



February 17, 2016

Charles Rivkin
Assistant Secretary of State for Economic and Business Affairs
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Assistant Secretary Rivkin,

On behalf of EarthRights International (ERI), we write to express grave concerns about the nomination of Newmont Ghana Gold Limited as a finalist for the Secretary's Award for Corporate Excellence. Newmont was nominated for its partnerships with private and public security forces to train and equip them in protecting mining operations and respecting the human rights of surrounding communities in Ghana. But Newmont's human rights and environmental record – whether in Ghana or in Peru, where ERI has extensive experience – is no model for the “exemplary” corporate conduct the award intends to recognize.

Last year we made a similar objection to the notion of giving an award to a company for one aspect of its work in one corner of its global operations, without considering the company's overall record of human rights, environmental, and labor rights responsibility. This practice puts the State Department in the position of abetting the whitewashing of corporate reputations, and lends support to the outdated and wrongheaded notion that “corporate social responsibility” can somehow offset or be assessed separately from the overall impacts of a corporation's activities.

Newmont's overall record in Ghana

We have received communications from Ghanaian communities, opposing Newmont's candidacy for the award on the basis of its human rights and environmental record in Ghana. We have encouraged them to write separately to you to register their concerns. From our own research, however, we have noted that the company has been responsible for toxic spills and severe disruption of the local environment, and has been implicated in the use of force against communities – including an incident as recent as June 2015. An unclassified cable from the U.S. Embassy in Accra confirms Newmont's negligence in the case of a 2009 cyanide spill:

Newmont's senior executives in Ghana acknowledge that the mining managers made a number of blunders in handling and responding to the incident. These missteps included:

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-- Using an overflow "event pond" to store cyanide solution while the mine was temporarily shut down for three days. This was an inherently unsafe practice that is inconsistent with both Newmont's own internal controls and with standard international mining practices....

-- Mine managers failed to immediately notify Newmont's management in Accra, the local community, and the Ghanaian mining and environmental regulators of the incident. Newmont's management in Accra only learned of the incident 24 hours later on October 9, and no one notified the local community or GOG authorities until nearly 48 hours later on October 10.

-- The company failed to properly trace and contain the spill after it escaped from the event pond....

“Newmont to pay dearly for chemical spill,” Cable 10ACCRA84_a (Jan. 28, 2010).

Whatever Newmont’s recent record may be, it has not convinced the local communities that it is a reformed company. In April 2015, a public hearing on Newmont’s proposed expansion of its Ahafo mine reportedly registered strong opposition to the proposal.

Beyond Ghana: Security, Human Rights and Environmental Sustainability Worldwide

As noted above, the State Department should take an expansive view when considering which corporations best reflect American values of respect for human rights, environmental protection, and respect for local communities. While “Newmont Ghana” is the nominee this year, Newmont is a globally integrated corporation whose own website does not distinguish between business units in different parts of the globe. Thus operations in other parts of the world, especially Newmont’s record of abuse in Peru, should be taken into consideration.

Security and human rights abuses in Peru

ERI has extensive experience with extractive industries in Peru and operates a local office there. Even assuming that Newmont’s partnerships with private and public security forces in Ghana are worthy of praise, the reverse is true in Peru. Although Newmont purports to implement the United Nations Global Compact, the Voluntary Principles on Security and Human Rights and the principles from the Universal Declaration of Human Rights, numerous allegations of excessive force against unarmed protestors, unlawful surveillance of environmental defenders, and harassment and intimidation of land owners indicate otherwise.

Newmont is the majority shareholder of the Peruvian gold and copper mining company, Minera Yanacocha, which operates in the Cajamarca region. Minera Yanacocha receives security services through contracts with the Peruvian National Police (PNP) and the private security company Securitas. Although the Peruvian company Buenaventura and the International Finance



Corporation partly own Minera Yanacocha, Newmont is at the top of the “chain of command” for all Minera Yanacocha’s security operations, including those provided by the PNP and Securitas. Newmont also has responsibility to ensure that security providers are adequately trained on human rights.

PNP forces under Newmont’s control have repeatedly been accused of retaliating against peaceful protestors critical of Minera Yanacocha’s operations with excessive force. For example, on November 29, 2011, members of the PNP fired ammunition against unarmed protestors. Dozens were injured, including Eduardo Campos Álvarez, who was shot in the back by a police officer and became paralyzed, and Carlos Chávez, who was shot in the leg. During a series of violent protests in the Cajamarca region against Minera Yanacocha’s operations in June 2012, over thirty civilians were injured and five civilians, including a minor, were killed by gunshots. During these protests, roughly 40 police with riot shields and batons arrested environmental defender Marco Arana while he was sitting on a bench in the city of Cajamarca. According to Arana’s lawyer, the police did not show a warrant or give a reason for the arrest, and the police repeatedly physically attacked Arana. In March 2014, police providing security services for Minera Yanacocha allegedly disrupted peaceful vigils of environmental defenders by firing live ammunition and tear gas and destroying the defenders’ property. The Inter-American Commission on Human Rights has granted precautionary measures to 46 local leaders in 2014 because of threats to their physical security by public security forces.

The State Department has repeated recognized the conflict over mining in Cajamarca in its annual human rights reports, but typically omits identification of the company at issue. All of the following refer to protests against Newmont’s operations through Minera Yanacocha:

On December 4, the government decreed a 60-day state of emergency in four provinces of Cajamarca Region to quell protests against a mining project. . . . On December 6, six members of the Cajamarca antimining coalition, including one prominent leader, claimed to have been improperly detained for 10 hours after participating in a congressional hearing in Lima.

Peru Human Rights Report, 2011.

On July 3-4, security forces allegedly killed four persons participating in demonstrations against the Conga mining project, in the towns of Celendin and Bambamarca, Cajamarca Region. . . .

On July 4, during antimining protests in Cajamarca, national police used allegedly excessive force in a confrontation with human rights lawyers Genoveva Gomez, from the Ombudsman’s Office, and Amparo Abanto, from the National Human Rights Coordinator, who were monitoring the detention of protestors at the Cajamarca Regional Police Station. . . .



On July 4, authorities detained Marco Arana, an environmental activist who protested against the Conga mining project in Cajamarca. Authorities stated that Arana was protesting during a declared state of emergency decreed on July 4. Human rights advocates argued that the state of emergency was not announced until July 5 and that Arana was arrested without a warrant but later released. Arana alleged mistreatment while at the police station, and at year's end an investigation was pending. . . .

On July 4, the government declared a 30-day state of emergency in three provinces of the Cajamarca Region after weeks of protests against a large mining project that interrupted daily activities, caused shortages in the region, and led to clashes between protesters and police in which five persons were killed and 21 injured. . . .

Human rights activists expressed concern about their safety while working, particularly in situations of social unrest such as the antimining protests in Cajamarca.

Peru Human Rights Report, 2012.

During the year the Ombudsman's Office appealed the decision of a prosecutor to archive the case in which human rights lawyers Genoveva Gomez and Amparo Banto alleged that police used excessive force during a 2012 antimining protest in Cajamarca. . . .

Human rights activists expressed concern about their safety while working in situations of social unrest, in regions including Cajamarca . . . where there were conflicts over natural resource extractive activities.

Peru Human Rights Report, 2014.

Another alarming aspect of Newmont's relationship with the PNP is the new Peruvian "license to kill" law. As noted in the 2014 Peru Human Rights Report:

On January 14, Congress modified the law regarding the use of weapons by security forces. The modified law states that security forces may be exempt from criminal prosecution if they kill or injure civilians in the line of service. The new language allows security forces to use any type of weapon, not only their officially issued firearm to which the previous code restricted them. It also removes language that required the officer's act(s) to be in accordance with official guidelines for weapons use. Human rights groups and the Ombudsman's Office criticized the changes, arguing they support impunity.



These alleged incidents and changes in Peruvian law call into question whether Newmont adequately takes into account human rights impacts when it administers human rights trainings and makes strategic decisions to deploy the PNP; it also raises doubts about whether it is possible to contract with public security in Peru in a way that respects and protects human rights. The “license to kill law” promotes impunity for Peruvian security forces, and its applicability is unclear when the PNP is providing security to Minera Yanacocha as opposed to performing its general public security function. Thus Minera Yanacocha enjoys the security services of an entity that may operate with impunity when anti-mine protests occur, which means that they may feel free to respond with even more excessive force than before the law was passed. To date, as far as we know, Newmont has never publicly denounced this policy change or the violence against protestors, nor has it made efforts to properly investigate and compensate the harms that protest violence victims and their families have experienced.

Aside from alleged excessive force against protestors, public and private security forces working for Minera Yanacocha have been implicated in unlawful surveillance of environmental defenders and harassment of landowners. In 2006, employees of Forza (Minera Yanacocha’s private security firm prior to Securitas) allegedly carried out “Operation Devil,” a campaign that systematically targeted local environmental defenders, *campesino* leaders, and members of the NGO Grufides, through digital surveillance, intimidation, death threats and defamation. International entities including the United Nations and the Organization of American States condemned Operation Devil. Although Minera Yanacocha denied its involvement with Operation Devil, we are unaware of any efforts to investigate or condemn the human rights abuses that were allegedly carried out by the security forces acting on its behalf.

Since 2011, Minera Yanacocha has been in a landownership conflict with the Chaupe family, which has accused the company’s private and public security forces of physical and psychological harassment, intimidation, and destruction of their property. Some of the most recent allegations date to earlier this month. Due to security concerns for the Chaupe family, the Inter-American Commission granted them precautionary measures in 2014. Even if the land in question legally belongs to Minera Yanacocha – a possibility that the family vigorously contests – there are means to gain ownership through the Peruvian legal system without resorting to violence. This is another situation in which both Newmont and Minera Yanacocha have denied the existence of any human rights violations, despite publicly available documentation, without showing any inclination to investigate the conduct of security forces working on its behalf.

Whether or not Newmont deserves praise for its track record in Ghana – a question that Ghanaian civil society groups can answer better than we can, but for which there is certainly some doubt given the incidents cited at the beginning of this letter – these incidents in Peru clearly demonstrate that Newmont frequently does not display the “exemplary” conduct that should be the touchstone of the ACE Award. To recognize Newmont for its human rights security trainings in Ghana would ignore the apparent shortcomings of its security policies and practices in Peru.



Environmental record worldwide

In addition to security and human rights concerns in Peru, Newmont's global environmental record also bears scrutiny. Throughout the world, including the United States, Newmont has repeatedly been accused of violating environmental regulations.

In Indonesia, Newmont reportedly dumped more than 4 million tons of toxic waste directly into Buyat Bay between 1996 and 2004. Due to the environmental contamination, declining fish populations and adverse health impacts, over 60 traditional fishermen families had to relocate. In 2005, the Indonesian government initiated a criminal case against Newmont's Indonesian subsidiary arguing that Newmont had illegally dumped arsenic and mercury in Buyat Bay. Newmont allegedly continues to dump 120,000 tons of tailings daily into the Senunu Bay.

According to a report by Great Basin Resource Watch, Newmont's U.S. operations have also entailed unlawful contamination. The Gold Quarry operation in Nevada received an Environmental Protection Agency (EPA) notice of violation in 2008 because of hazardous waste disposal. The EPA also sued Newmont for the costs of removing radioactive waste linked to its subsidiary's uranium operation in Washington.

In Peru, the protests described above have largely been in relation to the Conga expansion of the Yanacocha Mine. (In fact, just yesterday, protesters gathered in various cities across the country to object to the project, as well as the ongoing abuse of the Chaupe family and others.) The Yanacocha Mine is controversial and has been surrounded by allegations of violence and environmental damage since its inception. For example, in 2000, a Minera Yanacocha truck spilled 330 pounds of mercury along a road in Peru. Many local residents became ill from contamination, and the Peruvian government fined Minera Yanacocha. The Denver Post reported that the World Bank condemned Minera Yanacocha for not having proper guidelines for mercury transportation. The Conga expansion is even controversial, as it will involve the destruction and attempted relocation of four lakes that are sacred to local indigenous groups and provide a critical source of water for local farmers and the entire city of Cajamarca.

Given that the State Department values environmental sustainability, awarding Newmont for its "excellent" human rights efforts in Ghana would undermine the Department's effort to promote exemplary environmental practices. These reported incidents throughout the world demonstrate that Newmont is far from a paragon of environmentally conscious behavior.

Conclusion

To hold up a company such as Newmont as a model of corporate excellence would both make the State Department complicit in the whitewashing of Newmont's human rights and environmental record, and insult the numerous American businesses who actually make efforts to ensure that their activities benefit, rather than destroy, local communities around the world. Moreover, it would undermine the State Department's credibility as a strong supporter of responsible business practice worldwide. We strongly believe that the State Department's Award



should honor a corporation that that demonstrates human rights and environmental excellence in all of its global operations. Newmont fails this test.

Please do not hesitate to contact us if we can provide further information in relation to Newmont Mining and our concerns about its fitness for the ACE Award.

Sincerely,

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