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Tragadero Grande:  
Land, human rights, and international  
standards in the conflict between the  
Chaupe family and Minera  
Yanacocha

Report of the Independent Fact  
Finding Mission

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<http://www.resolv.org/site-yiffm/>

## Key terms

adobe house	Traditional Peruvian house with walls made of a dried mixture of mud and straw, often combined with a wood frame, windows, doors and rafters.
aggravated usurpation	According to article 202 of the <i>Peruvian Criminal Code</i> , aggravated usurpation is committed when a person dispossesses another by taking the whole or part of another's property. It includes destroying or altering boundaries, violence, threat, fraud or acts that disturb the owner's possession or a possessor's use of a property.
<i>campesino</i>	A peasant farmer or person living in a rural area.
Campesino Community	Peru's <i>General Law of Campesino Communities</i> , Law N°. 24656 of 1987, recognizes these communities as legal organizations, composed of families who inhabit and control defined territories, linked by ancestral, social, economic and cultural ties.
<i>choza</i>	A thatch hut widely used by <i>campesinos</i> in the Andean highlands of Peru. Made of local grasses, these huts provide temporary shelter for individuals or families while on the land.
communal land	Communal Land is the inalienable property of Campesino Communities. Communities regulate access to land by their members. According to the Law N° 26505, communal land can only be sold to a private entity by prior approval of at least two-thirds of qualified community members in a General Assembly convened explicitly for that purpose.
eviction	Permanent or temporary removal of occupants of land or dwellings by the owner of the property.
extrajudicial defense of possession	Defined in article 920 of the <i>Peruvian Civil Code</i> as defense against illegally occupied property and/or property which the legitimate possessor is unable to use. The process does not require judicial authorization. This civil measure must be conducted within 15 days of the observation of the illegal act against a legitimate possessor.
forced eviction	Eviction of individuals, families and/or communities against their will, without the provision of, and access to, appropriate forms of legal or other protection.
land invasion	See aggravated usurpation.
possession (of land)	Use of land in a continuous, peaceful and public fashion. It can be independent of property title and must be exercised through actual possession activities over time. Rights of possession may be lost by abandoning land.
possessors	Individuals or entities who exercise possession. For the purposes of this report, possessors are holders of land.

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*Annex 1: Tragadero Grande events timeline*

## Executive summary

This report presents the findings of the Yanacocha Independent Fact Finding Mission (the “Mission”), conducted between August 2015 and March 2016. The Mission was tasked with examining a conflict between a multinational gold mining company and a local *campesino* family, in the high Andes of northern Peru. At the root of the conflict is a dispute over a parcel of land called “Tragadero Grande”. Located within the Campesino Community of Sorochuco, Tragadero Grande falls within the footprint of a planned multi-billion dollar mining project called “Conga”. Both the family and the company claim distinct rights to access and use the parcel of land. From May 2011, the land dispute evolved into a multi-party conflict involving eviction attempts, corporate defense of possession, numerous legal cases and appeals, and allegations of human rights violations.

The primary parties in the conflict are the Chaupe family and Minera Yanacocha. Newmont Mining Corporation (“Newmont”) is the majority shareholder of Minera Yanacocha and operator of the Yanacocha mine. Buenaventura, Peru’s largest publicly-traded mining company, is the other major shareholder and The World Bank Group’s International Finance Corporation (“IFC”) owns a minority share. Other parties involved in the conflict include a Cajamarca non-government organization (“NGO”) GRUFIDES, as advocates for the Chaupe family, Minera Yanacocha’s private security provider, SECURITAS, and government institutions, including the Peru National Police (“Police”) and the judiciary. Minas Conga is a significant other party as the corporate entity that purchased Tragadero Grande from the Campesino Community of Sorochuco in the mid-1990s. Minera Yanacocha acquired Minas Conga in 2001, and with it Tragadero Grande. Minas Conga no longer exists as a corporate entity.

Newmont initiated the Mission in response to persistent allegations by the family and local, national and international NGOs that Minera Yanacocha had been involved in perpetrating human rights violations as part of the land dispute. Linked to these allegations, questions have been raised about Minera Yanacocha’s adherence to international human rights standards to which Newmont subscribes. An independent Director was appointed to conduct the Mission under the auspices of RESOLVE, a non-profit organization dedicated to multi-stakeholder consensus building. Newmont financed the Mission’s activities with all project funds being transferred to RESOLVE.

## Scope of work

The Mission was tasked with examining Minera Yanacocha’s process of land acquisition, allegations of human rights violations perpetrated against the Chaupe family, and Minera Yanacocha’s conformance to Newmont’s own policies and international standards. This report provides responses to the four questions agreed between RESOLVE and Newmont. The questions are:

1. What was the process of land acquisition by Minera Yanacocha, and was the process of land acquisition appropriate, reasonable and in conformance with applicable international standards?
2. What are the facts relevant to complaints that human rights have been violated and do NGOs and Newmont have access to all of the relevant information in this case?
3. Has Minera Yanacocha’s conduct conformed to the Voluntary Principles on Security and Human Rights?

4. Are there areas where Minera Yanacocha deviated from Newmont policy requirements and international standards?

It is beyond the scope of the Mission to reach a conclusion about the validity of the possessory rights to Tragadero Grande. This can only be determined by the courts or resolved through a negotiated agreement between the disputing parties. Also beyond the Mission's scope is to deliver a legal determination about claims that the company was involved in perpetrating human rights violations against the Chaupe family. This report is focused on presenting material information relating to these matters and determining Minera Yanacocha's conformance to Newmont policy commitments and international standards.

The Mission's findings and report are based on document analysis, key informant interviews, and discussions with a range of other stakeholders. Documentary information was accepted from Newmont, Minera Yanacocha, NGOs, and the Government of Peru. Other documents were accessed by the Mission team from a range of additional sources. A total of 281 documents were formally reviewed. The Mission team conducted interviews with Newmont and Minera Yanacocha representatives, members of the Chaupe family, their attorney, other members of the Campesino Community of Sorochuco, officials of the Government of Peru including the Police, national and international NGOs, and academic experts on the subject of rural land tenure in Peru. In total, the Mission team interviewed 101 individuals.

The Mission received and accepted documentary information from stakeholders as true copies provided in good faith and without falsification. The information collected does not meet a judicial standard of evidence and the validity of all documentation would need to be tested to be admissible in a court of law. The Mission's conclusions are the result of weighing the information available given the number and type of data points available to support a conclusion.

## The Mission team

In May 2015, RESOLVE President, Stephen D'Esposito, appointed Tim Martin, former Ambassador of Canada, as Mission Director. Following this appointment, the Mission Director was afforded complete independence for the conduct of the Mission, within the scope of the resources agreed between RESOLVE and Newmont. Mission funding was not conditional on specific activities or outcomes. There are no confidentiality or non-disclosure clauses in the Agreement. The Mission was conducted independently from the management and Board of RESOLVE.

The Mission Director appointed Myriam Méndez-Montalvo and Miguel Cervantes Rodriguez to the Mission team in August 2015. The Mission report findings represent the consensus views of this team. In August 2015, Tim Martin appointed an Independent Advisory Group to comment on the Mission's work and outputs. This group comprised Professor Anthony Bebbington, Dr. Gino Costa and Dr. Carlos Monge. The Mission was supported by Dana Goodson, Policy Advisor from RESOLVE and Professor Deanna Kemp from The University of Queensland as a contributing author. Information on the Agreement, funding and governance arrangements, and Mission team and Advisory Group profiles is available on a dedicated Mission website.<sup>1</sup>

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<sup>1</sup> See: <http://www.resolv.org/site-yiffm/>

## Brief orientation to the case

The case timeline begins in 1994, when Jaime Chaupe Lozano and Máxima Acuña de Chaupe purchased possessory rights to Tragadero Grande. Tragadero Grande was at that time part of the communal land belonging to the Campesino Community of Sorochuco. In 1995 and 1996, Minas Conga acquired Tragadero Grande when it purchased two larger parcels of communal land from the Campesino Community of Sorochuco. In this process, Tragadero Grande was divided into two units. Minas Conga re-named these units to correspond with the two separate land titles: Cerro Cocañes to the south and Pampas Erizales del Perol to the north. In 2001, these two titles were transferred to Minera Yanacocha when it acquired the assets of Minas Conga. The acquisition was followed by a decade during which the Conga project was explored, designed and finally permitted, in 2010.

In 2011, ten years after Minera Yanacocha purchased Minas Conga and as the Conga project was moving into its development phase, Tragadero Grande became the site of the dispute between the Chaupe family and Minera Yanacocha. Specifically, 24 May 2011 marks the beginning of the dispute, when the parties say they first encountered each other on the property. Their first and subsequent encounters prompted the company to attempt to evict the family through a range of extrajudicial defense of possession actions. The laws of Peru enable legitimate possessors to evict an “invading force” within a specified time period. If possessors do not take action within the specified period, they must lodge a complaint with a civil court and await a court order to support an eviction. Minera Yanacocha maintains that its extrajudicial defense of possession actions on Tragadero Grande are a lawful method for protecting its business interests and that these actions have not involved physical force at any time.

On 11 August 2011, Minera Yanacocha attempted to install a security guard post on disputed property. In attempting to conduct this activity, Minera Yanacocha, SECURITAS, and the Police were accused of violence and disproportionate use of force. Minera Yanacocha maintains that at no time was physical force applied to the Chaupe family on this day, or at any other time since the parties first encountered each other on 24 May 2011. Máxima Acuña de Chaupe told the Mission that from the commencement of the dispute, she and her family had been intimidated by Minera Yanacocha and violently assaulted by SECURITAS and Police. At the time of writing this report, she alleged that the threats to her family and harassment by the company were ongoing.

When the Mission completed its fact finding in March 2016, the land dispute between Minera Yanacocha and the Chupes was unresolved. Members of the Chaupe family were maintaining a constant presence on Tragadero Grande. A legal determination about the land dispute was pending. Each party held different information to support their respective claims and a negotiated settlement had not been discussed between the parties. As an interim measure, the local judiciary had approved an injunction request by Minera Yanacocha that prohibited the Chupes from using the property outside a two-hectare zone immediately surrounding their adobe house. Gardening, grazing, and construction activities that extended beyond this zone were being subject to extrajudicial defense of possession actions by Minera Yanacocha.

The Chaupe case continues to evolve. Further developments occurred as the Mission team was finalizing this report, including:

- The Government of Peru had moved to implement special measures to guarantee the Chaupe's safety and security. This followed guarantees made in 2015 that took into account an Inter-American Commission of Human Rights resolution that included the Chaupe family as beneficiaries as part of a precautionary measure to protect a group of protesters against the Conga project.
- Máxima Acuña de Chaupe was awarded the 2016 *Goldman Environmental Prize*, an international award for grassroots environmental activism. According to the official announcement, Máxima Acuña de Chaupe received the prize for South and Central America for standing up for her right to peacefully live off her own property.<sup>2</sup>
- Newmont had indicated to the United States of America's Securities and Exchange Commission that under the current social and political environment, it did not anticipate being able to develop the Conga mine in the foreseeable future.
- The local judiciary had lifted the injunction it granted in 2015 that established the exclusion zone outside the family's adobe house which prevented them from utilizing the land for cultivation and construction activities. Minera Yanacocha informed the Mission that it had appealed the ruling that lifted the injunction.

## Responses to Mission questions

This section provides succinct responses to the four Mission questions.

### What was the process of land acquisition by Minera Yanacocha, and was the process of land acquisition appropriate, reasonable and in conformance with applicable international standards?

Minera Yanacocha purchased Minas Conga in 2001. Minas Conga had earlier acquired land from the Campesino Community of Sorochuco in the mid-1990s. For a land acquisition process to be reasonable, at this time, and in this context, a two-phase negotiation process was required. The first phase involves negotiation at the communal level. Testimonial and documentary information provided to the Mission confirms that a communal purchase was conducted and that this process met the legally mandated procedural requirements. The second phase involves negotiating with individual possessors to purchase possessory rights. The second phase is not a legal requirement, but rather, a practicality for securing land access and providing fair compensation to possessors. In the case of Minas Conga, negotiations with individual possessors took place in the context of open group discussions, in several meetings over a period of weeks. On the balance of testimonial and documentary information provided to the Mission, it appears that a two-phase negotiation was

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<sup>2</sup> See: <http://www.goldmanprize.org/recipient/maxima-acuna/>



conducted, reflecting both the legal and customary process. It is on this basis that the Mission considers the process of land acquisition by Minas Conga to have been reasonable.

Notwithstanding that the overall process appears to have been reasonable, a critical outstanding question in the land acquisition process is: who negotiated the sale of possessory rights to Tragadero Grande at the time of the Minas Conga land purchase? Jaime Chaupe Lozano and Máxima Acuña de Chaupe were registered as the possessors after their purchase of the property from a family member in 1994. The Mission team sighted a Transfer of Domain of Possession document, which was fully executed by the transacting parties. However, other possessors indicated to the Mission team that a different person negotiated with Minas Conga in 1996, and sold possessory rights to Tragadero Grande. The signature of Samuel Chaupe Rodriguez – father of Jaime Chaupe Lozano and father-in-law to Máxima Acuña de Chaupe – appears alongside the signatures of other possessors on official transfer documents presented to the Mission by Minera Yanacocha. This information gap, combined with a range of other complicating factors, means that information about the sale of possessory rights of Tragadero Grande to Minas Conga is contradictory and incomplete.

### **What are the facts relevant to complaints that human rights have been violated, and do NGOs and Newmont have access to all of the relevant information in this case?**

The facts relevant to complaints that the human rights of members of the Chaupe family have been violated are incomplete. No single party appears to have access to all of the relevant facts in this case because critical information is missing. The Mission did not discover conclusive evidence that Minera Yanacocha violated the human rights of members of the Chaupe family. Specifically, there is no conclusive evidence relating to use of force by Police on 11 August 2011. Medical certificates confirm that injuries were sustained, but they do not verify the exact date or source of the injury. Video footage and photographic records are also inconclusive. No new evidence was discovered about events on this day. The limited nature of investigation by the company and competent authorities is a constraint in establishing the facts of the case.

The following contextual factors associated with this dispute were considered by the Mission:

- pressure associated with exercising extrajudicial defense of possession within a specified time period
- inequitable access to protections in extrajudicial defense of possession actions (i.e. in this case, Police are present to prevent conflict on the assumption of resistance by the family and that the security of company personnel may be put at risk)
- pre-existing factors relating to the vulnerability of the family
- pre-existing conflict associated with the Conga project, including protests and violent confrontations.

In light of these contextual factors and events described in this report, the Mission team concludes that the human rights of the Chaupes have been at risk when they are on Tragadero Grande. Minera Yanacocha is not the only party with human rights responsibilities in this particular case. Nonetheless, the company has not discharged its responsibility to respect human rights by conducting human rights due diligence reflecting the contextual and situational factors associated

with this case. This failure does not equate to a violation of human rights. It is one factor amongst many that has contributed to a situation where the Chaupe's human rights have been at risk. By handling this case as a land dispute, Minera Yanacocha did not actively and systematically consider how the human rights of the Chaupe family were being affected or how the company's actions would be perceived from a human rights perspective.

### **Has Minera Yanacocha's conduct conformed to the Voluntary Principles on Security and Human Rights?**

Newmont has committed to implement the *Voluntary Principles on Security and Human Rights* ("Voluntary Principles") throughout its operations and actively promotes the principles at major international forums. The company recently reviewed and updated its global standard and guidelines and clearly delegates responsibility for implementation to its global security functions. Likewise, Minera Yanacocha actively participates in Voluntary Principles dialogues in Peru and promotes the principles with the Government of Peru. Beyond promotion, Minera Yanacocha demonstrated to the Mission that it provides regular briefings to security services providers and the Police, including before specific operations. Non-lethal weapons are made available and there is a formal policy of taking a "defensive posture" in all of Minera Yanacocha's security operations. Some tactical decisions have been made to avoid physical confrontation at Tragadero Grande by conducting extrajudicial defense of possession actions when the family is temporarily away from the property.

While there is a clear commitment to conform to the Voluntary Principles and a general level of alignment, the Mission identified material gaps in conformance to the Voluntary Principles in this specific case. These gaps include the absence of (i) a case-specific risk assessment to guide Police, security service providers and the organization in the management of this case; (ii) a "root cause" analysis of the Tragadero Grande conflict; and (iii) a comprehensive investigation of security issues that are cause for concern.

### **Are there areas where Minera Yanacocha deviated from Newmont policy requirements and international standards?**

Newmont has a comprehensive suite of policies, standards, procedures, systems, indicators, targets and reporting protocols for sustainable development. These instruments have been periodically updated to reflect emerging developments in the field. These corporate commitments apply to Minera Yanacocha, of which Newmont is the majority shareholder. During their interaction with the Mission team, Minera Yanacocha representatives demonstrated a high level of awareness of the company's policy framework.

Notwithstanding this awareness, there are several areas where Minera Yanacocha has not sufficiently met the requirements of Newmont policy and international standards. Foremost among these is a requirement for engagement and dialogue on issues of mutual concern and in the resolution of disputes at the operational level. Likewise, in this case, decision-making has not been based on an investigative approach to seeking additional information and understanding this case from alternative perspectives. Finding a pathway towards a resolution of the dispute has been

delayed by a dominant legalistic orientation and a strategy that prioritized eviction and litigation over dialogue.

## Summary responses to Mission questions

<i>Mission question</i>	<i>Summary response</i>
Land acquisition process	On the balance of testimonial and documentary information, the Mission considers the overall process of land acquisition by Minas Conga to have been reasonable. There is clear information that the Campesino Community of Sorochuco sold Tragadero Grande to Minas Conga, reflecting legal and customary processes at the time. However, information about the sale of possessory rights of Tragadero Grande is more complex, and remains inconclusive.
Facts about human rights violations	The Mission concludes that Minera Yanacocha’s failure to conduct adequate human rights due diligence is one factor that has contributed to a situation where the human rights of the family have been at risk from the outset of the land dispute and have continued to be put at risk as the conflict has unfolded. No single party has access to all of the facts in this case. There is no conclusive evidence that Minera Yanacocha was involved in human rights violations. Neither is there evidence that the company actively and systematically considered the human rights dimensions of this case.
Voluntary Principles conformance	The Mission team concludes that while there is general alignment with the Voluntary Principles, there are specific and material gaps in the Chaupe case. These gaps include the absence of: (i) a case specific risk assessment; (ii) a root cause analysis of the Tragadero Grande conflict; and (iii) a comprehensive investigation of security issues that are cause for concern.
Deviation from Newmont policy and international standards	Despite a requirement across all of the above-mentioned instruments for dialogue on issues of mutual concern and in dispute resolution, these conditions were not fulfilled in the Chaupe case. Finding a pathway towards a resolution has been delayed by a strategy that prioritized litigation over dialogue.

Newmont’s commissioning of the Yanacocha Independent Fact Finding Mission represents a process of human rights accountability. A commitment to the public release of findings was made at the outset and the governance arrangements agreed between RESOLVE and Newmont enabled the Mission to work independently, and engage the family and the company without bias. The Mission has surfaced information that was not previously available to all parties and has highlighted where gaps remain. This provides a basis for engagement between the parties about the facts of the case. The Mission’s findings also highlight the importance of integrating human rights considerations and dialogue into legal and operational-level decision making in specific cases.

## 1 Introduction

This report presents the findings of the Yanacocha Independent Fact Finding Mission (the “Mission”), conducted between August 2015 and March 2016. The Mission team was tasked with examining a conflict in northern Peru between a multinational gold mining company and a local *campesino* family. Report findings are based on document analysis and data collected during field visits, interviews with key informants, and discussions with a range of other stakeholders. An independent Mission Director had overall responsibility for the conduct of the mission, under the auspices of RESOLVE, a non-profit organization dedicated to multi-stakeholder consensus building. Newmont Mining Corporation (“Newmont”) funded the Mission’s activities.

Newmont initiated the Mission in response to persistent allegations by the family, and local and international non-government organizations (“NGO”) that one of Newmont’s subsidiaries, Minera Yanacocha, had been involved in perpetrating human rights violations as part of an ongoing land dispute. Linked to these allegations, serious questions have been raised about Minera Yanacocha’s adherence to the international human rights standards to which Newmont subscribes. In particular, it has been alleged that Minera Yanacocha’s relationship with the Peru National Police (“Police”) was inconsistent with its obligations under the *Voluntary Principles on Security and Human Rights* (“Voluntary Principles”).

### 1.1 Concise description of the case

At the root of the conflict is a land dispute between the Chaupe family and Minera Yanacocha in northern Peru’s mineral-rich Cajamarca region. The dispute is over the possession and ownership of “Tragadero Grande”, an approximately 25-hectare parcel of land located within the Campesino Community of Sorochuco situated in the high Andes. Both the Chaupe family and Minera Yanacocha claim distinct rights to access and use of Tragadero Grande, based on transactions that date back to the 1990s. Tragadero Grande falls within the footprint of a multi-billion dollar gold and copper project called “Conga”. Conga was permitted by the Government of Peru in 2010 and suspended by Minera Yanacocha in 2012 on account of violent social conflict and widespread community opposition to the project. At the time of finalizing this Mission report, the project’s operating and construction permits had expired and Newmont had indicated to the United States of America’s (“US”) Securities and Exchange Commission that it does not anticipate being able to develop the Conga mine in the foreseeable future.<sup>3</sup>

Peruvian law confers sub-surface land rights to holders of mining concessions. The law requires that holders of mining concessions identify owners of surface land rights and negotiate right of access. The land dispute between the Chaupe family and Minera Yanacocha first became apparent in May 2011, just as Conga entered its project development phase. Personnel from Minera Yanacocha said they observed the Chaupe family building a *choza* on property over which the company holds formal title to surface rights and took action to defend those rights. Members of the Chaupe family allege that their human rights were and continue to be violated in the course of Minera Yanacocha’s

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<sup>3</sup> See: <http://d1lge852tjjqow.cloudfront.net/CIK-0001164727/050eb34a-9eba-4984-a379-7684d1ab4d2e.pdf>, p.22

defensive action. The family maintains that they have held possession of the disputed property since 1994 and that the company has no legitimate title and therefore no right to evict them.

What was initially a direct encounter between disputing parties has evolved into a multi-party conflict involving numerous legal cases, appeals, and allegations of human rights violations. The Chaupe family has been afforded special international and domestic protections. In 2014, the Inter-American Commission of Human Rights (“IACHR”) included the Chaupes as part of a wider resolution (i.e. not directly related to the land dispute) to protect activists involved in protests against Conga. The Government of Peru has confirmed special measures to guarantee the family members’ safety and personal integrity. Local, national and international NGOs have become involved in the case through campaigning and advocacy efforts, some more broadly targeted towards Conga. In this sense, what started as a localized land dispute has escalated into a complex and dynamic conflict. At the time of writing this report, the conflict remained active and unresolved, and allegations about human rights violations continued to be made by the family and certain civil society groups.

## 1.2 Report purpose and structure

The purpose of this report is to provide a summary of the Mission’s findings relating to Minera Yanacocha’s land acquisition and allegations about human rights violations perpetrated against members of the Chaupe family. Specifically, the report responds to four questions that relate to land acquisition, human rights, the Voluntary Principles and corporate policy requirements. These topics and associated questions were agreed between RESOLVE and Newmont. The questions include:

1. What was the process of land acquisition by Minera Yanacocha, and was the process of land acquisition appropriate, reasonable and in conformance with applicable international standards?
2. What are the facts relevant to complaints that human rights have been violated, and do NGOs and Newmont have access to all of the relevant information in this case?
3. Has Minera Yanacocha’s conduct conformed to the Voluntary Principles on Security and Human Rights?
4. Are there areas where Minera Yanacocha deviated from Newmont policy requirements and international standards?

These questions were designed to assess the actions and activities of Newmont and its subsidiary, Minera Yanacocha, and not the conduct of the Chaupe family or their representatives. In its work, and in the preparation of this report, the Mission has actively sought to avoid harm to the Chaupe family as the reported victims of human rights violations. A risk mitigation strategy was developed by the Mission team in consultation with an Independent Advisory Group.

It is important to note that it is beyond the scope of this Mission to reach a conclusion about the validity of the possessory rights to Tragadero Grande. This can only be determined by the courts, or resolved through a negotiated agreement between the disputing parties. Also beyond the scope is to deliver a legal determination about claims that the company was involved in perpetrating human rights violations against the Chaupe family. This report is focused on presenting facts and material information relating to these matters, and determining Minera Yanacocha’s conformance to Newmont’s policy commitments and international standards.

The report is structured as follows. Section 2 provides background to the Mission by describing its governance structure and outlining its approach to data collection and analysis. Section 3 provides case context and introduces the parties involved. Sections 4 and 5 locate the conflict within a broader context, including the company's own policy framework. Section 6 provides detailed information on the development of the conflict, including: the land acquisition processes; the company's extrajudicial defense of possession actions; the role of private and public security in those actions; and allegations of human rights violations perpetrated against members of the Chaupe family. Based on the information presented in preceding sections. Section 7 addresses the Mission questions. The final section offers concluding remarks.

## 2 About the Mission

The Yanacocha Independent Fact Finding Mission was initiated by Newmont's corporate office, based in Denver, Colorado, in the United States of America. The Mission was established on 13 May 2015, following the signing of an Agreement between Newmont and RESOLVE. Newmont entered into this Agreement in consultation with senior management of Minera Yanacocha, based in Lima, Peru. Minera Yanacocha is a joint venture company majority-owned by Newmont. Buenaventura, Peru's largest publicly-traded mining company, is the other major shareholder. The World Bank Group's private investment arm, the International Finance Corporation ("IFC"), holds a minority share. Newmont advised Buenaventura and the IFC about the Mission, although they were not involved in its establishment. The Mission did not have direct engagement with Buenaventura for the purposes of conducting the Mission. The IFC was consulted on procedural matters relating to application of the *IFC Performance Standards* but was otherwise not engaged by the Mission team.

In May 2015, RESOLVE President, Stephen D'Esposito, appointed Tim Martin, former Ambassador of Canada, as the Mission Director. Following this appointment, the Mission Director was afforded complete independence for the conduct of the Mission, within the scope of the resources agreed between RESOLVE and Newmont. Mission funding was not conditional on specific activities or outcomes. There are no confidentiality or non-disclosure clauses in the Agreement. The Mission was conducted independently from the management and Board of RESOLVE.

As Mission Director, Tim Martin appointed Myriam Méndez-Montalvo and Miguel Cervantes Rodriguez to the Mission team in August 2015. The Mission report findings represent the consensus views of this team. The team was supported by Dana Goodson, Policy Advisor from RESOLVE. In August 2015, Tim Martin appointed an Independent Advisory Group to comment on the Mission's work and outputs. This group originally comprised Professor Anthony Bebbington, Dr. Gino Costa, Professor Deanna Kemp and Dr. Carlos Monge. In March 2016, at the request of the Mission Director, Deanna Kemp completed her work on the Advisory Group, and instead supported the Mission team to write the final report. Information on the Agreement, funding and governance arrangements, and Mission team and Advisory Group profiles is available on a dedicated Mission website.<sup>4</sup>

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<sup>4</sup> See: <http://www.resolve.org/site-yiffm/>

## 2.1 Methods and data collection

The Mission’s findings and report are based on document analysis, key informant interviews, and discussions with a range of other stakeholders. Documentary information was accepted from Newmont, Minera Yanacocha, NGOs, and the Government of Peru. Other documents were accessed by the Mission team from a range of sources. A total of 281 documents were formally reviewed (Table 1).

**Table 1: Data by source and number of documents**

<b>Data source</b>	Company	NGOs	Government	Other	<b>Total</b>
<b>Number of documents<sup>5</sup></b>	168	77	10	26	<b>281</b>

The type of documentation reviewed by the Mission included correspondence between Newmont and NGOs, court records, maps and property documents, possession documents, company information and reports, NGO reports and correspondence, Government of Peru documents including Police reports, photographs and video footage. Secondary information was sourced from the web and academic literature.

Key informant interviews were conducted according to a Program of Work developed by the Mission team in consultation with the Advisory Group. Interviewees included Newmont and Yanacocha representatives, members of the Chaupe family, their attorney and other community members, officials of the Government of Peru including the Police, local, national and international NGOs, and academic experts on the subject of rural land tenure in Peru. In total, the Mission team interviewed 101 individuals (Table 2).

**Table 2: Overview of interview sample**

<b>Type of interview</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
Family members and their representatives	2	3	<b>5</b>
Other members of the community	5	1	<b>6</b>
Newmont corporate representatives	4	2	<b>6</b>
Minera Yanacocha representatives	9	-	<b>9</b>
NGO stakeholders	13	12	<b>25</b>
Government representatives	23	2	<b>25</b>
Independent experts	8	4	<b>12</b>
Diplomatic appointees	4	1	<b>5</b>
Other industry stakeholders	8	0	<b>8</b>
	<b>76</b>	<b>25</b>	<b>101</b>

Some interviewees asked to remain anonymous. In view of the sensitivity of the topic, and the vulnerability of some of the parties involved, not all information and testimony is directly attributed to a source.

<sup>5</sup> Does not include photographs or video footage.

Mission team members conducted three field visits to Peru for the purposes of collecting information and interviewing key informants. In June 2015, the Mission Director conducted an inception visit to Lima and Cajamarca. The full Mission team conducted fieldwork from 15 September to 26 September 2015 in Lima and Cajamarca, including a field visit to Tragadero Grande. Once initial findings were formulated, the Mission Director requested additional resources to enable follow up on outstanding information requests with the company and another meeting with the family's attorney. Two members of the Mission team held meetings in Lima and Cajamarca from 29 February 2015 to 5 March 2016. At the request of the Mission Director, RESOLVE's President attended some of these follow up meetings to support the team. In addition, the Mission team has maintained contact with Newmont and Minera Yanacocha and the Chaupe family's attorney for the purposes of clarifying information, fact checking, and keeping them informed of the Mission's work. Both parties had an opportunity to comment on the report before its release.

The Mission received and accepted documentary information from stakeholders as true copies provided in good faith and without falsification. The information collected does not meet a judicial standard of evidence and the validity of all documentation would need to be tested to be admissible in a court of law. The Mission's conclusions are the result of weighing the information, and the number and type of data points available to support a conclusion.

## 2.2 Limitations of the Mission

The main limitation of the Mission relates to availability of information. Much of the evidence remains incomplete or inconclusive, largely due to the absence of records, lack of investigative processes or the absence of eyewitnesses to verify details at critical events. This was anticipated given that some key events occurred more than 20 years ago.

Engagement with the company for the purposes of obtaining some information was not always as timely and forthcoming as contemplated in the Agreement between Newmont and RESOLVE. Information that was critical to addressing the Mission questions was provided by Minera Yanacocha in the final weeks of the Mission. The company indicated that requests for information were not always clear and that they provided information based on their understanding of the Mission's requests.

## 3 Case overview

### 3.1 Situating the case

Tragadero Grande is located within the Campesino Community of Sorochuco in the region of Cajamarca (Map 1). Situated in the Peruvian Andes, at an elevation of approximately 4,000 meters above sea level, the local ecosystem is composed of *puna* grasslands and high plateaus. The area is sparsely populated with scattered families that rely on pastoralism, horticulture, petty trade and migrant wage labor. To sustain their livelihoods, families in the *puna* area of Sorochuco area raise guinea pigs, llamas, sheep and cattle. Conditions at the highest altitudes have restricted crop production for family consumption. Some specialists and local residents have suggested that, with global warming, conditions for cultivation of certain crops have improved in recent years.



Figure 1: Location map of Sorochocho, Peru (South America)



Similar to other families in the area, the Chaupe family currently occupy an adobe house that was constructed in 2011. The walls of the house are made of a dried mixture of mud and straw with a galvanized metal roof. When on Tragadero Grande, the family has no access to services and limited access to basic infrastructure. There is no running water for drinking or sanitation, clothes are hand washed, and meals are cooked by wood fire on an earthen stove. The house is not serviced by electricity or gas. As peasant farmers, the Chaupe family relies on home-grown crops and animal produce. They raise cattle and small animals for their own consumption and for sale at the local market. Some family members travel outside of the area to work.

The Chaupes identify as *campesinos* and formerly participated as members of the Campesino Community of Sorochocho. Campesino communities are one of the oldest forms of socio-political organization in rural Peru. Peru's *General Law of Campesino Communities*, Law N°. 24656 of 1987, recognizes these communities as legal organizations, comprised of families who inhabit and control defined territories, and linked by common history and ancestral, social, economic and cultural ties. Campesino communities collectively own an area of land, manage shared resources, self-regulate activities and elect representatives for external affairs. In 1993, one year after the Yanacocha mine commenced production, more than 96 per cent of population in the Department of Cajamarca self-identified as *campesinos*.<sup>6</sup>

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<sup>6</sup> See: <http://im4dc.org/wp-content/uploads/2014/09/Mining-and-community-engagement-in-Peru-Complete-Report.pdf>, p.10

While ownership of *campesino* community land is communal, some communities recognize individual possession of plots. Being a community member is usually linked to participating in community assemblies and holding possession of an individual plot of communal land.<sup>7</sup> In some communities, the possessor can delegate responsibility to care for the land and can seek permission to leave for a prescribed period.<sup>8</sup> An informal land market of possessory rights is common. Transactions are authorized by the community administration, and recorded through possession titles and acts of transfer and sale. Communities can sell their communal land to private or commercial interests. These sales involve formal community approval, community benefits and/or payments to the community and, in the majority of *campesino* communities in Peru, approval by individual possessors, with compensation for the loss of possession.

### 3.2 The parties

The primary parties in the conflict are the Chaupe family, Minera Yanacocha and Newmont. Other parties include Minera Yanacocha’s private security provider SECURITAS and government institutions, including the Police and the judiciary (Table 3). Minas Conga is a significant other party as it is the corporate entity that originally purchased the communal land title from the Campesino Community of Sorochuco. It is important to note that Minas Conga no longer exists as a corporate entity.

**Table 3: Parties to the conflict**

<i>Party to the conflict</i>	<i>Brief overview</i>
The Chaupe family	The Chaupe family includes the couple Jaime Chaupe Lozano and Máxima Acuña de Chaupe, their daughters Ysidora and Jilda, and their sons Daniel and Carlos. Ysidora and Daniel are both married and Ysidora has a young son. Jaime and Máxima describe themselves as peasant farmers who also raise livestock for their own consumption and for sale. <sup>9</sup>
Minera Yanacocha SRL	Minera Yanacocha is a joint venture gold mining company that owns the Yanacocha mine and the Conga project. Newmont is the majority shareholder of Minera Yanacocha and operator of the Yanacocha mine. Buenaventura is the other major shareholder of Minera Yanacocha and Peru’s largest publicly-traded mining company. Buenaventura also held shares in CEDIMIN, the company that owned Minas Conga at the time that Minera Yanacocha purchased their assets. The World Bank Group’s IFC is a minority shareholder in Minera Yanacocha.

<sup>7</sup> In the Campesino Community of Sorochuco, possessory rights are retained as long as there is evidence of participation in community assemblies and use of the plot of land.

<sup>8</sup> For example to fulfil the duty to participate in military service.

<sup>9</sup> Máxima Acuña de Chaupe has been recognized internationally for her role as a defender of human rights. See: <http://business-humanrights.org/en/un-forum-day-3-focus-on-victims-defenders-is-fundamental-for-all-stakeholders%E2%80%99-work-on-business-human-rights>

Newmont Mining	Headquartered in Colorado, Newmont is one of the world’s leading gold mining companies, and the majority shareholder and operator of Minera Yanacocha. Newmont commissioned the Yanacocha Independent Fact Finding Mission.
Government of Peru	Several Peruvian state institutions have been involved in the conflict including, the Peru National Police, the Ombudsman, and the Ministry of the Interior. The Ministry of Women and Vulnerable Populations has expressed its concern to the company. Government officials have visited and interviewed the Chaupe family, issued public communiqués about their protection, and given guarantees for their human rights. The Police had an agreement with Minera Yanacocha to provide security services and have been present at attempts to evict the Chaupes. The judiciary has been involved in criminal and civil cases related to the conflict at the levels of the province of Celendín, the Superior Court of Cajamarca and the Supreme Court of Peru.
GRUFIDES	GRUFIDES, a Cajamarca NGO, has been advocating on behalf of the Chaupes since the events of 11 August 2011, both in Peru and internationally. Mirtha Vazquez from GRUFIDES serves as the family’s attorney.
SECURITAS	SECURITAS is Minera Yanacocha’s contractor for private security services and employee protection. They were contracted in February 2012. Their contract runs until May 2016. SECURITAS has 8,000 employees in Peru. The company’s operations in Peru are part of a large Swedish multinational with over 300,000 employees worldwide.
Minas Conga SRL	Minas Conga purchased land for the Conga project in the 1990s. At the time of purchase, Minas Conga was owned by CEDIMIN, a joint venture between the French Geological Survey (BRGM) and Peru’s Buenaventura, a major shareholder in Minera Yanacocha. Minera Yanacocha purchased Minas Conga’s assets in 2001.
CEDIMIN	The <i>Compañía de Exploraciones, Desarrollo e Inversiones Mineras S.A.C.</i> was established as the Peruvian branch of BRGM in the 1980s. CEDIMIN was later associated with the exploration of mineral deposits that led to the development of the Yanacocha mine. Minas Conga was part of CEDIMIN.

### 3.3 Brief chronology

A number of key events underpin the Tragadero Grande conflict (see Section 6 for more detail). The case timeline begins in 1994, when Jaime Chaupe Lozano and Máxima Acuña de Chaupe purchased possessory rights to Tragadero Grande.<sup>10</sup> Tragadero Grande was at that time part of the communal land belonging to the Campesino Community of Sorochuco. In 1995 and 1996, Minas Conga acquired Tragadero Grande when it purchased two larger parcels of communal land from the Campesino

<sup>10</sup> This is an introductory chronology. Documentary evidence (both Minera Yanacocha’s and the Chaupe’s) is presented in the section that follows.

Community of Sorochuco. In this process, Tragadero Grande was divided into two units. Minas Conga re-named these units and registered two separate land titles.<sup>11</sup> In 2001, these titles were transferred to Minera Yanacocha when it acquired the assets of Minas Conga. From a legal perspective, Minera Yanacocha does not distinguish Tragadero Grande as a single property and considers the two purchased and registered areas as legally valid properties. In the decade that followed, the Conga project was explored, designed, and finally permitted, in 2010.

In 2011, ten years after Minera Yanacocha purchased Minas Conga, Tragadero Grande became the site of a dispute between the Chaupe family and Minera Yanacocha. Specifically, 24 May 2011 marks the beginnings of the dispute, when the parties say they first encountered each other on the property. Their first and subsequent encounters prompted the company to attempt to evict the Chaupes from the property through a range of extrajudicial defense of possession actions. In the course of these attempts, the company, its private security firm, SECURITAS, and the Police have been accused of violence, the disproportionate use of force, and of human rights violations. In 2014, the Chaupes also disputed the boundaries of the company's land purchases. The family have claimed that the purchase did not include Tragadero Grande and have therefore called into question the company's right to defend possession.<sup>12</sup>

The trajectory of conflict at Tragadero Grande has continued to escalate, with the case being brought before the IACHR in May 2014. The local NGO, GRUFIDES, has played a leading role in supporting the family's legal claims of property possession and human rights violations and calling for remedial action. Over the course of the conflict, other local, national and international NGOs have advocated for the family, including through letters to Newmont's Chief Executive Officer outlining their concerns about human rights violations. Emphasizing the vulnerability of the Chaupes, NGOs have also expressed concern about significant power imbalances between Minera Yanacocha and the family, and the physical and psychological effects of the protracted dispute.

## **4 Case context**

In preparation for fieldwork, the Mission team reviewed information about social conflict in Peru's mining sector, the Conga project, and the nearby Yanacocha mine. This section provides a brief description of the broader context, which is highly conflictual.

### **4.1 Mining and social conflict in Peru**

The development and processing of Peru's mineral resources has been a major driving force of macro-economic growth over the past two decades. While vital to Peru's economy, most major mining projects are highly politicized, and some have triggered significant conflict between companies, the government, and local communities. In July 2015, the Ombudsman's office reported

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<sup>11</sup> Minas Conga also renamed other purchased properties to align them with the company's land nomenclature.

<sup>12</sup> The Chaupe family's attorney provided two documents prepared by Carlos Cerdan Moreno that suggest survey errors in relationship to the 1995 communal land purchase. The second purchase from 1996 was examined in a subsequent report, and the conclusion about survey errors was repeated. See: <http://cronicascajamarca.blogspot.com/2014/12/parcela-tragadero-grande-v-conclusion.html>

209 disputes involving extractive industries.<sup>13</sup> The majority of mining-related conflicts in Peru stem from community concerns about the use and availability of land, water, the fear of environmental pollution, displacement and effects on livelihoods, disagreement about the value of land, and inequitable distribution of risks and benefits.

The so-called ‘costs of conflict’ have largely been unaccounted for by corporate and state actors, despite the evidence that, once understood and aggregated, the costs can be considerable.<sup>14</sup> Many of these costs are felt at the local level, where individuals, communities and local organizations have taken significant risk to protect land, livelihoods and ways of life from mining activities. While mining has undoubtedly added to Peru’s national economic growth, local communities often perceive the encroachment of large mining multinationals as posing fundamental threats to their safety, values, culture, and welfare.

Legal, political and administrative challenges notwithstanding, the Government of Peru has enacted several laws and initiatives that focus on improving sustainable development of its mineral resources, and addressing social conflict. For example, the *Prior Consultation Law* of 2012 requires prior consultation with indigenous communities before projects on their lands can be developed, although eligibility and application of this law remains contentious. Also in 2012, the government established a National Office for Dialogue and Sustainability that aims to monitor conflict, assist in alternative dispute resolution, and promote the practice of negotiated agreements.

## 4.2 Minera Yanacocha and its expansion

Minera Yanacocha is a joint venture company that owns the Yanacocha mine, one of the largest and most profitable gold mines in the world. Using a cyanide heap leach process, in 2014, the mine produced 969,944 ounces of gold and 574,110 ounces of silver. Minera Yanacocha also owns the Conga project, located 24 kilometers northeast of the Yanacocha mine.

When Yanacocha commenced operations in 1993, the company believed that the deposit held modest reserves. The mine dramatically expanded in scale following a series of discoveries during the 1990s. Yanacocha’s gold production increased from 81,000 ounces in 1993 to more than 3 million ounces in 2005. The total mining complex spans 160 square kilometers, occupying a small portion of the 1,725 square kilometer concession over which Minera Yanacocha owns exploration and development rights.

Numerous studies have documented distinct patterns of protest stemming from progressive encroachment of the Yanacocha mine into nearby communities. As the operation moved further into its mine life, a number of controversies triggered significant opposition, including the Cerro Quilish expansion project. Cerro Quilish is a small mountain located in one of several hydrological basins that supply water to the City of Cajamarca and surrounding communities. With the stated aim of avoiding environmental damage, in October 2000, the municipality of Cajamarca declared Cerro Quilish a protected area and off-limits to mineral exploration. Four years later, Peru’s Ministry of Energy and Mines approved Minera Yanacocha’s exploration licence for the Quilish area. This licence

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<sup>13</sup> See: <http://sinia.minam.gob.pe/documentos/reporte-mensual-conflictos-sociales-ndeg-137-julio-2015>

<sup>14</sup> See: <http://www.pnas.org/content/111/21/7576>

was granted after Peruvian courts determined that the municipal declaration was unconstitutional. As the company moved drilling equipment onto the site, the community mobilized in opposition. In November 2004, following weeks of violent confrontation between the Police and protesters, Minera Yanacocha stated that it had underestimated the concerns of the local people and requested that the Ministry revoke its exploration permit. The company has confirmed that no further ground activities had been conducted at Cerro Quilish since this time and the project remains unpermitted. The company re-classified Cerro Quilish from a 'reserve' to a 'resource' and there are no plans to develop the deposit.

Minera Yanacocha's expansion plans subsequently focused on Conga. In 2010, the Government of Peru approved the USD 4.8 billion Conga expansion project, which would have been the country's largest-ever mining investment. Originally scheduled to begin production in 2015, Conga has been another source of controversy, with opponents once again expressing concern about the impact of the proposed project on local water supplies. In November 2011, Minera Yanacocha's proposal to substitute four high altitude natural lakes with man-made reservoirs triggered a large-scale strike, protests and violent confrontations. These events prompted the Peruvian government to declare a 60-day state of emergency, suspending civil liberties and imposing martial law in four provinces until January 2012. Five days into the strike, and following a request by the national government, Minera Yanacocha suspended project construction to "restore social peace". On 28 February 2013, approximately 800 protesters travelled to the Conga project area to inspect two of the natural lakes. A shelter for protesters was erected on Tragadero Grande.

Annex 1 provides a visual representation of the Chaupe case timeline and its relationship to the acute phase of the Conga crisis.

### 4.3 Previously commissioned studies

The social and community dimensions of the Yanacocha mine and the Conga project have inspired numerous investigative media articles, reports by research institutes, NGOs and advocacy groups, and a growing body of academic literature. Between 2009 and 2012, Newmont itself commissioned several public studies to understand stakeholder perceptions and other dimensions of the social conflict surrounding its projects and operations in Cajamarca, Peru. The Mission team reviewed three of these studies, including the *Global Summary Report* from Newmont's *Community Relationships Review*, an independent review of Yanacocha's security and human rights policies, both from 2009, and a qualitative study on Yanacocha's relationship with the City of Cajamarca, published in 2012.<sup>15</sup> The Mission team also reviewed complaints lodged with the IFC's Compliance Adviser Ombudsman between 2002 and 2014 that related to land acquisition for the Conga project.

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<sup>15</sup> See: [http://s1.q4cdn.com/259923520/files/doc\\_downloads/crr/CRR-Global-Summary-Report-and-Appendices-English.pdf](http://s1.q4cdn.com/259923520/files/doc_downloads/crr/CRR-Global-Summary-Report-and-Appendices-English.pdf); <http://business-humanrights.org/en/minera-yanacocha-releases-review-of-security-human-rights-policies-under-voluntary-principles>; and <https://www.csr.uq.edu.au/publications/listening-to-the-city-of-cajamarca-a-study-commissioned-by-minera-yanacocha-final-report>

Four common findings across these reports provide context for the case at hand:

- A number of unresolved grievances have stemmed from Minera Yanacocha’s land acquisition process. The company’s incremental, and collectively large-scale, land acquisitions, have resulted in complex and unresolved legacy issues.
- Minera Yanacocha has largely relied on state institutions and legal processes to resolve disputes. While government regulation and other interventions play an important role in dispute resolution, the previous studies recommended greater company engagement with rural communities accompanied by a concerted effort to demonstrate respect for local communities.
- Past studies concluded that Minera Yanacocha did not have adequate systems in place to translate high-level standards into effective practice as part of their operations. The reports suggested that the company tended to react to issues and grievances on an *ad hoc*, rather than a systematic, basis, and did not always co-ordinate internally. Internal issues were noted as constraining its ability to learn from past mistakes.
- The reports highlighted gaps in Minera Yanacocha’s approach to investigating social and community issues and incidents, including allegations of human rights abuse.

Newmont provides regular progress updates in its annual sustainability reports and to its Board of Directors about how recommendations from the *Community Relationships Review* are being addressed. The company indicates that its approach has continued to evolve in response to the lessons and guidance of this study. In its 2013 *Beyond the Mine* report, Newmont outlined an improved process of stakeholder accountability and integration of lessons into strategic and business planning processes.<sup>16</sup>

## **5 Newmont’s commitments and other relevant international frameworks and standards**

Newmont began formulating its approach to sustainable development during the ground-breaking Mining, Minerals and Sustainable Development (“MMSD”) study released by the Institute of Environment and Development (IIED) in 2002. Newmont later became a founding member of the ensuing International Council on Mining and Metals (“ICMM”). As an early mover in the development of corporate architecture for sustainability, the company has maintained a suite of policies, standards, procedures, systems, indicators, targets, and reporting protocols for sustainable development, periodically updating them to reflect emerging developments in the field. These commitments apply to Minera Yanacocha, of which Newmont is the majority shareholder.

As part of its approach, Newmont participates in a number of global initiatives. Participation involves corporate endorsement of external frameworks, such as the *United Nations Guiding Principles on Business and Human Rights* (“UNGP”) and the Voluntary Principles. The Mission team considers

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<sup>16</sup> See: <http://sustainabilityreport.newmont.com/2013/community-engagement.php>

these initiatives to be relevant international standards in the context of the Tragadero Grande conflict. The team also considers the IFC Performance Standards to be a relevant set of international performance benchmarks.

When Newmont and other companies endorse these and similar frameworks, they commit to upholding their principles and procedural considerations. While these standards set a high benchmark, there are few consequences for failing to implement them. For example no ICMM member company has had its membership revoked for non-compliance with the *ICMM Sustainable Development Principles*. The Voluntary Principles are self-regulated by members, and the UNGP are not legally enforceable. There are, however, a number of other drivers, such as increasing expectations of investors, lenders and insurers, and pressure from NGOs and civil society groups that, combined with internal mechanisms and incentives, motivate companies to apply these standards. Each of the three above-mentioned frameworks, and the company's engagement with them, are outlined below.

## 5.1 United Nations Guiding Principles on Business and Human Rights

The UNGP provide a set of guidelines for states and companies to prevent, address and remedy human rights violations. The guidelines outline how companies can uphold their responsibility to “respect” human rights and ensure access to “remedy” for victims of business-related human rights abuse. The principles were proposed by UN Special Representative on Business and Human Rights, Professor John Ruggie, and unanimously endorsed by the UN Human Rights Council on June 2011. The ICMM supported the UNGP immediately following their release and has developed interpretive guidance for its mining members. The ICMM also requires that its members “uphold fundamental human rights and respect customs, cultures and values in dealings with employees and others who are affected by our activities”.<sup>17</sup>

Key procedural requirements of the UNGP include:

- policy commitment to respect human rights
- due diligence processes to identify, prevent, mitigate and account for how the business addresses their impacts on human rights
- processes for the remediation of any adverse human rights impacts the business causes or to which they contribute
- assess actual and potential human rights impacts and act upon the findings, track responses, and communicate how impacts are addressed
- account for how human rights impacts are addressed and communicate this externally
- in the case of adverse impacts, provide for or cooperate in their remediation through legitimate processes.

The UNGP were formally recognized by Newmont in its 2014 *Sustainability and Stakeholder Engagement Policy*. Through this policy, Newmont commits to “[...] respect the dignity, wellbeing and human rights of employees and the communities in which we live, as well as others affected by our operations. Our actions and philosophies with regard to human rights are guided by the

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<sup>17</sup> See: <http://www.icmm.com/our-work/sustainable-development-framework/10-principles>



Organization for Economic Co-operation and Development (“OECD”) Guidelines and reflect the UNGP’s due diligence processes. We are committed to implementing the Voluntary Principles on Security and Human Rights and to understand and respect the cultural heritage, rights and norms of local communities through proactive engagement and training of personnel”.

In early 2015, Newmont became the first mining company to adopt the *UNGP Reporting Framework*. At this time, Newmont also released a new Human Rights Standard, completed a gap analysis against the standard, developed site-based action plans to address gaps, and conducted training to support compliance with the standard. According to Newmont’s 2015 Sustainability Report, the gap analysis identified a need for the company’s operations to improve its stakeholder engagement processes and implement risk management systems to better identify human rights risks. In 2015, Minera Yanacocha completed a human rights review.<sup>18</sup>

Minera Yanacocha makes a clear commitment to human rights in its 2015 *Statement of Commitment*. The company’s list of social responsibilities starts with a commitment to “Maintain adherence to the *Universal Declaration of Human Rights*, the *United Nations Global Compact* and the *Voluntary Principles on Security and Human Rights*”. Minera Yanacocha has in place a mechanism for addressing community grievances, including human rights complaints. The procedure for addressing a credible human rights complaint includes the following requirements:

- a committee convened to develop an investigation plan
- immediate cessation of any company actions impacting the alleged victim
- engagement of an independent third party to participate in the investigation
- taking action to address the findings.

The Yanacocha Independent Fact Finding Mission was initiated outside of this grievance process.

## 5.2 Voluntary Principles on Security and Human Rights

The conduct of public and private security providers involved in the protection of extractive sector projects can have a large impact on the human rights of people in the project’s area of influence. The Voluntary Principles are specifically designed to reflect challenges in extractive industries. They guide companies in maintaining the safety and security of their operations within a framework that ensures respect for human rights and fundamental freedoms. Newmont became a member of the Voluntary Principles in 2002 and participates in the Voluntary Principles group at the international level. Minera Yanacocha participates in the *Grupo Impulsor*, a multi-stakeholder group designed to advance implementation of the Voluntary Principles in Peru.

Key procedural considerations of the Voluntary Principles include:

- encourage appropriate and proportional use of force so that human rights are not violated
- record and report credible allegations of security incidents with human rights implications
- actively monitor investigation status of incidents and press for proper resolution

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<sup>18</sup> Minera Yanacocha explained that the scope of this review was to evaluate its security risk assessment practices. See: <http://sustainabilityreport.newmont.com/2015/ethics-and-governance/human-rights#!performance>

- monitor the use of equipment provided by the company
- conduct regular risk assessments that use a broad range of perspectives
- conduct “root cause” analysis of conflicts
- conduct regular structured meetings with public security to discuss security, human rights and workplace safety matters
- conduct training on the requirements of the Voluntary Principles
- reference the Voluntary Principles in agreements with public security (e.g. Police).

Other parties involved in the Tragadero Grande conflict are not members of the Voluntary Principles in that neither Buenaventura nor the Government of Peru is a member. While the government is not a member, senior officials participate in the *Grupo Impulsor*.

### **5.2.1 Minera Yanacocha’s agreements with security service providers**

Relevant to Newmont’s corporate commitment to the Voluntary Principles is Minera Yanacocha’s arrangements with public and private security providers. Also relevant is the complexity and sensitivity of the security task given the significant social protest against the Conga project and the fact that these protests have been associated with injuries, fatalities and a state of emergency.

As Minera Yanacocha’s provider of private security services and employee protection, SECURITAS is required to implement the Voluntary Principles under the terms of its contract with the company. The contract confirms that they received copies of the principles, along with other corporate policies. SECURITAS personnel are equipped with Plexiglas shields and non-lethal equipment.

Minera Yanacocha had a security agreement in place with the Peru National Police from 2011 until 2015. In September 2015, the Minister of Interior announced a moratorium on the hire of Police for private security purposes, effective from January 2016. At the time of finalizing the Mission report, Police had been withdrawn from the Conga site and the Government of Peru had terminated its agreement with the company. Minera Yanacocha was required to make specific requests for Police assistance to protect the safety and security of its personnel.

Until September 2015, the scope of the agreement with Minera Yanacocha was defined as prevention of crimes or attacks on Minera Yanacocha’s people or installations. It had the purpose of “guaranteeing the normal development of its administrative and productive activities”. Services were delivered by “Police on leave” who were paid on an individual basis for services rendered. Police utilized their official uniform, lethal weapons and other non-lethal equipment. The company provided transportation and insurance for the Police involved as required under Peruvian law.

The Government of Peru is not a signatory to the Voluntary Principles and Minera Yanacocha’s security agreement with the Police did not refer to the principles. Reference to human rights was specific to the provision of training to be delivered by Minera Manacocha to the Police. In 2013, Minera Yanacocha proposed new terms that included reference to the Voluntary Principles. These terms were not accepted by the Government of Peru.

### 5.3 IFC Environmental and Social Performance Standards

The IFC's Performance Standards apply to investment and advisory clients and become mandatory at specific sites as part of an investment or loan agreement. Adherence to the IFC Performance Standards and audit processes do not apply to the Conga project because the project is not subject to an IFC finance agreement. The Mission team nonetheless considers the IFC Performance Standards to be relevant international standards to the Tragadero Grande conflict for the following reasons:

- the IFC Performance Standards have been used as a key reference document in Newmont's global standards since their release
- the IFC was previously a lender for the Yanacocha mine and currently holds a minority equity stake in the Minera Yanacocha joint venture company
- local communities have utilized the IFC's non-judicial grievance mechanism, the Compliance Adviser Ombudsman ("CAO") for complaints relating to land acquisition for the Yanacocha mine and the Conga project.

The IFC Performance Standards offer a practical framework for understanding and managing environmental and social risks for high profile, complex, international, or potentially high impact projects. Procedural requirements are risk orientated and require active analysis of environmental and human rights risks in order to develop appropriate mitigation and monitoring plans.

IFC Performance Standard 5 on *Land Acquisition and Involuntary Resettlement* holds particular relevance in the Tragadero Grande case with respect to Minera Yanacocha's extrajudicial defense of possession actions following their first encounter with the Chaupes in 2011. The requirements of this standard are broadly consistent with Newmont's own corporate standard on *Land Access and Acquisition*, which, in various forms, has been a social performance requirement since 2004. Newmont's current standard emphasizes the identification of all stakeholders with a socio-economic or legal interest, comprehensive record keeping, and consultation and negotiation with project-affected people.

## 6 Case history: Land, extrajudicial defense of possession and allegations of human rights violations

This section describes the key elements of the dispute between Minera Yanacocha and the Chaupe family, which, over a period of five years, had escalated into a multi-party conflict. This section provides details relating to the family's claim that violent exchanges occurred with the company, SECURITAS, and Police over the presence of the family on the disputed land.

The first sub-section describes the situation when the Mission concluded its fact finding in March 2016. Case elements are then presented in chronological order, commencing in 1994 when Jaime Chaupe Lozano and Máxima Acuña de Chaupe purchased possessory rights to Tragadero Grande.

## 6.1 Situation at the conclusion of the Mission in March 2016

When the Mission completed its fact finding in March 2016, the land dispute between Minera Yanacocha and the Chaupes was unresolved. A legal determination about the land dispute was pending. Each party held different information to support their respective claims and a negotiated settlement had not been discussed. Both parties had filed criminal complaints for aggravated usurpation against the other party in the Celendín court.<sup>19</sup> The Chaupe's 2011 case against Minera Yanacocha had been dismissed. Minera Yanacocha's case was upheld and the Chaupes were convicted of aggravated usurpation. The Chaupes appealed the conviction in the Appeals Chamber of the Superior Court of Cajamarca and the charges were dropped. Minera Yanacocha challenged the appeal before the Supreme Court of Peru. At the conclusion of the Mission, the outcome of the Supreme Court case was pending and the company continued to exercise extrajudicial defense of possession.

In March 2016, members of the Chaupe family were maintaining a constant presence on Tragadero Grande.<sup>20</sup> Family members were conducting land-based livelihood activities on the property, while occupying an adobe house, constructed in 2011, on the northern property registered as Pampas Erizales del Perol. Pending the outcome of the criminal case before the Supreme Court of Peru, Minera Yanacocha had lodged an injunction request to prevent the Chaupes from using Cerro Cocañes, the property to the south. The Celendín judiciary had approved an injunction request. The Chaupe's utilization of the southern portion of the property was being subject to extrajudicial defense of possession actions by Minera Yanacocha.<sup>21</sup>

When the Mission team visited the family on Tragadero Grande, they sighted the adobe house and a demolished guinea pig hutch along with destroyed crops in an area beyond the house. Road access to Tragadero Grande was through a checkpoint on company property controlled by SECURITAS and located approximately two kilometers from Tragadero Grande.<sup>22</sup>

Aside from activities associated with their extrajudicial defense of possession actions, Minera Yanacocha indicated to the Mission team that it had ceased ground activities on Tragadero Grande. The company was conducting non-mining related activities on a property directly adjacent to Tragadero Grande. In 2015, Minera Yanacocha constructed an alpaca-raising project on this adjacent property and had built huts and shelters, and erected a fence to demarcate the boundary between the alpaca-raising project property and Tragadero Grande. Ten Police were stationed in the area. Minera Yanacocha representatives said that Police were there to protect the staff and facilities of the alpaca project.<sup>23</sup>

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<sup>19</sup> Celendín is the 'court of the first instance' for both civil and criminal matters relating to Tragadero Grande.

<sup>20</sup> This presence was being maintained on the northern portion of the property that Minas Conga registered as Pampas Erizales del Perol. Recognising this distinction, this report nonetheless continues to refer to the property as Tragadero Grande.

<sup>21</sup> The northern portion of Tragadero Grande was subject to a separate civil claim initiated by Yanacocha.

<sup>22</sup> The company considers these checkpoints to be a standard security measure to protect their property and commercial assets.

<sup>23</sup> Minera Yanacocha informed the Mission that when the alpaca-raising project was developed, project managers requested a security presence because they were concerned about their project installations and

In discussions with the Mission team, members of the Chaupe family said they were fearful about their personal safety and security, and about losing access to their land and livelihood. Máxima Acuña de Chaupe told the Mission that her family had been criminalized, harassed and intimidated by the company, violently assaulted by SECURITAS and Police, and that these threats were ongoing. She described receiving violent threats from company, security and Police personnel, being subject to surveillance by the company and the Police, and prevented from exercising her rights as a legitimate possessor. At the conclusion of the Mission in March 2016, government authorities had offered the Chaupes Police protection, which until that point in time, the family had declined.

## 6.2 Chaupe family's purchase of possessory rights in 1994

The Campesino Community of Sorochuco owns its area of land on a communal basis. Under this arrangement, communities hold legal authority to regulate access to and use of that land through the allocation of possessory rights. Possessory rights can be transferred through the equivalent of a private contract of sale, independent of land ownership. Private sale of possessory rights occurs through the transfer of domain of possession. When possessory rights are sold, transfer documents are witnessed by a community official and the names of the new possessors recorded in the General Register of Community Land. Sellers surrender their Certificate of Possession, and the community administration issues a new certificate to the buyers.

According to information made available to the Mission, Jaime Chaupe Lozano and Máxima Acuña de Chaupe purchased possessory rights to Tragadero Grande on 16 January 1994. The Chaupes said that they purchased the property from Jaime Chaupe Lozano's paternal uncle, Esteban Chaupe Rodriguez and his wife, Rosalía Fuentes Chugnas.<sup>24</sup> The amount paid was 600 Nuevos Soles. The Mission team sighted a Transfer of Domain of Possession document, which was fully executed by the transacting parties. Signatures of the two men appear on the transfer document alongside a fingerprint of each of the wives. Other parties were present during the land transfer process, including the then President of the Sorochuco Community Administration, Miguel Ayala Briones. In an interview with the Mission team, Miguel Ayala Briones confirmed that the sale occurred on the date indicated on the documents, and that he was a witness to the sale.

On the day of the sale, the Campesino Community of Sorochuco issued Jaime Chaupe Lozano and Máxima Acuña de Chaupe with a Certificate of Possession. This certificate indicates that Jaime Chaupe Lozano and Máxima Acuña de Chaupe are listed in the General Register of Community Land as possessors of Tragadero Grande. Through this purchase they also became formal members of the general community. The Mission team sighted the transfer document, the Certificate of Possession, and the register where Jaime Chaupe Lozano and Máxima Acuña de Chaupe are listed as possessors.

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personnel due to the presence of demonstrators (anti-Conga) and violence in the area. The Police presence concluded in September 2015 when Minera Yanacocha's agreement with the Police was no longer valid.

<sup>24</sup> The Mission did not examine the status of Esteban Chaupe Rodriguez and Rosalía Fuentes Chugnas' rights of possession at the time of this sale.

## 6.3 Two-phase land acquisition by Minas Conga in 1995 and 1996

Corporate acquisition of land from Campesino Communities for the purposes of mineral exploration is a two-phase process. The first phase involves the purchase of property from the general community. The sale of communal land to private interests became possible under *The Political Constitution of Peru* of 1993 and Law N° 26505 of 1995.<sup>25</sup> According to this law, communally held property can be sold by prior approval of at least two-thirds of qualified community members in a general assembly convened exclusively for that purpose. The second phase is contingent on completion of the first and involves negotiating with individual possessors to purchase possessory rights. The second phase is not a legal requirement, but rather, a practicality for securing land access and fair compensation to possessors.

This section describes Minas Conga's initial land purchase from the Campesino Community of Sorochocho and its subsequent negotiation with individual possessors.

### 6.3.1 Phase one: Purchase of property from the general community

From the mid-1990s, CEDIMIN had been conducting mineral exploration activities near Sorochocho. In 1995, and in order to continue exploration activities, CEDIMIN sought community approval to purchase 500 hectares of communal land, encompassing Tragadero Grande, from the Campesino Community of Sorochocho. This engagement occurred through CEDIMIN's property holding company, Minas Conga.

Acquisition by Minas Conga of communal land owned by the Campesino Community of Sorochocho is recorded as having occurred through two separate transactions. According to the public record, the Community Council convoked an extraordinary general assembly on 12 December 1995 to discuss the sale of communal land to Minas Conga – the first sale of its kind by the Campesino Community of Sorochocho under the new legal framework. The Community President at this time was Miguel Ayala Briones, who a year earlier had witnessed the transfer of possessory rights for Tragadero Grande to Jaime Chaupe Lozano and Máxima Acuña de Chaupe and issued their Certificate of Possession. The second extraordinary assembly was held on 20 November 1996, by which time a new Community President, Segundo Chavez Quiliche, had been elected. Minas Conga was represented by Edgar Cordova as chief negotiator on both occasions.

The first sale transferred 269.52 hectares of communal land to Minas Conga. Records indicate that this exchange was contingent on the construction of a road and provision of medicine to the local clinic. The second exchange transferred 226.56 hectares of communal land to Minas Conga. The community requested the construction of a multi-purpose community building. The company paid a cash price of 950 Nuevos Soles per hectare of land in both sales. Together, the two transactions completed the first phase of the land acquisition process from the Community of Sorochocho.

According to the title documentation provided to the Mission by Minera Yanacocha, each of the two sales contained a portion of Tragadero Grande. These portions appear in the Campesino Community of Sorochocho's General Register of Community Land as Cerro Cocañes to the south, corresponding to

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<sup>25</sup> This Act established the general principles needed to promote private investment for economic activities in peasant and native communities in Peru.

the first sale, and Pampas Erizales del Perol to the north, corresponding to the second sale. These titles are registered separately, which is why, from a legal perspective, Minera Yanacocha does not distinguish Tragadero Grande as a single property. For the Chaupe family, the division is not meaningful because, from their perspective, they hold possessory rights to Tragadero Grande as a single parcel of land.

### **6.3.2 Phase two: Negotiation with individual possessors**

After securing the necessary approvals from the general community for the sale of communal land, Minas Conga negotiated with 15 individual possessors. Information gained by the Mission suggests that over a period of approximately three weeks, the group of possessors, together with a technical team from Minas Conga, physically examined the plots and agreed the boundaries. Minera Yanacocha provided the Mission with two maps that correspond to the 1995 and 1996 sales and that list possessors, plot boundaries and total land area for each plot. The maps are signed by the possessors and include the signature and seal of the relevant community Presidents. The map corresponding to the first sale was signed by both Miguel Ayala Briones, who was President when two-thirds of the general assembly approved the first sale, and Segundo Chavez Quiliche, who was President at the time of the second sale and during negotiations with individual possessors. These dual signatures provide a sense of continuity in the land acquisition process. Signatures of the relevant community Vice-President, Treasurer and Auditor also appear on the maps.

Given the simultaneous nature of negotiations with the 15 possessors, individual transfer documents were not prepared. Instead, the group of possessors co-signed the communal land exchange document at a public notary office in Cajamarca city and then convened at CEDIMIN's offices at Baños del Inca to receive their individual payment. Each possessor was asked to sign a receipt of check as payment for the exchange.

Documents provided to the Mission by Minera Yanacocha, along with personal accounts of other possessors, indicate that Samuel Chaupe Rodriguez – father of Jaime Chaupe Lozano and father-in-law to Máxima Acuña de Chaupe – claimed possession of Tragadero Grande and negotiated with Minas Conga. The Mission was unable to confirm that Samuel Chaupe Rodriguez possessed rights to Tragadero Grande at the time of these negotiations, and whether the land payment check was received or cashed.<sup>26</sup> The family's attorney indicated to the Mission Director that Samuel Chaupe Rodriguez did sell 14 hectares of land that he possessed adjacent to Tragadero Grande, but not Tragadero Grande. The attorney maintains that the documents provided to the Mission by Minera Yanacocha do not represent the sale of possession of Tragadero Grande.<sup>27</sup> No further information about the sale of possessory rights was made available to the Mission by either party.

Jaime Chaupe Lozano and Máxima Acuña de Chaupe have consistently stated that they were unaware that Tragadero Grande was ever sold to Minas Conga. In responding to this claim, Minera Yanacocha provided the Mission with the general community approval documents for the 1995 and

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<sup>26</sup> No signature confirms receipt of the land payment check.

<sup>27</sup> The family's attorney explained to the Mission Director that the 14 hectare lot was adjacent to the disputed property. Samuel Chaupe Rodriguez is listed as a neighbour in Jaime Chaupe Lozano and Máxima Acuña de Chaupe's possession documents. According to the family's attorney, the 14 hectare sale would have been south of the parcel of land under dispute.

1996 sales of communal land to Minas Conga. The documents that relate to the first sale (which include the southern portion of Tragadero Grande) contain the signatures of Jaime Chaupe Lozano and his father Samuel Chaupe Rodriguez as general members of the community (i.e. their signatures appear as part of the two-thirds of the general assembly that approved the first communal land sale in 1995). The documents that relate to the second sale (which included the northern portion of Tragadero Grande) do not contain the signatures of Jaime Chaupe Lozano or his father Samuel Chaupe Rodriguez. The Mission did not speak to either Jaime Chaupe Lozano or his father Samuel Chaupe Rodriguez about their understanding of these transactions. The information on this issue also remains incomplete.

#### **6.4 Corporate acquisition of Minas Conga by Minera Yanacocha in 2001**

On 27 February 2001, Minera Yanacocha purchased Minas Conga from CEDIMIN. As part of this transaction, Minera Yanacocha acquired the land that Minas Conga had purchased from the Campesino Community of Sorochuco in the 1995 and 1996 land sales described above. As a condition of sale, Minas Conga provided guarantee to Minera Yanacocha that its assets had no liabilities.

The Mission team examined Minera Yanacocha's due diligence process associated with this acquisition. Minera Yanacocha explained that the company's due diligence process involved verification that both communal land sales were fully executed by appropriate parties and that Minas Conga held valid land title documents. Land title documents indicate that the land purchase agreements were signed by the required two-thirds of the community's general assembly convened for the purpose of the sale of land to Minas Conga in both sales. As the Mission completed its work, Minera Yanacocha discovered and presented records relating to the purchase process and amounts that Minas Conga paid to each of the possessors.<sup>28</sup>

#### **6.5 Ground activities prior to the first encounter in 2011**

According to Peruvian law, possession must be exercised through demonstrable use of land that is continuous, peaceful, and public. Both the Chaupe family and Minera Yanacocha assert that they have demonstrated possession of the disputed property. Both parties maintain that the other party was not present on Tragadero Grande prior to the first encounter in May 2011.

In separate interviews with the Mission team, Jaime Chaupe Lozano and Máxima Acuña de Chaupe explained that since they acquired possession of Tragadero Grande in 1994, the family has used the property on a continuous basis to graze cattle, sheep, and other animals. The family explained that they have also used the land to plant crops that are typical for the area. On their field visit, the Mission team observed a small fish pond near the house, traces of a garden (said to have been for potatoes) that had been dug up by Minera Yanacocha, and remnants of a guinea pig hutch that the company had removed.

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<sup>28</sup> This documentation was provided to the Mission team in the last month of fact finding process, during the team's visit to Lima in early 2016.



Before constructing their adobe home in 2011, the Chaupe family describe living in a series of thatch huts or *chozas*. In an interview with the Mission team, Miguel Ayala Briones said that the family had erected a *choza* on the property at the time of purchasing their possessory rights. Other local informants indicated that thatch structures were common at that time because, prior to road access, it was difficult to transport heavy building materials into the area. The Chaupe family told the Mission that during the school year, their children would stay in the town of Amarcucho with their paternal grandparents and return to Tragadero Grande on weekends. The family maintains that the property has never been abandoned. Beyond oral testimony, there is no clear documentary evidence to confirm the family's use or occupation of Tragadero Grande prior to 2011.<sup>29</sup>

Minera Yanacocha maintains that since its purchase of the property in 2001, it has demonstrated its possession of Tragadero Grande through the establishment of security controls and checkpoints, drilling activities, and construction of a road that runs along part of the property's perimeter. Minera Yanacocha provided the Mission with drilling plans, an archaeological survey report, and the contract for the perimeter delineation of the property as material support with respect to possession. The Mission team spoke to company personnel who described being intermittently present on the property during the decade-long exploration and study phase, and who said that they did not encounter the Chaupes during this time.

The Public Prosecutor in Celendín visited the property in 2011 to investigate the early complaint by the Chaupe family against Minera Yanacocha for aggravated usurpation.<sup>30</sup> The Public Prosecutor's report notes the presence of animal manure and some areas of worked land. It also notes evidence of an area where the company had undertaken earthworks for road construction.

## 6.6 Land dispute emerges and initial response in 2011

Under Peruvian law, illegal property invasions can be countered by actions of extrajudicial defense of possession. The law confers to possessors the right to repel an "invading force" so that they may recover their property without the need for a court order. In August 2011, extrajudicial defense of possession had to occur within two days of a possessor learning of a property invasion. In 2014, this prescribed period increased to a period of 15 days. If defensive action is taken after the prescribed period, a court order or authorization from a Public Prosecutor is required. Likewise, a court order or authorization is required if the Police assist the possessor. In cases of extrajudicial defense, Police can only protect the possessor, not assist in the action. The protective measure reflects an assumption that the invader will resist and that the security of the possessor may be put at risk.

On 24 May 2011, both parties say that they encountered each other on Tragadero Grande for the first time. Minera Yanacocha employees went to the site with Police after being alerted by the company's guard post that there had been a "land invasion". From this point, reports about what

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<sup>29</sup> Minera Yanacocha provided the Mission team with aerial photographs and Google Earth images of Tragadero Grande. While there are no visible structures in these images prior to 2011, the Chaupe family's attorney argues that *chozas* would not be identifiable as thatched rooves blend into the landscape. The adobe house structure is visible in these images from 2011.

<sup>30</sup> In Peru, a Public Prosecutor is an autonomous government authority, responsible for receiving, investigating, analyzing and evaluating criminal and civil charges.

happened on that day are inconsistent and reports are inconclusive. Jaime Chaupe Lozano said that the company evicted him. The Police report states that Jaime Chaupe Lozano was found “taking the private property of Minera Yanacocha”. The report notes that Jaime Chaupe Lozano did not present documents to demonstrate his legal rights to the property and that the Police and company personnel urged him to take his claim to court. The report also states that Jaime Chaupe Lozano left the property in a peaceful manner and was not pressured, threatened or coerced.

Jaime Chaupe Lozano refused to sign the Police report from this day. According to the family’s attorney, the report did not include information about the family’s claims of possession or their use of the land. Instead, it recorded only what was said by Minera Yanacocha representatives. On 25 May, the following day, Jaime Chaupe Lozano filed a criminal complaint for aggravated usurpation against Minera Yanacocha in the Celendín court. As part of investigation into the complaint, the Public Prosecutor interviewed the family. Interview records suggest that Máxima Acuña de Chaupe had no prior knowledge of Minera Yanacocha’s acquisition of Tragadero Grande. Records also suggest that while Jaime Chaupe Lozano had observed some drilling activity on the property in February 2011, he had no prior knowledge of Minera Yanacocha’s acquisition of the property. During his interview with the Public Prosecutor, Jaime Chaupe Lozano presented land transfer documentation and his Certificate of Possession. Records indicated that he asked the company to pay for damages to his land and, if they wanted to stay on the land, that they compensate him for it.

## 6.7 Events of 11 August 2011 on Tragadero Grande

The Chaupes maintain that on the afternoon of 11 August 2011, Minera Yanacocha attempted to evict the family from Tragadero Grande, and that a violent altercation occurred between the family and the Police. Other parties involved have a different description of the events on this day and the days immediately prior. Minera Yanacocha stated that it was not conducting an extrajudicial defense of possession but attempting to install a security guard post on disputed property. What occurred on 11 August 2011 is the subject of allegations that the human rights of members of the Chaupe family, including a 16-year-old minor, were violated. Given the significance of these allegations, the Mission focused considerable effort on understanding what occurred from the perspective of each party involved.

### 6.7.1 *The Chaupe family’s description of the events*

Direct quotes are included in this section to provide the alleged victims with a voice in this report. While the claims were not validated by the Mission, they form the basis of the allegations of human rights violations and are included on that basis.

In an interview with the Mission team at the family’s adobe house on Tragadero Grande on 22 September 2015, Ysidora Chaupe Acuña, in the presence of her mother, Máxima Acuña de Chaupe and her younger sister, Jilda Chaupe Acuña, recounted the events of 11 August 2011. Ysidora Chaupe Acuña explained that when the Police arrived on that day, the women were in the *choza* preparing food. She said, “*When we saw them, we were scared. We wondered what was going to happen and what they were going to do with us.*” She described how the women left their cooking pot and plates and stepped outside the *choza*. Once they had left the *choza* they could hear an engine and saw an excavator approaching the property. She said, “*It was then that we realized that their objective was*

*to kick us out and establish themselves in the area.*” Ysidora Chaupe Acuña said that her father, Jaime Chaupe Lozano, was outside and began crying. She said that her father asked the Police to show him an eviction order from a competent authority, and that no order was presented by the Police or the company.

Ysidora Chaupe Acuña also provided an account of what happened to her sister, Jilda Chaupe Acuña, 16 years old at the time, and their mother, Máxima Acuña de Chaupe, after they stepped outside the *choza*. She said that her sister went to the road, stepped in front of the machine, dropped to her knees, and begged that the family be left alone. Ysidora Chaupe Acuña told the Mission that, *“The Police came and they hit her in the head with the butt of their machine gun. They knocked her down and left her passed out.”* She also told the Mission that at the same time as her sister was hit, her mother was surrounded by about eight Police, *“They hit her hard and treated her brutally.”* She said, *“We were mistreated and beaten. We didn’t know what to do.”* According to their attorney, Mirtha Vazquez, the family remained present on the site for two or three days, without food or shelter.

The Chaupe family told the Mission that after this event they contacted GRUFIDES to seek assistance with medical expenses associated with their injuries. The family’s attorney told the Mission that once GRUFIDES heard the family’s account of the events on that afternoon, they developed a protection strategy and launched a media campaign about the case. GRUFIDES also arranged for the family to obtain medical certificates to verify their injuries. The family’s medical certificates were dated 16 August 2011, five days after the events of 11 August 2011. According to Peru’s Institute of Legal Medicine, the Chaupe’s medical certificates confirm that recent traumatic injuries were sustained, including a bruise on the head of Jilda Chaupe Acuña and bruises on the arms and knee of Máxima Acuña de Chaupe.<sup>31</sup> While the certificates confirm that the injuries were recent, they do not verify the exact date that the injuries were said to have been sustained, or the source of the injuries.

### **6.7.2 Minera Yanacocha’s description of the events**

Minera Yanacocha representatives indicated that land invasion is a regular occurrence in the Conga project area and swift extrajudicial defense of possession actions are a business imperative. On 8 August 2011, Minera Yanacocha noted a new land invasion on disputed property by the Chaupe family. Company personnel said that on 8 August 2011, they entered the property to enact extrajudicial defense of possession by insisting that the family leave the property. Company personnel were accompanied by SECURITAS and Police. Minera Yanacocha representatives said that the eviction attempt was unsuccessful and the family refused to leave. The company said that unsuccessful eviction attempts were also made on 9 and 10 August 2011.

On the afternoon of 11 August 2011, Minera Yanacocha representatives said that the company attempted to install a security guard post on disputed property. An employee from Minera Yanacocha’s Lands Department told the Mission that on that day, he went to the location where the guard post was being installed and asked the family to leave the property. Police were said to be

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<sup>31</sup> Professional staff of the Institute of Legal Medicine conduct expert forensic investigations in support of the administration of justice. This includes medical examinations and the issuance of certificates, when requested by the public prosecutor for investigative and judicial purposes. The Institute’s definition of recent is within a period of 10 days.

present to protect company staff and machinery. The Lands Department employee said he did not observe Police aggression towards the Chaupes, even when the Chaupe family and other community members hurled rocks at Police. Both the company and the family provided the Mission with video footage, some of which show Police maintaining a formation separate from civilians. However, in both cases, the footage does not provide a complete and uninterrupted recording of the event. Minera Yanacocha's Lands Department employee also said that he observed a young woman trip and fall while running around the property.

Minera Yanacocha confirmed that on 11 August 2011, an excavator was stationed on the access road to the property. Their Lands Department employee said that the company had intended to use the excavator to prepare a site for a guard post on the property. Company representatives explained that the excavator did not leave the road, that company personnel, security staff and Police left the area, and that the family continued to occupy the property. Minera Yanacocha maintains that at no time was physical force applied to the Chaupe family on this date or at any other point in the conflict.

### **6.7.3 Police report of the events**

A Police report, dated 11 August 2011, indicates that on that day, an eight-man unit met Minera Yanacocha and SECURITAS staff on disputed property.<sup>32</sup> The report indicates that Colonel Coronado was told by a SECURITAS representative that when the machinery arrived there would be an eviction, because people had constructed a hut near to where the mine needed to place a container. The report indicates that at 5.20pm Police were attacked by civilians who threw stones, sticks and carried machetes, and that Colonel Coronado sustained an injury. In order to defuse the situation, Colonel Coronado instructed the machine operator to stop. He then indicated to SECURITAS that he did not have the power to enact an eviction without a judicial authorization. According to the report, the SECURITAS manager said that he would inform Colonel Coronado's superiors that he had not supported the eviction.

The Mission team met with Police leadership in Cajamarca to discuss the events of 11 August 2011 in more detail. The team was interested in clarifying whether the Police attending on this day were on normal duties or party to the Agreement with Minera Yanacocha to provide security services to the company while on leave. Police leadership responded that they did not have further information about that day's events, including the status of the Police attending. A formal request for information was made by the Mission to the Director of Police Operations. In response, the Mission was directed to the Public Prosecutor of Celendín. The office of the Public Prosecutor explained that no additional information was available about events on this day.

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<sup>32</sup> In a video filmed by the Chaupes, approximately 25 Police appear to be present in total.

#### **6.7.4 SECURITAS report of the events**

A two-page, undated SECURITAS report about the events of 11 August 2011 indicates that SECURITAS personnel met with the Police on disputed property to verify construction of a *choza*. The report describes the company directing a verbal request to Jaime Chaupe Lozano to leave the site, and his refusal on the basis that the property belonged to the Chaupe family. The report states that an excavator arrived to prepare a site to place a container next to the *choza* and that family and community members approached the machine in an attempt to stop it. The report continues to say that Police sustained injuries when civilians threw stones, sticks, and wielded a machete. It also states that a woman tripped, fell, and remained on the ground. Company, security, and Police personnel, machinery and vehicles, were reported to have left the area by 6pm. The report includes several photographs that depict Police entering Tragadero Grande and interacting with civilians. In the SECURITAS photographs, police are depicted in a defensive position as civilians wield sticks.

#### **6.7.5 Public Prosecutor's response to complaints by the Chaupes about the events on 11 August**

Members of the Chaupe family lodged multiple criminal complaints about the events on 11 August 2011 with the Public Prosecutor of Celendín. These complaints, lodged against Minera Yanacocha, SECURITAS, and the Police, relate to injuries sustained by Máxima Acuña de Chaupe and Jilda Chaupe Acuña, and abuse of authority by the Police. The Public Prosecutor bundled the complaints and on 26 January 2012, suspended the case. The Public Prosecutor concluded that Jaime Chaupe did not demonstrate possession of Tragadero Grande.

In considering the complaints of injuries, the Public Prosecutor concluded that:

- the injuries did not meet the threshold conditions of “serious injuries”, defined by Peruvian law as requiring upwards of ten days’ recovery
- the Chaupe’s claim that injuries were sustained on 11 August could not be confirmed because of the five-day gap between events of that day and the date of the medical certificates
- the person or persons who allegedly caused injury to the Chaupes could not be identified, which is required to prosecute a case.

On the complaints relating to abuse of authority, the Public Prosecutor found that:

- Police were acting to restore public order, not assisting to enact an eviction
- given the Agreement between Minera Yanacocha and the Peru national Police to protect company assets from illicit acts, the Prosecutor concluded that contact between the Police and the Chaupes was also in the service of protection, not to enact an eviction
- the Police cannot be accused of abuse of authority since individual Police were engaged by the company under the Agreement.

#### **6.7.6 Other occurrences on 11 August**

Three other developments are recorded as having occurred on 11 August 2011. First, the Public Prosecutor of Celendín dismissed the criminal complaint of aggravated usurpation that Jaime Chaupe Lozano had earlier laid against Minera Yanacocha. Second, Minera Yanacocha filed a criminal complaint of aggravated usurpation against the Chaupes in the Celendín Court. Third, the company

provided Peru’s Ombudsman with documentation relating to the two land transactions with the Campesino Community of Sorochuco to demonstrate purchase of the communal land. Records suggest that days earlier, Jaime Chaupe Lozano had complained to Peru’s Ombudsman that Minera Yanacocha had attempted to forcefully evict him from Tragadero Grande.

## 6.8 Legal complexity, escalation and defensive actions from 2011 to the present day

A complex set of civil actions, criminal charges, court determinations, and appeals stem from Minera Yanacocha’s efforts to evict the Chaupe family from the disputed property and the family’s resolve to remain on the property. Table 4 provides a brief summary of legal matters between 2011 and 2014.

**Table 4: Summary of cases, determinations and appeals**

<i>Year</i>	<i>Date/month</i>	<i>Legal matter</i>
2011	25 May	Jaime Chaupe Lozano files a criminal case against Minera Yanacocha for aggravated usurpation of Tragadero Grande
	10 August	Jaime Chaupe Lozano complains to Peru’s Ombudsman of forcible eviction attempts by Minera Yanacocha
	11 August	The Celendín Public Prosecutor closes the complaint lodged on 25 May by Jaime Chaupe Lozano against Minera Yanacocha for aggravated usurpation. Minera Yanacocha files a criminal complaint of aggravated usurpation against the Chaupe family.
	22 December	Minera Yanacocha requested a judicial mandate from the Celendín Court to evict the Chaupe family. This request is granted.
2012	29 October	Members of the Chaupe family are convicted of aggravated usurpation with a suspended sentence of three years imprisonment and a collective fine of 200 Nuevo Soles. The sentence is appealed.
2013	2 August	Superior Court of Cajamarca annuls the Chaupe family’s sentence and orders a new trial.
2014	5 August	Members of the Chaupe family are convicted of aggravated usurpation and receive a suspended sentence of two years and eight months and a fine of 5,500 Nuevo Soles. The sentence is appealed.
	17 December	Superior Court of Cajamarca revokes the sentence against the Chaupes and orders the cessation of “preventive eviction” and “provisional supervision” by Minera Yanacocha of Tragadero Grande. Minera Yanacocha presents a complaint to the Supreme Court of Justice of Peru on an issue of jurisprudence.

2015	17 February	<p>Minera Yanacocha presents a civil action to recover ownership for the portion of Tragadero Grande occupied by the Chaupes. Pending court decision on this civil action, the family is permitted to live in their adobe house and utilize an undefined two-hectare area surrounding the house for residency and subsistence purposes.</p> <p>The Celendín judiciary approves injunction request on 20 March 2015 prohibiting the Chaupes from utilizing the land on Tragadero Grande (with the exception of the two hectare area referred to above).</p>
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A key matter listed in Table 4 is the legal mandate, obtained by Minera Yanacocha on 22 December 2011, to evict the Chaupe family within 24 hours. Representatives from Minera Yanacocha explained to the Mission team that the company did not exercise this right when it was granted in 2011, in light of the Conga crisis and for fear of causing further violence.

Between 2011 and 2015 there is a notable period of inactivity in extrajudicial defense of possession actions by Minera Yanacocha in this particular case. During this intervening period, the Chaupe family commissioned a civil engineering consultant to conduct a boundary survey. The civil engineer's report, dated 2014, concluded that there were errors in the original survey work that demarcated property boundaries with respect to the first sale approved in 1995, and that Tragadero Grande did not fall within the area of communal land that was originally purchased by Minas Conga.

According to the family's legal representative, there is disagreement between the family and Minera Yanacocha about the location of Cerro Cocañes, which demarcates the northern boundary of the land purchased by Minas Conga. The Chaupe family claims that Tragadero Grande is located north of Cerro Cocañes. The family's legal representative explained to the Mission Director that this is the basis upon which the Chaupe family claims that they did not sell Tragadero Grande to Minas Conga. In a subsequent report, the same engineer examined the second sale approved in 1996 and re-affirmed the conclusion that demarcation errors affected the sale of Tragadero Grande.<sup>33</sup>

Extrajudicial defense of possession actions by the company re-commenced in 2015, after the Superior Court of Cajamarca revoked the criminal conviction against the Chaupe family, and the injunction was granted for the southern portion of the property. The northern portion of Tragadero Grande was subject to a separate civil claim initiated by Yanacocha. Pending the results of this civil claim, the company was not preventing the family from living on the northern part of the property in their adobe house and utilizing an undefined two-hectare area surrounding the house for subsistence purposes. The family's attorney argues that court decisions that are based on the earlier division of Tragadero Grande into two separate titles is prejudicial to the family because the Chaupes do not differentiate between the two properties.

Table 5 lists events on Tragadero Grande in 2015. The right hand column indicates subsequent actions confirmed as extrajudicial defense of possession by Minera Yanacocha. Each action is conducted on the basis of observing land-based activities in the area outside the exclusion zone (i.e. outside the two hectares surrounding the house).

<sup>33</sup> See: <http://cronicascajamarca.blogspot.com/2014/12/parcela-tragadero-grande-v-conclusion.html>

**Table 5: Actions on Tragadero Grande in 2015**

<i>Year</i>	<i>Date/month</i>	<i>Events</i>	<i>Response from Minera Yanacocha</i>
2015	3 February	Minera Yanacocha personnel visited Tragadero Grande with SECURITAS staff and removed the foundations of a 12 x 3 meter construction, located approximately 300 meters from the house.	Confirmed as extrajudicial defense of possession. <sup>34</sup>
	17 March	Minera Yanacocha personnel removed more than one hundred seedlings while the Chaupe family were away from the property.	Confirmed as extrajudicial defense of possession.
	29 April	Minera Yanacocha removed a guinea pig hutch. The company confiscated the guinea pigs and took them to the office of the Public Prosecutor. The Chaupe family claims that Minera Yanacocha personnel beat Máxima Acuña de Chaupe's daughter-in-law in the process. The animals were returned to the family a few weeks later.	Confirmed as extrajudicial defense of possession. Denies that any violence occurred.
	22 July	Minera Yanacocha staff remove crops planted by the Chaupe family on Tragadero Grande and level the ground.	Confirmed as extrajudicial defense of possession.
	12 August	Minera Yanacocha staff again remove crops planted by the Chaupe family and level the ground.	Confirmed as extrajudicial defense of possession.
	May/June	Minera Yanacocha erected a fence on the boundary of Tragadero Grande. A guardhouse was built opposite the family's adobe house, on another property. The Chaupe family believes that this guardhouse keeps them under surveillance.	Activities unrelated to extrajudicial defense of possession.
	16 November	Daniel Acuña alleges that when no-one was home, Minera Yanacocha personnel entered the adobe house and destroyed an earthen oven that the family had recently renovated.	Denies entering the adobe house.

The Chaupe family also told the Mission team that they have received intimidating phone calls and other personal threats since the beginning of the dispute. In 2015, an allegation of a direct exchange with Paulino Ayuti, a contractor hired by Minera Yanacocha as a manual laborer, was reported in the media. In an interview with the Mission team, Máxima Acuña de Chaupe said, “He told me that if he

<sup>34</sup> According to Government of Peru documents sighted by the Mission, 35 Police were present at this event.



*sees me here [on the property] again, he will finish me off.*<sup>35</sup> On this occasion, Minera Yanacocha investigated the claims, and found no evidence to substantiate the claim. Máxima Acuña de Chaupe also alleges that, on one occasion, a group of men with balaclavas entered the house thinking that she was alone and with the intent of killing her, but failed because she was not there. These allegations have been described in the media, but were not reported to authorities. The Mission was unable to validate these claims. Reflecting on her situation, Máxima Acuña de Chaupe said to the Mission team, *“It is very hard to endure this. It seems Yanacocha wants to take my life only because I am defending my rights.”*

Given the status of the conflict over the Conga project and the significance of the family’s claims of human rights violations, the NGO community escalated the case to international fora. Máxima Acuña de Chaupe and members of the Chaupe family are included as beneficiaries of the IACHR’s *Precautionary Measure 452/11*, as part of a wider effort to protect a group of protesters against the Conga project (i.e. not directly related to the land dispute).<sup>36</sup> The IACHR’s mandate is to promote the observance and protection of human rights in the Americas by members of the Organization of American States, which includes Peru. In its determination, delivered on 5 May 2014, the IACHR found credible evidence to consider the rights of 54 Conga protesters to be at risk. IACHR determinations are not taken as a confirmation that human rights violations actually occurred.

Peru’s Ministry of the Interior is responsible for reporting to the IACHR on actions and measures taken by the state to comply with IACHR precautionary measures. The department of the National Office of Interior Government (“ONAGI”) has the mandate to grant personal guarantees with the purpose of protecting individuals confronted by threats, coercion, harassment, violence or family violence, and any other act which threatens the integrity, peace and tranquility of the individuals concerned. Regional and local representatives of the Ministry of the Interior are responsible for implementing this mandate.

After visiting Tragadero Grande in February 2015 to investigate complaints lodged by the family, Peru’s Ombudsman lodged a specific request with ONAGI to provide personal guarantees to the Chaupe family to protect their rights. The Ombudsman’s office recommended that all necessary measures be adopted to guarantee the integrity and lives of Máxima Acuña de Chaupe and her family. In response to the Ombudsman’s recommendation, Ministry personnel also visited the Chaupe family to investigate allegations of harassment by Minera Yanacocha. In February 2015, the Ombudsman also urged the Governor of Cajamarca to expedite the IACHR guarantees. The Governor did not find a basis to grant guarantees at this time.

ONAGI took into account the IACHR resolution and additional documentation provided by NGOs and, on 8 April 2015, granted the Chaupe family personal guarantees and guarantees of possession.

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<sup>35</sup> This single issue was logged in the operational-level grievance mechanism after the Mission team’s first in-country visit. After examining the issue, the company concluded that there was no evidence to support the claim and the matter was closed out.

<sup>36</sup> A Precautionary Measure adopted through an IACHR resolution is derived from the Organization of American States Charter. The Rules of Procedure specify that, “in serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons [...]” IACHR resolutions can include the obligation for member states to implement measures to protect the rights of people judged to be “at risk”.

Minera Yanacocha appealed this decision. Guarantees about possession were subsequently removed. ONAGI reconfirmed the personal guarantees on 29 September 2015 and ordered the withdrawal of Police from the disputed property, “with the exceptions permitted by the law or with the authorization from the possession holders”.

In a 4 March 2016 meeting, Dr Edwin Edquen Sanchez, the Governor of Cajamarca, told the Mission team that the Government of Peru had assumed responsibility for protecting the Chaupes through the ONAGI guarantee. The Governor said that the Police had been withdrawn from the area. He also indicated that his office was considering the role of Police in the protection of the Chaupe family and would prepare implementation guidelines for the guarantee. At the same time, a new government policy came into effect precluding agreements between the Police and corporate entities. At the time of finalizing this report, the Government of Peru had confirmed special measures to guarantee the Chaupe’s safety and was moving towards implementation. No official report from a relevant authority about protective measures was made available to the Mission.

## **7 Responses to Mission questions**

This section addresses the four Mission questions. These questions were contextualized and listed in Section 1. The Mission team’s responses to these questions reflect a process of interpretive evaluation at the conclusion of the fact finding process, and a weighing up of the information at hand.

### **7.1 What was the process of land acquisition by Minera Yanacocha, and was the process of land acquisition appropriate, reasonable and in conformance with applicable international standards?**

The process of land acquisition by Minera Yanacocha occurred in 2001 when it purchased Minas Conga. Minas Conga had earlier acquired land from the Campesino Community of Sorochuco. Records show two separate land transactions in 1995 and 1996 – the first transactions of this kind to be entered into by this community. Minas Conga also recognized the rights of individual possessors and negotiated with them directly to secure possession.

Minas Conga negotiated with the community about the area of land it sought to purchase and the terms of sale. Documentary and testimonial evidence confirms that community approval was obtained and that the community received the benefits they were promised. Available evidence also suggests that Minas Conga followed due customary process and negotiated with a group of affected individual possessors. There is no suggestion or evidence of coercion or intimidation during these transactions and descriptions of the process by those involved ostensibly suggest a willing buyer/willing seller transaction.<sup>37</sup>

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<sup>37</sup> Notwithstanding this conclusion, the Mission notes findings from a 2015 IFC CAO Compliance Appraisal Summary report, indicating, among other things, that the IFC “became aware of a range of grievances from former landowners in the area of the mine, and has acknowledged shortcomings in its client’s approach to land acquisition, particularly raising questions as to whether the classification of land purchases as “willing buyer–willing seller” was generally applicable as earlier assumed”. See: [http://www.cao-ombudsman.org/cases/document-links/documents/CAOAppraisalofYanacocha\\_May292015\\_forweb\\_000.pdf](http://www.cao-ombudsman.org/cases/document-links/documents/CAOAppraisalofYanacocha_May292015_forweb_000.pdf)

In terms of whether the land acquisition process conformed to international standards, it is important to note that two decades have passed since the early land transactions. While there are legacy issues that must be understood in the present day, there were few international standards to comply with in 1996, or indeed in 2001. Minera Yanacocha acquired Minas Conga, well before the advent of the UNGPs and the *IFC Performance Standards* and before Newmont had formulated its corporate architecture for sustainable development. To conform to today's standards, there would have to be greater assurances that the negotiation process was inclusive, equitable and provided possessors with access to information.

For a process to be reasonable, at this time, and in this context, the land acquisition would have to have included negotiation at the communal level and with individual possessors. On the balance of testimonial and documentary information provided to the Mission, from a procedural perspective, a two-phase negotiation was undertaken. On this basis, the Mission considers the process of land acquisition by Minas Conga to have been reasonable, given that the company negotiated at the communal level, and recognized the customary rights of possessors to negotiate.

Notwithstanding that the overall process appears to have been reasonable on the basis of conducting a two-phase process, an outstanding question in the land acquisition process is: who negotiated the sale of possessory rights to Tragadero Grande at the time of the Minas Conga land purchase? Jaime Chaupe Lozano and Máxima Acuña de Chaupe were registered possessors after their purchase of the property from a family member in 1994. There is documentary and testimonial evidence to support this claim. The family said that at no time have they sold, rented, abandoned or put any other person in charge of Tragadero Grande. However, Samuel Chaupe Rodriguez – father of Jaime Chaupe Lozano and father-in-law to Máxima Acuña de Chaupe – is identified in Minas Conga documents as the possessor, and recorded as selling possessory rights of Tragadero Grande to Minas Conga in 1996. The evidence on this central question is inconclusive.

The question of whether Minera Yanacocha acted appropriately is relevant in 2011, when the parties encountered each other on the property for the first time. At that time, the company considered Jaime Chaupe Lazano and Máxima Acuña de Chaupe and other members of the Chaupe family to be “invaders” of their property, and sought to defend its possession by evicting them.

## **7.2 What are the facts relevant to complaints that human rights have been violated, and do NGOs and Newmont have access to all of the relevant information in this case?**

The facts relevant to complaints that the human rights of members of the Chaupe family have been violated are incomplete. No single party appears to have access to all of the facts in this case because critical information is missing. The Mission did not discover conclusive evidence that Minera Yanacocha violated the human rights of members of the Chaupe family. Specifically, there is no conclusive evidence relating to use of force by Police on 11 August 2011. Medical certificates confirm that injuries were sustained, but they do not verify the exact date or source of the injury. Video footage and photographic records are also inconclusive. No new evidence was discovered about events on this day. The limited nature of investigation by the company and other competent authorities is an ongoing constraint in establishing the facts of the case.

The following contextual factors associated with this dispute were considered by the Mission:

- pressure associated with exercising extrajudicial defense of possession within a specified time period
- inequitable access to protections in extrajudicial defense of possession actions (i.e. in this case, Police are present to prevent conflict on the assumption of resistance by the family and that the security of company personnel may be put at risk)
- pre-existing factors relating to the vulnerability of the family
- pre-existing conflict associated with the Conga project, including violent protest.

The Police and private security have enabled protections for Minera Yanacocha. At different points in the conflict, the Chaupe family, the Ombudsman of Peru and the IACHR all indicated that state measures of protection for the family required strengthening. These measures were not strengthened until after the Mission had concluded its fact finding. The Mission concludes that in light of factors relating to the vulnerability of the family and inequitable access to state protections, and gaps in the company's approach to analyzing material aspects of the case, the human rights of the family have been at risk from the outset of the land dispute and have continued to be put at risk as the conflict has unfolded.<sup>38</sup>

The company did not demonstrate to the Mission that it had considered the potential for human rights violations that could result from its decisions or actions in this case. While this is not to be taken as evidence of corporate abuse of human rights, it is under these conditions that human rights abuses are more likely, and where the consequences for all parties can be significant.

### **7.2.1 Events and actions**

Most of the allegations of human rights violations correspond to dates when Minera Yanacocha was active on Tragadero Grande for defense of possession actions. Newmont views these actions as lawful measures undertaken to protect their business interests, whereas the Chaupes view these actions as violations of their human rights. Minera Yanacocha confirms that its defense of possession actions included eviction attempts and removal of family assets (i.e. crops and constructions) that were situated in the exclusion zone. Minera Yanacocha also indicates that it has defended possession with the protection of private security and in the presence of Police who were individually contracted by the company to provide security services to the company. Peruvian law provides the company with the right to seek Police protection during these actions. The family's advocates have sought protection for the family. State guarantees of protection were granted, but had not been implemented by the state when the Mission concluded. This is a key aspect of the Mission's finding that human rights were at risk from the outset of this dispute.

Parties agree that the Chaupe family has experienced attempts to forcefully evict them from Tragadero Grande (i.e. against their will). Parties also agree that eviction attempts occurred without an opportunity for the family to enter into dialogue with Minera Yanacocha about their claims of possession. The company did not attempt to open a dialogue with the family until 2015. The

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<sup>38</sup> The UNGPs state "human rights risks are understood to be the business enterprise's potential adverse human rights impacts." For the purposes of this report the term "at risk" indicates that the Chaupe's human rights were subject to potential adverse impacts.

Chaupe have resisted the company's eviction and defense of possession actions on the basis of a dispute about possession. While advocates for the family argue that the acquittal of criminal charges against them represent a tacit recognition of the family's possessory rights, Minera Yanacocha representatives vigorously disagree and the company has appealed the case. At the time of writing this report, the rights of possession over Tragadero Grande were yet to be determined by a court of law.

The Mission was also made aware of a number of allegations by the Chaupe family, including having received death threats and being subject to invasive surveillance. While allegations of intimidation are disturbing, the Mission was not presented with evidence to confirm the validity of these claims. As with other allegations, these claims are cause for concern and, once reported, would warrant investigation by competent authorities.<sup>39</sup>

### **7.2.2 Charges and cases**

After their first encounter on Tragadero Grande, the Chaupe family immediately brought criminal charges against the company for aggravated usurpation. It is also a fact that the company responded with an equivalent set of criminal charges. Additional charges, civil and criminal, were laid by both parties, raising the legal stakes of the dispute. As a result of these legal actions, the case has progressively escalated within Peru's judicial system. As the case escalated, support from the NGO community gathered momentum and the Chaupe case was bundled into a broader claim brought before the IACHR. This claim resulted in guarantees of protection for specified protesters against the Conga project.

### **7.2.3 Company response to allegations**

Minera Yanacocha's response to the Mission's questions about allegations of human rights violations was to state that the case is not a human rights matter, but rather, a land dispute and therefore a legal matter. The company's position is that actions taken in defense of possession are a business obligation and are supported by Peruvian law. The Mission concludes that in subordinating human rights considerations, Minera Yanacocha has failed to actively and systematically consider whether, and if so how, its decisions and actions put at risk the civil and political rights of the family, including their physical security and freedom of movement. The Mission acknowledges that some tactical decisions made by Minera Yanacocha personnel may have avoided violence, such as the decision not to exercise legal rights under the court order awarded to the company in December 2011. Another example is the decision to conduct defense of possession actions when the family is temporarily away from Tragadero Grande. However, these tactical decisions do not represent a systematic approach to assessing and addressing human rights risk.

The focus of this Mission has largely been on civil and political rights. It is also important to recognize that human rights include economic, social, and cultural rights. At no point has Minera Yanacocha actively and systematically considered the economic, social, and cultural rights of the family, such as

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<sup>39</sup> Subsequent to the Mission, Newmont provided information that on 29 September 2015 and 5 July 2015 Yanacocha registered two complaints by Máxima Acuña de Chaupe in its grievance management system. After examining the complaints, the company concluded that there was no evidence to support the claims.

those rights relating to livelihoods and an adequate standard of living. The company's lack of attention to the full suite of universal human rights form the basis of allegations by the family, and the concerns expressed by credible human rights organizations about the vulnerability of the family, their dignity, and their way of life.

At present, Newmont and Minera Yanacocha have a clear set of obligations under internal and international standards to consider the human rights dimensions of this case. When the dispute first emerged Newmont had committed to uphold fundamental human rights through its ICMM membership and had previously applied a *Human Rights Awareness Standard*. Moreover, Minera Yanacocha had referenced the *Universal Declaration of Human Rights* in its *Statement of Commitment*.<sup>40</sup> Notwithstanding these commitments, the Mission team did not sight evidence that Minera Yanacocha had sought to actively and systematically consider the potential adverse human rights impacts associated with the Chaupe case.

#### **7.2.4 Discovery of facts**

Discovery of facts requires an active effort to acquire, interrogate and analyze relevant information. Newmont and Minera Yanacocha have made numerous efforts to understand the broader human rights implications of their business activities, including a gap analysis and impacts assessments.<sup>41</sup> Until the Mission was initiated, the company had not actively sought to discover facts and establish an understanding of human rights risks in this particular case. There is no information, for example, to suggest that Minera Yanacocha considered the human rights dimensions of forced eviction from the Chaupe family's perspective. The limited nature of investigation by the company or competent state authorities is also a constraint in establishing the facts of the case.

#### **7.2.5 Access to remedy**

Ensuring access to remedy is a requirement of Newmont's internal standards, and forms the basis of other international standards to which the company adheres. Aside from assisting victims of human rights abuse, grievance mechanisms provide an avenue for learning about the human rights impacts of past actions and forecasting future risks. While Minera Yanacocha has an operational-level grievance mechanism in place, the company failed to self-employ this mechanism to systematically record allegations of human rights violations, which, according to the procedural requirements of the mechanism, would have triggered an early, internal investigation. This is a lost opportunity in terms of understanding the issues at hand, seeking resolution and avoiding future risks.

#### **7.2.6 Baseline conditions**

It is the view of the Mission team that the human rights of members of the family have been at risk since the first Tragadero Grande eviction attempt in May 2011. Aside from what has been outlined above, the baseline conditions at this time should have triggered a precautionary approach. The Chaupes are a *campesino* family with limited levels of education who rely significantly on subsistence farming and are located in an isolated and remote location, prone to harsh weather

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<sup>40</sup> According to a company *Five Star* report, Minera Yanacocha introduced this reference in 2005.

<sup>41</sup> According to a company *Five Star* report, the company conducted a human rights assessments in 2005, well before the appointment of the UN Special Representative on Business and Human Rights in 2008.

conditions. While there may be a legal mandate to do so, from a human rights perspective, it is problematic to forcefully evict this family, in the absence of dialogue, in the presence of private security and armed Police, and without the presence of a third party.

### **7.3 Has Minera Yanacocha's conduct conformed to the Voluntary Principles on Security and Human Rights?**

Newmont has participated in the Voluntary Principles since 2002. In 2014, international NGOs called for Newmont's membership to be revoked. In considering Minera Yanacocha's conformance to the principles in what is a conflictive and politically charged operating environment, the Mission team concludes that while there is general alignment, in the Chaupe case, there are material gaps.<sup>42</sup>

#### **7.3.1 Commitments**

In each of its Annual Reports about the Voluntary Principles, Newmont has confirmed a commitment to implementing the principles throughout its global operations. The company's 2015 report states that the principles provide a valuable framework for guiding the company's approach to security and ensuring respect for human rights. To this end, the company's Security Department recently reviewed and updated its global standard outlining the company's aim of providing security in accordance with the Voluntary Principles. This global standard requires Newmont's regional security functions to take responsibility for the management of internal and private security contractors, and memorandums of understanding with public security agencies.

#### **7.3.2 Implementation**

The Voluntary Principles require that participants actively promote the principles. Minera Yanacocha conducts promotional activities through corporate communications and participation in the *Grupo Impulsor* in Peru. The company has also sought to promote the principles in its engagements with the Government of Peru. In a 2013 review of its Agreement with Police, efforts were made by the company to secure the government's commitment to the Voluntary Principles. While this was not accepted by the government, it has continued to engage in the *Grupo Impulsor*.

Minera Yanacocha indicated that it provides regular information about the Voluntary Principles to SECURITAS staff and briefings before specific security operations.<sup>43</sup> The aim of these sessions is to ensure that SECURITAS staff understand the company's commitments to the principles and appropriate use of force. Moreover, it is company policy for staff and contractors to maintain "a defensive posture" in all security operations. SECURITAS staff are equipped with Plexiglas shields and non-lethal weapons.

Minera Yanacocha also provides regular information to Police about the Voluntary Principles, including appropriate use of force. According to interviews with Minera Yanacocha staff, Police are only permitted on company property after receiving an orientation to the Voluntary Principles. Following the termination of the Agreement with police in September 2015, Minera Yanacocha is no

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<sup>42</sup> The term 'material' indicates a relevant or important matter. This usage is broader than traditional measures of financial materiality and reflects Newmont's use of the term in its sustainability reports.

<sup>43</sup> The Mission sighted photographic records of several briefings.

longer in a position to provide briefings to Police prior to a specific operation. Minera Yanacocha indicated that they instead speak to the commanding officer to inform or remind them of the company's commitments to the Voluntary Principles, and ask that field officers are briefed.

Records indicate that Minera Yanacocha conducts thousands of training sessions with employees, contractors and state agencies, every year. Records and interviews also indicate that the company has a regular program of community outreach and hosts an annual workshop on the Voluntary Principles, which includes rondas, community leaders and members, Police, military, government, universities, and other companies.<sup>44</sup>

Following events on 11 August 2011, information available to the Mission suggests that on occasion, security teams have sought to avoid the risk of physical confrontation in defense of possession actions on Tragadero Grande. For instance, security staff interviewed by the Mission team explained that at a tactical level, decisions have been made to conduct extrajudicial defense of possession actions when family members are temporarily away from the property.

### **7.3.3 Case-specific gaps**

The Voluntary Principles require that risk assessments are conducted because they are, “critical to security of personnel, local communities and assets; the success of the company's short and long-term operations; and to the promotion and protection of human rights”. In response to Mission questions about risk assessments specific to the Chaupe case, Minera Yanacocha indicated that it does not conduct risk assessments in specific cases. As such, a risk assessment was not undertaken to guide security service providers, or the organization more broadly, in the management of the Chaupe case.

The Voluntary Principles also call for identification and understanding of the “root causes” of local conflicts. In its 2015 Annual Report about the Voluntary Principles, Newmont confirms this requirement for matters that cannot be resolved at the site level.<sup>45</sup> The Mission team did not sight evidence that a root cause analysis had been conducted at any stage of the Tragadero Grande conflict. It was not until 2015 – by which time the dispute had escalated into a multi-party conflict with international profile – that Minera Yanacocha initiated an internal analysis. While senior management explained that this analysis extended beyond legal risk and included reputational risk, it does not represent a root cause analysis of conflict. Senior management said that the idea of initiating dialogue with the family emerged from this exercise. The case was also elevated to the corporate office, at which point the Fact Finding Mission was initiated through RESOLVE.

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<sup>44</sup> Throughout Peru, rondas are a form of customary governance that operates alongside the formal civil administrative municipal structures. Literally the term *rondas campesinas* translates as ‘peasant patrols’.

<sup>45</sup> Newmont's report to the Voluntary Principles plenary for 2015, p. 4 states that “A root cause analysis is also required for those matters that are not resolved at the site level. In addition, methods for resolving complaints or escalating to external parties, official agencies or judicial processes are included in the global S&ER standard.”



A number of other security-related matters came to the attention of the Mission and are cause for concern:

- In an extrajudicial defense of possession operation related to the Chaupe case, SECURITAS was photographed using Police equipment. Actions that create confusion between the role of state and non-state security providers are not consistent with the Voluntary Principles. At the time of the Mission this incident was under investigation by the Government of Peru.<sup>46</sup>
- Information about events on 11 August 2011 is unclear. The Chaupe family indicates that they sustained injuries and were not offered medical assistance. Company and SECURITAS personnel indicated that no physical confrontation occurred. However, in the face of material indications of injuries and allegations of human rights violations on 11 August 2011, the company should have been more diligent in documenting and examining the event.
- There are a range of other incidents in the immediate vicinity of Tragadero Grande that have been interpreted by the family as menacing gestures by the company (e.g. construction of a fence for the alpaca project, security presence, surveillance etc.). These incidents have caused distress to the Chaupe family.

In the context of the Tragadero Grande conflict and Newmont's membership of the Voluntary Principles, these matters all warrant careful investigation by Minera Yanacocha.<sup>47</sup>

#### **7.4 Are there areas where Minera Yanacocha deviated from Newmont policy requirements and international standards?**

Newmont policy and relevant international standards aim to level the playing field by ensuring that corporate power is not exercised in a manner that diminishes the rights, needs, and interests of others. Collectively, these instruments provide an important mechanism for safeguarding people who are vulnerable, at risk, or otherwise unable to protect themselves. In the Mission's view there are several areas where Minera Yanacocha has not sufficiently pursued this underlying intent.

Striking a balance between corporate legal protection, respect for human rights, and community-level dialogue is a core challenge in this case. Previous studies identified this as a chronic issue for the company. While business has a right to protect its commercial interests and pursue matters in a court of law, when there is an imbalance of power, international standards require dialogue and engagement in dispute resolution. In this case, the other party was a *campesino* family with limited resources. In the absence of effective dialogue, the land dispute escalated into a protracted legal battle and a multi-party conflict. Newmont demonstrated to the Mission that efforts were made to engage international NGOs about the case once it had escalated. However, on the basis of available information, the Mission concludes that Minera Yanacocha did not adequately explore opportunities

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<sup>46</sup> The Voluntary Principles suggest that internal investigations can complement other investigative processes.

<sup>47</sup> Subsequent to the Mission, Minera Yanacocha provided case reports on two such events, as described in footnote 41.

to open early dialogue with the Chaupe family. Information also suggests that as the conflict escalated, the scope for engagement narrowed.

International standards relevant to this Mission emphasize the need for corporate actors to collect and store information in ways that support responsible decisions and actions. Early in the Mission, Minera Yanacocha representatives told the team that information about Minas Conga's negotiations with possessors was not available. Relevant documents relating to the purchase of possessory rights by Minas Conga were not located and provided to the Mission until February 2016. The reasons for this internal delay are unknown. However, the delay suggests that the company did not know it had this information. In this sense, the decision to consider and treat the Chaupes as illegal invaders was made by key personnel without access to critical information. The issue of company representatives taking decisive action with inadequate access to information is an issue that extends across the land dispute, responses to allegations of human rights violations, and the company's role in the escalation of this conflict. In the Mission's view, discussion of this information with the Chaupes when the dispute first emerged might have contributed to an early solution, through dialogue.

The Mission concludes that Minera Yanacocha's response to an event of concern to key stakeholders fell short of expectations, Newmont policy, and key considerations embedded in relevant international standards.

## **8 Concluding remark**

Newmont's commissioning of the Yanacocha Independent Fact Finding Mission represents an initiative of human rights accountability. A commitment to the public release of findings was made at the outset and the governance arrangements agreed between RESOLVE and Newmont enabled the Mission to work independently and engage the family and the company without bias. The Mission has surfaced information that was not previously available to all parties and has highlighted where gaps remain. This provides a basis for engagement between the parties about the facts of the case.

In the view of the Mission team, finding a pathway towards a solution in this case has been delayed by a dominant legalistic orientation, a lack of willingness to gather information on the root cause of the situation, and a preference for litigation over dialogue. Minera Yanacocha's stated aim of opening a dialogue with the Chaupe family appears to be inconsistent with its actions. A starting point for a conversation would be to understand the family's living conditions, talk to them about their situation, and commit to jointly clarifying gaps in the original land acquisition process. The Fact Finding Mission represents an effort by Newmont to advance understanding about the case. This effort will only contribute to a solution if there is willingness on the part of the company to reset the situation and open up a dialogue, and this is met with a positive response from the family.

## **Annex 1. Tragadero Grande events timeline**

1990 2000 2010 2011 2012 2013 2014 2015 2016

- Chaupe land purchase
- Minas Conga land purchase
- MYSRL acquires Minas Conga
- Eviction of Chaupes
- Defense of Possession
- Allegation of excessive use of force

## TRAGADERO GRANDE EVENTS TIMELINE

*This timeline is a selection of illustrative events, it is not exhaustive of all relevant events in the case.*  
 MYSRL — Minera Yanacocha Sociedad de Responsabilidad Limitada

- Tragadero Grande site events
- Judicial & Government events
- Conga Project & Regional/National events
- MYSRL Reviews

- Minas Conga/CEDEMINE discovers gold
- Conga Project EIA approved

Chaupe charges against MYSRL investigated and dropped

- Chaupe complaint to Ombudsman

Chaupe charges against MYSRL investigated and dropped

MYSRL charges against Chaupes investigated and result in conviction

- MYSRL receives judicial mandate to evict within 24 hours (does not do it)

Chaupe conviction, appeal and acquittal

Chaupe conviction, appeal and sentence annulled

- MYSRL registers criminal complaint against Chaupes for plowing land with tractor

MYSRL appeals nullification to supreme court of Peru

IACHR precautionary measure 452/11

- Chaupes lodge criminal complaint against MYSRL and police; Ombudsman office visits Chaupes
- Ombudsman requests security measures for Chaupes
- Ombudsman requests Ministry of Interior to guarantee life and integrity of Chaupes
- Ministry of Interior grants personal and possessory guarantees for Chaupes

Personal Guarantees confirmed

- Newmont CEO says conditions not there for Conga mine

- 800 demonstrators inspect lakes and build structure at Tragadero Grande

Suspension of Conga Mine Project

Independent Fact Finding Mission

- Community Relationships Review

- Voluntary Principles Review

- Listening to the city of Cajamarca Study

1990 2000 2010 2011 2012 2013 2014 2015 2016