

Mining & Communities

Supporting human rights-based development in the context of industrial mining in Guinea



Abridged version of the
Practical guide for civil society organizations and local authorities



MODULE 1 : WHAT DO COMMUNITIES NEED TO KNOW ABOUT MINING?

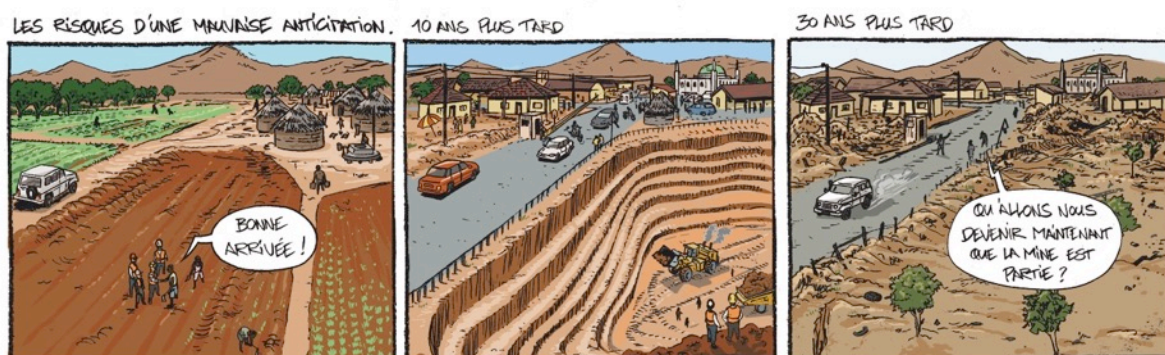
Unit 1.1 What do communities need to know about the arrival of a mine and the mine site?



The metals and minerals found in the country's soil collectively belong to the people of Guinea. The State, acting in the name of the people, can extract these resources for the public good. Industrial mining can be done using various processes. It is important for local communities to care about industrial mining for several reasons.

A mine is built in a village because that village is on soil containing an important quantity of minerals that the State wishes to exploit. The Mining Code regulates the process by which a mining company obtains authorization (a mining permit) from the State. This procedure requires preliminary studies, and participation by local communities in the studies is mandatory. The company must conclude a Community Development Agreement (CDA) with local communities and establish a Local Development Fund (LDF).

A mining project lasts a long time and involves multiple phases. The mine's closing is planned in advance, and the company is required to establish and fund a trust account for the site's rehabilitation. The mine's activities have a limited footprint. Any land used by the mine must be subject to fair compensation. Artisanal mining activities cannot occur on an industrial concession. The law provides for a 100-meter security buffer zone between company activities and dwelling areas, wells, buildings, etc.



Unit 1.2 What can a community expect when a company establishes a mine nearby?

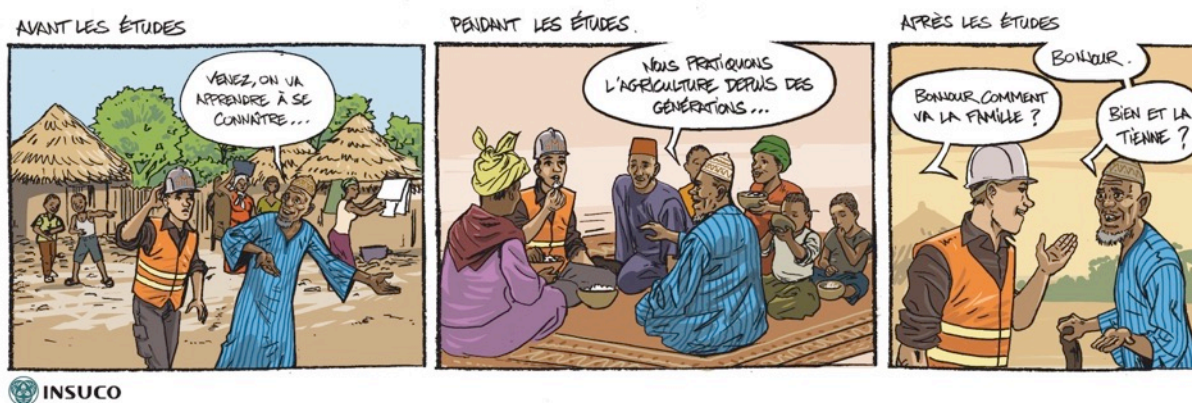


Communities affected by a mining project are not only those in or adjacent to the project area, but also those that are close enough to have their economies, rights or environments significantly affected.

All industrial mining activity has impacts (positive and negative) on local communities and so changes communities' traditional lifestyles and systems. In order to reap the benefits and avoid the negative impacts, everyone has a role to play in a country that respects the rule of law.

The possible benefits include more money, job creation, purchasing of local goods and services, and improved infrastructure and service provision. Industrial mining has many possible negative impacts on the environment (land and water), society (especially women), the economy and security.

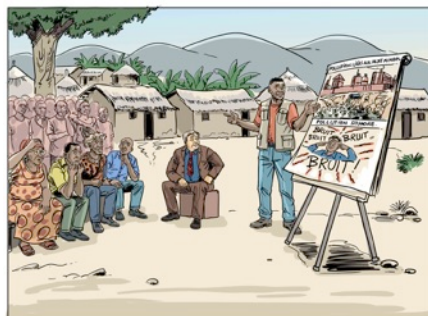
Unit 1.3 How can communities participate in decision-making regarding a mining permit?



An Environmental and Social Impact Assessment (ESIA) is a legal requirement for a company to obtain an exploitation permit or concession. The ESIA addresses the impacts of a mining project, and includes an Environmental and Social Management Plan (ESMP) with measures to avoid and mitigate those impacts. The ESIA is a document that must be available to the public.

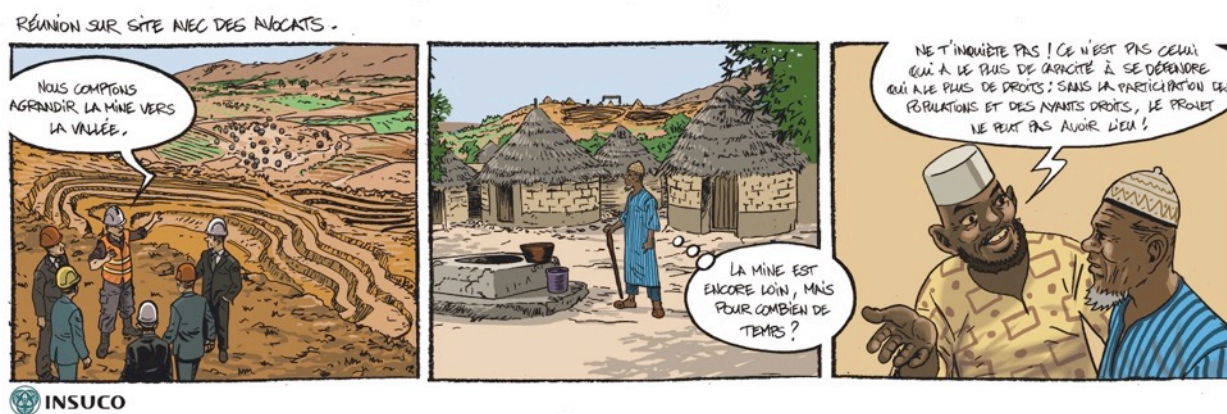
The ESIA process has several stages, each with mechanisms for public participation. Especially during scoping and analysis, public participation is critical to ensure that the ESIA and ESMP are well done and take into account all impacts on local communities.

The law requires implementation and monitoring of the ESMP. This is to be carried out by the company, as well as the territorial and central administration, specifically the Prefectural Committees for Environmental and Social Monitoring.



MODULE 2 : WHAT ARE THE LAWS, ROLES AND RESPONSIBILITIES OF EACH ACTOR?

Unit 2.1 What is law?



Law is the body of rules and principles that regulate and punish the conduct of individuals and groups in society. When legal rules are written, mandatory and issued by the National Assembly, they are called laws.

The laws of Guinea are organized in the following hierarchy, beginning with the Constitution, then international treaties, followed by organic laws and ordinary laws (Codes), then followed by decrees, orders, etc. The laws of Guinea are not the only laws applicable to a mining project. Other laws apply as well, such as the laws of the country where the mining company is from, agreements the mining company has signed, international law and safeguard policies.

Unit 2.2 What are human rights?



Exercising and enjoying fundamental liberties are our fundamental rights as human beings. Rights are also enjoyed by communities and for the most part exercised collectively. The State is the primary protector of human rights. Its four obligations are to respect, protect, promote and give effect to these rights on the whole of its territory. Companies have the responsibility to respect human rights in their activities and in their commercial relationships.



For example, the right to adequate food is the fundamental right of every person to be free from hunger. The right to health has a much larger scope than the provision and access to appropriate health care services.

The right to information and the right to participation are interdependent and indivisible: we would not know how to participate in a decision-making process if we had not been informed in advance. Guinea condemns discrimination against women; it has the obligation to ensure the elimination of all discrimination against women and to protect the rights of women and children.

A balance is to be found between the principle of free, prior and informed consent of affected communities and the right of States to choose the means of development that are in the national interest of their people.

Unit 2.3 What are the roles and responsibilities of each actor?

MAUVAISE PRATIQUE.



INSUCO

BONNE PRATIQUE

ASSEMBLÉE DEVANT LE MAÎTRE, LES SERVICES TECHNIQUES DE LA PRÉFECTURE, LE DIRECTEUR ENVIRONNEMENTAL DE LA MINE ET LE DIRECTEUR DES COMMUNAUTÉS DE LA MINE.



Mining activity concerns three main categories of actors: companies, the State and local communities.

At the State level, the central administration and decentralized services are required to apply the laws and ensure they are respected. Local municipalities are required to exercise their powers of local development. Companies are required to act in accordance with all applicable laws of Guinea and international law, including respecting human rights.

MODULE 3 : HOW CAN A COMMUNITY AVOID CONFLICTS?

Unit 3.1 How can a community resolve mining conflicts and avoid violence?

CONFLIT EXTRÊME QU'IL FAUT ÉVITER. LES RIVIÉRAINS SONT EN COLÈRE CONTRE LA SOCIÉTÉ MINIÈRE. ILS ESTIMENT QUE LES COMPENSATIONS N'ONT PAS RESPECTÉ LE CADRE LÉGAL.



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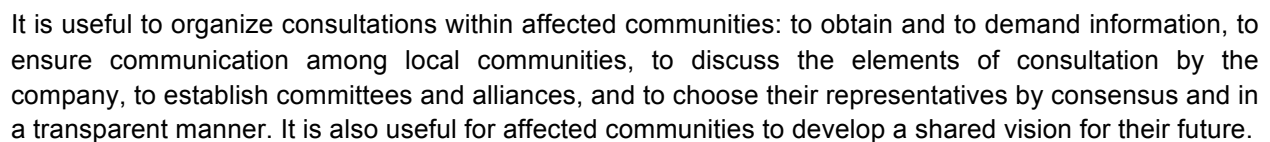
CONFLIT RÉGLÉ PAR LE DROIT ET LA JUSTICE AVEC L'AIDE D'UNE ONG.



There are different kinds of conflicts (relating to values, relationships, data, interests, or structural issues), and each has different possible avenues of intervention. In this respect, the Guide presents many examples of alternatives to violence related to mining conflicts.

Communication, dialogue, negotiation and mediation are important basic tools for resolving conflicts. Any mediation of a mining conflict requires capacity building for local communities, additional information and support in order to help reduce the power imbalance.

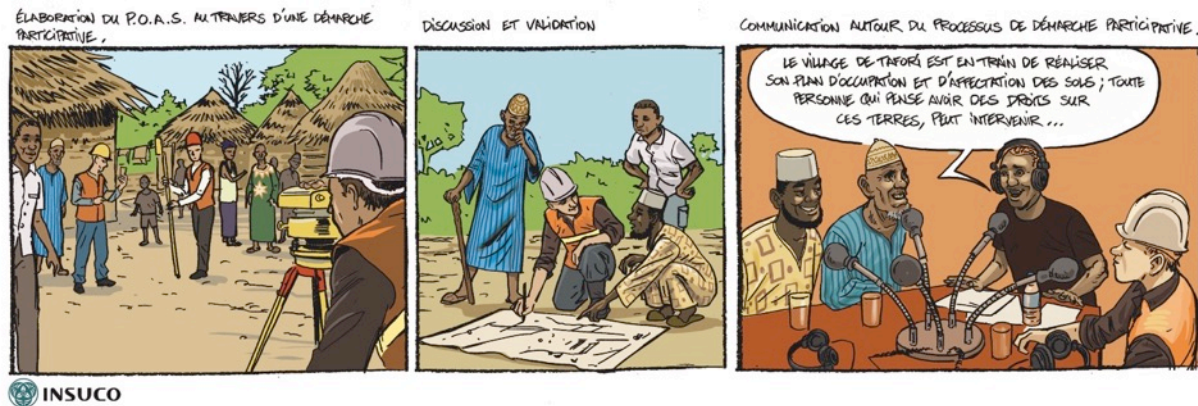
Unit 3.2 How can a community guard against manipulation and stay united?



A community protocol is a charter of rules and responsibilities in which local communities can outline their decision-making procedures, the elements of consultation procedures by outside actors, the conditions for access to and sharing of benefits, as well as their rights and responsibilities under customary, national and international law regarding land and natural resources. Such a protocol can take many forms, such as a consultation protocol or a biocultural community protocol.

A community protocol can be used to engage in dialogue with mining companies, to improve mining companies' consultation procedures, to build community capacity on their rights, and so help offset the often severe asymmetries of information and resources among local communities and companies.

Unit 3.4 How do you develop a land use plan as a tool for negotiation and social cohesion?



A land use plan is a collection of maps used to assess and plan territorial development. It is made up of two kinds of maps: those showing a territory's natural resources and their current use, and those showing how a community wishes to use the resources on their territory in the near and distant future.

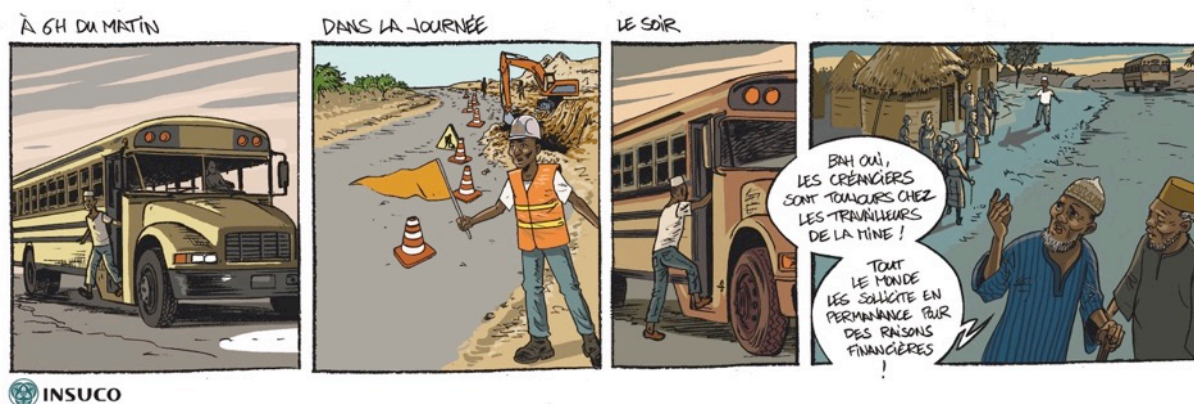
Land use planning is a method to collect information and to enable community members and local authorities to make choices for territorial development, resulting in a document that is the foundation for a series of regulatory planning documents.

Even though the negotiation of the authorization to extract is beyond the scope of local municipalities' powers, local municipalities can use their regulatory planning documents to negotiate (1) the configuration of the mine's infrastructure and (2) strategic reserve areas (no-go zones) that would be off limits to any mining activity.

Developing a land use plan requires expert assistance, the use of participatory methods (such as participatory mapping), wide distribution and popularization of its contents.

MODULE 4 : HOW CAN A COMMUNITY BENEFIT FROM MINING?

Unit 4.1 What benefits can a community receive from local mineral resource development?

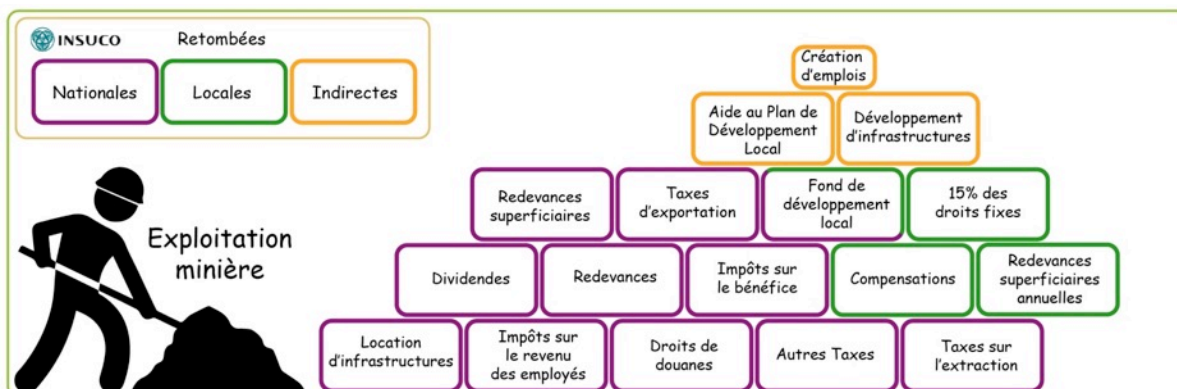


Without an appropriate framework for managing impacts and sharing benefits, most of the benefits of mineral resource development occur at the national level, while the most significant negative impacts are felt at the local level.

The potential benefits of a mine at the local level, both direct and indirect, include (1) direct financial returns, (2) jobs and local purchasing of goods and services, (3) infrastructure and service delivery and (4) voluntary contributions from companies.

Mining companies are subject to several obligations to give preference to Guinean companies and employees, using a scaled approach. But mining companies require specialized skills and materials; today, Guinea has few of the qualified workers or industrial units necessary to meet these needs.

Local communities can make a number of demands on mining companies and their sub-contractors in order to ensure an open, transparent and competitive process for recruitment and procurement.



Unit 4.2 How do you negotiate and implement a community development agreement?



A Community Development Agreement (CDA) is an agreement between affected communities and a mining company, also involving the State, which aims to avoid and minimize the mining project's negative impacts, compensate affected communities for unavoidable impacts, and ensure that local communities receive a share of the project's benefits that they would otherwise not have received. The execution (signature) of a CDA is one of the conditions required for a mining company to obtain an exploitation permit or mining concession.

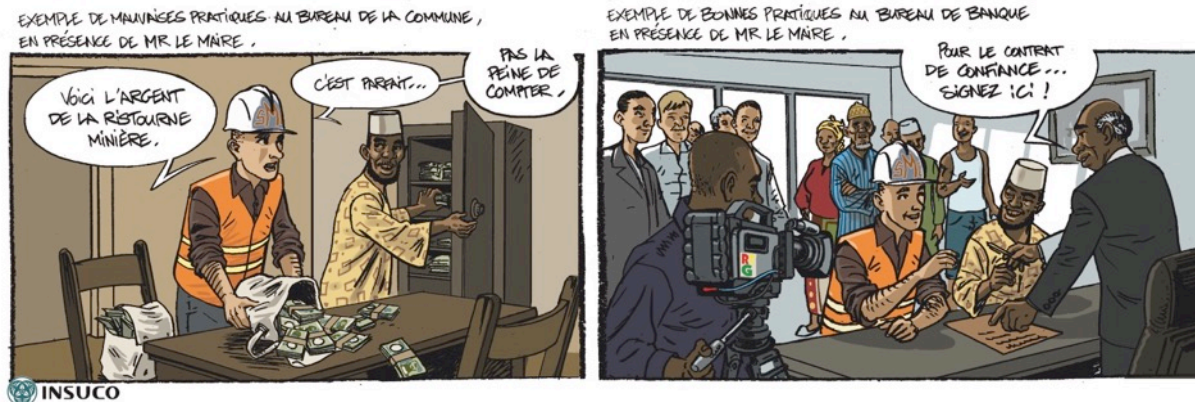
Based on the experiences of other local communities, it is recommended (1) to conclude precursor agreements with the mining company, (2) to integrate the Environmental and Social Management Plan (ESMP) into the CDA and (3) to ensure that the CDA serves to implement the affected communities' shared vision for the future as well as the Local Development Plans of affected local municipalities.

The success and results of a CDA depend in large part on the communities' and company's respective bargaining power. Given the significant imbalance in this regard, communities require significant lead-time, a budget and technical assistance to prepare for and negotiate a CDA with a company and the State.

Typical clauses in a CDA address the contribution amount and management of the Local Development Fund (LDF), local content, working conditions, cultural heritage, ESMP monitoring, access to the mine site, compensation, access to infrastructure post-closing, communication and implementation, legal provisions, and provisions in case of mine ownership transfer.

A CDA concluded when local communities do not have or understand all relevant information, do not have access to expertise, or are limited in their preparation time, can leave them worse off than if they had not concluded a CDA.

Unit 4.3 How can a community best manage their financial resources gained from mining activity?



A budget is made up of the total expenses and revenues in a given time period, usually a year. The total expenses must equal the total revenue in the time period. Families, local municipalities, companies – everyone has a budget.

With industrial mining, a local municipality's revenue sources will be increased by (1) payment of surface royalties as soon as a mining company settles in the area and (2) the creation of a Local Development Fund (LDF) at the start of exploitation.

It is the role of communities to analyze and evaluate the proper implementation of a budget in order to ensure the appropriate and transparent use of its resources, including financial resources obtained from the mine. To ensure good use and management of the LDF, it is advisable to set up a steering committee, develop management and operational rules (by consensus), formulate principles for local consultation frameworks and provide for participatory evaluation.

MODULE 5 : WHAT DOES A COMMUNITY NEED TO KNOW ABOUT THE IMPACTS?

Unit 5.1 We risk losing our lands or suffering damages. What do we need to know?

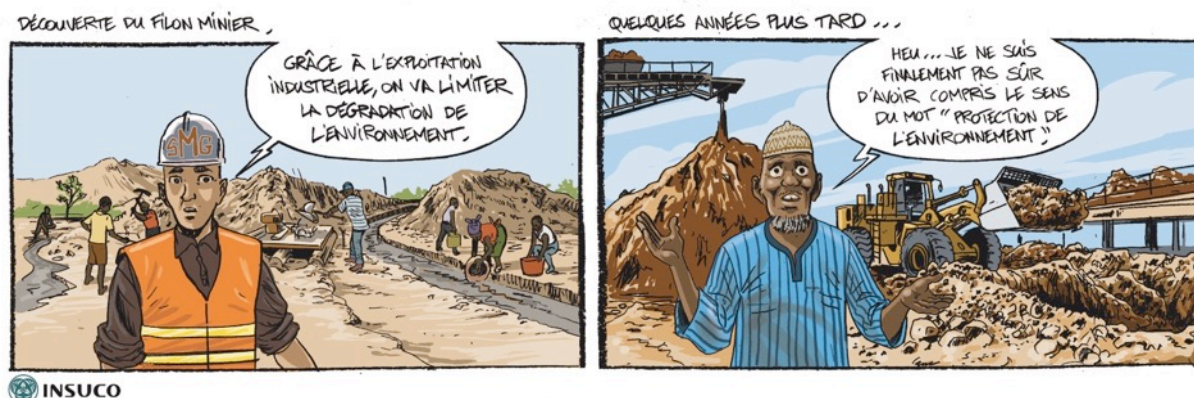


Resettlement is any situation of displacement, whether physical (loss of access to homes and lands) or economic (loss of assets or access to assets that leads to loss of income sources or other means of livelihood, such as forests, rivers for water and fishing, etc.), whether permanent or temporary, as a result of project-related land acquisition, restrictions on land use, or both. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in the displacement. Forced eviction refers to involuntary resettlement that does not provide adequate protection or access to such protection.

A mining project does not extinguish property rights. The right to adequate housing has a much broader scope than the right to property. Resettlement must only be carried out under exceptional circumstances and in full accordance with domestic and international law. No one may be expropriated of their lands unless it is legally recognized as in the public interest and subject to prior and just compensation. The procedure for any expropriation in the public interest is carried out in three stages. The procedure to compensate for expropriation is based on voluntary agreement.

It is essential for affected people to participate in the development of the Resettlement Action Plan (RAP). In order to do so, they generally need access to expertise to ensure the RAP is fairly negotiated and executed, with full and informed community participation in order to choose an appropriate form and sufficient level of compensation and to anticipate the issues that frequently occur.

Unit 5.2 Since the mine's arrival, we see environmental pollution in our area. What do we need to know?



Environmental pollution related to a mine is often a source of mining conflicts. The Constitution protects the right to a healthy environment and specifies that the dumping of toxic or polluting waste is a crime against the Nation. The Water Code provides that every person has the inalienable right to access water.

The mining company, the Prefectural Committees for Environmental and Social Monitoring and the Guinean Bureau of Environmental Studies and Assessment are required to implement and monitor the Environmental and Social Management Plan (ESMP). In case of pollution, it is best for communities to address the issue collectively, in collaboration with local municipal authorities and mining company representatives.

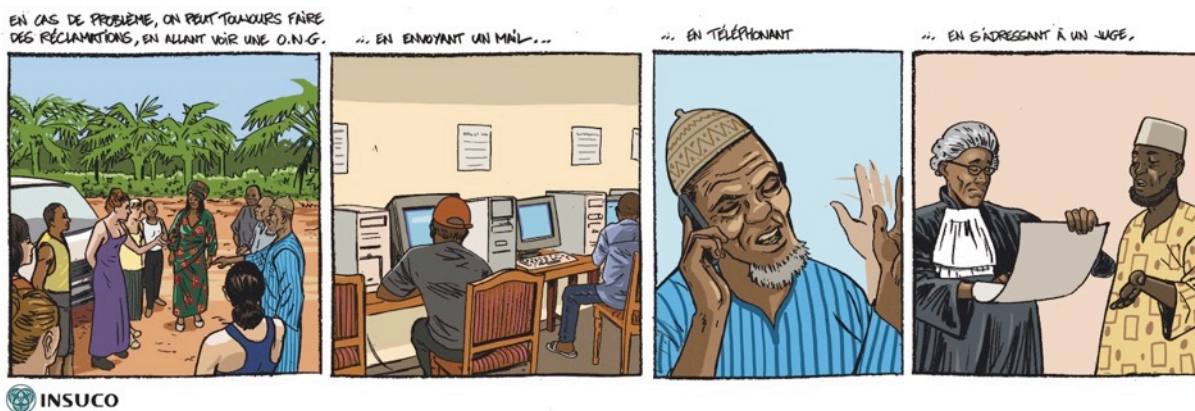
Unit 5.3 The mine may occupy our cultural sites. What do we need to know?



Cultural heritage can be defined in terms of tangible cultural heritage (objects, monuments, sacred sites) and intangible cultural heritage (expressions, knowledge and traditions) as legacies bestowed for the benefit of future generations. The State bears responsibility for identifying, protecting and safeguarding cultural heritage. To give effect to this, mining companies must identify cultural impacts. Several possible solutions are available if a sacred site cannot be displaced.

MODULE 6 : WHAT ACTIONS CAN A COMMUNITY TAKE TO ENSURE THE LAW IS RESPECTED?

Unit 6.1 What actions can you take locally to make your demands heard?



The hierarchy of actions to make a community's demands heard begin with understanding the problem, being informed about it, taking action locally, then nationally and finally seeking remedy.

Among the possible actions to take locally, it is advisable to begin with quiet advocacy, then to write a letter of complaint or petition, then to hold a meeting with representatives of the company and the State's

technical services, and to use the media. The Constitution protects the right to protest peacefully, meaning to adopt peaceable and irreproachable behavior.

If you can identify potential threats to your security, you can assess the seriousness of those threats and so better protect your security when you make your demands heard.

Unit 6.2 What are good documentation and monitoring practices?



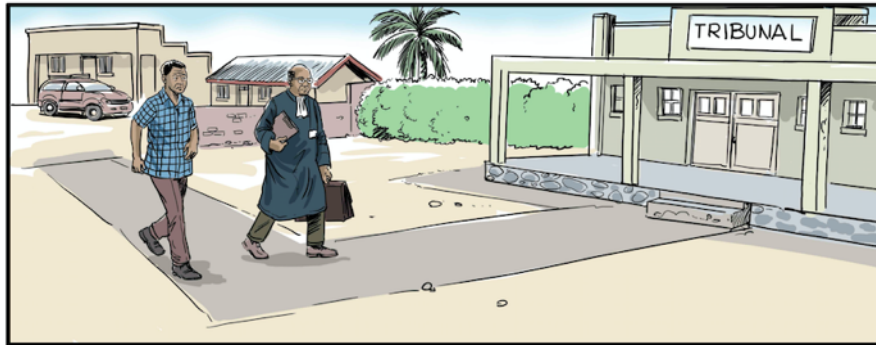
Documentation includes several activities: determining, recording and gathering information and documents. A document is a source and means of transmitting knowledge. Monitoring means regularly and systematically collecting information from multiple sources. The central element of monitoring is a detailed and complete knowledge of the reference situation, that is, the situation that is in compliance with the law.

The State is responsible for monitoring that rights are respected. NGOs, local civil society and others play a key role in verifying that laws are respected, and that standards and obligations are met.

In order to produce documentation and to monitor, you must establish contacts, determine the facts, store the information obtained, analyze and summarize the facts. Techniques to gather information include holding meetings and conducting interviews, using audio-visual materials, analyzing documents and using participatory techniques.

Some important monitoring tools include a baseline study, an impact assessment and joint monitoring. A baseline study describes the situation before a given change occurs. An impact assessment identifies a project's probable or actual impacts, the diversity of attitudes about a project, and strategies to mitigate the impacts and maximize possible advantages. Joint monitoring is a collaborative process of collecting and analyzing data, and then communicating the results among local communities, the mining company and State actors.

Unit 6.3 What mechanisms can we use to seek remedy for our claims?



The full enjoyment of human rights requires that any person who is the victim of a rights violation have access to remedy and redress.

If attempts to resolve the issue locally have failed, there are several possible mechanisms (judicial and non-judicial) you can use to seek remedy for claims regarding actions of the State or a mining company.

Such mechanisms exist locally (the mine's grievance mechanism, customary authorities), nationally (administrative oversight bodies, the judiciary), regionally (the African human rights system) and internationally (development banks' independent complaint mechanisms, the Organisation for Economic Co-Operation and Development's National Contact Points, the mining company's shareholders, and the systems of the United Nations and the International Labour Organization).

The choice of the most suitable mechanisms for remedy depend on a number of factors, including the criteria for the admissibility of a claim, the nature of the problem, the communities' desired outcome and the resources available to them.



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About the American Bar Association Rule of Law Initiative



The American Bar Association Rule of Law Initiative (ABA ROLI) is an international development program designed to promote the rule of law in over 60 countries across the world in partnership with a range of local actors, such as civil society organizations, ministries of justice, legislators, judges, lawyers and law schools, among others.

About INSUCO



The Guide was produced with technical support from INSUCO, an engineering and social sciences consulting firm involved in extractive, infrastructure and institutional projects in Africa, Latin America and Asia. Its objective is to promote durable partnerships among actors in a given area.

MAP OF GUINEA'S MINING ZONES

