



Newmont Mining Corporation Response

Report of the Independent Fact Finding Mission

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

October 18, 2016

Introduction

In 2011, Minera Yanacocha was progressing development of the Conga copper and gold project in northern Peru after the Ministry of Energy and Mines (DGAAM-MEM) and the Ministry of Agriculture (MINAG) approved Conga's Environmental Impact Assessment (EIA) in October 2010. The EIA also was provided to 11 other government agencies for input and comment prior to its approval, along with a robust public consultation process including more than 200 workshops with communities of the direct area of influence of the project. As Newmont announced earlier this year, Newmont does not anticipate developing Conga for the foreseeable future.

On May 24, 2011 the Chaupe family, led by Jaime Chaupe Lozano, illegally trespassed on Yanacocha property and later in August 2011 built a small grass hut (choza) on property lawfully purchased by Conga in 1996 and 1997. In response, Yanacocha legally exercised its obligations as a land owner to protect its property rights, as required by Peruvian law, and initiated legal action to restore company possession. This represented the start of what has become a protracted dispute over land ownership in the Conga project area as the legal processes run their course.

Over the last few years, international non-governmental organizations (NGOs) claimed that the human rights of Chaupe Family were at risk because of the land dispute. NGOs expressed concern that these risks to the Chaupe family were connected to Yanacocha's responses to property incursions as it sought to protect its property rights. Similarly, questions were raised about Newmont's adherence to international human rights standards. In particular, it was claimed that Yanacocha's security agreement with Peruvian National Police was inconsistent with the Voluntary Principles on Security and Human Rights.

The Mission

In the fall of 2014, U.S. based Newmont Mining Corporation (51.35% owner of Minera Yanacocha) began consulting with a number of international NGOs requesting guidance and support for a credible process to evaluate allegations associated with the land dispute. In May of 2015, Newmont formally commissioned RESOLVE – an independent nonprofit organization dedicated to multi-stakeholder consensus building – to conduct an [Independent Fact Finding Mission](#) to examine the issues surrounding the land dispute. The process sought to establish a fact-based understanding of the situation and provide Newmont with an independent examination of its adherence to the Voluntary Principles on Security and Human Rights throughout the land dispute. Specifically, the Mission was designed to address four key questions based on the various issues raised by NGOs:

1. What do the facts say as to the land acquisition process? Was the process of land acquisition by Yanacocha legal, appropriate and reasonable?

2. Has Yanacocha's conduct conformed to the Voluntary Principles on Security and Human Rights?
3. What are the facts relevant to the complaints that human rights have been violated? Do NGOs and Newmont have all of the relevant information with regard to the Chaupe situation?
4. Are there areas where Yanacocha deviated from Newmont policy requirements and international standards?

RESOLVE established an independent team led by former Canadian Ambassador to Colombia, and Director of RESOLVE's Resource Diplomacy program, Tim Martin. Mr. Martin appointed two other team members from the civil society community (Myriam Méndez-Montalvo) and with mining sector experience (Miguel Cervantes Rodriguez).

An Advisory Group of experts with NGO, human rights and industry knowledge was established to assure the independence, integrity and credibility of the review. Mr. Martin and the team established terms of reference (TORs) which were approved by the consensus. The Advisory Group reviewed and commented on the terms of reference for the review, the program of work and the final report.

RESOLVE received funding for the Mission through a project agreement with Newmont requiring the company to pay unrestricted, scheduled installments as described in the budget section of the report. These funds were under the sole authority of RESOLVE. All project funds were committed to RESOLVE for use by the Mission. RESOLVE provided Newmont with reports on how funds were used but Newmont had no control over the use of funds or direction of the project.

As described by the Mission, the report and findings were based on document analysis, interviews with key individuals (including the Chaupe family and their supporters), and discussions with a range of other stakeholders. Information was accepted from the Chaupe family, Newmont, Minera Yanacocha, NGOs, and the Government of Peru, and other documents were accessed by the Mission team from a range of independent sources.

The Mission team conducted three visits to Peru to collect information and interview key individuals. 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, other community members, officials with the Government of Peru (including the police), local, national and international NGOs, and academics with expertise in the subject of rural land tenure in Peru.

Findings and Opportunities for Improvement

[Newmont appreciates that the report](#) identified a number of findings, including areas for improvement related to the land dispute in the areas of security management and understanding risks to human rights. The Mission team also acknowledged the complex circumstances surrounding the dispute and the importance of understanding facts, and using available management systems, risk and conflict resolution tools to better understand, assess and manage outcomes. The report is also clear that a number of key facts in the dispute remain unclear.

Based on issues highlighted by the report, Newmont and Yanacocha have identified the following areas for improvement:

Improvement Area 1: Human rights due diligence practices need to be improved and more systematic in conflict scenarios to account for rapidly changing conditions on the ground.

Improvement Area 2: Security related risk assessments are being conducted at some level; however, root cause analysis and incident investigation processes and procedures need to be improved to better demonstrate alignment with the Voluntary Principles on Security and Human Rights.

Improvement Area 3: Conflict scenarios require more robust procedures including situational analyses focused on dispute resolution, negotiation and de-escalation approaches that can be implemented in parallel to legal mechanisms.

Improvement Area 4: Complaint and grievance mechanism processes should be reviewed and improved to be more responsive to allegations of human rights violations and abuses to ensure investigations are being initiated and documentation developed to demonstrate responses and actions where appropriate.

Newmont and Yanacocha have committed to internally socializing the report and its findings in order to improve company performance. While we may not fully agree with some of the interpretation of events as described in the report, we recognize that the company can improve its performance in certain areas. The company has many of the components required to deliver improved performance; however, we clearly acknowledge a need to formalize, systematize, and better integrate those practices across functions in a more transparent manner that is conducive to verification. Newmont and Yanacocha will develop an action plan to address these areas for improvement in a transparent and collaborative manner. We will also continue to evaluate other improvements we can make.

Next Steps

Newmont and Yanacocha have identified the following steps for addressing both the land dispute with Chaupe family and general areas for improvement. Yanacocha has begun the process of developing detailed action plans based on the phases described below.

Step 1: Intensify efforts to hold a good-faith dialogue with the Chaupe family to resolve the land dispute

Step 2: Establish detailed action plans and accountability for implementation of improvement areas – transparently report on progress and implementation

Step 3: Conduct monitoring/reporting of performance with independent assurance that appropriate improvements have been made and integrated into management systems

Concluding Observations

The Report of the Independent Fact Finding Mission represents an insightful collection and analysis of facts related to the Chaupe land dispute. We continually strive in good faith to be respectful of our stakeholders and neighboring communities, which is why we commissioned RESOLVE to establish an independent body empowered to objectively examine the situation and publicly disclose their findings.

Newmont appreciates the Yanacocha Independent Fact Finding Mission's work over the last 18 months, and we intend to use their report as the basis for achieving a responsible solution that is consistent with our values, standards and international commitments. We also recognize that in order to move beyond the current stalemate we must be open to understanding all perspectives.

It is our sincere hope that this 18-month long process and the final report will open pathways to begin a dialogue with the Chaupe family on reaching a fair and responsible resolution to the dispute with Yanacocha. Over the next few weeks, and beyond, we will work in good faith to socialize the findings of the report and our action plan with stakeholders so we can chart a constructive path forward.

Acknowledging the Report and Mission

Newmont and Yanacocha wish to thank the Mission Team and the Advisory Panel for their work and candor over the last 18 months. We would also like to take this opportunity to thank the members of the Chaupe family, their supporters and all of the other individuals and entities who participated in the interviews and cooperated with the Mission.