

Mining & Communities

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



A practical guide for civil society organizations and local authorities



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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.

In Africa, ABA ROLI runs programming to strengthen the rule of law in the Democratic Republic of Congo, Guinea, Mali, Nigeria and the Central African Republic, as well as a sub-regional program in the Great Lakes, whose office is in Burundi. The programs aim to increase access to justice for marginalized populations, to strengthen judicial systems and to promote human rights. In 2012 in Guinea, the organization, in partnership with the NGO *Centre du Commerce International pour le Développement* (CECIDE), contributed to the revision of a number of draft implementing regulations of the Mining Code in order to enrich them with international standards and ensure the protection of local communities.

About INSUCO



The Guide was produced with technical support from INSUCO.

INSUCO is 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.

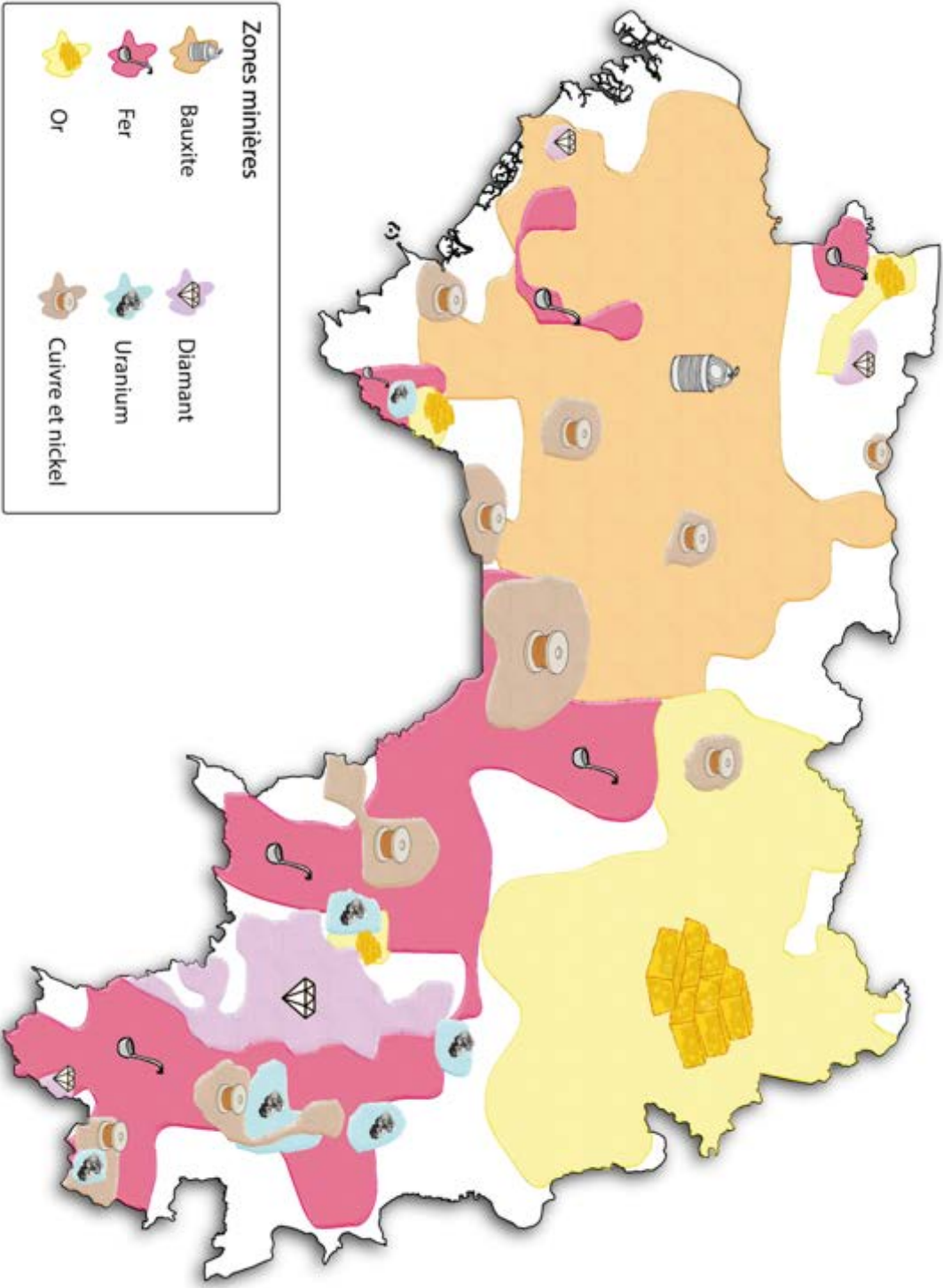
This Guide presents options for constructive engagement, which is an option among a range of approaches from engagement to resistance. References to guidance on resistance can be found in the list of Sources at the end of this Guide.

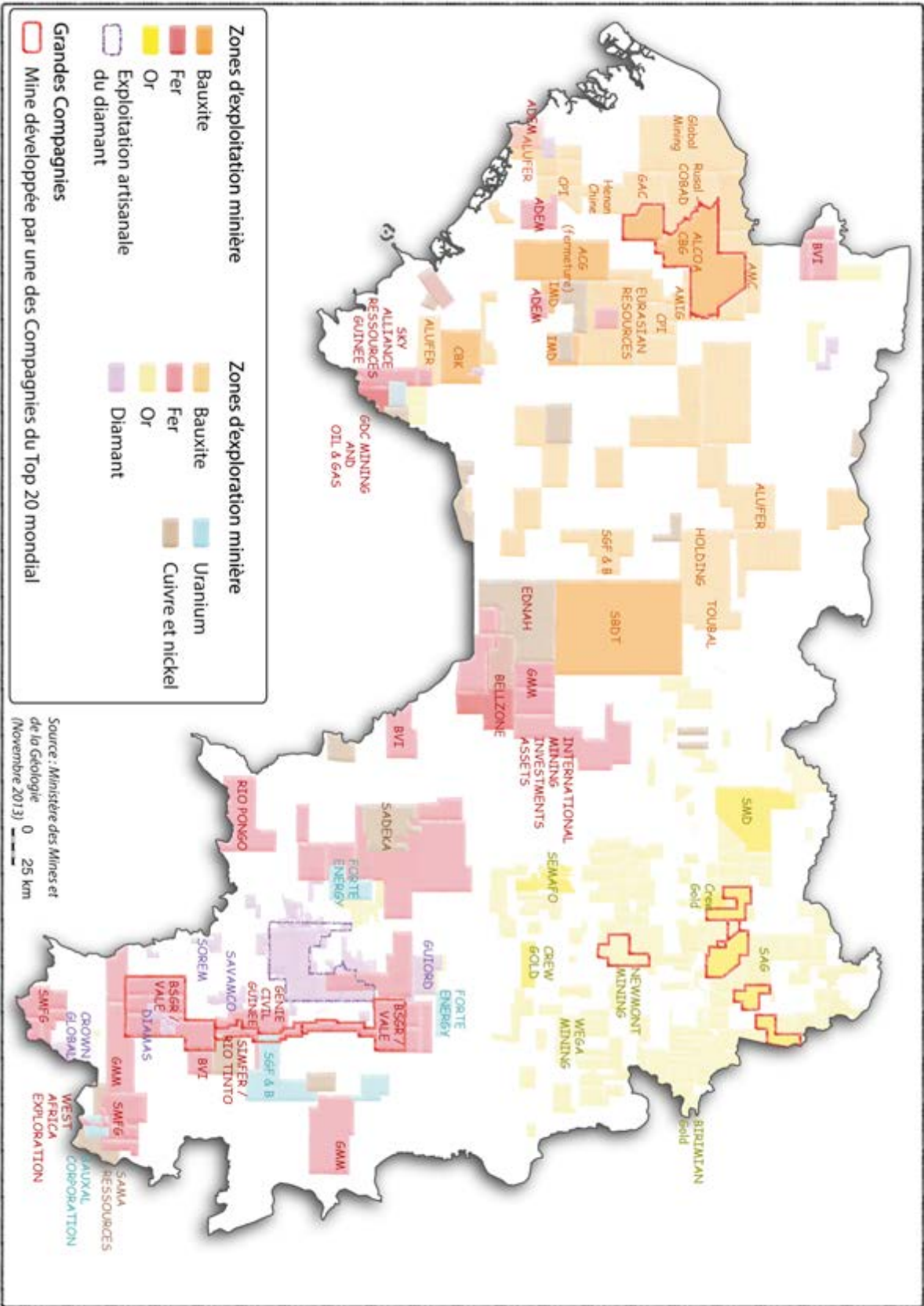
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Maps of mining areas in Guinea





Foreword

Given the importance of metals and minerals in our daily lives, the rapid intensification of mineral exploration and exploitation in Guinea, as well as the opportunity and significant challenge that this poses for contributing to sustainable human development, and the impacts on local people, the following question emerges:

Will mining activity and the riches generated by natural resources improve the lives of Guineans and future generations? (Africa Progress Panel)

This Guide is an initiative of ABA ROLI to establish a clear, shared understanding of the rights and obligations of local communities, mining companies and the State in the context of industrial mining. It also proposes strategies and tools for these actors, which can support creating spaces for negotiation and compromise, because the respect and protection of local communities affected by industrial mining in Guinea are not easy questions to address.

An understanding clearly shared by all is desirable not only for the benefit of local communities, but also for the accountability of companies and State actors. This strives to ensure that industrial mining activities will bring benefits and contribute to improve living conditions of Guineans today and tomorrow. A shared understanding equally supports realizing the State's objectives for sustainable development and reduces risks and costs for mining companies.

“People are not informed about their rights. They don't know the laws governing the mining sector. Often the lack of information means citizens act and then regret their actions.”

– Guinean journalist

Acknowledgments

ABA ROLI would like to thank, for their support, all those who contributed to developing this Guide:

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Next, we are very grateful for the availability and support the Guinean authorities demonstrated for our initiative, especially the Ministry of Mines and Geology (MMG), the Ministry for Territorial Administration and Decentralization (MATD), the Ministry for the Environment and Water, and the Ministry for Human Rights and Civil Liberties (MDHLP). We are particularly grateful to Mr. Nava Touré, Secretary-General of the MMG, for his advice that guided our methodology.

The observations, advice and support of the Guide's Guinean advisory group, whose members acted in their personal capacity, were key to help us produce a balanced document. The Guinean advisory group was made up of the following resource persons: Mr. Nava Touré and Mr. Vaféré Coulibaly, Interim Executive Director of the MMG Bureau of Studies and Strategy; Mr. Moriba Sossouadounou, National Directorate of Agriculture of the Ministry of Agriculture; Dr. Seydou Bari Sidibé, Executive Director of the Guinean Bureau of Environmental Studies and Evaluation (BGEÉE) of the Ministry for Environment and

Water; Mr. El Hadj Bachir Diallo, Legal advisor to MDHLP; Mr. Abdoulaye Kaba, National Director of MATD; Mr. Mamadou Taran Diallo, President of the Publish What You Pay Coalition in Guinea; Mr. Aboubacar Diallo, Coordinator of the Rights of Communities Affected by Mining Program of the NGO CECIDE; Mr. Mohamed Eric Thiam, Judge and Member of the Extractive Industries Transparency Initiative (EITI) Guinea; Ms. Sandy Nichols, Natural Resource Governance Institute; Mr. Mamadi Youla, President of the Chamber of Mines and Executive Director of Guinea Alumina Corporation (GAC); Dr. Pascal Rey, President and Executive Director of INSUCO; Mr. Hady Barry, Principal Advisor, Land Acquisition and Human Rights and Mr. Etienne Lamy, Principal Advisor, Community Relations and Social Performance of Rio Tinto; Mr. Jason Peirce, Director of Sustainable Development of Société AngloGold Ashanti de Guinée (SAG); Mr. Jamison D. Suter, Director, Environmental and Social Responsibility of Société des Mines de Fer de Guinée (SMFG).

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How to use the Guide

The Guide is first a **reference document** for civil society organizations and local authorities living in Guinea's mining zones. The Guide identifies and defines the relevant legal and regulatory provisions and proposes strategies and tools to promote dialogue in order to find solutions. The relevant legal and regulatory provisions are based on the Guinean Constitution, the laws of the Republic of Guinea, regional and international treaties, regional and international norms, industry good practice, as well as advice from local communities having experienced industrial mining in other countries.

Throughout the Guide, the source documents (the laws, regulations, standards, guides, etc.) are indicated in italics in parentheses at the end of a sentence, as follows: (*Source*). A list of the source documents and their full references is found at the end of the Guide, as well as a list of Key terms.

The Guide is at the same time a **trainer's manual**, which can be used in whole or in part by any facilitator, trainer or educator acting for the benefit of local communities living in the country's mining zones. Each module has multiple units and each unit follows the same format: teaching objectives, thematic content, summary of the key lessons and animation activities. The content of each theme is written in a question-and-answer format and includes case studies. The animation activities at the end of each unit include games, forum theatre scenes, discussion questions and other activities tailored to the theme. At the end of the Guide is Advice for facilitators with instructions for carrying out the basic animation activities.

Acronyms and abbreviations

ABA ROLI	American Bar Association Rule of Law Initiative
ACHPR	African Charter/Commission on Human and Peoples' Rights
AFD	<i>Agence Française de Développement</i>
AfDB	African Development Bank
AIP	Annual Investment Program
ASM	Artisanal and small-scale mining
BCP	Bio-cultural Community Protocol
BGEEE	Guinean Bureau of Environmental Studies and Evaluation
BICC	Bonn International Center for Conversion
CASSM	Company for Security Support to Mining Companies
CAO	Compliance Advisor Ombudsman
CBG	<i>Compagnie des Bauxites de Guinée</i>
CBK	<i>Compagnie des Bauxites de Kindia</i>
CBO	Community-Based Organization
CCE	Certificate of Environmental Conformity
CCLM	Consultative Committees in Mining Localities
CDA	Community Development Agreement
CECI	Centre for International Studies and Cooperation
CECIDE	<i>Centre du Commerce International pour le Développement</i>
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CFI	Court of First Instance
CIKOD	Center for Indigenous Knowledge and Organizational Development
CNT	National Transition Council
CPDM	Center for Mining Promotion and Development
CPSES	Prefectoral Committees for Environmental and Social Monitoring
CSO	Civil Society Organization
CTAE	Technical Committee for Environmental Analysis
CTRCTM	Technical Committee for the Review of Mining Titles and Conventions
DNM	National Directorate of Mines
EC	Equitable Cambodia
ECOWAS	Economic Community of West African States
EIP	<i>Association Mondiale pour l'Ecole Instrument de Paix</i>
EITI	Extractive Industries Transparency Initiative
ELAW	Environmental Law Alliance Worldwide
ELI	Environmental Law Institute
ESCR	Economic, social and cultural rights
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
EWC	Endorois Welfare Council
FAO	Food and Agriculture Organization of the United Nations
FIDH	International Federation for Human Rights
FPIC	Free, Prior and Informed Consent
GAC	Guinea Alumina Corporation

GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i>
GW	Global Water Initiative
IBA	Impact-Benefit Agreement
ICMM	International Council on Mining & Metals
IEG	Independent Evaluation Group
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
IFDD	<i>Institut de la Francophonie pour le Développement Durable</i>
IICA	Inter-American Institute for Cooperation on Agriculture
IIED	International Institute for Environment and Development
ILO	International Labour Organization
IPIECA	Global Oil and Gas Industry Association for Environmental and Social Issues
IRMA	Initiative for Responsible Mining Assurance
ISO	International Organization for Standardization
LDF	Local Development Fund
LDP	Local Development Plan
LML	Local Municipalities Law
LRC	Legal Resources Centre
LUP	Land Use Plan
MATD	Ministry for Territorial Administration and Decentralization
MDHLP	Ministry for Human Rights and Civil Liberties
MDT	<i>Mêmes Droits pour Tous</i>
MIGA	Multilateral Investment Guarantee Agency
MMG	Ministry of Mines and Geology
NCP	National Contact Point
NGO	Non-Governmental Organization
NJ	Natural Justice
NRC	Norwegian Refugee Council
NRCan	Natural Resources Canada
NSI	North-South Institute
OA	Oxfam Australia
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
PACV	Program for the Support of Village Communities
PAD	Detailed Development Plan
PAP	Project-affected person
PAR	Participatory Action Research
PRA	Participatory Rapid Appraisal
PRCB	Rural Communes of Boké Capacity-Building Project
RFUK	Rainforest Foundation United Kingdom
RAP	Resettlement Action Plan
SAG	<i>Société Anglogold Ashanti de Guinée</i>
SCOT	Territorial Coherence Plan

SDI	Sustainable Development Institute
SEMK	Mining Exploitation Company of Koidou
SMD	<i>Société Minière de Dinguiraye</i>
SME	Small- and medium-sized enterprises
SOMO	Centre for Research on Multinational Corporations
SSLS	South Sudan Law Society
UDHR	Universal Declaration of Human Rights
UEMOA	West African Economic and Monetary Union
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
USAID	United States Agency for International Development
WB	World Bank Group
WHO	World Health Organization

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

WHY DOES THIS MODULE MATTER?

In Guinea, just as in many other resource-rich countries, the State and mining companies can have different points of view about the importance and scope of local community rights in the context of industrial mining. Local communities are often left in the dark with little information, tools or power to react, all this while their already fragile situations are made worse.

That is why the following questions are addressed in Module 1:

- What do communities need to know about the arrival of a mine and the mine site? (Unit 1.1)
- What can a community expect when a company establishes a mine nearby? (Unit 1.2)
- How can communities participate in decision-making about a mining permit? (Unit 1.3)

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



TEACHING OBJECTIVES

- Define mining exploitation, its methods and provide an overview of Guinea's mineral potential.
- Define and explain the phases and obligations to obtain a mining permit.
- Begin to understand the mineral development cycle and scope of a mining site, as well as its impacts on artisanal mining communities, proximity to dwellings and water usage.

THEMATIC CONTENT

What is mining?

Mining is the process by which persons and companies extract or sample minerals, rocks and precious stones from the soil or sub-soil.

In Guinea, the extraction of natural resources by communities and companies dates back several centuries, in localities such as Fria in 1960, Kamsar in 1973 and Siguiri in 1995. But in other localities, mining is a new phenomenon.

— What is Guinea's mineral wealth?

Guinea has significant mineral potential that is seen as a development opportunity for the country. This mineral potential attracts foreign direct investment. Mineral projects are under development in the northeast (bauxite zone), in the central area (bauxite) and the southeast (iron ore). The metals and minerals in Guinea include:

Bauxite. Guinea has 30% of the world's global bauxite reserves and represents 94% of African bauxite production. The bauxite corridor is in the north-east of the country; the most exploited deposits to date are in Kindia, Sangarédi and Fria.

Iron ore. Guinea also has some of the richest and undeveloped iron ore deposits globally, including two leading deposits at Simandou and Monts Nimba in the Forest Region.

Diamonds. Guinea holds an estimated 30 million carats of diamonds, most exploited artisanally in the south-east of the country, as well as by some companies, including Guiter Mining, as of the date of publication.

Gold. The country also has significant gold reserves in the northeast in Lero and Siguirini.

Others. The mineral potential also includes uranium, nickel, calcium, granite, hydrocarbons and gas.

— Who owns Guinea's mineral riches?

According to the Constitution, the people of Guinea have an imprescriptible right to the country's riches; these must benefit all Guineans in an equitable manner (*Art. 21*). The mineral or fossil substances contained in the sub-soil or existing on the surface of the territory of the Republic of Guinea are the property of the State (*Art. 3 of the Mining Law*). This means that the minerals belong collectively to the people of Guinea, but the State – acting in the name of the people – may extract them for the national good. Most countries own their mineral resources in this way.

How is exploitation done?

There are many types of exploitation, from small- to large-scale:

Artisanal exploitation. All exploitation by manual and traditional methods and processes, which is characterized by a weak level of mechanization (rudimentary tools) and manual labor. (*Mining Law*)

To date, artisanal exploitation has been the primary method of extracting gold and diamonds in Guinea. More than 200,000 people earn a living by this means, and many of them are women (*USAID*).



Semi-industrial exploitation. All small-scale, permanent mineral exploitation using semi-industrial processes and whose annual production of commerciable products is within certain thresholds set in regulation (*Mining Law*).

Industrial exploitation. All large-scale exploitation by modern and mechanized methods and processes. This demands significant investments (in excess of 1 million Euros), fixed large-scale installations and trucks that can be two or three times as tall as people. Industrial mines can produce hundreds of thousands of tons of minerals (*Mining Law*).



— Which methods do companies in Guinea use for industrial mining?

Companies use different methods, depending on factors such as the type of mineral, deposit and site. A few of the methods are:

Open-cast. A method used when the mineral deposit is located deep in the sub-soil, requiring the removal of superimposed layers of overburden (rock waste) and minerals. An open-pit mine can be 4 km wide and 1.5 km deep. All mining companies in Guinea use this method to extract gold, diamonds and iron ore.

Strip mining. A method whereby successive layers of mine waste and minerals are removed. This method is used for minerals such as bauxite, phosphate and uranium, which are almost always located closer to the surface of the ground, with little or no overburden. In Guinea, this method is used by CBG, CBK, SAG, SMD and Guiter Mining, as of the date of publication.

Underground. A method requiring removal of a minimal quantity of overburden to access the mineral deposit; the deposit is accessed by tunnels or pits, which lead to a horizontal underground network that provide direct access to the mineral.

Gold dredging. This method uses suction dredges in watercourses and sometimes in wetlands. This method is not widely used in Guinea. The first companies authorized to use this method did not perform well and did not meet the relevant environmental standards.

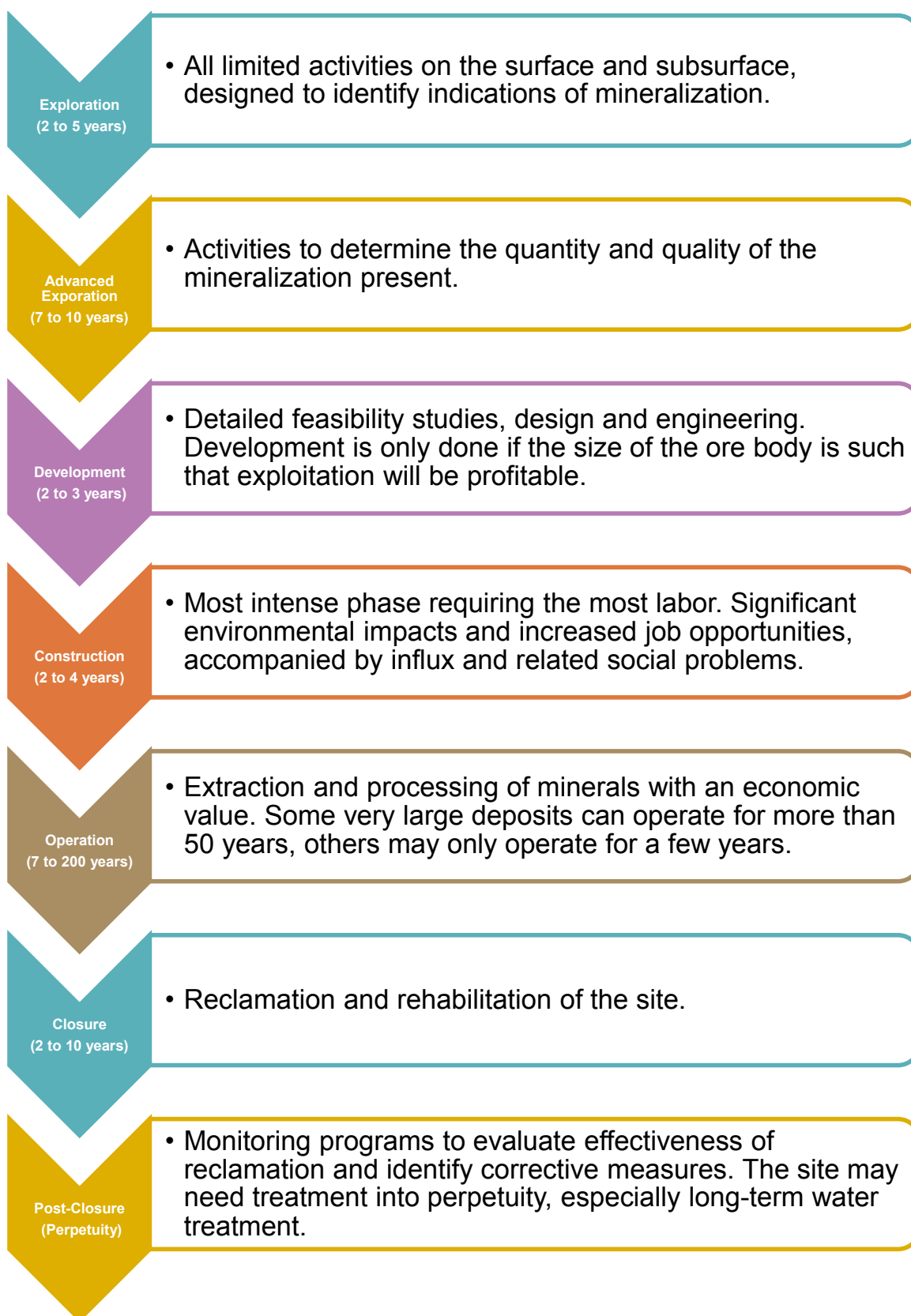
Mining projects can last from 10 to 100 years or more, and their phases can be summarized as follows (see diagram).

Why is it important to learn more about industrial mining?

It is important for local communities, civil society organizations, local authorities and others in Guinea to learn more about industrial mining happening in the country for several reasons:

1. **Impacts on local communities.** Although products of industrial mining are important in our everyday lives, and although positive impacts are sometimes possible, industrial mining has significant negative impacts if it is unregulated and not carried out responsibly. For example, displacement from homes and livelihoods, environmental pollution, increased insecurity and rising cost of living.
2. **Offers an "unprecedented opportunity" to reduce poverty more quickly in Guinea, which is a major challenge.** According to experts from the Africa Progress Panel, as a resource-rich country, Guinea today has an "unprecedented opportunity" to more quickly reduce the country's extreme poverty. But it is a major challenge to ensure that this promise will turn into reality. So far, the potential of Guinea's mining sector to reduce poverty in the country has not been realized.
3. **Increased investments in Guinea's mining sector.** With more than \$50 billion in expected investments, the mining sector is expected to become a significant industry in Guinea, likely to considerably affect the lives and lands of tens of thousands of people. The investments also include related infrastructure projects, such as a 650 km rail, new roads, and a deep-water port in Forécariah. This infrastructure can require higher investments than those needed to construct and operate a mine.
4. **Basic goods.** Metals and minerals are necessary for the production and manufacture of many products fulfilling everyday needs. For example:
 - Iron ore is primarily used to make steel, a metal used to construct roads, cars, airplanes, trains and railroads, bridges, buildings, heavy equipment, small and large household appliances, and more.
 - Bauxite is used to make aluminum, which in turn is used to build transport vehicles, windows and doors, packaging and a range of household goods.
 - Gold is commonly used in manufacturing electronic products, jewelry and as means of trade or currency.
 - Diamonds are not only used as precious stones in jewelry, but also in industries such as the health industry, for lasers, X-rays and other medical equipment.
 - Uranium is used to fuel nuclear power plants and in military instruments.

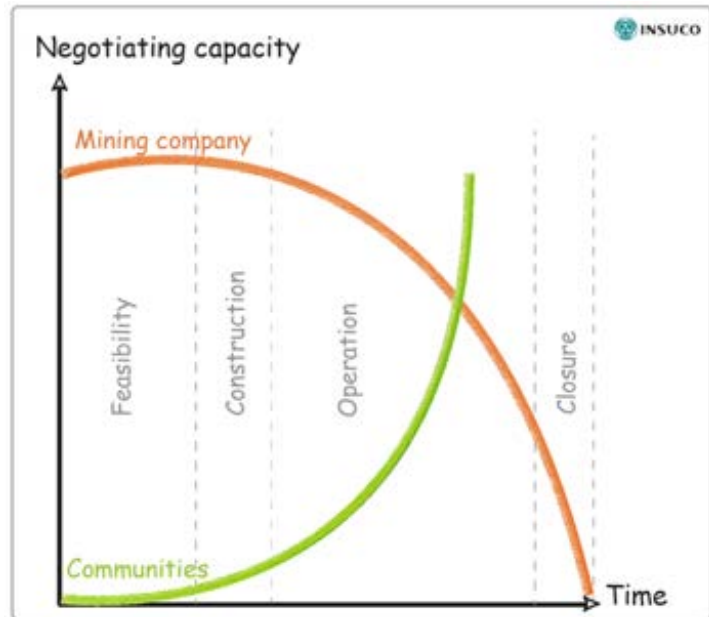
PHASES OF AN INDUSTRIAL MINING PROJECT



— Seizing the window of opportunity to negotiate at the beginning of the project

In most mining projects, local communities have few ideas about their rights or interests in the first phases of a mining project, even though this is the moment when a mining company is the most open to negotiation. This is also a key moment for the impact assessment, which will determine mitigation measures and compensation.

It is usually only after about 10 or 20 years – during construction and operation of the mine – when significant impacts arrive, that local communities take stock of their losses, their interests and their rights. This coincides with the moment when the company is least open to negotiation. The situation usually deteriorates and conflicts can arise. We can visualize this situation over time as two reverse curves (see diagram).



That is why it is important for local communities to mobilize as soon as possible to become aware of their rights and interests. This gives them an opportunity to better leverage the procedures and protections provided by law, and the company's openness to negotiate during pre-feasibility, feasibility, construction and the first 10 to 20 years of the mine's operations. This can also help avoid later conflicts.

Who decides that a mining company can set up in a community?

The following text presents a dialogue among the Senior Village Elder, a representative of the Mining Company, a representative of the State and a representative of a CSO.

Senior Village Elder: “Why is the mine here in my village?”

State representative: “The village is located on soil containing an important quantity of minerals that the State wants to recover in order to create wealth, invest in development projects and to redistribute equitably for the population’s well-being. Because the State does not have the technical or financial means to do mining activity, the State invites investors and mining companies to exploit the mineral resources in the village sub-soil.”

Mining Company representative: “My company is set up here in your village for several reasons, in particular because according to the research we did, there is an exploitable mineral resource in the soil, and this exploitation will be profitable for my company. But the State must authorize my company to exploit by granting a mining title.”

State representative: “The role of the State is very important. We must offer a favorable political and social climate for foreign direct investment. The State must also regulate this activity by law and ensure monitoring of the project activities. The *Mining Law* is the document that contains the national policy and the laws related to mining activities in the country.”

Mining Company representative: “To start our activities, the company must ask the State for authorization, which is done by granting a **mining title or permit** (an exploration permit, an exploitation permit or a mining concession) which is valid for a limited time (defined time period) and for a limited space (defined territory).

First, the company must obtain an **exploration permit**, because the exploitable mineral resources are only known after the exploration phase, which are the company’s first activities on the ground.

Next, before the company can start exploitation, the company must report to the State, which is responsible for validating the work plan for exploitation. If the company obtains an **exploitation permit** or **mining concession**, the siting of the concession is clearly defined after studies and prior public consultations, and the operations for setting up the mining infrastructure on the ground can start once all permits are obtained. But this can take anywhere from 5 to 10 years.”

— Obtaining a mining permit

Senior Village Elder: “How did the mining company succeed in obtaining a permit to exploit in my village?”

State representative: “The *Mining Law (Art. 3)* states that the sub-soil resources are the property of the State. The process to obtain a permit is lengthy, strictly regulated by law, and supervised by the relevant services of the State within the **Ministry of Mines and Geology (MMG)** and the Ministry for Environment. All of these decisions are published in the official national journal.”

Mining Company representative: “To start activities in a given area, the company must first obtain an exploration permit (*Art. 19 to 22 of the Mining Law*). We applied for this permit at the **Center for Mining Promotion and Development (CPDM)**, which is part of the MMG. The CPDM, based in Conakry, is responsible for supervising the application.

The application is next assessed by the Technical Committee for Titles, the National Mining Directorate (DNM) and the Ministry for Environment. At the end of this assessment, the decision – in our case a positive one – was made by the MMG (*Art. 22 of the Mining Law*). During this assessment, the company had to provide many reports, both financial and technical, to justify its activities.” (*Art. 26 of the Mining Law*)

State representative: “We also verify the company’s integrity, because persons and companies subject to international sanctions or criminal inquiries related to fraud, corruption or money laundering may not obtain a permit.” (*Art. 15 of the Mining Law*)

Mining Company representative: “At the end of our exploration activities, the company was required to submit an environmental notice to the DNM and CPDM, after the notice was validated by the Guinean Bureau of Environmental Studies and Evaluation (BGEEE). This notice explains the mitigation and reclamation measures. The company even shared this notice with you, Senior Village Elder, as required by law (*Art. 30-II of the Mining Law*).

Next, we submitted a full application for an exploitation permit or mining concession with the CPDM. This application was required to include many supporting elements, including:

- Feasibility studies: research results, mining deposit development and exploitation plan, economic and financial analyses of the project
- Plan of the mining project and its infrastructures, an application for a mining concession (*Art. 37-II of the Mining Law*)

- Studies relating to affected communities, for which they must be consulted
- Studies on the project's impacts on the environment and communities → *See Unit 1.3 about impact assessments*
- Studies on supporting local development, and a Community Development Agreement (CDA), which must be signed in order to obtain a permit." → *See Unit 4.2 about CDAs*

State representative: "To obtain an exploitation permit or mining concession, the National Mining Commission studied the company's application and issued an opinion. The Council of Ministers endorsed this opinion by decree. The exploitation permit was issued for a limited time period (maximum 15 years in case of an exploitation permit, and a maximum of 25 years for a mining concession) and a limited territorial perimeter (*Arts. 32, 36 and 39 of the Mining Law*).

All exploitation permits and mining concessions must be accompanied by a **mining convention**. The mining convention concluded by the State and the mining company (the holder of the exploitation permit or mining concession) comes in addition to the provisions of the Law and specifies the rights and obligations of the parties." (*Art. 18 of the Mining Law*)

— Publicity of the mining permit and mining convention

Senior Village Elder: "So can we see the terms of the permit and the text of the mining conventions?"

State representative: "Yes, since February 2012, the **Technical Committee for the Review of Mining Titles and Conventions (CTRCTM)** has published more than 60 contractual documents on its website about 18 mining exploitation projects, with an interactive summary of the agreement terms, allowing non-specialists to find the most important sections and understand the obligations of the companies and the State."

→ *See Source documents > Thematic Guides > Mining Contracts: How to read and understand them; the International Bar Association's Model Mining Agreement; and the World Bank Institute's Contract Monitoring Roadmap*

— Stopping the development or exploitation of a mine

Senior Village Elder: "But with everything we have heard from other local communities about the impacts of industrial mining, we don't want a mine near our community! We really want to stop the mine!"

State representative: "If the State has placed its trust in a mining company, the company is obliged to furnish guarantees of feasibility and respect for national law and Guinea's international engagements. In these circumstances, there is no reason to want to stop the activity.

The permit, authorizations and concession can be cancelled if the company does not comply with Guinean law, especially the *Mining Law*, which is meant to guarantee the protection of communities affected by the project. There are many reasons for cancellation, including non-compliance with the time limits for research or exploitation, a wrongly assessed feasibility study, fiscal infractions, non-substantiation of its activities, fraud or corruption, and more. (*Arts. 87 to 89 of the Mining Law*)

If the mining company is in breach of the law, it will be liable for its actions. The company can be held liable for damages to repair the harm it caused, with sanctions that may include cancelling the permit and concession, depending on the infraction." (*Title 8 of the Mining Law*)

→ *See Source documents > Guides on resistance*

What happens after a mining permit is issued?

Senior Village Elder: “Now that the mine is here, what will happen?”

State representative: “A mining project generally lasts a long time, many years, and is made up of several stages involving multiple actors: the central administration, its decentralized and deconcentrated services, its agencies charged with guiding the whole project from the beginning to the end.

The State is obligated to ensure that the laws are respected. Monitoring is important, because it aims not only to minimize the negative social and environmental impacts of the mine on affected communities, but also to favor positive economic impacts. To this end, the State relies on its many central, deconcentrated and decentralized services, its specialized agencies and on the private companies.”

Mining Company representative: “The mining project obviously involves my private company and its sub-contractors who will exploit the mining resources.”

Senior Village Elder: “What about the community members?”

Village youth: “And my local NGO?”

Journalist: “And my radio?”

State representative: “Yes, you are all involved. All communities and persons affected or related to the project are closely involved in each of the phases of the mining project: exploration, feasibility, construction, operation and closure. Let me use the following diagram [next page] to help explain the phases.”

What happens after the mining company leaves?

Senior Village Elder: “And when the company leaves, what will happen to us and the company’s employees? Who will rehabilitate our lands transformed by the company’s activities?”

Mining Company representative: “The closure of the mine is planned in advance, at the beginning of operation, in a **closure plan** attached to the feasibility study, and by funding a **trust account for rehabilitation** from the start of exploitation, in order to guarantee the rehabilitation of the site (*Arts. 131 and 144 of the Mining Law*). This closure plan, which the company is responsible for, aims to accompany communities in the transition period of the mine’s closure. As a matter of fact, this will be a sensitive time for communities, because there will be fewer and fewer jobs and the rehabilitation of the site can take a long time.”

Where can mining activities happen and what is the mine’s footprint?

Senior Village Elder: “Where will the mine be located? On all the lands of our village? But these lands are ours and we need them!”

Village resident: “Some of these lands are from my clan and I have rights to them!”

(Another) Village resident: “I have to work in my field on the village lands!”

(Another) Village resident: “And I need to let my animals graze there!”

(Another) Village resident: “I built my house on land that I bought from my neighbor last year, and that land belongs to me now!”

(Another) Village resident: “We have prayer sites, sacred sites in the bush. They are important to us!”

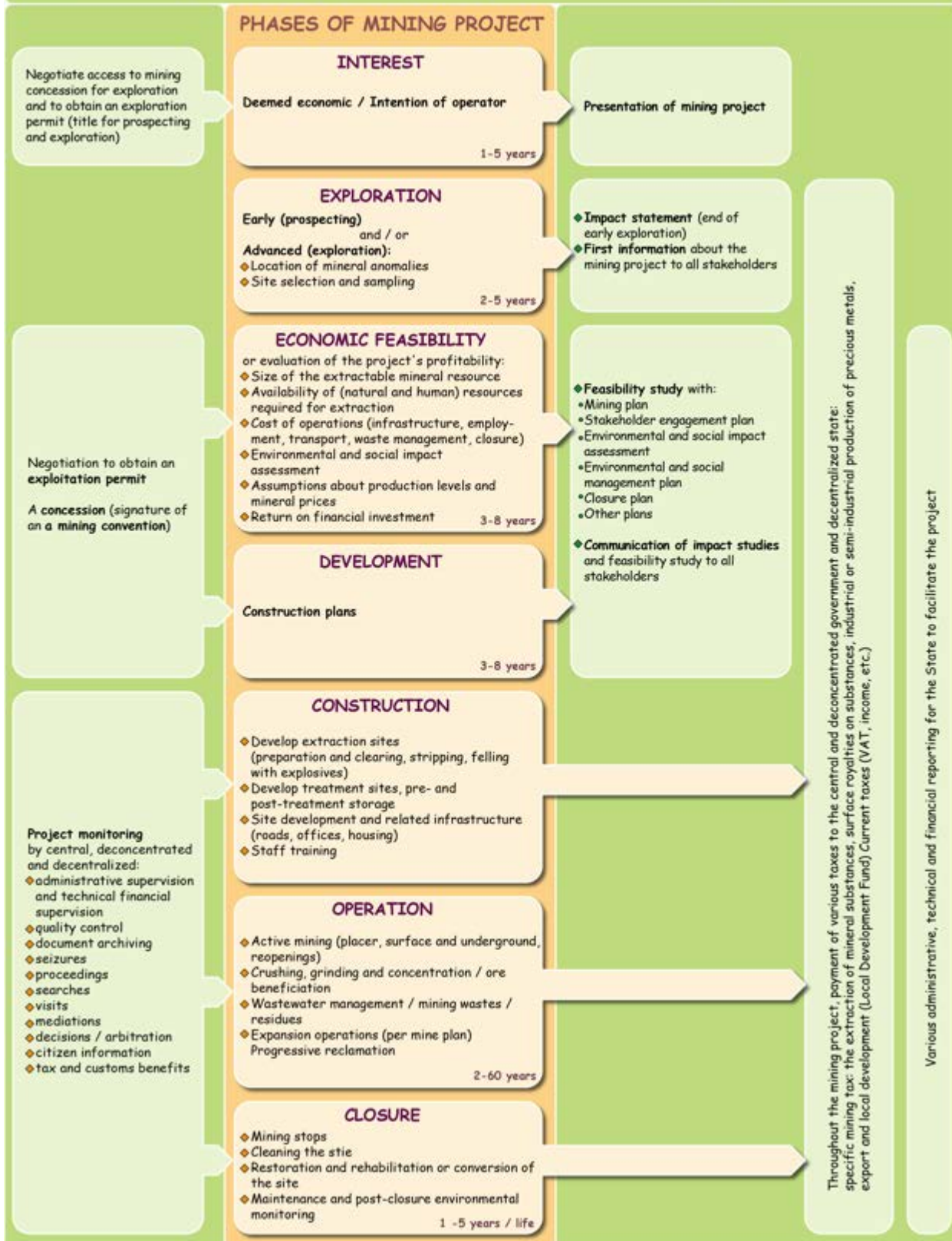
Mining Company representative: “Mineral extraction operations can only take place on the mining concession granted by the State. These operations only take place at certain sites, not on the entirety of the mining concession. Related infrastructure may be installed on or beyond the boundaries of the mining concession. Such infrastructure can be lodging, sites to treat and store the mineral, infrastructure to load the mineral (in trains, trucks, pipelines, etc.), transport corridors, solid and liquid waste treatment centers, entertainment venues, etc.”

State representative: “To negotiate with the company about the configuration of the infrastructure related to the mine, and to designate ‘no go’ areas, your locality can use its Land Use Plan.” → *See Unit 3.4 about LUPs*

Mining Company representative: “The footprint of our activity does not cover the entire concession. Our activity is only at sites defined by the mining plan and the impact assessment reports that we shared with you. All lands that will be used by the mine will be compensated fairly, and any activities or housing that will be lost will also be relocated or compensated. Affected community members will be compensated in accordance with the regulations in place in Guinea (*Chap. 3, Sect. 3 of the Mining Law*). → *See Unit 5.1 about compensation issues*

Building or expanding a mine are sensitive operations, which are planned together with community representatives. The discussed plans are then submitted for approval to the State agencies. The company’s usage of the lands is done in accordance with the plans, and under the supervision of the technical State service and communities.”

Legal and regulatory obligations of a mining project



— Industrial mining and artisanal mining activities

Village resident, artisanal miner: “And when the mine is there, will I be able to continue my artisanal mining activities?”

State representative: “Artisanal mining activity is subject to two constraints:

- Artisanal mining authorizations are granted in zones defined by decree of the Ministry of Mines, based on recommendation of the DNM (*Art. 52 of the Mining Law*);
- Next, this authorization cannot be granted for an area already belonging to another concession, the holder of which has an exclusive right of exploitation.” (*Art. 35 of the Mining Law*)

Village resident, artisanal miner: “So I can no longer operate within the mining concession? The mine on our lands will bring some benefits to our community, but what will happen to our artisanal mining activities that we have practiced for centuries in this area?”

State representative: “Indeed, you do not have the right to exploit artisanally without an exploitation authorization and on an existing concession. Moreover, if you continue to operate on the concession, especially near or on the extraction site, you are at serious risk of causing or being the victim of an accident, either by a rockslide, or an encounter with heavy equipment. You are risking your life, which causes problems for your community and the company, too.”

NGO representative: “Isn’t there an alternative solution so the two activities can continue in peace? I heard about a tripartite agreement negotiated among the State, the company and the artisanal mining community for peripheral areas within the mining concession – an agreement favoring co-existence.”

— Security zone

Village resident: “Can the mine come right up to my house? I ask, because the mine operations are now very close to our village. I’m really worried that our homes, which are made of mud, will crack and collapse from the explosives!”

Mining Company representative: “The *Mining Law* prohibits us from exploring or exploiting within a radius of 100 meters of wall-enclosed or similar properties, of villages, of groups of homes, of wells, of religious buildings, of burial or sacred sites, without the owner’s consent (*Art. 111*). This security zone of 100 meters is also a protected area where no activities are permitted, whether these are mining, private or community activities (*Art. 112*).”

Artisanal and small-scale mining (ASM)

The subject of this guide is industrial mining and not ASM. These two types of mining each present complex challenges – too complex to address in an already lengthy guide. The two types often demand different paths for dialogue and differing solutions. For example, for responsible ASM, we can say that it requires organization and formalization of the sector, as well as market incentives.

The **Fairmined Standard** is an example of a process favoring responsible ASM gold mining: engaging the sector in a formalization process, adopting sustainable exploitation practices, and in parallel significantly reducing the environmental and health impacts due to mercury usage.

Case Study: In Mongolia, artisanal miners negotiate a tripartite agreement with a mining company and the State to favor coexistence

In Mongolia, artisanal and small-scale mining activity (ASM) has existed for a long time. It was only legalized in 2010 and access to lands in the region is granted by bilateral or tripartite agreements. The agreements define the division of labor among the company and the artisanal mining community, the mechanisms for risk reduction, and the engagements of each party.

For example, the tripartite agreement specifies that the artisanal miners scrape the bottom of the pits, before they are backfilled. Mining companies cannot efficiently clean the bottom of the pit, where gold remains. Artisanal miners were aware of this “lost gold” and negotiated access, which led to the efficient use of resources for both parties, and maintaining community subsistence activities. The agreement favors coexistence, meaning living together peacefully within a given geographic zone (FAO, 2005).

The tripartite agreement could only be concluded by recognizing potential benefits and obligations for each party. The State is responsible for directing, furnishing policies, regulations and incentives to work together. The State must facilitate dialogue. Mining companies must support developing artisanal mining potential and its formalization. The companies must organize, train and provide equipment to the artisanal mining community, as well as alternative livelihoods where possible. The artisanal mining community must be organized, respect the laws and rights of others, and practice responsible artisanal mining. (Swiss Dev.)

— Water usage

Senior Village Elder: “Here, we don’t have much water. The wells are often dry in the dry season. If the mine comes, it will use all of our water and we won’t have any more!”

State representative: “Water is in the public domain and cannot be appropriated by a private company for its exploitation (Arts. 2 and 4 of the Mining Law and Chap. 2 of the Water Law). The mine has usage rights that are granted by the State in the form of a permit (Arts. 7 and 10, Chap. 3 of the Water Law). But this does not authorize the private company to divert all water resources: communities retain their domestic usage rights (Art. 6 Chap. 3 of the Water Law).”

Female Village resident: “If the mine uses all the water, how will we provide our households with water?”

State representative: “Water use by the mine is subject to the concession’s constraints. Taking river or sub-surface water is limited by law (Art. 100 of the Mining Law) and if the company abuses its right and takes too much water, then the State – alerted by the customary authorities – can cancel the permit it granted (Arts. 18 to 20 of the Water Law). The water resources of Guineans, their renewal, and the supply sites (Art. 101 of the Mining Law) are an absolute priority, protected by law.”

Senior Village Elder: “How do we know that the company is not reducing the quality and quantity of the water on our lands?”

Mining Company representative: “To obtain an exploitation permit or mining concession, our company must propose a **water supply plan** (Art. 30-II and 37-II of the Mining Law). This plan is presented as part of the feasibility study and the Community Development Agreement signed with your community. This plan specifies the company’s support for the village’s water infrastructure (drilling, improved wells). Next, we are bound to report both to the State and to affected communities on the quantity of water used and on the water quality near our mining site. This monitoring also covers the mine’s wastewater (Art. 143 of the Mining Law and Art. 6 of the Water Law).” → See Unit 5.2 about environmental pollution

*** End of dialogue ***

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ 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 learn more 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 Law 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).
- ✓ An industrial mining project lasts a long time and involves multiple phases. The mine's closure 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.

ANIMATION ACTIVITIES

- Small group discussion about mining exploitation, with photos.
- On-stage performance of the unit's dialogue by the facilitators
- Small group discussion of the diagram, "Legal and regulatory obligations of a mining project"
- Small group discussion of the Mongolia case study

Animation Box: Brainstorming

Discuss experiences with industrial mining in Guinea, ideally with photos

Objective: Discuss participants' lived experiences with industrial mining exploitation.

Have you seen an industrial mine up close?

What is industrial mining activity?

Do you know what they are doing in these pictures?

Are you involved in one of these activities?

Do you know where these activities are happening?

Are you affected by these industrial mining activities?

What are the impacts of industrial mining exploitation on your community?

(EC, Mining)

Animation Box: Small group work

Discussion questions for the Mongolia case study

Objective: Better understand the tripartite agreement and encourage reflection on the advantages and barriers to such an approach in Guinea.

What do you think of the case study?

Do you think such an agreement would be possible in your locality?

What are the barriers and advantages of such a tripartite agreement?

Why would a mining company be interested or not in this kind of agreement? Why would artisanal miners be interested or not in such an agreement? Why would the State be interested or not in such an agreement?

→ See also *Advice for facilitators > Basic animation activities > Discussing a case study*

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



TEACHING OBJECTIVES

- Propose a definition of communities affected by a mine.
- Describe some of the benefits and impacts of the establishment and operation of a mine.
- Share advice from other communities who have experience with industrial mining.

THEMATIC CONTENT

What is a local community?

The *Mining Law* defines “local community” as follows: “the group of municipalities affected by mining activity done according to a mining title or authorization.” Local municipalities are Regions, Urban Communes, and Rural Communes (*Art. 134 of the Constitution*). Elected Councils freely administer local municipalities (*Art. 136 of the Constitution*).

Interpreting the definition proposed by the *Mining Law* is not easy:

The State and mining companies may have an interest in a narrow definition, believing this will allow them to minimize community opposition and reduce demands for compensations. For example, one development bank’s rules define “affected communities” as the “local communities directly affected by the project” (*IFC*). They often use a spatial measure to define affected communities, such as the persons living within a certain distance from the fence of the mine (“fence-line communities”).

But a spatial measure is usually **arbitrary**, because it does not include people living another distance away, who are also affected by the mining project’s environmental impacts, its impacts on cultural sites of regional significance, or social impacts from migrant employment seekers coming to nearby cities.

A narrow definition of affected communities also creates problems when fence-line communities receive certain advantages, which other people living further away do not receive. **Conflicts and clashes** often occur when affected communities living further away retaliate against fence-line communities and the mining company. (*O’Faircheallaigh, 2014*)

Because more than one local municipality is usually affected directly and indirectly by a mining project, it can be useful for local municipalities to form an association (*Art. 62 of the LML*).

According to a draft international norm for responsible industrial mining, developed collaboratively (by an international coalition of NGOs, companies who buy minerals and metals for resale in other products, affected communities, mining companies and trade unions), **affected communities** are:

“Communities of any size that are in or adjacent to the mining project area, and also those that are close enough to have their economies, rights or environments significantly affected by the management activities or the biophysical aspects of the mining project.” (*IRMA*)

In this Guide, we favor this broader definition of communities affected by a mining project, when we speak of “local communities”.

The arrival of the Mining Exploitation Company of Koidou (SEMK) in the community of Koidou

The following text presents a dialogue among a facilitator from the fictional CSO FASOBALAKELA, Mr. Mayor of the Rural Municipality of Koidou and several residents (men, elders, women, youth and others) of Koidou.

CSO facilitator: “The rural municipality of Koidou is inhabited by a population that, for centuries, has lived from farming, animal husbandry, hunting, fishing and gardening. The land, forest and water sources in the area are its principal riches. These riches have provided this community with their livelihoods. Today, this way of life is at risk, because the State has granted an exploration permit for iron ore to the Mining Exploitation Company of Koidou (SEMK), for an area near the village and the main river that provides most of the local people’s water.

Since the announcement of the news in Koidou, Mr. Mayor of the Municipality, unaware of the national legislation, of the international norms and best practices for mining, is often called upon by his constituents to speak about the changes that they can expect in their community with the arrival of SEMK and its mining operations. In reality, the residents of Koidou are very curious to know the benefits and disadvantages of the future extractive activities in their locality.

Concerned by the repeated questions from his community, Mr. Mayor contacts his parent Ministry, who puts him in touch with an CSO specialized in supervising mining activities. Together with the CSO’s managers, he plans an awareness-raising activity for the community of Koidou, about the benefits and negative impacts of an industrial mine.

The CSO FASOBALAKELA organized the awareness-raising for the residents of Koidou village, in the presence of Mr. Mayor of the municipality and several council members.”

The CSO facilitator, a Practical Guide in hand, faces the participants (men, women, youth), the Mayor of Koidou and council members, all seated, next to a placard which says, “*The SEMK mine, its benefits and negative impacts?*”

Mr. Mayor: “With the arrival of SEMK and its operations in our locality, what changes can we expect?”

CSO facilitator: “All natural resource extraction activities bring changes (positive and negative) to local communities. The changes that accompany a mining operation can vary not only due to the different technologies used, but also due to the regulations and governance. Indeed, whether underground or open-pit, exploitation carries serious environmental risks and brings significant changes in the economic and social lives of local communities. In other words, the arrival of a mine necessarily leads to a change in the traditional systems and ways of life.

I imagine that just as in many other mining localities, there are some in this village who expect that the company's presence will lead to better living conditions, thanks to the creation of new jobs, especially for youth. Local communities also usually expect that mining activities will bring them other benefits, such as schools, health clinics, road infrastructure and the like."

Resident of Koidou: "I've already stopped my studies! Now that the company is here in our village, I no longer need to go to school, because I will have a job for life with the company."

CSO facilitator: "Thank you for your comment, but hold on. In order for you to obtain the benefits of the mine that I have just mentioned, and to improve your living conditions, everyone must do his or her part: local community members, CSOs, local authorities, the central administration, the deconcentrated services, the mining companies, the investors, the subcontractors – everyone! In **Module 2** of the Practical Guide, we will learn in detail about the legal framework (what is law), human rights, and everyone's roles and responsibilities.

This means, young man, that you are much better off staying in school and learning more about mining. That way you will have a better chance of actually getting a job, whether with the mining company (which usually has only very few jobs for unskilled workers) or with another company."

Resident of Koidou, [standing up, exclaims]: "Oh really?"

CSO facilitator: "Yes, and the big changes that you can expect are numerous and varied. They also depend on the phase of the mining project." (See the following diagram)

Possible benefits

CSO facilitator: "Without responsible management and governance, mining's benefits of money, jobs, and improved infrastructure will be collected at the national level, while the significant negative impacts will be concentrated locally.

— Money

Mining projects can bring more money to the central administration through licensing and infrastructure fees, taxes, royalties, and salaries. They can also bring increased investment. These mining revenues can contribute to economic and social development nationally and regionally, and sometimes locally.

At the local level, local municipalities are entitled to receive surface royalties, contributions to a local development fund, and compensation. We will learn about the responsibilities and obligations concerning the financial resources from mining in Unit 4.1 of the Guide."

— Jobs

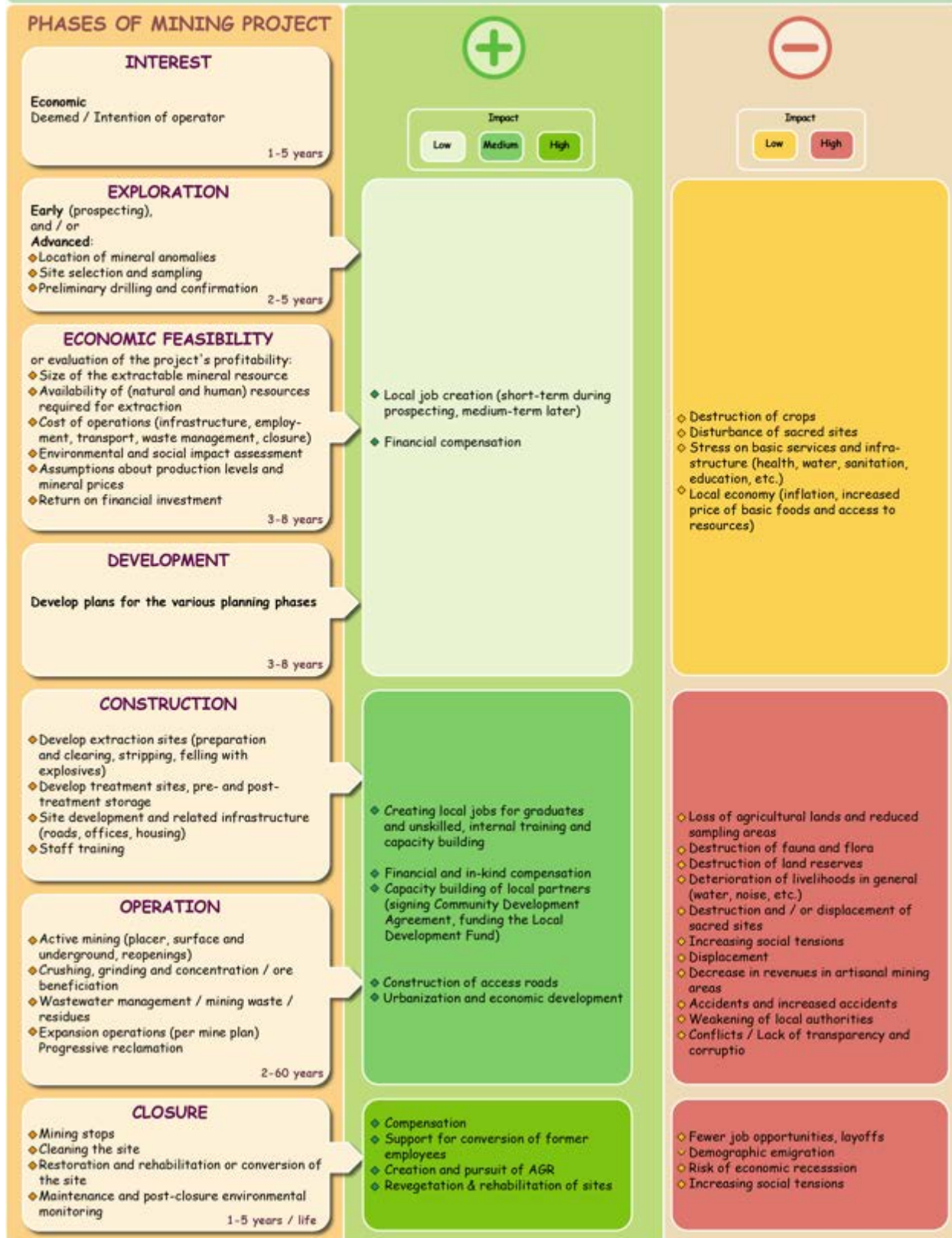
CSO facilitator: "One of the potential benefits of mining projects is an increase in jobs from the extraction project. These may be jobs directly with the company, or indirectly in the larger system of suppliers and service providers for the (local) content that the project needs to function.

But be careful: this potential benefit does not automatically materialize.

Most of the time, mining projects need highly-skilled workers (specialized technicians) and people living in rural areas are not able to meet these needs. Only a few unskilled jobs (such as cooks, janitors or the like) can be done by local community members.

Unfortunately, State representatives and politicians often do not manage these very high expectations of local jobs. In fact, they often make the problem worse by making unrealistic promises of local jobs." → *See Unit 4.1 about mining's benefits*

Impact of a mining project on communities



— Local content

CSO facilitator: “Even if there are few opportunities for direct local jobs with the company, there may be opportunities for local communities to supply the company, its contractors and sub-contractors with goods and services, such as uniforms for employees, steel drums, fruits, vegetables and meats to the catering services, as well as transport, construction, procurement advisory and geosciences. Employing residents of the area and acquiring local goods and services is often called “local content”.

— Infrastructure and service delivery

CSO facilitator: “Another potential benefit of industrial extractive activity is improving infrastructure, such as roads, access to running water, electrification, schools, hospitals, mosques and churches. The State can also be in a position to provide or improve service delivery such as education, health care and social programs, thanks to the taxes collected on mining.

I have just given you an overview of the possible benefits of the arrival and operation of a mine. In **Module 4** of the Guide, we will learn in detail about the possible benefits and tools to help capture them, such as negotiating a Community Development Agreement (CDA) and sound management of the financial resources arriving at the local level.”

Negative impacts

CSO facilitator: “There are many possible negative impacts of industrial mines: on the environment, society, economy and security.”

— On the environment

CSO facilitator: “First, as concerns the environment, industrial mining has permanent environmental impacts that can be significant. In other words, negative impacts are not only felt during construction and exploitation. They last forever because industrial mining **permanently modifies the physical, chemical and biological composition of the soil.**

There are also negative impacts on **access to and occupation of land.** Access to land is a critical aspect for mines. The State and mining companies need access to land to explore. They have to acquire the right to use the land (often by resorting to the expropriation powers granted to government by the Constitution) in order to construct the mines and associated infrastructure.”

Resident of Koidou: “But how is that possible, to lose my farmland, the only resource that allows me to provide for my family?”

CSO facilitator: “If for example you were to lose your farmlands, it is imperative that you make sure that the expropriation takes place under the conditions described by law, including the *Mining Law*, the *Land Law*, and the norms of the United Nations: the Basic Principles and Guidelines on Development-based Evictions and Displacement. (We will learn about this in Unit 5.1 of the Guide.)

There are negative impacts on **water.** The water sources previously used by local people for household use, cooking, farming, gardening, washing and for their animals, can be obstructed, deviated or blocked, and in some cases entirely drained.”

Resident (female) of Koidou: “So if I understand correctly, one of the biggest problems with the arrival of a mining company in a community such as ours is that their operations may eliminate access by residents to the water they need for their survival?”

CSO facilitator: “A mine must never block access to water for residents. But the reality of experiences of communities in Guinea and elsewhere is that access to water can be negatively affected. You also have

to take into account air pollution, especially from dust. (We will learn about how to manage these issues in Unit 5.2 of the Guide.)”

— On society

CSO facilitator: “There are many negative social impacts from mining. I will just give you an overview of some of them: impacts on women, from influx, and those on culture and traditions, including cultural sites.

The impacts of a mine’s arrival and operation are not felt by all members of local communities in the same way. There are **disproportionate impacts on women**: men largely reap the benefits, while the environmental and social risks overwhelmingly fall on women.

For example, most often it is the men – and not women – who are consulted when companies negotiate access to land, compensation or other benefits. This means there is an increased risk that women’s interests and needs are neglected. The company or the State pays compensation to men “in the name of” their families. Jobs and income are disproportionately directed to men, not women. Men, with their new riches, may take on another wife. In all, this disempowers women by increasing their economic dependence on men, and so worsening existing inequalities.

Sexual and gender-based violence can increase due to the changes in family roles, pay and an increase in social tensions. We hear of “circumstantial marriages” and sexual violence in Guinea’s mining areas. Throughout the Guide, we will learn how to always take into account the disproportionate impacts on women, and how important it is to involve them in the development process.

Influx is the rapid increase in the number of people living in and around the extraction site. People come from other parts of the country or from abroad in search of work at the mine. This in-migration creates tensions because more people now compete for benefits – especially jobs – linked to the mine. Industrial mining can also influence cultural sites at all phases, such as burial sites that are dug up, sacred wells that dry up, and the like. The increase in salaries and payment of compensation can lead to problems of personal and community financial management, as well as corruption.

In **Module 5** of the Guide, we will learn in detail about anticipating and managing these negative impacts: compensation and resettlement procedures, environmental pollution, and how to protect your cultural sites.”

— On security

CSO facilitator: “Mining projects, just as other extractive industry projects, can endanger security and bring about conflicts. Conflicts can arise for a number of reasons, including behavior of security forces.

In **Module 3** of the Guide, we will learn in detail about ways to avoid and address mining conflicts, tools to help local communities avoid being manipulated, and discover tools to support communication and social cohesion, such as community protocols and land use planning.

Finally, in **Module 6** of the Guide, we will learn in detail about actions that CSOs, local authorities and demonstrably legitimate representatives of local communities can take to make their claims heard, peacefully and to the right person, based on the law and documentation, tools for monitoring impacts, and recourse mechanisms available in Guinea and abroad.”

How can we ensure a shared benefit from the mine, avoid conflict, and not suffer negative impacts?

Mr. Mayor: “You have said a lot, dear facilitator! What can we do to make sure that we can benefit from the mine, not suffer negative impacts, conflicts and the like? This seems like a big challenge, perhaps even impossible.”

CSO facilitator: “Yes, that is why I have come to accompany you. We have worked to develop this Guide as a reference manual with its six modules on the subjects of mines, mining conflicts, benefits, impacts and actions.

The Guide’s content is based on the laws of Guinea, especially the Constitution, the *Mining Law*, the *Local Municipalities Law*, the *Land Law*, the *Environment Law*, as well as other laws and regulations; regional and international standards; mining industry good practice; as well as advice from other local communities who have experienced industrial mining, whether in Guinea or abroad.

Some of the advice from other local communities is:

1. Do not rely on verbal promises and never make rushed decisions
2. Avoid divisions and stay united as a community
3. Know your rights, the contracts, as well as national and international laws
4. Gather all proof of your traditional knowledge and how you use your lands
5. Seek information and allies
6. Engage with the mining companies as well as the local and central administration.

We hope this Guide can accompany you: to better understand industrial mining (Module 1), the legal framework and everyone’s role (Module 2), tools and practical suggestions to avoid tensions and conflicts (Module 3), to share in the benefits and avoid negative impacts (Modules 4 and 5), and to make your claims heard in a peaceful manner to the right person (Module 6).”

*** End of dialogue ***

SUMMARY OF THE UNIT’S KEY LESSONS

- ✓ Communities affected by a mining project are those adjacent to the project as well as those sufficiently close that their economies, rights or environment are significantly affected.
- ✓ All industrial mining activity brings changes (positive and negative) to local communities and necessarily causes changes in traditional systems and ways of life.
- ✓ Possible benefits include more money, job creation, procurement of local goods and services, and improved infrastructure and service delivery. Negative impacts of mining fall on the environment (land, water), society (especially women), the economy and security.
- ✓ To share in the benefits and avoid negative impacts, everyone must play their part under the rule of law.

ANIMATION ACTIVITIES

- Discussion on defining communities (see box below).
- On-stage performance of the unit's dialogue by the facilitators.
- Small group discussions about the diagram, "Impacts of a mining project on communities."
- Activity for baseline analysis (see box below).

Animation Box: Discussion

Definition of affected communities

Objectives: Initiate reflection about the different possible definitions of affected communities, and how this definition affects managing negative impacts and sharing benefits.

Discuss the Guide's proposed definition of "affected communities." Also discuss the different people within communities who are affected: men, women, youth, those who are in a situation of vulnerability (children, homeless, disabled, displaced and migrants).

Play the "yes sir, no sir" game. → *See Advice for facilitators > Basic animation activities, for instructions*
Divide the participants into small groups: 1 group takes the position of fence-line communities; another takes the position of neighboring communities; 1 group takes the position of the mining company; 1 group takes the position of central administration. Each group must find the best arguments to support its position.

Ask participants to develop their own definition of an affected community.

Animation Box: Reflection and analysis

Baseline analysis

Objectives: Reflect on what is happening in the community; strengthen what has been learned.

10 questions for the analysis:

1. Has the State consulted the community?
2. Have the mining companies consulted communities?
3. Does the State have laws that protect the community?
4. Are the laws respected by the companies?
5. Are the laws respected by the State?
6. Is the community provided with information?
7. Does the community receive information in advance?
8. Is the community involved in decision-making?
9. Is the community the one who makes the decision?

10. Does the community benefit from the project?

You need two pieces of paper or two locations. Place a paper (marked “yes”) on one side of the room and another paper (marked “no”) on the other side. (If you are not in a room, you can use other tools to mark one space “yes” and another space “no”.)

Ask 10 participants to present themselves (assign one participant for each of the 10 questions), making sure there are an equal number of men and women.

Ask all participants to analyze each question one by one.

For questions 1 to 5, ask all participants if they believe the answer is yes, no or somewhere in between. The person assigned to the question must move towards “yes”, “no” or somewhere in between, depending on the responses of the other participants.

For questions 6 to 10, replace “yes” and “no” with “everyone” and “some”, and ask participants to examine if everyone or only some community members were involved, received information, received benefits, etc.

Encourage discussion on the 10 questions. If there are different opinions, talk about the differences – including different male or female perspectives: are women’s responses to the question different from or the same as those of men? (OA, 2014)

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



TEACHING OBJECTIVES

- Identify the phases and content of an ESIA and ESMP.
- Initiate reflection on the importance and tools for public participation in the ESIA process.

THEMATIC CONTENT

How can we influence the conditions of a mining permit?

The following text presents a dialogue among a young woman, a journalist, a State representative, and a Mining Company representative.

Young woman: “It seems that the mining company must do a lot to get a mining permit. There were a number of studies about the affected communities, right? Could you explain those again?”

Mining Company representative: “Of course. The application that the company must present to the State includes:

- Feasibility studies
- A mining project and infrastructure plan, an application for a mining concession (*Art. 37-II of the Mining Law*)
- Studies about communities affected by the project, and for which they must be consulted:
 - Studies on the mining project’s impacts: a detailed Environmental and Social Impact Assessment (ESIA), which includes an Environmental and Social Management Plan (ESMP);
 - Studies to support local development: a plan of support to Guinean companies to create or strengthen the capacity of local businesses, a plan to promote hiring Guineans, as well as a community development plan, annexed to a Community Development Agreement (CDA), which must be signed in order to obtain a permit.”

What is an environmental and social impact assessment (ESIA)?

Journalist: “Ok, that’s it? I remember something about impact assessments and support for local development. Let’s start with the impact assessment. What is that?”

Mining Company representative: “Of course. The **environmental and social impact assessment**, let’s just call it the ESIA, is usually done by an engineering consultancy hired by the company. The ESIA identifies, anticipates, interprets and informs about the impacts of a mining project (the qualitative, quantitative and functional changes) on the environment as well as on local people, including their cultural sites. The objective is to provide for measures to minimize the negative impacts.

The ESIA results in an **environmental and social management plan (ESMP)**, which includes: a Hazard Plan, a Risk Management Plan, a Hygiene, Health and Safety Plan, a Remediation Plan, a Resettlement Plan, and mitigation measures to reduce negative impacts and optimize positive impacts.

The ESMP establishes the principal measures and means intended to reduce the project’s impacts on the biophysical environment, to compensate people and goods affected by the project, and to improve working conditions, through the environmental and social impact avoidance plan, the resettlement and compensation action plan, the health, safety and hygiene plan, the solid and liquid waste and dangerous substances management plan, and the land reclamation plan.”

— **Publicity of the ESIA**

Journalist: “Who can tell us if an impact assessment has been done for a mine?”

State representative: “The ESIA is a legal requirement in Guinea, guaranteed by the *Mining Law* and the *Environment Law* for mining project developers, that is, the mining companies. It is a public and consultative process, where communities must be consulted on time and even involved in the process of its execution. You can talk to the mining company to get information about the timing of the ESIA process.”

Journalist: “Can we get a copy of the ESIA? Who do we need to talk to?”

State representative: “The ESIA is a document that must be accessible to the public. To get a copy, you should talk to the mining company who did the study. If the mining company doesn’t give you a copy, you can request one from the National Directorate of Mines (DNM) or as a last resort, the Guinean Bureau of Environmental Studies and Evaluation (BGEEE). If it turns out that no ESIA has been done, you must inform the competent authorities as soon as possible.”

“Around the world, the environmental impact assessment is an essential step for mining activities. When we see that the company does not share its plans with local communities, and at the same time, refuses to share water monitoring information, the Buraka people can only assume that the company is hiding secrets.”

– Expert geochemist

BGEEE & CTAE

The **Guinean Bureau of Environmental Studies and Evaluation (BGEEE)** coordinates the operations of validating ESIA reports and overseeing the implementation of ESMPs in collaboration with all stakeholders, including Ministerial departments, civil society, farmers' organizations, NGOs, as well as the Prefectoral Committees for Environmental and Social Monitoring (CPSES), which oversee monitoring locally.

The **Technical Committee for Environmental Analysis (CTAE)** is made up of representatives of all technical services concerned by the mining project. The CTAE falls under the authority of the Ministry of Environment and is coordinated by the directorate general of BGEEE.

— Cumulative impacts

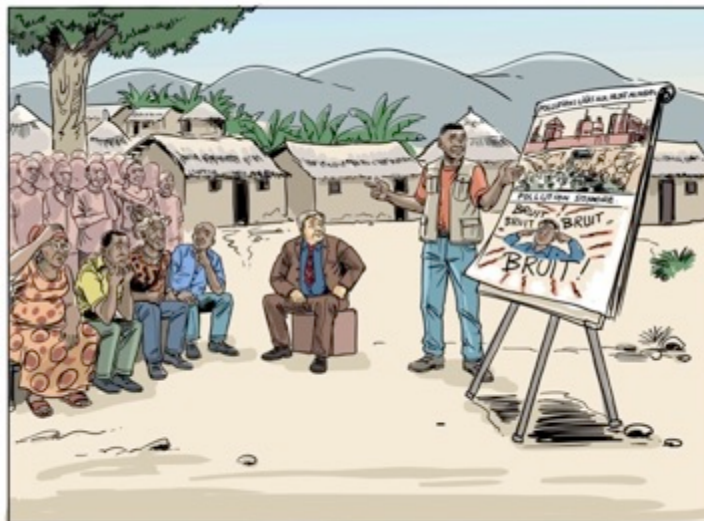
Journalist: "There are many on-going mining projects in the country. The ESIA only looks at the impacts of a single project. Who will examine the cumulative impacts of all mining projects in the country?"

State representative: "There are several types of impact assessment studies with important differences. An **ESIA** is usually completed by an engineering consultancy on behalf of a mining project developer for a specific mining project. The ESIA is required by law. The ESIA is binding, meaning it is obligatory for all developers.

A **strategic environmental and social impact assessment** evaluates the cumulative impacts from all projects of a given sector (for example, all mining projects in Guinea). A strategic assessment is not required by law. A strategic assessment is usually done by an engineering consultancy on behalf of the State (for example, the Ministry of Environment). This is a tool to help decision-making to manage the toxicity of cumulative activities in a given sector."

*** End of dialogue ***

RIGHT TO INFORMATION ABOUT A MINING PROJECT'S IMPACTS



What is the ESIA process?

— Goal of the ESIA process

The goal of the ESIA process is to identify and highlight the environmental and social concerns of the projects, to analyze their intensity given the appropriate site, to adopt adequate measures to mitigate negative impacts and enhance positive impacts.

— Phases of the ESIA process

The ESIA process is linked to a mining project's phases as follows:

Mining project phase	ESIA phase
Selection and identification	Screening
Preparation, prefeasibility	Scoping, Process begins
Project appraisal, approval	Analysis, Decision, ESMP mandatory
Construction	ESMP implemented and monitored
Operation	ESMP implemented and monitored
Closure	Closure plan implemented and monitored
Post-Closure	Closure plan implemented and monitored

(Goodland, 2008)

— What happens during each phase of the ESIA process?

1. Screening. Analysis of the project notice's content in order to categorize the project and determine the level of impact assessment required. An ESIA is usually required for projects with significant and varied impacts on the environment, which fall under Category A.¹

2. Scoping. A process designed to foster consensus on the fundamental questions (that is, the key environmental and social issues on the mining project's initial site) to be addressed in the ESIA.

Scoping usually begins with a rapid assessment of the environmental and social issues during a field visit paid for by the project developer. The BGEER and an engineering consultancy conduct the field visit. The phase concludes with the drafting of terms of reference² based on the results of the field visit. The terms of reference are submitted for approval to the CTAE. This analysis aims to verify that the ESIA will be conducted in compliance with the applicable principles and procedures in effect.

3. Conducting the process. The project developer is responsible for conducting the ESIA process, and usually contracts with an engineering consultancy to do this. The ESIA must conform to the terms of reference and be approved by the competent authorities. The drafting of the ESIA must take into account information gathered during the prior phases. The report must be drafted in accordance with the requirements of the General Guide on Environmental Assessment.

¹ Category B concerns projects that may have specific impacts, which require a limited environmental analysis; Category C concerns projects not susceptible to significant environmental impacts, which do not generally require an environmental analysis; Category D concerns environmental improvement projects.

² Terms of reference are an agreement on the objective, structure, calendar and specific tasks to be accomplished during a negotiation, an ESIA, a CDA or any other project.

4. Analysis and Decision. The project developer officially submits copies of the ESIA report to BGEED for analysis and approval by the Ministry of Environment. The approval process of an ESIA report includes public consultation with communities affected by the project and the CTAE public hearing:

Public consultation with affected communities: BGEED organizes a public consultation, paid for by the project developer, in the project's area of influence, especially for ESIA for Category A projects. The public consultation begins with public hearings with communities affected by the project, the goal of which is to gather favorable opinions and counter-proposals by parties concerned by the project. The legal duration of the public hearings is 15 working days. After this time, the team has 7 additional days to collect more details.

The public hearings are wrapped up by organizing a day of general public consultation presided over by local administrative authorities, together with participation of all actors involved (affected communities, farmers groups, NGOs, etc.). The public consultation concludes by drafting minutes that are read, approved and signed by the chief responsible for administrative district, the local elected representatives, the representative of the Ministry of Environment, the project developer, and the engineering consultancy.

Public hearing: The public hearing is held by the CTAE and consists of the technical analysis of the ESIA report's contents. The CTAE's task is to verify conformity of the technical and scientific data in the ESIA report, to identify deficiencies and make concrete proposals to improve it. For detailed ESIA reports, the minutes of the public consultation with affected communities are also assessed.

After the phases of the public consultation attesting to acceptance of the report by affected communities and the CTAE public hearing approving the ESIA report, the ministerial authority in charge of the environment decides, in light of all annexed instruments of approval, to issue the **Certificate of Environmental Conformity (CCE)**, which reflects the conformity of the project to the principles of environmental protection, conservation and management.

Revision of the ESIA occurs after the public consultations and the CTAE public hearing, in order to integrate the opinions and observations in the report with conditional approval.

6. Monitoring and supervision. Monitoring and supervising the ESMP's implementation aims to verify the effectiveness of implementing the ESMP's proposed mitigation measures.

— **What is the content and structure of the ESIA report?**

The ESIA report's contents include:

The **context** of the mining project: information identifying the project developer, the engineering consultancy, the project's justification and its area of influence. The **baseline analysis** of the site and its environment: all parts of the territory which may be affected by related activities (access routes to the site, materials supply sites, transport corridors, etc.).

A **description and comparative analysis of variations** of the mining project: an important step which involves demonstrating that the developer's chosen variation of the project is the best option on all levels including its technical, economic, social and environmental aspects. The different variations of the project are compared in order to show their strengths and weaknesses. The chosen variation is the one that best responds to the project's objectives, while also being acceptable in terms of environmental, technical, economic and social aspects. The identification, assessment and analysis of the **impacts of the chosen variation**: this part specifies the different project activities (the source

of impacts) and the relevant environmental components (physical, biological and human) to identify the impacts.

The **ESMP** – the most important section of the ESIA – consists of all prevention, mitigation, compensation, monitoring and institutional measures (including capacity-building), which are necessary during construction, operation, closure and site reclamation to eliminate, compensate for, minimize or bring negative environmental and social impacts to acceptable levels.

Does it work well, the ESIA process?

If the ESIA is of poor quality, and if implementation of the ESMP is not guaranteed, the mine's impacts on affected communities will not be mitigated or managed well.

So it is important to understand the weaknesses of the process, in order to help correct them. The weaknesses of ESIA processes include:

1. **Integrity of the mining company.** The engineering consultancy that conducts the ESIA for the mining company sends the study to the mining company (the project developer), and not directly to the Ministry of Environment. This gives the mining company an opportunity to edit and modify the contents of the ESIA report in its favor before submitting the report to the Ministry of Environment.

A related issue is that the mining company may see the ESIA as a mere administrative formality – one of the boxes to be checked on the list of documents required to obtain a permit. This may mean that the company has no intention to implement the ESMP or effectively monitor mitigation measures.

2. **Conflicts of interest.** Several concerns may lead to conflicts of interest:

The mining company wants the project to go forward with as few obstacles as possible. The company pays the engineering consultancy for the ESIA, and the company pays the costs of BGEEE's field visit during the scoping phase and the public consultations. The pressure placed by mining companies on administrative bodies and the engineering consultancy team – even independent consultancies – can be tremendous.

It can be practically impossible for an engineering consultancy team to say: “we have evaluated this project and we advise you, project developer, not to proceed with this project, as least not in its present design.” (*Goodland, 2008 & 2012*)

3. **Local knowledge & direct interests.** Engineering consultancies may be highly accredited and specialized, but an outside consultant can usually never know the land, the local people, their traditions and cultural sites, as well as the local people themselves do. Outside consultants often have trouble understanding issues that are important to the community. Local people also have more direct interests in the results of the ESIA than an outside consultant. (*EC, Mining*)
4. **Implementation.** An ESIA often lacks mechanisms, capacity-building measures and institutional resources that guarantee implementation – especially concerning social impacts. (*O'Faircheallaigh, 2013*)

— How can we avoid and correct for these weaknesses?

According to experts, independent reviews of ESIA's are necessary to reduce bias from possible conflicts of interest. This independent review can be done in a number of ways, such as:

Strong public participation in the ESIA process. For example, according to a draft international norm, if necessary, the mining company should provide resources for capacity-building and training, in order to

foster informed participation by stakeholders in the ESIA process (*IRMA*). In Canada, the federal government offers subsidies to local communities allowing them to hire their own expert.

An **independent review** of the ESIA. For example, an NGO or local communities can hire their own expert: an expert reads the developer's ESIA with a critical eye, ensures that local communities understand the content, such that they can fully participate during any discussions and during the public consultation. Local communities can also conduct their own impact assessment: they can contract with an engineering consultancy, an NGO or another specialized consultant or work with a CSO to do it themselves. → See *Unit 6.2 about community-controlled impact assessments*

“The majority of safeguard policy violations of World Bank projects are due to unresolved design issues, stemming from inadequate evaluation of environmental or community impacts and inadequate consultation with affected people.”
– *Independent evaluation of World Bank (IEG, 2010)*

Several international NGOs specialize in this area, such as E-Tech International, Source International, Center for Science in Public Participation, Environmental Law Alliance Worldwide and others. → See *Source documents > Specialized NGOs*

How can we participate in the ESIA process?

— Why participate in the ESIA process?

There are 2 main reasons to participate in the ESIA process:

1. If the ESIA is of poor quality, and if implementation of the ESMP is not guaranteed, the mine's impacts will not be mitigated or managed. Public participation is a way to ensure that the ESIA and the ESMP are well done and take into account all impacts on communities.
2. You have an opportunity to **participate in decision-making** about the mining permit, especially to define which impacts will be taken into account in the ESMP.

— How can we best participate in the ESIA process?

The objectives of public participation, as well as the mechanisms for participation, depend on the phase of the ESIA process. The most important phases for public participation are scoping, conducting, analysis, supervision and monitoring.

The following table summarizes for each ESIA process phase what the main objectives for participation are, the possible mechanisms, and which actor is responsible for ensuring public participation.

OBJECTIVES AND MECHANISMS FOR PUBLIC PARTICIPATION IN THE ESIA PROCESS

Phase	Objectives	Mechanisms	Responsible actor
Screening	Inform the public about the intended project Stimulate interest or social mobilization	Public notice, informational meetings, open door events	Engineering consultancy
Scoping	Define the issues of the project Integrate local or regional knowledge in the study's requirements	Discussion groups, consultations, opinion and comment gathering	Engineering consultancy
Conducting	Acquire scientific, vernacular or traditional information Assess the significance of the impacts on different groups Integrate measures responding to actors' issues and expectations	Survey (with participation of certain scholars or local people), discussion groups, work sessions with local NGOs, public presentation	Engineering consultancy
Analysis	Ensure integration of actors' concerns and expectations into the report and/or decision	Public hearing, information session, restitution workshop	Ministry of Environment (BGEEE) and the engineering consultancy
Decision	Report the decision Share the decision	N/A	Ministry of Environment (BGEEE)
Monitoring	Ensure implementation of the ESMP regarding the developer's obligations	Monitoring committees, public access to reports, inspection panel	Project developer, CPSES, Ministry of Environment

(IFDD)

— What can we do if we did not participate in an impact assessment that concerns our community?

You can research and review the content of the impact assessment, the minutes of the ESIA validation, seek information from the technical services responsible for reviewing and approving the ESIA and the effectiveness of the ESMP. And you can use administrative review procedures to obtain additional information. → See *Unit 6.3 about recourse mechanisms*

“We thank you, representative of the Ministry of Environment, for these reassuring words [about the principles of participation, information, and consultation with affected people], but why in all these long years, has not a single agent of the State come here to bring us together to gather our opinions, before a mining project, except now.

We are used to seeing white people come here with machines, and accompanied by Guineans like us, to destroy our crops. When we complain, they respond by saying that the highest authority of the country has authorized them to come do this work in this place. We remain powerless, without an interlocutor and learn at our expense.”

– Words of a participant during public hearings in Guinea

Case Study: Public hearing about a project extension for an aluminum smelter in Guinea

Before approving the final report for a project extension for an aluminum smelter in Fria, public hearing sessions were organized. Several copies of the draft version of the report were made available at the prefectural library in Fria and in the documentation room of the Ministry of Environment in order to collect citizens' opinions over the course of about 30 days on the draft report's contents. The availability of the documents was preceded by extensive information to the public. NGOs and associations were invited to read the reports in order to provide meaningful comments.

At the same time, public consultation forms were prepared and distributed to administrative bodies and national and international NGOs in order to collect comments before the public hearing.

During this time, a listening office was opened in Fria to submit observations or make statements about the minutes. Public consultation forms were also prepared by the project developer and made available at the listening office. Bulletins were broadcast on the Boké rural radio and national radio to announce the agenda of the arrival of the investigating commissioner to distribute the consultation forms and the planned date for the public hearing in Fria, Boké and Conakry.

The public hearing in Fria was held under the honorary chairmanship of the Governor of the administration region of Boké, and the hearing in Conakry was held under the chairmanship of the Ministry of Environment. The meeting in Fria revealed new environmental concerns as well as relevant observations which were recorded; the consultant committed to take all of these issues into account. The minutes were signed by all parties before the Governor's closing remarks.

The public hearing in Conakry was held under the chairmanship of the Chief of Staff of the Ministry of Environment. About twenty ministerial departments gathered for the meeting, several NGOs and associations for the protection of the environment. After a long presentation by the consultant, discussions were held until late in the afternoon, recommendations were formulated, and the minutes were submitted to the various parties for signature before the close of the session. (IFDD)

Case Study: Local communities in Ghana participate during the ESIA scoping phase

In 2010, in the Upper West region of Ghana, when an engineering consultancy arrived in the area during an ESIA scoping phase, a local NGO, the Centre for Indigenous Knowledge and Organizational Development (CIKOD) observed the work of the consultancy. The NGO had been working with the traditional authorities of the affected villages to develop a biocultural community protocol, which documented their rights under customary law, national and international law, their internal decision-making process, and their shared vision for development. CIKOD was concerned that the consultancy's questionnaire did not address the impacts that were most important from the community's point of view, especially about their health and their sacred sites.

That is why CIKOD facilitated a community well-being assessment of the four communities affected by the mining company's operations. Community forums and stakeholder consultations were held and testimonies were given. Radio programs were organized where community members shared their experiences.

The results were presented during a meeting in the scoping phase. The community well-being impact assessment showed several impacts identified by local communities that had not been included as key issues in the project, as defined by the consultancy. As a result, the terms of reference for the ESIA were modified to include the concerns of local communities. (CIKOD)

→ See also Unit 6.2 about the community well-being impact assessment

How can we make sure that the ESMP will be implemented and monitored?

— What do we need to know about implementation and monitoring of the ESMP?

The CCEs issued after the approval of a mining project ESIA are **valid for one year** and are only renewable after a satisfactory assessment of the ESMP's implementation. As a result, every year, the project developer must submit an annual report of the ESMP's implementation, including the activities completed, the impacts recorded, and the works done to mitigate the severity of the impacts or to restore damaged sites.

According to a draft international norm, the mining company must conduct, every three years, a participatory and inclusive evaluation of the mining project and its possible environmental, social, health and other impacts. The evaluation should be supervised by a permanent mining project monitoring advisory group or an equivalent review body (IRMA).

— Why does implementation and monitoring of the ESMP matter?

If implementation and monitoring of the ESMP do not happen, negative impacts on communities will be poorly mitigated and managed.

— Who is responsible to implement and monitor the ESMP?

The project developer's technical environmental and social teams are responsible for the internal implementation and monitoring of the ESMP.

The central and territorial administration are responsible for the external implementation and monitoring of the ESMP. This includes the local monitoring carried out by the **Prefectoral Committees for Environmental and Social Monitoring (CPSES)** and the annual supervisory monitoring coordinated by BGEEE as part of the license or CCE renewal. The CPSES and BGEEE can, depending on the need, call upon any resource person to take part in ESMP monitoring activities.

The CPSES, presided over by the Secretary General for Decentralized Municipalities of the Prefecture, includes all local environmental and social actors, including those of the mining project, local territorial technical services, local elected representatives and civil society. Since 2012, CPSES committees were supposed to be established in all prefectures hosting mining companies. The CPSES are charged with ensuring mining companies comply with their obligations in the ESMP.



As of the date of this Guide's release, CPSES committees are not yet established in all prefectures. Citizens must advocate that these committees be established and that they have the means to function, as provided by law.

— Residual impacts

During implementation of the ESMP, beyond potential impacts, **residual impacts** must also be taken into account. While potential impacts are directly generated by the project's current activities, residual impacts become apparent after several years of the project's implementation, and even after its closure.

Residual impacts refer to the environmental impacts that remain after the ESMP's mitigation measures are put in place. A mining project can have residual impacts on hydrology; the quality and quantity of sub-surface water; the quality and quantity of fresh water; fauna and their habitat; wetlands; physical and cultural heritage; structures and sites of archaeological, paleontological or architectural importance; human health and safety; tourism.

— Unforeseen events

Unforeseen events may occur, causing damage to the biophysical environment or affecting human health and safety. Unforeseen events are – by their very nature – difficult to predict. The **emergency situation preparedness plan** includes the implementation and maintenance of a high degree of preparation through the purchase and maintenance of equipment, training and simulation activities.

— We are not convinced that the project developer or the CPSES are doing their jobs to implement the ESMP. What can we do?

One of the ways to ensure implementation of the ESMP – and in fact to take into account all issues raised in the ESIA – is to integrate it into the Community Development Agreement (CDA). By proceeding in this way, all mitigation, compensation and benefit-sharing measures, performance obligations, promises and grievance resolution mechanisms, remedies and sanctions systems are codified in a single contract. (Goodland, 2008) → See Unit 4.2 about CDAs

— Who can we talk to?

First, you must speak directly with the company to fulfill its obligations to minimize or compensate for impacts in compliance with the ESMP. This is an informal appeal. Next, you can directly seize the prefectural or ministerial authority in charge of the environment in an administrative appeal, to ensure the CPSES effectively supervise the ESMP's implementation. Finally, if these approaches fail, you can seize the competent court to obtain damages; this is a judicial remedy. → See also Module 6 about local actions, documentation and monitoring, and recourse mechanisms

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ An 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 Prefectoral Committees for Environmental and Social Monitoring (CPSES).

ANIMATION ACTIVITIES

- Presentation in plenary of the ESIA process and the significance of public participation. Small group discussions about the table, "Objectives and mechanisms for public participation in the ESIA process."
- Discussion about the ESMP, why the ESMP matters, and mechanisms to support its implementation.
- Discussions about the unit's case studies (see box below).
- Forum theatre to discuss obstacles to participation and internal community consultations (see box below).

Animation Box: Discussing the case studies

Questions to discuss the public hearing case study

Objectives: Better understand the conduct of a public hearing, its strengths and weaknesses.

How does the public hearing correct (or not) the weaknesses of the ESIA process?

Discuss the steps that can be taken to build capacity of affected communities to discuss informed public participation, an independent review of the ESIA, etc.

Questions to discuss the Ghana case study

Objectives: Better understand the difference between participating during the scoping versus the decision phase, the benefits and challenges.

What is the objective of public participation during the scoping phase?

What is the significance of defining the issues before the ESIA process?

Discuss the differences between the case study of the public hearing in Guinea (participating in the public hearing during the decision phase) and the case study in Ghana (participation in the scoping phase). Identify the advantages and challenges of participating during these two phases.

→ See also *Advice for facilitators > Basic animation activities > Discussing a case study*

Animation Box: Forum theatre

Participating in the ESIA process

Objectives: Initiate reflection and rehearse how to overcome the barriers to participation in the ESIA process and internal community consultations. → See also Unit 3.2 about internal community consultations

→ See Advice for facilitators > Basic animation activities, for guidance on forum theatre

Scenario: The Mayor, Secretary General and one of the elders of Koidou are alone and start to read the ESIA documents. The documents have a lot of technical and incomprehensible language, all written in French, a language that none in the group is perfectly fluent in. What they understand from the documents, nevertheless, is that the project holds great economic value for all the community with very few environmental risks, most of which will be mitigated by the company without any cost or additional responsibility on the community. The Mayor, Secretary General and elders passionately discuss the positive and negative aspects of the project, and given their timeline of one week, decide not to consult other community members at this stage, despite the objections of the Secretary General. They then decide to go to the capital city to make sure their questions are heard while still recognizing the urgent development needs of their community – otherwise the youth will leave for a larger city, further aggravating the community's already precarious situation.

Mr. Mayor: "There is no alternative. We need this project. Our decision is clear. But we must make sure that our community will obtain a real benefit from this." (OA, 2014)

MODULE 2 : WHAT IS LAW, AND EVERYONE'S ROLES & RESPONSIBILITIES?

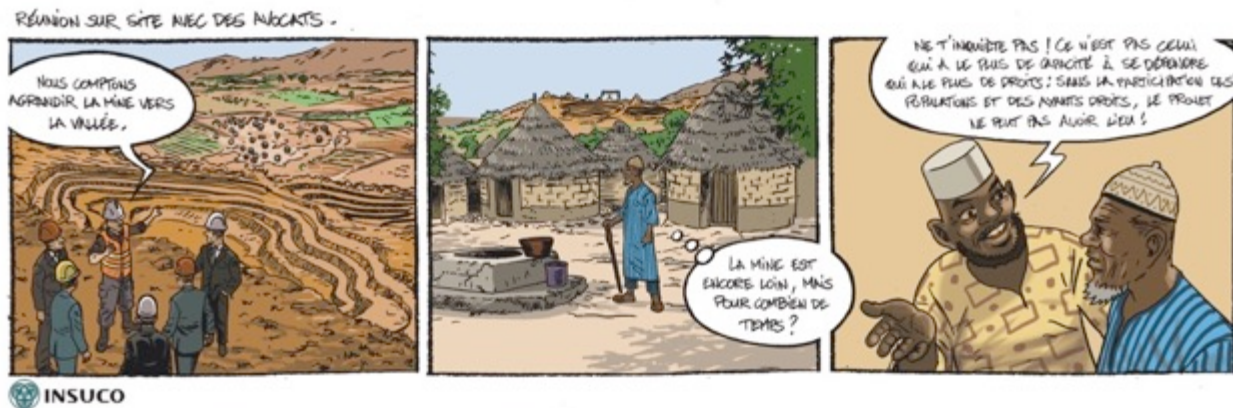
WHY DOES THIS MODULE MATTER?

In every democratic State, people must know and have their rights respected. Authorities at the local, sub-prefectoral, prefectoral, regional and national levels – they must all support people in this process. When local people know what their rights are, and everyone's respective roles and responsibilities concerning a mining project, this can help reduce the asymmetry of power between them, the mining companies, their sub-contractors and the central administration. This allows people to use their fundamental rights as a means to frame their claims against the State and companies, thus giving their grievances a legal basis and promoting the rule of law.

That is why the following questions are addressed in Module 2:

- What is law? (Unit 2.1)
- What are human rights? (Unit 2.2)
- What are everyone's respective roles and responsibilities? (Unit 2.3)

Unit 2.1 What is law?



TEACHING OBJECTIVES

- Allow understanding of what law is, and identify the laws of Guinea. Initiate reflection on customs and law.
- Identify the laws and regulations relevant to a mining project, emphasizing safeguard policies.

THEMATIC CONTENT

What does a society without law look like?

Imagine:

- Your neighbor's animals run freely and destroy your rice field in the winter.
- Motorists drive at 150 km/h near the village school.
- In class, the teacher is explaining an important lesson about Guinea's history. Your friends are talking at the back of the class, preventing you from hearing what the teacher says.

In all these situations, individuals' freedom of action can cause damage to other people, with the risk of leading to permanent conflicts. To avoid this situation, we need rules to direct individuals' behavior, to have guidelines to follow, and so maintain order in society. This set of rules and norms constitutes Law.

These rules specify speed limits in school zones; they oblige your neighbor to tether his animals during the rainy season, or be liable to pay compensation for damages; or specify disciplinary measures to adopt in class (no talking).

What is law and how is it manifested?

Law is the ensemble of rules and principles that regulate and sanction the conduct of individuals and groups in society. These norms foster stability, security, conflict management, integration, coordination for a better social order, and so contribute to a balanced society, peaceful cohabitation, harmony and peace.

Law manifests itself in a number of ways:

A woman who marries; a police officer regulating traffic; a village assembly making a decision; a judge condemning a thief; a deputy prefect prohibiting wood cutting near the river; a father giving his lands to his children, etc.

Legal rules can come from law, from custom, from regulation, from jurisprudence, from contract – which are all called sources of law. Among these sources of law, formal law is the most important.

— How do laws function in a State?

When legal rules are written, binding and originate from the National Assembly, this is known as formal **law**. The word “law” is a generic term to designate a rule, norm, instruction or obligation, general or permanent, that originates from a sovereign authority (legislative authority) and is binding on all individuals in a society. Non-compliance is sanctioned by public force. Formal laws are the principal source of law. Formal laws are texts adopted by the General Assembly (Parliament) and promulgated by the President of the Republic either on a proposal from deputies, or based on a draft submitted by the Government.

We recognize laws because:

- It is a rule that **applies in all situations** that it covers; it applies to all individuals without distinction, and applies permanently to the whole of the territory.
- A law is a **rule desired by the State**. It expresses the sovereignty of the State and comes from a collective will (through the National Assembly, the representative of the people). In this way, nobody is above the law, not even those who wrote it.
- A law is **obligatory**. If an individual disrespects the law, he is punished. Force or coercion and sanction are the elements that distinguish a law from ethics, politeness or goodwill. By way of example, ethics does not prevent motorists from driving too quickly, but the law obligates them not to drive too fast, and sanctions them if they do not comply.

Thus, there are laws that oblige us to do something (**imperative law**) and laws that prohibit us from doing something (**prohibitive law**). For example, the obligation to lend assistance to someone in danger if this does not adversely affect one’s own person (*Art. 57 of the Criminal Law*); prohibition of bush fires with intent to hunt (*Art. 81 of Forest Law*).

— The seven elements of good laws

Broadly speaking, there are seven elements of good laws. Good laws:

1. Are clear and possible to obey
2. Are reasonable and make sense
3. Are accessible to and understood by the public
4. Apply equally to all people, including the people that make the law
5. Are enforceable, so that there are consequences if people disobey
6. Apply to the present and future, and not to past actions
7. Do not conflict with other laws and the Constitution of a society (*EC, Civics*)

— You haven't spoken about custom and our traditions. That is also law, right?

You are right – the rules and principles that local communities use to govern themselves and to manage their shared resources is also a system of law. We call this local or customary law.

Custom is a source of law in Guinea. It inspires the legislator in codifying the rules of law (formal law). But custom is not taken into account by tribunals in settling conflicts, largely because of the difficulty posed by its application when the parties are from different customs, such as Mandinka and Fula, or even within Fula, Foulacouda and Toucouleur.

Aside from this, regional and international human rights instruments increasingly recognize customary law as an independent source of law. In 2010, the African Commission on Human and Peoples' Rights (ACHPR) recognized the property rights of the Endorois people (a minority community in Kenya) in light of customary law. Then in 2011, the ACHPR said that Member States, such as Guinea, should interpret the right to property guaranteed by Article 14 of the *African Charter* as a right that also includes rights guaranteed by custom and traditional law concerning access to and use of lands and other natural resources held communally (*ACHPR, Guidelines and Principles on ESCR*).³

— What is the purpose of law in society?

Laws exist in society to:

- Determine the status of each individual, group or institution
- Define the obligations binding on each person, as well as their freedoms and rights
- Specify the position the person holds in society
- Maintain order and security
- Protect people, their goods, as well as their individual and collective freedoms
- Protect the environment and living space
- Punish people who harm others
- Resolve disputes in society and indicate the procedures to follow to resolve them
- Establish systems of government and the role of institutions
- Ensure equality among citizens.

— Who are subjects of law?

Law applies to all individuals and institutions present on the national territory, who are also subject to obligations.

- **Physical persons:** This refers to all human beings living in society who act in their own name, regardless of their status (the President of the Republic as an individual, a husband, a wife, a salesperson, a laborer).
- **Moral persons:** This refers to an entity organized under public law (the State, regions, prefect, municipality, etc.) or under private law (associations, companies, etc.). The entity is represented by individuals (physical persons) who occupy a function in the entity and defend its interests.

³ Other non-binding instruments that recognize customary law include the ACHPR's Resolution on a Human Rights Based Approach to Natural Resource Governance and the FAO's *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.

What are the laws of Guinea?

Laws vary from one country to another, depending on the society's history, sociology, culture and values. Laws are also influenced by a country's economic, social and political situation.

Laws function as a hierarchy in the following descending order of importance (*Art. 9 of the Civil Code*). In Guinea we have:

- **Constitution.** This is the supreme law of the country. The Constitution defines the powers and functions of the State, as well as the rights and fundamental liberties of citizens. All other laws in Guinea must be compatible with the Constitution; if they are not compatible, then they are not valid.
- **International treaties**, which can be:
 - at the **sub-regional** level as a member of, for example, the Economic Community of West African States (ECOWAS);
 - at the **regional** level, such as by ratification of the African Charter on Human and Peoples' Rights (*ACHPR* or *African Charter*); and
 - at the **international** level, as a United Nations Member State, or through signature and ratification of treaties or conventions;
- **Organic laws**, which determine the structure of the country's institutions, such as the statute of magistrates;
- **Ordinary laws**, which we call **Laws** (or Codes), which comprehensively organize a subject (Civil Code, Criminal Law, Local Municipalities Law, Labor Law, Water Law, Mining Law, etc.);
- **Decrees and orders:** Decrees, Ministerial orders, Ministerial decisions, Regional orders, and Regional decisions.

— What are the laws applicable to a mining project?

The laws of Guinea that we have just identified are not the only ones applicable to a mining project. If the developer is from another country (which is the case for every mining project in Guinea), the following obligations are added to the obligations under Guinean law:

- the laws of the mining company's country of origin;
- the contracts and agreements concluded between the mining company, the Republic of Guinea, the investors and the service providers;
- international law, such as investment, human rights, environment, and fiscal treaties;
- safeguard policies, principles, standards and norms at the international level.

→ See Unit 6.2 about researching the obligations applicable to mining projects

— What is a safeguard policy?

A safeguard policy is the set of environmental and social norms developed by a development bank or another investor. The set of environmental and social norms is often called a "safeguard" policy, because it is meant to protect or safeguard local communities affected by the project.

Each development bank has its own safeguard policy. The rules of each safeguard policy can vary, but common subjects include participation of stakeholders, environmental and social impact assessment, as well as protection during involuntary resettlement.

— Are safeguard policies binding?

The *Mining Law* obligates mining companies to comply with the *Environment Law* “or best international practices” in terms of the environment, worker safety, and local communities (Art. 142). A safeguard policy is often recognized as an indication of best international practices, so we can infer that according to the law, safeguard policies are binding for subjects such as local communities and the environment (meaning that mining companies are bound to comply with them).

Aside from the *Mining Law*, every development project (whether it is a mine, a dam, a railroad, etc.) that receives a grant, loan or other financing from a funding body such as:

- a development bank, such as the World Bank (WB), the International Finance Corporation (IFC) or the African Development Bank (AfDB),
- one of the 80 commercial banks who have adopted the Equator Principles⁴, or
- an export credit agency⁵

is **bound by contract** to comply with the safeguard policy.

Every project that receives a loan or financing from one of the commercial banks adopting the Equator Principles and certain export credit agencies is obligated to comply with (1) the IFC’s *Environmental and Social Performance Standards* and (2) the World Bank Group’s *Environmental, Health and Safety Guidelines*.

For example, every project in Guinea in which the IFC is involved (as of the date of publication of the Guide, IFC is involved in the Simandou project) must comply with the IFC’s safeguard policy.

Many of the development banks, including the IFC, have an independent accountability mechanism mandated to directly receive complaints from local people affected by one of the bank’s projects and who fear that the project has or could have negative environmental or social effects on them. → *See Unit 6.3 about accountability mechanisms of development banks*

“Safeguard policies are not necessarily standards that protect human rights. Sometimes they do, sometimes they don’t. In any case, the World Bank is currently revising its safeguard policies. The results of this process will have significant repercussions on the future of development in Africa and elsewhere in the world. So far, the new proposed policies have raised significant concerns from civil society, who sees a weakening of critical protections for indigenous peoples and other local communities, including persons displaced by Bank-financed projects.”

– Bank on Human Rights Coalition

⁴ List of the 80 commercial banks: www.equator-principles.com/index.php/members-reporting

⁵ An agency of the State providing its private companies with financial support for high-risk projects abroad.

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ 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.

ANIMATION ACTIVITIES

- On-stage performance by the facilitators of the factual situations demonstrating the various manifestations of law.
- Pen game to allow participants to identify the elements of a good law.
- Brainstorming to allow participants to share their view of law and life in a society without law.

Animation Box: Game

What is a good law: Pen game

Objectives: Better understand the function of law in society and the 7 elements of a good law.

Ask participants to stand in a circle. Tell the group they will be playing the pen game. Give a pen (or a marker) to one of the participants, and tell the person to start; do not say what the rules of the game are. The participants will be confused, because they do not know the rules, but tell them again to start the game.

After a few seconds, take the pen and explain the game: tell participants they must pass the pen to the participant standing next to them in the circle.

Allow participants to pass the pen for a few seconds, then stop them. Tell the last two participants who held the pen that they broke the rules and they are disqualified. Tell them they passed the pen with the wrong hand.

Tell the other participants to continue playing the game. After a few more seconds, invent other rules and tell participants they are not playing the game correctly. For example, say that they must pass the pen in the other direction.

Over the course of the game, try to confuse participants by using contradictory rules. For example, you can tell participants they must jump when they pass the pen, then a few seconds later, tell them they must also spin around when they pass the pen.

Start to disqualify participants by giving reasons one by one, for example, tell them they passed the pen too slowly. (If a participant is disqualified, he is out of the game and must leave the circle.) Then, start to disqualify participants for other reasons, for example, because they were wearing a blue shirt. Then disqualify all the men from the game.

After five minutes, join the game – without explanation. Then, without any warning, stop the game and say that you are the winner.

Discussion questions after the game:

Was it a good game? Did participants like the game?

What were the issues with the game and the rules?

During the discussion, use the 7 elements of good laws to organize the participants' responses. (EC, Civics)

Animation Box: Discussion

Rule of law

Objectives: Discuss the similarities and differences between custom and the rule of law as presented in the unit.

Present Article 3 of the *African Charter*: "Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law." Underline and explain the key words.

Present a story. Elhadj Ibrahima Sambégou, a traditional Fula of Guinea, explains the organization of traditional society with its Constitution that advocates a changeover of power every two years. This changeover took place seamlessly. Chiefs were chosen based on agreement. The induction and oath taking took place in different locations, which allowed everyone to feel involved in the ceremonies. Similarly, decision-making and enactment of laws was done by consultation and agreement with the whole community. Mr. Boubacar Djibo next explains the Fula social structure and review bodies.

Present the opinion of an elder. *A proverb says, "If you see a hyena bowing before dogs, that is because man got involved." The rule of law is the same thing: it makes the weak strong, and the strong weak, so that all subjects are equal. But beware! The rule of law stops at the hut's entrance: once inside, I am the State!*

- Ask participants to find the similarities and differences between the stories and Article 3 (you can ask participants to find the highlighted words in French and in their local language).
- Ask participants to write, in their own words, Article 3 of the *African Charter*.
- Ask participants to work in groups to show in a drawing or poster what Article 3 means to them.
- Ask participants questions about the respect of this rule in their locality. What comments do they make about respect for this rule? About the proverb? (EIP)

Unit 2.2 What are human rights?



HUMAN DIGNITY

TEACHING OBJECTIVES

- Allow understanding of human rights, their interdependence and universality.
- Initiate a reflection on human rights as affected by a mining project.
- Allow understanding of the right to adequate food, right to health, right to information and right to participation.
- Initiate reflection on the balance to be sought between free, prior and informed consent (FPIC) and the rights of the State.

THEMATIC CONTENT

What are human rights?

In our daily lives, we all have basic needs, such as having enough to eat, enough clean water to drink, and access to health care when we are sick. We also need certain fundamental freedoms, such as the freedom to express our opinions and practice our religion. Exercising and benefiting from these freedoms are our fundamental rights as human beings.

Everyone has human rights – men and women, young and old, rich and poor – regardless of where they are born or what their beliefs are. You cannot be deprived of these rights or have them restricted, except

according to reasons and procedures provided for in law. The State bears the obligation to promote these rights and to have them respected.

— What is the source of human rights?

Human rights are rooted in universal human values and recognize the inalienable dignity of every human being everywhere in the world. Seen in this light, every culture is a source of human rights. In fact, taking different forms, all cultures affirm in one way or another respect for the individual and human dignity.

Human rights are rooted in the Constitution, in the laws of each country, and codified in multiple regional, international and universal instruments. For example, the preamble of the Constitution refers to the *Universal Declaration of Human Rights* (UDHR) of 1948, the International Conventions and Covenants on human rights, as well as the *African Charter on Human and Peoples' Rights* (*African Charter*) of 1981. The UDHR, the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) together make up the International Bill of Human Rights.⁶

— Do human rights apply only to individuals, or also to communities?

In African communities especially, these rights also apply to communities and are mostly exercised collectively and not by a single individual.

- **Collective rights:** These rights can be exercised collectively as a people or a community. The ACHPR has recognized as a people those who are linked by their identities and historical, traditional, racial, ethnic, cultural, linguistic, religious, ideological, geographical and economic identities, or other linkages.

For example, the *African Charter* protects peoples' right to self-determination (*Art. 20*); peoples' right to freely dispose of their wealth and natural resources (*Art. 21*); peoples' right to their economic, social and cultural development (*Art. 22*); as well as peoples' right to a general satisfactory environment favorable to their development (*Art. 24*).

- There are **individual rights that may be realized collectively**, such as the right of association, trade-union freedom, and cultural rights.
- **Individual rights:** These rights are related to an individual and generally imply an abstention by the State, without always demanding positive action. These are also called rights and freedoms. Most civil and political rights, such as the right to life, to equality before the law, to be judged by a competent, independent and impartial tribunal, the right to freedom of expression, the right to elect and be elected are considered individual rights. We can also find examples of social rights, such as the right to education or the right to work.
- There are also some **compromises between individual and collective rights**. Article 17 of the UDHR is an example of this: "Everyone has the right to own property alone as well as in association with others."

⁶ Guinea has also ratified the following international treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, International Labour Organization (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, African Charter on the Rights and Welfare of the Child.

HUMAN RIGHTS IN THE GUINEAN CONSTITUTION

Right to life and to moral and physical integrity (<i>Art. 6</i>)	Prohibition on acts of torture, abuse or cruel, inhuman or degrading treatment (<i>Art. 6</i>)	Right to freedom of expression (<i>Art. 7</i>)
Right to access public information (<i>Art. 7</i>)	Right to equality before the law (<i>Art. 8</i>)	Right to address a judge to assert one's rights against the State and its agents (<i>Art. 9</i>)
Right to a fair trial (<i>Art. 9</i>)	Right to petition (<i>Art. 10</i>)	Right to property (<i>Art. 13</i>)
Right to health and physical well-being (<i>Art. 15</i>)	Right to a healthy and sustainable environment (<i>Art. 16</i>)	Crime against the nation concerning hazardous or pollutant waste (<i>Art. 17</i>)
Right to work (<i>Art. 20</i>)	State's obligation to ensure its riches equitably benefit all Guineans (<i>Art. 21</i>)	Right of the Guinean people to the preservation of its patrimony, culture and environment (<i>Art. 21</i>)

— Human rights are all related, right?

Human rights are universal, indivisible and interdependent, equal and non-discriminatory. They are often grouped into civil and political rights on the one hand, and economic, social and cultural rights on the other hand:

Civil and political rights include individual liberties such as the right to life, prohibition of torture, right against arbitrary arrest or detention, equality before the law, freedom of expression, political liberties such as the right to vote, the right to participate in political life, resistance to oppression, etc.

Economic, social and cultural rights are, among others, the right to work, to strike, to health, to food, to social security, to education, to adequate housing, etc. To be implemented, these rights often need the intervention of the State. These rights also prohibit the State from pursuing activities that can inhibit fulfillment of these rights.

— Who is responsible for the respect and implementation of human rights?

The State, through its many institutions including the courts and tribunals, is the primary protector of human rights on the entirety of its territory. The State has four major obligations concerning human rights:

1. **Obligation to respect.** The State, one of its organs or one of its representatives, must refrain from interfering with a community or individual enjoying its rights.
2. **Obligation to protect.** The State protects persons and groups against violations of their human rights, including preventing violations of individuals' or communities' rights by third parties (non-State actor, another State or international organization). This corresponds to protection by legislative measures or effective remedy.
3. **Obligation to promote.** The State has the obligation to create conditions favorable to the exercise and enjoyment of human rights, including to integrate teaching human rights in scholarly and professional education courses (*Arts. 20, 23 and 25 of the Constitution*).
4. **Obligation to fulfill.** The State must take positive actions of enforcement and investment to facilitate enjoyment of economic, social and cultural rights progressively within a reasonable time using the greatest amount of available resources. The State must also use international cooperation to maximize its resources.

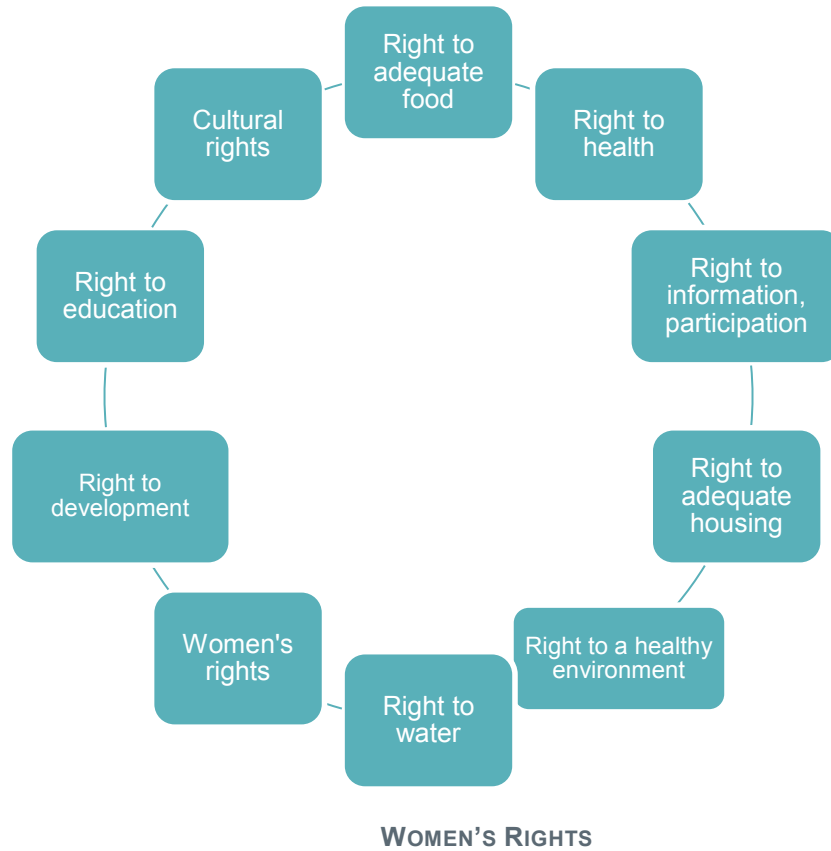
Companies, such as mining companies, their investors and sub-contractors, have a responsibility to **respect** human rights in their activities and commercial relationships. This responsibility requires companies to:

- Avoid causing or contributing to adverse human rights impacts through their own activities, and to address such impacts where they occur; and
- Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. (*United Nations, Guiding Principles on Business & Human Rights*)

More specifically, the Guinean State, mining companies, mining project developers and the other companies involved in mining exploitation activities “have a primary obligation to respect and promote recognized human rights including the rights of women, children and workers arising from mining activities” (*Art. 15 of the ECOWAS Mining Directive*).

Industrial mines and economic, social and cultural rights

The management and operations of a mining project have impacts on all human rights. In this Guide, we emphasize economic, social and cultural rights, such as:



It is recognized that “the full and complete development of a country, the welfare of the world and the cause of peace **require the maximum participation of women on equal terms with men in all fields**” (*Preamble to the Convention on the Elimination of All Forms of Discrimination against Women – CEDAW*).

The Guinean Constitution recognizes that “all human beings are equal before the law. Men and women have the same rights” (*Art. 8*). Guinea condemns discrimination against women and has the duty to “ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child” (*Art. 18 of the African Charter*).

Discrimination against women is defined as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (*Art. 1 of CEDAW*).

CEDAW obligates Guinea to take “in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men” (*Art. 3*).

RIGHT TO ADEQUATE FOOD

It often happens that mining exploitation deprives many families or communities of their means of subsistence by taking away their right to access their agricultural and grazing lands.

The fundamental right of everyone to be free from hunger (*Art. 11 of ICESCR*) is indirectly addressed in Guinea's laws. The objectives of the *Public Health Law* are to contribute to "the improvement of health by providing to the individual, the family and the municipality the minimum conditions of hygiene allowing them to lead socially and economically productive lives" (*Art. 1*). The *Public Health Law* also states that "the individual, family and municipality enjoy the protection of food and nutritional conditions" (*Art. 3*).

The right to adequate food can be defined as follows: "the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear." (*OHCHR*)



RIGHT TO HEALTH



The Constitution states: “Everyone has the right to health and physical well-being. The State has the duty to promote these, to fight epidemics and social evils” (Art. 15). The *Public Health Law* aims to “ensure the protection and the promotion of health, the rights and obligations of the individual, the family and the municipality on the whole of the territory of the Republic of Guinea” (Art. 1). The right to health is also recognized in the *African Charter* (Art. 16) as well as the ICESCR (Art. 12).

The right to health has a much broader scope than just delivery and access to appropriate health care. The right to health also includes:

- The underlying determinants of health; such as food and nutrition, lodging, access to clean and potable water and to an adequate sanitation system, safe and hygienic working conditions and a healthy environment.
- The fact that services, goods and infrastructure must be available, accessible, acceptable and of good quality.
- The fact that services must be accessible to all without discrimination. (OHCHR)

RIGHT TO INFORMATION AND THE RIGHT TO PARTICIPATION



Information is the action of informing, being informed, reporting a fact, a situation or an event, or seeking this information. In this way, information is any news, any details, any documentation about a thing, an event, a community, a country or a person, brought to public attention. Without information, citizens cannot participate in the activities that transform and improve the life of their community and country. It is by participating that citizens can generate, orient or influence the process of management and decision-making.

Indeed, it would be difficult for an individual or a community to enjoy their right to development, to work, to water, to housing, to food or to a healthy environment without adequate information concerning these situations (the right to information); and without effective participation of these individuals or these communities in decision-making (right to participation).

The right to information and the right to participation are **interdependent and indivisible**: we would not know how to participate in any decision to be made if we are not informed. As concerns mining activities, the right to information is expressly encouraged: the State is invited to engage in the promotion of transparency of information regarding mining revenue in particular, by supporting and subscribing to the Extractive Industries Transparency Initiative (EITI) (*Art. 13 of the ECOWAS Mining Directive*). Guinea adhered to this initiative in June 2005 and was accepted as a compliant country on 2 July 2014.

At the local level, the *Local Municipalities Law* guarantees the right of local municipality residents to be informed of the affairs and decisions of the municipality that concern them. This right, indivisible from the free administration of local municipalities, is a fundamental principle of local democracy (*Art. 11 of the LML*). The Constitution guarantees the right to be informed and the right to access public information, and provides that every person is free to educate and inform themselves from sources accessible to all (*Art. 7*), a right also protected by the law concerning the right to access public information.

The *African Charter* provides that “every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law” (*Art. 9*). The rights of each individual to receive, disseminate and seek information are recognized in the UDHR and the ICCPR.

The UDHR, ICCPR and ICESCR, just as the *African Charter*, recognize the right of everyone to take part in the management of public affairs (right to participation). The right to participation is a key component of good governance, for example, designed to give effect to several of the peoples' rights stated in the *African Charter*:

- The **right to development** (*Art. 22 of the African Charter*) has been interpreted by the African Commission as an important right at the heart of protecting access by local communities to their lands and their resources. This right is important because it guarantees the rights of communities to their lands or their resources against disturbance or threat. It opens for local communities the possibility to exercise their rights in the usual decision-making procedures.
- The **right to self-determination** (*Art. 20 of the African Charter*) is increasingly understood as a procedural right guaranteeing a community the right to effective participation in any decision-making or electoral process capable of affecting the rights of the communities' members. (*LRC, Customary Law*)

The **right to development** is “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources” (*Art. 1 of the Declaration on the Right to Development*).

PRINCIPLE OF FREE, PRIOR AND INFORMED CONSENT (FPIC)

Consent is an agreement given by one person to another about a question or a proposal. It must not be obtained by force or by deceit, and must knowingly be given in order to commit or to accept an engagement to do or not to do something.

Free, prior and informed consent (FPIC) is a legal principle, that is, a rule of conduct, obligatory and executory depending on the source of law. In brief, FPIC is a principle that specifies:

- that communities must **understand the consequences** of the project over the course of the project's life cycle,
- that they must be able to **participate in decisions** which affect their lives and livelihoods, in particular by negotiation over the course of the project life cycle; and
- that they must have the opportunity to **give (or refuse) their consent** to the projects, such as mining projects, which have impacts on their lands, territories and other resources.

FPIC is a process inherent to a rights-based approach to development. The principle of FPIC has its roots in several of the rights contained in the Guinean Constitution and in the *African Charter*, such as the right to property (*Art. 13 of the Constitution*), the right to culture (*Art. 17 of the Charter*) and the right to equality (*Art. 8 of the Constitution*).

At the regional level, several African institutions have called upon African States to respect the principle of FPIC of communities affected by mining projects.⁷ In the ECOWAS *Mining Directive*, mining companies are recommended to respect the rights of local communities and to obtain the FPIC of affected communities before exploitation begins and before the beginning of each successive phase of mining exploration, as well as post-closure (*Art. 16*).

⁷ For example, ECOWAS in its *Mining Directive*, the ACHPR in its *Resolution on Natural Resources*, the pan-African Parliament, as well as the African Union in its *Africa Mining Vision* (*Oxfam America*).

At the international level, in 2007 Guinea voted in favor of the *United Nations Declaration on the Rights of Indigenous Peoples*, a declaration that calls on States to consult indigenous people to obtain their FPIC before approval of any project, such as mining projects, having impacts on their lands or territories and other resources (Art. 32).

“Local communities should meaningfully and effectively participate in a way that they can substantially influence the decisions. The right to participation in the decision-making process should not be construed as a right to veto development or extractive initiatives. This is because the African Commission has reiterated at different occasions the right of African States to choose development paths in the national interest of their peoples. At the same time, a mere formalistic attempt to consult does not constitute consultation.

For a consultation to grant a social license to the extractive or development projects, it has to be a ‘genuine and effective engagement of minds between the consulting and the consulted parties’.”

– Pacifique Manirakiza, associate professor at the University of Ottawa Faculty of Law and President of the ACHPR Working Group on the Extractive Industries, Environment and Human Rights

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ 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.
- ✓ 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.

ANIMATION ACTIVITIES

- Drawing and developing a tree of human dignity (see box below).
- Presentating and discussing images of the right to dignity, right to adequate nutrition, right to health and right to information.
- Brainstorming about the importance of women's participation in decision-making and respecting women's rights (see box below).
- "Yes sir, no sir" game to discuss the FPIC of affected communities and the rights of the State (see box below).

Animation Box: Drawing

Tree of human dignity: Human beings, human rights

Objectives: To initiate understanding of human rights, their interdependency and universality; to raise awareness about human rights violations.

Materials required: Work sheet, pencil and paper for each pair of participants; glue; big sheet of paper on which you can draw a tree of human size; flip charts of different colors.

Ask participants to brainstorm about the meaning of the word "human". Ask them to think about the qualities of a human being and to write them on the cards (e.g., intelligence, sympathy, generosity). Explain that what is special about us is our humanity, our being human. As humans, we can think and articulate thoughts; we also have a sense of right and wrong, which is our conscience.

Ask participants to write on a separate set of cards what they think is needed in order to protect, enhance and fully develop these qualities of a human being (e.g., food, water, shelter or housing, education, friendship, loving family, relatives).

Draw a tree with many branches and a large trunk. Draw an outline of a human being in a circle within the trunk of the tree. Based on the cards prepared by participants, write the main qualities of “human” within the outline of the human being, and write the things they need to develop outside the trunk.

Explain that everything inside the outline of the human being relates to human dignity, the wholeness of being human. Everything written outside the outline represents what is necessary to human dignity. Human rights are based on these necessities. Discuss with the participants about the meaning of “human rights” and try to identify their main characteristics.

Write different human rights in the branches of the tree, and connect each branch of the tree with the thing necessary for a human being to live in dignity (e.g., right to food, right to housing, right to property, right to education, right to freedom of expression, right not to be discriminated against, right to health). Ask the participants to identify which rights are of particular concern to them and their community.

Use these questions to stimulate discussion:

- What happens when a third party or State attempts to deprive someone of something that is necessary to his or her human dignity (e.g., access to land or property, access to health services)?
- When one right is violated (e.g., right not to be discriminated against, right to property), how does that affect other rights (e.g., right to food, right to health) and people’s lives and livelihoods?
- Who is responsible for respecting and protecting people’s human rights and for redressing their violations?
- What can be done to help protect human rights?

Explain that just as any other plant, a “human dignity tree” needs strong roots, good soil and care to grow and flourish. Give these to the tree and label them with the things that make human rights grow and flourish (e.g., respect of rules and norms, equal opportunities and equal treatment, education, participation, markets and economy, democratic institutions). (*FAO, 2010*)

Animation Box: Discussion

Women's rights

Objectives: Discuss the importance of women's participation and respect for women's rights.

Present Article 18 of the *African Charter*: "1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. 2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community. 3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. 4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."

Ask the participants questions about the meaning of the key words in Article 18 (duty of the State, elimination of every discrimination, protection of the rights of the woman, etc.).

- Why should women's rights be respected?
- Today, what guarantees the respect for the rights of women in our country?
- Compare the Article from the *African Charter* to the articles of the Charter of Kouroukan Fougá.
- Ask the participants about what discriminatory practices against women they know of.
- Ask the participants if boys and girls are treated similarly in school and in the family.
- Ask the participants to observe cases of discrimination against women they see around them, in the family, in the village or in the city and to report these. (*EIP*)

Animation Box: Game

FPIC and the State: "Yes sir, no sir" game

Objectives: Initiate reflection on the equilibrium to be found between the FPIC of affected communities and the rights of States to choose development paths in the national interest of their peoples.

→ See *Advice for facilitators > Basic animation activities > "Yes sir, no sir" game for guidance on the analysis of the pros and cons*

Discuss the quotation of Professor Manirakiza. Remind participants of Article 21 of the Constitution. Play the "yes sir, no sir" game. Divide participants into 2 groups: 1 group takes the position of communities affected by a mining project; 1 group takes the position of the State. Each group must find the best arguments to support its position.

Unit 2.3 What are everyone's respective roles and responsibilities?

TEACHING OBJECTIVES



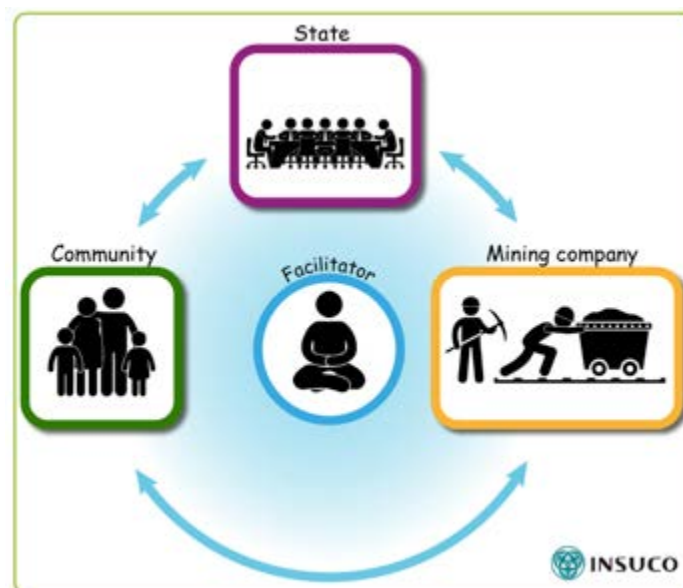
- Identify the groups of actors involved in a mining project.
- Describe the roles and responsibilities according to law of the different actors.

THEMATIC CONTENT

Who is involved in an industrial mining project?

In general, mining involves three main groups of actors who may at times have differing interests. These groups are:

- **companies**, who bring capital and expertise,
- the **State**, who authorizes mining companies to exploit sub-surface mineral resources in exchange for a share of the wealth created,
- **local communities** living in and around the territories with mineral resources such as bauxite, iron ore, gold, diamonds, etc.



What are everyone's respective roles and responsibilities regarding mines and communities?

Under the rule of law, laws set out that each of the three groups of actors have a role to play and responsibilities to fulfill in a mining project. These roles and obligations concern, for example, land management, job creation and stability, economic development, protection and management of natural resources, respect for human rights.

What are the roles and responsibilities of the State?

In a State, there are several bodies which each has a role to play:

- the **legislative branch** (National Assembly), which is responsible for creating and adopting laws,
- the **judicial branch** (courts and tribunals), which are responsible for interpreting laws,
- the **executive branch** (central administration and deconcentrated services), which is responsible for applying and enforcing the laws.

The responsibilities of the State concerning human rights, as discussed in Unit 2.2, include obligations to respect, protect, promote and fulfill human rights. The responsibilities of the executive branch are at two levels: the central administration and the deconcentrated services.

— Central administration

The central administration is made up of each Ministry's services with national jurisdiction; they are mostly located in the capital, Conakry, and include for example: the Ministry of Mines and Geology (MMG); the Ministry for Territorial Administration and Decentralization (MATD); the Ministry of Environment; the Ministry of Agriculture, Water and Forests; the Ministry of Security and Civil Protection; the Ministry of Health and Public Hygiene; the Ministry of Human Rights and Civil Liberties, etc.

The central administration Ministries are responsible at the national level to carry out their role in designing, leading, orienting and supervising. As such, they prepare and implement the policies and decisions of the government and of each of the Ministers, and participate in developing draft laws and decrees.

The main responsibilities of the central administration include:

- Promote the well-being of the population, that is, create conditions favorable for development (*Art. 23 of the Constitution*).
- Ensure that riches, such as mines, are enjoyed equitably by all Guineans (*Art. 21 of the Constitution*).
- Ensure protection of the environment (*Art. 16 of the Constitution; Arts. 5, 10 and 9 of the Environment Law*).
- Promote health and the right to life (*Art. 15 of the Constitution*) and hygiene and safety standards in the mines (*Art. 145 of the Mining Law*).
- Promote employment conditions (*Art. 20 of the Constitution*) and support research, training and enhancement of the mining sector through the Mining Investment Fund (*Art. 152 of the Mining Law*).
- Popularize (meaning to explain, allow the comprehension of) human rights (*Art. 25 of the Constitution*). Thus the State must inform local populations of their rights when a mining company arrives.

- Guarantee the right to property and ensure that expropriation does not occur without just and prior compensation (*Art. 13 of the Constitution*).

— Deconcentrated services

The deconcentrated services are all the administrations representing Ministerial departments, who are established at the level of Territorial Constituencies, which are the Prefectures and Sub-prefectures (*Art. 134 of the Constitution*). The Territorial Constituencies are created by regulatory act (*Art. 135 of the Constitution*).

The deconcentrated services fulfill the State functions of the central administration that are delegated to them by the regulatory act that created them, and their jurisdiction is ordinary. They are technical services whose roles and responsibilities are defined in a general manner and by sector (education, health, mines, environment, agriculture, etc.).

Currently, these services are organized into Regional Directorates and Regional Inspectorates, Prefectoral Directorates and Prefectoral Inspectorates, as well as Sub-Prefectoral Directorates.

The main responsibilities of the deconcentrated services include:

- Provision of basic services such as electricity and water, in an adequate manner both in terms of quality and quantity.
- Monitoring and supervision of mining and geologic activities at the regional or prefectoral levels by the Prefectoral Directorate of Mines and Geology.
- Monitoring and supervision of the implementation of the ESMP by the CPSES. → See *Unit 1.3 about ESMP and CPSES*

What are the roles and responsibilities of communities?

Within local communities there are multiple groups of actors. Here we look in detail at the responsibilities of local municipalities and civil society organizations.

— Local municipalities

Local municipalities are the regions, the urban communes and the rural communes (*Art. 134 of the Constitution*). Their establishment and organization are governed by law (*Art. 135 of the Constitution*).

As the place of closest administration, local municipalities have a diverse range of competencies. The principle of decentralization provides, in the spirit of the Constitution, that “decentralized” competencies be transferred to them, that is, competencies previously exercised by the State concerning local development. Thus, local municipalities acquire a certain decision-making and management autonomy, as well as a level of design freedom in developing regulatory documents and a Local Development Plan (LDP).

The governing bodies of the local municipality include the municipal council and the local executive authority (the mayor and his deputies) (*Art. 84 of the LML*).

The main responsibilities of local municipalities include:

“Today, there is a vacuum, even when texts are developed, their application is ambiguous. This unfortunately causes remorse among local people.”

— Guinean elder

- Managing land use and territorial administration, and exercising certain powers concerning land management (*Arts. 253 to 262 of the LML*), such as constituting land reserves in view of plans provided in planning documents, zoning plans, or development plans in force on the territory.
- Promoting local socio-economic development (*Art. 4 of the LML*). To accomplish this mission, the municipality carries out a study called a local socio-economic diagnostic to identify the problems and priorities of the community and to serve as the basis from which to develop an LDP (*Art. 511 of the LML*). The LDP must also take into account animal husbandry if required (*Art. 80 of the Pastoral Law*).
- Favor sustainable development of local municipality resources (*Art. 4-2 of the LML*) and ensure protection of the environment (*Art. 29-19 of the LML*). The municipality is also responsible for the administration of water resources for the purpose of good water management for the benefit of the local municipality (*Arts. 35, 36 and 41 of the Water Law; Art. 29-22 of the LML*).
- Disseminating decisions and laws among the population (*Art. 162 of the LML*).
- Making sure of the enjoyment of the rights accorded to members of local municipalities, including human rights through their popularization (*Art. 4.2 of the LML*).
- The right to give an opinion before the granting of an authorization for quarrying exploitation (*Art. 69 of the Mining Law*), even though the opinion is not binding on the State.

— Civil society organizations (CSOs)

Just as companies and every other actor in Guinea, CSOs are required to comply with the laws of the Republic of Guinea. CSOs can play a number of roles in a mining project, such as:

- **Monitoring**, that is, contributing by actions of information, sensitization, reporting and warning to apply and respect the laws, uphold social justice, and ensure transparency.
- **Advocacy**, developing ideas, principles and best practices offering solutions, alternatives and perspectives, fostering communities' awareness of their capacities to individually and collectively face social problems and challenges, encouraging citizen participation, supporting their rights.
- **Service delivery** or the action of responding to different needs related to improving living conditions, such as education, health, food security.
- **Expert role**, specializing in a subject and bringing knowledge and experience for policies, strategy, and identifying solutions.
- **Capacity-building**, enrichment of competencies and qualifications, expanding and diversifying knowledge and management tools through training and education.

What are the roles and responsibilities of companies?

A company has several roles, including generating wealth by maximizing profits for its shareholders, who are the owners of the company. Every company, regardless of its size, sector or origin, has the duty to comply with all applicable laws of the Republic of Guinea and to respect human rights.

A mining project needs several different kinds of companies in order to function, which we can group into three categories:

- The **mining company**, which holds the mining permit,
- The **investors**, those who wish to obtain a profit from the mining company's activities,
- The **sub-contractors**, which are the specialized services, whether for geotechnology, security, studies or other specialties, hired by the mining company.

— Mining companies

Mining companies can sometimes be small companies or large companies. They can specialize in different aspects, such as exploration, exploitation, etc.

The main responsibilities of mining companies include:

- To act in accordance with the terms of the mining permit, including payment of royalties.
- Respect the State's international commitments and those applicable to their activities for improving mining sector governance, specifically those of ECOWAS, the Kimberley Process and EITI (*Art. 122 of the Mining Law*).
- Prioritize employment of qualified Guinean executives and provide a training and development program for Guinean staff and Guinean companies (*Arts. 108 and 109 of the Mining Law; Art. 45 of the Labor Law*). → See Unit 4.1 about jobs
- Respect workplace health and safety conditions (*Art. 145 of the Mining Law; Arts. 169, 172, 176 and 178 of the Labor Law*).
- Participate in the local municipality's development through the signature of a Community Development Agreement (CDA) and paying into a Local Development Fund (LDF) (*Art. 130 of the Mining Law*). → See Unit 4.2 about CDAs and Unit 4.3 about LDFs
- Predict and prevent the dangers of mining exploitation on health and the environment (*Art. 41 of the Environment Law*). Produce an ESIA on the mining project; implement and monitor the ESMP (*Arts. 22, 30, 37, 69, 70 of the Mining Law; Art. 82 of the Environment Law*). → See Unit 1.3 about ESIA
- If the exploitation of the mine causes health problems and environmental damage, the mining company will ensure that the risks are reduced and managed (*Art. 143 of the Mining Law*). → See Unit 5.2 about environmental pollution
- Remedy bodily or material damages resulting from the transport or use of chemical substances or dangerous hydrocarbons harmful to people's health and the environment (*Art. 90 of the Environment Law*).
- Create and fund a trust account for environmental rehabilitation (*Art. 144 of the Mining Law*).
- After the works have finished, rehabilitate the mining site (*Arts. 64 and 144 of the Mining Law*), that is, remediate the site to allow agriculture or reforestation if the lands were agricultural zones or a place where trees had been planted (*Art. 20 of the Environment Law*).

— Investors

Investors are physical or moral persons who place their funds in a company in the hope of receiving a positive return on their investment (a profit). Investors may be a government, a commercial bank, a development bank, an export credit agency or other companies.

In Guinea, the State is an investor in each mining company that holds a mining permit (*Art. 150 of the Mining Law*); sometimes this participation by the State is small (less than 15%) or larger (for example, 49% in the case of CBG).

The main responsibilities of investors include:

- monitoring compliance with their safeguard policy.
- providing access to remedy in case the safeguard policy is violated.

— Sub-contractors

Mining companies often hire specialized services, such as in the areas of geology, road construction, drilling or electrification, security, impact studies, etc.

The main responsibilities of sub-contractors include:

- Operate within the terms of their engagement by the mining company.
- Follow the company's internal policies.
- Follow the professional codes of conduct, as the case may be, of the company.

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ Mining activity concerns three main groups 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.

ANIMATION ACTIVITIES

- Presentation of the roles and responsibilities by the facilitators.
- Small group work or role play concerning the obligations of the State and of mining companies regarding human rights (see box below).

Animation Box : Small group work or Role play

Obligations of the State and of companies regarding human rights

Objectives: Allow reflection and understanding of the obligations of the State and of companies regarding respect for and protection of human rights.

Teaching tools: Divide participants into four groups. Give each group the image of a human right. For their image, each group should analyze the following:

- What the State should do to support realization of the right: such that everyone may enjoy it fully.
- What the State and companies should not do in order to respect (not violate) the human right.
- What the State should do to protect the human right against violation by other actors.

Before each group begins, explain the task they have to do, using the example of the right to education.

- In order for the right to education to be realized, the State must open new schools in rural villages and train additional teachers such that everyone can enjoy the right to education.
- To respect (not violate) the right to education, the State should not force families to pay fees outside of their means in order for their children to attend school.
- To protect the right to education against violation by other actors, the State must adopt laws prohibiting child labor such that children do not have the option of working instead of going to school.

Give the participants 20 minutes to discuss in their small groups and analyze these obligations about the image that was given to them.

Then, invite each group to present their images and analysis to all participants. After each presentation, invite participants to comment or ask questions. Here are some suggested answers:

Right to health

- To realize this right, the State should ensure that everyone can go to the hospital by constructing more hospitals and training more doctors, based on need.
- To respect this right, the State should not forcefully evict people from their lands and resettle them far from health centers.
- To protect this right, the State should not permit companies to construct a factory polluting a community's water and making the residents sick.

Right to adequate housing

- To realize this right, the State should take measures to improve housing conditions, such as by linking houses to infrastructure distributing water and electricity.
- To respect this right, the State should not demolish poor people's houses simply because they are in poor condition, without furnishing new ones.
- To protect this right, the State should not permit companies to take people's lands or forcefully evict them.

Right to a fair trial

- To realize this right, the State should improve the knowledge and capacities of judges, and guarantee that they are independent of political influence.
- To respect this right, the State should not try to influence the decision of a court of justice.
- To protect this right, the State should punish all persons attempting to corrupt or bribe a judge, and punish all judges who accept a bribe.

Right to freely express his or her opinion

- To realize this right, the State should adopt a law to protect persons who say what they think or believe.
- To respect this right, the State should not arrest people or close media outlets critiquing the State.
- To protect this right, the State should not allow political parties to intimidate or threaten persons to express their political opinion.

It is important for participants to understand:

- When States ratify international human rights treaties such as the ICCPR and ICESCR, they obligate themselves towards their people and other States to realize, respect and protect human rights;
- In which manner human rights can be respect;

- Guinea has ratified the ICCPR and ICESCR, and the Constitution makes these human rights part of Guinean law.
- That the State has the duty, recognized under both international and Guinean law, to respect and protect human rights.

Discussion:

Hang the group's images on the walls of the room or space such that they are visible. For some of or for all of the 4 rights, do the following activity:

- Choose a few examples of the obligations of the State and ask participants if they believe this is something the Guinean State is doing or not.
- Ask participants to share their life histories or current information demonstrating how the State is or is not fulfilling its duty and adhering to its obligations to respect these rights.
- To wrap up, ask participants what they believe they can do as citizens if the State or a company does not fulfill their duty to respect human rights.

You can remind participants that knowing their rights is the first step in defending themselves. Remind participants that it is up to a country's citizens to demand that the State respects human rights. (*EC, Civics*)

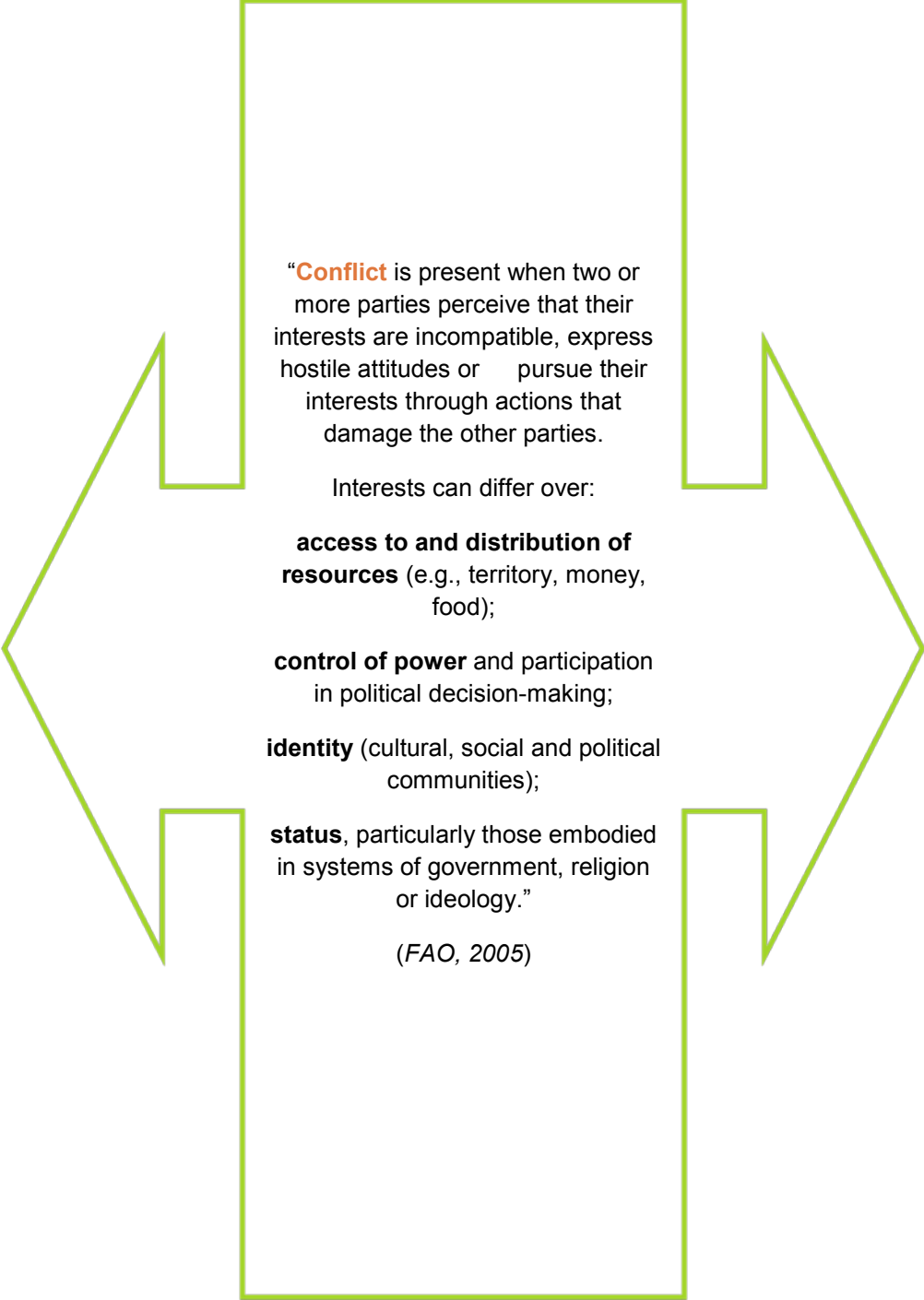
MODULE 3 : HOW CAN A COMMUNITY AVOID CONFLICTS?

WHY DOES THIS MODULE MATTER?

Mining conflicts in Guinea are increasing, which poses risks for everyone in Guinea. Especially intra-community conflicts carry important risks for an equitable sharing of mining's benefits, good impact management, as well as the respect and protection for human rights.

That is why the following questions are addressed in Module 3:

- How can a community resolve mining conflicts and avoid violence? (Unit 3.1)
- How can a community avoid manipulation and stay united? (Unit 3.2)
- How can a community protocol be developed and used as a tool for communication and social cohesion? (Unit 3.3)
- How can land use planning be used as a tool for negotiation and social cohesion? (Unit 3.4)



“**Conflict** is present when two or more parties perceive that their interests are incompatible, express hostile attitudes or pursue their interests through actions that damage the other parties.

Interests can differ over:

access to and distribution of resources (e.g., territory, money, food);

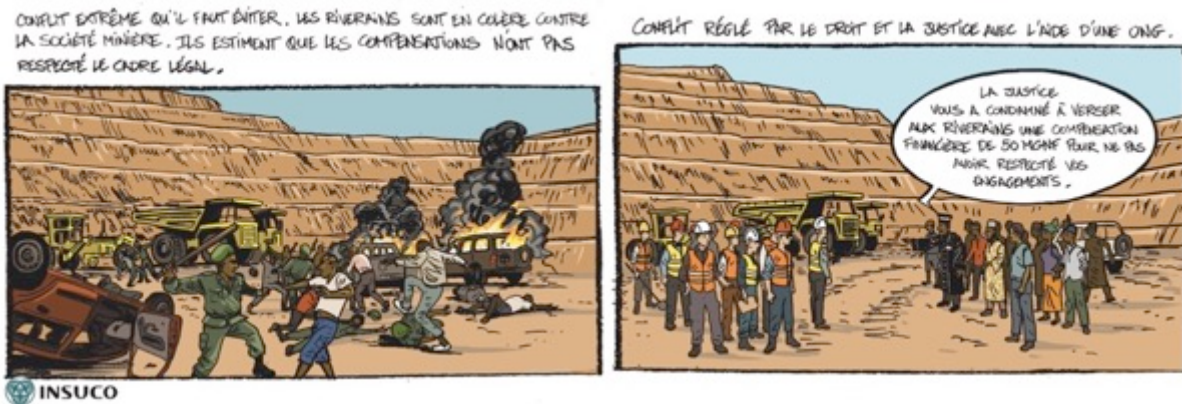
control of power and participation in political decision-making;

identity (cultural, social and political communities);

status, particularly those embodied in systems of government, religion or ideology.”

(FAO, 2005)

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



TEACHING OBJECTIVES

- Initiate reflection on the multiple sources of mining conflicts and possible interventions.
- Define the concepts of dialogue, negotiation and mediation.
- Present the standard of the Voluntary Principles on Security and Human Rights.

THEMATIC CONTENT

Where do the risks of mining conflicts come from?

The following text presents a dialogue among a journalist, a CSO representative, a representative of the State and a young woman.

Journalist: “Youth are protesting in the streets to claim their rights against the mining companies. These protests often cause all sorts of damages and don’t even lead to an improved situation. How can we propose alternatives to violence?”

CSO representative: “That’s not easy, especially not with mining activities that risk upsetting traditional lives and creating false expectations of immediate riches. In order to propose alternatives, it is first important to understand the causes of the conflicts.”

Journalist: “The youth who are protesting, they are claiming their right to work which is not respected by the mining company! That is the source of the conflict: the company’s failure to respect this right.”

CSO representative: “Not exactly. The youth are claiming what they believe their right to work to be. It is important to know the mining company’s obligations, according to law, regarding employment and to understand the role of the State in creating, adopting and applying labor laws.”

Young woman: “Based on what you said, I see several causes of conflict here: youth are missing information, what the company says is insufficient to meet their satisfaction, and it may even be that the laws themselves do not meet our needs.”

— What types of conflicts are there?

CSO representative: “Exactly. There are always multiple causes of conflicts, especially for mining conflicts. Among the different types of conflicts, there are relationship conflicts, data conflicts, interest conflicts, structural conflicts and value conflicts, which we can depict in a circle as follows (Moore):



Conflicts can manifest themselves between members of a community or between neighboring communities, between community representatives and the mining company, or with the intervention of security forces or others.

Here are some examples of causes of mining conflicts. Each of the examples includes multiple types of conflicts:

- **Poor consultation with local communities** and other stakeholders, whether this be consultation by the company, by an elder with his constituents, consultations within a community, etc.
- **Unequal sharing of the mine's benefits**, given that most of the benefits land at the national and not local level, and that there is an absence of information to manage the very high expectations (usually unsatisfied) of local communities in terms of jobs, social services, investment and compensation.
- **Often severe negative impacts on the economy, society and environment**, which are not managed, such as inflation, influx of new populations, militarization of the area, nuisance due to mining exploitation, challenges for local communities to gain equitable access to artisanal mining areas.
- **Poor financial management**, especially for personal use, corruption concerns.
- **Inadequate institutional and legal frameworks**, especially for example local community lack of awareness of their rights, confusion about the sovereign role of the State and the role of mining companies in terms of local development, the plurality of norms (local law, State law) and arbitration bodies (municipality, administration, technical services, etc.) or the need for reform of many laws.”

— **What are the possible interventions to address conflicts?**

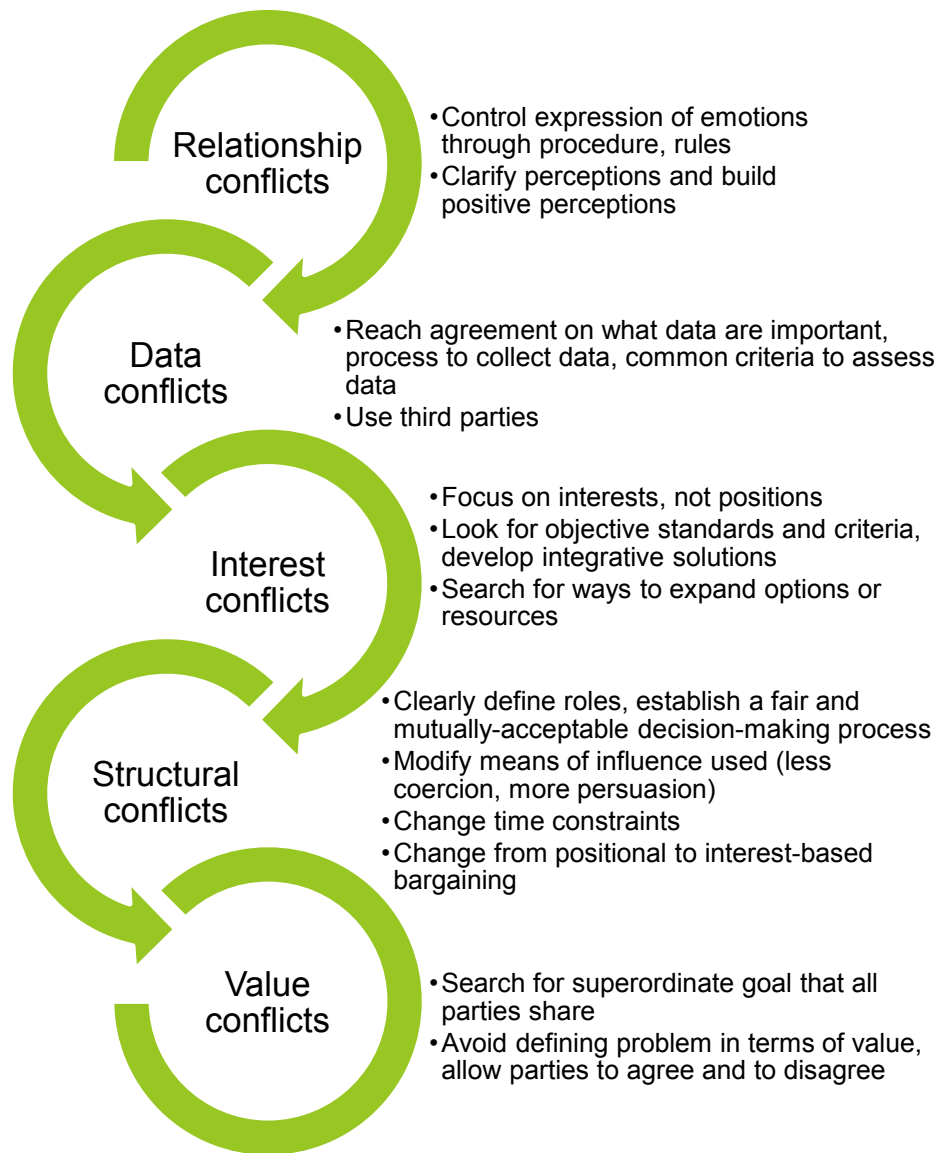
Young woman: “We just discussed the many different types of causes of conflicts. So what can we do to resolve all these conflicts?”

CSO representative: “There is no easy answer to your question. First, I want to remind you that the State has the obligation to ensure compliance with the law, which serves to maintain order and security. The State has an important role to play in informing people living in mining zones, such as about the importance of diversifying their economic activities.”

State representative: “For that purpose, in June 2012, the State created **Consultative Committees in Mining Localities (CCLM)** to prevent and manage conflicts between mining companies and local communities, to establish dialogue between companies and other actors involved in mining activities in the area, in order to promote a peaceful environment, security and peaceful cohabitation.”

CSO representative: “The better you know and identify the causes and types of conflicts, the better you will be able to select the tools and interventions most appropriate to address them. Given that there are usually several types of sub-conflicts in a mining conflict, you will need more than one avenue of intervention. Using one avenue does not preclude the use of others. We can categorize the possible interventions by type of conflict, as shown in the following diagram.

POSSIBLE INTERVENTIONS FOR NON-VIOLENT CONFLICT RESOLUTION



(Moore)

This Guide provides you with many examples of alternatives to violence for mining conflicts:

For **poor consultations**, you can improve the consultation process and sharing of reliable information at all levels:

- Within communities by establishing an **information center** to master information about the mine project cycle, its footprint, impacts and benefits; and **consultations within communities**. → See *Unit 3.2*
- Between the company and local communities, by using, for example, a **consultation protocol** to improve communication; developing a **land use plan (LUP)** to negotiate the placement of infrastructure associated with the mine or to declare certain strategic reserve zones. → See *Units 3.3 and 3.4*

- For the **lack of rights-awareness**, you can train, through **information centers**, people to know how to go in a peaceful manner to ask the right question to the responsible person, to understand their rights explained in the Guide; to develop a **LUP** for land conflicts. → See *Module 2, as well as Units 3.2 and 3.4*
- For **severe impacts**, you must ensure full participation by affected communities in the **ESIA process**; to direct your **own impact assessment**, if you have the resources and a reliable methodology; to verify the **implementation and monitoring of the ESMP**; to demand the creation of a **monitoring or joint monitoring** program; to understand through the **information centers** the impacts of mining projects and how to act. → See *Module 5, as well as Units 1.3, 6.2 and 3.2*
- For **unequally shared benefits**, you can first understand the **possible (realistic) benefits** through the information center; to negotiate strongly for a **community development agreement** which guarantees benefits; and to control the **good financial management** at the local level of financial returns. → See *Module 4*
- Finally, you can always use basic tools to manage conflicts, such as **dialogue and mediation.**”

What are basic tools for conflict management?

Young girl: “Could you tell us a bit more about basic tools to manage conflicts?”

CSO representative: “Of course, I’ve mentioned dialogue and mediation as examples. First, it is important to remember something that everyone is already familiar with: **negotiations**. When people speak with one another in an effort to resolve their opposing interests, they are negotiating.” (*FAO, 2005*)

Young girl: “Yes, I negotiate ever day, at the market, with the children – I have lots of examples!”

CSO representative: “Exactly. Some negotiations can be fairly simple, with just one or two people (such as the examples you just gave) and others can be complex, involving multiple actors: local men and women, government agencies, domestic and multinational companies, politicians, international development agencies, and CSOs.

In contrast, **dialogue** is a process for sharing and learning about another person’s beliefs, feelings, interests and/or needs in a non-adversarial, open way, often with the help of a third-party facilitator. Contrary to mediation, which generally aims to resolve or settle a dispute, the goal of dialogue is usually simply to improve interpersonal trust and understanding.” (*FAO, 2005*)

Journalist: “How are dialogue and mediation different from negotiation?”

CSO representative: “In some negotiations, the people involved in the dispute (who we call “parties”) have become so entrenched in their differences that they are no longer in a position to find a constructive solution on their own. In such cases, a so-called third-party – a facilitator or mediator – can be in a position to help. The role of the facilitator or mediator is to help individuals and groups to negotiate and successfully come to a consensual agreement.” (*FAO, 2005*)

Young girl: “A **consensual agreement** – does that mean unanimous?”

CSO representative: “That is a good question. Consensus does not mean that everyone will get what they want. It also does not mean there will be a unanimous decision on an agreement, and it does not imply a vote to seek a majority. **Consensus** means that each “party” feels that their interests have been taken into account, and that they can live with the agreement – they may have wanted a bit more here and a bit less elsewhere, but they can accept to live with the results of the negotiation.” (*FAO, 2005*)

— Mediating mining conflicts

Young girl: “Do you believe our community can use mediation to help us resolve mining conflicts?”

CSO representative: “It depends. Consensual negotiations are more effective to address certain types of conflicts – but not all types of conflicts! For example, conflicts arising from diverging interests about the use of resources can be negotiable. However, basic necessities (such as identity, security, recognition or equal participation in society) are generally non-negotiable (FAO, 2005). I also have two more pieces of advice for you about this:

- Beginning such a mediation process usually requires the assistance of a professional mediator qualified to act in the local context.
- The success of all consensual negotiation processes is limited when there are large differences in power between the negotiating parties, such as for example, negotiations between you – as members of a local community – and a multinational mining company. The establishment of consensus can be reached if the power imbalances are not so large that a mediator cannot correct for them in the negotiation process.” (FAO, 2005).

Young girl: “But there are very large differences in power between me and the company! So we should forget about mediation, right?”

CSO representative: “Not all at once, no. Sometimes it is the best option available to find a solution, especially given the weaknesses and ineffectiveness of many of the other recourse mechanisms. It is important to proceed carefully, seek capacity-building, obtain additional information, and to ensure that the mediator recognizes the power imbalances. In any case, in our daily lives and when we speak with representatives of the State or a mining company, we can use some of the techniques that are used in a mediation, such as negotiating interests (not positions).”

*** End of dialogue ***

Positions, interests and needs

Positions are what people say they want – the superficial demands they make of their adversaries. Interests are what people care about, want, or need in order to fulfill in a necessity. They are the underlying desires and concerns that motivate people to take a position.

While positions are what people say they want (for example, “I want to build my house here”), their **interests** are what caused them to take a particular position (“because I want my house to be close to my family”). Parties’ interests can often be compatible and so, negotiable, although their positions may be total opposites.

Needs are what we as humans must have.

Active listening is a way of listening that focuses entirely on what the other person is saying, and confirms understanding of both the content of the message and the emotions and feelings underlying the message in order to ensure that understanding is accurate. (FAO, 2005)

Violence, mines and security forces

The following text presents a dialogue among a female artisanal gold miner, journalist, CSO representative, and a representative of a Mining company that applies the Voluntary Principles on Security and Human Rights.

Female artisanal gold miner: “The mining company’s security services chase us away from our artisanal exploitation sites. Even the pregnant women. We’re dropped off directly at the company’s security office, and they give us small tasks to do, or they transport us several dozen kilometers from our homes.”

Journalist: “We have also heard rumors of violence at Zogota.”

CSO representative: “I’ve sadly heard that this happens often – that the guards commit abuses and impose disproportionate punishments by force on poor people. Such kinds of conduct are grave human rights violations: the fact of subjecting a person to forced labor without their consent, or of transporting them from one place to another for the purpose of punishing them for whatever reason, are grave violations of the provisions of Articles 6 and 9 of the Constitution and are absolutely forbidden by law (*Art. 2 of the Labor Law*).

This conduct by security forces is also similar to assault and battery and aggravated assault. This is punishable under the provisions of Article 295 and following of the *Criminal Code*. The International Labour Organization Convention Number 29 similarly provides that ‘the competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations’ (*Art. 4*).”

— Voluntary Principles on Security and Human Rights

Representative of a Mining company applying the Voluntary Principles: “What you describe is very serious. For the acts of the private security forces of our company, we apply the Voluntary Principles on Security and Human Rights.”

Female artisanal gold miner: “What can you tell us about the Voluntary Principles on Security and Human Rights?”

Representative of a Mining company applying the Voluntary Principles: “The Voluntary Principles are a set of principles designed to guide companies in the extractive sector in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights.”

Female artisanal gold miner: “How can I convince the company’s security to apply the Voluntary Principles?”

Representative of a Mining company applying the Voluntary Principles: “NGOs, local authorities and local communities can advocate for the mining company to include the Voluntary Principles in any contract with private security providers, and can organize trainings in human rights for the security providers.”

— The State and the Voluntary Principles

Journalist: “I’ve heard that it is possible not only for a mining company, but also for a State – such as Guinea – to adhere to the Initiative for the Voluntary Principles. Is this true?”

Representative of a Mining company applying the Voluntary Principles: “Yes, States can also adhere. For example, Ghana was the first African country to adhere to them. The government of Ghana had to present an action plan describing the measures they planned to take to promote and implement the Voluntary Principles in order to adhere to the Initiative.

In Guinea, for example, citizens can demand the application of the Voluntary Principles by the public security forces responsible for the security of the goods and staff of mining companies, the Company for Security Support to Mining Companies (CASSM). CASSM is a military or police detachment placed under the authority of the MMG. NGOs can lead a campaign in Conakry with the State to adhere to the Voluntary Principles Initiative.”

*** End of dialogue ***

Case Study: Unfortunate events at Zogota in Guinea

The village of Zogota in Guinea, near the city of N'Zerekore, surrounded by Yono mountain, was the site of iron ore exploration of the companies Vale and BSGR (VBG). Protests took place on 31 July 2012, causing significant material damage to the company. It was said that villagers attacked the company's installations, pillaging and ransacking them. They also took staff (nationals and expats) hostage with machetes to their necks, threatening them, yet not injuring them.

According to some local elders, three days after the protests there was a “massacre” on the villagers of Zogota. On 4 August 2012, human rights NGOs accompanied by the office of the United Nations High Commissioner for Human Rights, undertook a fact-finding mission about these unfortunate events, apparently committed by a contingent made up of police and military against the village residents. Villagers waited for the local administration to acknowledge the mission, but they never came. The ministerial delegation also did not come, even though they were well aware of the drama.

The team was able to determine the following facts: the road to Zogota was blocked by tree trunks, 3 vehicles (facing in the direction to leave) belonging to the police and army were abandoned a few kilometers from the village; two wooden bridges had been cut; the village was almost entirely deserted of its inhabitants, especially its women and children; a few armed adult and youth males were guarding the village; five bodies, including of the District President, were lying lifeless on the ground, riddled with bullets; traces of blood were found in many places; there were cases for military bullets and empty tear gas canisters; traces of bullets were found on the walls of homes and of a primary school; a few homes and commercial hangars had clearly been burned.

According to testimony from villagers, the military contingent arrived around midnight by blocking entry to the village with wood. Villagers awoke and gathered with the village chief NyankoyeKolie encouraging the defense of the village. He then received a tear gas grenade in the face, which killed him. The villagers saw a dozen vehicles full of bodies dressed in uniform. According to the villagers, a dozen of their own were arrested the night of the attack, and another ten or so before the attack, and they called for their release, adding that the arrested persons were clubbed and tortured in the vehicles.

According to those on the mission and the regional coordinator of the CSO *Mêmes Droits Pour Tous* (MDT), the massacres constitute a grave and flagrant violation of the UDHR (Articles 3, 5 and 6), of the Guinean Constitution and also a crime against humanity (according to Article 7 of the Rome Convention). This was the first time such a situation occurred in Guinea. According to MDT, the maintenance of order and arrests of the protesters were not allowed to have occurred at the time chosen by the security forces (at midnight and three days after the protests), nor by the means and methods used. (*Pacem in Terris et a/*)

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ 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.
- ✓ The Voluntary Principles on Security and Human Rights are a set of principles intended to guide companies in the extractive industry to ensure the safety and security of their operations while respecting human rights and fundamental liberties. States can also adhere to the Voluntary Principles.

ANIMATION ACTIVITIES

- Reflection on the multiple types of conflicts and possible interventions.
- Mango battle game for sensitization on the institutions charged with the resolution of mining conflicts and a reflection on the strategies for resolving conflicts.
- Analysis and forum theatre to rehearse positive actions to take in a conflict situation.

Animation Box: Analysis in small groups

Reflection on conflict types and interventions

Objectives: Improve understanding of the multiple types of conflicts and possible interventions.

Ask participants for examples of mining conflicts from their experiences. Ask participants (in plenary or in small groups) to analyze mining conflicts in light of the “Circle of Conflict” diagram to identify the multiple types of conflicts in each example they mentioned. Ask participants to reflect on the different possible interventions to resolve the conflict, with the help of the diagram “Possible interventions for non-violent conflict resolution”.

Animation Box: Game

Mango battle

Objectives: Raise awareness about the institutions charged with regulating mining conflicts. Encourage reflection on the strategies to resolve conflicts.

Preparation: You, as facilitator, must know which conflict resolution institutions exist in the community. It is also recommended to contact a local judge to observe the game and to participate in the discussion that follows. Ask the judge to explain to participants the role of a judge in a conflict, what participants can do in case a conflict arises, at what moment citizens should consider the option of initiating judicial action, and what are the different potential results of a court decision. The judge should also promote a discussion on the interface between customary practices and formal conflict resolution.

Materials required: A mango or any other fruit or vegetable (even a crumpled ball of paper representing a fruit or vegetable, created by participants).

Explain the game to the participants. Divide the participants into two groups. Ask Group A to leave and wait outside. While they are away, tell Group B that their objective is to get the mango, because they have the right to use it for its mango juice.

Leave and tell Group A that their objective is to get the mango, because they have the right to use its skin to make a cake.

Bring the two groups together and ask each group to form a line facing the other. Tell the groups they have 5 minutes to get what they need. Tell them they have the right to speak, but not to use violence, to get what they want. Then place the mango (or its replacement object) between the two groups and say "Go". After 5 minutes, say "Stop".

Repeat the activity. This time, tell participants they must negotiate and come to an agreement in 5 minutes. When the "battles" and negotiations have finished, discuss the results with participants. Examine their opinions on the strategies to resolve conflicts. Note the importance of negotiating, and the importance of the rules used to resolve a dispute.

Some discussion questions for participants:

- What happened during the activity? How did you feel when you negotiated the first time? The second time?
- What was most frustrating to you?
- If you could play the game again, would you behave differently? If so, how?
- Would the negotiations have turned out differently if there had been a third party, an "arbitrator" (explain that an arbitrator or mediator is a neutral third party who does not take sides) present during the game?
- Did the two groups obtain a fair result after the first and second time? Were anyone's rights ignored?
- How would you prove your rights over the mango in this situation? Would you go to see a community elder, a judge or someone else?
- Would you respect that person's decision? Why?
- Would it be possible to file a complaint with someone or with another institution with respect to a decision you are not satisfied with?
- Which institution? A community or State institution, including a court?

Usually someone takes the fruit and the ways in which the groups handle the situation will be a surprise. Sometimes groups will negotiate to divide the fruit in 2 halves, or they will not negotiate at all. Sometimes groups will communicate and realize they each need different pieces of the fruit and can come to an agreement; each group takes the part they need. During the conflict, you should try not to influence the results, and instead tell participants that they must not use any violence to achieve their objectives.

Invite participants to share their own experiences with conflicts. Work with them on different strategies to resolve conflicts, especially communication, negotiation and mediation. Develop ideas on resolving conflicts within a group. Write the ideas down on a piece of paper and hang them up somewhere in the room.

Some discussion questions:

- Have you ever had a discussion or misunderstanding about to whom an object belongs? Or do you know someone who has been in such a conflict?
- Did you discuss or negotiate to solve the problem about the object?
- Was there another person present to help decide on the conflict? If so, who?
- Was that person's decision respected? Why?

Possible modifications to the activity: (1) Change the facts – for example by changing the property in question and introducing different property rights by different rights-holders; (2) Create four groups instead of two, and hold two “mange battles” at the same time. Start and stop the activity at the same time and discuss the different processes and results of each battle; (3) Invite a local elected representative or a State court representative to explain to the group what their job is and how their institution functions. (FAO, 2010)

Animation Box: Analysis of Zogota case study

Discussion questions

Objectives: Improve understanding of the different sources of conflicts and each actor's obligations.

What are the sources of conflicts and violence in the Zogota case study as described here?

What are the obligations of the State in the scenario? Of the mining company? Of the villagers?

Could the *Voluntary Principles* have helped the situation? Ask participants to explain their responses.

→ See also *Unit 6.2 about peaceful protests*

→ See also *Advice for facilitators > Basic animation activities > Discussing a case study*

Forum theatre

Objectives: Initiate reflection on how each of the actors could have acted differently in order to have better results.

Use the scenario of the protests at Zogota to do a forum theatre activity. What could each of the actors have done differently?

→ See *Advice for facilitators > Basic animation activities, for guidance on the forum theatre activity*

Unit 3.2 How can a community avoid manipulation and stay united?



TEACHING OBJECTIVES

- Allow communities to identify the risks of manipulation.
- Emphasize communication channels within communities, the need to choose representatives in a transparent and consensual manner, and to define the elements of consultation from the community's perspective.
- Propose local information centers, consultations within communities, and the articulation of a shared vision for the community's future as mechanisms to improve social cohesion and communication.

THEMATIC CONTENT

Where do the risks of manipulation and loss of social cohesion come from?

Very often, some members of a community may support a mining project, while other members of the community oppose it. Some mining companies will try to divide community members into two camps: those who are “for” and those who are “against” the project.

The arrival of a mining project often creates strong individual expectations and future prospects which can lead to manipulation and conflicts. → See *Unit 3.1 about mining conflicts*

— Why stay united?

Solidarity and social cohesion of affected communities is very important to protect and defend the interests and rights of communities against the conduct and interests of the mining company and the State, because:

Divisions make communities more vulnerable. Without solidarity and social cohesion, communities are even more vulnerable to misdeed and manipulation by the State, mining companies or other actors.

Mining companies (not communities) often set the agenda for the development program, and the State's promises of development may be politically motivated.

Companies and the State can use a campaign of disinformation.

Communities and members of the public often observe that mining company presentations (usually in PowerPoint) only highlight the project's benefits, and do not reveal the project's direct or indirect negative impacts on the environment, economy or human rights.

Mining companies can worsen existing power imbalances in a number of ways, for example, by choosing the location for negotiation, the language, the agenda, the calendar or otherwise determining which information and materials will be shared, who brings expert consultants and lawyers, and allocating speaking time during meetings. (Müller-Hoff)

"You have to stay united, otherwise they will talk to you one by one, and make separate agreements.

Get the affected communities to come together and have one voice, instead of four little ones, so that we don't have a different deal for that group or this group, so that everybody is in it together. We're just a small, little community here, just 600 people."

– Advice from other local communities

(NSI, 2006)

How can a community avoid manipulation and stay united?

Good sharing of information and good communication within a community, with neighboring communities and with external actors are essential to avoid manipulation. Everyone must benefit from this information – including women, youth – as they are actors not to be ignored within the community.

We propose a number of mechanisms to encourage sharing information and good communication, which can assist affected communities to avoid manipulation, stay united, and so increase their chances of succeeding in any action to protect and promote their rights as communities:

1. Establish local information centers.
2. Organize consultations within the community.
3. Establish a shared vision for the community's future.
4. Develop and use a community protocol. → See Unit 3.3
5. Develop and use a land use plan. → See Unit 3.4



A well-organized and structured community is very important for the success of all actions taken to protect and promote the rights of this community.

1. Establish local information centers

Local authorities and CSOs of communities affected by mining activity can collaborate to put in place local information centers, accessible in the villages that will be affected, to all persons, including women, youth, etc.

These local information centers will prepare communities by providing them with information (access to data) and with trainings (capacity-building) about the stages of the mine project life cycle, the years between impacts and revenues, the potential advantages and the impacts of the process on local communities, the legal obligations, the rights of communities and the actors involved, especially land rights, human rights and the applicable legal framework.

— Preparation

In Guinea as in other parts of the world, it often happens that local communities may not be able to make rapid and binding decisions about their future. People need time to understand the mining process, its benefits and impacts, their options in terms of development, and to consult with experts to guide them. Employees of the mining company and its subcontractors, however, work in haste and under time pressure of short deadlines (institutional or legal) which often have no meaning for local communities. Local information centers can help bridge this divide.

A local information center can be particularly useful to prepare local communities. The following table, “Activities of each actor” presents the activities of the State, mining companies and local communities, which can guide the work of the local information centers at each stage of the project life cycle.



Adapted from O Trade

— Formalize community rights

To benefit from just and prior compensation and indemnification for land acquisition or damages (→ See Unit 5.1 about compensation), it is essential for communities to understand and document their land rights as soon as possible at the beginning of the project life cycle. People must be assisted in gathering information and documents about their lands (how much time they have lived there, what their rights to the land are).

Communities can also start or formalize their land use plan for this purpose. → See Unit 3.4 about land use planning

ACTIVITIES OF EACH ACTOR THROUGHOUT THE MINE PROJECT LIFE CYCLE

	Exploration <i>2 to 10 years</i>	Development <i>1 to 5 years</i>	Construction <i>1 to 10 years</i>	Exploitation <i>7 to 200 years</i>	Closure and Post-Closure <i>2 to 10 years, to perpetuity</i>
What does the State do?	Grants permits, licenses Capacity-building	Grants permits, licenses ESIA process Monitoring and inspection	Grants permits, licenses Supervises ESMP, RAP Monitoring and inspection	Inspection of ESMP Monitoring and inspection	Supervising closure plan Monitoring and inspection
What does the mining company do?	First contacts on the ground Prospecting, geologic research, mapping Negotiate land access	Drilling and infrastructure Negotiate land access, resettlement ESIA consultations Security	Operational infrastructure, transmission lines Detonations, plants, pumping systems Local content	Emissions control, water management Biodiversity and flora management Local content	Rehabilitation, clean up, stabilization Treatment, revegetation
What do CSOs and local communities do?	Establish local information centers Property titles Community protocol Develop a LUP Develop a LDP, shared vision for future Capacity-building	Participation in ESIA Negotiate RAP Plan for local content Negotiate CDA, LDF Manage financial resources	Implement CDA, LDF, LDP (Joint) monitoring of ESMP Local content Manage financial resources	Implement CDA, LDF, LDP (Joint) monitoring of ESMP Local content Manage financial resources	Monitor closure plan Manage financial resources

“We weren’t consulted in the right way. We weren’t told everything we needed to know. I’m not sure if I want to really call it a consultation. It’s a group of people that come in and talk about this is what they want to do. You decide what “properly consulted” means, and demand that your rights are met (rights such as having access to all the information, being able to understand all the information – that is, information needs to be translated into your language) – only then will you be able to make an informed decision.”

– Advice from other local communities (NSI, 2006)

2. Organize consultations within the community

Other communities have determined that it is very important to first have good consultations within affected communities in the broad sense of that term (the core affected community and its neighboring community) in order to know what communities expect from mining activities, to define a shared vision for the future, their communication channels, their rights, etc. In order to exercise any control in the decisions that can or will affect their lives, local communities must have the requisite capacity and access to information.

The *Local Municipalities Law* sets out procedures for public consultations and extraordinary sessions of the municipal council, which can serve as a tool to support organizing consultations within the community throughout the life of the mining project (*Arts. 12 and 111*).

— Obtain and demand information about the developer and the mining project

It is imperative to know about the mining company (developer) responsible for the mining project. It is also very important to demand from the mining company, its sub-contractors, the administration and all other actors, complete transparency about the mining project, its work schedule, its estimates for operations and employment, its estimates of benefits and revenues. Good information allows communities to better apprehend the risks and opportunities that will arise with the setting up of the mining project, from exploration to closure. → See *Unit 6.2 about documentation and monitoring*

— Ensure communication within communities

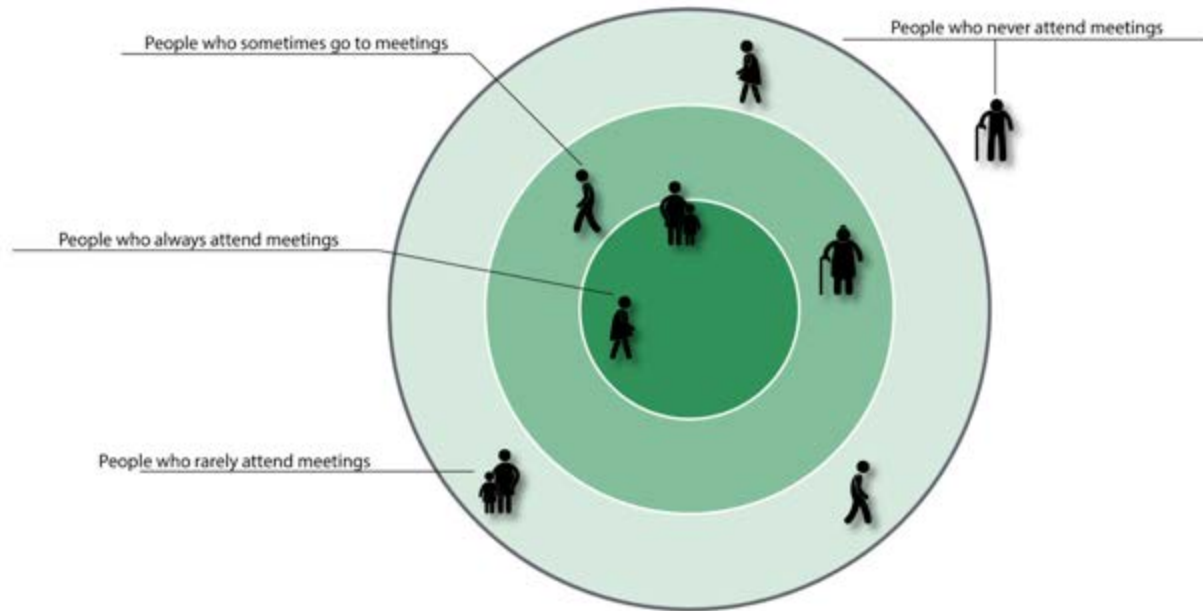
During consultations within communities, do not invite mining company representatives, because this will change community dynamics. The mode for internal community communications can be formalized by the community, such as in a community protocol. → See *Unit 3.3 about community protocols*

“Meet with the community without mining people. Listen to community concerns, including the youth and Elders and everyone. You’ve got to know what your community wants. Elders and youth need to work together and learn from each other.”

– Advice from other local communities (NSI, 2006)

Consultations must be **inclusive** in order to avoid future conflicts within the community (do not exclude particularly vulnerable groups, such as women, youth, etc.). It is recommended to use a **variety of communication tools**, because not everyone can come to every meeting, even if they want to. Community resource persons must have **basic equipment** to allow them to communicate (motorbike, phone, etc.). If the equipment is not provided by the mining company, the costs of using the equipment must be covered by it. → See *Unit 4.2 about budgets for negotiations* Mechanisms to **resolve conflicts** must also be established within the community. → See *Unit 3.1 about conflicts*

FREQUENCY OF MEETING ATTENDANCE



COMMUNICATION TOOLS

Oral communication by regular public assemblies

Home visits to those who cannot come to meetings

Information sessions in villages, at the town hall

Announcements on local radio and by town criers

Debates, radio dramas on local radios

Visuals: maps, photos, diagrams, charts, image boxes, videos, etc.

Publishing information (thematic brochures, meeting minutes, etc.) in public places, town hall, etc. for wide distribution

— **Discuss consultation and communication procedures with the mining company**

Local communities must reflect on what they need in terms of full consultation that responds to their interests and needs. This could include, for example:



This is important, because it often happens that local communities, mining companies and the central administration do not have the same understanding of what “consultation” means.

Communities must **track and monitor visits by operators**. Every visit must be recorded in a community visitor log, specifying the date and purpose of the visit, the organization for which the person works, and a summary of the message transmitted. Do not hesitate to demand proof of identity from individuals who say they work for the mining company: their uniform or their vehicle are not guarantees that they actually work for the mining company.

— **Choose interlocutors in a transparent and consensual manner**

Community members themselves – and not the mining company or the State – must choose who their interlocutors or representatives to engage with the mining company will be. This choice must be made in a **transparent** and a **consensual** manner, and it must be reviewed yearly. The interlocutors or representatives must be able to make their voice heard with the authorities and operator during the preparation as well as the execution phases of the project. The choice of representatives can be formalized in a community protocol, to be communicated with external actors. → *See Unit 3.3 about community protocols*

This is very important, because the arrival of a mining project can be an opportunity for certain individuals to manipulate the community in order to obtain personal benefits. This opportunity is not only within the community. Outside actors can similarly arrive to involve themselves in local discussions, for the purpose of obtaining a personal advantage. For example, outside actors can come, posing as mining company staff, and promise benefits (such as work) in return for full or advance payment.

— Establish committees and alliances

Given the complexity of the subject and the different types of expertise communities need, it is useful to establish different committees or clusters within affected communities to address specific issues, such as: analyzing the ESIA; monitoring environmental and social impacts; CDA negotiating team; community well-being; women's affairs; local business development; security; anti-corruption; training, recruitment and jobs; post-closure community sustainability, etc.

Try to find common ground among the different affected communities about their common interests, for example, infrastructure or services, in order to avoid unequal treatment by the mining company.

Build alliances with other groups, such as NGOs, research organizations, universities, other communities affected by a mining project, etc.

“Get organized and establish committees. Community leaders have to see this as a professional job. Consider establishing a committee like the Wildlife, Lands Environment Committee, which is well-positioned to help the leadership make informed decisions.”

— Advice from other local communities (NSI, 2006)

3. Develop a shared vision for the community's future

It is strongly recommended by other communities having experienced industrial mining to develop a shared vision for your community's future. This helps you reinforce solidarity and social cohesion of local communities.

→ See Animation Box > Shared vision for the community's future

Case Study : La Granja Social Fund in Peru

In 2005, the Government of Peru granted a concession to Rio Tinto to determine the feasibility of developing the La Granja project for copper exploitation in the north of the country. One of the conditions of granting the concession was the payment in installments by Rio Tinto to the Peruvian government of \$22 million over a 5-year period. According to Peruvian government policy, 50% of this sum was transferred directly to the La Granja Social Fund, a fund for sustainable development projects in the affected municipality.

The Social Fund is managed by a committee of representatives of the municipality and the company, and includes all communities and families living in the territory, which is larger than the concession itself. As of December 2010, the Social Fund had received more than \$10 million, and half of this was already earmarked for specific projects. All projects support implementation of the municipality's Local Development Plan. The establishment of the Social Fund as of the investment phase has contributed to strengthening relationships and trust between local government, communities and the company. The establishment at the investment phase has also made possible capacity-building of municipality and local community members in the first phases of the mining project's life cycle, before occurrence of significant impacts or revenues. (Bernaes ; Balcazar et al.)

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ It is very important for communities affected by a mining project to remain united, well structured and organized in order to guard against manipulation and to make their actions to respect and protect their rights more successful.
- ✓ To that end, it is useful to create local information centers to better prepare local communities by giving them information and training on the many relevant topics.
- ✓ It is useful to organize consultations within affected communities: to obtain and to demand information, to ensure communication among local communities, to discuss the elements of consultation by the company, to establish committees and alliances, and to choose their representatives by consensus and in a transparent manner.
- ✓ It is also useful for affected communities to develop a shared vision for their future.

ANIMATION ACTIVITIES

- Discussion about demonstrably legitimate representatives of affected communities (see box below).
- Visual representation of information exchanges within a community and with external actors about mining activities (see box below).
- Discussion and forum theatre about the consultation process and its challenges (see box below).
- Developing a shared vision for the communities' future (see box below).

Animation Box : Discussion questions

Representatives of affected communities

Objectives: Discuss demonstrably legitimate community representatives, who are representative of the interests of communities affected by a mining project.

Discuss who is the current representative of communities affected by the mining project. Who are the interlocutors? Why? According to which criteria were they chosen?

Discuss how to ensure demonstrably legitimate representation of affected communities, according to the definition developed by participants. → See *Unit 1.2 for the definition of affected communities*

Discuss mechanisms to ensure that the “representatives” of affected communities are demonstrably legitimate and representative of the interests of all social levels of affected communities.

Animation Box: Analysis and drawing

Map of exchanges

Objectives: Illustrate in a visual manner the exchange of information (or of materials) that occurs within a community and with external actors, in the course of mining activities (or agricultural activities, etc.). This activity makes it possible, on the one hand, to include aspects of commercial exchanges, and on the other hand, to identify formal and informal communication channels. This last point is fundamental in evaluating needs for improved communication for any planned project.

Time required: about 1 to 2 hours, depending on the complexity of the problem and the number of participants. **Materials:** paper, markers, blackboard or newspaper.

Bring together a group of participants – preferably coming from different groups / social layers of the community. Explain the activity's objective.

Ask participants to identify all actors with whom they exchange technical information about the environment, community development plan, mining project activity calendar, mining project's impacts, studies, market, monitoring by technical committees, etc. (for example, staff, project developer, sales agents, mayor, sub-prefect and others); make a list on the blackboard of all the actors named. Use arrows to identify the flow of the exchanges, specifying what is exchanged next to each arrow. (This can also be drawn on large pieces of paper, which helps keep a record of the discussion.)

The activity can be extended to another domain (for example, commercial exchanges, community decision-making) by following the same methodology. Obstacles to communication and decision-making (especially for women) can also be discussed.

Transcribe the results and leave them with participants. Discuss how the results will be used. (*Adapted from IICA*)

Animation Box : Discussion

Community consultations and negotiations

Objectives: Reflect on the current baseline for consultation, summarize public participation in the ESIA process and address issues on the mining company's goodwill.

Ask participants to identify questions they would like to ask mining company representatives about the company's consultation process.

Some examples of possible questions to ask to company:

What possibilities will the community have to give its opinion on the project's design? How will this input be organized?

In what manner will community members participate in the ESIA process? Who conducted the ESIA and will the reports be translated into local languages?

With whom did the company consult? Does the company believe it has the community's consent to operate?

What process will occur if there are changes to the project's design?

Will the company negotiate with communities at each phase of the project?

In what manner will the company respond to community concerns?

Is the company ready to disclose all profits and payments related to the project?

Who will benefit from the project's profits? (OA, 2010)

Animation Box : Forum theatre

Consultation process of affected communities

Objectives: Initiate reflection and rehearse how to negotiate the elements of a consultation process with a mining company.

→ See *Advice for facilitators > Basic animation activities, for guidance on the forum theatre activity*

Scenario: A mining company representative, Mr. X, visits a local community and meets with a group of its representatives. He is very formally dressed, speaks little or none of the local language, and from the beginning, emphasizes the need for fast action about the main problem he came to discuss with the community in a climate of mutual respect, confidence and cooperation, to ensure that all will benefit from the proposed endeavor.

The local representatives politely thank Mr. X for his visit, and suggest sharing a meal before discussing business, but again, Mr. X highlights the need for a quick decision, rejects any needless pause and next explains the significant merits of the project he is promoting. He opens his shiny laptop and starts a sophisticated PowerPoint presentation, all in French, with many complicated tables and statistics. He repeats the scientific nature of this data; cites successful case studies from around the world; highlights the immense benefits for the community in terms of economic development, especially job creation; and concludes by saying that this project, without any risk on the whole, is really the only option for the community to become part of what has become an invincible force for good in the world, that is, globalization.

When the community representatives try to ask questions about the nature of the project, Mr. X responds by presenting a pile of glossy documents to review and take into account for an informed decision. He also provides them with a copy of the mining convention. Mr. X begins to collect his things and asks the community representatives to visit him in the capital in a week's time. The representatives ask for more time in order to consult with their constituents, but Mr. X insists that the final decision be made as soon as possible, because time is money and in these times of global economic crisis, life punishes those who arrive too late.

Mr. X: "Do you want to be responsible for the continued decline of your great community? We'll see each other next week. Don't be late. Other communities are ready to sign." (OA, 2014)

Animation Box: Forum theatre

Participation of women in consultations within communities

Objectives: Initiate reflection on the obstacles for women to participate in consultations within communities, and discuss ways to include them.

→ See *Advice for facilitators > Basic animation activities, for guidance on forum theatre*

Scenario: Several local community members are gathered to collectively discuss a crucial upcoming meeting with a mining company concerning a mining project. The company representative promised that the project would potentially bring immense benefits for the community, and carries many risks that must be evaluated in order to ensure that the eventual agreement between the mining company and the community will contribute to the community's economic development, which has been suffering for some time.

Right after the start of the community's official meeting proceedings, the women are asked to leave to fetch food and drinks for the meeting. When one of the women politely testifies about the need for an active role for women in these community discussions, one of the elders assures her that the women's needs are a high priority and will be duly considered.

The women leave. The meeting continues and after some time, the various community members (all men) bring up important questions: "What will the precise benefits be for the community? What will the project's potential negative impacts be? How will the benefits be distributed?"

However, given the complexity and length of the expected negotiations, two community leaders (two men and both advanced in years) are assigned the task of forming a committee of experts who will explore all details of the future agreement. Despite the fact that not everyone agrees with this decision, the other community members leave the meeting. The new leaders assigned to this task assure the others that their needs will be taken into account, and say: "Rest assured that our dignity and our traditions are not for sale and that everyone, we mean everyone, will benefit from the proposed agreement." (OA, 2014)

Animation Box: Discussion and analysis

Shared vision for the communities' future

Objectives: This tool can be adapted and used to develop a shared vision for the future of affected communities. It can help set out realistic expectations and form the foundation for developing objectives and specific actions plans, progress monitoring and re-evaluation of priorities. It must involve a highly participatory process to ensure the representation of different perspectives.

Facilitate an open discussion with a wide range of community members by using the questions below. Forming small groups can help encourage active participation by groups such as women and youth. Be encouraging and do not judge; there are no incorrect answers. Responses can be given in the form of role play, narration of oral histories, illustrations, or recorded on pieces of cardboard or graphic paper.

What is your most positive image of the community in 5, 10, 20 or 50 years?

What changes would you most like to see?

What would you be doing?

What would your children be doing? What would their children be doing?

What role would you play in bringing about these changes?

What accomplishments would you be most proud of?

What would the village surroundings look like?

What role will the existing local institutions have played?

How would the local decision-making system be different?

Review the responses given and ask participants for further thoughts. Identify potential clusters or themes.

Discuss how the topics could be represented in a collective community vision. What format would be most appropriate and meaningful?

A potential follow-up process could involve discussion of specific plans to achieve the visions. This could be presented as vision statements, targets or goals, and activities. → *See also Advice for facilitators > Basic animation activities > Action plan*

Once the vision has been agreed upon, record it and make at least one copy for safe-keeping. The community may wish to format it differently and post it in a visible location. (NJ, 2012)

Unit 3.3 How can a community protocol be developed and used as a tool for communication and social cohesion?



TEACHING OBJECTIVES

- Understand what a community protocol is.
- Assess the need and usefulness of developing a protocol.
- Understand the steps to develop and disseminate a protocol.

THEMATIC CONTENT

What is a community protocol?

Other communities affected by mining activity have used community protocols as a mechanism to communicate with mining companies or other project developers.

A **community protocol** is a charter of rules, procedures and priorities defined by a community, which can specify a number of things, such as identifying the affected communities; its decision-making procedures; its rights according to customary, national and international law; a mapping of its use of lands and natural resources; its legitimate representatives; its values and vision for the future; consultation procedures important to the community; its development priorities, etc.

A community protocol can take different forms, according to the needs and wishes of the community. There are, for example, community consultation protocols (consultation protocol) or biocultural community protocols (BCPs).

— Consultation protocol

Local communities affected by industrial mining activities in Canada and Australia make use of **consultation protocols** to ensure the State, the mining company, its sub-contractors and other involved companies respect communities' rights in the management and operations of the mining project.

A consultation protocol can include the following elements:

- **Identification** of affected communities and their territories, sites of importance to their lives, etc.
- **Elements of the consultation procedure.** Identify the place where meetings are held among the community and visitors, as well as the meeting language, which actors can set the agenda, how much advance notice communities need before a meeting is held, as well as the costs of any translation and preparation necessary to participate in meetings.
- **Communities' internal decision-making process.** Describe the manner in which representatives will consult other community members; the time required for disseminating information received and obtaining community feedback; what 'consent' means from local communities' perspective.
- **Representatives.** Identify representatives who have been chosen in a transparent and consensual manner, who are demonstrably legitimate and credibly represent the interests of all groups and community members, including women, youth and vulnerable groups, as well as the procedures to validate the representatives on a yearly basis.
- **Needs.** Identify the needs of communities for the work of disseminating information and holding consultations within the community (motorbike, gas, phone, translation, etc.).

— **Biocultural community protocol (BCP)**

A **biocultural community protocol (BCP)** can be more comprehensive than a consultation protocol. A BCP can articulate the values of the community, its customary laws, its traditional institutions, its relationship with natural resource and its development priorities. This type of community protocol can include a broad range of elements, such as:

- Identify the **institutions and governance** of the community;
- Mapping of the community's **natural resources**, including its obligations and duties towards them;
- Assessment of community **capacity**;
- Community **rights** under customary, national, regional and international law;
- Formal articulation of the **consultation procedure** (consultation protocol) or what constitutes FPIC;
- The community's shared **vision for the future** and its **development priorities**;
- The most appropriate **compensation and benefit-sharing** in the eyes of the community;
- The community's **commitments**, for example, sustainable use of its natural resources, accountability in their commitments to outside actors (*Adapted from Booker*)

Case Study : Strengthening customary institutions and organizations in Ghana in the context of mining activity

Since 2003, the Tanchara and Daffiama communities in the north of Ghana have worked with a civil society organization, the Centre for Indigenous Knowledge and Organizational Development (CIKOD) for the purpose of developing a series of community organizational development tools, including a mapping of institutions and resources, visioning and action planning, organization and self-assessment of well-being, and institutional strengthening, in order to increase the capacity to 'develop from within'.

These tools have allowed the customary chiefs and community organizations to respond in a culturally appropriate manner to the exploitation of a gold mine as well as other changes that are affecting their territories, sacred forests and important natural resources. (*CIKOD / NJ, Information Sheet*)

— How can a community protocol be used?

A community protocol can be used to engage in dialogue and negotiate with mining companies; to articulate and raise awareness of community development needs and priorities; to strengthen capacity around community rights under national and international law, in order to reinforce governance and community representation, and to engage in an impact assessment process.

In this manner, community protocols can help balance often gross asymmetries of information and resources between communities and companies. The process itself of developing a community protocol, as well as the final product, can help local communities to regain a sense of agency. (*Booker*)

Case Study : Mobilizing diverse communities in Kenya

When the Government of Kenya announced a giant infrastructure construction project of several billion dollars in Lamu, the local communities of fishermen, religious chiefs, concerned residents and CSOs came together in solidarity. They engaged in a process of meetings, consultations and visioning sessions, which concluded in a decision not to oppose the project, but rather to assert that their recognized rights under international, regional and national law be respected in practice. They emphasized issues of procedure, such as the right to information, to participation in decisions that affect them, of impartial impact assessments, in all highlighting the growing critical mass of civil society in Kenya. (*Save Lamu / NJ, Information Sheet*)

— The constraints of a community protocol

A sole focus on customary law (without taking into account the laws of Guinea or international treaties) can prevent women from openly articulating their needs and challenges. Protocols must be developed using participatory methodologies in order for them to have meaning and be useful.

The process can create divisions and conflicts within communities, something which must be anticipated and prevented. The process of developing a protocol cannot be captured or manipulated by elites or third parties. The potential and implementation of the protocol also depends on the openness and political will of the State and companies to engage with communities in conformity with the community protocol. (*Booker*)

How can a community protocol be developed?

The process of developing a community protocol must be endogenous, inclusive, empowering and primarily based on the community's own resources and diversity of knowledge, competencies and experiences.

The process must promote dialogue within the community and with external actors, as well as intergenerational exchanges. It must enhance the capacity and structure of the community to ensure that interactions with external actors take place with honesty, transparency, respect, social and cultural sensitivity and integrity. *(NJ, Information Sheet)*

Every process of developing and using a community protocol is unique, and can be as varied as communities themselves. There are multiple methods and tools which can help for the various aspects of a community protocol process, including self-determination, endogenous development, documentation and communication, social mobilization, empowerment or legal capacity-building, strategic advocacy, and reflecting on monitoring and evaluation. Below is an overview of the possible steps to develop a community protocol *(adapted from NJ and SSLs)*.

— Preparing and deciding to develop a community protocol

Preparation requires careful attention. This may be the first time the community has written down their customs.

Usually the process of developing a community protocol requires the assistance of an animator or outside facilitator, such as an NGO, an academic or religious leader. However, mining company or government representatives are not appropriate facilitators for developing a community protocol, because they have a strong interest in the outcome of the process, meaning that the process may not be credible.

First the facilitator must obtain the consent of the community to help them develop the protocol. The facilitator must explain the objectives and the steps in the process.

The process can take a long time. Particular attention must also be paid to scheduling of activities, as these may coincide with harvest time or other community activities.

— Holding consultations within the community to gather information

There are several methods and animation techniques that can be used for the **process** of consultations within the community in order to collect the information necessary to develop a community protocol, which can be grouped into the following categories:

Internal development and well-being: mapping community institutions, calendar of community decision-making, historical timeline, trend line analysis, visioning for the community's future, analysis of community capacity, analyses of opportunities and threats, worksheet on community well-being impact assessment.

Power and multi-stakeholder partnerships: research and action framework, mapping key actors, understanding relationships among key actors, participatory theatre, forum theatre, image theatre, and multi-stakeholder role play.

Legal empowerment, mobilization and advocacy: participatory resource mapping, community biodiversity registers, information and communication technologies, participatory video, photo stories, audio interviews, legal awareness and action, and legislative theatre.

Monitoring and evaluation: activity table for monitoring and evaluation, basic methods for analysis and illustration, and most significant change stories. *(NJ, 2012)*

The process must be fully transparent, allowing all segments of the community to participate. Meetings with different groups and social layers of the community will help ensure reliable data. For example, elders may have access to information, which youth may not be aware of. Given that women and children

are often marginalized in decision-making processes, it is particularly important to include their perspectives in this process.

The **subjects** to be addressed during the consultations within the community depend on the type of community protocol – a consultation protocol or a biocultural community protocol:

For a consultation protocol, the facilitator should concentrate on gathering information about the process of collective decision-making that would be acceptable to the community. Consultations within the community can also address questions relevant to mining activity, such as information about the community's development priorities and vision, its constraints, its means of using lands and natural resources.

For a biocultural community protocol, the facilitator is responsible for gathering not only information about the collective decision-making process, but also all related elements. This includes: community identity; its natural foundations; its socio-cultural foundations; its economic foundations; its political and institutional foundations; and its legal foundations.

— Developing a draft community protocol

The step of gathering information is likely to have revealed a wealth of information in the form of notes, piles of graphic paper, and files of photos and maps. All of this information is important and should be managed with care and respect, especially if some of it is sensitive or confidential.

The next step of the process is to establish a priority of the particular questions to be addressed in the community protocol. Prioritization can often be done by additional community discussions, and using simple tools such as voting and ranking, through private ballots or in an open space. For example, subjects with the most votes or the highest general ranking could be included in the protocol. Another tool is a prioritization matrix. → *See Advice for facilitators > Basic animation activities > Problem priority matrix*

Prioritization is essential for BCPs. The BCP will be more effective if it has clear messages targeted to specific outside actors with decision-making power, by providing just enough information to inform them why and how they can take measures and what the impact of the decisions will be. As for consultation protocols, the sample consultation protocol (at the end of the unit) can guide you in developing the draft protocol.

At this stage, it is important to discuss and negotiate with the mining company a memorandum of understanding between the community and the company concerning the procedures to respect the community protocol. The discussions and negotiations may sometimes have to take place in the presence or with the involvement of the State and with CSO partners as observers.

— Finalizing the community protocol

Once the draft community protocol is finalized, the facilitator must analyze the document again during meetings with community members. After having integrated community members' comments, the facilitator next concludes the community protocol. If the community decides to approve the finalized document, community representatives must sign the protocol.

— Popularizing and disseminating the community protocol

Once the community protocol is finished, it must be widely disseminated among the institutions who could be involved in mining activities on the community's territory. These institutions can include: mining companies and their sub-contractors; technical services and central administration; mining project investors (development banks, etc.); Chamber of Mines and others. The protocol can be disseminated in

written form, by video, dialogues, radio, media, or any medium that allows a clear and accessible dissemination of the protocol to concerned persons.

A community protocol is a living document that can be updated periodically. Simple changes can be made on an on-going basis as needed, but more fundamental changes will require formal community approval. The community can designate a person or an institution of the community who is responsible for safeguarding the protocol. This person will be responsible for maintaining all documentation related to the protocol and its updating as necessary. (NJ)

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ 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. But attention must be paid to the constraints of a protocol, and the process of its development and use must be transparent, using highly participatory methods.
- ✓ The process of developing a community protocol involves four steps: (1) preparing and deciding to develop a protocol, (2) holding consultations within the community to gather information, (3) developing a draft protocol, (4) finalizing the protocol and (5) popularizing and disseminating the protocol.

ANIMATION ACTIVITIES

- Presentation in plenary of the various issues.
- Small group work for participants to discuss the differences between a consultation protocol and BCP.
- Discussion of the advantages and limitations of developing a community protocol and negotiating an agreement with the company to respect the protocol.

Sample consultation protocol

Abridged version of a consultation protocol concerning land access in South Sudan

Introduction: *The context and reason why the community has developed the protocol.*

Objectives: *The goals of the protocol.* These procedures (1) describe community expectations of outside actors' conduct and (2) provide advice to those who wish to use/occupy/extract lands and other natural resources occupied or traditionally used by the Mursi.

Scope of application: *The territory to which the protocol applies, describing the landscape's important characteristics, the territory's perimeter (in consultation with neighboring communities), modes of land use, the location of natural resources, etc.*

Communities concerned: *Those who have developed and adopted the protocol.* These procedures are adopted by the following communities/peoples of these zones: the provinces of Buruba, etc.

Applicable events: *The events that trigger the protocol's procedures.* We believe the implementation of the right to decide on the use of these lands and other natural resources includes actual participation of the Mursi people in all decision-making processes, beginning with the project's initial decisions concerning installation, design and impact assessment.

Authorized representatives: *The choice of community representatives, made transparently and by consensus.* The following groups have been mandated by the Mursi to participate in the decision-making process, and to delegate responsibilities for participating in these processes: [list of names].

How to meet: *The elements of the consultation procedure, for example, the meeting place, preferred hours, language, notice period, agenda setting, etc.*

Every meeting with the community must take place in the Mursi language. The Mursi would like four days advance notice before any meeting about only one zone, and two weeks advance notice for any meeting concerning all Mursi lands. The following traditions of the Mursi people must be respected: [list of local traditions]. Documents describing the project must be written in Mursi, and explained to the communities in Mursi. The number, place and time of meetings must be subject to agreement with authorized representatives.

Notice period for an opinion: *The notice period required by the community before it can provide an opinion or make a decision.* It is critical for the Mursi to have the necessary time to consider and discuss the proposed project. [Details of the notice period]

Information and budget: *Information, capacity-building and financial resource needs required to implement the protocol procedures.* Funds for reasonable fees. → *See Unit 4.2 about budgets for consultations and negotiations*

Relationships: *Relationships held by the mining project managers.* The project managers must disclose all relationships with people or institutions who are linked to the project.

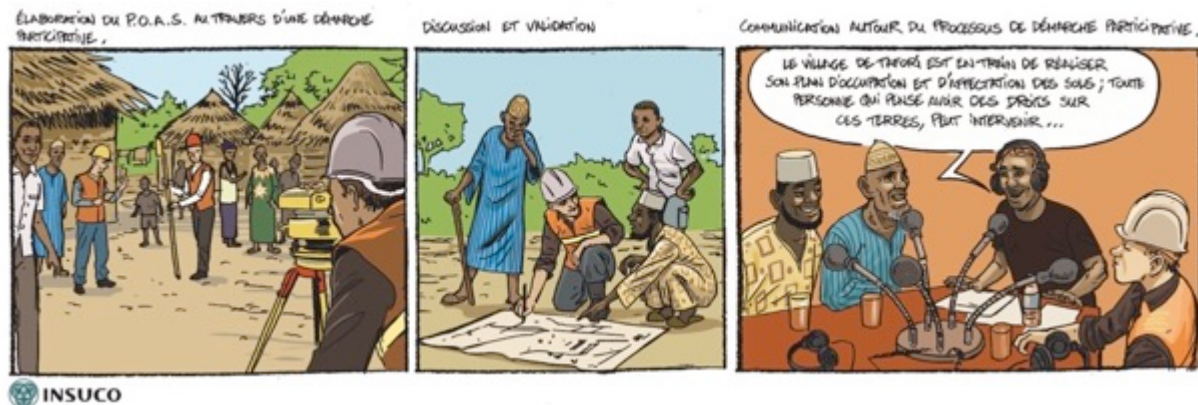
Decision-making process: *The community's decision-making process.*

[Signatures of authorized representatives]

Annex 1. Reasonable consultation fees.

Annex 2. List of interpreters/translators and fees (Adapted from SSLs)

Unit 3.4 How can land use planning be used as a tool for negotiation and social cohesion?



TEACHING OBJECTIVES

- Initiate reflection on the use of lands and natural resources.
- Facilitate understanding among local actors of land use planning as a tool for social cohesion and mining project negotiation.
- Define a land use plan, its purpose, the steps in its development, and its dissemination.

THEMATIC CONTENT

What is land use planning?

Land use planning is a set of maps established on a regional scale to assess and plan territorial development. It is made up of various kinds of maps: land use maps, and land designation maps.

Land use maps show the natural resources of a given territory, their current use (rice paddies, yam hills, pastures, water access points, forests for hunting, forest for logging, cattle tracks, etc.), all housing, all economic infrastructure (roads, railroads, dam, market, etc.) and all social infrastructure (school, health center, cultural sites, etc.).

Land designation maps show the manner in which the community wishes to use its territory in the near and distant future. These maps allow spaces to be reserved for expanding activities (constructing new housing, expanding fields), for new activities (creating an irrigated perimeter, creating a protected forest), or for changing existing activities (switching agricultural and grazing zones).



“If big mining companies want to do something and they come to the community and they want to talk about it, talk about all these things first: The traditional life, how you’ve been working on the land, all the burial sites. They can’t just move into your land and start developing mines, that’s not right. You have to let them know how you use your land, how you use it to survive, trapping, even berry picking, even the plants is medicine, even the rocks is medicine for use.”

– Advice from other local communities (NSI, 2006)

— Within what legal framework does land use planning fall in Guinea?

Land use planning is part of territorial development planning. In Guinea, the Land Law, Town Planning Law, and Local Municipalities Law provide that Rural Municipalities develop a plan for the use of their lands and natural resources in an ensemble of documents, as a means of organizing the development of their territories. All of these documents are developed in collaboration with the services of the State.

Land use planning is not a regulatory instrument. Instead, it is an animation method applied to a territory, as a way to collect information and identify the choices of residents and authorities about territorial development, resulting in a document that can serve as a basis to develop the following regulatory planning instruments:

- The **Territorial Coherence Plan (SCOT)**. This sets the fundamental guidelines for territorial development in order to maintain balance among the diverse activities carried out. It determines the general destination of the soil and the nature and layout of all infrastructure. It sets the general guidelines for the extension of the habitat and restructuring of urban spaces. It takes into account State and local authority programs, which it directs and harmonizes. (*Arts. 229 to 235 of the LML; Arts. R121.1 to R122.17 of the Town Planning Law*)
- The **Land Use Plan (LUP)** designates for a municipality the urban zones, zones reserved for agriculture, for grazing and forestry, nature reserves, and zones for urban expansion. It sets out the layout of roads and secondary roads. It can also designate administrative zones, installations for collective equipment and for subdivisions. (*Arts. 236 to 245 of the LML; Arts. 86 and 87 of the Land Law*)
- The **Detailed Development Plan (PAD)** sets out precisely for a given territory the rules and servitudes for soil use. The Detailed Development Plan is developed according to the same procedures governing the development of a SCOT. (*Arts. 230-232; 233-235; 243-245 of the LML*)
- When a local municipality does not have one of the first three documents, it can establish **Zoning and Development Plans**. These specify the zones within the territory of the municipality and identify their designated use. Within the urban or urban expansion perimeter, these specify residential, commercial, administrative or industrial zones. Within the rural perimeter, these specify zones reserved for agriculture, grazing, reforestation and forest maintenance, livestock corridors, etc. (*Art. 90 of the Land Law; Arts. 246 to 252 of the LML*)
- The **Local Development Plan (LDP)** is the primary instrument for the socio-economic development of a local municipality. It is obligatory. It presents in a structured manner the ensemble of actions for socio-economic development that the local administration intends to lead or support for a period of three to five years. The LDP ensures coherence across the SCOT, LUP, PAD or Zoning and Development Plans with development actions. The LDP is implemented yearly by the Annual Investment Program (AIP) (*Arts. 511 to 528 and 529 to 532 of the LML*).



As a territorial animation method and not a regulatory instrument, it is the responsibility of participants in the land use planning process to ensure that authorities correctly use the information and choices in the local municipality's regulatory planning instruments.

What are the regulatory levers to negotiate a mining project on the basis of the SCOT, LUP and PAD?

Mining activity lies outside of local municipalities' regulatory scope and land use planning, because the subsoil belongs to the State, which declares promotion zones and ranks mineral substance deposits within its private domain (*Arts. 3 and 5 of the Mining Law*).

Even though the decision to authorize extraction lies outside the scope of local municipalities' powers, two regulatory levers still exist for local municipalities to negotiate a mining project on the basis of the SCOT, LUP and PAD:

1. On the one hand, the local municipality can **negotiate the configuration of infrastructure** associated with the mine (port, railroad, housing area, plant location, etc.) if these do not fit into its development scheme.
2. On the other hand, the regulatory planning documents can serve as a basis to negotiate the designation of certain community territories as "**strategic reserve zones**", which will be exempt from all mining activity and will not be subject to a promotion zone or to allocation of mining titles (*Art. 5 of the Mining Law*).

Given these two options, we will see how land use planning can be a tool for social cohesion of local communities and a tool for negotiating a mining project.

— In what way is land use planning useful?

In terms of social cohesion, land use planning is an animation method that provides a forum to examine and discuss problems and tensions, and to develop a consensus on the way to manage the spaces and resources critical to communities. A land use plan has the advantage of showing on a map how resources are used today, to discuss the territory's future, and how the community wishes it to be developed. A land designation plan has the benefit of providing authorities with a compass by which to authorize (or not) certain activities, and to encourage operators to valorize the land.

When engaging with mining companies or other developers, land use planning is only of interest when municipal authorities use it to develop regulatory instruments such as the SCOT, LUP and PAD. **If such regulatory instruments are developed based on land use planning, then the local municipality has a regulatory tool with which to negotiate the configuration of mining project infrastructure.**

In this sense, land use planning allows community members to verify if the SCOT, LUP and PAD, as well as the negotiations with mining companies, respect their wishes.

— Risks of land use planning

The risks of land use planning lie in its development. If land use planning is not done by involving socio-professional groups and various authorities, the outcome may only represent the point of view of one group and harm other groups – which can lead to major conflicts. Also, land use planning must regularly be re-debated in order to adapt it to the locality's evolution.

“Map and record everything – all the historical sites, burial sites, fishing and hunting areas, everything. You have to record it, that’s really important. Meet with the Elders, interview elders, even young people. You have to show the map to the mining company as proof.”

– Advice from other local communities (NSI, 2006)

How is land use planning done?

— Methodologies

There are several possible methodologies, but participatory methodologies have the most benefits for community members. → See also *Unit 6.2 about techniques to gather information* Participatory methodologies allow, on the one hand, land use planning to be done using the knowledge and choices of resource users, and, on the other hand, they allow resource users to better understand the multiple objectives to taken into account when developing territory (urban development, facilities, balance among multiple uses, etc.)

Some of the more effective participatory methodologies include:

- **Participatory mapping.** With the accompaniment of a facilitator, different categories of actors map their land according to their representation and discuss the maps produced in this manner.
- **Territorial consultation.** A facilitator uses participatory mapping in a consultation process, working in stages by group of actors and with different actors in order to find a consensus on land use, the problems, and solutions for planning and designation.
- **Role-playing.** For example, farmers draw a map of animal farming, identify problems breeders have and propose solutions. Breeders play the role of fishers, fishers that of farmers, etc. Then multiple collective sessions are organized to discuss and define a consensus on the use and designation of the land.
- **Participatory modeling.** This method uses computer modeling that allows actors to see the effects of their choices in the short-, medium- and long-term on their territory’s natural resources, especially water and forest resources.

Land use planning requires accompaniment by technical experts. They must first conduct an objective socio-land diagnostic, then develop the methodology for land use planning, and then accompany community members and authorities.

— Steps

All of these methodologies have the following steps in common:

1. Land use Identifying different socio-professional groups and local authorities: ensuring the identification of legitimate representatives for each group, and for information-sharing among the group and its representatives. Then, developing a land use map for each group. Meetings among the groups to compare the different maps. Then defining a collective map, that shows the spaces with conflicting interests.

2. Land designation For each group, on the basis of their land use: proposing solutions for spaces with conflicting interests and resource uses for the group’s activity according to time periods of relevance to

the participants (5, 10, 15, 20 years, etc.). Then meeting again among the groups to compare the various maps and define a collective map. Then, public sharing of the plan, local dissemination (display, local radio, village discussions) and an administrative validation process.

How can the results of a land use planning process be popularized?

Land use planning is only useful if it is known by everyone, and it must receive administrative approval. A land use planning process must be popularized during its development and at the end, when the plan is available. Communicating about land use planning must be considered from the beginning of the process. The land use plan must be used by authorities to develop local regulatory instruments (SCOT, LUP, PAD, LDP, etc.).

COMMUNICATING ABOUT LAND USE PLANNING

Before the process	During the process	When the plan is available
<p>Announcements on local radios and by town criers that a land use planning process will take place during the year.</p> <p>Display a poster announcing the process and dates at the town hall.</p>	<p>Organize debates, infomercials, radio shows on local radios</p> <p>Organize information sessions in villages.</p>	<p>Information session at the town hall</p> <p>Information sessions in villages</p> <p>Informational debates on local radios</p> <p>Reminder of the information every year at the town hall and in the villages at the AIP</p>

“Try to gather all the information that you might require. Gather all your traditional knowledge, change of land use. Have educated resource people available – lawyers if you can, scientists, or biology or anthropology people. Get these key people together and sit down and tell them what you need to do. And ask for funds through the company or even the government if they can help.

And just go from there. It’s like a learning process from there.”

– Advice from other local communities (NSI, 2006)

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ Land use planning is a collection of maps used to assess and plan territorial development. It is made up of two kinds of maps: maps showing a territory's natural resources and their current use, and maps 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 gather 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 instruments: SCOT, LUP, PAD.
- ✓ Even though the decision to authorize extraction lies outside the scope of local municipalities' powers, local municipalities can use their regulatory planning instruments (SCOT, LUP, PAD) to negotiate (1) the configuration of the mine's infrastructure and (2) strategic reserve areas (no-go zones) that would be off limits to 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.

ANIMATION ACTIVITIES

- Small group work to discuss and analyze the use of lands and natural resources.
- Participatory mapping, accompanied by technical experts.
- Game of “farmers” and “miners”.

Animation Box: Small group discussions

Use of lands and natural resources

Objectives: Identify and discuss the use of the community's lands and natural resources.

Form small groups of five to six people (separate women and men) and give each group an image of a natural resource. You can bring your own images or you can ask participants to bring their own objects or images representing natural resources. Ask each group to discuss the values and uses they associate with the natural resources represented by the image or object. Facilitators can ask question such as:

- Is the natural resource important to community members?
- How is the natural resource used?
- Who is responsible for managing the resource?
- What are the values associated with this resource?
- How would the community be affected if a mining project had an impact on this natural resource?

Ask the women to reflect on their role in the community, on their specific knowledge, their interests, and the link between these and the natural resource represented in the image. How would the women be affected if a large project had an impact on this natural resource? Ask the same question of the men, that is, how would they be affected by a mining project given their role, knowledge and interests.

The images can be glued on a large piece of paper. Ask each group to write or draw images summarizing the main discussion points. Each group should be invited to make a report to all participants. (OA, 2014)

Animation Box: Mapping

Participatory mapping

Objectives: Develop a land use map by consensus and the use of GPS.

Site identification (at least 2 months in advance). Identify the site. This can be in response to a specific request from a community about difficulties of access, control or use of resources; a change that will have an impact on a community or region (mining project), the need to develop a land use plan, etc.

Survey (at least 6 weeks in advance). Hold discussions with community members and local authorities to ensure you have their consent for the mapping project. Establish a calendar for the activities to be done (identifying resources and activities, draft maps, etc.). Ensure that all groups of the community are included. → See *Unit 3.2 about consultations within the community*

Logistics (at least 3 weeks in advance). Together, the team must define all selection criteria for the local mapping facilitators (and ensure that they represent all groups of the community). Then discuss and validate these criteria with the community.

Confirm calendar and assess logistics. The team should make a final visit to the community before the training to confirm that everyone is still interested and available, that the mapping facilitators were chosen by the community in accordance with the agreed-upon selection criteria, that the logistical questions have been addressed, that the training site is appropriate, etc.

Training local mapping facilitators (3 to 5 days). Discuss with the community what a map is, by asking someone to show where their fields are and then to represent this on the ground. Repeat these steps with the other people until the map shows all the fields. Once the map is drawn on the ground, transfer it to paper, group by group, then compare and discuss. When everyone has agreed on a final map, the local mapping facilitators present the map to the other community members. Then create a sheet to collect GPS data in the field. Once the team has returned, transfer the GPS data to a computer to produce the first printed draft of the community map.

Producing and validating the map. The community corrects the information in the first printed draft of the community map and provides the missing information. (RFUK)

Animation Box: Game

“Farmers” and “miners”

Objectives: Understand the different sources of rules governing property and property rights. Reflect on the coexistence of multiple legal systems (customary and statutory) and their differences. Learn about basic negotiation rules and unequal power relations. Learn what it means for a community to trade its rights.

Time required: 50 to 60 minutes. *Materials required:* Three large sheets of paper, pencils, a tree, a log or any other solid object (e.g., a chair, a rock).

Divide the participants into two equal groups: “farmers” and “miners”. Describe the situation of a mining company that wishes to construct a mine on one of the communities’ territories. Give each participant a card with their team’s color. Each “farmer” should think about one or two things that the “miners” need to do before starting their activity in the area (e.g., build a school, establish an irrigation system) and the

reasons why “miners” need to do this. Each “miner” needs to think about one or two suggestions that can convince “farmers” to come to an agreement. After the discussions within each team and after they agree on the main points, participants should write down their thoughts on a large piece of paper.

Ask each team to choose one person as their representative. Each team’s representative must read their team’s main points out loud. The two representatives should discuss on behalf of the teams and try to come to an agreement. They should try to be fair to both the “farmers” and the “miners”. The points of agreement should be written down on a third sheet of paper by someone who is appointed as secretary. Allow ten minutes for the discussion.

To facilitate the discussion, ask participants to refer to the chart they prepared to identify the characteristics of various forms of property rights that can exist on a piece of land to be used by the mining company for its activities (e.g., community management, state ownership, individual ownership/leasehold/use right). You may also add other arguments such as the need to protect the environment, to provide employment opportunities, improve infrastructure, provide social amenities or sources of food or revenue for the community. Discuss with participants why it is important to define rules about using land or things and to establish institutions to make them function.

Some modifications to the game: Blindfold two players and ask them to stand in the center of the game area, near the tree or other solid object. Set a time limit for the game. At your signal, the players move up silently one by one and place their cards on the tree. If one of the blindfolded “representatives” hears one of the players approaching, they point in the direction of the sound and call “Stop!” The caught player starts all over again.

The discussion between the “farmers” and “miners” can be very educational. It can be played for the community and followed by a discussion with the community members and an invited paralegal or NGO representative with expertise on land and property rights.

Some questions for discussion:

- What rules do the “farmers” need to follow when they try to find an agreement? Where can the rules regulating rights over land be found?
- Who is responsible for making sure everyone follows the rules? What would happen if someone breaks a rule?
- What should be done to ensure that “farmers” do not lose their means of subsistence in cases when the State issues a land-use right to the “miners”?
- Why do the details of an agreement matter so much? Why is it necessary to think about time limits, maintenance and running costs?
- Is it necessary to have consequences and sanctions for not following rules? Why? (FAO, 2010)

MODULE 4 : HOW CAN A COMMUNITY BENEFIT FROM MINING?

WHY DOES THIS MODULE MATTER?

The arrival of a mining project can create high expectations from local communities: to benefit from the mining project, a job, a sum of money or various other advantages (water, electricity, paved road, medical center, etc.) in exchange for the occupation and use of their lands or natural resources.

It is clear that in general, these expectations of benefits are not met – in fact, far from it. On the one hand, the expectations may be much higher than the benefits that a mining project can realistically generate. And on the other hand, a lack of dialogue between the community and other actors can contribute to keeping expectations elevated and making ill-suited social investments. Access to and distribution of mining project benefits is often a source of conflicts.

That is why the following questions are addressed in Module 4:

- What benefits can a community gain from exploitation of the mineral resources in its area? (Unit 4.1)
- How can a community negotiate and implement a community development agreement? (Unit 4.2)
- How can local municipalities best manage their financial resources gained from mining? (Unit 4.3)

Unit 4.1 What benefits can a community gain from exploitation of the mineral resources in its area?



TEACHING OBJECTIVES

- Generate understanding of the main types of benefits that can possibly arise at the national and local level from a mining project.
- Define the requirements imposed on mining companies in terms of jobs, training and local procurement.

THEMATIC CONTENT

What benefits can a community gain from exploitation of the mineral resources in its area?

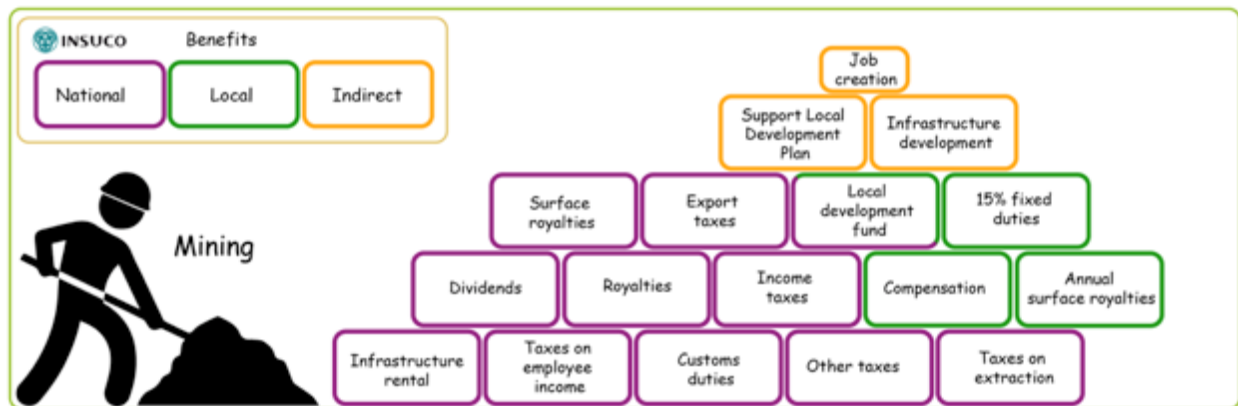
The main benefits from mining activity are money, purchase of services (jobs) and goods by the mining sector, as well as the improvement of infrastructure and service delivery, which arrive at the local and national level, directly and indirectly. Without an appropriate framework managing negative impacts and distributing benefits, most of the benefits from mineral resources arrive at the national level, while the negative impacts overwhelmingly arrive at the local level. Even when benefits are captured at the national level, the State has the obligation to ensure that these riches are shared equitably by all Guineans (*Art. 21 of the Constitution*).

According to the *Africa Mining Vision*, the most important aspect when revenues are transferred to communities (as well as revenues for the central administration) is **the way the funds are managed and used**. Given that mining deposits only have a limited life, local economies which essentially depend on mining exploitation can come to an abrupt halt if the use and management of the community's revenues is not sensibly planned.

There are several potential benefits, direct and indirect:

1. Direct economic and financial benefits
2. Jobs and purchase of goods by the mine
3. Infrastructure and service delivery
4. Voluntary contributions by companies.

POSSIBLE BENEFITS FROM INDUSTRIAL MINING EXPLOITATION



1. Direct economic and financial benefits

— At the national level

The installation of a mining company in Guinea carries a number of economic and financial benefits **at the national level**: foreign direct investment, export earnings, government revenue, and jobs. The mining sector is particularly strategic in Guinea: today it makes up about a quarter of government revenue and generates 60 to 80% of the country's export earnings. The mining sector demands significant investment of money, but compared to other sectors, it creates very few jobs.

As concerns **revenue from mining paid into the national budget** by mining companies, the *Mining Law* (Art. 165) provides an allocation of fixed fees and taxes⁸ as follows:

- 80% into the national budget
- 15% as a direct support to the budget of all of the country's local municipalities⁹
- 5% into the Mining Investment Fund¹⁰.

— At the local level

The *Mining Law* provides direct financial benefits **at the local level** with the installation of a company on a territory:

- **Annual surface royalties.** A company must pay annual surface royalties to local municipalities from the moment the company arrives in an area, well before the start of exploitation of sub-surface resources (Art. 160 of the *Mining Law*). → See Unit 4.3 about managing financial resources
- **Local Development Fund (LDF).** Mining companies beginning commercial production (beginning of the exploitation phase), are obligated to contribute 0.5 to 1% of their sales revenue earned in the area, depending on the type of mineral extracted, for local development into a LDF of affected communities as part of a community development agreement (CDA) (Art. 130 of the *Mining Law*). → See Unit 4.3 about LDFs

⁸ The tax on extraction of mineral substances other than precious metals, the tax on industrial or semi-industrial production of precious metals, the tax on quarry substances, the tax on exportation of mineral substances other than precious substances, and the tax on exportation of artisanal gold (Art. 165 of the *Mining Law*).

⁹ An implementing text will determine the modalities of the transfer, use, management and control of the resources allocated to all of the country's local collectivities.

¹⁰ A fund intended to promote investment and development of the mining sector.

- **Compensation** to families, individuals and others for damages and injuries caused by mining activities (*Art. 106 of the Mining Law*). → See *Unit 5.1 about compensation*
- Mining company establishes and funds a **fiduciary account for environmental rehabilitation**, in accordance with its ESMP, meaning an account that holds funds for the benefit of affected communities to ensure the rehabilitation and closure of the exploitation site (*Art. 144 of the Mining Law*).

The implementing texts specifying how these provisions will be implemented are still being drafted.

2. Jobs and purchase of goods by the mine

When the mining company or its sub-contractors hire local employees, or when the mining company or its sub-contractors purchase goods and services locally, such as uniforms, fruits, vegetables and meats, creating jobs in transport, construction or supply, this is called **local content**.

People living in communities often perceive that the distribution of mining company jobs is characterized by favoritism and a lack of transparency. They also note that even for those jobs that they are qualified to fulfill, companies or their sub-contractors often import workers from their own tribe or from other areas.

— What are the obligations of a mining company and its sub-contractors in terms of local content?

Mining companies have several obligations in terms of local contact: hiring Guineans, training employees, or giving preference to Guinean companies (*Arts. 107 to 109 of the Mining Law*).

In terms of **sub-contracting**, the *Mining Law* demands that mining companies, as well as their sub-contractors, favor Guinean companies. The proportion of Guinean enterprises must go from 10 to 30% between the exploration phase and the 11th year of the exploitation phase. Mining companies are obligated to use Guinean companies “on the condition that they offer comparable price, quantity, quality and delivery times” as foreign companies (*Art. 107*). → See *Unit 1.1 for an overview of a mining project’s phases*

The *Mining Law* establishes a quota system for **Guinean employees**. The law proposes a progressive principle for mining companies (and their sub-contractors) to employ Guinean nationals and to procure from local companies. All unqualified positions are reserved for Guinean nationals as of the exploration phase, and management positions must go from 33 to 90% between the exploration phase and the 11th year of mineral exploitation. Management staff must go from 50 to 100% and qualified workers from 66 to 100% (*Art. 108 of the Mining Law*).

— Why doesn’t the mining company purchase the fruits, vegetables and other goods that we have to sell?

Today, the number of market contracts offered by mining companies that can actually be fulfilled by Guinean companies are limited, because Guinea **lacks industrial units** that meet the service standards required by mining companies. There are many obstacles for companies in Guinea, such as failures in electricity supply, lack of access to other necessary, basic infrastructure, administrative red tape, and underdevelopment of the capital market.

— **Why doesn't the mining company hire more people?**

Few full-time jobs are available for the level of qualifications available in a village or in a given exploitation area. Most of the village youth will be left out given the long waiting list for very few jobs.

Mining companies demand **specialized skills** and must meet high standards. Today, Guinea has a very small qualified workforce to fill the mining company's technical jobs. Here are a list of typical jobs for qualified workers during the mine's exploitation (operation) phase:

TYPICAL JOBS DURING A MINE'S EXPLOITATION PHASE

Miners	Carpenters	Drillers and blasters
Heavy equipment operators	Geologists	Human resource specialists
Pipe fitters	Safety experts	Security officers
Environmental scientists	Clerks	Assayers
Supervisors	Managers and executives	Cleaning staff
Accountants	Truck drivers	Trainers
Laboratory technicians	Electricians	Landscape gardeners
Public relations specialists	Welders	Nurses
Administrative assistants	Surveyors	Lawyers
Mechanics	Engineers and technicians	Marketing personnel
Computer technicians	Assayers	Kitchen chefs and teams

(NRCan)

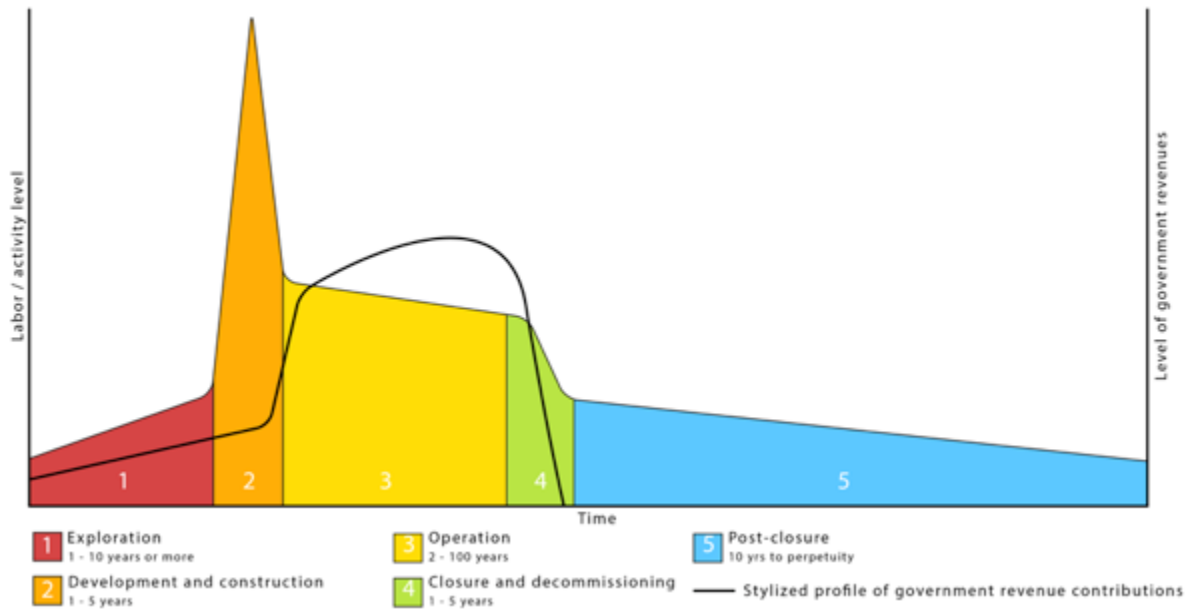
— **Why aren't all the employees hired from my village?**

The *Mining Law* establishes a quota system for Guinean employees, and provides that the company may reserve certain unskilled positions for members of the local municipality (*Art. 108*). Recruitment largely depends on the company's recruitment policy. Later we provide some advice on the measures that you can demand from mining companies and their sub-contractors.

— **Why aren't all the jobs permanent?**

The number of jobs strongly depends on the phase in which the mining company is. As the diagram shows, in the beginning during exploration, there are few jobs. Most of the jobs are generated later during the development and construction phase, during which the local community has priority eligibility for unqualified work. But few of these jobs will be permanent throughout the operation of the mine, a phase which only requires a limited number of qualified workers. The number of jobs also depends on the mining company's recruitment policy, which is in large part profit-driven.

LEVEL OF WORK DURING EACH PHASE OF THE MINING PROJECT



(ICMM, 2014)

- The mine occupies our lands and natural resources, which were our means of survival. The company doesn't hire our youth. There are few other revenue-generating activities. What can we do?

First, the mine must compensate any losses and injuries caused by the company's activities to local people's means of subsistence. → See Unit 5.1 about compensation issues

Community development projects and participation of local municipalities in these, as well as local municipality investment and social, economic and cultural development programs – whatever the source of the funding – are the responsibilities of local municipalities (Art. 29 of the LML).

Enterprise facilitation initiatives, as well as public-private partnerships, can be additional means to support economic development.



One of the key levers for local communities to obtain the benefits they seek in the context of a mining project, such as revenue-generating activities, is the negotiation and implementation of a Community Development Agreement (CDA). → See Unit 4.2 about CDAs

- What can we do to improve local content?

The State has an important role to play, together with mining companies, to increase local capacity and local companies.

As a consequence, it is vital for local communities to reflect on the concrete measures that mining companies and local authorities can adopt to address these challenges, in order for the local labor supply to meet the demands of mining companies and their sub-contractors; for local companies to become

competitive; for the agriculture sector to be structured in a manner to supply the mining company; for the acquired competencies to continue to be used after the mining project ends, in order to gain long-term benefits.

For example, the partners in the Simandou project have been working since 2008 to establish a training platform for small- and medium-sized enterprises (SMEs). About 2,000 participants from almost 500 SMEs have benefited from the trainings to date.

Here we present a set of tools and measures that local communities and their local authorities can demand of mining companies and their sub-contractors in order to implement transparent, open and competitive recruitment and procurement processes:

1. Apply a **communication plan** of the industrial project at the national, prefectural and local levels, designed to inform people about:
 - The project's agenda,
 - The number and type of jobs proposed,
 - The hiring process (locations, competencies, eligibility of people directly affected by the project, candidate selection process),
 - The main markets for goods and services considered in the development of the industrial project.
2. Creating **information and recruitment offices** in several areas of the project zone, accessible to all affected communities, particularly to submit unsolicited applications and to publish or disseminate job openings and tenders.
 - These offices must be an obligatory step in the company's and sub-contractor's recruitment of personnel; they must have sufficient means to implement a fully transparent recruitment process, with control mechanisms to avoid any pressure or collusion.
 - Regular communication of the needs and norms to be respected in order to obtain tenders for goods and services.
3. Establishment of two **databases**:
 - A database of available workers and their skill level, which must be consulted as a priority during any recruitment by the mining company or its sub-contractors;
 - A database of local companies and their field of competence, which must be consulted as a priority during any procurement by the mining company or its sub-contractors.

3. Infrastructure and service delivery

Thanks to taxes paid into the national budget, the State benefits from resources that can serve to improve infrastructure and service delivery. It is up to the State to assume its responsibilities towards its citizens and its needs in terms of education, health and basic infrastructure. These responsibilities are shared among the central administration, deconcentrated services and local municipalities. → *See Unit 2.3 about everyone's respective roles and responsibilities*

Often, local communities have been frustrated that the companies' electricity or running water is not shared with them, when their local economic activities would greatly benefit from a constant source of electricity and running water.

In many cases, a company has offered this service in place of government, which is not viable and leads to poor quality and a lack of local acceptance of the service rendered. Companies or governments choose which projects to do, instead of leaving this choice to communities or aligning projects with local and regional development priorities. Such an approach where companies choose can often be a source of conflicts.

“You saw the factory where we were. The lights are big and bright. They’re on 24 hours a day. They never stop working. Here, we’re sitting with candles. It doesn’t make sense.”

– Worker in Liberia

4. Voluntary contributions by mining companies

Communities say that the company doesn’t provide them with a hospital, or a meeting room or other infrastructure. Mining companies can contribute to – but are not directly responsible for – an area’s socio-economic development. That responsibility falls on the State, and in particular on the central administration, deconcentrated services and local municipalities. It is for the State to assume its responsibilities towards its citizens and its needs in education, health and basic infrastructure. → *See Unit 2.3 about everyone’s respective roles and responsibilities*

An agreement can be entered into with the mining company to contribute to the construction of infrastructure. However, responsibility for the functioning of that infrastructure is shared among decentralized and deconcentrated actors, mainly local municipalities and the technical services.

Some mining companies commit to respect principles of sustainable development (reconciling their economic activity with respect for the environment, social issues and systems of good governance) and so acting in favor of local communities (without being obligated to), because it is in their own interest to do so.

Some challenges regarding benefits

Whether on the national or local level, there are several challenges in ensuring that the potential benefits are transformed into actual benefits.

One of the main challenges is **corruption**, which, given the omnipresence of the problem, the readers of this Guide need no further explanation of, beyond initiatives such as the Extractive Industries Transparency Initiative (EITI), an initiative to which Guinea has been accepted as compliant on 2 July 2014.

The major challenge beyond publication of payments is **monitoring**, at the national and local levels, **the judicious, effective and efficient use** of the sums paid for the purpose of poverty reduction and the country’s development. This demands transparency in managing the funds, as well as responsibility and accountability of the actors involved in order to prevent misappropriation of funds. → *See Unit 4.3 about management of local financial resources*

The decision of whether or not to extract a mineral resource should be preceded by an **assessment of its net benefit**: a calculation of the advantages in terms of royalties, taxes, and benefits for the company, and then a deduction of the costs of monitoring environmental impacts that can last into perpetuity, as well as managing the social impacts. The environmental costs of a mine can be significant – water treatment for acid mine drainage can cost up to \$1 billion. This calculation should show whether the proposed mining project will generate a significant net benefit. (*Goodland, 2012*)

A mine only has a limited lifetime and if there is a high rate of young people in mining jobs (directly and indirectly), this can lead to **increased dependency** of the community or country on exhaustible resources. This dependency endangers the local and national economy, which cannot survive after mining projects end.

The large number of new arrivals, in combination with an increase in cash and a growing economy, can lead to a **loss of tradition and cultural identity**. Increased work means there is less time available to devote to traditional activities. For example, the local population in Moribadou, the village close to the Simandou iron ore mining project, has rapidly increased over the past 9 years to 10 times its original size, given the influx of people coming in search of work from other parts of the country and from neighboring countries, such as Senegal and Ivory Coast. Local authorities say that the population growth has caused problems due to changes in culture, on-going needs, increased cost of life, insufficient capacity of the mosque, and insecurity risks for women. The existing services and infrastructure (for water, electricity, roads, sanitary facilities, health and lodging facilities) are insufficient and under high stress. Immigration has also raised health and safety issues, such as increasing rates of alcoholism and prostitution.

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ Without an appropriate framework to manage impacts and share benefits, most benefits from industrial mining occur at the national level, while the most severe 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 recruitment and procurement process.

ANIMATION ACTIVITIES

- Presentation of the unit's concepts.
- Presentation of the diagram, "Possible benefits from industrial mining exploitation", followed by discussion for better understanding.
- Small group discussions to identify the baseline and to prepare an action plan (see box below).

Animation Box: Discussion questions

Benefits of a mining project

Objectives: Identify from the participants' point of view the possible benefits of a mining project, and supplement the list with the benefits identified in the unit.

Questions to ask participants: What benefits can a mining company bring to a given area at the local level, whether directly or through financial contributions to local administration budgets?

Checklist for the facilitator of the possible benefits:

Local jobs (by mining companies and their sub-contractors, during construction and exploitation); training programs (corresponding to the identified needs, awarding scholarship grants, assistance to teachers and existing educational institutions, literacy program, etc.)

Infrastructure projects (transport – trails, roads, bridges, railways, etc.; electrification or developing new and renewable energy sources, improving health infrastructure, education, access to drinking water, construction of buildings for social, religious and cultural uses – youth center, sports field, mosque, etc.)

Support program for public health (prevention of epidemics – AIDS, Ebola, malaria, etc.; promoting hygiene and sanitation); support for cultural and sports projects

Develop projects to improve agriculture and animal husbandry; support to agricultural and agri-food sectors (processing and valorization of local products)

Support to artisanal mining; creation of new revenue-generating activities for vulnerable groups; micro-credit program; support for tourism development; local procurement (food, construction, maintenance, etc.); support to local businesses; compensation

Capacity-building for local authorities; promoting inter-village cooperation; support to emergence of committees and cooperatives

Animation Box: Discussion questions

Recruitment and local procurement by the mining company

Objectives: Identify the baseline for recruitment and local procurement, in order to better understand how to act to improve the situation.

Divide the participants into small groups and ask them to discuss several questions:

Did the mining company formalize a detailed and transparent strategy for recruitment and procurement?
Does the mining company respect past agreements / the recruitment procedure?

Has the company planned support for redundant employees (bonuses, support for retraining, etc.)?

Do we as community members act transparently? Do we prohibit pressure tactics, nepotism, favoritism to access jobs and market offers? Have we formally denounced any such behavior and non-compliance to the competent authorities (mining company, local authorities, etc.)?

Animation Box: Discussion questions

Local content measures

Objectives: Reflect on local content measures that participants can demand.

Divide the participants into small groups and ask them to discuss several questions: What local content measures can they think of in order for mining companies to use local labor? To improve the competitiveness of local entrepreneurs? To acquire skills that can be used beyond the mining project?

Ask some of the small groups to share their answers with all participants. For this group discussion, the facilitator can use the unit's text and the following list of local content measures as a checklist: access to company specifications to provide goods and services; training workers in the operation and maintenance of mining infrastructure; basic training in business and management techniques; training on quality standards; training in the logistics, transport, catering, hospitality, construction, and mechanics sectors, etc.; access to investment credit; creation of vocational training schools; recruitment of trainers; grants for business creation.

Animation Box: Discussion questions

Developing the local economy

Divide the participants into small groups and ask them to discuss several questions:

What is our vision of the long-term development of the territory? → *See also Unit 4.2 about LDPs of local municipalities; Unit 3.2 about a shared vision for the communities' future* Do the mining companies respect Guinean laws and regulations on local content? What are the gaps of local laborers and companies in order to meet the needs of mining companies and their sub-contractors? What actions can help us both meet the project's needs and diversify our local economy (in which sectors is it strategic to invest)? Discuss the responses of some of the small groups in plenary. Working with all participants, develop an action plan. → *See Advice for facilitators > Basic animation activities > Action plan*

Animation Box: Forum theatre

Negotiating economic benefits

Objectives: Initiate reflection on the obstacles to negotiating economic benefits and develop proposals to act differently in order to obtain better results.

→ *See Advice for facilitators > Basic animation activities > Forum theatre*

Scenario: Two community representatives travel to the city to meet with the mining company representative, Mr. X, accompanied by his secretary, to discuss the proposed mining project. Mr. X is very formally dressed, speaks almost none of the local language and, from the beginning, emphasizes the need for quick action concerning the main problem, which he wishes to discuss with the community in a climate of mutual respect, trust and cooperation, to ensure that everyone benefits from the proposed project.

Mr. X presents multiple tables and complicated statistics. He comes back repeatedly to the scientific nature of the data; cites success stories from around the world; highlights the immense advantages for the community in terms of economic development and particularly job creation; and concludes by saying that this project, without risk on the whole, is truly the only option for the community to become part of what has become an invincible force for good in the world, that is, globalization. The two community representatives are slightly outpaced by the technical language used by Mr. X. They take out their notebooks to jot down the key points mentioned, but Mr. X assures them there is no need for any useless paperwork: "More paper means less trees." He tells them that his secretary will take notes, which will be shared with them in due course.

The two representatives stop taking notes and ask about the precise nature of the mechanisms for profit-sharing and how much profit the company will earn. Mr. X, slightly irritated, assures them they have nothing to be afraid of and that the community will have the best possible offer in these hard economic times. The two representatives nod their heads, express their gratitude for the proposed project and ask for more time to consult with their community, because they cannot give their consent without additional community dialogue. In addition, they suggest that the next set of discussions be held in the community, so that Mr. X can have a deeper and more personal understanding of the realities on the ground. This will also allow the representatives to avoid being accused of reaching an agreement behind the backs of all the other community members.

This proposal is squarely rejected by Mr. X: “Do not involve me in your internal problems.” He insists that the final decision be made as soon as possible, because time is money, and in these times of global economic crisis, life punishes those who come too late. He asks the two community representatives to sign a blank sheet of paper that he will fill in later with details of a preliminary agreement, including terms and conditions addressing economic, social and environmental impacts and mitigating the damages the project might cause.

When the two representatives hesitate to sign, Mr. X reassures them in a charming manner that they have nothing to be afraid of: “Now is the time to act and ensure the long-term survival of your wonderful community. Trust me, once this is finished, we will all be a rich and happy family.” As he says these words, he hands them an envelope containing a large sum of cash. The two representatives quickly look at each other, smile shyly, take the envelope, and sign the preliminary agreement. (OA, 2014)

Unit 4.2 How can a community negotiate and implement a community development agreement?



TEACHING OBJECTIVES

- Facilitate understanding among local actors of a community development agreement (CDA) as a support to a Local Development Plan (LDP), ESMP and Local Development Fund (LDF).
- Provide guidance on the negotiation process for a CDA.
- Provide guidance on monitoring and implementing a CDA.

THEMATIC CONTENT

What is a community development agreement (CDA)?

A community development agreement (CDA) is a contract concluded among local communities (sometimes also the State) and the mining company that aims to avoid and minimize a project's negative impacts, compensate local communities for unavoidable impacts, and ensure that local communities receive a share of the project's benefits that they would otherwise not receive. A CDA is at the same time a means of anticipating and avoiding conflicts between communities and companies, to establish communication lines, early warning systems, and mechanisms to address and resolve tensions and emerging problems. (O'Faircheallaigh, 2014)

One of the conditions for obtaining an exploitation permit or a mining concession is the negotiation and signature of a CDA between the mining company and local communities (Art. 130 of the Mining Law), as well as establishing and funding a Local Development Fund (LDF). The implementing text of Article 130 is being drafted and will further define its implementation. → See Unit 4.3 about LDFs

The purpose of a CDA according to the Mining Law is to establish conditions favoring efficient and transparent management of contributions to local development paid by the exploitation permit holder, while taking into account capacity-building of communities in planning and implementing their community development program (Art. 130).

— What advice do other local communities have about CDAs?

1. It is recommended to consider **precursor agreements** with the mining company before negotiating and signing a CDA, in order to establish relationships and trust among the parties. Such precursor agreements can vary from a memorandum of understand, to terms of reference for negotiation of the CDA, to a letter of intent, a consultation agreement, etc. For example, in Suriname, communities affected

by exploration activities for a bauxite mine were frustrated that company representatives came to the site without prior notice. They drafted a simple letter of intent which declared, among other things, “We must be informed in advance of meetings, because it is not fair that you appear on site and expect us to stop everything that we are doing in order to meet with you. We need copies of documents in advance, and the documents must be drafts so that we can comment.” (NSI, 2011)

2. It is recommended to have a **clear picture of what the community wants, and so to integrate the CDL in the long-term development plan** of local communities. A mining project has a limited lifetime and the revenues are exhaustible. → See Unit 3.2 > Animation Box: Shared vision for the communities’ future

It is important that the CDA serves as a lever for communities to carry out their development responsibilities: to strengthen their local socio-economic diagnostic and Local Development Plan (LDP). The LDP of a municipality constitutes the principal strategic instrument for territorial planning, which must not be concentrated on mine development, but instead integrate all issues of local development. Every local municipality must have an LDP (Art. 511 of the LML).

3. It is also recommended to **integrate the ESMP in the CDA**. The ESMP is the instrument that obligates the mining company to avoid and minimize negative impacts. Integrating these measures into the CDA is a strong means of ensuring implementation of the ESMP, as well as to monitor and establish consequences for non-compliance. → See Unit 1.3 about ESMPs

“The first step is to get a unified, cohesive picture of what your community wants, and to know: ‘What is our vision for the future – 50 years, 100 years, 6 generations from now? What do we want for our youth? Where are our Elders telling us to go? How are we going to get there?’ If your community can get to that point, then you’re halfway to wherever you’re trying to get. That can be a huge process in itself. If your negotiators don’t know what the community wants, then the negotiations aren’t going to do anything for the community.”

*– Advice from other local communities
(NSI, 2006)*

Case Study: In Dominican Republic, local government empowered to take charge of development with mining company support

As part of the decentralization process in the Dominican Republic, a new law required municipal councils to constitute the municipal government and to be responsible for community development. But the municipal councils had neither the ability nor the means to implement their obligations under the new law. That is why a mining company and its partners entered into partnership with the governments of three municipalities near the company’s gold mine, together with the Dominican federation of municipalities, the Canadian Embassy (the company’s home state) and a local NGO to support the municipal councils to prepare and implement Local Development Plans, as provided for by the new law.

The tripartite partnership process between the local government, the mining company and civil society, took place in several stages: preparation and capacity-building of each partner; roundtables to plan the development plans; building consensus on the development plans through forums and meetings held for

civil society by municipalities, and holding municipal plebiscites; and approval of the plans by implementing municipal agreements on projects discussed in municipal forums with civil society organizations.

Thanks to this support, the three municipalities near the mining site were the first since the law's entry into force to create multi-year local development plans by involving local community members. The municipalities were also the first to form municipal economic and social councils, and municipal environmental units, to hold municipal plebiscites, to approve a development budget, and to create social monitoring committees to monitor the works and projects of the municipal government. (*Ausland & Tonn*)

— Is it easy to conclude a CDA?

Experiences of other communities show that CDAs can only lead to equitable and sustainable solutions if there is a fundamental equality in bargaining power between communities, the State and companies, and if care and expertise are applied to their negotiation.



Without an equality in negotiating power, CDAs are only yet another instrument that leaves community members feeling wronged and injured by the mining project. Equality of bargaining power and care in negotiation in this context are very challenging. (O'Faircheallaigh, 2014)

The results of a CDA – meaning the scale of benefits and effectiveness of mitigation and compensation measures – depends in large part on the relative bargaining power of local communities on the one hand, and the company on the other. This relative bargaining power is determined by the degree of social cohesion of the community, the strength or weakness of local political organizations, human, financial and information resources available to local communities, and the experience of a community with industrial mining, to name just a few factors.

The success of a CDA also depends on the community representatives and the degree to which the representatives are demonstrably legitimate and capable of articulating and promoting the wide range of community interests. If some interests are excluded, this can seriously weaken community bargaining power and so undermine the agreement. (*O'Faircheallaigh, 2014*) → See *Unit 3.2 about consultations within communities*

This challenge is an opportunity for the State and civil society to accompany local communities, to provide support and resources for local community empowerment.

How do you prepare for negotiations?

Negotiating a CDA is a long process for communities; it requires a lot of time in advance to prepare, as well as resources and technical expertise during the negotiations. A CDA can often take two or three years to negotiate, and must be

“Don't panic and don't feel pressured to sign a document before you understand what it's about. It's important to fully understand the scale of the potential impacts – positive and negative – before making a decision. This is especially important if you're signing a lease or an agreement, because you'll have to live with its consequences.”

– Advice from other local communities (NSI, 2006)

concluded before mine construction starts. A CDA should also include clauses for a participatory evaluation every three to five years, which can lead to renegotiating its terms.

— What do you need to negotiate a CDA?

Resources are necessary to survey the needs of local communities and to define priorities for the negotiated agreement; to allow participation of community members in preparing and undertaking negotiations; to allow community negotiators to meet with the mining company; and to provide local communities with **access to technical and professional expertise** required for complex negotiations concerning large projects.

Access to experts is further required to adopt a strategic approach to negotiations; to appreciate the needs and priorities of the other parties; to understand the economics of the proposed projects; to design revenue-sharing and compensation measures that both respond to community needs and at recognize commercial realities; to design efficient mitigation measures as well as their implementation; to draft agreements that are sufficiently specific, relevant and binding, yet sufficiently flexible to adapt to changes. (O'Faircheallaigh, 2013)



Never let an individual meet with the mining company alone to discuss matters. At least one other person must always join the meeting in order to discuss or to take notes. (NSI, 2011)

— Budget for consultations and negotiations

Communities can **prepare a budget** and ask for funds from the State, the mining company or another funder. Many companies have financed negotiation processes, impact studies, and consultations within communities in order to negotiate a CDA. A community can also form a partnership with an NGO.

To avoid and manage the disadvantages and risks associated with mining company funds (for example, the company may try to influence the negotiation results, the community's choice of consultants, etc.), and to reaffirm the independence of the community despite company funds, it is recommended to conclude **financing agreements** in the form of a memorandum of understanding in order to address the issue of financing throughout the process of consultations and negotiations. It is useful to set aside a sum of money as emergency funds, in case the company stops its funding. The community should always have funding sources in addition to any funds from the company.

BUDGET ITEMS



(IBA Toolkit)

— Set up a negotiating team

Based on other communities' experiences, it is recommended to set up a well-structured team to lead the negotiations, made up of individuals from the community who have experience negotiating, who know the law and the community's rights. Within the team, there are certain **key roles** that should be assigned (see the diagram below). Each team member's mandate must be clear.

The **negotiating team** will be responsible for communicating with the mining company, for consulting with community members, and for collaborating with community leaders. In this context, they must ensure that the interests of different community members are represented, and that the leaders and members are informed in order to make a decision. If a mining project may affect more than one community, the negotiating team can represent multiple communities. It must be clear who can sign the CDA (which member of the negotiating team, or which community leader) and ensure communication between them.

The negotiating team must try to keep all internal conflict out of view of the mining company. Otherwise the company, the State or other actors could use the division and conflicts within the community to pit some community members against others. If community members fight among themselves, they lose time, energy and resources. (NSI, 2011)

— Create an action plan to gather and manage information

The information communities need in order to negotiate include, among others: the relevant national laws and regulations, the conventions negotiated between the company and the State, all permits obtained by the mining company, correspondence between the company and the negotiating team and/or the lead negotiator, the ESIA, the ESMP, drafts of agreements, the LDP of the local municipality, the water supply plan (see Unit 1.1), baseline studies, etc. This information will help establish the baseline of the community and gather information concerning the mining project and the company. → See Unit 6.2 about baseline studies, as well as information to gather about the mining company and the mining project

KEY ROLES IN THE NEGOTIATING TEAM



(NSI, 2011 & IBA Toolkit)

— Develop a communications strategy

Communication among the negotiating team and the community is of prime importance. Given that it is impossible for the team to communicate continually with community members, everyone must understand how and when they will be consulted, and when information about negotiations will be shared. **Consultations within the community** must take place before any negotiation with the company, and must continue once negotiations start, in order to ensure that the community's expectations will be respected as much as possible. → See Unit 3.2 about *consultations within the community*

Communication strategies with community members can change over the course of negotiations. At the start, the team must share as much information as possible, because this helps the team to understand the needs and interests of community members; this also helps justify the team's mandate to lead the negotiations. After negotiations have started, the team must regularly update community members and ensure it understands community member questions and issues. (NSI, 2011)

"All decisions need information. Informed decisions need context. Wise decisions need dialogue – among the team members, and at key times with the wider community." (NSI, 2011)

— Evaluate and improve the negotiating position

This involves evaluating the strong and weak points of the community's negotiating position vis-à-vis the company. For example, conflicts and divisions can weaken the negotiating position of the community and lead to a bad agreement. A good understanding of the applicable laws, the mining project and the mining company can improve the negotiating position. Don't forget that these are negotiations – not necessarily the conclusion of an agreement. Sometimes you simply discuss each side's expectations.

How do you negotiate and come to an agreement?

— Rules and procedures for the negotiations

It is recommended to develop **terms of reference** for the negotiations. These terms of reference for meetings between representatives of the community and of the mining company should be mutually accepted and written. Here are some key aspects to take into account:

Time limits. Define reasonable time limits for community representatives to consult their communities. This helps avoid tension and unfairly using time pressure at key moments in the negotiation.

Confidentiality. Even if confidentiality may allow some parties to speak more openly, it can also be counterproductive, because it blocks transparency and accountability to the broader public. One way to address this is to use a third-party observer. Another way is to allow that even if the negotiation process is confidential, the results of the negotiation must be subject to public scrutiny.

Waivers. Try to always refuse waivers (a renunciation of certain rights, such as the right to seek judicial remedies) in the terms of reference for negotiations, or in any other agreement with companies. If the company insists on a waiver, here are four elements for fair and relevant waivers:

1. They should be mutual.
2. They may only extend to issues that are concretely addressed in the negotiations or the agreement.
3. They should only bind parties during negotiations and after, solely when an agreement has been reached. Where negotiations fail and are ended, the waiver no longer has any reasonable justification.
4. They may not extend to criminal actions. Persecution of criminal offences cannot be the subject of private negotiations and instead constitute a duty of the State in the public interest. (*Müller-Hoff*)

— Being strong during negotiations

The negotiating team must be strong during negotiations. Some lessons learned by other negotiating teams include:

- Negotiations must be documented in detail and **in writing**, such as by minutes mutually agreed to and signed. Disagreements should also be documented.
- Establish principles for the negotiations with the company (for example, that the company respects the community's rights).
- Determine the schedule for the negotiations. Sometimes it is better to start with the easier questions in order to have some quick wins.
- Know how to run an efficient meeting, meaning the team is united, has a plan that it follows, there are one or two people who speak, and notes are taken.
- Hold team meetings before and after each meeting with the company, so that everyone is clear on the plan and their role before the meeting, and so the team can discuss afterwards what happened during the meeting, and what can be done to improve or what they have to do next.
- Manage offers. It is better for the community to make an offer, rather than only responding to offers made by the company. (*NSI, 2011*)

Pressure tactics during negotiations. Several tactics can be used to be strong in the negotiating room and in other contexts. For example:

- There should be about the same number of persons of the same status during a meeting. This means that community leaders should not be present if there is no higher-level company representative present. This also means that company officials should not outnumber community negotiators.
- Leaving the room in protest (a “walk-out”) is a very serious way to apply pressure if the company is not negotiating enough. But a walk-out must always be followed up with a letter to the company about what can be done to change matters. Also remember that this tactic can be used only once or twice, otherwise it will no longer be effective.
- Strong characters can be brought into the negotiations at key moments – such as elders, children or women. This can help add weight to an issue that is very important to these groups. Harmful people, or community people who cause damage to the negotiations, should be removed appropriately.
- Meetings should take place in the community and not in the company’s offices. The negotiators will be more at ease in this setting, and the process will at the same time be more visible to community members.
- Alliances with NGOs or communities in another country who have concluded agreements with the same company can change the balance of power in favor of the community.
- Contacting the project’s funders, or sending letters to the company’s board of directors or shareholders can also increase community power. (NSI, 2011)

— Model clauses of a CDA

According to Article 130 of the *Mining Law*, the CDA must include, among others, clauses about training local community members, environmental and community health protection measures, and the process for developing socially-oriented projects. The following table of possible model clauses is simply a list of suggestions based on CDAs concluded in other countries. The implementing text for Article 130, as soon as it enters into force, could determine CDA clauses in Guinea, including mandatory and optional clauses.

POSSIBLE MODEL CLAUSES IN A CDA

<i>Local Development Fund (LDF) contribution and management</i>	<ul style="list-style-type: none"> • Determine the level and procedure for the company’s contribution to the LDF, as well as the management and use of LDF funds (steering committee, management and operation rules, principles for consultative committees, participatory evaluation) → <i>See Unit 4.3 about LDFs</i> • Determine savings by local municipalities to save financial resources in order to adapt to life after mine closure. For example, the plan for allocating, managing and monitoring revenue from the Chad-Cameroon oil pipeline requires saving a portion of the State revenue “for future generations.”
<i>Local content</i>	<ul style="list-style-type: none"> • Determine the conditions for local municipality inhabitants to provide goods and services to the company. Determine recruitment requirements for jobs, including for women. → <i>See Unit 4.1 about local content</i>
<i>Work conditions</i>	<ul style="list-style-type: none"> • Determine work conditions for communities, and assist company employees to better understand community culture (forms of communication, trainings to help external workers better understand local culture).
<i>Cultural heritage</i>	<ul style="list-style-type: none"> • Determine measures to protect the community’s cultural heritage. → <i>See Unit 5.3 about cultural heritage</i>
<i>ESMP monitoring</i>	<ul style="list-style-type: none"> • Determine in detail how to verify implementation of the ESMP, for example, how local communities will be involved in defining, supervising, monitoring and managing environmental and social impacts. → <i>See Unit 1.3 about ESMP and Unit 6.2 about joint monitoring</i> • Provide for compliance with higher environmental standards, such as the environmental laws of the mining company’s country of origin, the IRMA norms, safeguard policies, etc.
<i>Mining site access</i>	<ul style="list-style-type: none"> • Determine the boundaries of company employee movement (prohibit access to a sacred site). • Determine conditions under which community members can access the mining site. For example, in Ghana, a group of women negotiated for a monthly guided visit of the mining site. In Mongolia, the tripartite agreement established access conditions for artisanal miners. → <i>See Unit 1.1 for the Mongolia case study</i>
<i>Compensation</i>	<ul style="list-style-type: none"> • Determine compensation for economic displacement derived from the project’s use of the area. → <i>See Unit 5.1 about compensation</i>
<i>Post-closure access to infrastructure</i>	<ul style="list-style-type: none"> • Determine access to infrastructure and installations after the mining project’s closure (building, roads, ports, bridges).

<i>Implementation</i>	<ul style="list-style-type: none"> • Determine communication: details of the means, frequency, and representatives (of the community and company) for meetings to manage the CDA after signature in order to verify its implementation. • Provide quotas for male-female representation (30% women is recommended) for any team, cluster, consultative committee, etc. within the scope of the CDA. • Provide measures to guarantee and ensure the CDA's execution, in case one of the parties does not fulfill its obligations. • Determine detailed measures to resolve and manage conflicts. The community should work together with the company to put in place a grievance mechanism well before the CDA.
<i>Legal provisions</i>	<ul style="list-style-type: none"> • All legal provisions, including waivers, should be negotiated and reviewed by a lawyer before signing the CDA, because companies may try to slip in clauses limiting community rights. • Determine conditions for a participatory evaluation that serves to renegotiate the agreement's terms every 3 to 5 years.
<i>New owner of the mine</i>	<ul style="list-style-type: none"> • Determine conditions for compliance with the CDA by any new owner of the mine, if the mine changes hands through purchase/sale of companies.

(Adapted from NSI, 2011)

— Consent to a legal agreement

A CDA is a legal agreement, which requires the parties' consent, their capacity to contract, a certain object forming the subject of the engagement, and a lawful cause (*Art. 649 of the Civil Code*). Consent is not valid if it was:

- given in **error**, for example, not understanding the contract's scope, object or content,
- extracted by **violence**, including the fear of physical or moral violence; or
- obtained by fraudulent means known as **fraud** (*Arts. 650 to 655 of the Civil Code*).

This means that the developer, the company, the State, etc. may not exert pressure on the negotiating team or other community members, and that they are not allowed to threaten or force you by any means to make a decision or give your consent to a CDA. → See *Unit 3.2 about risks of manipulation*



A CDA concluded when communities do not have all relevant information, do not have access to experts or are limited in their time to prepare, may leave them worse off than not having concluded a CDA. (O'Faircheallaigh, 2014)

How do you implement a CDA and maintain relationships?

The promised benefits of a CDA do not arrive automatically after signing the agreement. Several factors internal and external to the CDA can influence its implementation and the relationships among communities, the company and the State. To that end, several of the model clauses in other CDAs provide monitoring procedures, conflict management mechanisms, and trainings to ensure implementation.

SOME PRECAUTIONS BEFORE SIGNING A CDA

Never sign a legal document before consulting with a legal advisor or an NGO representative	Verify that the commitments and objectives in the agreement are clear
Take the necessary steps to legalize the agreement under Guinean law and ensure that the agreement complies with applicable laws and policies	Verify that detailed plans and funds for supervising and monitoring project impacts, as well as supervising and monitoring implementation of the agreement, are included in the CDA with agreed goals
The CDA should create institutions or clearly attribute responsibility to certain persons to verify compliance with the agreement	Integrate sanctions (fines) if the agreement's conditions are not met by the company or communities, as well as incentives (rewards) if they are met

(NSI, 2011)

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ A Community Development Agreement (CDA) is an agreement between affected communities and a mining company, also possibly involving the State, which aims to avoid and minimize a 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 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, post-closure access to infrastructure, 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.

ANIMATION ACTIVITIES

- Presentation of the unit's key lessons.
- Discussion to emphasize the importance of the LDP (see box below).
- Activity to develop a shared vision for the community's future. → See *Unit 3.2 > Animation Box: Shared vision for the communities' future*
- Forum theatre to reflect on and develop an action plan to overcome obstacles to negotiating a CDA (see box below).

Animation Box: Discussion

Discuss the case study about the Dominican Republic

Objectives: Improve understanding of how a mining company can support local municipalities to develop a Local Development Plan (LDP), and the importance of developing an LDP.

Discussion questions:

How did the mining company and other partners help the local government to develop and implement a local development plan?

Is it a good idea for a company to help local government in this manner? Why or why not?

What challenges do you see to implement this approach in your community?

→ See also *Advice for facilitators > Basic animation activities > Discussing a case study*

Animation Box: Forum theatre

Negotiating a CDA with a mining company

Objectives: Initiate reflection on the obstacles to negotiating a CDA with a mining company.

→ See *Advice for facilitators > Basic animation activities for guidance on forum theatre*

Scenario: Community representatives arrive at the office of the mining company representative, Mr. X, which is located in an affluent business neighborhood in the capital. It was very difficult for them to get there, as they had to pay high transport costs and could only come by public transport. The community representatives are tired and they feel pain everywhere. The entrance to the office is full of luxury furniture and very formal, not at all familiar. Yet, the representatives feel that they have come well-prepared and are ready to negotiate an agreement that will truly benefit their under-developed community.

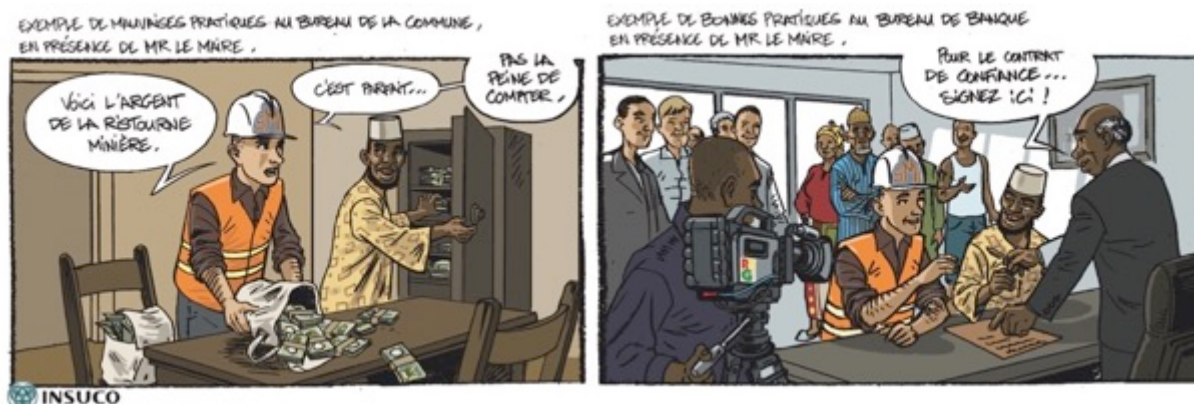
While they wait for their appointment, the community representatives notice a man leaving Mr. X's office who is in visible distress. He looks quickly at the representatives before strongly expressing his frustration at having been deceived by the company. The representatives look at each other in surprise and are just about to approach this man, when Mr. X comes out of his office and welcomes them with exaggerated cordiality. He quickly pushes them into his office, asks them to be seated, and after quickly asking about their health and giving them a glass of water, turns to business and communicates his strong belief and satisfaction that today will be a day that none of them will forget for a long time.

The meeting starts with Mr. X asserting the need for quick decisions. He allows 5 minutes for questions about the CDA. The representatives inquire about the modalities to supervise implementation of the ESMP, the contribution to the LDF, the consultative committees, the waivers, access to site for artisanal miners, and request more time in order to sufficiently consult with the community. In response, Mr. X shows signs of irritation and, speaking more loudly, reiterates the risk-free nature of the CDA, clarifies that a decision must be taken immediately and concludes by saying that this is an opportunity for now or never.

Returning to his overstated conviviality from earlier, he smiles and asks the community representatives not to stop economic development and critical progress, especially for the community's youth. He also mentions that recently, persons opposed to large-scale development projects were physically attacked by members of their own community, something which should not be repeated in the future, because blood is always bad for business. He places the CDA in front of them. The community representatives look at each other, visibly uncomfortable, then nod and sign the CDA.

Mr. X: « Congratulations. You have just saved your community from extinction. » (OA, 2014)

Unit 4.3 How can local municipalities best manage the financial resources gained from mining?



TEACHING OBJECTIVES

- Define what a budget is: family budgets, local municipality budgets.
- Identify financial mechanisms that encourage good financial governance by local municipalities of funds from mining activities.
- Initiate reflection on agreement and decision-making about appropriate use of the local municipality budget and LDF.
- Identify the main methods to control local budgets.

THEMATIC CONTENT

What is a budget?

A budget is the total expenses and revenues (income) during a given period, usually one year. Families, local municipalities, companies, CSOs – everyone has a budget. The total expenses for the year must equal the total revenue for the year. This is the concept of a **balanced budget**. (MATD)

— Family budget

For example, a **family budget** is the total expenses and income over a one-year period. Annual family expenses mainly include: food, housing, rent, clothing, health, education and recreation. Income mainly includes: salaries, income from revenue-generating activities, donations (money orders, transfers, cash or in-kind donations), loans (loans to friends, neighbors or micro-credit institutions). Here are two examples of a family budget:

Family A's Budget

INCOME	GNF
<i>Annual income</i>	<i>12,000,000</i>
TOTAL INCOME	12,000,000
EXPENSES	
<i>Food</i>	<i>5,400,000</i>
<i>Housing</i>	<i>2,400,000</i>
<i>Clothing</i>	<i>1,200,000</i>
<i>Health</i>	<i>2,400,000</i>
<i>Education</i>	<i>600,000</i>
TOTAL EXPENSES	12,000,000

Family B's Budget

INCOME	GNF
<i>Annual income</i>	<i>13,000,000</i>
<i>Gift</i>	<i>3,000,000</i>
TOTAL INCOME	16,000,000
EXPENSES	
<i>Food</i>	<i>5,400,000</i>
<i>Housing</i>	<i>2,400,000</i>
<i>Clothing</i>	<i>1,200,000</i>
<i>Health</i>	<i>2,400,000</i>
<i>Education</i>	<i>600,000</i>
<i>Motorbike</i>	<i>3,000,000</i>
<i>Radio</i>	<i>500,000</i>
<i>Recreation</i>	<i>500,000</i>
TOTAL EXPENSES	16,000,000

(MATD)

In the context of mining activity, a family's income can increase. But at the same time, the cost of expenses can also increase due to inflation. And workers who receive a salary for the first time ever may not manage their expenses well, which can lead to alcohol abuse and domestic violence.

— Local municipality budget

Just like a family, a local municipality has a budget of its total expenses and public revenues, calculated over a one year period, which must always be balanced.

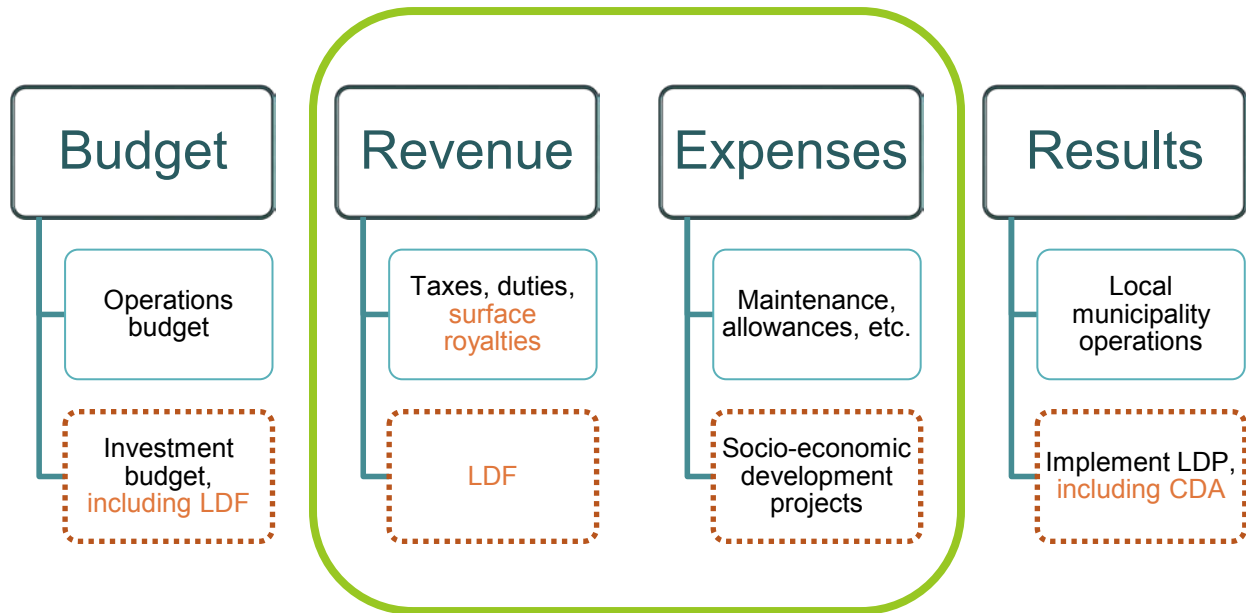
A local municipality's **expenses** can be classified into compulsory and non-compulsory expenditures. Compulsory operating expenditures include compulsory operating expenses (building maintenance, office costs, duty allowances, etc.) and compulsory investment expenditures (those required to implement the Annual Investment Program (IAP) for the LDP's annual activities, etc.).

Its **revenue** includes tax revenues (duties and taxes), non-tax revenues (surface royalties, etc.), state grants and various incidental revenues (grants, loans, subsidies, etc.). Revenues can be classified into operating revenue and investment revenue (the resources necessary to implement the IAP, etc.).

In the context of mining activity, the local municipality’s revenue will be increased by:

- As of the arrival of the mining company, well before the start of exploitation, payment by the company of surface royalties (*Art. 160 of the Mining Law*); and
- At the start of the exploitation phase, the company’s contribution to a Local Development Fund (LDF) in the amount of 0.5 to 1% of the mining company’s sales revenue earned in the zone, depending on the mineral type extracted, and in accordance with the Community Development Agreement (CDA) concluded with local municipalities (*Art. 130 of the Mining Law*).

CHARACTERIZATION OF HOW A LOCAL MUNICIPALITY BUDGET FUNCTIONS



Some challenges related to budgets

Several challenges related to financial resources from mines can arrive at the family or local municipality level.

For example, when a person receives compensation – perhaps a sum of money that the person has never before held – they risk spending the money recklessly. He could buy a motorbike or a car with all the money, and then some time later, no longer have money to pay for the fuel consumption or engine maintenance. Often, compensation is paid to the man heading the family, so the man can take a second wife, but the money does not suffice to support the larger family.

The challenge for local municipalities is to ensure the appropriate and transparent use of its resources – including financial resources from the mine – to achieve their local development strategies. Each local municipality is required to have an LDP, and an AIP to ensure the LDP’s annual implementation through the municipality’s investment budget. They must also be able to ensure the rigorous and transparent use of these resources to the mining companies providing the funds.

How is financial resource management and use supposed to be done according to law?

— Local municipality budget analysis

Once it is developed and approved by the council, the local municipality's budget is made public (*Art. 400 of the LML*). The public is given notice of the budget's availability by the means of communication chosen by the local municipality (display, radio, etc.).

This allows local municipality residents to analyze the relevance of the local municipality budget and to demand its review if necessary. The most important elements at this stage of analysis include verifying the budget's coherence with the LDP, ensuring accuracy of the fund's source (and in particular those from the mines which are by law made public), and balancing the revenue with the expected expenses.

Analyzing local municipality budgets is essential to determine whether public revenue is spent wisely and respects the principles of good governance. It allows citizens to understand the actions of local authorities for local development, to approve them, or ask for them to be refocused.

Local municipality budget analysis is not linear and can change depending on the objectives set, the phase of the financial year or the tools being used. Despite this, the **main objectives** remain the same:

- Ensure the receipt, use and management of funds given by a third party, especially surface royalties, company contributions to the LDF.
- Compare the local municipality's expenses by sector and ensure these correspond well to the development priorities as defined in the LDP.
- Hold public authorities accountable in the performance of their functions and at the same time strengthen their legitimacy as proponents of local development.

— Budget execution

Once the budget is approved, the resident's role is to ensure it well executed, that the funds are spent in the manner defined in the provisional budget and its accompanying documents.

Budget execution is made up of five phases, each subject to its own analysis: budget allocation by investment/services focus, obtaining quotes for the purchase of goods and services, payment for goods and equipment, recording transactions in the ledger, and finally executing mid-term and end-of-year budget and financial reports.

— Budget performance evaluation

Local municipality budget evaluation must be done throughout the life cycle of the project: from its elaboration to its evaluation. This consists of assessing the coherence among all municipality budget documents: the provisional budget, framework document, accounts book, mid-term and final budget reports. This evaluation should be done together with that of the budget itself.

Do the allocated budgets correspond with the expenses? Do the expenses correspond with the activities carried out? Do the activities carried out correspond with the project's specific objectives? Does the final implemented project incorporate the development priorities as defined in the LDP?

Evaluating the good performance of the budget and all budget documents allows irregularities and inappropriate uses of public funds to be identified. Residents are then entitled to ask for clarification and/or additional information from local authorities. People, CSOs and CBOs can then ask to organize information campaigns that bring together government authorities, civil society, private actors, etc.

The objective is to jointly discuss the current budgetary situation in light of the analysis of all public documents. This allows local municipality budgets to be made accessible to a larger number of people by explaining its purpose and use.

If we doubt that the process was followed correctly, how can this be verified and what can we do if we see significant failures?

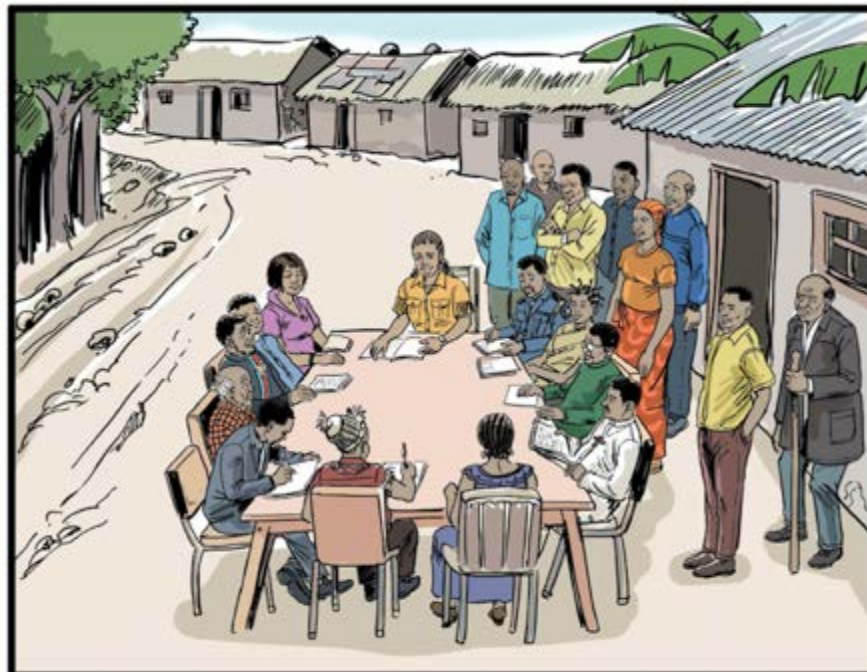
— What can you do in case of determining a misappropriation of funds?

Organize a verification check of the administrative and legal governing documents (mining conventions, administrative accounts, management accounts in order to ensure payment of funds or traceability of expenses (receipts issued, invoices, receipts justifying withdrawal or deposit of funds, etc.). The steps to take involve:

- Reviewing financial statements and accounting records in order to determine responsibility and identify the cause of the misappropriation
- Taking sanction measures
- Defining new provisions to put in place sound management (strategies, methods, dispositions to secure funds, management structures)
- Opening a bank account requiring double or triple signature
- Putting into place a new management structure
- Making disbursement of funds conditional on the existence of a valid LDP and AIP.

Proven misappropriation of funds can expose the responsible person to two types of sanctions: (1) administrative sanctions ranging from reprimand, to dismissal, to suspension, defined by hierarchy or guardianship, depending on the seriousness of the offense, (2) penalties following criminal prosecution.

BUDGET ANALYSIS



— **We doubt that the company is paying surface royalties. What can we do?**

Surface royalties are paid annually in proportion to the surface area described in the mining permit (*Art. 160 of the Mining Law*). If a company does not pay the royalties it is required to, affected communities can, through their representatives (local authorities), contact the mining company (in writing) with a payment reminder. If the mining company does not react or does not recognize the payment due, communities can also address in writing the relevant Ministries (MMG, MATD) in order to resolve the issue. In order to do this, resource persons (people from the community now holding positions of authority with the State, NGO partners and CBOs) can be brought on board to facilitate or accelerate the process of resolving the grievance.

Case Study: Rural communes of Boké capacity-building project

In 2009, a partnership involving the Guinean government, the Program for the Support of Village Communities (PACV), the mining company Rio Tinto Alcan, the Agence Française de Développement (AFD) and the NGO Centre for International Studies and Cooperation (CECI) implemented a Project for Building Capacity in the rural communes of Boké (PRCB) near the company's mine site. The partnerships also included the National Directorate for Decentralization, the National Directorate for Local Development, the Boké prefectural authorities and the community-level and sub-prefectural authorities of the Sangarédi, Kolaboui and Kamsar communes.

The project's goal was to strengthen local governance, deconcentrated technical services and CSOs, and facilitate social and environmental empowerment of the inhabitants of the three communes. The PRCB's work fell into three categories:

1. Mobilizing resources and managing local revenues. The issue of unawareness and poor management of rural commune resources, exacerbated by a lack of transparency. Through tax trainings, creating collection committees and a commission for mobilizing local resources (made up of persons able to understand the resources to be mobilized, and who work together with a tax officer), and establishing secure payment methods (directly to the bank by the payer), the rural communes were able to monitor the distribution of its resources with the prefecture as foreseen in the LML.

2. Procurement. The goal was to put in place the procedures foreseen in the PACV manual by means of trainings for local elected representatives, deconcentrated technical services and members of civil society, and by establishing a procurement commission in each rural commune (made up of a commune councilor, a councilor from each district benefiting from micro-projects, three civil society representatives including one female, a secretary general, commune receiver, a local development agency and a consulting engineer, as well as representatives of CECI, PACV and the prefectural development service as observers). Transparent procedures to manage procurement processes were added, and a monitoring committee was created, made up of a representative of the district population concerned by the micro project, the relevant sectoral technical services, councilors and civil society.

3. Managing communal affairs. The goal was to allow increased access to documents and to create annual budgets that better responded to the needs of the communes and their peoples. This was accomplished by training commune councilors on the LML, practical training in computing for the deconcentrated prefectural services, receivers, secretary generals and local development agents, and putting in place a budget outline with support and monitoring for the steps of developing an annual budget for the councilors, mayors, receivers, secretary generals and local development agents. (*Uniterra / CECI*)

Guidance for good management and use of financial resources from mines – Local development funds (LDFs)

Here are some guidance for good management and use by local municipalities of financial resources from mines, in particular local development funds (LDFs). Local municipalities are owners in using the LDF, which is part of the municipality's budget. Local municipalities carry out the duties of authorizing officer and receiver, as defined in the LML. They are also guarantors of its good management.

— Participatory budget

For a local municipality budget, a **participatory budget** refers to a process of budget planning, implementation and monitoring that puts citizens in the center of the decision-making process. It provides them with the opportunity to decide on resource allocation, to prioritize among local municipalities, many social policies, and to control execution of expenditures. Thanks to this mechanism, the local municipality's policies more closely respond to the needs and priorities of the most vulnerable groups. (MATD)

Implementing a participatory budget requires putting in place a Steering Committee, operating rules, a local municipality baseline, an infrastructure and equipment inventory, a diagnostic defining priorities, a matrix to prioritize needs, monitoring implementation, and a participatory evaluation. (MATD)

Incentives for participatory budget include having everyone participate, improving local governance, correcting the injustices in resource redistribution, jumpstarting fiscal civics, and building infrastructure responding to the population's needs. (MATD)

— LDF Steering Committee

The CDA can provide for the parties to put in place a **Steering Committee** to oversee implementation of the LDF. The criteria to participate on the committee can include: education (literacy), resident, representation of districts, representation of different stakeholders, availability, etc. The possible roles and responsibilities of the Committee include:

- Supporting the LDF implementation process
- Participating in information and social mobilization
- Participating in conflict resolution
- Making decisions on resolving constraints
- Actively participating in planning, implementing and evaluating the process
- Report to the council on the process.

Steering Committee members could be, for example: mayor, secretary general, receiver, sub-prefect, two mining company representatives, two NGO representatives, two youth representatives, two women's representatives, a representative of municipality citizens, and two representatives of notables/elders/clerics. The Steering Committee could be chaired by the mayor. The Secretariat could be supported by the secretary general. A civil society representative could be designated as rapporteur. The committee could of course decide to modify this structuring depending on the context. (Adapted from MATD)

— LDF management and operating rules

Every LDF needs management and operating rules. These serve two functions: to define use of the LDF and to orient users on the modalities of accessing and managing funds. The CDA should determine the

LDF implementing rules. The rules must be developed in a participatory manner and by **consensus**. They should allow conflicts to be avoided and peaceful implementation.

On the one hand, the rules define access to funds: eligible types of activities, eligible types of expenditures, potential beneficiaries, levels of co-financing and any other funding conditions. This part resembles a funding code. On the other hand, the rules define the financial system and steps required to validate a local development project. To that end, the rules define the make-up and submission of project applications, the selection of projects to finance or co-finance, project execution, monitoring and evaluation.

— Principles for the LDF consultative committees

The CDA should also define some **principles for all local consultative committees** involved in the LDF's functioning. The goal of the local consultative committees is to implement the CDA through the LDF in a transparent manner supporting good governance. The local municipality should receive prior consent from consultative committees before making expenditures (disbursements) and the necessary support for good use of the funds.

There is no required number or form for consultative committees. This depends on the scope and objectives of the CDA and LDF. As the case may be, these can be akin to committees, commissions or working groups. All modalities for the functioning of the consultative committees (human, technical and financial) are to be defined in the CDA or the LDF's management and operating rules. Note that the CDA will determine quotas for male-female representation for all consultative committees in order to guarantee women's participation. Women should make up a minimum of 30% of committee participants.

To support good governance of the funds, it is advisable to put into place a minimum of three consultative committees with different objectives:

1. A first committee is in charge of the LDF's executive functions. It is concerned with the proper functioning of the LDF and good financial management. It validates the manual or procedures and oversees its implementation.
2. A second committee manages, monitors and evaluates the ongoing projects. It also assesses funding applications by judging the feasibility and viability of projects, in order to ensure coherent territorial development in accordance with the LDP.
3. A third committee provides information and advisory support to communities. Its mission is two-fold: to accompany populations in formulating and submitting their development project, and to advise populations on the appropriate usage of the funds. This committee serves as a bridge between the communities and the financial facility.

Each of the committees must be made up at a minimum of members coming from the municipality, civil society and mining company in order to strengthen the capacities of all actors on the territory in the management of local finances and decision-making for the development of their municipality.

— Participatory evaluation

A participatory evaluation is one involving actors at different levels in a joint manner in monitoring activities and in the monitoring and evaluation of a project, program or particular policy. They share control of the content, process and results of the evaluation activity and identify corrective measures. Participatory and inclusive evaluation focuses on active contributions by the main actors involved. (*IRMA*)

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ A budget is made up of the total expenses and revenues in a given time period, usually one 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 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 operating rules (by consensus), define principles for local consultative committees and provide for participatory evaluation.

ANIMATION ACTIVITIES

- Discussion to define a family budget and a local municipality budget.
- Discussion about the PRCB case study. → See *Advice for facilitators > Basic animation activities > Discussing a case study*
- Discussion about the diagram, "Characterization of how a local municipality budget functions."
- Presentation on analyzing and evaluating the proper functioning of a local municipality budget. Discussion about the risks of an uncontrolled budget (see box below).
- Discussion and role play on prioritizing development projects (see box below).

Animation Box: Discussion questions

Distributing funds from the LDF

Objectives: Understand how the LDF funds will be distributed across different projects, and how to apply for funding your own projects.

Who distributes the LDF funds and how are they distributed among projects? I have a project idea: Can I apply for funding, and if so, how can I apply? Where does the money go when our project is approved? What is its path? How can I verify that the funds will reach me? How must I spend the funds that were allocated to me?

Animation Box: Game

Management, decision-making, local development: Spot the differences in the posters

Objectives: Improve understanding of what should and should not be done in terms of managing funds, consultation and decision-making, and prioritizing local development projects.

Duration: 30 minutes (10 minutes per billboard). **Group:** 10 people.

The facilitator will successively present several posters to the participants. Each of the posters has two pictures on it, showing what should and should not be done regarding a financial facility. Participants are invited to examine the two pictures, to identify the differences, and to say what appears good and not good to them. The facilitator will take stock of what was said, presenting each of the posters in turn, and

reflecting on the importance of: managing funds, consultation and decision-making, and local development.

Poster #1: Managing funds. *Picture 1:* A mining company representative is in the municipality office to pay a commission. Money is strewn across the office: on the desk, on the tables, etc. Some of the money is placed in a small chest without being counted or recorded anywhere. All of this shows disorganization. *Picture 2:* The same municipal representative is with a mining company representative in the office of the Credit Z Bank. The director of the bank gives an account book to the municipal representative and invites the two parties to sign a “trust contract”. At their sides are civil society representatives, as well as a journalist and cameraman reporting on the event.

Poster #2: Consultation and decision-making. *Picture 1:* A municipal representative is seated at his desk on which we see a bank account book where the money from the mine is held. At the door to his office, there is a long waiting line of people dreaming (thought bubbles) of a personal project (buying a sheep, building a closure, etc.). The municipal representative looks helpless, he doesn’t know which project to choose. He holds his head in his hands. *Picture 2:* The same municipal representative is in a meeting room with a gathering of about ten people from the mining company, civil society, etc. Together, they discuss implementing a single project (one for the whole group). In the room, we see tools supporting decision-making, such as an operating manual, flip chart, etc.

Poster #3: Local development. *Picture 1:* A group of workers is working on completing the construction of a hotel. In the foreground is the owner, a rich businessman who is speaking with the site manager. On the picture, we see a billboard that says, “Development project financed by ABC Program.” *Picture 2:* The same workers are working on completing construction of a water pump in a village that didn’t have one. Around the workers are village council members. They are discussing the final details to be put in place before commissioning the pump (enclosure, opening hours, etc.). They are holding in their hands a folder showing that they have formed an association. On the picture, we see women returning from the river with their buckets of water.

Animation Box: Discussion

“Risks of an uncontrolled budget”

Objectives: Allow community understanding of the importance of budget analysis and evaluation, and the risks associated with not doing this.

To be relevant, the discussion on the importance and the risks should be done in small groups (maximum of 10 persons). Participants can begin the discussion using personal examples (one of their projects, their professional activities, etc.) in order to then bring the discussion to the community level.

The facilitator should list all of the risks identified by participants on a flip chart. After having grouped them by type, the facilitator asks participants about ways to avoid these risks in developing a budget and how they, as citizens, can ensure avoiding them.

Examples of risks of an uncontrolled budget: misappropriation of funds, corruption, product failures (because it is too expensive), abandoned projects, community discontent, loss of confidence in the mining company, etc.

Animation Box: Discussion and role play**Prioritizing development projects**

Objectives: Learn how to exchange information within the community in order to determine the relative importance of various development projects. Understand how to be attentive to the concerns of others about a shared problem.

At the municipality level, a large village that already has two functional boreholes expressed the need for a new water point to decongest the first ones that are suffering from the village's strong demographic growth. At the other end of the municipality, two other relatively isolated villages do not yet have a borehole and their respective residents continue to consume surface waters near the residential areas; the river crossing one of the two villages moves upstream from a bauxite area that will soon be exploited by a mining company and so risks significant pollution.

Each of the three villages has a legitimate need for access to a new improved water point, but we can also see that the urgency varies among the three villages, and certain works will have to be prioritized if they can all not be completed in the same year.

Ask participants what rules or principles could be used to prioritize the works. They can discuss in small groups.

Do a role play with representatives of the three villages, a mediator and any other actors the participants believe are necessary in order to put the rules and principles to the test.

→ See also *Advice for facilitators > Basic animation activities > Problem priority matrix*

Animation Box: Role play**The role of consultation in decision-making**

Objectives: Understand how to adopt an LDF that takes into account the needs of the various actors involved.

Number of participants: 10. Total duration: 40 minutes

General context: Mining company X must pay its trimestrial contribution to the LDF in two weeks. To plan the actions to be taken, the municipality issues a call for projects well in advance. Several projects were selected in light of their objectives. The funds awarded by the mining company allow funding one more project. Two projects have gained attention:

The first, developed by a women's committee from X, involves transforming fruits into jams and selling these in a roadside shop. The revenues earned from this will allow the needs of 12 women in fragile situations to be met. The second project involves constructing a water pump in a village with about 340 residents. The village already had a water pump project three years ago, but the pump doesn't work anymore, compelling the residents to obtain water from the river. The LDF commission convenes a meeting and must decide by the end of the day which of these two projects will receive funding from the LDF.

Among the 10 participants, at least 2 represent the municipality, 1 represents the mining company and at least 2 are simply observers (they do not intervene in the discussions). During 20 minutes, the 8

participants discuss which project to choose and why. The next 15 minutes serve as a debriefing. The 8 participants will give their views on the discussion, the observers will assess the debate and give their opinions on the weak and the strong points of the consultation and decision-making. The final 5 minutes will be for the facilitator to give their point of view and provide an overview of how to lead a consultation.

Animation Box: Discussion questions

Grant of financial resources from mining

Objectives: Understand how financial resources from mining are remitted to the local municipality. Understand how to verify that the remittance effectively occurred and that the resources are used as intended.

Who receives the financial resources from mining? According to which modalities/conditions do mines remit financial resources (for example, is the municipality required to have a bank account, does it have to meet any requirements in order to access the funds, etc.)?

When are the various financial resources from mining remitted and according to what schedule? How can a local municipality ensure that it has received the financial resources from the company on schedule, and that the amounts received are correct?

What can be done if the situation is otherwise (the company hasn't paid, the company paid late, the company paid an amount other than what was initially foreseen)? How can it be ensured that the local municipality puts the financial resources from mining to good use? What can be done if the resources aren't put to good use?

MODULE 5 : WHAT DO YOU NEED TO KNOW ABOUT IMPACTS?

WHY DOES THIS MODULE MATTER?

The entitlements that can arise from a mining project's negative impacts, especially impacts on land, environment and culture, are governed by law. These rights and their limitations must be widely known among the public.

That is why the following questions are addressed in Module 5:

- We risk losing our lands or suffering harm. What do we need to know? (Unit 5.1)
- Since the company's arrival, we see environmental pollution all around us. What do we need to know? (Unit 5.2)
- The mine might occupy our cultural sites. What do we need to know? (Unit 5.3)

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



TEACHING OBJECTIVES

- Understand the scope of the State's legal authority for expropriation.
- Provide guidance on the resettlement process and compensation according to law.
- Identify common challenges for communities.

THEMATIC CONTENT

Land access, mining, and local communities

Land access is a key concern for industrial mining. At the same time, land access and its exploitation are issues of survival for most rural communities in Guinea.

Land-related damages in the context of a mining project are numerous, whether it is enclosure, temporarily or permanently reduced access to lands and grazing lands, dynamite causing cracks in houses, resettlement, land compensation (including uncultivated land), or land market fluctuations due to speculation.

Women are often disproportionately affected by resettlement impact or inadequate housing conditions: they are often excluded from consultation and compensation, and exposed to violence and significant emotional stress.

— What is displacement?

Losing access to shelter or lands is called **physical displacement**. Loss of access to revenue or a means of subsistence (forests, rivers for water or fishing, etc.) is called **economic displacement**. Displacement can be permanent (for life) or temporary (for example, during the rainy season).

— What is resettlement?

Resettlement refers to any situation of physical or economic displacement caused by a project's activities for land acquisition or restrictions on the use of lands. **Voluntary resettlement** involves the sale of lands where the seller is not obligated to sell, and the buyer cannot expropriate or use another means of force to acquire the lands. (*IRMA*)

Resettlement is **involuntary** when affected people do not have the right to refuse acquisition of the lands or the use restrictions making up the physical or economic displacement. This occurs through (i) lawful

expropriation or temporary or permanent restrictions on the use of lands and installations, (ii) negotiations in which the buyer can resort to expropriation or impose legal restrictions on the use of lands, if negotiations with the seller fail. (*IRMA*)

A large range of coercive measures and manipulation are often used such that the State or a mining company can claim that a resettlement is “voluntary”, when in fact it is not.

Forced evictions refer to acts or omissions involving the coerced or involuntary displacement of affected people, without provision of, and access to, appropriate forms of legal or other protection (*UN, Basic Principles and Guidelines on Development-Based Evictions, para. 4*).

How does a mining project affect property rights?

A mining project does not extinguish property rights (*Art. 123 of the Mining Law*). According to Article 125 of the *Mining Law*: “The State will ensure that the holder of a mining title or other authorization obtains the consent of the landowner or beneficiaries as soon as necessary. In the absence of consent from the landowner or beneficiaries, this can be imposed by the State, in accordance with the regulations in effect, adequate and prior indemnity, an obligation to allow the works to be done on the property and not to impede them. The price of the land or indemnities due to the creation of servitudes or other dismemberments of real rights or occupation, shall be fixed as in expropriation.”

In order to know how to obtain an indemnity or compensation for damages, or to understand rights in case of displacement or resettlement, it is first necessary to understand fundamental housing, land and property rights.

— Right to adequate housing

The right to adequate housing is recognized in the International Charter of Human Rights as well as in the jurisprudence of the *African Charter*. For housing to be adequate, it must at a minimum meet the 7 criteria set out in the diagram below (*OHCHR*).

To protect the right to adequate housing, it is especially important to pay attention to the particular situation of individuals and groups, and those who find themselves in situations of vulnerability: women, children, persons with disabilities, etc.

Case Study: Ogoni people in Nigeria

In the case *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, the African Commission on Human and Peoples’ Rights condemned Nigeria for violating the right to adequate housing. In this respect, the African Commission noted: “The Government [of Nigeria] destroyed the houses and villages of the Ogoni people and then, through its security forces, provoked, harassed, beat and in certain cases, killed and shot innocent citizens who attempted to return to rebuild their destroyed houses. These actions constitute serious violations of the right to housing protected by Articles 14, 16 and 18 of the *African Charter*” (*OHCHR*).

CRITERIA OF THE RIGHT TO ADEQUATE HOUSING

Security of tenure

- Housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats

Availability of services, materials, facilities and infrastructure

- Housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal

Affordability

- Housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights

Habitability

- Housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards

Accessibility

- Housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account

Location

- Housing is not adequate if it is cut off from employment opportunities, health-care services, schools, child care centers and other social facilities, or if located in polluted or dangerous areas

Cultural adequacy

- Housing is not adequate if it does not respect and take into account the expression of cultural identity

— Right to property

The scope of the right to adequate housing is much broader than that of the right to property, which is the right to own property. The right to property is protected by the Constitution in Article 13. Property rights vary from country to country, but generally include several types of rights, such as the right to use, access or transfer, etc.

Given the gaps in Guinea's land laws and regulations,¹¹ the failure to establish Land Commissions throughout the country, the absence of a decree implementing the *Mining Law* provisions protecting

¹¹ According to a recent analysis of resettlement related to the Fomi dam, "Guinea's land regulations have significant gaps concerning not only mechanisms for expropriation in the public interest, but also concerning the modalities of compensation for people affected by the process. It must be pointed out that the *Declaration of land policy in rural areas*, adopted on 20 March 2001, better regulates land in rural areas than the *Land Law* of 1992." (GWI)

property rights, and no regulatory operations manual, it is not only challenging for local communities to understand land law, but also challenging for State authorities and mining companies to understand and implement it.

“States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth.”

– Para. 4.1 of the FAO Voluntary Guidelines on the Responsible Governance of Tenure

— Who is a landowner?

Until 1992, in Guinea the State was the sole landowner. In 1992, the *Land Law* recognized that natural and legal persons could also hold property rights (*Art. 1*). The *Land Law* recognized property rights by occupation (*Art. 39*) and protection of property rights in case of expropriation (*Art. 55*).

The definition of landowner in the *Land Law* includes “occupants, natural or legal persons, justifying a peaceful, personal, continuous and good faith occupation of an immovable as an owner”; their good faith can be proven by “the development of the immovable in accordance with local practice” (*Art. 39*). The *Land Law* provides scope for recognizing customary land ownership and its dismemberments (use, delegation, loans, etc.).

Few women in Guinea are landowners, even if they are responsible for 80% of the country’s agricultural production. They generally have only use rights on agricultural lands through their husbands or sons, which makes their access dependent on their family’s men.

Often decisions about property, inheritance or land use are based on masculine customary and statutory systems that make women highly vulnerable to violence and economic marginalization. The fear of becoming homeless can make women choose to remain victims of violence contexts. (*OHCHR; NRC*)

In which situations does the State have the right to acquire land?

— The State’s right of expropriation in the public interest

According to the Constitution, “no one may be expropriated, except in the legally recognized interest of all and subject to prior and fair indemnification” (*Art. 13*). According to the *Mining Law*, “when the public interest so requires, the holder of a mining title or other authorization can pursue expropriation of the immovables and lands necessary for the mining works and for the installations exploitation requires, as provided by the regulations in force. The indemnity related to the expropriation in the public interest referred to in this Article shall in no case be less than the whole of that concerning landowners in Article 124 above” (*Art. 125*).



Case Study: Endorois people in Kenya

The Endorois community is an indigenous minority community that lives near Lake Bogoria in Kenya. In 1973, close to 60,000 Endorois were evicted from their ancestral lands in order to allow ruby exploitation. The Endorois community wished to reclaim their lands, and filed a complaint with the African Commission on Human and Peoples' Rights (ACHPR) against the Government of Kenya.

The ACHPR decision recognized that the Government of Kenya violated the rights of the Endorois, as recognized in the Kenya Constitution and by the *African Charter*, including violating land rights of the Endorois people as an indigenous population, independent of a lack of formal land title. The ACHPR observed that “for all development or investment project that will have a significant impact on the Endorois territory, the State has the duty not only to consult the community, but also to obtain their free, prior and informed consent, according to their customs and traditions.” These initiatives led to termination of ruby exploitation. (EWC)

What is a “fair” procedure for compensation, indemnification and resettlement?

— What is the procedure for expropriation in the public interest?

According to the *Land Law*, expropriation occurs in three main phases: a public interest inquiry, a land parcel survey, and an expropriation order. After a public interest inquiry, a declarative decree in the public interest is entered. For public infrastructure (roads, dams, etc.), this decree authorizes the works (*Art. 57*). It states the expropriation term, which is no more than three years, except for public infrastructure in which case it is extended to five years (*Art. 57*).

After the public interest decree, a land parcel survey is conducted to identify all assets and rights affecting the lands where the expropriation will be applied (*Art. 59*). After the land parcel survey, the Minister in charge of Estates will enter an expropriation order which identifies the list of affected properties. This order is a deed of transferability (*Art. 58*). The landowners have two months to communicate a list of rights holders on their property (tenants, occupants, users, etc.) (*Art. 60*).

— What is the indemnification procedure for expropriation?

In Guinea, the indemnification procedure for expropriation is based on **mutual agreement**. The procedure is described as follows in the *Land Law*:

- Two months after notifying landowners of the expropriation order entered by the Minister in charge of Estates, the expropriating actor has three months to communicate their indemnification proposal to the landowner and invite him to make a counter-offer. The objective is to find a mutual agreement between the two parties before the Land Commission (*Art. 66*);

- In case of agreement, this is recorded in a report by the Land Commission countersigned by the two parties (*Art. 67*);
- In case of disagreement, the Court of First Instance (CFI)¹² is seized by the earliest petitioner. The indemnity is fixed by ruling of the President of the CFI (*Art. 68*), possibly after expert testimony if this is requested by one of the two parties. This expert testimony must be conducted by three accredited experts (*Art. 70*). In both cases, the expropriating party must pay the indemnity (*Art. 72*). The payment of the indemnity definitively extinguishes the land rights of the expropriated party (*Art. 63*). After six months, in case of non-payment, interest runs automatically and the landowner can apply for a revision of the agreement (*Art. 73*).

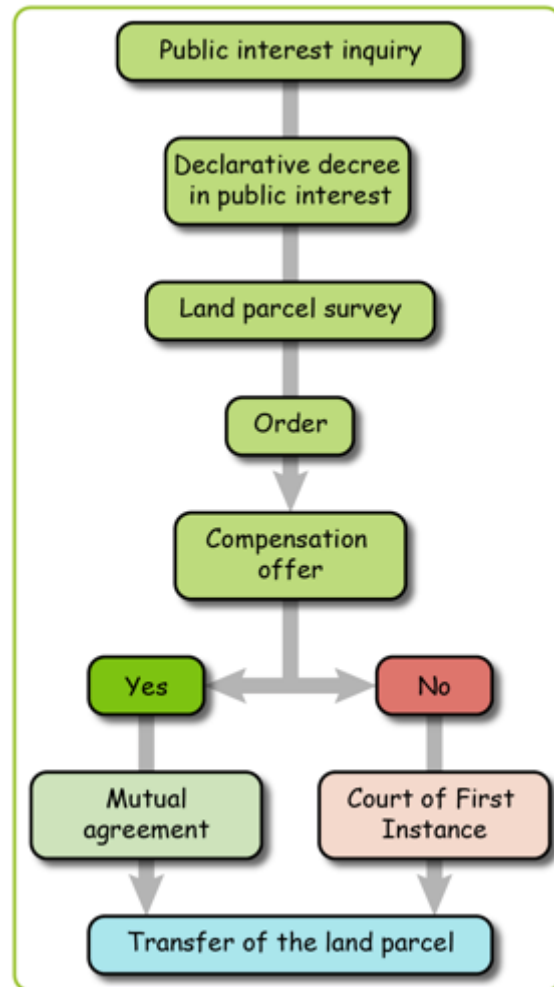
— International standard

Resettlement should only be carried out in exceptional circumstances, in accordance with the law, and in full compliance with the relevant provisions of international human rights law and international humanitarian law (*UN, Basic Principles and Guidelines on Development-Based Evictions, para. 6*).

Any eviction must be: a) authorized by law, b) carried out in accordance with international human rights law, c) undertaken solely for the purpose of promoting the general welfare, d) reasonable and proportional, e) regulated so as to ensure full and fair compensation and rehabilitation, f) carried out in accordance with the United Nations *Basic Principles and Guidelines on Development-Based Evictions and Displacement*. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under the laws of Guinea. (*UN, Basic Principles and Guidelines on Development-Based Evictions, para. 21*)

All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education (*UN, Basic Principles and Guidelines on Development-Based Evictions, para. 16*).

PROCEDURE FOR EXPROPRIATION IN THE PUBLIC INTEREST AND INDEMNIFICATION



¹² Decree N/D/2001/031/PRG/SGG of 17 May 2001 amending certain provisions of the law L/98/014/AN of 16 June 1998 amending the law L/95/021/CTRN of 6 June 1995 restructuring the justice system in the Republic of Guinea: Boké, Dixinn, Faranah, Kaloum, Kankan, Kindia, Labé, Mamou, Mafanco and N'Zérékoré.

While the rules and procedures of development bank **safeguard policies** are all different, they nevertheless share several common fundamental protections:

Objective. Involuntary resettlement must be avoided or reduced as much as possible, by exploring all possible alternative viable project designs. Affected persons must be supported to improve (not only restore) their well-being and standard of social and economic living.

Lack of land title. Lack of a legal land title (especially common among women, ethnic minorities, etc.) should not be a barrier to indemnification for involuntary resettlement.

Compensation. Compensation must be provided before displacement, and should be just one part of a broader set of measures in support of development aiming to genuinely rehabilitate affected people, and taking into account their needs and development priorities.

Meaningful participation. Affected people must be informed of their options and their rights regarding resettlement. They must have real options among the alternatives to resettlement that are technically and economically feasible. For consultation to be meaningful, information on the proposed project and plans for relocation and rehabilitation should be made available to local people and civil society organizations in a timely manner and in a form and manner appropriate and understandable to the local population. Special measures are needed to ensure the full and effective participation of women and the disadvantaged.

— Indemnification, compensation for damages

To compensate or compensation means to replace a thing by its in-kind equivalent. Compensation is the opposite of indemnification, which is monetary compensation for expropriated assets. (*GW*) According to the *Mining Law*, the mining company “must pay potential legitimate occupants of lands required for its activities, an indemnity to cover the disturbance suffered by the occupants” (*Art. 124*).

The *Mining Law* specifies that “all damages caused by the holder of a mining title to landowners, usufructuaries, and legitimate occupants or their beneficiaries, will give rise to reparation by payment of an indemnity. In particular, in case the landowner, usufructuary, legitimate occupant or their beneficiaries have done works or possess facilities that will become redundant as a result of mining exploitation, the holder should reimburse the cost of these works or installations or, if it is lower, the value on the date they became redundant. The amount of these indemnities will be compensated with the advantages that those suffering these damages may, as the case may be, obtain from the activity and the works of the mining title holder” (*Art. 126*). The implementing text of these *Mining Law* provisions, which is being drafted, will determine the amount, frequency, mode of payment and all other terms related to indemnities.

— What type of compensation is most appropriate?

There are several types of compensation and indemnification: cash money, replacement land or homes, livelihood support in a new house, numerous community services such as education, health, regular payments of a portion of the income earned by the mining project, etc. Communities should assess the types of compensation with great care – that is, do not quickly accept a suitcase full of cash.



Cash has largely failed as a type of indemnification. The amount of cash is often inadequate to support land-based communities to begin a new life. What is more, without support, a sudden influx of cash can lead to poor decision-making by community members on expenses, soon leaving them in poverty (and generally excluding women, children, elderly, etc.).

— What level of compensation will be sufficient?

The international standard is that compensation must be sufficient to restore (and should strive to improve) livelihoods to the level existing before the mining project. It is often challenging to determine if new life in a new location will be at least as good as a family's life until that point.

Compensation and indemnification should cover not only the loss of lands and physical assets, but also access to natural resources and other means of livelihood, such as community forests. → *See Unit 3.4 about participatory mapping of natural resources*

The key components of a compensation program must be determined: new livelihoods, access to markets, roads, schools, medical clinics, religious centers, preserving cultural values, grievance mechanisms, quality of agricultural lands, professional training, long-term work at the mining site, etc.

— Compensation is not adequate and was never paid. Who should we contact?

The Ministry of Lands and the Land Commissions are responsible, as well as the Court of First Instance, in the absence of a mutual agreement among the expropriating party and the landowners.



Resettlement programs must be inclusive. All those who will be displaced from their lands have a right to compensation. Those who will be temporarily displaced from their lands, or who will suffer an economic displacement (but will stay on their lands), also have a right to compensation or indemnification.

Participating in the development of a Resettlement Action Plan (RAP)

— What is a Resettlement Action Plan (RAP)?

A **Resettlement Action Plan (RAP)** is a document in which the mining company, a project developer or another responsible entity defines the procedures and measures they intend to implement in order to mitigate negative impacts, indemnify losses and secure advantages for the development of people and communities affected by the investment project.

Mining companies are required to develop a RAP with the participation of communities affected by the project, and to make it public (see the diagram below, “Phases of a resettlement process” and “Participation in a resettlement process”). The RAP is a public document.

— Why does the RAP matter?

The RAP is very important, because it is the moment when key decisions are made: **who** will be resettled (the project-affected people or “PAPs”, defined below), **where** they will be resettled (resettlement area) and according to which rules (the **framework compensation agreement**). The framework agreement is discussed and signed by the involved parties, and forms the basic agreement according to which all negotiations with affected people to settle compensation will be made. The RAP must be developed by collaboration among the national and local authorities, as well as affected people and their representatives.

— Who are “PAPs”?

The mining company calculates who will be in the category of “people affected by the project”, which they refer to as “PAPs”. The “PAPs” are those who suffer a direct loss of resources, housing or disturbance to livelihoods. This loss or disturbance opens a right to compensation. Collective (based on lineage,

community or municipality) compensations may also be due. These compensations are one-time. They must be understood as limited in time, and do not give rise to a right for life.

Case Study: Resettlement of people of Sangarédi

In 2007, the GAC company proceeded to survey and resettle an estimated 650 people residing in two villages in the sub-prefecture of Sangarédi, as part of the development of its bauxite exploitation project. According to the company, the displaced villages were fully reconstructed at another site, in modern-style housing with all basic infrastructure: school, market, drilling for drinking water supply, health centers, cultural and sport areas for youth, prayer sites, etc.

Others say that the infrastructure is not as described: there is no water supply, no arable land, no cultural or sport areas, no suitable prayer sites. It is said that the two-room houses measure just 7.5 square meters, with a living room that measures just 2 meters by 1 meter, one latrine for every two families, a school without a teacher, and a health center without equipment or staff.

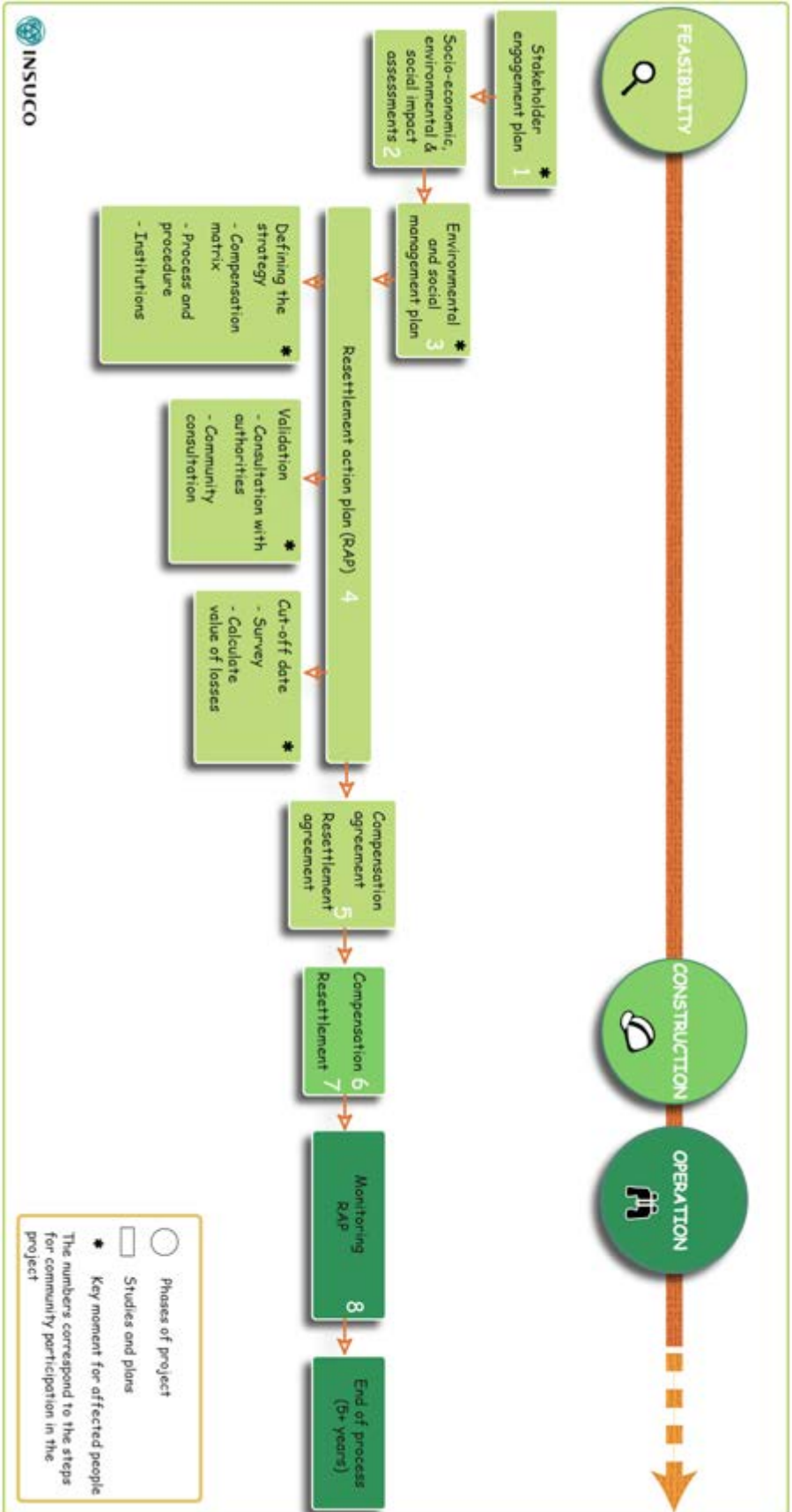
Others agree that despite the enormous efforts made, the resettlement operations should be considered a failure, because the relocation was hardly followed up with measures for accompaniment. The relocation was planned without compensation for agricultural lands. As a result, famine progressively set in, because there were no fields to cultivate, leaving residents with no choice but rural exodus. (CECIDE; BGEEE)

— Advice for participating in a RAP process

The mining project should not advance in a manner that affects communities without first having agreed with them on the terms of the RAP (with the participation of communities in the process, see diagrams above) and ensuring that the terms are in compliance with the law. **Access to independent experts** can be very important at this stage to ensure a fair RAP process, with full and informed community participation. According to a draft international standard, “the company should facilitate access, if need be, to legal expert or other advice. This may involve providing funding to allow affected people to select and consult experts, to work with governmental agencies and/or NGOs to furnish pro bono legal and other services to affected people, or another means” (IRMA).

Very careful attention must be paid during the **negotiations for compensation and indemnification**. Communities must be prepared in order to ensure the full protection of their rights, because companies often want to complete the process as quickly as possible and with the least cost. The negotiations should be done with the involvement of the State’s technical services and before the decentralized services.

PHASES OF A RESETTLEMENT PROCESS



PARTICIPATION IN A RESETTLEMENT PROCESS



What are some common challenges?

— Women and land rights

Compensation is paid to the landowner or user, that is, the male head of the household. But the women who are responsible for the agriculture may not receive compensation, and sometimes the male heads of household do not manage the compensation money in a manner that takes women and their needs into account. For example, for the diamond mines of Marange in Zimbabwe, the female heads of household were excluded from the indemnification, because the local authorities only defined a “household” as one led by a male. Similarly, several households were led by children, because their parents had died of HIV/AIDS, and these households too, were excluded from indemnification. (Among other things, the army was also used to force people out of their homes, killing several persons.) Here is some advice to take gender into account:

- Ensure active participation by men and women during all consultations. Help remove barriers to participation: for example, provide support for child care or for transport, in order to allow participation in meetings.
- Pay particular attention to divorced persons, single parent households, and elderly.
- If required, include the name of the spouse or partner on official documents. Identifying the spouse on land titles, including official land rights registers, helps avoid fraud and strengthens security for both partners. In particular, assets acquired during the marriage should be registered in the name of the husband and wife (joint ownership) and should be jointly managed. (NRC)

Finally, here is an overview of **concerns and common issues** that have occurred, according to the experiences of other communities (*Herbertson*). We include these here in order for local people to anticipate and to try to avoid them.

Poor quality of the studies

- If the ESIA and the RAP are of **poor quality**, then the project's impacts are not fully understood, and many displaced persons (especially economically displaced) may be excluded from indemnification and the benefits of resettlement. → *See Unit 1.3 about ES/As*
- **Lack of sustainable livelihoods** at the resettlement site. Jobs are available at first, but only last a few months.

Poor quality of the new site

- **Sites are not ready.** The resettlement sites are not ready by the time displaced persons must move there. Houses are not built, no water or electricity, agricultural fields aren't cleared, etc.
- **"The soil is no good".** Poor quality agricultural land at the new site.
- **Few jobs.** At the new site, the only available jobs offered are forced participation in a large-scale agricultural or labor scheme; people become indebted and there are many labor rights violations.

Poor relationships between the company and displaced persons

- **"King-making"**. The company or the government designates a representative to speak in the name of the community, instead of leaving this choice to the community.
- **"Divide & conquer"**. The company plays different sub-groups of a community against each other → *See Unit 3.2 about consultations within communities*
- **Broken promises.** Unrecorded promises often broken.
- **Discrimination** against women, children, persons with disabilities, elderly.
- **Disputes.** Disputes between the company and the community concerning if/when resettled persons should pay for electricity, water, other services at the resettlement site.

Violence, coercion

- **Use of force during resettlement.** → *See Unit 3.1 about violence*
- **Coercion and intimidation.** A common approach is to present each villager with a list of compensation and say "if you don't sign this, you won't get any compensation at all", thus coercing people into agreeing to unfavorable resettlement terms. → *See Unit 4.2 about consent*

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ 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.

ANIMATION ACTIVITIES

- Presentation of the key lessons and diagrams, “Phases of a resettlement process” and “Participation in a resettlement process”.
- Presentation and discussion of the case studies of the Endorois people, Ogoni people, and resettlement at Sangarédi. → *See also Advice for facilitators > Basic animation activities > Discussing a case study*
- Discussion in plenary or in small groups to assess information required for informed participation in a RAP process (see box below).
- Forum theatre about negotiating a RAP (see box below).

Animation Box: Analysis

Verifying information in the RAP

Objectives: Understand which information affected persons need in order to participate in a RAP process. Understand to whom questions should be directed.

Tell participants to put themselves in the shoes of someone who has received notice that a RAP process was started by the mining company. Ask participants to work in small groups. Ask them to identify what information they would need in order to verify the RAP. What questions must they ask to obtain information? To whom should these questions be directed? Here are some examples of issues to address (with the company, the State, NGOs, etc.):

That you will receive a compensation sufficient to fully replace what you will lose. → *See Unit 3.4 about land use*

That you are satisfied with the location of the resettlement sites listed in the resettlement plan. (Quality of the soil, relationships with neighboring communities, payment for services such as water and electricity)

That you will have security of tenure at the site, in case of resettlement.

That the housing and services to be provided at the resettlement site are adequate (who will pay for the services?).

That you are satisfied with the livelihoods support made available (is this for an unlimited duration?).

That you are satisfied that you will not be worse off than you are today.

That the conditions respect your right to adequate housing (and its seven criteria).

(Adapted from EC)

Animation Box: Forum theatre

Negotiating a RAP

Objectives: Understand the barriers to informed participation in a RAP, including negotiations and coercion. Identify actions for better results.

→ See *Advice for facilitators > Basic animation activities, for guidance on forum theatre activity*

Scenario: The representative of a mining company, Mr. X, accompanied by a lawyer and a local police officer, visits a community and presents an official document stating that the community will be resettled in order to make room for an essential development project. Community members, led by two representatives, are shocked and deny having signed an official agreement. But to their surprise, Mr. X presents a piece of paper with the words “Written Agreement” at the top, clearly signed by the community representatives. He says: *“An agreement is an agreement. Could you please leave and stop blocking our work. We have no time to lose.”*

Community members are furious and confront the representatives. They in turn insist they are innocent and propose resisting the agreement. They approach Mr. X and his support staff, and inform them of their decision not to be resettled. The lawyer emphasizes there is a written agreement that may not be violated, and that a breach of the agreement will automatically result in forced eviction. The community members try to reason with them: *“We have lived here for generations. This land belongs to our ancestors.”*

But their attempts are in vain. The police officer commands community members to immediately vacate their houses. When the community members refuse and announce a seated, non-violent protest, Mr. X loses his patience and tells the police officer to stop playing around and do his job. The police officer pulls out his stick and starts beating the community members. Mr. X looks at what is happening and smiles: *“You leave me no choice. He who does not hear must feel. There is no alternative. What must be done, must be done.”* (OA, 2014)

Animation Box: Discussion questions

Sangarédi case study

Objectives: Understand the challenges to obtain a sufficient type and level of compensation for resettlement.

What mechanism was used by the GAC project?

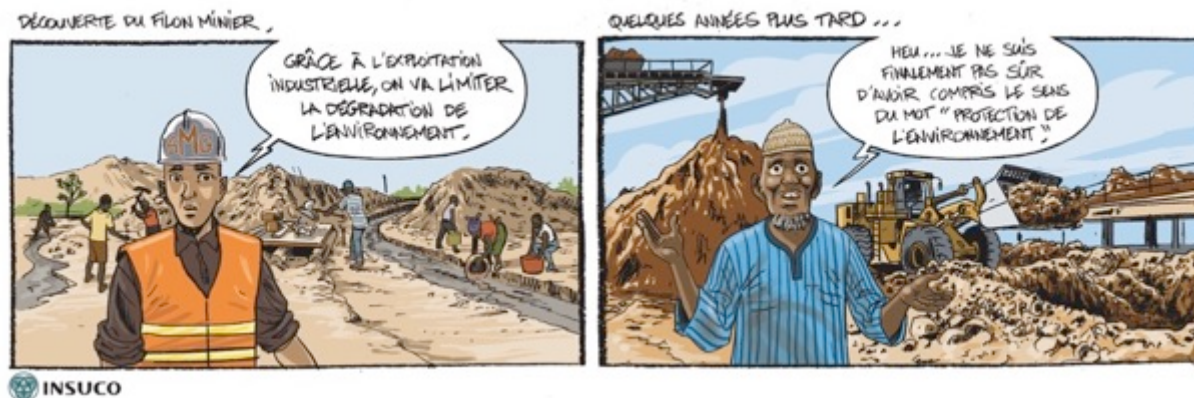
Was the principle of fair and equitable compensation respected?

How were the local authorities involved?

Are there any appeals for a person who has been expropriated and who is not satisfied with the compensation? What actions can they take?

→ See also *Advice for facilitators > Basic animation activities > Discussing a case study*

Unit 5.2 Since the company's arrival, we see environmental pollution all around us. What do we need to know?



TEACHING OBJECTIVES

- Improve understanding among local actors of the concepts of the environment and pollution in the context of a mining project, as well as the right to environmental protection and health.
- Know and learn to mobilize existing resources and tools for environmental protection and quality of life.

THEMATIC CONTENT

Environmental pollution, mining and local communities

In a mining project, the construction and exploitation phases are often the ones that most degrade the environment: deforestation, erosion, loss of agricultural lands, pumping and/or water pollution, construction of tailings facilities, etc. Women are generally disproportionately affected by environmental pollution. For example, they are usually responsible for collecting water. If the water supply and sanitation services become inadequate, women may spend up to four hours a day walking, waiting in line, and carrying water.

No industrial open pit mine operates without significant long-term impacts, in part because 99% of the displaced and treated rocks in open pit mines ends up as **waste**. This waste is disposed of, usually in the form of mud, to a permanent storage area, called a waste management area or a storage facility.

Disposal of **tailings** is commonly identified as the main source of mining operations' environmental impact. The volume of waste requiring storage often exceeds the total volume of the extracted and treated mineral. Poor use and disposal of chemical products (for example, cyanide for a gold mine) leads to waste, which can significantly affect not only the soil (affecting crop quality and the underlying water bed), but also water and the health of those using it, as well as the surrounding communities.

Industrial mines can compete for **water use** with other users – residents, agriculture, animal husbandry. Mining operations can have various significant impacts on an economy such as that of Guinea, where the largest amount of water used in the country is absorbed by agriculture. The high number of people migrating to the mining site to work there (or to look for work) also causes significant environmental impacts on the neighboring villages and towns, especially on the availability and quality of drinking water. Security perimeters can also block access to water for local communities.

Industrial mining exploitation **permanently modifies** the physical, chemical and biological composition of the soil. Almost all industrial mines need **long-term water treatment** – this means active treatment of water after mine closure, likely in perpetuity. Groundwater depletion by dewatering operations and the presence of large mine facilities may take decades after the end of mining activities to restore, and in some cases, the groundwater levels and flow directions can be changed indefinitely. (*IRMA*)

Bioaccumulation of mercury and other heavy metals in the soil may only appear after several years, or even after mine closure. It is important to understand the risks usually incurred by mineral exploitation.

That is why environmental rehabilitation and a **fiduciary account for environmental rehabilitation** are so important and required by law. (*Art. 144 of the Mining Law; Art. 6 of the ECOWAS Mining Directive*).

VARIOUS KINDS OF POLLUTION OBSERVED IN GUINEA



BLASTING IN AN OPEN PIT GOLD MINE IN GUINEA



— Community concerns

Environmental pollution is often a source of mining conflicts. Communities living and growing crops near mining areas have many questions about the various forms and levels of pollution they are confronted with, such as the following examples:

“Since the arrival of the mine, the vehicle traffic, blasting and opening of exploitation sites have **increased dust levels** during the dry season to the point where the situation is intolerable. It has become dangerous to walk on the paths by foot or motorbike, because there is no visibility. Our homes and gardens are dirty and we breathe dust all day long. How can we protect our safety and our health?”

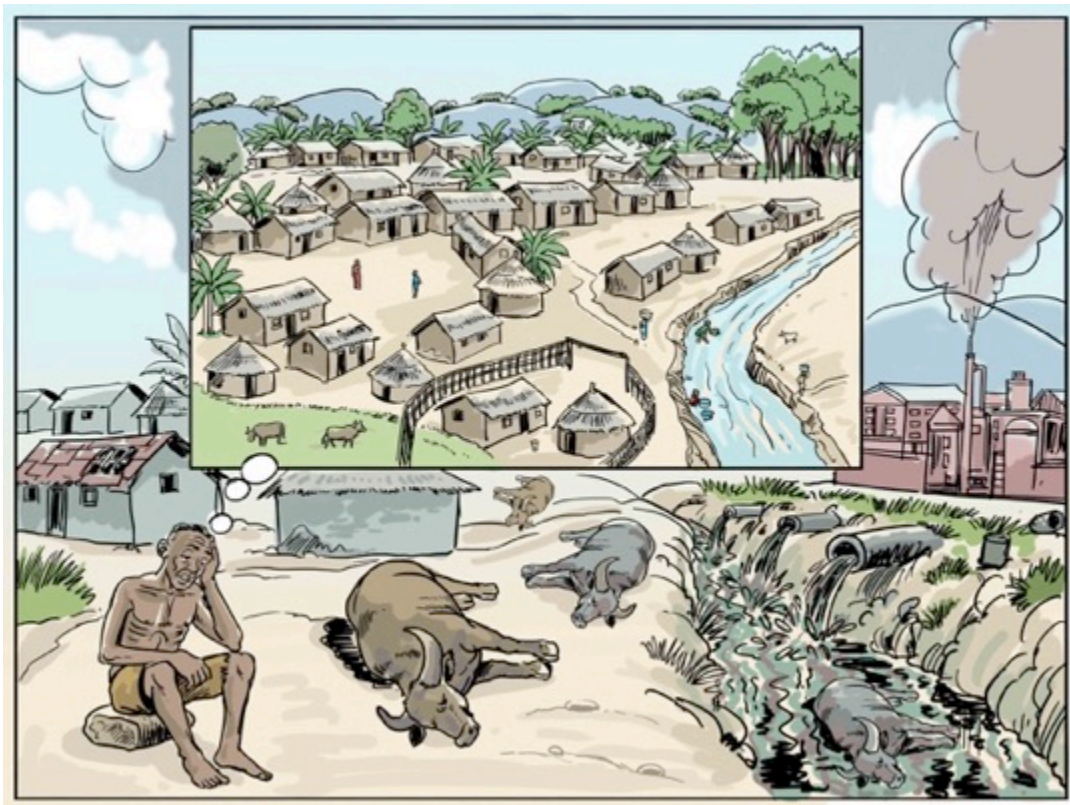
“Given the shortage of drinking water in our village, the company has done some drilling (wells) for the community, but the water from the wells closest to the cyanide lake (water residue) always has a yellowish color, and people don’t know if this water is polluted or not by the substances the company disposes of, such as cyanide, and they don’t know if they should stop using it. How can we know if the water quality is safe?”

“Since the beginning of the mine’s exploitation, the **water quality and levels** of our creeks and wells have quickly deteriorated. Not only have we seen the terms of our access to water deteriorate, but we aren’t sure if the water we are consuming is safe. How can we know if our water is safe and how can we again have access to water in a quantity and quality sufficient for us and our animals?”

“Vehicle traffic day and night, blasting, operation of the plant, and train traffic of minerals have all increased the **noise level** to the point where it covers our voices, scares the game away and prevents us from sleeping at night. How can we know if the noise levels we are dealing with comply with the company’s commitments, the laws of Guinea and international norms, and how can we improve our situation?”

“We sometimes find that some of the vehicles and/or the plant can dump **products that burn the ground** and enter into the soil. We think these can be toxic substances dangerous for our health and the environment. How can we know if these are dangerous and how to protect ourselves?”

RIGHT TO A HEALTHY ENVIRONMENT

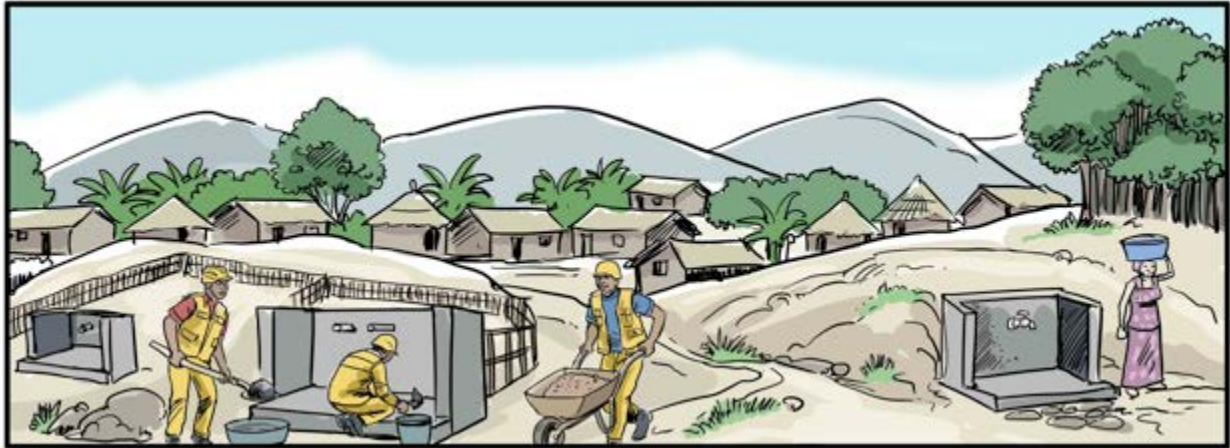


The *Constitution* recognizes the right to a healthy environment as a fundamental right of every citizen. Article 16 states that: “everyone is entitled to a healthy and sustainable environment, and has a duty to protect it. The State ensures protection of the environment.” Article 19 reiterates that people “are entitled to preservation of their heritage, culture and environment.” This means that communities, supported by the State’s services, not only have the right to enjoy a healthy environment, but a duty to protect it. Guinea’s national policy on the environment aims to allow actions taken in favor of environmental protection to be more efficient and coherent.

In many of the world’s regions where mines or quarries have been opened, citizens’ right to a healthy environment has not been respected, and violations have often been reported, though without necessarily any positive consequences to remedy the harm. The responsibility to have this right respected falls directly on the States that have inscribed this right in their Constitution.

For their part, citizens also have the duty to respect and promote protection of the environment against pollution. Thus, in several texts, community participation is encouraged in the form of environmental associations, local communities, clusters, etc. The *Environment Law* encourages the creation and functioning of associations for the protection and enhancement of the environment (*Art. 14*) and grants public interest status to associations working in the environment field (*Art. 7*).

RIGHT TO WATER



Water is one of the elements of nature, impossible to replace by a substitute, the source of life and the basis of human dignity. The right to safe and clean drinking water is recognized as a fundamental right, essential to the full enjoyment of the right to life and all other human rights. Access to water is a component to realize other rights such as the right to life, to health and to food.

The *Water Law* provides that “everyone has an inalienable right to access water resources and a right to use them for domestic purposes” (*Art. 6*). An inalienable right is a right of which no one may be deprived. In its Article 20, the *Water Law* provides that “subject to the public interest, the use of water resources for drinking water has absolute priority.”

The Minister can modify the inalienable right to access water. It is specified in law that if such modifications deprive citizens of their right to water, those citizens have the right “either to an alternative source for water supply, or to prior and just indemnification” (*Art. 14*).

The elements of the right to water are:

- Sufficient supply: the water available must be sufficient and continuous to cover personal and domestic uses.
- Physically accessible and affordable: according to the World Health Organization, in order to have basic access to 20 liters per day, the water source must be within **1,000 meters of the home** and **collection time should not exceed 30 minutes**.
- Water for personal and domestic uses must be safe and acceptable (*OHCHR*).

Case Study: Environmental pollution at an industrial gold mine in Guinea

In October 2010, two partner NGOs, CECIDE (Guinea) and Global Rights (United States), with the technical advice of an expert geochemist from the American Association for the Advancement of Science (AAAS), determined that in the industrial gold mine they visited, many technical problems needed to be addressed by the mining company operating there and by the Guinean authorities. These problems included:

1. *Security and access to the gold mine tailings pond.* There is no adequate security barrier, because in a number of places along the perimeter, the barrier is missing or has been damaged. In other places, there is no restriction whatsoever, meaning that humans, just as animals, have direct access to the tailings. Two major risks are associated with the tailings. First, the nominal concentrations of cyanide found of 50 mg/L were well above concentrations of 1 mg/L (a level very toxic for human beings) and even cows die at levels of 5 mg/L. Next, the tailings represent a significant physical danger: animals get stuck in it and die by drowning, and people trying to save their valuable livestock risk dying in the same manner.

2. *Erosion and sedimentation.* The first 50 to 100 meters of earth that are extracted are made up of a sediment that quickly decomposes into a substance resembling sand. There is a serious problem of runoff carrying this sediment to neighboring properties, including streams, and in some cases fields planted by community members. During a recent rainy season, such tailings severely damaged a good portion of a community member's rice field and a widow's vegetable garden. (CECIDE)

What is understood as pollution under the law?

According to the *Environment Law*, pollution is “all direct or indirect contamination or modification of the environment, provoked by any act and likely to: affect a use of the environment profitable to people (e.g., use of river water, cropland, forests, etc.); cause or risk causing a situation prejudicial to people's health, safety, and well-being, flora and fauna, or collective and individual goods (e.g., dust emissions causing respiratory disease, or high noise levels that cause people stress and scare away animals)” (Art. 3).

Protecting the environment against pollution, and ensuring its enhancement, are one of the foundations to allow the successful economic, social and cultural development of the country (Art. 5 of the *Environment Law*). This foundation is so important that the *Constitution* states that “the transit, import, storage or discharge on the national territory of toxic waste or pollutants constitute a crime against the Nation” (Art. 17). For example, the discharge of toxic wastes in the soil, even accidentally, is considered a crime.

— International standards: Maximum levels of different forms of pollution

In its laws, Guinea has not adopted maximum levels to measure different forms of pollution. However, there are international standards that set threshold limits for each form of pollution. These standards should apply to companies that operate in countries that do not have their own pollution standards.

The draft IRMA Standard for Responsible Mining has collected leading international standards for the quality of surface waters (Table 3.1a), ground waters (Table 3.1b), air quality (Chapter 3.4.1), noise (Chapter 3.5) and greenhouse gas emissions (Chapter 3.6). For companies using cyanide, the international standard is the *International Cyanide Management Code*; as of the date of publication of this Guide, among the companies in Guinea, SAG is a signatory. For mercury, the standard is the *Minamata Convention on Mercury*, ratified by Guinea in 2014.

The World Bank Group's *Environment, Health and Safety Guidelines* also state maximum environmental pollution thresholds (water, air, soil, waste, dangerous materials) and addresses issues of community health and safety. → See Source documents > Initiatives on industrial mining exploitation

Who is responsible for monitoring environmental impacts?

The mining company, the CPSES and the BGEEE are obligated to monitor and supervise implementation of the ESMP. → See *Unit 1.3 about ESAs and Unit 1.1 about the water supply plan*

In Guinea, several Ministries can be involved in monitoring water use. This first concerns the Ministry of Energy and Waterworks whose mission is to develop and implement policies and development strategies for the energy and water sectors in Guinea. This is done by technical services.

The Ministries of Environment and Mines have a role in the supervision of water use, for example, their level of pollution. The ministerial authority in charge of the environment will determine the list of harmful or dangerous substances whose discharge, dumping, depositing, or introducing directly or indirectly in Guinean inland waters should be either prohibited or subject to prior authorization of the environmental service (*Art. 31 of the Environment Law*).

Copies of the results of monitoring water used by the mine should be available from the Ministries listed above or from the mining companies.

What are best practices to manage environmental pollution which mining companies should follow?

— Water quality

The rehabilitation of pollution caused by a mine can be very costly; preventing pollution in the first instance is preferable. Mining exploitation minimizes water pollution by limiting the discharge of polluted water into the environment, by limiting the amount of infiltration to waste rock, and by collecting all contaminated water before it crosses the mine facility boundary (*Chapter 3.1, IRMA*). The quality of water needed by mines (for example, to treat and recover metals, to control dust, to wash equipment) is inferior to the water quality needed for human consumption. Mines can use wastewater, hyper saline ground water, or water coming from other disposal sources. (*ICMM, 2012*)

— Water quantity

The key aspects of mining exploitation regarding water use include efficient use of production water, withdrawal and disposal of mine dewatering water, storm water, and floodwater in ways that minimize harm to surrounding water users and environmental resources, and ensuring that total withdrawals maintain environmental flows in nearby streams, springs, lakes, wetlands and any other surface water resource. Responsible industrial mining protects water resources by minimizing the need for dewatering or efficiently using the dewatering water. Responsible groundwater use will protect other groundwater users by not causing unreasonable groundwater drawdown. (*Chapter 3.2, IRMA*)

— Mine waste management

It is through waste management that a mining company has the most control over both the short- and long-term environmental contamination, but the control and management associated with these waste materials is a major challenge. It must be ensured that mine waste (tailings, waste rock and overburden) and mine facilities (waste rock piles, tailings impoundments, open pits, underground workings, etc.) are managed in a way that eliminates offsite contamination, and leaves remaining mine features in a condition that brings about the least environmental and financial risk, and the most potentially useful land use to future users. (*Chapter 3.3, IRMA*)

— Air quality

Mining sites can release significant quantities of air pollutants in two main categories: particulate matter, and toxics. By volume, most contaminants are particulate, such as dust from blasting, large truck and

equipment traffic, conveyors, ore crushing, etc. Toxics may only make up a small proportion of a mine's air emissions, but they can significantly degrade human health and the environment.

This pollution can usually be controlled with relatively inexpensive measures. But a mine's typically large geographic footprint make control especially important and sometimes difficult. The most common method for dust control is spraying water (for example, by truck on the roads and near blasting activities). Chemical additives, such as magnesium chloride, can increase the sprayed water's effectiveness and durability. Mining companies should aim to protect and maintain pre-mine air quality conditions through the reduction and control of physical and chemical emissions into the air. (*Chapter 3.4, IRMA*)

In case of pollution, what can we do?

In case of pollution, or sometimes suspicion of the presence of pollution (that is, when it could be doubted as to its presence), it is best to address the problem collectively, in collaboration with local authorities and mining company representatives. Insofar as pollution is regulated by law, it is for the competent authorities, in collaboration with affected communities and the mining company, to manage the pollution in order to limit its consequences.

— Observations and information

First, the pollution must be ascertained: meaning to describe it, provide its location, and date it. If the pollution is clearly visible (for example, an accidental discharge or emission of significant dust around a village), it is possible to collect evidence such as photos, testimonies, etc. If the pollution has been present for a long time (e.g., dust), it will be easy to collect evidence at the appropriate time. It is important to obtain information from the mining company on the levels of documented pollution or accidents occurred related to its project. → *See Unit 6.2 about documentation and monitoring*

It is often very difficult for people to prove the presence of pollution in a scientific manner. And even if scientific data is available, causality may be difficult to prove.

— Contacts

In case of an actual or suspected pollution problem, the community's main interlocutors within the **mining company** are: 1) the community relations department, 2) the environment department, and 3) management. The environment department is in charge of ensuring the company's mining project commitments are met, and that the environmental protection laws are respected. Community representatives, supported by their local authorities, can refer the company to the commitments made in the ESMP concerning potential project impacts. The CPSES should be contacted to ensure monitoring of the ESMP. → *See Unit 1.3 about ESIA's and Unit 1.1 about the water supply plan*

As concerns **public authorities**, all forms of pollution observed and sustained by communities can be reported to the president of the district, to the agent in charge of water and forests, to the municipality (mayor and municipal council), to the sub-prefect and their various department heads (including rural development), as well as to the prefectural administration for water and forests.

Concerning water issues, communities should be supported by the competent authorities, meaning the National Directorate of Water, including its representatives at the national and prefectural levels, and local municipalities who are in charge of enforcing the *Water Law*.

— Other options to seek remedy

If dialogue is impossible to establish, then affected communities (supported or not by their local municipal, prefectural and sub-prefectural authorities) may decide to file a complaint to enforce their rights. → *See Unit 6.3 about recourse mechanisms*

Case Study: Monitoring by CSOs of the BTC pipeline in Azerbaijan

The Baku-Tbilisi-Ceyhan (BTC) pipeline (large pipe to transport oil across large distances) is a project to construct an oil pipeline running from Azerbaijan, across Georgia and into Turkey. The project was subject to unusually high monitoring by national and international institutions to assess its public visibility and compliance with international standards. In this context, the British Petroleum (BP) company initiated a partnership with a regional CSO to provide trainings, mentoring and facilitation of local NGOs working in Azerbaijan. The partners signed a memorandum of understanding and started an NGO monitoring program focusing on 5 areas: environment, social issues & human rights, cultural, historical and archaeological heritage, and using local products and service providers. The company provided the funds for the trainings and mentoring, while the regional CSO financed the other costs.

The NGOs published their conclusions in May 2005 and discussed these in meetings with the regional CSO and with the BP company. The company agreed to implement several of the local NGO recommendations. The regional CSO served as a facilitator and informed interlocutor among the local NGOs and the BP company. The NGO representatives provided their local perspectives on improving performance and establish stronger relationships among civil society and the BP company. The BP company provided project management assistance and information necessary for the NGOs to play a critical and constructive role. There were also challenges: for example, the regional CSO's concerns about its reputation in light of a partnership with a major oil company such as BP, and the need for the regional CSO to include as many local NGOs as possible in the building of a consensus. Compromise, dialogue and patience were paramount. (IPIECA)

Template for a complaint letter about pollution

Sender: Name

Date

Name of the village, sector, district, sub-prefecture, and prefecture

Subject: Pollution observed (identify the type of pollution and the location)

Recipient: Name of the relevant mining company, sub-contractor (if applicable).

To the attention of the Director of Mining Company X:

We, representatives of the community we have found that the activities of your company (or one of your sub-contractors) are a source of pollution on the territory of the municipality and more specifically, the village

We have found that, on [date], the exploitation of the minerals causes: *Name the impacts of the environmental pollution. For example: a significant increase in dust during the dry season near some houses; an increase in noise and vibrations in residential areas due to the continuous traffic of mining vehicles, blasting, plant operation, works undertaken, etc.; an accidental discharge of unidentified liquids, considered to be dangerous, following a road accident involving one of your vehicles; deforestation and/or destruction of farming areas without prior notice, etc.*

Present the pollution's consequences on the environment and human health. For example: reduced access to water by village residents (water may be polluted and/or quantity diminished in certain streams, sources, wells, etc.); health consequences such as an increase in illness in children, pregnant women, elderly persons (diarrhea); reduced access to water for livestock (eventual loss of livestock or illness);

increase in pulmonary illnesses due to dust; increase in stress and insomnia due to noise and vibrations; degradation of farming due to lack of water, dust, land acquisition, etc.

We have just drawn your attention to the urgent need to remedy this situation for the well-being of the inhabitants of our community and in order to avoid conflicts. The laws of Guinea protect citizens and their environment from pollution (*Constitution, Mining Law, Environment Law, Water Law, Public Health Law, etc.*) and your company established in Guinea is obligated to comply with these laws.

Furthermore, in your ESIA and water supply plan, your company made commitments that your activities would take place in a manner limiting negative impacts on communities and the environment. We ask you to explain what measures you intended to take, and how you implemented these in order to avoid this pollution and reduce its impacts on neighboring communities. We also emphasize the importance of involving communities in the areas where you operate in a continuous process of information and consultation.

We therefore ask you, in collaboration with local authorities, to meet with us in order to observe in the field the pollution to which we refer. Then we can open a dialogue (company representatives, local authorities, community representatives), in order to find the best way to remedy or mitigate this pollution in order to respect our right to information and to a healthy environment.

We would be most grateful if you could respond in writing to our community representatives as soon as possible. In order to involve representatives of the State who are guarantors for ensuring application of these laws, a copy of this letter is being sent to the mayor of the municipality, the sub-prefect, and the prefect of

Please accept our sincere greetings.

Name and affiliation of the signatories

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ A mining project's construction and exploitation phases are often those that can most degrade the environment. 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 Law provides that every person has the inalienable right to access water.
- ✓ The mining company, the Prefectoral Committees for Environmental and Social Monitoring (CPSES) and the Guinean Bureau of Environmental Studies and Evaluation (BGEES) are required to implement and monitor the Environmental and Social Management Plan (ESMP). Industry good practice should govern water quality, water quantity, mine waste management, and air quality.
- ✓ In case of pollution, it is best for communities to address the issue collectively, in collaboration with local municipal authorities and mining company representatives.

ANIMATION ACTIVITIES

- Discussion of the unit's themes. Using an example given during the discussion, collectively draft a letter to address a joint complaint letter about the pollution.
- Discussion of the case studies of the gold mine and the monitoring program in Azerbaijan. → See *Advice for facilitators > Basic animation activities > Discussing a case study*
- Forum theatre to understand the steps to take in case of environmental pollution, using the community concerns listed in the unit to create scenarios. → See *Advice for facilitators > Basic animation activities > Forum theatre*

Animation Box: Analysis

Right to a healthy environment

Objectives: Understand the content of the right to a healthy environment, also according to tradition.

Present Article 24 of the *African Charter*: “All peoples shall have the right to a general satisfactory environment favorable to their development.” Underline and explain the key words. Next, present a story. Among the Mandinka, there were oversight committees in each village to prevent environmental degradation. Next, myths were built about the forests or bushes, and water access points, for their preservation. The forests or bushes surrounding villages served to protect the huts against strong winds. Water access points protected the water source.

Discuss a healthy environment (*What factors or human activities change the local environment? What people or services protect the area's environment?*)

Ask participants to write Article 24 of the *African Charter* in their own words.

Show the linkages among the story and Article 24 of the *African Charter*.

Ask participants to work in groups to show in an image or poster a representation of their interpretation of Article 24.

Ask participants about respect for this right in their locality. What comments do they have about respect for this right? (*EIP*)

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



TEACHING OBJECTIVES

- Define the concept of “cultural heritage” as place, practices and values.
- Guide communities on identifying what may constitute culture heritage on their territory and justifying its importance.
- Identify the steps communities can take to ensure cultural heritage sites are protected and/or that communities can continue their existing practices at these sites.

THEMATIC CONTENT

Cultural heritage, mining and local communities

— What is cultural heritage?

Every society according to its traditions wants to preserve and pass on a heritage coming from their ancestors and belonging to them (cultural heritage). Cultural heritage can be classified as follows:

Tangible cultural and natural heritage: Tangible objects (houses, masks, tools), monuments, groups of buildings, sites, certain natural features, geological and physiographical formations and precisely delineated areas, as well as natural sites or precisely delineated natural areas (*Arts. 1 and 2 of the World Heritage Convention*).

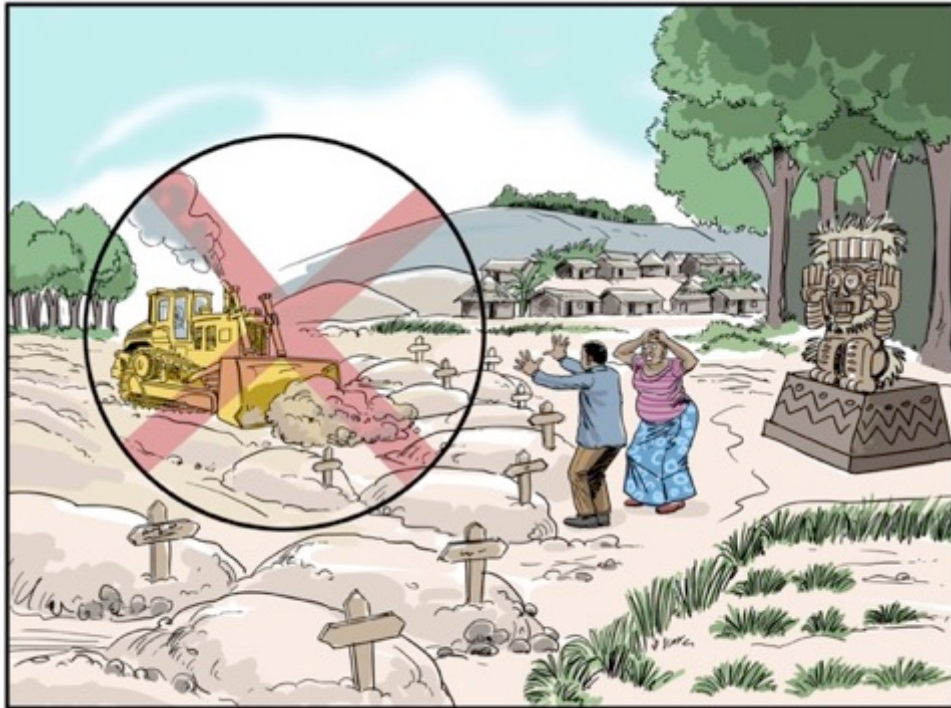
Intangible cultural heritage: Expressions (songs, dances, oral histories), knowledge and skills – as well as instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups, and in some cases individuals recognize as part of their cultural heritage (*Art. 2 of the Convention for the Safeguarding of Intangible Cultural Heritage*).

Sacred sites may refer to a site, object, structure, area or natural feature or area, held by national governments or indigenous communities to be of particular importance in accordance with the customs of an indigenous or local community because of its religious and/or spiritual significance (*Akwé : Kon Guidelines*). These are the natural places, sources, rocks, cemeteries and tombs, and places where communities conduct certain practices: they sing, they remember their community’s history, they pray, they initiate youth to educate them.

— Mining and cultural heritage

Mining exploitation and other forms of industrial development can result in profound and irreversible damage to cultural heritage. Most obviously, exploration or mining can destroy or damage tangible cultural heritage, such as historical buildings or sites of spiritual significance for local communities. But damage to intangible cultural heritage can also occur by inappropriate visits to a site, or inappropriate use of traditional knowledge. (Chapter 2.11, IRMA)

RIGHT TO PROTECTION OF CULTURAL HERITAGE



Mines may not occupy your cultural sites without your consent. According to Article 111 of the *Mining Law*: “No work of prospecting, exploration or exploitation of mineral substances or quarries may take place, without authorization, on the surface and within one hundred meters: around properties closed by a fence or a similar structure, towns, groups of dwellings, wells, religious buildings, burial places and sacred sites, **without the owner’s consent.**”

According to the *Akwé : Kon* guidelines, “When developments are proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, personnel associated with such developments should recognize that many sacred sites, and areas or places of other cultural significance may have important functions with respect to the conservation and sustainable use of biological diversity and, by extension, the maintenance of the natural resources upon which such communities rely for their well-being” (para. 31).

— Who has the obligation to protect cultural heritage?

Guinea recognizes that the State primarily has the “duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage situated on its territory” (*Art. 4 of the World Heritage Convention*). Guinea also recognizes that the State has the duty to take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory (*Art. 11 of the Convention for the Safeguarding of Intangible Cultural Heritage*).

How can we assess a mine’s cultural impacts?

Given the duty of the State to protect sites, and the responsibility of mining companies to assess the impacts of their activities, companies are responsible for identifying not only the environmental and social impacts, but also their cultural impacts. → *See Unit 1.3 about ESIA*s

If a mining project may have an impact on cultural sites, the site can be replaced or moved. The *Akwé : Kon* guidelines provide that if it is necessary to assess the potential impact of a proposed development on a site, the assessment process should also include the selection of an alternate site for the mining project, “in consultation with its custodians and the affected community as a whole” (*para. 32*). Where a sacred site is to be affected by a mining project, and in cases where no law exists to protect the site, the local community may wish to **develop protocols** regarding the site in the context of the proposed project (*para. 32*).

The IFC safeguard policy makes the following additional distinction among replicable cultural heritage that can be replaced, moved or reproduced, and non-replicable cultural heritage that cannot be replaced, moved or reproduced without irreparable damage or destruction. Finally, the IFC also distinguishes critical cultural heritage, which is, for example, of national importance, because it is a place where a historical event took place, or because it is an object held by the ancestors of all Guineans.

— Responsibility of mining companies for protecting cultural heritage

According to the IFC safeguard policy, the mining company will “identify and protect cultural heritage by ensuring that internationally recognized practices for the protection, field-based study, and documentation of cultural heritage are implemented” (*Performance Standard 8, para. 6*).

To do this, the mining company will “consult with affected communities to identify cultural heritage of importance, and to incorporate into [its] decision-making process the views of the affected communities on such cultural heritage” (*Performance Standard 8, para. 9*).

— Responsibility of communities to identify cultural heritage

Mining company representatives both know, and do not know, what a community’s cultural heritage is. They know this, on the one hand, because around the world, human beings are similar. And sites that are important to communities may be defined in legal texts that companies rely on and which are valid for all communities around the world.

But, on the other hand, mining company representatives often work in countries or regions that they do not necessarily know. **Someone can only know what they have seen**. In countries where they work, these representatives do not know exactly what is important for the area’s inhabitants to transmit to their children, the historical events, or how spirits and ancestors are taken into account.

Finally, these representatives know nothing about the heritage of a particular town, because a foreigner does not know where a village's cemetery is, until an inhabitant has shown him where it is. And even if the representative then knows the location of the cemetery, he still does not have all the necessary information; as a proverb says, "a foreigner can know a recent tomb, but he does not know who lies beneath." The village's heritage may even be kept secret from a neighboring village, when it comes to fetishes or places to make sacrifices to the spirits.

Case Study: Failed sacrifice for smooth progress in a village in Guinea

A village located near the main exploitation area of a mine in Guinea asked for a sacrifice for smooth progress of the works to be done, in order to appease the eponymous ancestors or founding spirits of the village. The mining company heard the request and responded. It was up to the company to pay for the sacrifice. Knowing little about Guinean society and how to conduct sacrifices, the company entrusted the task and the money to the Mayor of the municipality.

The Mayor respected the day of the sacrifice, but did not respect the color of the animal that was to be sacrificed, nor the number of kola nuts. At first the village elders did not say anything, because this had been imposed on them from the outside. It was only a few weeks later that they voiced their disagreement about the sacrifice. The company thought it had done a good deed and that it got along with the villagers, but then saw that it was the complete opposite; their agent (the Mayor) had not correctly carried out his obligations, and had deceived them all. The elders regretted not having spoken up sooner, before the sacrifice.

Case Study: The sacrifice that created conflicts in Guinea

While working on a hill, a mining company's loader broke down. One of the village families told the mining company representative that the breakdown was because of a spirit's action, and that a sacrifice had to be done close to the village. The mining company heard the request, and the sacrifice was done without the knowledge of another family that owned the site.

Instead of appeasing the spirit and solving the mine's problem, the sacrifice created a war between the two families, and the mining company, too, was accused by the two families. The company understood too late that a sacrifice is never done without inquiring and without a community announcement. The family and the village authorities understood that the mining company quickly needed to be informed about the location of the sacred sites in the area, and who were the true guardians, family by family.

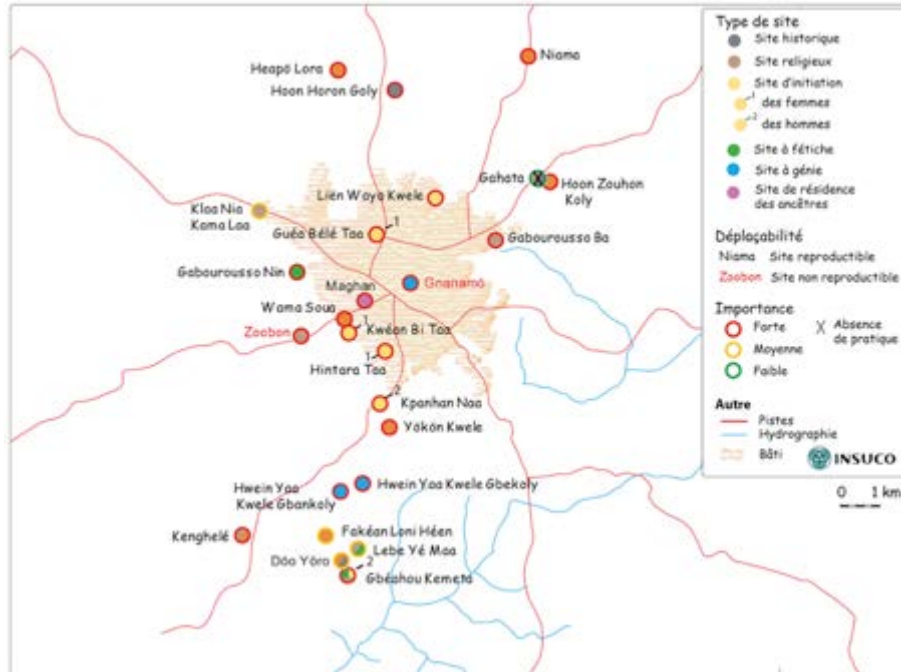
— Process of identifying cultural sites

Before beginning exploration work and before the development phase, a mining project should inquire about sites to ensure they will be protected. When a foreigner arrives in a village (a mining company representative or someone else), that person must be told what they can or cannot do in and around a given area. For example, they can be told: "Here, you cannot enter the forest, or there, you cannot bathe in the water or gather items from that side." If a foreigner is not informed and does something that they should not have done, they are pardoned. The community pardons that person, or a devil pardons him. It's because they were not responsible that they are pardoned.

In the same vein, a mining company representative cannot be held responsible for what has not been shown to them. They must see where a site is and know what can or cannot be done there. By showing the sites to company representatives, you can hold them accountable for their actions there.

Agents sent by the mining company to identify a village's sites are sent there to be the company's eyes and the ears, and to transmit this information to those who have not come yet, and those who will come later. On site, these agents make a "GPS waypoint" (with a camera, an agent records the "position" of the site, which is then mapped) along with one or more pictures, which indicate the site and provide additional information about it.

SAMPLE MAP SHOWING THE LOCATION OF CULTURAL HERITAGE SITES



The information collected in this manner will be given for years to come to all persons working on the mining project site. Every worker who comes to the area will have this map and will know where the sites are, and what may or may not be done at those sites. Recording this information allows everyone in the mining project and all of their new arrivals to be informed.

— Do we have to show our sites and have them inventoried?

You are not obligated to show the sites. But the company is obligated to respect the sites and must report on the respect that it and its agents have demonstrated. In this case, you must have an understanding not to disclose the sites, but still ensure that the company can fulfill its obligations to respect the sites. For example, you could decide to give some information, and not others. You would inform the mining company that a site exists, what kind of site it is, and ask the company to warn the village and the guardians of the site as soon as works are planned for the area, leaving enough time for the community to intervene as it wishes at the site, for example, in order to move it.

— We are asked to disclose our village secrets in order to better protect them: are we obligated to do this, and how can we ensure confidentiality?

Some sites are also "secret" sites. They contain objects that are secrets of a family, of a village or of several villages. Such secrets can include masks or fetishes, or information about the ancestry of a village's families, or information on the use of fetishes, or secret words to be uttered during a sacrifice. Various words or objects can be secrets.

When a company's representatives or agents come to inquire about the sites, it is not a question of giving them the village secrets or disclosing objects that should not be seen or known. The representatives and the agents are inquiring about protecting heritage sites. They need to understand why a site should be protected.

It is easy to make known why a site should be protected, and the importance of the site to the community, without disclosing secrets. The mining company understands that communities have secrets, and that they will be excluded from these. Community members can directly say that an important site for youth initiation rituals exists, show its location, and state that other information cannot be revealed. The company cannot ask communities to disclose secrets that the community does not wish to disclose.

Of course, for certain sites, providing the location is already disclosing a secret, or even the fact of knowing who is the guardian. But in its steps of protecting heritage, the mining company must, according to law, not share information given by a community, village or family. This information cannot be shared or made publicly available. In the office, the information is protected and only certain people have access to it. Those people are the ones consulted when other people, such as field staff, go to the village in question. Moreover, not all information is given to these workers. For example, the location of the site is given, as well as what is prohibited. The other information is not provided, because it is not needed in order for them to respect the site.

— **How can we be sure that the mine will take our recommendations into account when they intervene at a site?**

First, it is important that cultural impacts be taken into account during the ESIA process, so that the obligations are captured in the ESMP. → *See Unit 1.3 about ESIA's* The community can also ensure that its recommendations for site protection are taken into account in its relationship with the mining company. The community should mobilize the company and its community relations staff in particular, to provide necessary information about the site, the usages, and develop a **compact for shared management**, in one form or another. → *See Unit 4.2 about precursor agreements*

This compact or agreement should include management information (for example, the precise elements of a sacrifice, or who are the guardians responsible for the rites) and precise recommendations from the community. Through the guardians of the sites, and local traditional and public authorities, the community should assure itself:

- that every visit, and any action by the company close to or on the sites, be notified to communities before the company's intervention;
- that activities done by the mining company at the cultural heritage sites is governed by knowledgeable village resource persons;
- that for interventions at the site, such as sacrifices or prayers, or chasing a spirit, it is for communities to lead the rituals down to the smallest detail; the same applies if it concerns moving objects from a sacred forest.

Misunderstandings can occur between the community and mining companies. Community authorities and guardians of the site should not hesitate to approach the company to ensure that they have been well understood, and to provide guidance on how the company should act. It is also reasonable for local authorities and guardians to be present in order to monitor activities at the sites.

When a site cannot be moved, what proposals can the mining company make?

This is often the case with burial grounds, and we will use this as an example. When there are development projects, it can be challenging to respect burial grounds and ancestors. There are usually three possible solutions:

- The remains of dead humans are moved and placed elsewhere, as they had been resting, tomb by tomb. In Guinea, so far no one has done this operation, though it has been done elsewhere, and could be done in Guinea. It is for communities to decide if the bones of the dead can be unearthed and buried again elsewhere. It is for each person to decide what they wish for their loved ones, and for each community to know if God, the Koran, the Bible, tradition, ancestors themselves, would prohibit, authorize or tolerate in an exceptional case, this operation.
- Nothing is moved of the remains and the burial ground; it remains intact. If it is not an area for mineral exploitation, then it can be covered, with asphalt, and amenities installed. The tombs remain below and are no longer accessible to communities. If it is an exploitation area, the best method is not to touch the remains, and put an enclosure around the burial ground.
- Nothing is moved (not the remains, not the burial ground), but it is protected by an amenity such as a barrier, that prevents people from entering and carrying out activities. In this case, the burial ground can be in the middle of mining installations.

These options are for communities to decide on and to discuss with the mining company representatives.

— What remedy exists for communities who wish to see a site preserved (not displaced), and what works in our favor or against us?

The rationale of the site's significance for a community and whether it can be reproduced are factors that determine the importance of preserving a site. In some cases, arrangements cannot avoid a site or be done in another manner due to technical constraints. Depending on a site's significance, a mining project can override a site's preservation. If a site is important for a small community, the company may enforce its project and destroy the site. If a site is of national importance (a critical site, according to the IFC), the company would have trouble destroying it. In this case, discussions would be held to weigh the various benefits and losses. It is a site's significance that works in favor of communities, and a mining project's constraints that work against communities.

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ 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 that end, mining companies must identify cultural impacts, but the company requires the assistance of local communities to do so, because only local communities know the cultural impacts. Several possible solutions are available if a sacred site cannot be displaced.

ANIMATION ACTIVITIES

- Presentation of the unit's key lessons, followed by an analysis to identify cultural heritage (see box below).
- Discussion of a case study, followed by questions to identify the issues and discuss solutions.
→ See *Advice for facilitators > Basic animation activities > Discussing a case study*

Animation Box: Analysis

Identifying cultural heritage

Objectives: Understanding the concept of known cultural heritage.

Give a number of examples, such as those proposed below, to explain the concept of known or unknown cultural heritage. For example, in the Kissi tradition, the dead are buried in different places depending on whether they are children, women, men or even depending on the way they died. This tradition is not present in Guinea's Forest Region. Mining companies cannot know everyone's traditions.

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

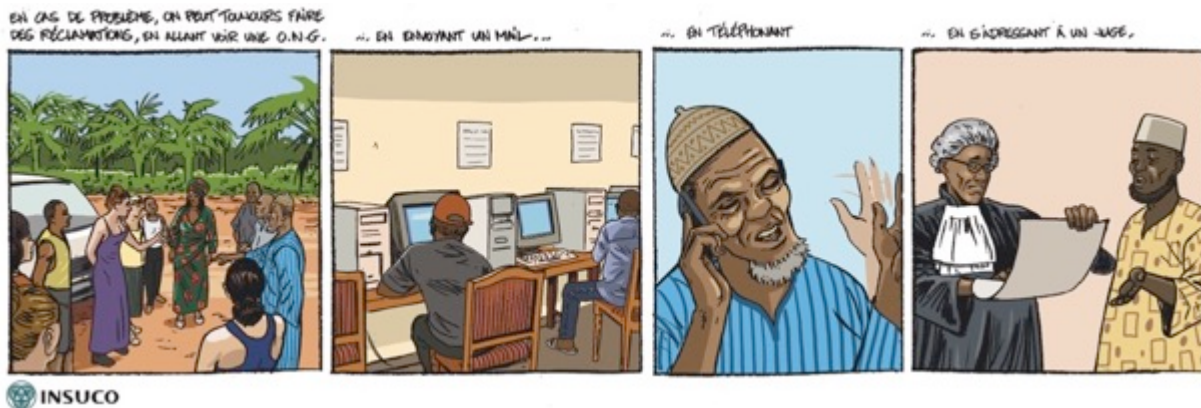
WHY DOES THIS MODULE MATTER?

Access to justice and remedy is critical to ensure the respect, protection and promotion of human rights. In order for communities' grievances and CSO advocacy to be more credible, good documentation and monitoring practices are necessary, and grievances should be framed in accordance with the relevant law. In this sense, it is important to know how to peacefully ask the right question to the appropriate person.

That is why the following questions are addressed in Module 6:

- What actions can a community take locally to make their grievances heard? (Unit 6.1)
- What are good documentation and monitoring practices? (Unit 6.2)
- What recourse mechanisms can a community use to seek remedy? (Unit 6.3)

Unit 6.1 What actions can a community take locally to make their grievances heard?



TEACHING OBJECTIVES

- Provide an overview of the actions CSOs and local communities can take at the local level to peacefully make their grievances heard.
- Provide guidance on how to write a complaint letter, how to prepare for a meeting, how to use media, and how to organize peaceful protests.
- Initiate reflection on how to ensure one’s security.

THEMATIC CONTENT

What should people do if they have a grievance?

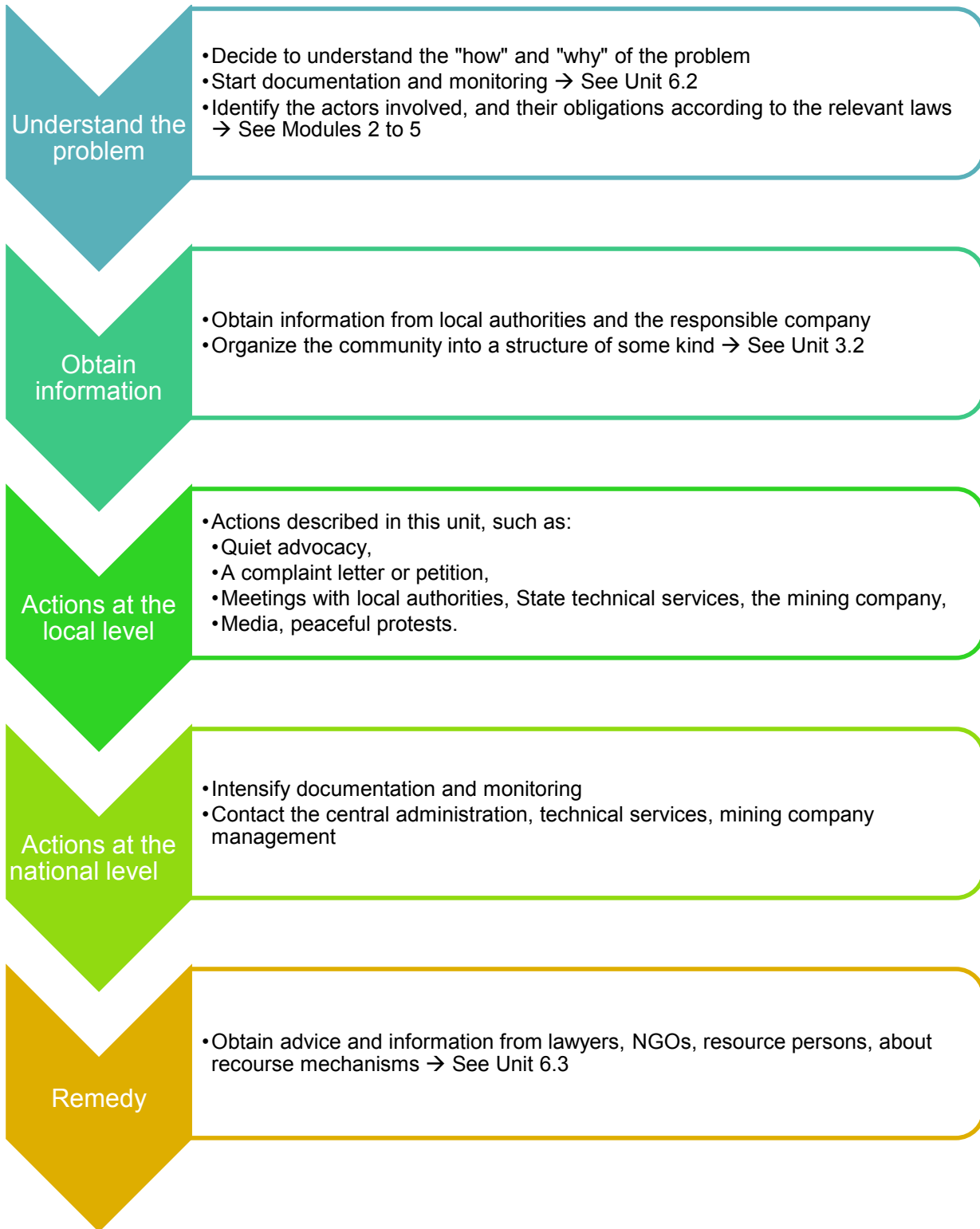
If people have grievances related to mining activity, there are many possible actions to take. The diagram below identifies several of these possible actions and the order in which to take them. All of these actions assume the community is organized.



Throughout the process of making your grievances heard, documentation is very important. That is why you should always take notes in a meeting, request and keep as many documents as possible, write minutes for meetings, consultations, etc.

→ See Unit 6.2 about good documentation practices

HIERARCHY OF ACTIONS TO MAKE GRIEVANCES HEARD



— What is advocacy?

Advocacy is the process of making your grievances heard, and it is advocacy that usually leads to negotiations.

Advocacy is the process of taking sides and working for a particular side or interests in a conflict. For example, lawyers engage in advocacy when they represent clients in court proceedings. Another example is when stakeholders in a conflict engage to defend themselves – by making their own positions heard during negotiations, mediation or political debate. Any attempt to persuade another party to accept its demands is “advocacy”. (FAO, 2005)

Negotiation is a form of decision-making in which two or more parties talk to each other in order to bring their initially opposing interests closer together. Negotiation can be relatively cooperative, such as when two parties seek a mutually-beneficial outcome (usually called interest-based negotiation) or it can be confrontational (usually called win-lose or adversarial), where each party seeks to have their interests prevail over the other party’s interests. (FAO, 2005)

— Process

At the local level, it is usually best to proceed in the following order:

1. Start with quiet advocacy, then
2. Write a complaint letter or petition, then
3. Hold meetings with mining company representatives, then
4. Use media, social networks, peaceful public protests, as necessary.

How do you do quiet advocacy?

It is always helpful to begin making your grievances heard by quiet advocacy. As a form of speech promoting a cause, quiet advocacy is the process of presenting a situation or project through a sober message, focused only on the key aspects, without media or public protest. An example of quiet advocacy is meeting with a mining company representative without the media, or sending a private letter of complaint. The purpose of quiet advocacy is to **inform** the other party in order to allow them to respond in good faith.

How do you write a complaint letter or a petition?

If quiet advocacy does not lead to the results you asked for, you can consider writing a complaint letter, and if there are no results or you are not satisfied with the result, you can address a petition showing that many community members are affected by the situation.

— What is a complaint letter?

A **complaint** is, for a person whose rights are disturbed or violated, the means of expressing to a legally constituted authority, one of the following three elements:

- Accusing a natural or legal person of any act,
- Demanding to stop a rights violation and/or remedy a potential or actual harm allegedly or potentially suffered by a person,
- Requesting correcting action, following an abuse of right or authority.

To be effective, a complaint must be written. A literate community member can help to draft the complaint.

— What is a petition?

A **petition**, according to Article 10 of the Constitution, is the right of every citizen to address a writing signed by one or more persons to the competent State authorities to express an opinion, demand, complaint, protest, wish or concern of a specific or general nature. A petition is admissible if it has a reasonable goal (for example, restore the potability of water in the community), is written in the official language and in a direct manner, outlining the situation, the decision and the disputed project. It must indicate the values for community members to sign and mobilize, include useful references and an optimistic conclusion. Finally, it must contain the first and last name, complete mailing address and handwritten signature of each petitioner.

— Goal of the complaint letter or petition

Complaints and petitions are written to communicate in private or in public with a company, such as a mining company, their subcontractors, consultants or others. It may be that the company is not aware of the harms its activities are causing to local communities. Or, the company may prefer private communications to resolve the conflict in order to avoid media attention and so protect its reputation. That is why it is useful to first try private meetings and complaint letters (called quiet advocacy) before trying other tactics.

— Recipients of the letter

Here is a list of people to whom you can address a complaint letter:

- Local authorities (municipality, sub-prefecture)
- Local, provincial and national offices of the Ministries involved (MMG, MATD, Ministry of Environment, Ministry of Agriculture, etc.)
- Mining company, their local or international office (if it is a foreign company), their CSR and/or sustainable development department
- The office or headquarters of the bank (or other financing institution) providing financing to the mining company
- The embassy of the company's home country.

— Contents of the letter

While the contents of the complaint letter or petition depend on the specific objectives, needs and expectations of the community, it is useful to include the following elements:

- The names of the people, officials and company involved.
- A brief explanation of the situation, a factual presentation of the problem.
- A description of the affected area (where is it, how big is it, how is this area usually used by the community, who has been living there and for how long).
- References to the law or international standard that has been violated (if this is known).
- A description of the actions (positive and negative) already carried out by the authorities.
- A short list of the other actions you have already taken to address the situation.
- A list of things you want the authorities or company to stop doing, and a list of things you want them to do.

- A request for a meeting within two weeks (or shorter or longer) to discuss the content of the letter and to identify possible solutions/responses.
- Signatures of each person who agrees with the content of the complaint/petition.

Do not forget to keep one or more copies of the original letter that you are sending to the authorities/company. When you drop off the petition, make sure the person receiving it signs an acknowledgment of receipt (give them a paper to indicate they received the petition, noting their name, contact information, date and signature). → *See also Unit 5.2 > Template for a complaint letter about pollution*

How do you prepare for meetings and negotiations with the company?

When you contact the mining company, they may accept your request for a meeting. This means you must prepare the following:

- What is the purpose of the meeting? (*To make your grievances heard? To discuss a solution?*)
- Have you already agreed on an agenda for the meeting?
- Do you know the legal provisions relevant to your grievances?
- Do you have any evidence or proof that you can bring with you?
- What will you ask for at the end of the meeting?

If your conversations with the mining company's community relations department have produced no results, you must think of speaking with other responsible company officials (in Conakry, abroad, etc.).

How do you use the media?

The **media** include radio, television, newspapers (printed or electronic) as well as social media and networks (blogs, Facebook, YouTube, Twitter, etc.). Article 7 of the Constitution states that people are "free to express, protest, disseminate their opinions in speech, writing and image."

— How are the media useful?

It is useful to communicate with the media to be heard more often, because communities are often isolated, which does not facilitate information-sharing. By contacting the media (press and briefing conferences, social networks, etc.), community member voices can reach decision-makers in Guinea and abroad. For example, video is useful to make the voices of the voiceless heard, and so promote social change. At the same time, to maintain your credibility, it is important to use video strategically. → *See Source documents > Thematic guides > WITNESS*

Often, when the media are aware, officials fear that their image might suffer, and then tend to act more quickly to meet their commitments. The media thus play a role as intermediary.

— Limits and challenges in using the media

It is important to consider the advantages and disadvantages of responding to negative press. It is also important to consider how to protect the sources of information that you will publish (anonymous witnesses). Sometimes an NGO, a CSO, a politician or another actor claims to represent the interests of communities, when in fact the actor has not engaged with the authorities or representatives of communities. → *See Unit 3.2 for advice of how to avoid manipulation*

— Be prepared

Before speaking with the media, always prepare the message you want to communicate to them, because a misrepresentation of the story is a huge price to pay (you are no longer credible). You need to have a clear idea of your objective and which facts to state, and explain that you are seeking a solution to the problem and not intending to create conflict. If using the media is meant to be for the benefit of the entire community, you must first consult the community before speaking in their name.

It is always better to have evidence to give to the media to support the story (for example, specific factual testimony and photos). Sometimes it is preferable to ask a CSO to make a media statement, taking care to verify that they understand the message the community wishes to disseminate.

— Case summary for the media

To be prepared, you can draft a **case summary for the media**, which includes the important elements of a problem you wish to communicate. It is useful to include:

- The name of the community, municipality, and sub-prefecture.
- The name and nationality of the company.
- The date of the company's arrival in the area.
- What activities the company has already done, and which activities it plans to do in the future that concern the community.
- How many people are affected by the mining activities, or how many will be affected.
- The main impacts of the project so far, and what impacts you fear in the future.
- Legal background (done with the help of a lawyer).
- Case studies (choose a local community member that people can relate to easily). (*EC, Mining*)

How do you organize a peaceful protest?

The Constitution protects the right to peacefully protest (*Art. 10*). What does “**peacefully**” mean? It means conduct defined by non-violence, that uses no verbal or physical violence. Articles 106 and following of the *Criminal Code* provide that exercising the freedom to protest requires a prior written declaration, but not prior authorization. This declaration must state the protest's objective, date, location, duration, itinerary and identity of the organizers (*Arts. 107 and 108 of the Criminal Code*). For all parades, processions, public protests, it is mandatory to set up an organizing committee made up of at least five people to maintain order and prevent violations of laws and regulations (*Art. 119 of the Criminal Code*).

It requires good organization to mobilize participants in a peaceful protest, by dropping leaflets, knocking on doors, making calls, etc. There should be a clear message for the protest (for example, the right to just compensation for expropriation). Meetings should be held among organizers and participants if possible, in order to provide information on the purpose of the protest, and to make sure everyone understands how to stay safe and maintain a peaceful protest at all times.

1. *Plan and communicate*: Ensure that everyone knows the route of the protest, and the principles of a peaceful protest. The organizers should have a list with the names of each participant. They should also have contact information for a lawyer, in case anyone is arrested or there is a need for legal assistance.

2. *Document*: Take pictures to prove the peaceful nature of the protest. Ask an NGO to observe the protest and to record all violations.

3. *Be accountable to each other:* Form small groups to better keep track of other participants, such as if they are lost, detained or injured. The organizers should identify and resolve any issues quickly.
4. *Security:* Try to have a few participants who have first-aid training. Have a backup plan in case of bad weather or unforeseen events. Leave valuables at home and make a safety plan for children and young participants. (EC, Security)

PRINCIPLES FOR A PEACEFUL PROTEST

Do no harm to others and do not retaliate in reaction to violence.	Be honest and treat all persons with respect, especially law officers.	Use fact-based grievances to limit the risk of rumors and loss of credibility.	Express feelings, but not harbor hatred.
Use "I / we" and not "you / they", for example, "I am not heard!" instead of "You are not listening!"	Never spread hatred or hate speech.	Be alert to people around you and provide needed assistance.	As peacekeepers, protect others from insults and violence.
Not run or make threatening motions.	If a demonstrator is seen threatening anyone, intervene to calm down the situation.	If demonstrators become violent and it cannot be stopped, withdraw.	Do not steal or damage property.
Do not carry weapons.	Do not bring or use alcohol or drugs, other than for medical purposes.	Keep the agreements made with other demonstrators. In the event of serious disagreement, withdraw.	Accept responsibility for nonviolent actions. Not lie or use deception to escape the consequences of actions.

(Adapted from *Nonviolent Action Handbook*)

How do you ensure your security when making your grievances heard?

— **What do we mean by security?**

Security is generally defined by the absence of threat, danger and fear. In the context of human rights defenders making grievances heard, the most relevant aspects of security include: physical security, personal property security and personal information security. Security is intended to support the human rights defender asserting their rights, allowing them to focus their energy and time on advocacy, and so spend less time on worries and fears.

— **Risks in making your grievances heard**

When human rights defenders are in contact with people, mining companies, or powerful institutions, there may be threats and intimidation to your physical security and freedom. These threats can come from security forces, authorities, individuals or even mining company employees. Sometimes it is difficult to know where exactly the threat is coming from. Often the threat may never materialize, but it still causes human rights defenders to refrain from claiming their rights and forces them to stop their activities. However, in cases where threats do materialize, human rights defenders can be injured, imprisoned, or in some cases, killed. (EC, Security)

— What security risks do human rights defenders face?

Obstruction, threats of violence, intimidation, physical violence, harassment, sexual assault, arrest and arbitrary detention, criminal charges, seizure or destruction of personal property, telephone and email surveillance, rumors and manipulation – these are some of the types security risks used to intimidate human rights defenders. (*EC, Security*)

— How do you identify and assess the security risks?

You should determine what interests are involved, predict and identify potential threats, and assess the severity of the threat. “Risk” in this case means an event that could happen in the future and which could be harmful. (*EC, Security*)

Threats can come from individuals within or outside of the community, from mining companies, from security forces and from other authorities (local, state, etc.). Usually, human rights defenders’ work is threatened because it affects the interests of one or more of these people (natural or legal person). It is important to think about the problem on which you are working, your objectives, who is working with you, and who could potentially be affected. Think about the interests you are trying to protect (for example, the right to life, continuing to work, etc.). Think about the negative and positive impacts. Usually several interests are involved, and identifying these interests is the best strategy to confront a threat.

Next, you should anticipate the security risks by being proactive (not reactive). This means you should act before a threat materializes, which permits you to avoid the harm, or to be prepared to confront it if it materializes. To be proactive, consider the following questions:

- What activities are planned? (to assess their sensitivity)
- In what kinds of areas are these activities? (in isolated areas where risks may be higher, in border zones with a significant military presence)
- When will the activities be done? (some time periods have higher risks when organizing advocacy activities, such as during elections or periods of ethnic tensions)

This assessment should be done when planning activities, during activities, and afterwards. Once the source of the threats has been identified, you can assess the severity of the threat. A direct threat made in public may mean that the person making it does not fear punishment, and is probably linked to very powerful people. This is an example of a very dangerous threat.

To confront these different cases, consider these questions:

- Does the threat come from a natural or legal person (an individual or a company or a powerful institution)?
- Does this person have the support of the State or security forces?
- Has this person already threatened other individuals or groups in the past?
- Did the past threats materialize?

Also consider your weaknesses and strengths, which would influence the severity of the risk to your security.

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ The hierarchy of actions to make your grievances heard is: understand the problem, obtain information, take actions at the local level, then the national level, and finally, seek remedy.
- ✓ In terms of actions at the local level, it is recommended to begin with quiet advocacy, then write a letter of complaint or petition, then meet with company representatives and the State's technical services, and then use the media.
- ✓ The Constitution protects the right to peacefully protest, meaning irreproachable non-violent behavior.
- ✓ By identifying security risks, it is possible for human rights defenders to assess the severity of threats, and so better protect their security by anticipation when making grievances heard.

ANIMATION ACTIVITIES

- Presentation by facilitators of the diagram, "Hierarchy of actions to make grievances heard."
- Self-assessment and analysis of local solutions in plenary or small groups (see box below).
- Small group activities to draft a letter of complaint or petition; case summary for the media.
- Analysis in small groups of the interests to confront a threat (see box below).
- Presentation of hypotheses; discussions in plenary or in small groups to identify and discuss possible actions at the local level (see box below).

Animation Box: Self-assessment and analysis

Self-assessment and analysis of local solutions

Objectives: To identify in the field the solutions that have been put into place locally, in order to respond to different problems and grievances encountered. This is one of the most interesting and important activities, but it is often neglected in the process of identifying a project or action plan. This activity should be done in a group; this allows participants, including technical facilitators, to become aware of their own potential for adaptation and innovation, so they can systematically evaluate, improve and organize it.

Time needed: Preparation (1 to 2 hours in a general meeting); field work of several hours up to a few days, depending on the complexity of the problem (facilitators do not necessarily have to participate); analysis (2 to 3 hours).

Teaching material: Flip charts, markers, blackboard for the preparation, notebooks for the field work.

Preparation phase

- What are we looking for? (What type of solutions do we want to identify and analyze? What information do we still need?)
- Where are we going to look for it? (In what part of the community, from whom, in what part of the production system, etc.)
- What tools are we going to use? (For example, semi-structured dialogue, field observation, community workshops, etc.)
- Define and prepare tools and techniques.
- Who is going to conduct the assessment? (Responsibilities)

The best approach is to entrust the research to a focus group. By replying to the questions mentioned, the group can agree on the “terms of reference” for the field work. They can agree in advance on a list of outputs expected.

Implementation phase: It is very important to let the group do the research without the presence or participation of facilitators, whose role is more related to preparation and analysis.

Analysis phase: Once the field work has been completed, another meeting should be convened for the group to present its findings. These findings feed into other exercises: identification, analysis and prioritization of solutions. (IICA)

Animation Box: Small group work

Assessment of interests to confront a threat

Objectives: Assess and understand the different actors involved in the threat to security, and the possible reasons for the threat.

Use the personal story of a participant to analyze the different interests involved, by including all group members in the discussion. Here are the questions to ask the group:

Who was responsible for (the source of) the threat?

Who helped you confront the threat?

Who worked against you?

Are there other people who could have had an interest in this case? Do you believe they could have been involved in the security threat?

Why do you believe you or your group was targeted with the threat?

What was the final outcome?

(EC, Security)

Animation Box: Analysis

Hypotheses to identify and discuss possible actions at the local level

Objectives: Analyze different hypothetical mining activities that could affect a local community. Identify good practices and action plans (based on past experience) to confront each hypothetical situation, all while minimizing security risks.

Analyze each hypothesis in light of several questions: What actions can be taken by the community in the hypothetical situation? If the community has been in a similar situation before, what did they do? What was the result?

Hypothesis 1: You’ve seen an announcement in a newspaper saying that a mining company has requested a permit for a mining concession near your community. The announcement specifies that the State intends to consult affected communities over the next 12 months in order to understand their

perspective before granting the concession. The State will meet with affected communities next month to begin the consultation process.

Hypothesis 2: You saw representatives of the State and of a mining company in your village. Your neighbor saw drilling and surveying equipment, and trucks on nearby roads. You're not sure what the representatives are doing in your village, but something must really be happening. You and a neighbor decide to find out what is going on. You learn that the company has a mining exploration permit. You are worried that a mine will be built on your community's lands and that this will have terrible consequences on the local river and your livelihood.

Hypothesis 3: You wake up one morning to the sound of chainsaws. You, your family members and your neighbors walk to where the noise is. On top of a small hill, you discover trucks and many men with chainsaws. A large part of the forest has already been cut down. You do not know who these people are. Who gave them permission to cut the trees down? Why didn't anyone come to speak with you about this?

(Adapted from OA, 2014)

Unit 6.2 What are good documentation and monitoring practices?



TEACHING OBJECTIVES

- Initiate reflection on the usefulness of documentation and monitoring.
- Provide guidance on the records to create and keep up-to-date.
- Provide guidance on baseline studies and impact assessments conducted by CSOs and local communities.
- Make the goal and phases of joint monitoring known.

THEMATIC CONTENT

What is meant by “documentation” and “monitoring”?

A document, a medium that uses or contains information or knowledge, is a source and means of transferring knowledge. **Documentation** may consist of several activities: determining what information is needed and how to acquire it; recording the information found and storing it in documents; gathering existing documents containing necessary information; organizing documents to make them more easily accessible; effectively conveying documents to users who need the information. (*HURIDOCS, 2001*)

Monitoring means gathering information in a systematic and regular manner through a variety of sources¹³ in order to assess measures to take later in the event of a violation. Monitoring requires: long, regular and constant observation and systematic information gathering; the gathering of a large amount of information; continued reference to laws, regulations, contractual obligations, norms or standards and the instruments comparing the situation investigated with the established norms; assessment of the situation, which serves to prepare an action to bring the situation in compliance with the law. (*HURIDOCS, 2003*)

A key component of monitoring work is a full and complete understanding of the **baseline situation** considered “normal”, that is, in compliance with the law, regulation, contractual obligation, norm, etc.

¹³ For example, the press, companies, UN reports, State services, NGOs, etc.

— Who is responsible for monitoring respect for rights?

Monitoring respect for rights is the responsibility of the **State**.¹⁴ Monitoring the free exercise and enjoyment of rights and freedoms is also done by the bar association, CSOs, especially press and media groups, trade unions, and human rights NGOs informed by local people.

This means **local civil society** plays a critical role in verifying respect for rights, norms, regulations, obligations, agreements, etc. In fact, not only is local civil society the first to be harmed when norms are violated, but civil society is also the actor which, through its proximity, directly witnesses the gaps regarding norms, procedures and commitments. Local civil society also serves as an on-going center for documentation, given that companies frequently change over the course of a given mining project.

— What are the benefits of documentation and monitoring practices?

Documentation and monitoring actions help structure and organize collective action regarding a project on the basis of **objective and verified** information and data.

Documentation and monitoring are also the basis of all **communication strategies**, whether to the affected community, the company, the media, the administration or international NGOs.

Documentation is useful because the law gives **priority to written evidence**. If one day you find yourself in court, you will be prepared. From a legal point of view, according to Article 801 of the *Civil Code* and Article 40 of the *Civil Procedure Law*, the party asserting facts must prove them to the court.

“Take very good written notes during meetings. Always have something with you to take notes in written form. This helps you with evidence.”

– Advice from other local communities (NSI, 2006)

— Challenges related to documentation and monitoring

Aside from human and financial resource needs, there are several challenges related to good documentation and monitoring for local communities and CSOs, in particular on proving that the impacts are caused by the company (**causality**), access to information, and lack of **political will** for dialogue from companies or the State.

Information to gather about the mining project and the mining company

One or more entities can act as a mining project developer. A **developer** is the legal entity responsible for carrying out the mining project. The developer can be the Guinean State, a mining company, a foreign State, a development bank, or a combination of these actors. It is useful to gather answers to the following questions:

¹⁴ By constitutional bodies including the National Assembly (*Arts. 88 and 89 of the Constitution*), the Constitutional Court (*Art. 96 of the Constitution*), the courts (*Art. 107ff. of the Constitution*), the Economic and Social Council (*Art. 125 of the Constitution*), the Ombudsman (*Art. 127 of the Constitution*), the National Human Rights Institution (*Art. 146 of the Constitution*) and by government agencies.

About the **mining project**:

- What is the project? What is its purpose? How big is it? When will the work begin? For how long will the project be active?
- Who are the project developers (for example, a private mining company, the State)? What is the company's history or its past results? Does the company have a good or a bad reputation?
- Who is investing money in the project (for example, a commercial bank, the World Bank, an investment fund)?
- What are the main activities of each of the project developers? What is the nationality of each of the companies involved?
- What construction work will be done for the project (for example, roads, dams, major electricity poles)?
- What support is the State providing (for example, tax exemptions or reductions for the project developers, fee reductions for land access and use)?
- What do local managing authorities think about the project? (*OA, 2010 and 2014*)

About the **mining project's impacts**:

- What lands will be affected? Are there maps showing the affected lands? Will the impacts on lands and other natural resources be permanent?
- Will the company conduct a human rights impact assessment? An assessment of environmental impacts? Of impacts on women?
- What are the project's risks (for example, pollution, access to a sacred site)? Are there independent reports assessing these risks, and does the community have access to them?
- What benefits will local communities receive? Will the benefits be permanent or temporary? How will the wealth generated by the exploitation of the area's resources be redistributed locally (for example, in areas of education, transport of goods or people, health, agriculture, or other social development programs)?
- Will the project allow community lands to be protected? If the project developers acquire land, will affected community members be compensated, in particular with replacement land? (*Adapted from OA, 2010*)

About the **legal framework (laws and regulations)** applicable to the mining project:

- Who are the investors of the company (or project developer) and are there any applicable safeguard policies? Commercial banks, development banks, etc.
- What are the company's policies or codes of conduct? About social aspects, the environment and human rights. Codes or guidelines from industry associations the company belongs to, such as the International Council on Mining & Metals (ICMM) or other associations, such as the United Nations Global Compact or the Voluntary Principles on Security and Human Rights.
- What obligations flow from the company's home State? For example, if the company comes from one of the member States of the Organisation for Economic Co-operation and Development (OECD),¹⁵ it is subject to the OECD Guidelines for Multinational Enterprises. If the company

¹⁵ The 34 OECD member States are: Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

comes from the People's Republic of China, there are several guidelines issued by various Chinese ministries.

How can documentation and monitoring be done?

There are several possible tools for documentation and monitoring, in particular:

1. Basic procedures and techniques for information gathering
2. Baseline study
3. Impact assessment
4. Joint monitoring

Each of these tools can be used in a simple or a more complicated manner, depending on the resources of the people using the tool, as well as their objectives.

1. Basic procedures and techniques for information gathering

These procedures and techniques are suitable for gathering information about the mining project, the mining company or to conduct an inquiry about a problem.

1. Establish contacts. Your contacts can send you information, bring incidents to your attention, etc. Contacts can be NGOs, religious institutions, hospitals, specialists (doctors, lawyers, journalists, unionists), members of government, parliamentarians, politicians, diplomats, etc. You must be able to trust them, they should be diverse and representative, maintain confidentiality, etc.

2. Establish the facts. Information must be gathered and field work must be done to determine the facts, including: identifying the actors involved; gathering information, testimonies (see the techniques below); verifying accusations and rumors. If you wish to file a complaint, you must determine and research the pieces of evidence required to determine if the incident constitutes a legal violation or infraction. Some important elements are: characteristics to identify the victim; identify the location where the incident occurred; the means used to commit the infraction or violation; the circumstances surrounding the violation; the identity of the alleged perpetrators; the official reactions to the alleged violations. (*Mukosa*)

3. Keep the information gathered. Ensure that you keep and retain the information gathered, on an on-going basis as you gather it. Information gathered can be the product of a long process that may not be repeated in the future, and loss of such information could be irreparable. Respect the principle of confidentiality at all times: before, during and after the inquiries.

4. Analyze and summarize the facts. Conduct an impartial and objective analysis of the information gathered, by checking facts that appear contradictory and ensuring accuracy. It may be necessary to collect additional information. Information that appears false should be set aside. Respect the principle of accuracy and precision, as this is the foundation of all human rights work. It is likely that various actors may have different perspectives about the same incident. In this case, meet with a large number of people in order to get a wide range of opinions. The summary of observed facts describing the circumstances of their commission should be done with as much detail and accuracy as possible.

TECHNIQUES TO GATHER INFORMATION

Meetings and interviews

- With the actors involved, experts
- On-site inspections
- Surveys

Audio-visual materials

- Photos or video
- Audio recording
- Maps

Document analysis

- Laws, regulations, policies
- Mining company studies, government and company policies
- Newspapers
- Official statistics

Participatory techniques

- *Role play*: Various groups of actors are invited to put themselves in others' shoes. To do this, a facilitator presents a scenario, and each participant plays the role of another.
- *Participatory Rapid Assessment (PRA)*: Group facilitation and exercises for information-sharing, analysis and actions among the participants involved.
- Participatory mapping, modeling → See Unit 3.4
- *Participatory Action Research (PAR)*: Community members participate in gathering data. Data gathering is implemented by using locally available materials (sticks, beads, peas, beans) on the ground, provided by participants themselves.
- *Focus group discussions*: A discussion involving 6 to 12 people, guided by a facilitator, during which participants speak freely and spontaneously on a subject. The goal is to obtain detailed information on the group's problems, perceptions and ideas.
- *Semi-structured interviews*: Asking open-ended questions such as "tell me about the work conditions in this community."
- Calendars, story-telling
- Using images (in the broad sense of photos, drawings, illustrations)



Isolated, poorly documented grievances, based on rumors or other communication failures, should be avoided. These only discredit local communities and local civil society, as well as their actions to protect their rights.

— How do you conduct a meeting or interview?

To begin the meeting or interview, clearly explain the nature of the mission, the objectives of the conversation and what will be done with the information gathered. Take note on paper of the name of the person interviewed, the date and a summary of the conversation (the key points of the responses given by the person interviewed). Meetings and interviews should take into account the specificities of women's issues.

If you record the audio or video of an interview, you must first ask consent from the person before recording, and the recording equipment must be in plain view of the person being recorded. → *See also Source documents > Thematic guides > WITNESS*

You must prepare questions in advance and know the information you are looking for. Start by asking **open-ended questions** (such as, "Have you heard anything about the situation of leaking water? What do you know about it?") Remember that people do not always say the truth when answering questions. While people may be inclined to speak truthfully, they can often omit details or conceal important facts, and more rarely tell a complete lie.

Then, you must listen closely to the responses given, **analyze the responses**, and **ask direct follow-up questions** (such as, "When exactly did the water start leaking?") Analyze the responses: Are there any logical gaps in them? Are there gaps in the logic of the story developing over the course of the conversation or interview? Are there any contradictions or inconsistencies with what the person said earlier? Inconsistencies with responses from other witnesses or persons interviewed?

To do this, consider the following points:

- **Witness or not?** Was the person a direct witness, that is, did they themselves see the event, actor or things involved in the facts you are trying to determine? Or did the person only hear about what happened? From whom did this person receive information? If someone was not a direct witness, it is difficult to accept what they said, and you should find a direct witness to speak with.
- **Motives and bias.** If the person was a direct witness, can you trust their answers? Does the person have any motives (political or otherwise) that would make them omit details or conceal the truth? Are the stories and facts of the direct witnesses consistent with what other direct witnesses said?

— Document management

It is important for local authorities, CSOs and any entity carrying out documentation and monitoring activities to establish a file that will serve as a compendium of documents related to the grievances. Here is a list of documents typically placed in a file throughout the advocacy process:

- Documents about the mining company (name of the company, its representatives, their contact details), its sub-contractors (name of the company, its representatives, their contact details).
- Register of persons who carried out field visits within the scope of the project, as well as all documentation they brought.
- Notes taken during meetings with the mining company, or field visits by other organizations involved in the mining project (date of the meeting, names of participants, key information).

- Secondary source documents, such as news articles, independent studies, studies the company is required to make public (the ESIA, the ESMP, the water supply plan, the RAP, etc.), CSO reports.
- All correspondence, such as complaint letters, petitions produced by CSOs, local authorities, etc. and responses received from companies.
- Results of research on laws, regulations, standards applicable to the mining project.
- All other relevant documents.

2. Baseline study

— What is a baseline study?

A baseline study describes the state of affairs before a change (for example, the arrival of a mine) occurs. Baseline studies can be simple or very detailed, covering one or more areas, and be done by different groups, etc. Some examples include:

- **Local socio-economic diagnostics done by local municipalities** which aim to determine the state of the local socio-economic situation; the local demographic and socio-economic trends; the main current and foreseeable needs of the population in terms of urban planning, housing, public services, child and gender development; the main socio-economic problems experienced by the population; the main possibilities and constraints applicable to local socio-economic development (*Art. 513 of the LML*). This document is about 80 pages.
- **Socio-economic baseline studies done by mining companies**, which are carried out by engineering consultancies and can be 500+ pages. This is a detailed document by the mining company in order to improve its understanding of local communities, to have a detailed description of the site for the project, and to identify local community development dynamics that the company may support.
- **Baseline studies done by CSOs**, which aim to show the current situation in terms of respect for rights, for example. These studies can be simple (a collection of photos and quotations) or more detailed, such as reports of 200+ pages.

— Baseline study done by a CSO

This study can show, through photos, videos, maps and testimonies, the current situation in a community or in a region, before a mining project arrives, during its development and after exploitation. To conduct a baseline study, CSOs can use the basic procedure and techniques for gathering information, prioritizing the use of participatory techniques. The results of the baseline study should be presented so as to inform on the basis of gender, ethnicity and socio-economic status.

Here are some typical questions:

- What do we already know about the community today? For example, how many people in which groups (women, youth, farmers, etc.) risk being affected by mining activity? What is the history of the community? What are their livelihoods?
- What are the education, health (recurring illnesses, etc.) and housing conditions? How might these conditions affect the ability to obtain employment? What are the capacities of CSOs on land management, education, etc.?

- Which aspects of the community's culture, society, economy and environment does it most want to protect?
- What are the community's strongest points, and in which ways are they most vulnerable?
- What has the community learned from prior similar experiences (development, negotiations, etc.)?
- What do we know about the future desired by the community? What work remains to determine the objectives or vision for the community's future?
- What are the key characteristics affecting a community's capacity to negotiate and implement an agreement once signed? (*Adapted from IBA Toolkit*)

— **In what ways is a baseline study by a CSO useful?**

This kind of study can help communities and civil society demonstrate the severity, scale and scope of a mining project's negative impacts, by providing proof of the difference of the situation before extraction (the baseline) and the situation during or after extraction (the change).

A baseline study is especially important in terms of economic, social and cultural rights, in order to demonstrate a regression (or improvement) in their enjoyment. Remember that the State and the mining company have minimum obligations to *respect* human rights, which is why it is important to highlight negative impacts on the enjoyment of rights.

3. Impact assessment

— **What is a community-controlled impact assessment?**

We have already discussed the environmental and social impact assessments (ESIAs), which are conducted and controlled by engineering consultancies on behalf of mining companies, as well as their weaknesses. → *See Unit 1.3 about ESIs*

Here, we are discussing an impact assessment controlled by local communities, which is a process designed and led by communities, producing information and knowledge identifying: potential or actual impacts of a project as understood by the community; the diverse attitudes within communities about a project; appropriate strategies to mitigate impacts and maximize benefits from the point of view of local communities. Local communities in Australia, Canada, Ghana, Colombia and the Philippines have used community-controlled impact assessments as a way to ensure their participation is as informed as possible. (*O'Faircheallaigh, 2013*)

— **Value of a community-controlled impact assessment**

This kind of study gives a central place to community questions and concerns. It values community understanding of project impacts and their ideas about mitigation measures; it recognizes the legitimacy and power of local knowledge and authority to manage the resources affecting their livelihoods. It also uses appropriate methodologies and communication channels to communicate information and establish community opinions about the proposed project, and helps develop capacities for research and communication within local communities.

Just as with community protocols, community-controlled impact assessments can play a key role in resolving or managing conflicts within communities. It does this by identifying the range of groups and interests within a community concerning a project, and provides a forum within which these can be discussed and addressed. A community-controlled impact assessment also provides communities with sufficient and useful information that builds their confidence and allows them to more effectively participate in related decision-making. (*O'Faircheallaigh, 2013*)

— How can a community-controlled impact assessment be used?

This study can be used in a number of ways, such as:

- An input during the scoping, implementation, analysis and decision phases of the ESIA process → See Unit 1.3 about ESIA's
- A collection of measures of improvement to suggest for the ESMP
- A tool to improve understanding within local municipalities of the anticipated or actual impacts
- A tool for advocacy with the State and the mining company at any stage of the project cycle
- A foundation for monitoring and surveillance by the community for the length of the mining project.

— The limits of a community-controlled impact assessment

If the communities or the CSO do not use a methodology that is valid in the eyes of the government and/or the mining company, there is a risk that the results will not be accepted either. A community-controlled impact assessment may be seen as an antagonistic advocacy tool that could contribute to conflicts, if the communities and the CSOs do not take care to clarify their mission and objectives and/or they do not constructively engage the State and company representatives during the process.

— What topics can a community-controlled impact assessment address?

There are many possible topics of such a study. It all depends on what is important for the local community, and what their objective is in doing the study.

Here are some examples of possible topics:

- Impacts on **artisanal mining** → See Source documents > Thematic guides > ASM-PACE
- Impacts on **agriculture and natural resources**
- Impacts on **health and well-being** → See animation activity at the end of the unit
- Impacts on **women** → See Source documents > Thematic guides > OA, Women
- Impacts on **human rights** → See Source documents > Thematic guides > Getting It Right

— How can you do your own impact assessment?

There are a number of ways, such as:

1. By the community itself. A committee with members representative of the local community, or a CSO or CBO which has the trust of such a committee, can facilitate a process for members of the community with the goal of learning more about the mining project through visuals and narration. The process will allow indicators to be identified for the study, to gather data, and validate the results.

2. By a consultant engaged by the community. A committee with members representative of the local community can engage a consultant to conduct an impact assessment on the basis of terms of reference developed and approved by the committee. The consultant's role is to inform local community members of the approaches and methods relevant to the impact assessment, to train local community members, to help them secure and manage funding for the process, to advise on the technical requirements of the ESIA, and to assist in drafting the impact assessment report. (*O'Faircheallaigh, 2013*)

— What are the steps to develop and conduct an impact assessment?

It is first important to precisely define the objective of the impact assessment, who will lead it, as well as the topics (artisanal mining, gender, human rights, health and well-being, etc.).

An impact assessment can be done in 6 steps: (1) preparation, (2) legal framework, (3) identify questions; (4) gather data; (5) analyze and report, and finally, (6) engagement, monitoring and follow-up.

(1) Preparation

Set up a **research team**, made up of men and women, with a coordination group. Identify the actors involved, such as the affected communities, the host State (in this case, Guinea), the company's home State, company representatives and employees.

Organize a first meeting with the community. Discuss with them (separately with men and women, as needed) about the problems they face, how to build their capacity, and identify their concerns, in order to define the objectives and the topics of the study. **Obtain the community's consent** before proceeding. Develop rules of conduct and communication procedures between the research team and community members. Next, develop a work plan and budget.

Contact the actors involved as soon as possible: central government, deconcentrated services, the mining company, its sub-contractors, etc. During the meetings, explain the study's objective. Ask for their support for the initiative and ensure they agree with the methodology you propose using. (*Getting It Right*)

(2) Legal framework

Seek information about the laws of Guinea, and the international standards related to the impact assessment's topics. → *See Unit 1.3 about ESIA's* Determine the legal framework applicable to the mining project. → *See above*

(3) Identify questions

Identify specific questions about the study's topic. For each question chosen, develop a list of corresponding questions that will be used in the impact assessment. → *See Source documents > Thematic guides > Getting It Right (for potential questions related to human rights) or OA, Women (for potential questions related to gender)*

(4) Gather data

Interviews with the communities affected by the mining project, asking the questions determined in step 3. Explain clearly to participants the objective of the impact assessment and how the team will use the data they are gathering. Do not forget to ensure confidentiality for certain interviews as needed, or to record the conversation for your records. → *See also the participatory techniques for data collection*

Make an inventory of the data gathered and validate the information: identify contradictory versions of events coming from different actors, and verify these if possible. Analyze the information. → *See the basic procedure to gather information*

Share the preliminary results with the actors involved, as well as the conclusions, and make preliminary recommendations. Be clear in formulating recommendations to give the State or the company concrete objectives that correspond to their roles and responsibilities (*Getting It Right*) → *See Unit 2.3 about everyone's respective roles and responsibilities*

(5) Analyze and report

Analyze the results to identify the main impacts and who bears responsibility for them. Measure the gap between what the law says, and what is actually happening on the ground. **Prepare a draft report** (less than 30 pages) that contains the conclusions and recommendations. Distribute the draft report to the

community and actors involved in order to get their feedback. Once their feedback has been received, integrate it into the report. (*Getting It Right*)

(6) *Engagement, monitoring and follow-up*

Verify if you have achieved the objectives of the study, as determined in the first step. Develop an action plan to monitor and follow-up on the report's recommendations. (*Getting It Right*)

4. Joint monitoring

— What is joint monitoring?

Joint monitoring is a continuous dialogue and collaborative process to gather and analyze data, and to communicate the results among local communities, the mining company (whose participation is essential) and State actors. Joint monitoring or fact-finding is characterized by:

- Sharing data and working together to address uncertainties
- A continuous dialogue including technical experts, decision makers and all actors involved, including local communities and CSOs
- Making information clear, understandable and accessible to all, including local communities and CSOs
- Ensuring scientific objectives are framed by all actors involved
- Commitment by the parties to a joint process. (*RESOLVE*)

Joint monitoring is different from the traditional approach, where companies and agencies are solely responsible for monitoring, or where the results of monitoring are not shared with local communities (or CSOs), and/or the results are not credible to local communities.

— How is joint monitoring useful?

Despite evidence collected by local communities and CSOs, often mining companies (and State services) have different perspectives on impacts – especially their scale, who caused them, as well as who bears responsibility for remedying them. Conventional decision-making on environmental science issues also has its limits, because so-called scientific results are not always trusted by everyone, or they may not have access to key information.

Asymmetry of information and resources of the local communities on the one hand and companies on the other hand can rapidly lead to tensions or decreasing confidence. In certain cases, some solutions to these issues can be found through joint monitoring and fact-finding.

— Objective of joint monitoring

Joint monitoring aims to resolve these kinds of conflicts and to allow stakeholders to clarify – **in collaboration** – specific problems and the search for possible solutions. These activities allow for independent verification or reconciliation of scientific data about a project (for example, water quality, air pollution emissions, community health), and so build trust among the stakeholders involved. This can also allow parties to move from disputing the facts to collaborating in the search for solutions.

— What conditions favor the use of joint monitoring?

Beginning of the project. It is easier to put a joint monitoring system into place at the beginning of the mining project. If it is only put into place after heightened tensions or conflicts, there are more obstacles to doing so.

Good faith. Joint monitoring is not effective if one or more of the stakeholders acts in bad faith and uses the process for their personal gain (for example, the company for its reputation, or CSOs to launch an advocacy campaign).

Agreement to look for mutual interests. Community members and the company must agree to look for mutual, and not competing, interests. If this principle is not respected, joint monitoring risks solidifying existing power relations between the company and local community, and so developing a false legitimacy around mining company actions through a so-called participatory process.

— What are the benefits of joint monitoring?

A process for monitoring impacts and implementation of mitigation measures must usually be put in place during the feasibility phase. A joint monitoring approach implies that this process includes other stakeholders, in particular local civil society organizations and local communities.

Joint monitoring is a voluntary approach that has benefits for all parties, helping to build trust among them and about the credibility of the results, to contribute to better understanding of impacts, to integrate local knowledge, to manage rumors and prevent conflicts (CAO, 2008). For companies, a joint monitoring system is a means to foster efficient communication with communities and build a relationship of trust and dialogue. It also serves as an early warning system in case of problems.

— How do you set up a joint monitoring system?

1. Willingness of the parties. First you need the strong commitment of the company, communities including local authorities and State actors, depending on the specific situation. If local municipal representatives, communities and CSOs are interested in launching such a process, they must advocate with the company or the government. A joint monitoring system can first be put into place for a specific issues of great concern to local people and for which it is possible to building a monitoring protocol. For example, this can concern impacts on water, air or other natural resources. (SSLS)

2. Define the objective and scope of the joint monitoring. If the principle of joint monitoring is accepted, the next step is to identify a joint team responsible for planning the process, or jointly choosing a mediator or facilitator to plan the process. What questions will be addressed in the process? Which scientific, technical or legal information is needed? Who must be involved in the process? The next step is to develop and formalize the rules of the dialogue – a code of conduct setting out the planning conditions and terms of collaboration. (SSLS)

3. Agreeing on a joint monitoring program. The joint team should draft and agree on a plan to carry out the activities of the joint monitoring, in particular the methodology (see box below), the institutional structure (see box below) as well as a financing agreement that takes into account the issues addressed and the resources available for the activity.

Several options are available for the modalities and the **financing agreement**. The joint monitoring program can be directly financed by the mining company, by a State agency responsible for monitoring the mining project, or by a neutral third party. In developing the financing agreement, the team must be conscious of a central dilemma in financing: while many may want the company to pay for the monitoring, such company funding may subject the program to claims of actual or perceived bias.

A common way to address this dilemma is by having each of the stakeholders involved contribute to the program in one way or another. If some stakeholders are not able to provide financial resources, they can provide other resources in-kind, or volunteer installations and meeting space, or assist with transport. (SSLS)

OPTIONS FOR THE METHODOLOGY

Community watch	Observer	Monitoring committee	Independent technical expert
<ul style="list-style-type: none"> Community members themselves monitor the issues. This option does not require much technical expertise, as it is based on field observation rather than laboratory analyses. 	<ul style="list-style-type: none"> Community members accompany company representatives as they carry out monitoring activities, and then communicate what they observe to the wider community. 	<ul style="list-style-type: none"> An integrated approach including the company, civil society and government monitoring agencies. A technical working group analyzes field data gathered by volunteers. The working group then engages the company in joint problem-solving. 	<ul style="list-style-type: none"> A team of experts is contracted by the joint team to conduct the monitoring. The experts meet with the company, community representatives and other stakeholders during each field visit. They draft a report that is made publicly available.

POSSIBLE INSTITUTIONAL ARRANGEMENTS

<p>Mining company</p> <ul style="list-style-type: none"> The advantage of this approach is that it can be put into place quickly. However it can lack credibility because the company controls the process. It is more appropriate in situations where there is a high degree of trust between the company and the host community. 	<p>Government institution</p> <ul style="list-style-type: none"> This approach is most appropriate when neither civil society nor the mining company have the capacity or credibility to host the monitoring. However, the government agency can only host the program if it has the necessary credibility and expertise.
<p>Civil society</p> <ul style="list-style-type: none"> The advantage of this approach is that funds for the monitoring program are managed independently of the organizations directly involved in the project. The civil society organization can be a local NGO, church, university, etc. One of the challenges is that the company may not perceive these organizations as neutral. 	<p>Mixed approach</p> <ul style="list-style-type: none"> In this approach, one organization hosts the monitoring mechanism and other organizations provide various services and capabilities. For example, the company could host the program and a local NGO could manage the technical aspects.

(Both boxes from SSLS)

4. Implementation and joint evaluation, sharing results. The joint team should draft a detailed monitoring plan according to the dialogue rules, methodology, institutional and funding arrangements. The plan must identify which issues the program will monitor, the methods that will be used to collect data, and how it will ensure that the data is of sufficient quality. It should include clear standards and propose mitigation plans for impacts beyond certain thresholds. The entire process must be well documented and transparent. It should also include mechanisms for dialogue, especially to address conflicts about interpreting the data collected. The program must be evaluated and the results must be shared with stakeholders, as set out in the plan. (SSLS, RESOLVE)

SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ 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, a (community-controlled) 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.

ANIMATION ACTIVITIES

- Presentation of the unit's themes. Ask participants to summarize, in their own words, how to carry out documentation.
- Discussion on information about a mining project and a mining company; barriers to access information (see box below).
- Worksheet on community health and well-being impacts (see box below).
- Small group work on the joint monitoring scenario, "Betaland" (see box below).

Animation Box: Discussion

Information about a mining project, its impacts and a mining company

Objectives: Learn about the questions to ask mining companies in order to access as much information as possible about the mining project, its impacts and the mining company. Discussion with other participants to think about different types of questions that they might not identify on their own.

Divide participants into small groups. Ask participants to make a list of questions about (1) the mining project, (2) its impacts, especially consequences and questions about the project's risks, possible resettlement and compensation, and benefits the community could receive from the project, and (3) the mining company. Ask participants to indicate to whom they would ask these questions in order to receive responses.

Ask each small group to share their responses with all participants. The facilitators can verify if, for example, the questions identified in this unit are included in the participants' responses. (OA, 2010 and 2014)

Animation Box: Access to information**Obstacles to access information**

Objectives: Understand obstacles to access information and how to overcome them.

Divide participants into small groups of 5 to 6 people.

Ask each group to discuss obstacles they encounter in accessing information about a project, and how these obstacles can be overcome or have been overcome by the community in the past (that is, what are the solutions and what did the community try to do before).

Ask each group to make a brief summary of their discussion on a piece of paper. If literacy is low, groups should focus on the discussions only. If not, then give pieces of paper to each group, drawing two columns onto each paper with the words “obstacles” and “solutions” at the top of each column.

Ask each group at the end of the activity to present their discussion results to all participants, concentrating on the solutions. (OA, 2014)

Animation Box: Impact assessment on health and well-being**Worksheet of impacts on community health and well-being**

Objectives: Analyze the potential impacts (negative and positive) of a proposed activity on community well-being as defined by the community.

Encourage the community to gather as much information as possible on the proposed activity. This will improve the accuracy and completeness of the study. Facilitate a broad community discussion to identify key aspects of material, social, cultural and spiritual well-being (for example, food, health, housing, education, tenure security, presence of social groups, equity, freedom to exercise traditions and beliefs, etc.).

Group these into clear themes. Create a worksheet (a table) organizing the different aspects of community well-being under their respective themes. The worksheet should include columns with space to indicate if the proposed activity will have a potential negative, positive or neutral impact on that aspect. It can also include columns to note if more information is necessary, and to add comments.

For each row and column of the worksheet, analyze the potential impact of the proposed activity on the different aspects of well-being. The score can be a simple “yes” or a checkmark. It can also be more descriptive or provide a value relative to a defined scale.

Once the worksheet is complete, facilitate a discussion within the community about the results. On the whole, will the proposed activity probably have a negative or positive impact on community well-being?

Develop an action plan. If the analysis shows a strong negative impact, the community will certainly want to take action to reduce or prevent the activity from occurring without a clear framework for management and compensation. If the analysis shows likely positive impacts, the community will want to engage in a proactive manner to increase these potential positive impacts. (CIKOD and NJ, 2012)

Animation Box: Small group work

“Betaland” joint fact-finding scenario

Objectives: Learn how to organize and implement a joint fact-finding inquiry through a fictional scenario and role play.

Participants will be introduced to fictional scenarios based on real case studies and work in small groups, with each person randomly assigned a role to play.

The Hoth gold mine is located 20 km west of the small town of Naboo, in Betaland. Since 2010, the headlines and first page of local newspapers have featured several stories on the Hoth mine and hold it responsible for environmental and public health risks. Since the mine started operations, the residents of Naboo and neighboring villages have expressed growing concerns regarding negative impacts of the mine on their health, environment and social and cultural practices. They also believe they have been treated unfairly in the agreements to acquire their lands for the mine, and believe the company’s local recruitment and hiring practices are discriminatory.

Community members are also very worried by the mine’s impact on their water. In January 2013, a French NGO published a report showing evidence of water contamination in several areas affected by the Hoth mine, as well as other negative environmental and social impacts. After that, a university study revealed contamination of Naboo drinking water by the Hoth mine. Hoth rejects the scientific validity of both studies. Hoth claims it has a broad network of stations for monitoring water quality.

At the end of 2013, local community members, NGOs, local government, Hoth and other stakeholders agreed to a dialogue process to try to address their concerns and disputes through a collaborative process. Most of the dialogue participants agreed that the Hoth mine’s impacts on the quality and quantity of water were the source of intense debates and controversies, which needed immediate attention. One of the first agreements that came out of the dialogue was to begin a process of “joint fact-finding” to conduct scientific studies whose results would be trusted and considered accurate by all stakeholders. Participants hoped that a fact-finding inquiry by an independent, unbiased scientist could move the discussion on water forward and propose fact-based solutions.

The participants in the dialogue (company, affected communities, local authority and NGOs) have asked for your help as an independent expert.

Ask participants to form small groups. Within each group, ask participants to choose a role to play: company representative, local authority, elder, woman, youth, NGO, etc.

Ask participants to discuss the following:

1. What ground rules or principles do you think would be important to guide the joint fact-finding process and behavior of the participants?
2. How might the independent scientists be selected?
3. How will relevant data be gathered, analyzed and interpreted?
4. How will study results be communicated and used? (CAO, 2014)

→ See also Unit 3.1 > Diagrams “Circle of Conflict” and “Possible interventions for non-violent conflict resolution” to assist participants’ reflections

Unit 6.3 What recourse mechanisms can a community use to seek remedy?



TEACHING OBJECTIVES

- Initiate reflection on what constitutes clear, efficient and independent access to remedy.
- Provide an overview of recourse mechanisms, judicial and non-judicial, for human rights abuses related to mining projects.
- Make known and facilitate access to regional and international recourse mechanisms.

THEMATIC CONTENT

Right to remedy and reparation

The effective enjoyment of human rights requires that any person whose rights have been infringed has access to effective legal remedy. Article 8 of the UDHR states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

Several types of recourse mechanisms – judicial and non-judicial – are possible to seek remedy for violations due to acts of the State and of mining companies. A **judicial recourse mechanism** is an action with a claim based on law brought before a judge or a court against an individual, one or more State officials or entities, a company, or a group of individuals to repair damage which the claimant alleges to have suffered. **Non-judicial recourse mechanisms** are any other type of mechanism.

— Elements of the right to effective reparation

There are several elements of the right to effective reparation in case of gross violations of international human rights law: (1) restitution, including, as appropriate, restoration of liberty and return to one’s place of residence, (2) compensation for physical or mental harm, material and moral damage, (3) rehabilitation (medical and psychological care, legal and social services), (4) satisfaction and (5) guarantees of non-repetition.¹⁶

¹⁶ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law* of the United Nations General Assembly.

— **Criteria for non-judicial recourse mechanisms**

Principle 31 of the *UN Guiding Principles on Business and Human Rights* sets out the following criteria to assess the effectiveness of non-judicial grievance mechanisms:

Legitimate: Enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes

Accessible: Being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access

Predictable: Providing a clear and known procedure with an indicative time-frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation

Equitable: Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms

Transparent: Keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake

Rights-compatible: Ensuring that outcomes and remedies accord with internationally recognized human rights

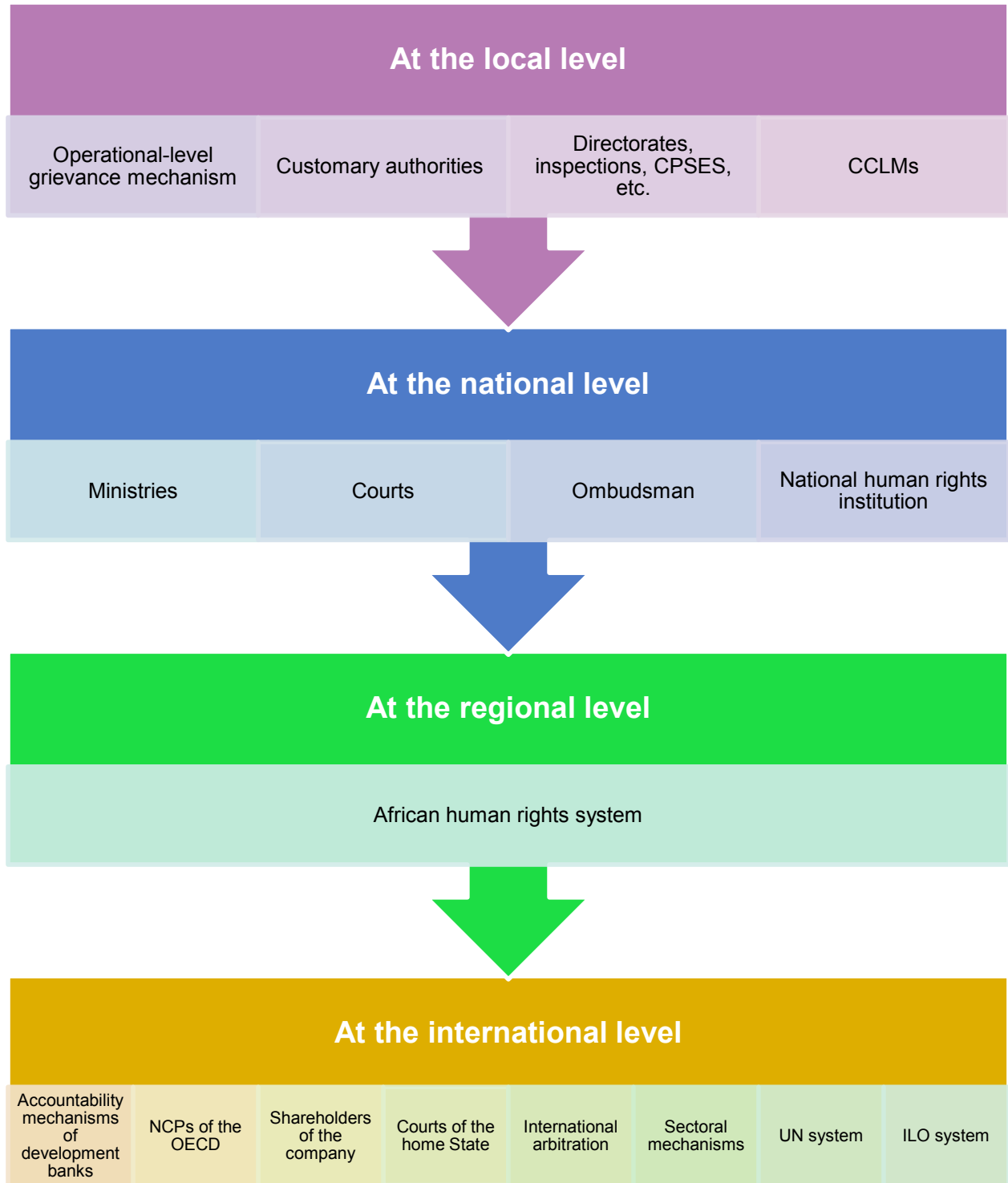
Source of continuous learning: Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms

Based on engagement and dialogue: Consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances

Overview of recourse mechanisms

If attempts to resolve the problem at the local level are unsuccessful, the following recourse mechanisms at the national, regional and international level can be attempted to address actions by the State and mining companies. → See *Unit 6.1 about actions at the local level*

OVERVIEW OF POSSIBLE RECOURSE MECHANISMS



— How can you choose the recourse mechanism most suitable for your case?

Among the recourse mechanisms covered in this unit, the one that is most suitable for your case depends 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 time and resources available to them.

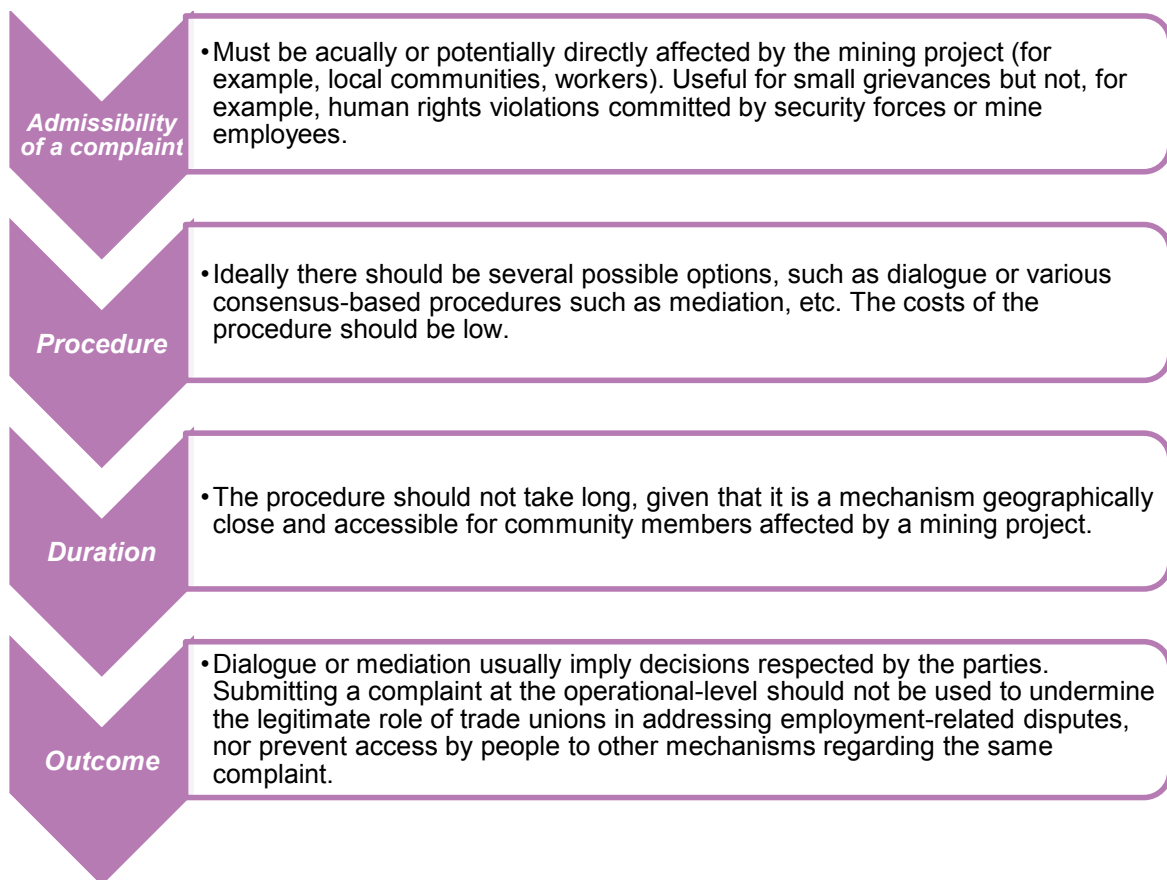
For example, judicial procedures at the national level can be costly and require a lawyer. Often the decisions may be ineffective given the time it takes for a claim to be heard and decided. Regional recourse mechanisms may not provide binding decisions for the country, and can also take a long time.

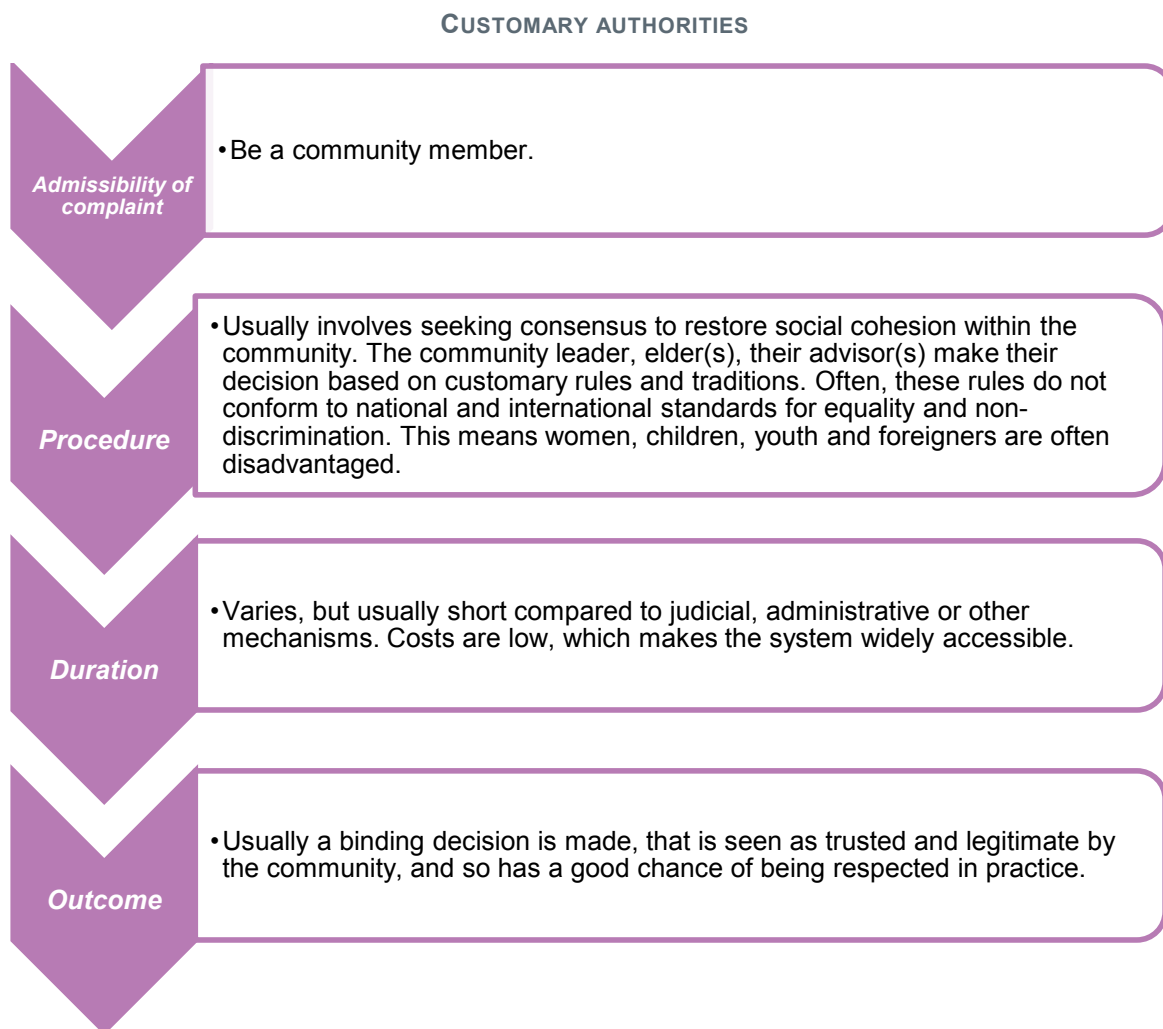
In order to assist you in choosing among the different recourse mechanisms identified in the diagram, "Overview of possible recourse mechanisms", the next pages provide information on each of these recourse mechanisms about: (1) criteria for the admissibility of a complaint, (2) the procedure, (3) the duration of the procedure, and (4) the outcome.

At the local level

OPERATIONAL-LEVEL GRIEVANCE MECHANISM

It is good practice for each mining project to have an operational-level grievance mechanism (*IRMA, Chapter 5.3*). It is their primary tool to avoid and resolve conflicts.





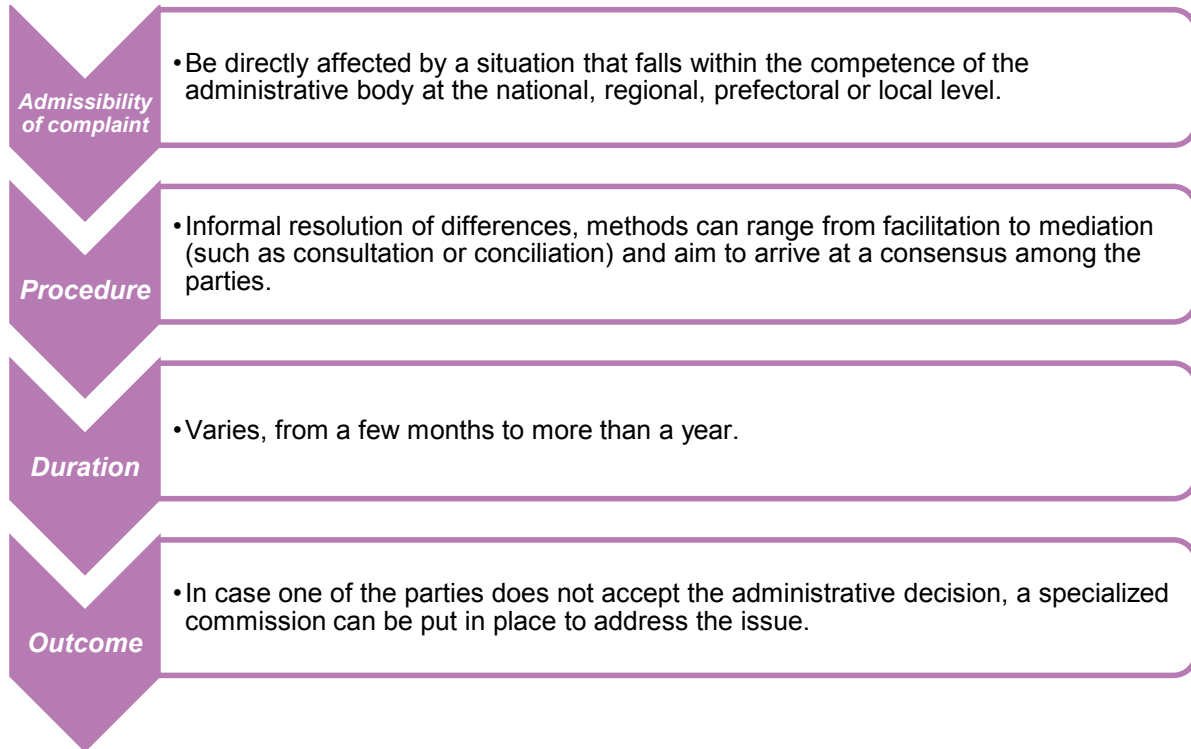
Case Study: Gold mining activities by dredging suspended after complaints to the Ministry of Environment

Practiced with very rudimentary tools, gold exploration activities by dredging on the Tinkisso river in Guinea caused obstruction of the riverbed with the formation of sand dunes at various places on the river, water pollution due to spillage of used oil, destruction of vegetation on the banks, narrowing of living areas for hippos, disappearance of manatees, reduced revenues for fishermen due to the scarcity of fish varieties, drastic reduction in fish consumption by neighboring communities necessary for their protein needs, and reduction in the clarity and purity of the water, which affects aquatic life in general.

In 2012, after tensions between fishermen and miners, the Ministry of Environment decided to suspend all gold mining activities by dredging in the Tinkisso river, a tributary of the Niger river. This general suspension was seen as legitimate and recognized by local authorities and community members suffering the impacts of this form of mining. (BGEEE)

ADMINISTRATIVE AUTHORITIES

The first recourse mechanism (aside from customary authorities) to resolve a conflict is often the administrative agency charged with the issue. At the level of the region, prefecture and sub-prefecture, affected communities can seize, individually or as a group, the deconcentrated services (inspections, directorates), the CPSES and CCLMs. → *See also Unit 2.3 about the roles and responsibilities of the State*



At the national level

At the national level, there are several recourse mechanisms: administrative authorities, courts, Ombudsman and the National Human Rights Institution. Complaints can also be addressed to members of the National Assembly (Mines Commission) for their support.

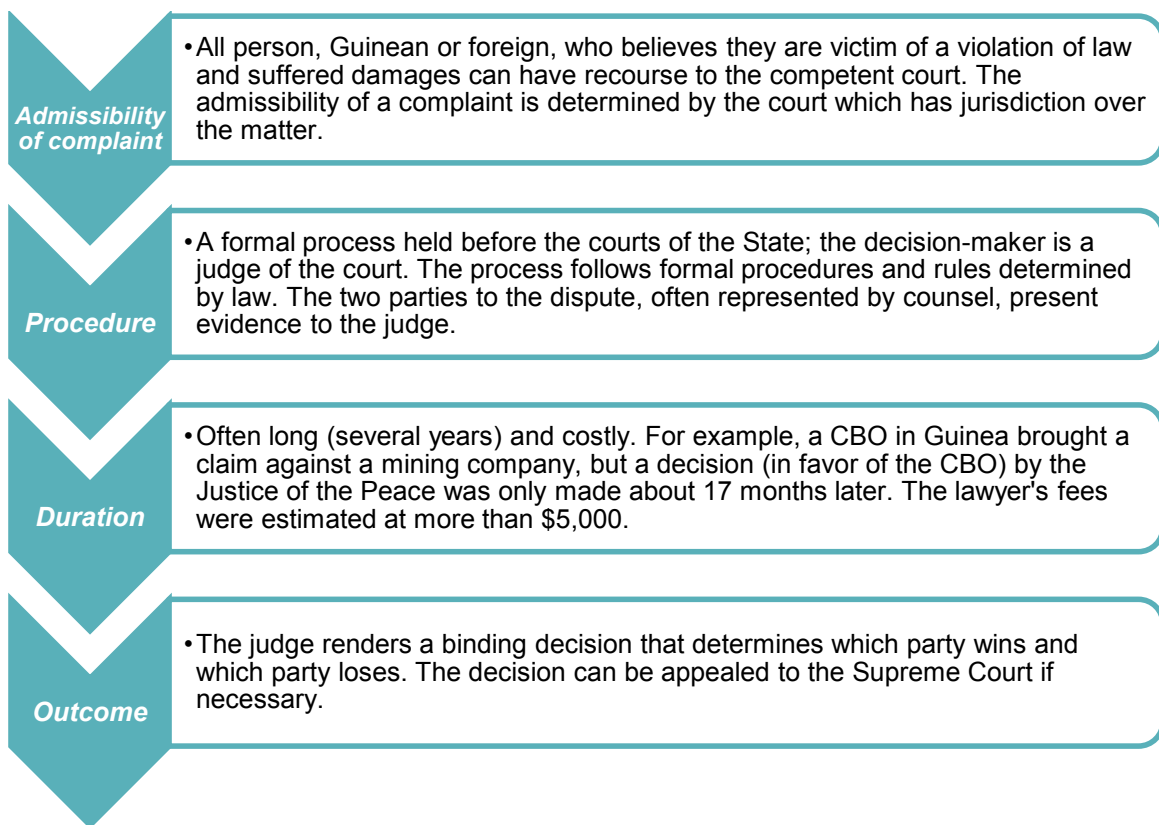
ADMINISTRATIVE AUTHORITIES

At the national level, complaints can be addressed to administrative authorities at the Ministries: to MMG which transfers cases to be addressed to its technical services (Bureau for Studies and Strategy, Communication Service, Community relations, etc.), to MATD, to the Ministry of Environment, the Ministry for Security, the Ministry for Health, the Ministry of Agriculture, etc. → *See box above for details about the admissibility of a complaint, the procedure, duration and result.*

COURTS

Article 9 of the Constitution contains two important provisions guaranteeing every person, Guinean or foreign, to assert their rights in all circumstances: All human beings “have the inalienable right to apply to the court to assert their rights against the State and its agents” and all “are entitled to a fair trial in which the right to defend oneself is guaranteed.” Article 9 further provides that “the right to counsel is recognized.”

Access to the courts is often limited, because the courts are far from rural areas and communities living in those areas may not have enough knowledge on how to use lawyers, what the relevant legislation is, and the procedures and rights they are granted by law. In addition, costs can be high and judges are not always willing to implement regulatory standards that can contradict a country’s traditions and customs. (FAO, 2010) It is recommended to consult a CSO, such as MDT, to accompany you in pursuing judicial remedies in Guinea and in the region. → See *Source documents > Specialized NGOs*



Case Study: Mining company sued by local communities

For many years now in Siguirini, Guinea, communities suffer the negative impacts of gold mining by the SMD company. In 2010, demonstrations were harshly repressed and many community leaders were jailed.

In 2012, the mayor of the rural municipality of Siguirini, supported by the community-based organization Citizens Association for the Development of Baraka (*Association des Ressortissants pour le Développement de Baraka*, ARDEBA) and supported by the NGO CECIDE engaged the Ministry of Mines in order to address the following grievances: i) payment of three years of surface royalties in arrears; (ii) payment of 10% of the sale of scrap metal and composite removed from SMD, representing the share of

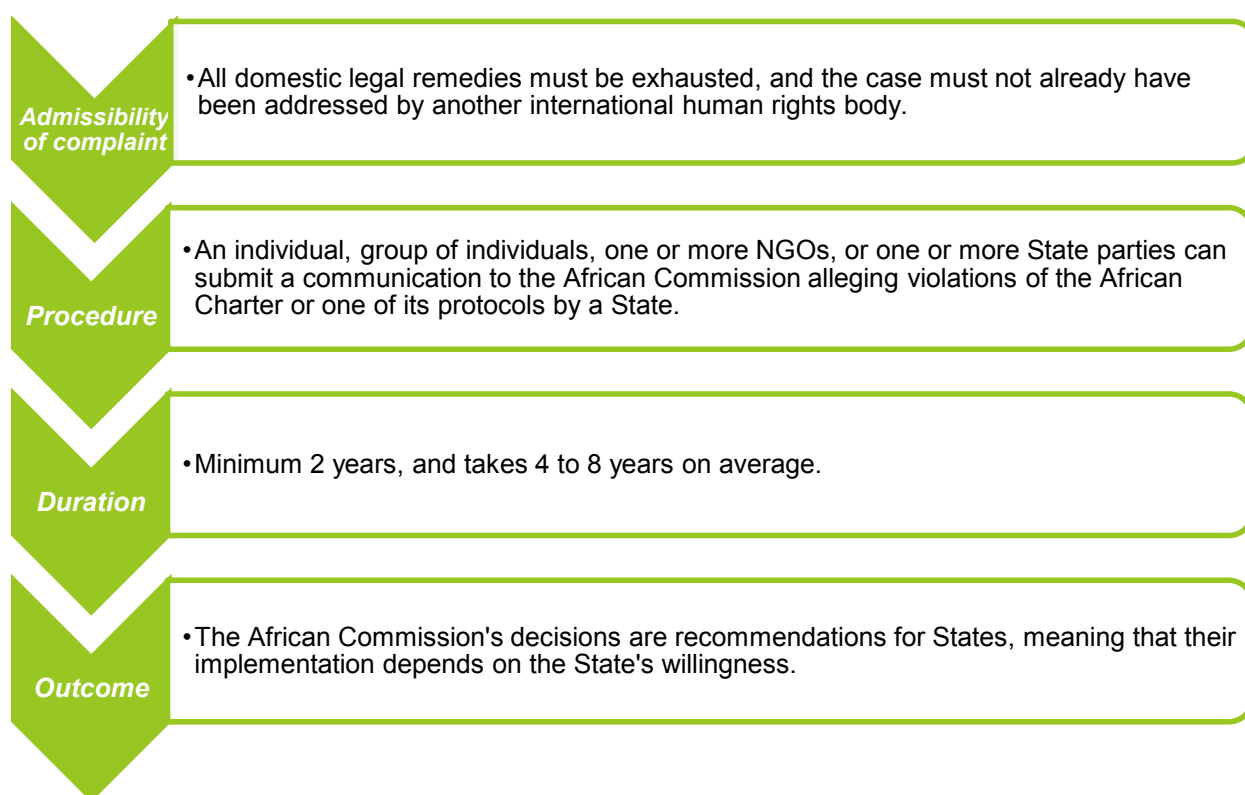
the rural municipality of Siguirini; (iii) flooding of the Lero fields as a result of SMD blocking the Karta river; (iv) compensation of 145 farmers for expropriation from their lands.

One year later, SMD was sued by the CBO ARDEBA in the court of the Siguiri Prefecture. SMD was sentenced by that court in the first instance to pay \$66,000 to ARDEBA for damages resulting from non-compliance with the contract signed on 27 May between the parties. SMD has lodged an appeal with the appellate court in Kankan. (*CECIDE*)

At the regional level

There are two principal recourse mechanisms in the African human rights system: the African Commission on Human and Peoples' Rights, and the ECOWAS Court of Justice. → *See Source documents > Thematic guides > FIDH, Section I for more information*

COMMUNICATION TO THE AFRICAN COMMISSION

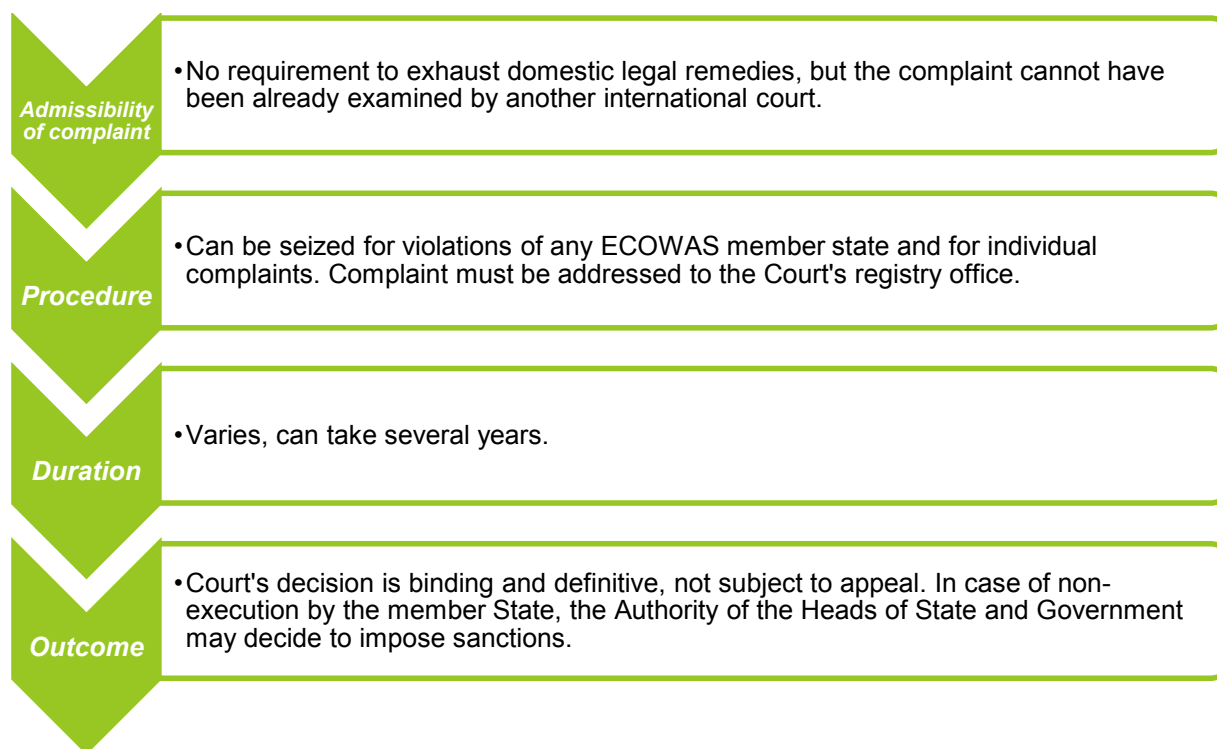


Case Study: Endorois community in Kenya submits a communication to the African Commission

The Endorois community is a minority indigenous population living near Lake Bogoria in Kenya. In 1973, about 60,000 Endorois were evicted from their ancestral lands to allow ruby exploration. The Endorois community wished to reclaim their lands and so organized the Endorois Welfare Council (EWC), an organization advocating for community rights. EWC first filed complaints using local and regional judicial mechanisms, also mobilizing communities and demonstrating. In 2003, with the help of international NGOs, the Endorois submitted a communication to the African Commission against Kenya. The African Commission concluded that the Kenyan government violated the rights of the Endorois, as recognized by the Kenya Constitution and by the *African Charter*, regardless of any lack of formal land title.

Challenges remain for the Endorois community to implement the African Commission decision. Ruby exploitation on Endorois land has stopped, but institutional reforms are still ongoing, as is the case with the Kenya Lands Commission, which has a mandate to investigate the historic injustices related to lands. In 2014 – four years after the African Commission decision – the President of Kenya appointed a working group to implement the African Commission decision. The colonial land tenure system in place at the time of the expropriation has been abolished. The Kenya Constitution today recognizes community lands as a form of land ownership, but the law necessary to implement this provision is still being drafted. (EWC)

ECOWAS COURT OF JUSTICE



→ See Source documents > Thematic guides > FIDH, Section I for more information

Case Study: Victims of forced eviction file a complaint against the State with the ECOWAS Court of Justice

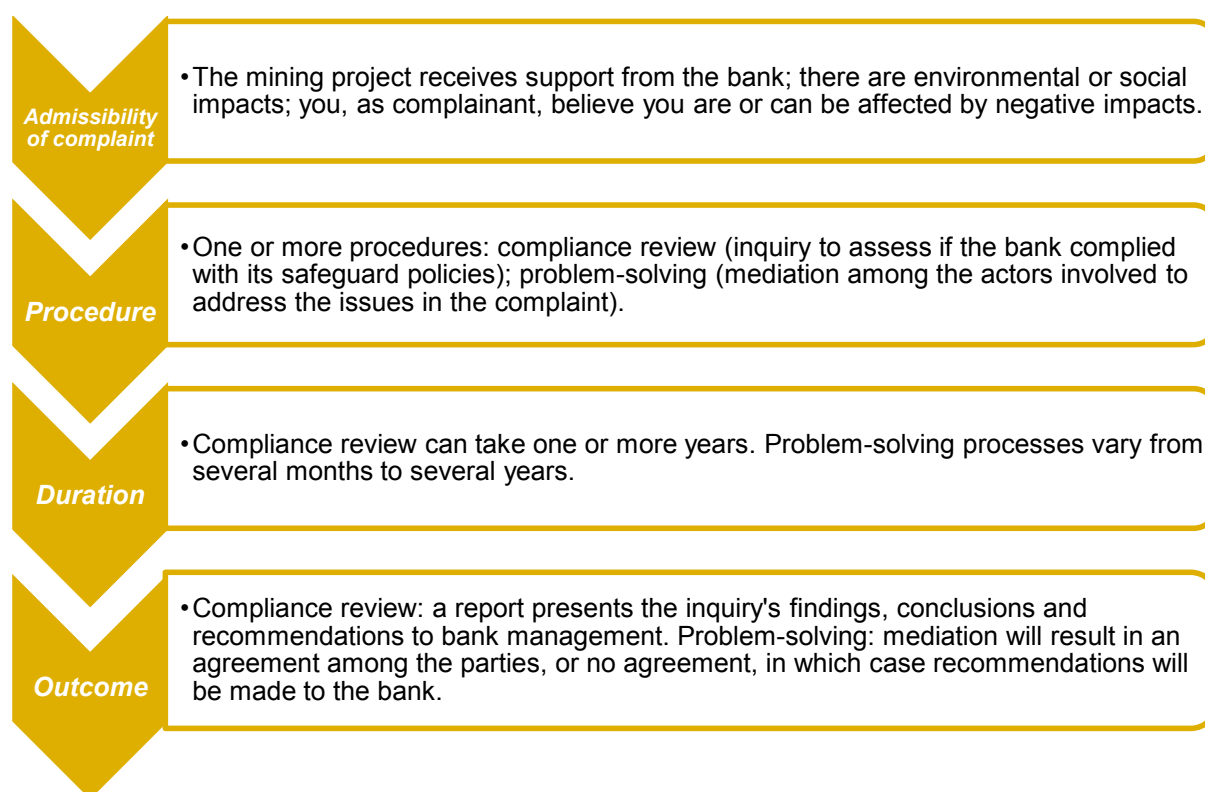
This case has pitted the Saoro community against the Guinean Palm Oil Company (*Société guinéenne de palmiers à huile*, SOGUIPAH) for more than a year. Arguing that according to the Land Law, the lands belong to the State, SOGUIPAH wanted to expropriate residents without compensation. People have thus refused to move, but the company called on the army to carry out forced evictions. The toll was heavy, as 4 people died and more than 70 people are currently detained.

Having brought the case to the high court, the community's case was dismissed. The CSO *Mêmes Droits pour Tous* (MDT) was approached by the victims, and a complaint was filed against the State with the ECOWAS Court of Justice. The Court seized the State which has filed a defense. The Court will next come to Conakry for the next steps in the procedure. (MDT)

At the international level

ACCOUNTABILITY MECHANISMS OF DEVELOPMENT BANKS

As of the date of the Guide's publication, the IFC, World Bank, African Development Bank (AfDB) and the European Investment Bank all have projects in Guinea. If you are affected by a project receiving support from one of these banks, and you have not succeeded in having your issues addressed at the local level, you can file a complaint with the bank's accountability (recourse) mechanism.¹⁷ → See *Source documents > Thematic guides > FIDH, Section IV*

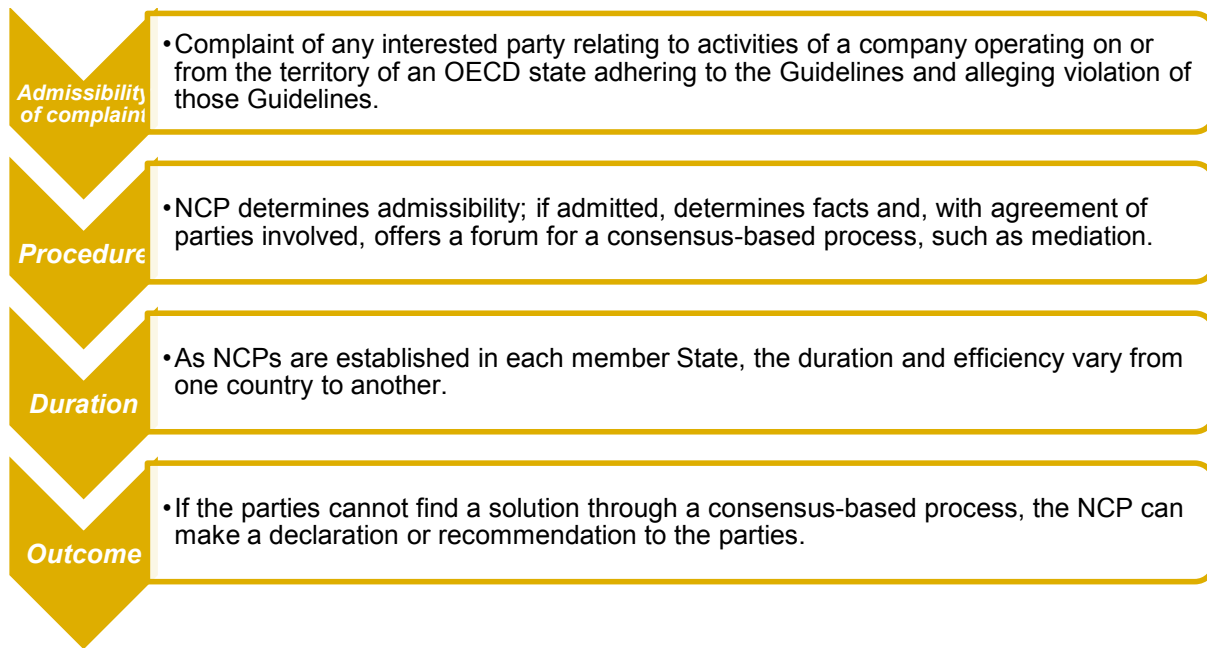


¹⁷ For the IFC, contact the Compliance Advisor Ombudsman (CAO); for the World Bank, contact the Inspection Panel; for the AfDB, contact the Independent Review Mechanism; for the European Investment Bank (EIB), contact its Complaints mechanism.

NATIONAL CONTACT POINTS (NCPs) OF THE OECD

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) are recommendations to companies on general principles, information disclosure, human rights, employment and industrial relations, environment, and combating bribery, among other topics.

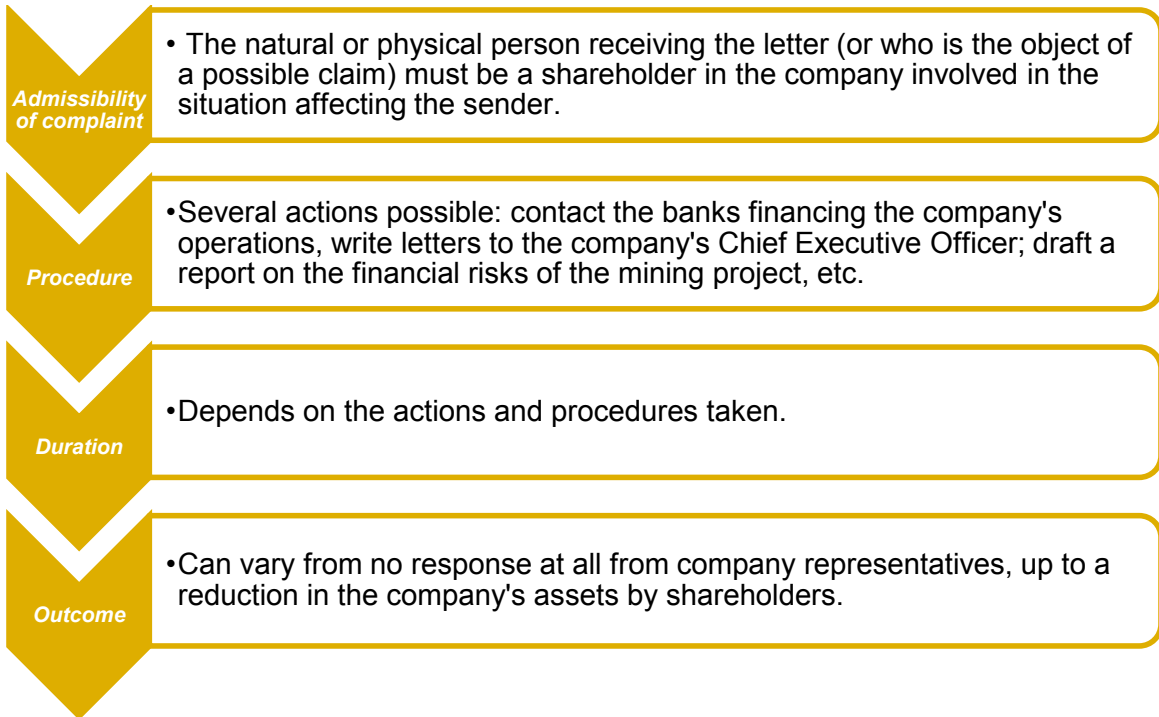
The OECD Guidelines require that each adhering government¹⁸ establish an official National Contact Point (NCP). The NCP is the agency (can take different forms) of the adhering government. The role of NCPs is to promote the OECD Guidelines at the national level and to offer a “**specific instance**” recourse mechanism to resolve issues that arise for any interested party who believes a company has not respected the OECD Guidelines in its activities. → See *Source documents > Thematic guides > FIDH, Section III for more information*



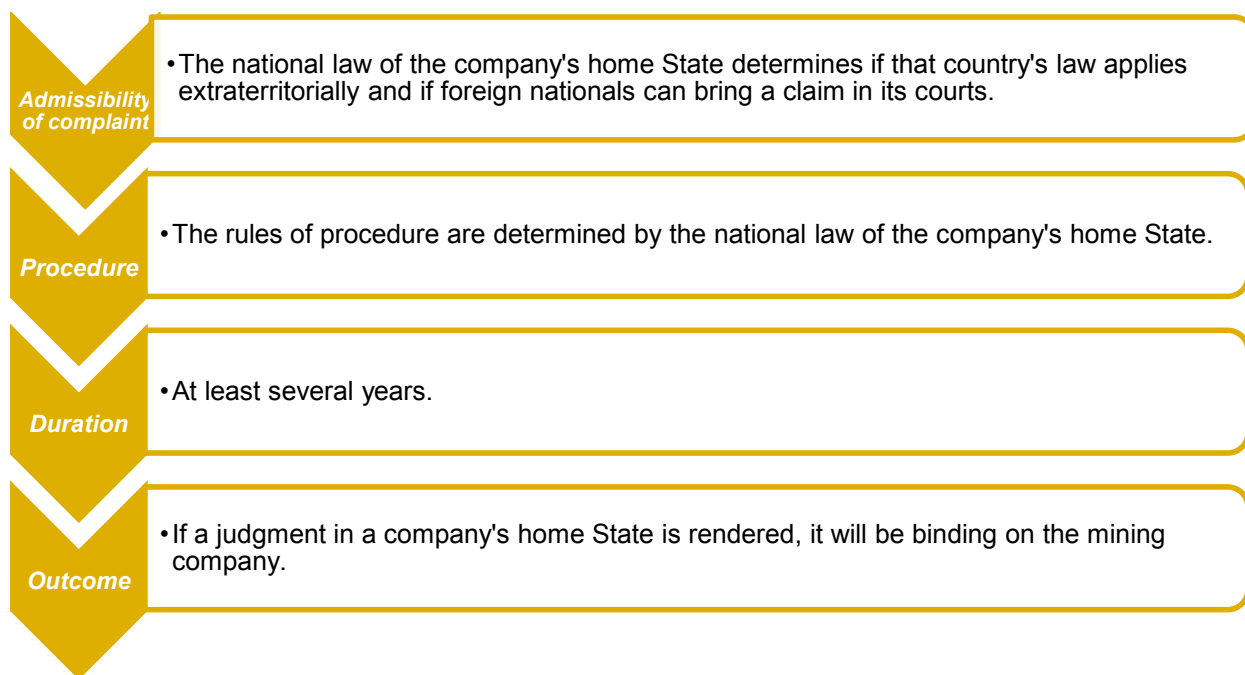
¹⁸ Governments adhering to the OECD Guidelines include the 34 OECD member States plus Argentina, Brazil, Egypt, Latvia, Lithuania, Peru, Romania and the European Commission. The 34 OECD member States are: Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

SHAREHOLDERS OF THE COMPANY

Public companies place their securities (such as shares or units of the company) for sale to the general public, usually on a stock exchange. Each shareholder is a co-owner of the company. Information about the structure and shareholders of a listed company should be publicly available and mostly available online. It takes expertise and usually accompaniment by international partners to carry out actions engaging shareholders. → See *Source documents > Thematic guides > FIDH, Section IV for more information*

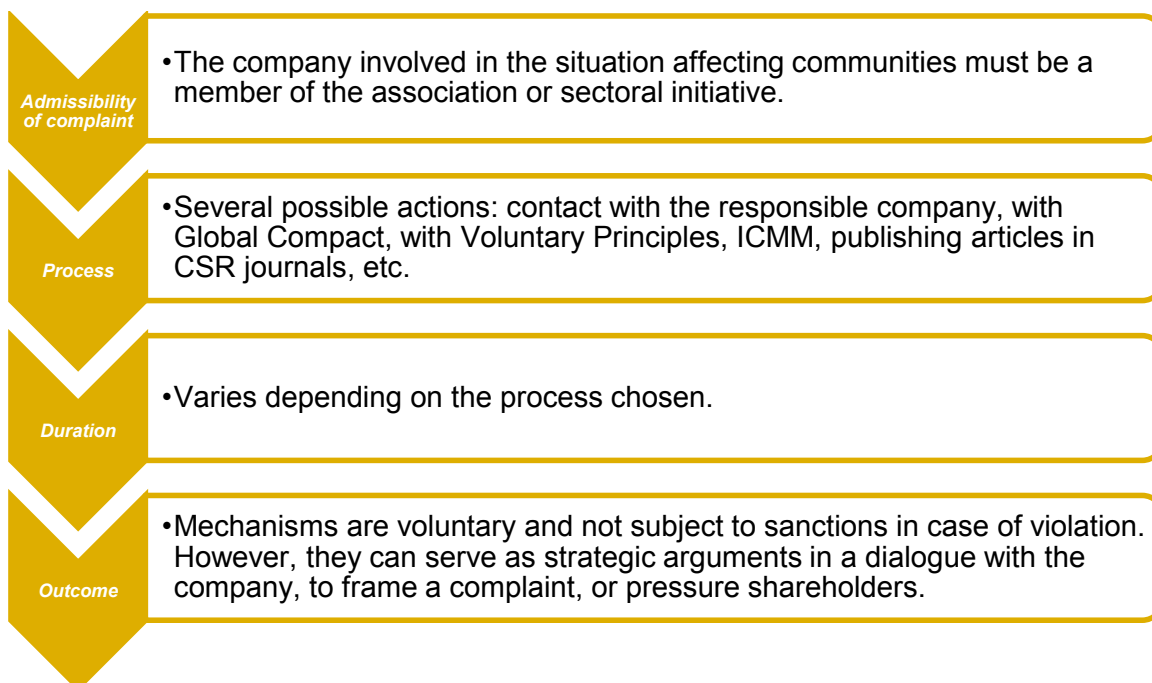


COURTS OF THE COMPANY'S HOME STATE



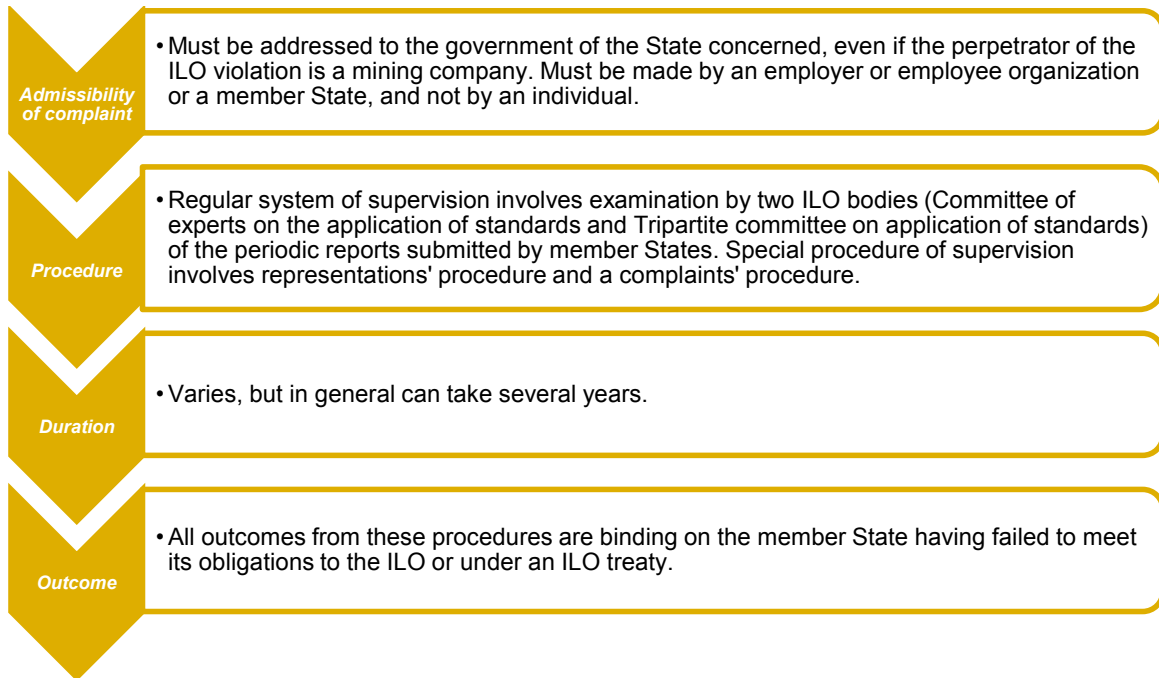
SECTORAL AND MULTI-SECTORAL MECHANISMS

There are several voluntary initiatives on corporate social responsibility (CSR). For example, the United Nations Global Compact, the Voluntary Principles on Security and Human Rights, etc. → [See Source documents > Thematic guides > FIDH, Section V for more information](#)



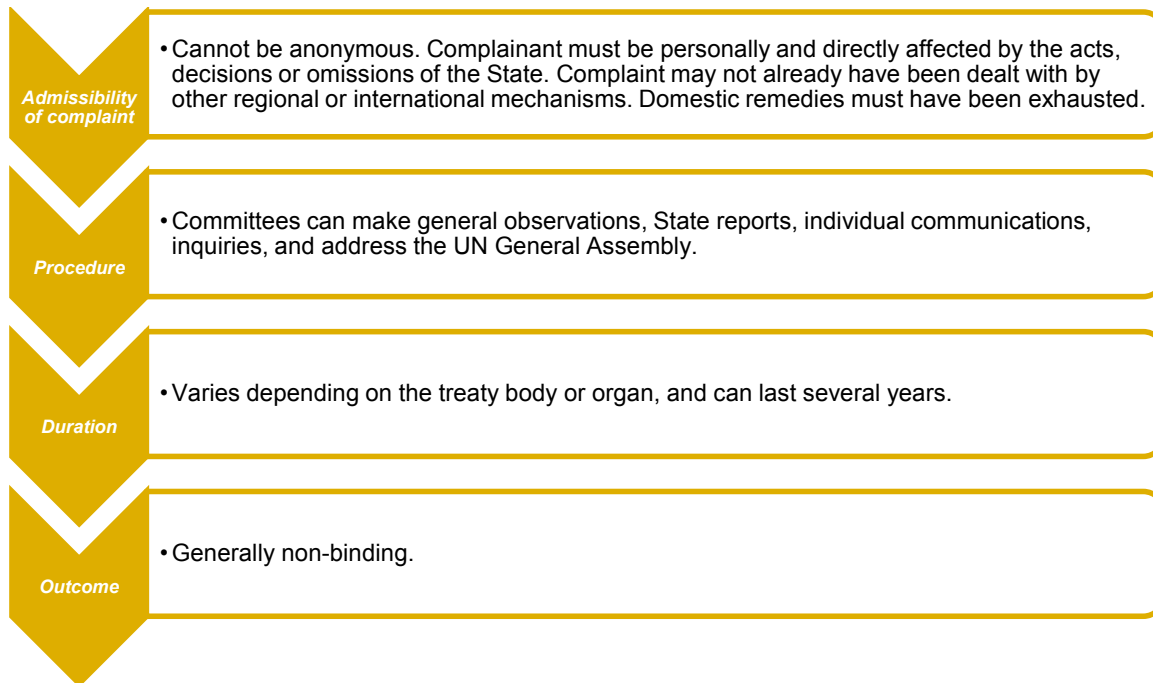
INTERNATIONAL LABOUR ORGANIZATION (ILO) SYSTEM

The ILO has two main supervisory mechanisms for overseeing application of its labor standards: the regular system of supervision and special procedure of supervision. → *See Source documents > Thematic guides > FIDH, Section I for more information*



UNITED NATIONS (UN) SYSTEM

The UN has several recourse mechanisms to receive complaints, whether through the mechanisms of bodies created by UN treaties on human rights, or through the mechanisms of the organs of the Charter of the UN. Such complaints must be made against UN member States and cannot be addressed to companies. For each UN human rights treaty, a committee is charged with overseeing respect for the treaty's implementation. The UN Charter created several organs, including the Human Rights Council, the Human Rights Advisory Committee, the revised 1503 procedure and the "special procedures". → See *Source documents > Thematic guides > FIDH, Section I for more information*



Case Study: Joint report of Guinean CSOs to the Universal Periodic Review of the UN Human Rights Council

The Universal Periodic Review (UPR) procedure provides CSOs the opportunity to report on their verification of respect for human rights by UN member States. Guinea's review by the UPR in May 2010 was seized as an opportunity by a group of Guinean human rights NGOs (Coordination of Guinean Human Rights Organizations (CODDH), CECIDE, ARDEBA) with technical support from the US-based NGO Global Rights, to submit their observations to the Human Rights Council and to raise awareness at the international level.

The joint report identified a deterioration of the economic and social conditions for the majority of the population, despite the country's rich natural resources. This has led to grave civil and political rights violations, thus highlighting the interdependence of human rights.

Deprived of the enjoyment of their social and economic rights, popular uprisings have become increasingly frequent since 2007. Exercising their right to peaceful assembly and freedom of expression, citizens repeatedly denounced poor governance, corruption and irresponsible management of Guinea's natural resources. Systematically, these agitations were violently repressed by Guinean security forces, resulting in massive violations of civil and political rights in the country. The unfortunate events of 28 September 2009 caused more than 150 deaths and at least 37 cases of rape, according to the Guinean

Organization for Human Rights Protection (*Organisation Guinéenne de Défense des Droits de l'Homme*, OGDH). Such flagrant human rights violations are only amplified when persons arbitrarily arrested are imprisoned and subject to a judicial system in which human rights are violated.

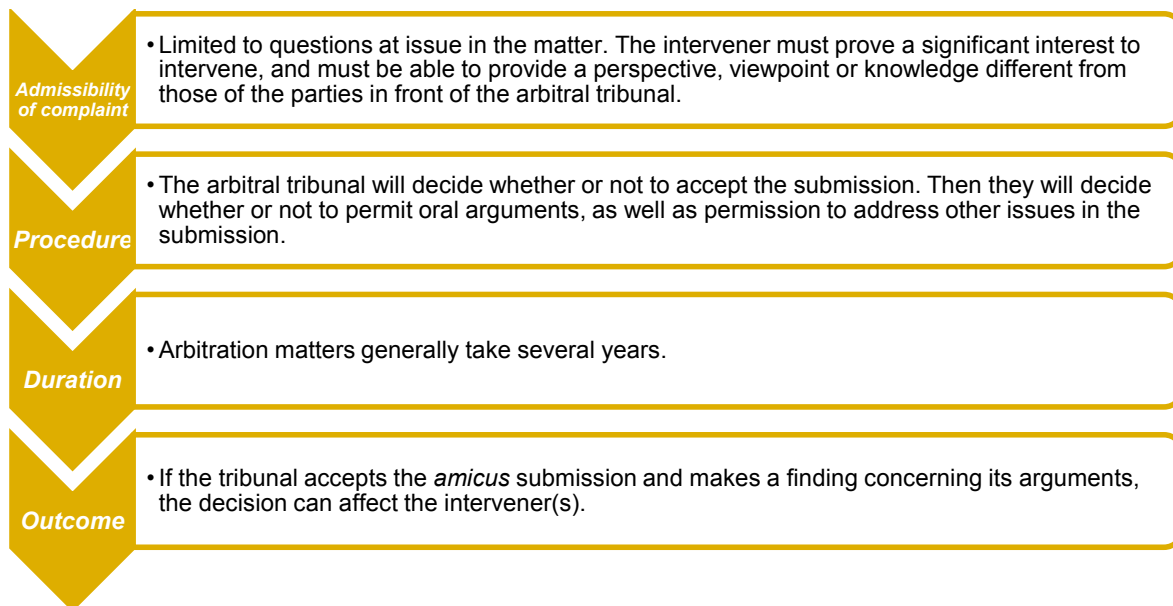
NGOs have called on the government to take all necessary measures to identify those responsible and punish the perpetrators, not only to repair the harms caused to victims, but also to put mechanisms in place to ensure such acts do not recur.

To carry out this work, the report's authors divided themselves into four working groups. Information was collected through field surveys conducted by members of the coalition, through direct observation, focus group discussions, and interviews. (*CECIDE*)

INTERNATIONAL INVESTMENT ARBITRATION

Disputes between the Guinean State and foreigners regarding the application or interpretation of the *Investment Law* are, unless otherwise agreed to by the parties, definitively settled by arbitration (an agreement to resolve their dispute through an arbitral tribunal, instead of the courts of the home or host State). The decision of the arbitrators (the arbitral tribunal) is binding and can be executed in a State's courts by the winning party. When the Republic of Guinea is party to such an arbitration, NGOs, CSOs or other private persons can intervene in the arbitration matter by submitting an *amicus curiae* ("friend of the court") brief.

As of the date of the Guide's publication, Guinea is a respondent (defendant) in two such arbitration matters conducted according to rules allowing submission of *amicus curiae* briefs: the BSG Resources Limited and Getma cases. → [See Source documents > Thematic guides > CIEL for more information](#)



SUMMARY OF THE UNIT'S KEY LESSONS

- ✓ 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 recourse mechanisms (judicial and non-judicial) available to seek remedy for claims regarding actions of the State or a mining company.
- ✓ Such recourse 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 recourse mechanism(s) depends 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.

ANIMATION ACTIVITIES

- Presentation in plenary of the different recourse mechanisms to seek remedy.
- Analysis of the many options and tools to address conflicts (see box below).
- Analysis of the mine's operational-level grievance mechanism in light of the 7 criteria for effective non-judicial grievance mechanisms.
- Discussions on case studies. → See *Advice for facilitators > Basic animation activities > Discussing a case study*

Animation Box: Analysis in plenary or small groups

Analysis of multiple options and tools to resolve disputes

Objectives: Initiate reflection and identification of tools to resolve conflicts. It is important to remind participants that these options are not mutually exclusive. The strategy must adapt to the dynamic of the conflict as it evolves.

What tools do you use today in your community to resolve conflicts within the community? With other actors? Use the following table to identify advantages, disadvantages and examples for each one of the options and tools identified by participants. (*Futuro Sostenible*)

Options	Advantages	Disadvantages	Examples
Administrative recourse mechanisms			
Judicial recourse mechanisms			
Mediation			
Negotiation			
Others			

ADVICE TO FACILITATORS

Planning a training program

Objectives of the training

It is recommended to involve several community members (men, women, elders, youth) in planning the training. Together, you must identify:

1. The situation in the area. For example, the phase of the mining project, the most pressing problems faced by community members.
2. One or more of the units (maximum two modules) that address the subjects of the identified problems.
3. The actors within communities in the area who are best placed to favor a social transformation acting on the knowledge and tools of the unit, and who can benefit from a change in attitude, motivation or individual behavior.
4. The training's objectives for participants on an individual-level. For example, transfer knowledge and tools, favor a change in attitude, motivation or individual behavior.
5. The objectives for social transformation expected by the actions and conduct of participants after the training.
6. The mode and hours of instruction, number of participants (including women), facilitators of the training (men and women), precautions for participants' security, location of the training, materials and equipment required.

Agenda for the training

Here is a suggested agenda to deliver a 3-day training on *Module 3*. It is recommended to have an attendance list for participants to fill out each day with their name, gender, position and contact information.

Day 1

Welcome, participant introductions (30 minutes) – Ask each participant to say their name, where they are from, and why they are interested in the training. Explain the objectives of the training to participants.

Rules of conduct (30 minutes) – Suggest some guidelines or rules for participants' conduct during the training, to ensure everyone can participate. Here are some examples: Put phones on silent. Do not talk on the phone, or go outside to take the call if necessary. Everyone can fully participate: women, elders, men, youth, etc. One individual cannot dominate the discussion. All perspectives are valuable. Raise your hand to request the floor. Interactive method.

Ask participants to choose a “village leader” for the training who will monitor the discussions, ensure the guidelines are respected, manage time, etc.

Participants' expectations (30 minutes) – Ask participants what their expectations are for the training, and to write these down on paper. Discuss participants' expectations. If the expectations are unrealistic (for example, stop the mine by participating in the training), explain the objectives of the training once again.

Define basic concepts (1 to 2 hours) – As needed, discuss some basic concepts covered in Modules 1 and 2. For example, what is an industrial mine? The phases of a mining project? What is law? What are everyone's roles and responsibilities? What is an "affected community"?

Energizer games, as needed (10 minutes)

Facilitate Unit 3.1 (3 hours)

Reflections, participant questions, preparation for the next day (15 minutes) – Ask a few interim evaluation questions. For example, some general observations on the day, the pace of the training (too fast, too slow, time management), relevance of the subjects, which aspects they most and least appreciated, suggestions for the next day. The facilitators should adapt the delivery of the training program in light of participants' reasonable comments and suggestions.

Day 2

Reminder of the rules of conduct, questions, participant reflections (15 minutes)

Facilitate Unit 3.2 (3 hours)

Energizer games, as needed (10 minutes)

Facilitate Unit 3.3 (3 hours)

Reflections, participant questions, preparation for the next day (15 minutes) – Ask a few interim evaluation questions.

Day 3

Reminder of the rules of conduct, questions, participant reflections (15 minutes)

Facilitate Unit 3.4 (3 hours)

Energizer games, as needed (10 minutes)

Action planning (1 hour) – Ask participants to reflect on what they learned. Ask participants to work in small groups (5 or 6 people) and to work together to develop an action plan. → [See Basic animation activities > Action plan](#)

Evaluations (30 minutes) – Ask participants to respond to several questions to evaluate the training program as a whole. For example, questions about their degree of satisfaction, their degree of increased knowledge and tools, change in attitude or motivation. After 3 to 6 months, facilitators should ideally call participants, to ask what initiatives they have taken based on the knowledge and attitudes of the training.

Some tips for a smooth training

- Give clear instructions, including on the time required for participants to complete activities without wasting time. For example, ask one question at a time.
- Try as much as possible to ask questions allowing participants to describe or explain something (open questions) instead of asking questions with a 'yes' or 'no' answer (closed questions).
- Encourage everyone to participate – this may require directing questions to those who have not yet spoken, or asking them to report the results of a small group discussion to the group as a whole. Try to avoid situations where people with strong characters dominate the discussion.
- Try to mix the groups for each activity, to allow participants the opportunity to listen to and share their viewpoints with different people during the training.
- Give correct information – if you do not know the answer to a question, you should say so, and if possible, promise to find the answer and to share it with the participant at the next meeting.
- If one of the participants shares information that you know is wrong, correct them. Point out that information is not the same as an opinion, and that it is not a problem for people to have different opinions.
- When a discussion strays from the subject, assess the value of the digression for participants relative to the need to finish the program on time, and refocus the discussion if needed. (*Adapted from OA, 2014*)

It is not for facilitators to mediate (or try to resolve) conflicts or misunderstandings among participants. But if a conflict or serious disagreement arises during the training, facilitators can be called upon to intervene. The goal of the intervention should be to allow the training to continue, rather than resolving the conflict. Facilitators can:

- Acknowledge that a few participants are in conflict. If needed, observe that the disagreement is interrupting the training.
- Remind participants that the goal of the training is to learn and understand the context of a mining project and to strengthen understanding of the issues by communities. Suggest that the disagreement can be better resolved at another time and in another place.
- Ask the persons in disagreement to suspend their dispute in order to respect the group and allow everyone to concentrate on the activity at hand. (*OA, 2014*)

Basic animation activities

At the end of each unit, there are suggestions of methods and animation activities designed to address the subject of the unit. In this section we provide several basic animation activities that we have referred to throughout the Guide.

Animation Box: Brainstorming

Objectives: Rapidly obtain relevant information, working in a large group or small group of people directly involved in a situation (focus group). The goal is to collect all of the ideas and perceptions expressed by people.

Some of its applications: When an aspect of community life (for example, the sources of revenue accessible to local people) will be researched for the first time; or when a general overview of people's perceptions and reactions to a given proposal or event is required.

Time required: This is a very quick exercise; it is usually used to introduce other exercises designed to analyze the results of a brainstorming session. *Materials:* blackboard, newspaper, markers, cards.

Introduce the exercise with an open question on the issue. Write or visualize the question. Participants should visualize all of their ideas on the cards (one idea per card, 3 lines at most). Those with better writing skills should help other participants.

Cards that express the same idea are grouped together. If participants agree, repeats can be discarded, but it is best to replace them with a new card that expresses something agreed to by all. No cards may be removed from the board without the group's agreement. Cards must be read out loud to participants whenever they are handled. Cards that express ideas directly related to one another are grouped together.

The group decides what it is going to do with the results (depending on the circumstances in each case, e.g., the group may hold a new brainstorming session on one of the topics raised, or it may analyze, prioritize, etc.). (IICA)

Animation Box: Analysis of pros and cons – “Yes sir, no sir” game

Objectives: Foster an open dialogue on a contradictory subject using dynamic role playing to overcome obstacles to the discussion.

Time required: 2 to 3 hours as needed, not counting preparation time. *Materials:* Blackboard, tape, markers, cards.

First identify the topic that needs to be clarified. This should be an issue that affects everyone in the group, so that they will participate actively. The issue should be expressed in the form of a proposal or a positive statement (for example, “We should completely eliminate the practice of burning”).

Choose two volunteers from among the participants: the optimist (yes sir) will try to stress all the positive aspects of the proposal or statement (all the good reasons for adopting the proposal). The pessimist (no sir) will do likewise with the negative aspects (all the problems and difficulties that might arise). If there are no volunteers, the facilitators can participate as one or the other of the leading characters. The optimist and pessimist should be given time apart from the group to prepare their arguments.

Both of the leading characters (optimist and pessimist) should try to get participants to speak in favor of their side. Each idea is visualized on a card and placed on the blackboard, on the “yes sir” or “no sir” side. The game should be seen as a competition to see which of the two will have more ideas on their side.

When neither side can produce any more ideas or arguments, the pros and cons of the proposal are analyzed, and the cards are placed in order of priority and discussed when pertinent. This can lead to a new round; if there are new volunteers, the first two players can be replaced.

The information obtained should be set out in a comparative chart of pros and cons for the original proposal. It might be useful to organize the ideas in the form of an impact diagram. (IICA)

Animation Box: Forum theatre (also called Participatory theatre)

Objectives: Stage a community conflict or issue of contention, encourage participation by audience members in the action (becoming “spect-actors” and not only spectators), replacing one of the characters in an attempt to positively change the outcome on stage. Forum theatre is a rehearsal by participants for future actions in their daily lives.

Participants’ experiences, the case studies and scenarios in the Guide can serve as a script to use for this activity.

Time required: Ideally takes 60 to 90 minutes, but it depends on the audience’s reaction to the performance.

Materials: If possible, objects that are found in the community should be used for the set, staging and accessories. Costumes can be used and should make the character’s status clear. For forum theatre performance you need (1) actors to take on the role of characters in the play, (2) a “joker” and (3) “spect-actors”. All should be encouraged to speak loudly and face the audience when speaking.

(1) Characters in the play: Facilitators need to decide if they will play the characters themselves, invite some of the training participants to take on the roles of characters in the play, or invite a group of external actors to perform the play. Actors need to be given time to memorize the script and learn about their movement on stage during the play. Characters in the play should be close to real life and not like caricatures. Actors must listen very carefully to the spect-actors’ interventions. Actors must be able to improvise on the spot and respond to the audience’s ideas in a way that is consistent with their character. Actors must not simply reject (or happily embrace) the spect-actor’s idea, but should adopt a “yes, but” strategy, challenging the spect-actor to engage deeper with the problems in the play.

(2) “Joker”: The Joker is the host of a forum theatre performance – one of the facilitators. She or he explains the rules for the audience, facilitates the audience’s interventions, and helps to reflect on the interventions together with the audience. This means challenging the audience to engage deeply with the issues at hand. It requires asking questions that will help deepen everyone’s (including the Joker’s) understanding of the situation.

The Joker must be enthusiastic about the process, a good listener, non-judgmental, confident in the role as guide, aware of the dynamics in the room, flexible to change plans, deepens the discussion and moves the event forward, avoids all actions which could manipulate or influence the audience, asks open questions and avoids “yes” and “no” questions, asks every question truly wanting to hear the answer, understands that people need time to think things through, avoids long discussions with the audience and encourages audience members to try out their solutions on stage, knows there will always be more than

one solution to any problem, must watch for magic solutions and asks the audience to decide, and makes sure the person who has intervened does not leave the stage defeated.

(3) The “spect-actor”: An audience member who comes on stage and takes part in the action. The “spect-actors” look for alternative ways for the protagonist (and in some cases the antagonist) to change the outcome of the play. The protagonist is the chief character or hero in the play, while the antagonist is the adversary (not necessarily the enemy) who prevents the protagonist from getting what she or he wants. In forum theatre, the protagonist ultimately fails to achieve her or his aim and the audience is asked to replace her or him and try out their ideas for (positive) change.

Phases of forum theatre: Each forum theatre activity is made up of two presentation: first, the “anti-model” (play performed by the actors based on the scripts they learned) in order for the audience to know what the play is about; and then, the actual “forum theatre” in which the audience is invited to come on stage and try out their ideas for change.

Phase 1: Before performance of the anti-model

During this phase, the Joker, standing center stage, welcomes the audience, introduces her or himself, describes the nature of the theatre initiative and some of the key terms (for example, protagonist, antagonist).

“Here is the play!”

Phase 2: Performance of the anti-model

The facilitators or actors perform the anti-model. After the play is finished, the Joker comes back onto the stage and engages the audience in a brief dialogue about the play. She or he may ask questions such as:

- What happened during the play?
- What were some of the issues and problems you saw?
- Who are the main characters?
- What did the protagonist want?
- Did the protagonist get what she or he wanted?
- What prevented her or him from getting what they wanted?
- What else could she or he have done to get what they wanted in this situation?
- Do these problems exist in our community?

The goal is to involve as many audience members as possible, get them to share their ideas and warm them up to the idea of participating in the forum theatre.

Next, the Joker explains the rules of forum theatre and the role of “spect-actors”: please say “Stop” when you have an idea of what the protagonist can do to positively affect the outcome of the play. Come on stage, take the role of the character you would like to replace and try out your idea. The Joker may want to play a warm-up game to prepare the audience for coming onto the stage and intervening in the play.

“Here is the play again!”

Phase 3: During the forum theatre

During the forum theatre, the Joker should be somewhere on the side of the stage, facing the audience (not the actors) in order to immediately identify audience members willing to intervene in the play. Once an audience member (spect-actor) comes onto the stage, the Joker may ask:

- What is your name?
- Who would you like to replace?
- From which moment in the play would you like to start your intervention?

During an intervention, the Joker should pay close attention to what the audience member is trying to do, both in terms of her or his words as well as actions and gestures. When an intervention has come to an end, the Joker first invites other members of the audience to discuss the intervention:

- What did you witness during the intervention?
- What did this person do differently compared to the original person?
- Was it realistic? Has this happened before?
- Would that option work for everyone?
- What are other things she or he could do in this situation?

At times, the Joker may also involve the other actors and ask them questions about the intervention from the perspective of their characters. Finally, the Joker may ask if another audience member has a different idea of how to tackle the problem in the same moment. If no one has another idea at this time, the play continues (starting from the next scene) as if nothing ever happened until the next spect-actor seizes the opportunity to come and try out her or his idea.

Phase 4: After the forum theatre

The forum theatre activity ends with the Joker thanking the audience for their participation and the actors for their work. The Joker also invites the audience to take what they have learned during the event and apply it in their real lives. (OA, 2014)

Animation Box: Discussing a case study

Objective: Ask questions allowing understanding of facts, actors and issues in the case study, and assessing applicability of the case to one's own community in Guinea. Identify and understand lessons learned in the case.

Divide participants into small groups in order to discuss one or more of the reflection questions on the case study. Once the activity in small groups is completed, discuss the responses with all participants.

1. What is the context of the case study? What are the applicable laws?
2. Who are the actors involved and how do they relate to each other? What are their motivations?
3. What are the objectives of the activity in question in the case study?

4. What are the issues? What are the main facts to recall?
5. What is the goal of analyzing the case study? Which problems are to be solved?
6. What information is missing? Where can you find it?
7. What options are possible to resolve these problems? What are their advantages and challenges?
8. What criteria can be used to choose which problem-solving option to pursue?
9. What would you do if you were in the place of the main characters in the case? Justify your responses.

Animation Box: Problem priority matrix

Objectives: Develop a diagram showing the main problems facing the community, using a method of comparison by pairs, which is less subjective than other prioritization methods.

Time required: 1 hour. *Materials:* Newspaper and markers, or blackboard and chalk.

Explain to participants that the plan is to determine as a group what problems have been identified and which are most important to the community or group. It is a good idea to first do an exercise distinguishing between problems and causes. Prepare a dual-entry matrix with the same number of rows and columns as the number of problems identified. (See sample matrix.)

Start with the cell that includes problem number 1 (first column) and problem number 2 (second row). Ask the participants, “Which problem seems more important, number 1 or number 2?” or “Which problem needs to be solved most urgently, number 1 or number 2?” Once there is a consensus, record the most important problem in the cell. Repeat the exercise comparing all the problems two by two. At the end, half the matrix will have been filled (since only half is necessary).

Count how many times each problem appears in the matrix so that they can be organized in order of frequency. The problem that appears most often will be the most important one. Ask participants what they think about the exercise. Write down the result and give the sheet of newsprint or a copy of the results to the group. (IICA)

SAMPLE PROBLEM PRIORITY MATRIX

Problem	No jobs	Loss of fields and plantations	Occupying the waterbed	Hygiene	Dust	Loss of animals
No jobs		Fields	Water	Hygiene	Dust	Jobs
Loss of fields and plantations			Water	Fields	Dust	Fields
Occupying the waterbed				Water	Water	Water
Hygiene					Hygiene	Hygiene
Dust						Dust
Loss of animals						

Advice to facilitators

Problem	Frequency	Rank
No jobs	1	3
Loss of fields	3	2
Occupying waterbed	5	1
Hygiene	3	2
Dust	3	2
Loss of animals	0	0

Animation Box: Action plan

Objectives: Develop a plan to carry out an action, project or initiative using the knowledge and tools gained during the training.

Framework to develop an action plan:

- Context: Identify the problem, issues or situation you would like to change by the action, project or initiative.
- Goal of the action, project or initiative. What is the goal or the objectives of your action, project or initiative?
- Expected results: How will the action, project or initiative lead to a positive change in the situation?
- Activities: What activities are required to carry out this action, project or initiative?
- Resources: What resources do you need? Budget, human resources, equipment, technical assistance, etc.
- Calendar: What is the schedule to carry out your action, project or initiative? Are there important milestones?
- Obstacles: Identify a few obstacles to carry out the project. How will you overcome them?
- Communication: What is your plan to communicate the steps and outcome of your action, project or initiative?

Animation Box: Energizer activities

Objectives: Energize participants during a workshop or meeting, especially when participants seem sleepy or tired, as a means to build in a natural pause between activities.

Time required: 5 to 10 minutes.

Juggling ball game – Everyone stands in a close circle. (If the group is very large, it may be necessary to split the group into two circles.) The facilitator starts by throwing the ball to someone in the circle, saying their name as they throw it. Continue catching and throwing the ball establishing a pattern for the group. (Each person must remember who they receive the ball from and who they have thrown it to.) Once everyone has received the ball and a pattern is established, introduce one or two more balls, so that there are always several balls being thrown at the same time, following the set pattern.

Names and adjectives – Participants think of an adjective to describe how they are feeling or how they are. The adjective must start with the same letter as their name, for instance, “I’m Henry and I’m happy.” Or, “I’m Arun and I’m amazing.” As they say this, they can also mime an action that describes the adjective.

Touch something blue – Ask participants to stand up. Explain that you will tell everyone to find something blue, and that they have to go and touch it. This could be a blue shirt, pen, shoe or whatever. Continue the game in this way, asking participants to call out their own suggestions for colors to touch.

The longest line – This game requires a lot of space and may need to be done outdoors. Divide participants into teams of eight to ten people. Each team must have the same number of members. Explain that the task is to create the longest line using participants' own bodies and any clothing or things in their pockets. Participants are not allowed to collect other things from the room/outside. Give a signal for the game to start and set a time limit, such as two minutes. The team with the longest line wins.

I like you because ... – Ask participants to sit in a circle and say what they like about the person on their right. Give them time to think about it first!

(Alliance)

KEY TERMS

Active listening: A way of listening that focuses entirely on what the other person is saying, and confirms understanding of both the content of the message and the emotions and feelings underlying the message in order to ensure that understanding is accurate (*FAO, 2005*).

Affected communities: Communities of any size that are in or adjacent to the mining project area, and also those that are close enough to have their economies, rights or environments significantly affected by the management activities or the biophysical aspects of the mining project. (*IRMA*)

African Development Bank (AfDB): A group of financial institutions founded in 1964 for the African continent, made up of 54 African member States and 26 non-African member States.

Annual investment program (AIP): Each local municipality is required to produce a document that describes the investment work proposed for the year, the costs of these investments, the sources of funding, recurring costs for maintaining new investments, and the means of financing the recurring costs. The AIP is the annual installment of the LDP. (*Art. 529 of the LML*)

Baseline study: A study showing through photos, videos, maps and testimonies the current situation in a given community or region, before a change (for example, a mining project) is initiated.

Bauxite: A mineral substance used to produce alumina and aluminum.

Binding: An obligation or decision is binding if it is compulsory and subject to sanctions for non-compliance.

Biodiversity: The natural diversity of living organisms. This is assessed by considering the diversity of ecosystems, species and genes in space and time, and the interactions between them.

Civil society organization (CSO): A small or large organization bringing together members of local society of a village, region or entire country, advocating for the interests of the civil society they represent.

Community-based organization (CBO): A grassroots civil society organization. Just as an NGO, a CBO is independent of the State. The risks, costs and benefits are shared among members, and the directors or managers are accountable to the members. Most are non-profit, but some operate as cooperative commercial enterprises.

Community-controlled impact assessment: A process designed and led by communities generating information and knowledge identifying: the likely or actual impacts of a project as understood by the community; the diverse attitudes within a community about the project; and appropriate strategies to mitigate impacts and maximize advantages from the perspective of local people.

Community development agreement (CDA): An agreement among the holder of a mining title (a mining company) and the local community, including clauses relating to health and education, and implementation of economic and social vocation projects (*Mining Law*).

Community protocol: A charter of rules, procedures and priorities defined by a community, which can specify a number of things, such as identifying the affected communities; its decision-making procedures; its rights according to customary, national and international law; a mapping of its use of lands and natural resources; its legitimate representatives; its values and vision for the future; consultation procedures important to the community; its development priorities, etc.

Concertation: Sharing and discussing in order to agree to act together in order to solve a problem.

Conflict: Conflict is present when two or more parties perceive that their interests are incompatible, express hostile attitudes, or pursue their interests through actions that damage other parties. Interests can differ over access to and distribution of resources (territory, money, energy sources, food); control of power and participation in political decision-making; identity (cultural, social and political communities); status (especially those embodied in systems of government, religion or ideology). (*FAO, 2005*)

Consensus: Consensus decision-making requires that everyone agrees to a decision, and not just a majority, as occurs in majority-rule processes. In consensus-based processes, people work together to develop an agreement that is good enough (but not necessarily perfect) for everyone at the table to be willing to accept. (*FAO, 2005*)

Consent: The agreement freely given by a person to another on an issue or proposal. It must not be obtained by force or deception. It must be informed in order to engage or to accept an engagement to do or not do something.

Consultation: A session during which persons share information and discuss to raise concerns and make comments on the impacts and merits of a proposal or an activity before making a decision. Consultations can be held within communities, with a company or other developer, the State, neighboring communities, etc. Consultation is different from consent.

Corporate owners: The corporation(s) or other business institution(s) including any private or state-run enterprises that have complete or partial financial interest in or ownership of a mining project (*IRMA*).

Corporate social responsibility (CSR): Means responsibility for impacts of a company's decisions and activities on society and the environment, translating into transparent and ethical conduct that addresses the following core issues: organizational governance, human rights, labor and workplace conditions, environment, practice loyalty, consumer issues, community and local development (*ISO 26 000 of 2010*).

Customary law: The set of rules and principles that local communities use to govern themselves and access to their shared resources (*LRC, Customary Law*).

Cyanide: Industrial chemical used in the processing of gold and silver at many mine sites and as a minor processing reagent at some base metal mines. If released to the environment or if improperly used in mineral processing, cyanide can pose a risk to workers, surrounding communities, aquatic resources and wildlife. (*IRMA*)

Developer: Legal entity responsible for carrying out a mining project.

Development bank: National and international financial institutions that provide loans, grants and other investments for projects and activities around the world. They include, for example, the World Bank, the International Finance Corporation, the International Monetary Fund, as well as regional development banks, such as the African Development Bank (*Bank on Human Rights*).

Dialogue: A process for sharing and learning about another party's beliefs, feelings, interests and/or needs in a non-adversarial, open way, usually with the help of a third party facilitator. Unlike mediation, in which the goal is usually to reach a resolution or settlement to a dispute, the goal of dialogue is usually simply to improve interpersonal understanding and trust (*FAO, 2005*).

Diamond: This form of carbon is used as a gemstone for jewelry, but also in industry, the health sector, for lasers, X-ray machines and vacuum chambers.

Economic displacement: Loss of assets or access to assets that leads to loss of income sources or other means of livelihood (for example, wage-based income, agriculture, fishing, foraging, and other natural resource-based livelihoods, petty trade, and bartering). (*IRMA*)

Environment: All natural and human conditions making up the living environment in a given area, including water resources, ecosystems and people.

Environmental and social impact assessment (ESIA): Document consisting of an analysis of the initial state of a mining project site and its natural and human environment, statement of the measures envisaged to eliminate, reduce and/or offset any adverse effects to the environment, and corresponding estimated costs, as well as a presentation of possible alternatives and why, from an environmental perspective, the proposed mining activity is possible (*Mining Law*).

Environmental and social management plan (ESMP): The most important part of the ESIA, the ESMP is made up of all prevention, mitigation, compensation, monitoring and institutional measures to be carried out during the construction, exploitation, closure and rehabilitation of the mine site, in order to eliminate negative environmental and social impacts, compensate for them or bring them to acceptable levels.

Export credit agency: A government agency that offers its private companies financial support for high-risk projects abroad.

Expropriation: Operation by which the State may, in the public interest, compel a person to give up their land or other property with compensation. Expropriation without compensation is illegal.

Extractive industry: Industry sector that exploits non-renewable natural resources, usually referring to the oil, gas and mining industries. The extraction process implies production of raw materials, which are then treated for added value from the transformation and/or for export.

Feasibility study: The process by which a mining company analyzes if a project is technically and economically feasible. The study examines the technological, legal, operational, economic, technical and planning aspects of the mining project in question.

Forced eviction: The permanent or temporary removal against their will of individuals, families, and/or communities from their homes and/or lands, without the provision of, and access to, appropriate forms of legal or other protection. (*IRMA*)

Gold: Soft, malleable and dense metal with a bright yellow color and luster, used to make decorative objects and jewelry. It is also often used in the manufacture of electronic products and as money.

Government: Institution exercising legislative, executive and judicial powers within a political entity (the State). Members of government are generally designated with the title of Minister or Secretary and placed under the authority of a head of government. The government decides and undertakes actions necessary for the conduct of the State.

Grievance: A motive or reason for complaint.

Health: A complete state of physical, mental and social well-being, which does not only consist of the absence of illness or disability (*Preamble of the WHO Constitution*).

Industrial mining exploitation: Any operation where the activities consist of extracting and concentrating mineral substances and recovering marketable products by modern and mechanized processes (*Mining Law*).

Influx: Arrival of a large number of people or goods (see the definition of **migrant influx** below).

Information: Information is the act of informing, informing oneself, providing knowledge of a fact, situation or event, or of searching for this knowledge. A piece of information is any news, intelligence, or documentation about a thing, event, community, country or person, brought to the attention of the public.

Injury: The violation of a person's rights, interests or well-being by a third party. For example, injury occurs when a mining company's activities cause pollution of a local community's water.

Intangible cultural heritage: Expressions (songs, dances, oral histories), knowledge and skills – as well as instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups, and in some cases individuals recognize as part of their cultural heritage (*Art. 2 of the Convention for the Safeguarding of Intangible Cultural Heritage*). Intangible cultural heritage is inherited from past generations, maintained in the present and bestowed for the benefit of future generations (*IRMA*).

Interests: Interests are what a party in a dispute cares about or wants. They are the underlying desires and concerns that motivate people to take a position.

International Finance Corporation (IFC): Global development aid institution (a bank) which is part of the World Bank Group, and exclusively finances private sector activities.

International law: The laws governing relations among countries. In the context of human rights, international laws set out obligations of the State and companies towards communities.

Iron ore: Refers to rocks and minerals of metallic iron which can be profitably exploited, mainly used as a component in steel.

Joint monitoring: A continuous dialogue and collaborative process to gather and analyze data, and to communicate the results among local communities, the mining company (whose participation is essential) and State actors. The goal is for the various actors involved to cooperate in identifying problems and seeking solutions, and that a significant number of people participate in each phase of the process.

Land use planning: A set of maps established on a regional scale to assess and plan territorial development. It is made up of various kinds of maps: land use maps, and land designation maps.

Law: The word “law” is a generic term to designate a rule, norm, prescription or obligation, general and permanent, which comes from a sovereign authority (legislative power) and is imposed on all individuals in a society. Non-compliance is sanctioned by public authority. The word “law” also refers to specific texts of law, such as a text adopted by the National Assembly (parliament) and promulgated by the President of the Republic either based on the proposal of members of parliament, or based on a draft proposed by the government.

Livelihoods: A set of habits and practices of a community or local population that allows them to earn their living, to provide food, and have a desirable quality of life. In rural communities, such activities are mostly grazing, hunting, small business or agricultural.

Local community: A group of persons living collectively in a given geographic area, near one another, and sharing history, culture, traditions and customs.

Local development fund (LDF): Fund financed by a contribution for local development from the mining company, intended to finance community development projects within the context of the implementation of a Community Development Agreement (*Mining Law*).

Local development plan (LDP): A plan for all local socio-economic development actions which a local municipality intends to take or support over a given period, usually 3 to 5 years (*Art. 511 of the LML*).

Local municipalities: Local municipalities are the Regions, Urban Communes and Rural Communes (*Art. 134 of the Constitution*). Their creation and administration are governed by law (*Art. 135 of the Constitution*). They are freely administered by elected councils (*Art. 136 of the Constitution*). The LML is being revised to adapt it to the Constitution.

Mediation: An extension or elaboration of the negotiation process that involves a third party. This third party works with the disputing parties to help them improve their communication and their analysis of the conflict situation, so that they can themselves identify and choose an option for resolving the conflict that meets the interests or needs of all the disputants. Unlike arbitration, in which the intermediary listens to the arguments of both sides and makes a decision for the disputants, a mediator helps the disputants to design their own solutions.

Memorandum of understanding: A document describing an understanding or a bilateral or multilateral agreement among the parties. In contrast to other agreements, a memorandum of understanding is usually not binding. (*IBA Toolkit*)

Migrant influx: Movement or displacement of a group of people from one region to another.

Mitigation measures: Methods or plans used to reduce, offset or eliminate adverse impacts of a mining project. Measures can be taken by the company, the State and local communities.

Mining company: The holder of a mining permit (a mining title, an authorization, a license), whether it be an exploration permit, exploitation permit or concession. The term can also be used to refer to mining project developers.

Mining exploitation: Made up of all mined, processed and extracted reserves, the infrastructures above and underground, the works above and underground, buildings, equipment, tools and stock, as well as intangible elements attached to it (*Mining Law*).

Mining permit: A document, also called a mining title, granted by decree of the President of the Republic, authorizing the holder, within its perimeter (defined by geographic coordinates) and without depth limitation, an exclusive right to prospect, explore (exploration permit) or exploit (exploitation permit) and free use of the minerals which it concerns (*Mining Law*).

Mining project: Any set of activities undertaken for the purposes of extracting mineral resources. Mining projects may include exploration, mine construction, mining, mine closure and related activities either separately or in combination. (*IRMA*).

Monitoring and follow-up: The activity of monitoring and follow-up involves observation with an intent to check, collect, verify and actively use information to address issues, such as those involving human rights.

Multilateral Investment Guarantee Agency (MIGA): An agency within the World Bank Group, whose function is to promote foreign direct investment in developing countries to support economic growth, reduce poverty and improve people's quality of life.

Negotiation: A form of decision-making by which two or more parties talk to each other in an effort to resolve their opposing interests. Negotiation can be relatively cooperative, such as when two people seek a solution that is mutually beneficial (commonly called interest-based or principled), or it can be

confrontational (commonly called win-lose or adversarial bargaining), when each side seeks to prevail over the other.

Non-governmental organization (NGO): Legal entities of civil society made up of individuals who voluntarily form associations to pursue common goals. They are also non-profit and their activities usually serve a social purpose. Their independence allows them to monitor government action and recommend improvements.

Office of the Compliance Advisor Ombudsman (CAO): Independent accountability mechanism of the IFC and MIGA which resolves conflicts through its ombudsman (mediator), verifies compliance of investments by IFC or MIGA in projects, and advises the President of the World Bank Group.

Ombudsman (or mediator): An independent and objective person who investigates citizens' complaints against government agencies or other organizations in the public or private sector.

Overburden: Layers of soil and rock covering an ore deposit. Overburden is removed prior to surface mining and should be replaced after the metallic ore is taken from the ground. (*ELAW*)

Petition: The right of every citizen to address a writing signed by one or more persons to the competent State authorities to express an opinion, demand, complaint, protest, wish or concern of a special or general nature (*Art. 10 of the Constitution*).

Physical displacement: Relocation or loss of shelter resulting from land acquisition for a mining project and/or restrictions on land use. (*IRMA*)

Pollutant: Any solid, liquid or gas discharge, any waste, odor, heat, sound, vibration, radiation capable of causing pollution (*Art. 3 of the Environment Law*).

Pollution: Environmental degradation by introducing materials into the air, water or soil which are not naturally present in the environment. It causes a disturbance of the ecosystem, the consequences of which can lead to migration or extinction of certain animal and vegetable species unable to adapt to the change.

Position: An opinion, viewpoint, expression of will on an issue, situation or event relative to interests, or a superficial demand made to a disputing party during a negotiation or mediation. A party's position can often be opposed to another party's position, but their interests may still be compatible.

Project-affected persons (PAP): People who suffer a direct loss of resources, shelter or disruption of livelihoods. This loss or disruption gives these people a right to compensation.

Quarry: Place where stone is extracted directly from the earth.

Recourse mechanisms: Procedures, judicial or non-judicial, intended to hear the injury, damage or any complaint of a person, and to obtain a solution and reparation.

Rehabilitation: Return former exploitation sites into conditions that are safe, suitable for rural productivity, and with a visual appearance close to their original state, in a sustainable means and in a manner deemed adequate and acceptable by the respective administrations of the Minister of Mines and Environment (*Mining Law*).

Resettlement: Resettlement is any situation of physical or economic displacement due to activities of a project involving land acquisition or restrictions on land use. **Voluntary** resettlement means land transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other

compulsory procedures to acquire the land. **Involuntary** resettlement is all situations of physical or economic displacement due to activities of a project involving land acquisition or restricting land use, when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail. (*IRMA*)

Resettlement action plan (RAP): A document that defines the measures to take regarding compensation, relocation and economic rehabilitation of people affected by mining activities.

Safeguard policies: The set of environmental and social norms developed by a development bank or another investor. The set of environmental and social norms is often called a “safeguard” policy, because it is meant to protect (or “safeguard”) local communities affected by the project (*Bank on Human Rights*).

Social cohesion: Strong union among parties making up a group.

Sovereignty: The exclusive right of a people to freely exercise the supreme political authority (legislative, judicial and executive) in a geographical area or a group of people living in a community.

Stakeholder: Persons or groups who are directly or indirectly affected by a project, such as rights holders, as well as those who may have interests in a project and/or the ability to influence its outcome, either positively or negatively. (*IRMA*)

State: The Republic of Guinea, or any entity belonging to it, or of which it controls the capital and duly acts in its place (*Mining Law*).

Subcontractor: A natural or legal person (company) which works for the mining company and is accountable to it (*Mining Law*).

Subsidiary: A company owned wholly or partially by a parent company, usually incorporated in a country other than where the subsidiary is incorporated.

Tangible cultural heritage: Tangible objects (houses, masks, tools), monuments, groups of buildings, sites, certain natural features, geological and physiographical formations and precisely delineated areas, as well as natural sites or precisely delineated natural areas (*Arts. 1 and 2 of the World Heritage Convention*), which are considered worthy of preservation for the future. This can include heritage that has archaeological, paleontological, historical, architectural, religious, aesthetic, or other specific cultural value (*IRMA*).

Terms of reference: A document describing the objective, structure, calendar and specific tasks to be accomplished during a negotiation, an ESIA, a CDA or any other project. The terms of reference must be specific and detailed, and should identify the tasks to be accomplished, the persons responsible for carrying them out, deadlines and work methods.

Usufruct: The right to use property (for example, to live in a house) or to receive revenue (for example, collect rent) without being the owner. It is a combination of two components of the right to property: the right to use and the right to dispose of the fruits. This means usufruct does not include the right to dispose of the property by disposal or destruction.

Waste: Any residue of a production, transformation or use process, or any movable good that has been abandoned or thrown away (*Art. 58 of the Environment Law*).

World Bank (WB): A group of five international institutions: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID). The bank is based in Washington and finances multiple projects (for mining and other activities) in Guinea and around the world.

SOURCE DOCUMENTS

Laws, treaties and regulations

Laws, treaties and regulations relating to industrial mining exploitation in Guinea.

Constitution

Constitution of 19 April 2010, promulgated by decree on 7 May 2010

Regional treaties

African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986

African Charter on the Rights and Welfare of the Child of 1990

International treaties

Human rights

Universal Declaration of Human Rights (UDHR) of 1948

International Covenant on Civil and Political Rights (ICCPR) of 1976 and its Optional Protocol of 1976

International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976 and its Optional Protocol of 2013

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) of 1981

International Convention on the Elimination of all forms of Racial Discrimination of 1969

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family of 2003

ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize of 1948

ILO Convention No. 29 concerning Forced or Compulsory Labor of 1930

Convention on the Rights of the Child of 1990

Convention on the Rights of Persons with Disabilities of 2008 and its Optional Protocol of 2008

Environment

Convention concerning the Protection of the World Cultural and Natural Heritage, of UNESCO of 1972

Convention for the Safeguarding of the Intangible Cultural Heritage of UNESCO of 2003

Convention on Biological Diversity of 1992

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 2010

Minamata Convention on Mercury of 2013

Laws and regulations

Civil Code

Law L / 004 / AN / 1983 of 16 February 1983 on the Civil Code

Civil, Economic and Administrative Procedure Law

Decree D / 98 / N° 100 / PRG / SGG of 16 June 1998 on the Civil, Economic and Administrative Procedure Law

Criminal Procedure Law

Law L / 037 / AN / 98 of 31 December 1998 on the Criminal Procedure Law

Environment Law

Ruling No. 045 / PRG / 87 of 28 May 1987 on the Environment Law, modified by Ruling of 1989 – Environmental Protection and Enhancement Law

Ruling No. 97 / 001 of 10 January 1997 on the institutionalization of environmental impact assessments

Decree D / 199 / PRG / SGG / 89 of 8 November 1989 codifying environmental impact assessments

Decree D / 2000 / 397 / PRN / ME / LCD of 20 October 2000 on the administrative procedure for evaluation and assessment of environmental impacts

Decree D / 2014 / 014 / PRG / SGG of 17 January 2014 on adopting a directive for carrying out environmental and social impact assessments of mining operations

Order No. 990 / MRNE / SGG of 31 March 1990 regulating the content, methodology and procedure of environmental impact assessment

Joint Order No. 93 / 8993 / SGG of 11 October 1993 establishing the technical nomenclature of facilities classified for environmental protection

Order No. 03182 / MEEFDD / CAB / SGG / 010 of 31 March 2013 establishing the CTAE

Order No. 5311 / MDEEF / CAB / SGG of 29 September 2011 on the organization, functioning and management of BGEEE

Order No. 2012 / 9004 / MEDEF / CAB / SGG of 21 August 2012 on the establishment, powers, composition and operation of Prefectoral Committees for Environmental and Social Monitoring

Order A / 2013 / 474 / MEEF / CAB of 11 March 2013 on adopting the General Guide on Environmental Assessment

National Action Plan for the Environment, 1994

National Policy on the Environment, August 2011

Forest Law

Law L / 99 / 013 / AN of 22 June 1999

Labor Law

Law L / 2014 / 072 / CNT of 10 January 2014 on the Labor Law

Ruling No. O / 003 / 88 / PRG / SGG of 28 January 1988 promulgating the Labor Law

Land Law

Law L / 99 / 013 / AN on the Land Law of Guinea, 1999

Ruling No. O / 92 / 019 of 30 March 1992 promulgating the Land Law

Decree D / 2001 / 037 / PRG / SGG 2001 declaring the Rural Land Policy

Livestock and Livestock Products Law

Law L / 95 / 046 / CTRN of 29 August 1995 on the Livestock and Livestock Products Law

Local Municipalities Law

Law L / 2006 / AN of 15 May 2006 on the Local Municipalities Law (*under revision to be adopted during the next session of laws of the National Assembly in April 2015*)

Mining Law

Warning : Several implementing texts of the Mining Law are expected, and others have not yet been published in the Official Journal.

Mining Law of 9 September 2011 (adopted by the CNT), partially amended by Law L / 2013 / 053 / CNT of 8 April 2013, on amending certain provisions of Law L / 2011 / 006 / CNT of 9 September 2011 on the Mining Law of the Republic of Guinea of 8 April 2013

Decree D / 2014 / 015 / PRG / SCG of 2014 on adopting a model standard mining convention

Decree D / 2015 / 007 / PRG / SGG of 14 January 2015 on implementing a system for expedited processing and tracking of integrated mining project files

Decree D / 2015 / 016 / PRG / SGG amending certain provisions of Decree D / 2011 / 218 / PRG / SGG of 11 August 2011 on creating a mining heritage company and repealing Decree D / 2012 / 093 / PRG / SGG of 10 August 2012 on transitional measures to manage the Guinean company of mining heritage (SOGUIPAMI)

Joint Order No. A / 2012 / 6862 / MMG / MATD / CAB of June 2012 on creating Consultative Committees in Mining Localities (CCLM)

Technical Committee for the Review of Mining Titles and Conventions (CTRCTM), www.contratsminiersguinee.org

Joint Order No. / 1185 / MMG / CAB / CNSM / SG / 2007 of March 2006 on the responsibilities, operations and working conditions of the Company for Security Support to Mining Companies (CASSM) and Security Companies of Precious Materials (CSMP)

Decree D / 95 / 170 / PRG / SGG on the organization of mining security in the Republic of Guinea

Pastoral Law

Law L / 95 / 51 / CTRN of 29 August 1995 on the Pastoral Law

Public Health Law

Law L / 020 / AN / 1997 of 19 June 1997 on the Public Health Law

Right to Information

Law L / 2010 / CNT / 004 of 24 November 2010 on the right to access public information

Town Planning Law

Law L / 98 / 017 / 98 of 1998 adopting and promulgating the Town Planning Law

Water Law

Law L / 94 / 005 / CTRN of 15 February 1994 on the Water Law

Wildlife Law

Law L / 99 / 038 / AN of 9 December 1997 on the Wildlife Protection Law and Hunting Regulation

International instruments and standards

Regional and international instruments, standards and initiatives, binding and non-binding, concerning industrial mineral exploitation.

Safeguard policies of development banks, which may be binding depending on the context

Environmental, Health and Safety Guidelines of the World Bank Group, www.ifc.org/ehsguidelines

Integrated Safeguards System (ISS) of the African Development Bank (AfDB) (2013), www.afdb.org

Operational Policies (OP) of the World Bank Group, www.go.worldbank.org/TR22ER4GD0

Performance Standards of the International Finance Corporation (IFC) and Guidance Notes (2012), www.ifc.org

Non-binding instruments

Akwé : Kon Guidelines of 2004, www.cbd.int

Fairmined Standard for artisanal and small-scale mining of 2014, www.lorequitable.org

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Center for Science in Public Participation (CSP2), www.csp2.org

Environmental Law Alliance Worldwide (ELAW), www.elaw.org

Community protocols

Natural Justice, www.community-protocols.org

Scientific monitoring of environmental pollution

Source International, www.source-international.org

American Association for the Advancement of Science (AAAS), oncallscientists.aaas.org

Financial resource management

Publish What You Pay Coalition (PWYP) Guinea, www.publishwhatyoupay.org/fr/members/guinee/

Negotiating a CDA

Lawyers for Resource Justice, www.namati.org/lawyers-for-resource-justice

Sustainable Development Strategies Group (SDSG), www.sdsq.org

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WITNESS, www.witness.org

Judicial procedures

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