

ATTACHMENT THREE

Introduction

The following responses have been developed specifically to address allegations made in a letter from the Special Rapporteurs within the Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council to the Head of the Permanent Mission of Ghana at the United Nations Office in Geneva. This letter was passed onto Newmont by the Government of Ghana through the Ministry of Foreign Affairs and the Attorney-General's Department.

Allegation #1: "In 2006, Newmont's application to exploit the Akyem site was reportedly turned down by the EPA, which expressed concern about the serious impact that mine's rock dump waste would have on the biodiversity of the forest."

Response #1: This is inaccurate and a distortion of the facts.

- The Ghana Environmental Protection Agency (EPA) did not turn down Newmont's Environmental Impact Study (EIS) document. Rather, NGGL voluntarily withdrew a draft document on EPA's advice that the company should re-evaluate the Akyem project in view of the Agency's concern about the pit size and the issue of partial backfilling at closure and the nature and location of the waste dump. This is precisely the nature and purpose of Ghana's Environmental Assessment law and process.
- The company did exactly what the EPA asked and reassessed and evaluated the project's potential to be developed in a manner permissible by the EPA and, at the same time, economically viable to Newmont. Final public hearings were held by the EPA in July 2008. A revised EIS document was completed in draft form in September 2008 and in final form in November 2008 and submitted in December 2008. Following both EPA and independent external assessment and consideration, the EIS was approved by EPA in February 2009.

Allegation #2: "Despite this, in early 2009, the Ministry of Mines, Lands and Forestry's reportedly granted a permit to the NGGL."

Response #2: This is incorrect as indicated in the information below.

- The 'Ministry of Mines, Lands & Forestry' no longer exists. The Ministry that the new Government replaced it with, the Ministry of Lands & Natural Resources, does not issue environmental permits. This is done by the EPA which is part of the Ministry of Environment, Science & Technology.

Allegation #3: *“Despite a decision to postpone the commencement of works in February 2009, NGGL is planning to start operating soon.”*

Response #3: This statement is inaccurate as there was no decision to ‘postpone the commencement of works in February 2009’. The Akyem project has been working with the Akyem community for the last five years and has received an EPA permit. However, there is no plan ‘to start operating soon.’

Allegation #4: *“In addition to considerable environmental damage within the forest reserve and impact on the rich and rare biodiversity in the forest, the project would have severe impacts on the livelihood of an estimated 7,900 to 10,000 people.”*

Response #4: Newmont’s proposed project in Akyem would affect a small area (74ha) of the degraded southern boundary of the production forest called Ajenjua Bepo.

On the people side, Newmont’s intention is; first, to involve everyone who is likely to be impacted by the Project in the decision-making process; second, compensate fairly those negatively impacted; and, third, ensure that the project provides new sources and opportunities for improved economic livelihood and capacity building for the maximum number of people.

The total number of farmers affected by the proposed Akyem mine is less than 2000. Newmont is in regular contact with these farmers with a view to negotiating fair and adequate compensation which will be paid promptly as well as examining various alternative livelihood programs including farming elsewhere.

- The ore reserve is located along the southern boundary of the Ajenjua Bepo Forest Reserve and the pit area represents approximately 13% of the 569-hectare forest reserve area. In total, the project impacts 74 hectares out of the more than 18,000 hectares of forest reserves in the immediate area. The area to be mined within the Ajenjua Bepo Production Forest makes up only about 3.8% of the total proposed Akyem project footprint. According to independent experts, the area of the forest where we would be working contains low biodiversity value because it is already interspersed with farm and fallow land. In addition, the forest overall is in poor condition with only small true forest patches and poor connectivity to other forest communities. Several investigators have classified this portion of the forest to be “highly degraded”.
- The proposed project area is a patchwork of agricultural lands and secondary and tertiary forest area, but contains no original or primary forest. The Akyem deposit situated in the Ajenjua Bepo Forest Reserve is one of several mining deposits located in forest reserves and in which the Government of Ghana permitted

exploration and future mine development. As intimated earlier, the open pit development would disturb 74 hectares located within the Ajenjua Bepo Forest Reserve. All other mine infrastructure and activity would be situated outside of the forest as per the Government of Ghana requirements for mining in forest reserve areas. The portion of the Ajenjua Bepo Forest Reserve that would be affected has been previously extensively logged and portions have been reforested with plantation-type species. Also, the majority of the forest reserve area has been previously converted to crop land, or planted with non-native timber species. Wildlife habitat in the project area has been extensively modified by human activities, now hosting many species adapted to high levels of human activity. Newmont is working with international biodiversity experts to study ways it can "offset", or compensate for, impacts caused by the mine development in the forest reserve area.

- Government and other external experts have studied the Ajenjua Bepo forest for the last 14 years for the purpose of balancing its conservation qualities with productive economic activity. In 1990, the forest was harvested for timber under the supervision of the Forestry Commission and in 1992 it was converted to a Conversion Working Circle. This categorization means that, by law, the forest can be mined for the mineral deposit in the degraded section of the forest, as interpreted by the Forest Services Division of the Forestry Commission in Accra.
- The status of the Ajenjua-Bepo Production Forest is classified as 'Forest Condition 4', which indicates a 'Mostly Degraded forest'. (See Hawthorne WD, Abu Juam M (1995), Forest Protection in Ghana, IUCN, Gland, Switzerland and Cambridge, UK).
- In addition, the Ajenjua Bepo Forest Reserve is not one of the Globally Significant Biodiversity Areas (GBAs), in Ghana, according to the Forest Services Division office in Accra.
- Prior to the start of the Project, Conservation International, a credible international NGO has already undertaken and completed baseline studies to capture the biodiversity status of the forest. A monitoring team made up of experts from NGOs such as Conservation International & Ghana Wildlife Society and Ministries, Departments and Agencies including the Forestry Services, Wildlife, Meteorological Services Division and the Irrigation Department together with Newmont Ghana will establish the level of biodiversity that has been impacted and a comprehensive mitigation plan will be put in place to address it.

Allegation #5: "We are informed that up to 1,500 persons, most of them small-scale farmers, may be evicted, and that despite the provisions for relocation and

compensation existing in the Mineral and Mining Law and in the Constitution of Ghana, no plans have been developed either by the company or the authorities to do so in a fair and equitable manner."

Response #5: This statement is incorrect as Newmont does not 'evict' farmers from their land. Newmont has and will continue to follow the laws and regulations of Ghana related to land access as specified under the *Minerals and Mining Act (2006)*.

Newmont has always compensated people if mining activities have deprived them of land, crops or structures. Newmont is bound to do so by Ghana's laws, and by its own guiding principles. We have open and transparent negotiations with property owners, and these discussions are based on informed participation, fairness, openness, mutual respect, and a series of laws and international best practice standards. Typically, Newmont has given compensation that is substantially higher than the rates dictated by Ghana's Land Valuation Board.

- In Akyem, where we are yet to commence mining, the company has been working collaboratively with the Compensation Negotiations Committee (CNC) to establish the principles which will guide rate negotiations for the revised rates which are evaluated yearly. The CNC is made up of 56 members. All nine communities elect a representative who has a one-year mandate. The Ghana Commission on Human Rights & Administrative Justice (CHRAJ) is represented, as are the National Commission on Civic Education, the Office of the Administrator of Stool Lands and other bodies. The CNC has formed three sub-committees – Land, Crops and Immovable Property -- and the affected farmers and communities have engaged the services of their own external valuers to guide them in the negotiations and compensation determination process. In addition, all agreements reached during the negotiations are affirmed by the individuals and communities affected. This is a public and transparent process that has been going on for several years at Akyem.
- Compensation entitlements are discussed with the active involvement of each affected community member. Negotiations take into consideration loss to farmers and to the community as a whole, and this is reflected in the spectrum of representatives who are involved in the negotiation process.
- Affected community members elect representatives to negotiate on their behalf, while the chiefs also elect traditional representatives (who may not be affected by the project) to be part of the process. These elected representatives, together with representatives from government ministries, departments and agencies as well as from Newmont, comprise the Compensation Rate Review Committee (CRRC). The CRRC's primary objective is to reach agreement on fair and adequate compensation rates applicable for various crops during a particular year.
- The company cross-checks with each affected community member for his or her approval before any form of negotiation takes place between the company and the elected representatives.

- The company has, on a yearly basis, negotiated with the affected communities and elected representatives of the affected individuals for fair and adequate compensation for their crops. The most recent compensation rates that were collectively agreed upon and paid to affected farmers were the result of rigorous and lengthy negotiations. All parties involved agreed that a fair and adequate rate had been established.
- Concrete plans, including a comprehensive and publicly-available Resettlement Action Plan and a Guide to Land Access & Compensation, will be drawn up along the lines of the Ahafo project, once the project is given the go-ahead. The same wide-ranging consultation with affected community members at Akyem will be undertaken at the appropriate time for this planning.

Allegation #6: "NGGL's offer to farmers for their land would not compensate for the amount of money they presently earn from harvesting one acre of cocoa trees for one year, which would affect their ability to sustain themselves and their families should they lose their land."

Response #6: This statement is completely false and not consistent with the practices that Newmont has utilized for fair, equitable and transparent negotiation currently or historically.

- Newmont does not unilaterally decide on the rates for crop compensation to farmers. Rates for crops are negotiated by the Compensation Negotiations Committee (CNC) every year and the two parties, after reaching agreement at negotiations, sign a Memorandum of Understanding detailing the terms of the agreement. The two parties in the compensation process have their negotiation process witnessed by various government institutions that provide technical guidance to the CNC. Among the government institutions present at CNC negotiations are the Ghana Commission on Human Rights & Administrative Justice (CHRAJ), the Land Valuation Board (LVB) and the Ministry of Food and Agriculture. The Wassa District, Accra-based NGO, WACAM, has been invited to take part as an observer of this process but has consistently declined this invitation.

Allegation #7: Persons "who were evicted when NGGL carried out exploration and preliminary work in 2006 have not been relocated nor compensated, as it also allegedly happened at the other mining site exploited by NGGL, the Ahafo Mine."

Response #7: This allegation is false and does not represent the situation which occurred at Ahafo or Akyem.

- No land owners or farmers were 'evicted' or their households impacted by exploration or preliminary work at Akyem. Where line-cutting impacted individual

crops, farmers were paid negotiated compensation rates and this was overseen by and agreed to by the representative crop rate committee.

- In the case of Ahafo, a Resettlement Negotiation Committee elected by the affected communities, participated in the development of a negotiated agreement for resettlement entitlements. More than \$16 million was paid to impacted farmers in Ahafo related to crop compensation and over \$17 million was spent on resettlement.

Allegation #8: "Small-scale farmers who would lose their land would not be provided with alternative land on which to resume their agricultural activities."

Response #8: This statement is false and not representative of the land access process at Ahafo or of the proposed activities for Akyem.

- Our track record at Ahafo provides proof. There, Newmont has extensive and successful programs which ensured that farmers whose lands were lost obtained access to new farmlands and re-commenced farming. In addition to being given alternative lands, the impacted farmers were provided with assistance for land-clearing and inputs such as tools, seedlings and fertilizers. The Agricultural Inputs and Land Access Program (AILAP) aims to increase the levels of agricultural produce yield and improve market access for local farmers. More than 96% of farmers who were displaced and compensated (3,295 farmers) have participated in the program and are now back on the land farming.
- Farmers in the area who were not impacted by the Ahafo Mine are participating in another Newmont community development program, the NGO-run Ahafo Agribusiness Growth Initiative (AAGI). More than 2,600 farmers have taken advantage of this program and have improved their farming practices, outcomes and marketing skills.
- Similar programs to AILAP and AAGI are planned for the Akyem Mine Project when it commences. The exact nature of these will be determined in consultation with impacted or Project-Affected peoples at Akyem.

Allegation #9: "Moreover, by losing access to the forest reserve for hunting & fruit picking, the local communities would lose a significant part of their food supplies."

Response #9: The project will have minimal impact on local people's access to forests and will certainly not impact their food supply.

- Only a small part of the Ajenjua-Bepo Forest will be potentially impacted by the Akyem Mine Project. The Birim North District includes eight other forest reserves totaling almost 180 square kilometers. The Akyem project affects less than 0.39% of the district's forest reserves, which is 18,000ha.

- Nevertheless, Newmont has engaged several NGOs and scientific consultants to clearly understand the non-timber forest use patterns of local communities. The intent is to ensure that these uses are incorporated into both the negotiation and compensation programs as well as targeted mitigation activities to replace impacted use patterns. At Akyem, Newmont has already established local plant nurseries which are engaged in the propagation of native and locally-used plant materials to determine the best propagation methods. We will continue to evaluate these and other medicinal plant farms or herbal medicine gardens in the area.
- In 2007, Newmont invited the global, scientific-based environmental organization, Conservation International (CI), to assess Akyem's biodiversity values and uses. The findings are being incorporated into the Akyem project planning.
- The CI study concludes: "Subsistence farming and the collection of wood and non-wood forest produce form a key link to livelihoods. Therefore, the need to mainstream biodiversity into the environmental and social management aspects of the Akyem project development is critical to community sustainability." ('Community Biodiversity Use Assessment Akyem Project', Conservation International 2008. p.21) http://newmontghana.com/index.php?option=com_content&task=view&id=212&Itemid=2).
- Newmont is taking Akyem's cultural values seriously. Based on the assessment, the company knows how natural areas are used and we intend to incorporate local practices into development programs, the rehabilitation nurseries and the closure decommissioning to ensure that values and traditional practices remain intact.

Allegation #10: *"There are also reports indicating that dust generated by the exploitation of the mine may affect the production of crops in the fringes of the forest."*

Response #10: This statement does not correctly represent the data presented in the Environmental Impact Study.

- Results of air modeling indicate that expected effects of the Project on the air shed are minimal. The primary emission source associated with the Project is fugitive dust. Fugitive dust emissions will be controlled through use of direct water application, biodegradable wetting agents and revegetation of disturbed areas concurrent with operations. All ore transfer points in the processing plant will be equipped with water sprayer units. Dust deposit gauges and volumetric sampling methods would provide specific information appropriate to assess health and safety issues at key locations in the study area. Additionally, PM10 monitoring would be implemented to further

define potential impacts specific to respiratory health for both workers within the proposed mining area and at targeted hamlets and communities.

- The company has installed a complete meteorological (weather) station within the proposed mining area and has been collecting data since early 2007. The weather station records wind speed, wind direction, rainfall, temperature, evaporation, and humidity. These data are validated, entered into the Project data base and are periodically reported. This information will continue to be collected throughout the life of the mine and through the reclamation period.

Allegation #11: "The digging of pits and dams ... is expected to have severe impact on the access the local population to water from rivers and streams.."

Response #11: The proposed project footprint is not located within the river course of any perennially flowing streams. Watercourses that drain the Akyem Project Area and flow into the Pra and Mamang rivers (including those emanating from the Ajenjua Bepo Forest Reserve) are ephemeral and flow only during the wet seasons (totaling about four months a year). This includes the Akwasi – Akwasi, Adenttonsu and Yaayaa streams. The ephemeral water from these would be channeled via drains.

Allegation #12: "Exploration that took place in 2005 and 2006 has already led to significant modifications of the forest cover, leading to some streams drying up and others becoming inadequate for consumption by the population."

Response #12: There have been no or insignificant modifications to the forest cover as a result of exploration activities. Temporary access to the area was mostly by low impact roads already and previously created by Forestry authorities. The streams in the area only flow in the wet season and none were impacted by Newmont's activities and are still existent.

Allegation #13: "Risks of leakage of cyanide and other pollutants of the ore processing into the rivers poses health and safety concerns."

Response #13: This statement is inaccurate as Newmont utilizes state-of-the-art methods and technology to ensure pollution from its activities does not occur.

- Newmont has brought several innovations to Ghana regarding the handling of cyanide, an element needed for mining. Our Ahafo Mine is the first in Ghana and the second in Africa to receive compliance certification from the International Cyanide Management Institute (ICMI). Practices at our mine abide by the Cyanide Code in all aspects of cyanide use, transport, handling and storage, mining operations and

decommissioning, worker safety, emergency response, training, and public consultation and disclosure.

- The mining process uses milling and grinding technology to reduce rocks to a sand or flour-like texture from which the mineral is extracted. Cyanide is used in this milling process. Once the mineral is extracted, the remaining materials are termed 'tailing' and are deposited in a compacted and lined facility designed to contain them and to protect surface and ground water resources. The tailing facility will be designed and operated in accordance with International Cyanide Management Code standards. Before depositing the tailings in the storage facility, residual cyanide will be removed or reduced to levels which do not affect human health or the environment. The tailing materials are constantly studied to ensure their long-term characteristics and to ensure that they can be properly managed, stored and reclaimed to a suitable post-mine land use such as secondary forest and/or agricultural production.
- At the Ahafo Mine, Newmont recycles nearly all of the cyanide we use, thanks to a technology known as Counter Current Decantation (CCD) system. The result of using this system means we import and use less cyanide overall and, more importantly, that cyanide levels in the storage facility are reduced to levels which are protective of the environment. Sunlight degrades cyanide such that concentrations of cyanide at the far end of the tailing impoundment are at levels which are undetectable and certainly not harmful to the environment. Additionally, the tailing materials and remaining solution are maintained in a closed-system which are not discharged to the environment; rather recycled back to the processing facility for reuse.
- Daily monitoring of the Tailings Storage Facility's decant pond shows average cyanide concentrations of 0.17 mg/L (daytime) and 0.22 mg/L (nighttime) at well below the regulation level of 50 mg/L that is considered to affect wildlife. Birds, known to be sensitive to cyanide, are thriving along banks of tailings storage facility. And every month we monitor water boreholes downstream from the tailings facility. There have been no issues.
- The Ahafo Mine Tailings Storage Facility (TSF), its pipe area, and all pipe joints are lined in leak-proof HDPE rubber. The TSF liners prevent cyanide from contacting the underlying groundwater system. This was the first time in Ghana that this protective technology had been applied.
- In addition, it is highly unlikely that anyone in the area would come into contact with cyanide. As is done at the Ahafo Mine, cyanide will be delivered in dry briquette form in truck-mounted Iso-tanks. The dry bricks are then dissolved inside the iso-tank,

and pumped into the cyanide mixing tank at the process plant, untouched by human hands. This process is the first of its kind in the mining industry in Ghana.

- All areas of the mine site with the cyanide solutions will have secondary containment and monitoring systems to remove any potential danger to human health and the environment. Please see the report on the Ahafo Mine on the International Cyanide Management Institute's own website:
WWW.cyanidecode.org/signatory_newmont.php).
- The Akyem project will be designed and run under the requirements specified by the International Cyanide Management Institute.

Allegation #14: "Environmental impact assessment was not carried out in conformity to international standards."

Response #14: The Akyem EIS was completed by internationally recognized experts and was completed in total compliance with Ghanaian law and in line with international environmental impact assessment practice.

Allegation #15: "That local communities have not been adequately involved in the decision-making processes affecting them."

Response #15: It would be difficult to involve local people in a project more than has occurred at Akyem.

- Over 600 meetings and events between 2004 and early 2009 have been held, with many different local and regional stakeholders, including community leaders and members, government agencies, religious and traditional authorities, farmers groups, business associations, and the media;
- Public Hearings by Ghana EPA in 2004, 2005 & 2008 (These were all video recorded). The Public Hearing in 2008 was attended by more than 500 Akyem area residents and other stakeholders including NGO personnel;
- Regular meetings, briefings and events throughout 2005, 2006, 2007 and 2008 with multiple levels of community and government stakeholders to provide information and obtain comments. A database documenting all of these meetings is available for public scrutiny;
- Community Consultative Committee meetings have been held regularly since 2005 (The committee has more than 40 elected community representatives.). Meetings are fully documented;

- Crop Rate Review Committee (46 community members & 10 government representatives) has recently successfully concluded negotiations after more than 40 meetings over 15 months (There are 46 elected community members and 10 government representatives plus observers from NGOs and national government institutions.). These meetings are similarly documented in the database.
- Community visits to see mining and rehabilitation at other Ghanaian mine sites including Amansie, Tarkwa and Ahafo;
- Further monthly trips to the Ahafo Mine are being run in 2009;
- A Grievance Office was established in 2006. Records are kept of all grievances and their resolution;
- Community Information Centers have been operating since 2006 providing easier access for community members to Project-related information (Centers in all eight major communities);
- All documents are made available in bi-lingual format in a variety of media including posters, video, print, and on the Internet.

Allegation #16: "Allegations that during 2008 NGGL may have fraudulently enticed local village elders into acquiescing to the projects by paying them large amounts of money in the form of 'administrative costs.'"

Response #16: This statement is grossly inaccurate. Newmont has been extremely transparent regarding compensation to local elders and Traditional Authorities as indicated below.

- Newmont's presence brings about considerable focus on the role and responsibility of traditional leaders in the communities around the project areas. The numerous visits to the operating and project areas by Newmont officials, government officers and NGO personnel cause community members to devote substantial time to meetings, discussions, and other interactions. Traditional leaders, in particular, are often required to attend meetings and manage issues that come about due to Newmont Ghana's presence. Management recognizes the impacts of these activities and have elected to work with the traditional councils to defray some of the extraordinary expenses related to our presence. Since 2006 (Ahafo) and early April 2008 (Akyem), Newmont Ghana has developed Memoranda of Understanding with the traditional councils to provide funds in recognition of these extraordinary demands. The funds are paid to the traditional councils and Newmont Ghana has requested that these agreements remain public. In this case, the Akyem traditional leaders have graciously given explicit permission that details of the agreements be

made public. Details of the agreements have been detailed in the media and have been available on our web site since early 2008 (see WWW.NewmontGhana.com)

Allegation #17: There are “concerns over the fairness and transparency of the negotiations that NGGL may have held with the concerned communities.”

Response #17: Newmont Ghana is committed to transparency and open and honest communication. This is evidenced by our commitment to and implementation of a number of international conventions including the Extractive Industry Transparency Initiative (EITI) and the Partnering Against Corruption Initiative (PACI). The company participates in more than a dozen various forums for consultation and public awareness-raising at Akyem. We also make all relevant documents widely available in bilingual form and in a variety of media to ensure that all stakeholders are fully informed and involved. We have also brought in outside experts and NGOs to train various community groups in their rights, the law and in negotiating skills.