



Newmont's Ahafo South gold mining project in Ghana Documentation of Violations of the Human Rights to Food and Water

Recommendations
to the Board of Directors
of the International Finance Corporation (IFC)



FIAN International (FoodFirst Information and Action Network)

Recommendations

FIAN recommends the members of the IFC Board of Directors

- to ensure that the following concerns are addressed before approval of the loan:
 - that major modifications are made regarding access to land, compensation, and development projects to restore livelihoods and improve the standard of living of people affected by the mine;
 - that these modifications have the consent of the affected communities, especially women;
 - that there is full documentation on payments to the Water Resources Commission on the extraction of water from the rivers and of ground water and that these payments are made in accordance with Ghanaian law.
- to ensure that any loan agreement with Newmont will include binding agreement on precautionary measures and measures after closure which will protect and improve the sustainable access to safe water of the affected communities.

Table of Content

1. Introduction	4
2. The Ahafo South gold project - basic facts	5
3. Human rights implications of the project	
a) The Human Rights to Food and Water: Protecting access to resources as state obligation	6
b) Compensation and Resettlement: constitutional provisions	7
c) Violations of the Human Right to Food	8
d) Violations of the Human Right to water	11
4. Non-compliance with IFC Safeguard Policy 4.30 on involuntary resettlement	13
5. “Reducing poverty - improving lives” - recommendations to IFC Board	14

1. Introduction

IFC has been approached to support Newmont's Ahafo South project in Ghana. The total project cost is estimated at \$470 million. The proposed IFC investment is a \$75 million A loan for IFC's own account and a \$50 million syndicated B loan. The projected board date is December 22nd, 2005, the IFC project number is 23338.

According to the Summary of Project Information prepared by IFC management, "this project is expected to become a demonstration case for how to handle environmental, social, and community development issues in Ghana. Ghana has a long history of mining and unfortunately in some cases mining operations have resulted in negative environmental and social impacts on local communities. It is expected that this project would become a model for other mining companies to follow; for example, the level of multi-stakeholder involvement in the resettlement process is expected to become the benchmark for the future."

This positive assessment could not be confirmed during a visit to the area by representatives of FIAN in early September 2005. Instead, the visitors witnessed discontent with the way Newmont is relating to the communities. The inadequacy of compensation and the loss of access to land and water were major concerns for those economically displaced, while those also physically displaced (at the time of the visit an estimated 100 persons) raised a series of issues related to the process of resettlement as well as the level of compensation and the living conditions in the resettlement village. After the visit to the area, FIAN met with Newmont staff in Accra and has been provided with additional information which has been taken into account in writing this report.

However, the assessment of the documents disclosed on August 29th 2005 (ESIA, RAP, PCDP) has confirmed the concern of the affected communities that the project does not provide adequate measures for the restoration of livelihood for physically and economically displaced persons. Furthermore it has to be concluded that the project is unsuited to make a contribution to sustainable development locally, in the region and on the national level. The state of Ghana has not taken adequate measures to protect the right to food and the right to water of the affected communities.

2. The Ahafo South gold project - basic facts

Newmont Ghana Gold Limited intends to develop the Ahafo Project in two phases: Ahafo South (Phase One) and Ahafo North (Phase Two). The Ahafo South Project involves mining and processing ore in the southern portion of the lease area. The total Mine Area of the Ahafo South Project is 2,992 hectares. The project is located in the Asutifi district, in the Brong Ahafo Region, 300 km north-west of the Ghanaian capital city of Accra. It is situated close to the twin towns of Kenyase (Kenyase 1 and Kenyase 2) and approximately 42 km from the nearby Sunyani town.

Project History (as in ESIA)	
December 19 th 2003	The Ahafo Project is formalised on 19 December 2003 with the signing of a foreign investment agreement between Newmont and the Government of Ghana
February 2004	Initiation of Resettlement Negotiating Committee
February 10 th 2004	Cut-off date for compensation
April 2004	Beginning of construction phase
September 2004	Environmental Impact Statement submitted to the Ghana Environmental Protection Agency
March 30 th 2005	Beginning of resettlement
April 2005	Environmental Permit granted by the Environmental Protection Agency
August 29 th 2005	Disclosure of Environmental and Social Impact Statement and Resettlement Action Plan for IFC
December 22 nd 2005	Planned IFC board approval of loan
May 2006	Expected beginning of production

According to the Resettlement Action Plan (RAP) for the Ahafo South project, the project will lead to the physical and economic displacement of 823 households (5,185 persons). Of these, 399 households (2,593 persons) are being resettled and 424 households (2,586 persons) are eligible for relocation compensation. There will be an economic displacement of an additional 878 households (4,390 persons), who live in nearby communities and rural homesteads. The total number of households impacted stands at 1,701 (9,575 persons). The number of affected people will double once the Ahafo North project will be developed.



Some data from the baseline survey conducted for the RAP are the following:

- 95% of homesteads practice subsistence and cash cropping on small holdings as primary livelihood activity
- non-farming incomes are limited and 2/3 of adults have no employable skills other than farming
- women are a large part of the agricultural workforce and generate the majority of non-farm income
- nearly 40% of household annual expenditure is for food and 12% for education
- about half of all adults in the district are non-literate; 42% of project-affected people do not have formal education

3. Human rights implications of the project

a) The Human Rights to Food and Water: Protecting access to resources as state obligation

During the last five years, Ghana has signed several international agreements which are relevant to the human rights to food and water which are the focus of our discussion. Ghana has also supported other international initiatives which are important to a better understanding of human rights obligations. An important step was the ratification of the International Covenant on Economic, Social and Cultural Rights by Ghana in the year 2000. This Covenant is the most comprehensive international treaty on economic, social and cultural rights. Article 11 of the Covenant guarantees the right to an adequate standard of living which encompasses the rights to food and water. In 1999, the UN Committee on Economic, Social and Cultural Rights (CESCR) - which is the body monitoring the implementation of the Covenant - published its General Comment on the Right to Food, followed in 2002 by the General Comment on the Right to Water.

Human rights basically define the relationship between the individual and the state. By ratifying the Covenant, the state of Ghana has recognised the human rights contained in it as well as corresponding state obligations. The state has obligations on three levels: to respect, to protect and to fulfil human rights. As the individuals' physical and economic access to food and water is recognised in the international human rights system to be at the centre of the legal content of the human rights to food and water, the three levels of state obligations can be described as the following:

- respect = the state itself must not hinder the individual's and group's access to food and water
- protect = the state must prevent third parties from hindering the individual's and group's access to food and water
- fulfil = the state has to realise the rights to food and water for everyone

This interpretation has recently been confirmed when the member states of the Food and Agriculture Organisation (FAO) in November 2004 adopted unanimously the Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context of national food security. Guideline 8 deals with access to resources and assets. Article 8.1. reads

“States should facilitate sustainable, non-discriminatory and secure access and utilisation of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries, and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources.”

Guideline 8 continues to discuss different forms of access. One important aspect is access to productive resources for women. This has also been recognised in the Protocol to the African Charter on the Rights of Women which Ghana signed in 2003:

Article 15 Right to Food Security

States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:

- a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;
 (...)

Ghana has ratified the African Convention on the Conservation of Nature and Natural Resources of 1968 and signed the revised version of 2003 which addresses the effects of mining on land degradation. The state obligations formulated in the Convention complement the obligations concerning access to land under the Right to Food. Following Article IV on land and soil, states “shall ensure that non-agricultural forms of land use, including but not limited to public works, mining and the disposal of wastes, do not result in erosion, pollution, or any other form of land degradation”. In the same article it reads that “Parties shall develop and implement land tenure policies able to facilitate the above measures, inter alia by taking into account the rights of local communities.”

b) Compensation and Resettlement: constitutional provisions

Article 20 of the constitution makes both the prompt payment of fair and adequate compensation and resettlement on suitable alternative land a condition on compulsory acquisition of land.



Resettlement village in September 2005



Constitution of Ghana Article 20 (extracts)

(2) Compulsory acquisition of property by the State shall only be made under a law which makes provision for.

(a) the prompt payment of fair and adequate compensation; and

(b) a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from other authority, for the determination of his interest or right and the amount of compensation to which he is entitled.

(3) Where a compulsory acquisition or possession of land effected by the State in accordance with clause (1) of this article involves displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values.

(5) Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.

The Land Valuation Board and the Environmental Protection Agency are the main state actors to ensure the implementation of these constitutional provisions. However, according to the Minerals and Mining Amendment Act of 1992, it is the company which will negotiate compensation with the affected communities and resettle the people. In this setting, the state institutions mainly have the obligation to protect people’s rights in the negotiating process with

the company and in setting the regulatory framework within which the company operates in order to comply with the provisions of article 20.

c) Violations of the Human Right to Food

On June 2nd 2005, the press reported that “‘Artificial famine’ hits Newmont Ahafo project area”:

“The company’s operations have reduced food production in the area drastically, while the population in the area has doubled, raising the cost of living in the area and adding to the economic woes of the people. The poor, affected farmers, mostly women who since birth had depended on their farms for food, are today rubbing shoulders with Newmont’s affluent workers on the food market, while the meagre crop compensation received is finished whilst others are still on the waiting list, either fighting for more reasonable compensation or yet to go through the exasperating bureaucratic process for their compensations. Almost all the people this reporter interviewed, expressed similar concern about the affordability and availability of food in the area.¹”

The article continues to portrait individual cases.

When a FIAN delegation visited the area in early September 2005, community members confirmed that the lost access to land and inadequate compensation are a major threat to food security.

The urgent need to address the issue of access to land was emphasised by the Newmont commissioned “Independent Assessment of Resettlement Implementation” conducted during a field visit in July/August 2005 by the consultant Frederic Giovannetti. He identified the group of those not native from the area as specially affected:

“Securing replacement land appears to be a significant issue for people not native to the area, less so for people native to the area. Some of the interviewees have indeed been found to remain without a sustainable source of livelihood, particularly without land, and the principle stated in the draft RAP that replacement land would be allocated by traditional authorities does not seem to work for all categories of affected persons, particularly those who are not native of the area.” (p.7)

However, access to land is not only an issue for those not native to the area, but also for most of those economically displaced. NGGL insists that there is no legal obligation for the company to provide land and that it is not prepared to purchase land for economically displaced persons. It will rather facilitate access to arable land through the traditional system. This process of facilitation will be monitored. (RAP, chapter 7). This approach ignores the fact that gaining access to land through the traditional system entails costs for the households. According to article 20 of the Ghanaian Constitution “the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values”. If the state is delegating the resettlement to the company, it is still obliged to protect the right to food of the affected people in this process. Any costs related to that have to be born either by the state or the company.

In the case of the Ahafo mine, access to land is a necessary prerequisite to restore livelihoods and the economic well-being of the project-affected population. In a letter to IFC management on 26th October 2005 which was signed by more than 1,200 community members, it was emphasised that the compensation provided by Newmont was too low and the Livelihood

¹ “‘Artificial famine’ hits Newmont Ahafo project area. We are starving - Affected farmers, residents cry out” Article by Clement Boateng in Ghanaian Chronicle, Thursday, June 02, 2005, <http://www.ghanaian-chronicle.com/thestory.asp?id=6085>

Enhancement and Community Empowerment Programme (LEEP) inadequate to restore livelihoods.

Extract from letter by communities to IFC management on issue of Compensation (October 26th 2005)

The enumerations and surveys of the farms of farmers for purposes of compensation were often done in the absence of the farmer concern. Most farmers were not at the field when the enumeration of their farms took place and the farm size and number of crops on the farm were unilaterally determined by the NGGL and its survey team. In cases where the farmers were in the field at the time of the survey, they were neither informed of their total farm size nor the number of crops enumerated on their farms and whether or not they were agreeable to the enumeration and/or the enumerated figures captured in their farms.

Similarly, farmers for which crop compensation is due were not involved in the negotiation of an agreeable rate of compensation as required by law. NGGL through the Resettlement Negotiating Committee (RNC) set up by the company determined the compensation rates to be payable for crops to be affected by the operations of the company. The farmers find the rate of compensation determined by the NRC to be payable as compensation for their crops very low. Notwithstanding the fact that the affected farmers were not parties to negotiation team that determined the crop compensation and the fact that the farmers have indicated their resentment and rejection of the compensation rates determined by the NRC, the company nevertheless sought to impose the rates on the affected farmers.

In addition, the company in conducting the enumeration refused to enumerate and pay compensation for crops that were young at the time of the enumeration though such crops were planted long before the date of the mine take.

An important issue relating to the payment of compensation is the extension of what is described as moratorium areas by the company. There was an initial agreement in the RNC that community people were not supposed to farm in certain defined area which were described as areas where a moratorium had be placed on farming. According to the community people, the company has extended the moratorium areas beyond the areas originally agreed in the RNC.

Access to land and an adequate level of compensation go hand in hand to restore livelihoods and protect the right to food of affected people. In “The Economics of Involuntary Resettlement” published by the World Bank in 1999, Cernea points out that “even if all material losses were compensated at their market value, the cash equivalent generally would fall short of the amount needed to restart the economic and productive activities” (p. 14). Another important aspect is that even if farmers were provided with land, there is always a period in which these farmers will not have any income as they have to cultivate the land first. This has not been taken into account in the compensation procedures, which has contributed to the “artificial famine” which was described above. To quote Cernea again:

“Land deprivation is the leading form of capital loss and poverty creation. This is so because people loose both the natural capital and the capital they created with their own hands - i.e. by working their lands. Studies undertaken in Brazil, India, Kenya, and Indonesia show that land loss has more severe consequences than home loss. Regarding employment, the chance of working one’s own land or another person’s land is the best circumstance. Self-sustainable family farms will disappear. Not all jobs would be

immediately lost, but with a certain delay, because of the initial job offers by the Company. But this is a short-term offer. According to the experiences from China, Brazil, Turkey, Togo and Korea, the employment boom takes place when the investment starts off, and it dramatically decreases towards its ending.²”

In an article published in the Ghanaian Chronicle on September 9th 2005, NGGL’s General Manager Dave Ingle said: "The construction workforce is now coming to a peak of over 3,600 and it is important to recognise that these jobs would not last into the operational phase of the project". The paper quotes him as adding “that it would be likely that jobs attached to the mining phase would be 1,000 and this would require the full implementation of the alternative livelihood programme.”

Extract from letter by communities to IFC management on issue of training (October 26th 2005)

The project is stated to have trained a number of persons from the community in Metalwork masonry and administration. However, the training duration was for period of three weeks and carried out for a small number of people. The duration of the training was in the first place not enough to train a farmer or any body to carry out the jobs stated in the EIA to wit metalwork, masonry and Administration or will enable the person who underwent the training acquire any employable skills. A good number of people who undertook the semi-skill training are currently not on any job.

Looking into the causes of the ‘artificial famine’ in the Ahafo project area, it has to be concluded that the right to food of those physically and economically displaced has been violated because the state institutions have failed to ensure that

- a) lost access to land is restored
- b) compensation is adequate to restore livelihoods



The Kodiwohia school has benefited from the HiPC initiative. Today the school building is empty.

² <http://www.rosiamontana.org/documents/english/press/formulaasresettl.htm>

d) Violations of the Human Right to water

In its General Comment No 15 the UN Committee on Economic, Social and Cultural Rights defines the “failure to enact or enforce laws to prevent the contamination and inequitable extraction of water” as a violation of the obligation to protect the right to water. The diversion of the river Subri, the extraction of ground water and water from other rivers can be described as “inequitable extraction of water”. There is also a real danger of contamination of surface and ground water.

The information provided in the Environmental and Social Impact Assessment (ESIA) suggests that access to safe water will be impacted by the operation in the following way

- The river Subri will be dammed, the river will dry up after the dam
- The river Tano (which is the largest of the rivers and fed by the other rivers described here) will loose water because of pumping from the river (Newmont is currently pumping from the river until the end of 2005 to fill the reservoir) and because of the extraction of water from rivers and ground water. There will also be modifications in the watershed characteristics.
- The water quality of the Awonso stream is likely to be impacted. According to the ESIA, the Awonso is used as a water source by people living in small hamlets within the watershed. Those living before the environmental protection dam are likely to experience pollution of water because of sedimentation, heavy metals etc.
- The static test on the acidity of the ore suggests that there is a low potential for acid mine drainage (AMD). However, these tests are not sufficient to exclude AMD. This poses a threat to ground water quality. Also, the plan is that after mine closure the pit will fill with water which is potentially acidic.



The diversion of the river Subri is a major concern.

The information presented in the ESIA does not give sufficient information on how many people are affected by the damming of the Subri and the changes in the Tano river and the Awonso stream - before and after resettlement. The damming of the river Subri not only negatively affects the access to water but is also threat to peoples' health as it is likely to increase water-borne diseases because of the stagnant water. Also, communities such as Dokyikrom, Yawusukrom, Osei Tutukrom and their environs have been cut off when the access road was flooded. To link up to other communities, residents of Dokyikrom and its surroundings are compelled to walk about seven miles using a footpath around the dam. They have appealed to Newmont to relocate them, but this was not granted. Because of the destruction of roads children have dropped out of school. On October 16th 2005, two men drowned when trying to cross the dammed water, using a heap of damp sand across it.

Following the Water Resources Commission Act , no person is allowed to divert, dam, store, abstract or use water resources, construct or maintain any works for the use of water resources except with the permission of the Water Resources Commission (WRC). According to a Newmont official the company is paying 10 cedis per cubic meter for the extraction of water from the river Tano to the WRC, which is the usual rate. So far, no documentation has been provided by either Newmont or the WARC on payments from water extraction from the dammed Subri or ground water.



It has to be concluded that the state of Ghana has so far failed to adequately protect the right to water of the project-affected communities.

4. Non-compliance with IFC Safeguard Policy 4.30 on involuntary resettlement

The physically displaced households will move into two resettlement villages: 312 households (2,028 persons) will move to the Ola Resettlement village and 87 households (566 persons) to the Ntotroso Resettlement village. By the time of the FIAN visit to Ola in early September 05, approximately 100 persons had been resettled there.

The most important worry of the people was how to earn an income to feed the family and send the children to school. As detailed above, access to land is a major issue for both physically and economically displaced persons. According to OD 4.30, the living conditions of displaced persons have to be at least restored and “land for land” approaches are the preferred option. In the case of the Ahafo project, “land for land” is the only feasible option to restore livelihoods. Without major modifications regarding access to land, compensation, and development projects, this project will not be in compliance with OD 4.30.

There is a general problem of those displaced not being involved directly in the decisions which affect their lives, which is illustrated below on the issue of resettlement but has also been voiced as a major concern regarding decisions on compensation. Even for NGOs in Ghana access to project documents on the IFC website is difficult because of the large volumes, which makes it both technically problematic and very expensive.

Extract from letter by communities to IFC management on issue of resettlement (October 26th 2005)

In the first place, the communities or the affected persons were not involved in the planning and design of the resettlement site or principles, policies and procedures of the resettlement and relocation contrary to what is stated in the EIA.

The communities and persons resettled on the resettlement site were not part of the planning and design of the resettlement and are not happy with the reduction of the number of rooms owned by members of the community who have been and/or will be resettled at the resettlement site. Except those who had a single room within the Mine Take Area, who were built a single room at the resettlement site, every other person had his/her rooms reduced by half. The rationale behind the reduction of the number of rooms of the people resettled was not acceptable to the communities nevertheless they were compelled and unwillingly moved in to occupy houses built as a replacement of their old houses.

There are also aggrieved persons in the resettlement site who were resettled without kitchens even though they had kitchens at their old settlement.

5. “Reducing poverty - improving lives” - recommendations to IFC Board

The Ghana Living Standards Survey GLSS 4 (1998-99) and Participatory Poverty Assessments Survey identify the extreme poor or vulnerable and the excluded to include the following:

“i. Rural agricultural producers, particularly migrant farm hands, settlers and traditional fishermen and food crop farmers in the country are extremely poor. In addition, food crop farmers contribute nearly two-thirds of total extreme poverty; almost double its share of the total population.

(...)

iv. Displaced communities, particularly those subjected to periodic flooding/drought, negative effects of mining and tourism and ethnic conflicts.”

In 2003, the World Bank evaluation of its Mining Sector Rehabilitation Project is concerned with the modest amounts of net foreign exchange and high import content, low corporate tax payments, and limited employment creation, following liberalisation and deregulation. It is pointed out that there is a need for a “broader cost-benefit analysis of large-scale mining that factors in social and environmental costs ... before granting future production licenses” (World Bank, 2003: 23). In the case of the Ahafo project it is the local communities who bear the costs. These people belong to the most vulnerable segment of Ghanaian society. It is the obligation not only of the Ghanaian State but also of the international community to protect the rights of these people. Those states who are parties to the International Covenant on Economic, Social and Cultural Rights have to take into account their state obligations under international law when engaging with international finance institutions like the IFC.

FIAN recommends the members of the IFC Board of Directors

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- to ensure that any loan agreement with Newmont will include binding agreement on precautionary measures and measures after closure which will protect and improve the sustainable access to safe water of the affected communities.

List of documents quoted

Investment Agreement between the Republic of Ghana and Newmont Ghana Gold Limited and Rank Mining Company Limited and Golden Ridge Resources Limited, December 2003

Project Documents disclosed on the websites of IFC and Newmont:

- Document No. 1: Resettlement Action Plan-Ahafo South Project, Planning Alliance, 2005.
- Document No. 2: Environmental Social Impact Assessment-Ahafo South Project, Maxim Technologies Inc., 2005.
- Document No. 3: Public Consultation and Disclosure Plan-Ahafo South Project, Maxim Technologies Inc., 2005.
- Document No. 4: Newmont Ghana Gold Ltd., Ahafo South Project, Independent Assessment of Resettlement Implementation, Frederic Giovannetti, 2005.

World Bank (2003). *Project Performance Assessment Report: Ghana Mining Sector Rehabilitation Project*, Report no. 26197, Sector and Thematic Evaluation Group, OED, Washington DC: World Bank.

Communities' concerns/comments - Environmental Impact Assessment on the Ahafo Mine prepared for IFC by Newmont Gold Ghana Ltd (NGGL), October 26th 2005 (letter by communities to IFC management)

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FIAN, the **FoodFirst Information & Action Network** is an international human rights organisation that campaigns for the realisation of the right to adequate food, a human right contained in the International Covenant on Economic, Social and Cultural Rights. FIAN International is a network of national organisations with members in over 60 countries in Africa, the Americas, Asia, and Europe. FIAN has consultative status with the United Nations. It is a grassroots oriented organisation without political or religious affiliations.

The members of FIAN envision a world free from hunger, in which every person can fully enjoy their human rights and live in dignity. For FIAN, this means exposing violations of people's right to food wherever they may occur. It also means standing up against unjust and discriminatory practices that prevent people from feeding themselves. FIAN militates for a form of globalisation that does not violate human rights and respects social and ecological standards.