger the IFC Performance Standards. In the context of research around this report, multiple incidents of arbitrary dismissals as well as a systematic practice of hiring a large number of workers through short term contracts for jobs that should be permanent positions were identified.

While an exhaustive look at potential labor violations associated with Yanacocha is outside the scope of this study, it is important to note that the failure to respect labor rights can generate negative consequences on the development of children and adolescents. In addition to the consequences associated with the loss of livelihoods for those wrongfully terminated, the rights of children can be significantly impacted when a parent suffers a serious illness or injury from exposure to chemicals, or is underpaid or underemployed. Both the PSs and proposed new ESSs contain requirements for borrowers on the issue of labor, however the indirect consequences on children of potential labor violations should be incorporated into these requirements, and taken into consideration during social assessments and stakeholder engagement processes.

RECOMMENDATIONS TO THE WORLD BANK GROUP

This report aimed to identify some of the impacts on children around the Yanacocha and Conga projects that have so far been overlooked and unaddressed, and offer some recommendations for how to avoid such issues in future mining projects—including the Conga mine if it is to go forward. The following recommendations are a summarized list from this report:

- ❖ The World Bank should internalize a commitment to respect human rights in its policies and demand the same from clients to serve as a basis for auditing or supervising compliance with these commitments.
- ❖ Include children, adolescents, and child rights advocates in the design and implementation of Bank projects so that the potential risks to children can be identified through stakeholder participation.
- ❖ Recognize that child rights are cross-cutting issues, that should be incorporated into all relevant policies, including but not limited to:
 - Social and Environmental Assessment policies
 - Labor policies
 - Policies that include reference to water consumption and health of communities
 - Resettlement policies
 - Policies that describe borrower responsibilities with respect to stakeholder engagement
- ❖ Include specific requirements for rigorous environmental and social assessments to identify, prevent and mitigate the risks to children posed by projects financed by the WBG. Assign special attention to vulnerable groups like children through assessments at critical moments in the project cycle—including where conflict or social strife is indicated or has occurred.
- ❖ During the appraisal stage, Bank staff should consider whether the above requirements have been properly addressed during the stages of identification and preparation of projects to be financed so that sufficient budget can be allocated for mitigating identified risks.
- ❖ To prevent the risk of human rights violations, the Bank should concentrate on a risk analysis during the project identification phase. Stakeholders potentially affected by foreseeable human rights violations, especially children and adolescents, should be included in consultations and consensus building prior to the design of the project. Their views should be integrated into the design of the project in a timely manner.
- ❖ Before the completion of the initial assessment of the proposed project and the subsequent negotiation of the final form of financing and approval by the Board of Directors, the Bank and its clients should reach public agreements on how the loan conditions will ensure the preservation and enjoyment of the human rights of all stakeholders, especially children and adolescents.

- ❖ During the implementation phase and supervision of the project, the WBG should focus on ensuring compliance with international standards that guarantee the human rights of all parties involved in the project and only disburse funds if standards have been respected.
- ❖ Ensure equitable distribution of social and economic benefits of Bank financed projects to vulnerable groups, including children and adolescents, as well as sexual and gender minorities, women and persons with disabilities.
- ❖ Reinforce the WBG's role in supervising the implementation of the Performance Standards and the new Environmental and Social Framework and reminding governments and private sector clients of their obligations to respect, protect and remedy violations of human rights under binding international human rights law.
- ❖ Provide funds to develop skills, knowledge and abilities of states and authorities in all sectors to identify, prevent and mitigate potential violations of human rights, including those of children and adolescents.
- ❖ All projects funded by the World Bank should include grievance mechanisms in their design through which those affected can raise concerns and provide indications of actual or potential human rights consequences, and such claims should be studied and addressed within the larger context rather than as singular events.
- ❖ Require that companies include child rights in any training programs for employees around human rights, including the potential for sexual exploitation of children.

CONCLUSION

Given the WBG's work around the connection between investing in children and poverty reduction, the WBG should incorporate child rights into its policies more explicitly. In a 2010 publication on child and youth development, the World Bank states that, "Since capacities built during childhood and the youth period largely determine adult outcomes, effective investments in young people provide important returns not only to the individual and the community, but to society as a whole." It is therefore important, not only from a human rights perspective, but also from a development perspective, that the needs and wellbeing of children are taken into account in all projects the World Bank Group finances.

The human rights concerns recorded in this report cover a wide range of rights of children and adolescents in the Cajamarca region within the area of influence of the Yanacocha project. Such concerns include impacts on their right to life, to moral, mental and physical integrity, to development and wellbeing, and to a life free of sexual exploitation, as well as to food, health, education, identity and freedom of movement, among others. Violations of those rights clearly show the limitations that the environmental and social impact assessments carried out during the development of the Yanacocha project should have predicted.

This case also demonstrates the need for carefully thought-through strategies and plans for prevention, mitigation and appropriate remediation that are required to avert the negative impacts on child rights. Children and adolescents must be included in those efforts, as well as other members of the community, in order to ensure that their unique needs are addressed and their rights protected. The

recommendations and conclusions of this report suggest ways to protect and promote human rights so that future projects can be done in a different way, with greater respect for the rights of children and to ensure that the next generation can benefit from development activities of the World Bank Group.