



CECIDE

Centre de Commerce
International pour le
Développement



Involuntary Resettlement for the Extension of a Gold Mine in Kintinian:

Kintinian, Guinea – Fact-Finding Mission Report

January 2017

English translation of the French original

Advocates for
Community
Alternatives 

 **COMMUNITIES
FIRST**

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PREFACE

In December 2015, worrying headlines from Upper Guinea appeared in the international news – “Guinea: To evict Kintinian’s inhabitants, drastic means” – hinting at actions consistent with a forced eviction in an already fragile context of poor relations among affected communities and the mining company involved, AngloGold Ashanti. This report stems from those headlines. It seeks to shed light on how the actors involved – both the State and the company – acted in a manner consistent or not with their responsibilities under national and international law. Such light is critical to hold both the company and the State accountable for their actions – especially when each of them professes to be acting in accordance with the law and international standards.

The company involved, AngloGold Ashanti, is one that claims to follow international standards such as the IFC Performance Standards. The company had recently supported an initiative in Guinea, led by the American Bar Association Rule of Law Initiative, on supporting community rights, including key rights to information, participation, and involuntary resettlement in accordance with international norms. The government involved, the Republic of Guinea, is one whose representatives had participated in international meetings of the Voluntary Principles on Security and Human Rights, and whose government is implementing the Responsible Mineral Development Initiative process. We hope this report can contribute not only to improving the situation of communities affected by the Area One resettlement, but also to broader governance reform within AngloGold Ashanti and the Guinean State, especially in light of its recent draft decree regarding expropriation in the public interest currently under consideration.

ACKNOWLEDGMENTS

The NGOs CECIDE and MDT would first like to thank the 11th Hour Project, a program of the Schmidt Family Foundation in the United States, for its support, without which this project could not have been realized.

Second, we would like to express our sincere thanks and congratulations to Communities First in the United States and Advocates for Community Alternatives in Ghana, respectively represented by Lien De Brouckere, Principal, and Jonathan Kaufman, Executive Director, for their invaluable technical support to produce this document.

We would like to express our sincere thanks to all those who, from near and far, have made valuable contributions to the realization of this report: local Kintinian communities in general and the communities affected by the Area One project in particular; the administrative authorities of Siguiri; the managers of AngloGold Limited of South Africa and even those of AngloGold in Guinea, in spite of everything. We shared, out of courtesy, a draft of this report with the company, to ensure that we did not misrepresent what AngloGold or SAG said or wrote. Unfortunately, the company did not provide feedback on time.

We cannot forget here other actors of Guinean civil society and journalists from community radio who marked the formalization of this project with their informed contributions. These include Mr. DIALLO Aboubacar Akoumba, a journalist specialized in mining issues on ESPACE FM radio, and Mr. BAH Amadou, President of the NGO Action Mines. We remain grateful for the collaboration, at the start of this project, of the Ministry of Mines and Geology and SOGUIPAMI for their human resources. We add to this list of thanks, the delegation of the Kintinian communities, especially those who did not hesitate to make the trip from Conakry during the especially tense moments for a series of meetings that involved CECIDE, civil society actors and journalists.

We thank with deep gratitude the dynamic youth of Kintinian who facilitated the mobilization of the community members affected by the Area One resettlement for the fact-finding inquiry that forms the foundation of this report.

We would also like to thank Mr. CISSE Kabinet for his contributions to the report, as well as the collaborators of Communities First, Virna Rizzo and Camille Oberkampff, for their indispensable support.

The editorial team is made up of: Aboubacar DIALLO, Coordinator of CECIDE's Community Rights Program, Frédéric Foromo LOUA, President of MDT, Lien De Brouckere, Principal of Communities First, and Jonathan Kaufman, Executive Director of Advocates for Community Alternatives. This team was supported on the ground by: Raphael Golota LAMAH of SOLEIL FM radio, Fatoumata KANTE of the online press, and René LOUA of the NGO Mains Solidaires.

For all those who have not been listed here, by simple omission, please find here our sincere congratulations for the inestimable efforts made.

ABBREVIATIONS AND ACRONYMS

AngloGold	AngloGold Ashanti Limited
AP	Armed Post
BGEEE	Bureau Guinéen d'Etudes et d'Evaluation Environnementale (Guinean Bureau of Environmental Assessment and Studies)
CECIDE	Centre de Commerce International pour le Développement (NGO - Center of International Trade for Development)
IFC	International Finance Corporation
MDT	Les Mêmes Droits pour Tous (NGO – Same Rights for All)
PAP	Project Affected People
PS	Performance Standards
RAP	Resettlement Action Plan
SAG	Société AngloGold Ashanti de Guinée
SOGUIPAMI	Société Guinéenne du Patrimoine Minier (Mining Asset Management Company of Guinea)
UN	United Nations
VPSHR	Voluntary Principles on Security and Human Rights

I. SUMMARY

Since the announcement in March 2015 by *Société AngloGold Ashanti de Guinée* (“SAG”) that its operations at the gold mine of Siguiri would end in May 2016 if it remained limited to its current perimeter, the mining company and public authorities have tried everything to ensure the extension of SAG’s operations to at least one area within its concession: “Area One”. Such an extension required the resettlement of around 380 Kintinian families. The resettlement process was marked by several improprieties, including the involvement of the military and other security forces during the census and inventory process.

The findings of the field mission led by two Guinean NGOs regarding wrongdoings in the resettlement process conducted by SAG revolve around six main points: (1) physical violence and intimidation; (2) contested legality of signed resettlement agreements; (3) lack of legally required information and consultation; (4) paltry compensation; (5) inadequate measures to restore the communities’ livelihoods; (6) serious barriers to access to remedy.

(1) Physical violence and intimidation. Divisions within affected communities reflect the clear opposition of many residents to the extension of operations to Area One. Negotiations led by residents asking for, among other things, local job creation, have failed and led to the arrest and imprisonment of negotiators. A few weeks later, security forces, including the Red Berets (*bérets rouges*), arrived on site and effectively held the village of Kintinian “hostage” for the remainder of 2015. The arrival of security forces was accompanied by theft, violence and waves of arrests. While security forces allege that the main reason for their presence was their intervention against illegal semi-industrial mining, a second motive was to force the residents of Area One to accept the inventory of their lands and other possessions, which they had refused to do for a long time. Instead of waiting for security forces to leave, SAG took advantage of their presence and started the inventory process on December 5, 2015. The involvement of security forces during the inventory process is extensively documented.

The data and testimony collected on-site support the conclusion that security forces and SAG collaborated to proceed with the inventory at Area One. In doing so, the State of Guinea has failed to fulfil its Constitutional obligation to protect. Facts uncovered during the investigation confirm the occurrence of thefts, violence and other damage perpetrated by security forces during the inventory, including in private homes. SAG also failed to meet its obligations under the Voluntary Principles on Security and Human Rights (VPSHR) as well as its own human rights policy in terms of risk assessment. Its failure to use its influence to limit the use of force and to help remedy any negative impact related to its operations is similarly reprehensible.

(2) Contested legality of signed resettlement agreements. SAG acknowledged that no public interest decree had been issued in this case, which means that the resettlement orchestrated by SAG at Area One falls outside of the legal framework of a public interest expropriation. Thus, the relevant legal framework is one that would govern any voluntary transaction between a seller—who is not obligated to sell—and a buyer—who may not fall back on expropriating the seller if the negotiations fail.¹ Around one hundred households of Area One refused to sign the resettlement agreements offered by SAG. The Prefect, however, managed to convince these residents that he would defend their best interests during a meeting in April 2016, and the representatives of the above-mentioned households eventually felt obligated to sign by “respect for the Prefect” and not by choice. In any event, the irregularities surrounding the census and inventory (which took place in a climate of violence and intimidations and in the absence of many inhabitants who had fled the area) necessarily impact the validity of the resettlement agreements, because the inventory is the foundation of any resettlement agreement. Most households failed to understand the content of the agreement and never received assistance to understand it or to defend their rights and interests. It was also impossible for signatories to fully understand certain clauses of the agreement because they did not have access to the documents they referenced, such as the Resettlement Action Plan (RAP) for the project.

We can conclude from these facts that all affected people were forced to sign the agreements and to enter so-called voluntary transactions. The lack of voluntary consent is glaring. Without a public interest decree, each resident should be free to refuse to sign the agreement – here, no one felt they could refuse to sign. In addition, the context of violence surrounding the inventory process as well as the presence of security forces during it appears incompatible with such a voluntary approach. **This means that the agreements may be considered null and void, and the mining company maybe found liable for any damages.**

(3) Lack of legally required information and consultation. **It is clearly established that key affected communities were left out of the consultations to develop the RAP.²** Consultations led by SAG with the local negotiation committee did not include Area One communities in general. In fact, virtually no one at Area One ever heard of a RAP. Further, no access to the RAP was provided to residents who may have wished to see it. We can conclude from these facts that **the State of Guinea failed to meet its responsibility to ensure that SAG respect articles 37-II, 130 and 142 of the Mining Code**, which require, consistent with international principles, the participation and consultation of local communities. **SAG failed to fulfil its responsibilities based on the International Finance Corporations (IFC) Performance Standards (PS) to ensure that the local negotiation**

¹ Land Code arts. 57-60; Mining Code art. 125.

² Resettlement Action Plan: Seguelen Project, October 2013 pp. 18-19.

committee would communicate the results of consultations to the members of relevant communities. SAG also failed to share relevant information in violation of the IFC PS and of its own policy on involuntary resettlement.

(4) Paltry compensation. Directly affected local communities were not consulted in the design of the matrix to be used to calculate their resettlement compensation while the local legal framework was widely insufficient. Once the compensation matrix was established, local communities were not properly informed about it. And since the inventory process was tainted, any compensation established on that basis is necessarily insufficient and paltry. It is further established that the compensation matrix has not been updated since its creation in 2013 to reflect the current cost of living. **The compensation offered by SAG will not enable the communities to recover their livelihood**, especially given the current situation. Indeed, the resettlement site isn't ready and the communities have been forced to live in temporary housing for an indefinite period of time. It is worth noting here that SAG offers a monthly stipend to certain heads of affected household to cover rental costs.

(5) Inadequate measures to restore the communities' livelihoods. The arrest and imprisonment of community members brought the negotiations regarding the resettlement and improvement of livelihood, including through local job creation, to an end. No plan was put in place to restore the livelihood of Area One's affected communities. SAG failed to fulfil its responsibility to design and put in place such a plan, in violation of IFC PS5. More broadly, SAG failed to fulfil its obligation to respect human rights by its inaction when local community members were arrested following the failure of the negotiations during which they had asked for the creation of more local jobs.

(6) Serious barriers to access to remedy. Most of the individuals who participated in the investigation stated that they did not know whether SAG had a grievance mechanism. Yet, the dispute resolution clause in the resettlement agreements provides that disputes will be resolved by that very grievance mechanism. **SAG therefore failed to put in place a grievance mechanism that would meet the international standard or its own internal human rights policy.** The dispute resolution clause constitutes an excessive limitation on communities' access to remedy. **SAG failed to comply with the VPSHR, which require companies to record and report any credible allegation of human rights violation by public security in their areas of operation.** SAG took no steps regarding the massive presence on its concession of security forces and the military, including the Red Berets (*bérets rouges*), while it was proceeding with the inventory at Area One as part of the resettlement process.

Based on these findings, we make the following recommendations to the key players listed below:

To the State of Guinea:

- Remedy any harm caused by your military and security forces and ensure that human rights are respected;
- Provide a clear legal framework that is respectful of local communities' customary rights in terms of compensation;
- Ensure better compliance with the Mining Code.

To SAG and its parent company, AngloGold Ashanti Limited ("AngloGold"):

- AngloGold should conduct a public audit to assess and remedy SAG's involuntary resettlement of Area One, including the negotiation and implementation of a livelihood restoration plan for communities affected by Area One;
- AngloGold and SAG should facilitate affected communities' access to remedy;
- AngloGold should strengthen its supervision of SAG with regards to human rights, involuntary resettlement and the VPSHR;
- SAG should improve its consultation and access to information processes;
- SAG should define with more clarity the limits of its mining concession.

To the local Kintinian community:

- Act peacefully in defense of the community's interests;
- Avoid a social divide and engage in reconciliation with the traditional chieftdom;
- Stop artisanal gold mining activities on SAG's concession;
- Avoid any behavior that would nurture or foster conflicts with SAG;
- Encourage responsible mining practices.

II. INTRODUCTION

Since *AngloGold Ashanti de Guinée* (SAG) announced in 2015 that its operations at the gold mine of Siguiri would end in May 2016 if it remained limited to its current perimeter, the mining company and public authorities have done everything possible to ensure the extension of SAG's operations to at least one more area within SAG's concession, "Area One". Extension of SAG's operations required the resettlement of around 380 Kintinian families.

Faced with the commercial, economic and political necessity to avoid closure of the mine – in a context of tensions between the community and the mining company – it appears that the State of Guinea and the multinational mining company failed to comply with their national and international legal obligations. Instead, both players used abusive means to ensure the resettlement of Area One communities, thereby favoring national and commercial interests to the detriment of the rights of local communities.

1. About the mining company

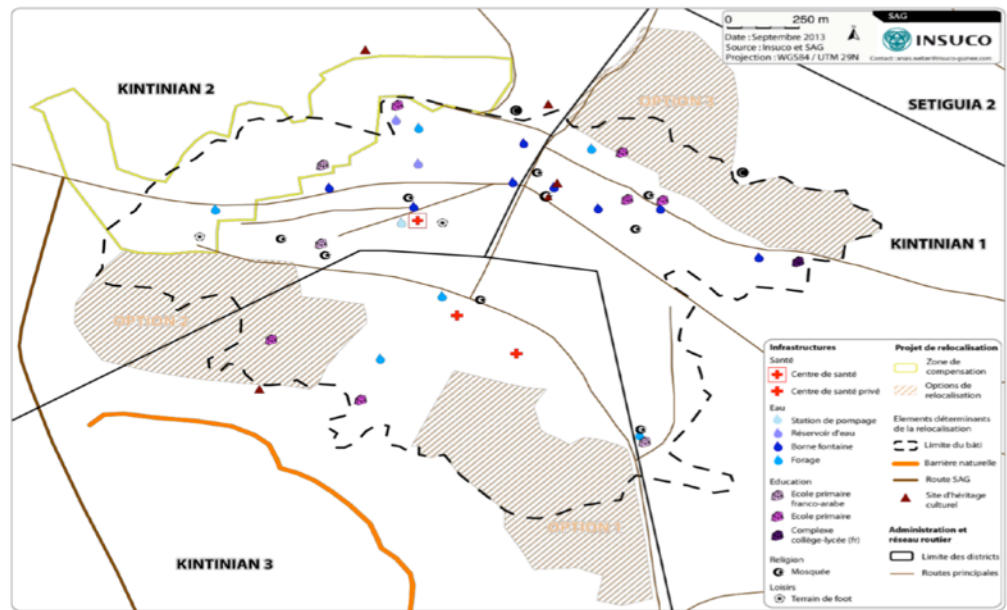
AngloGold Ashanti Limited ("AngloGold") is a South African mining company listed on the Johannesburg stock exchange that operates in South America, Australia and other African countries. In Guinea, AngloGold holds 85% of *Société AngloGold Ashanti de Guinée* ("SAG"), a partially state-owned public limited liability company created in 1996, which has owned a mining concession in Kintinian since 1998. Kintinian, previously called "Bouré, the gold capital of the ancient empire of Ghana" is located in the Prefecture of Siguiri, in North-East Guinea. SAG is the first producer of gold in the country, processing around 30,000 tons of gold per day³ and reaching an average annual production of 421,670 oz. over the last ten years.⁴ The second and only other shareholder of SAG is the State of Guinea, which owns 15% of the company through shares managed by SOGUIPAMI (the Mining Asset Management Company of Guinea). AngloGold retains complete operational control over SAG's activities. SAG's operations are based in Siguiri, a Prefecture in North-East Guinea in which "Area One" is located on SAG's mining concession. More specifically, "Area One" is located in the district of Kintinian 2 (14,65 km²), in the rural town of Kintinian.

³ AngloGold Ashanti, About Us, <http://www.anglogoldashanti.com/en/About-Us/Regionsandoperations/Guinea/Pages/default.aspx>.

⁴ Mosaique Guinée, « Situation à Kintinian : Le gouvernement encourage les autorités locales, les forces de défense et de sécurité à poursuivre l'opération d'assainissement de la zone, » 11 December 2015.

FIGURE 1 MAP OF THE AREA TO BE RESETTLED AND THE POTENTIAL RESETTLEMENT SITE

Among AngloGold’s internal policies, its Human Rights Policy (which reflects the company’s commitment to respect human rights and is inspired by the UN Guiding Principles on Business and Human Rights)



and its policy on Land Access and Resettlement (reflecting its commitment to Performance Standard 5 (“PS5”) of the International Finance Corporation (“IFC”) among other standards) are relevant to the investigation⁵. AngloGold also adheres to the Voluntary Principles on Security and Human Rights (“VPSHR”) and is a member of the United Nations Global Compact.

2. About the NGOs leading the investigation

NGOs *Centre de Commerce International pour le Développement* (“CECIDE”) (created in 2000) and *Mêmes Droits pour Tous* (“MDT”) (created in 2004) operate throughout Guinea. CECIDE’s mission is to promote and defend the social, economic and cultural rights of communities, and their involvement in the design and implementation of public policies for development. MDT focuses on the defense and promotion of human rights; it was founded by Guinean lawyers and young professionals in the legal industry to fight human rights violations in Guinea. These organizations have been accompanying Kintinian communities since 2010 on issues such as the promotion and defense of rights and obligations, prevention and conflict management, and capacity building for legal experts and local government. These two Guinean NGOs, backed by journalists and expert researchers on mining issues, were supported financially by the **11th Hour Project** (US-based) and technically by Lien De Brouckere (Communities First, USA) and Jonathan Kaufman (Advocates for Community Alternatives, Ghana – Network Coordinator for Public Interest Lawyering Initiative for West Africa (PILIWA)).

⁵ AngloGold Ashanti, *Human Rights Policy*, 5 August 2013; AngloGold Ashanti, *Land Access and Resettlement Standard*, 19 October 2011.

3. Context

In early 2013, SAG began to develop a Resettlement and Compensation Action Plan (“RAP”) for the Seguelen project (concerning an affected area called “Area One”, shown on Figure 1), which was performed by INSUCO, a consulting firm.⁶ *According to the RAP, Kintinian and Setiguia communities, which were the most affected by the resettlement, were not consulted.*⁷ In May and June 2013, INSUCO conducted a field investigation to deepen its understanding of agricultural goods’ prices and to collect other necessary information to proceed with the calculation of farmers’ compensation – yield of crops, income related to woody species, etc. The investigation also covered real estate transactions and the value of the village’s infrastructure.⁸ INSUCO shared its study with SAG in October 2013, and SAG presented the RAP to the Guinean Office of Environmental Studies and Evaluations (Bureau Guinéen d’Etudes et d’Evaluation Environnementale (“BGEEE”)) in February 2014.⁹

On March 14, 2014, the Guinean government approved SAG’s RAP.¹⁰ The same month, the BGEEE adopted the terms of reference for the inventory of goods and affected people.¹¹ In May 2014, a prefectural committee for the implementation of the RAP was allegedly created.¹² Nearly a year later, in March 2015, pressure mounted: SAG requested that Area One be made available to it before the end of August or it would be forced to close the Siguiri mine in May 2016.¹³

On August 22, 2015, President Alpha Condé arrived in Kintinian and gave a speech about the conflict that had been opposing the Kintinian communities and SAG for a long time. The speech was well received by an elated crowd, which was supposed to ensure the agreement of affected communities to surrender the targeted area to SAG.¹⁴ It is worth noting, however, that the President’s visit occurred in a post-election context and that Kintinian is one of the most populated strongholds of the governing party. The presence of “Area One”’s Project Affected Persons (PAP) was not verified.¹⁵ Regardless, the acclamation of an ecstatic crowd collectively overjoyed does not reflect the consent of communities that is required by national law and international standards.

⁶ INSUCO, *RAP: AngloGold Seguelen Project*, October 2013, p. 15.

⁷ INSUCO, *RAP: AngloGold Seguelen Project*, October 2013, pp. 18-19.

⁸ INSUCO, *RAP: AngloGold Seguelen Project*, October 2013, Annex 1-3 « Compensation details and methodology».

⁹ Email from SAG and AngloGold dated 28 May 2016.

¹⁰ Email from SAG and AngloGold dated 28 May 2016.

¹¹ Email from SAG and AngloGold dated 28 May 2016.

¹² Master Agreement regarding the transfer of Area One, dated 27 August 2015.

¹³ Memorandum regarding the situation of SAG and its relationship with Siguiri communities, SAG, not dated.

¹⁴ Master Agreement regarding the transfer of Area One, dated 27 August 2015, p. 2.

¹⁵ Guinée 50, « Dossier: Les clés pour comprendre le conflit minier qui oppose la SAG à la communauté de Kintinian, » 13 January 2016.

On August 27, 2015, a Master Agreement regarding the transfer of Area One was allegedly signed by SAG and “representatives” of the affected communities, the latter being represented by the traditional chief of the Kintinian village, El Hadj Namory Camara, as the president of the Local Negotiations Committee.¹⁶ The Master Agreement provides that SAG will conduct an inventory of assets—“in order to identify all individuals and the entirety of their assets that may be impacted by the project—between September 11 and October 6, 2015.”¹⁷ The legitimacy of the president of the Local Negotiations Committee will later be questioned, which led to delays in the implementation of the RAP, arbitrary arrests and imprisonments, and the aggressive deployment of security forces in Kintinian.¹⁸

III. METHODOLOGY

To fulfil its mandate in an objective fashion, the investigation team led by CECIDE and MDT adopted the following methodology:

Documentary research. A large number of documentary sources were reviewed ahead of the field mission in Kintinian, including press articles covering the investments of AngloGold in Guinea and the involuntary resettlement of the Kintinian communities, a baseline study on artisanal gold mining in the Prefecture, a socio-economic baseline study about the village of Kintinian, AngloGold’s RAP for its mining project, several individual resettlement and compensation agreements, certain documents reflecting AngloGold’s internal policies and standards on Human Rights and on the resettlement of affected communities, etc.¹⁹

Communications with government entities, SAG and its parent company, AngloGold. Since the beginning of the investigation, CECIDE and MDT have been in contact with government entities, SAG and AngloGold. CECIDE met with the deputy CEO of SOGUIPAMI and the legal advisor of the Ministry of Mines and Geology in December 2015 to discuss the situation at “Area One”. These individuals facilitated the first field mission that took place in May 2015 in Kintinian, involving CECIDE, MDT and SAG. Contacts with the mining companies were initially made by Lien De Brouckere of Communities First through email exchanges and teleconferences with senior officials from SAG in Guinea and AngloGold in South Africa, starting in February 2016. Communications intensified at the end of August 2016 when a press conference was held by CECIDE and MDT in Conakry listing grievances

¹⁶ Master Agreement regarding the transfer of Area One, dated 27 August 2015.

¹⁷ Master Agreement regarding the transfer of Area One, dated 27 August 2015, p. 2.

¹⁸ CECIDE, Memorandum of 9 December 2015 meeting between CECIDE and SOGUIPAMI; Guinée 50, *Dossier: les clés pour comprendre le conflit minier qui oppose la SAG à la communauté de Kintinian*, 13 January 2016.

¹⁹ These documents along with other documents referenced hereafter, are listed at the end of the report in a detailed bibliography.

that were further described in a Declaration issued the same day.²⁰ SAG responded to this declaration at the request of the Business and Human Rights Resource Centre.²¹

Field Missions. In May 2015, as part of a project supported by the 11th Hour Project, CECIDE and MDT conducted their first field mission to reframe their activities and better assist the affected communities of Area One. The two NGOs noted the efforts made by the authorities to find a solution to the communities' persistent objection to hand over their land, but also found a number of violations to the rights of these communities, starting with the violent intervention of the military and security forces and the lack of consent from many individuals regarding their resettlement.

A second fact-finding field mission took place in September 2016. A team made up of Aboubacar Diallo (CECIDE), Frédéric Foromo Loua (MDT), Lien De Brouckere (Communities First), Jonathan Kaufman (Advocates for Community Alternatives), Raphaël Golota Lamah (journalist at Soleil FM), René Loua (Mains Solidaires), Fatoumata Kante (journalist at Guinée58) with the assistance of several local facilitators, was mandated to conduct an objective field investigation and collect relevant data from the communities affected by SAG's mining project. The investigation team informed the mining company of its intentions to proceed with this field mission, and SAG welcomed the initiative as an opportunity to clarify the facts.²² The field mission proceeded along the following main steps:

- September 14, 2016: the investigation team met with Mohamed Lamine Keita, Prefect of Siguiri since March 15, 2016, who welcomed them and signed their mission order.
- September 14-18, 2016: a detailed questionnaire regarding the profile of the affected communities and their knowledge about and experience with SAG's plan to expand to "Area One" enabled the team to collect important data from about 90 individuals within the affected communities. Impacted community members mobilized to participate actively in the investigation.
- September 18, 2016: the investigation team met with Kintinian elders at their headquarters to introduce the scope of the team's field mission that took place in their town.
- September 19, 2016: the investigation team concluded its mission with a meeting with SAG's officials to clarify certain points. SAG answered these questions in

²⁰ CECIDE and MDT Press Release, *Pression Violente Pour les Expulsions en Guinée Afin de Prolonger les Opérations d'AngloGold Ashanti*, 18 August 2016.

²¹ Business and Human Rights Resource Centre, « *Guinea: NGOs say hundreds of households to be displaced by AngloGold Ashanti were intimidated, threatened – company responds* », 13 September, 2016.

²² Meeting with AngloGold, July 2016; Teleconference with SAG and AngloGold, 31 August 2016.

writing (in English) on September 28, 2016.

IV. FINDINGS

The investigation led to the following six main conclusions:

- 1) physical violence and intimidation;
- 2) contested legality of signed resettlement agreements;
- 3) lack of legally required information and consultation;
- 4) paltry compensation;
- 5) inadequate measures to restore communities' livelihoods; and
- 6) serious barriers to access to remedy.

1. Physical violence and intimidation

a. Factual findings

A divided community. The legitimacy of the local negotiation committee was questioned several times. A letter signed by over 22 local clan leaders and elders illustrates a clear objection to SAG's operations on Area One: "We, clan leaders of the village, feel obligated to inform you of the consensus reached by the entire population regarding the non-exploitation of Area One."²³

Failed negotiations about local job creation and other demands communicated to SAG. A delegation of eleven negotiators allegedly met with the then-Siguiri Prefect, M. Cheick Mohamed Diallo ("former Prefect") on several occasions in September and October 2016. It is reported that the former Prefect purportedly told them that the land belonged to the State and the State can decide who gets the lots. The negotiators, on behalf of a "council of Kintinian Area 1 residents" presented several demands including regarding unemployment and youth employment. A series of petitions reflect the pressing appeal from Area One residents for SAG to create local jobs: "hiring one (1) person per concession [household] for an unlimited period."²⁴ In fact, when looking closer at this issue, the number of local jobs seems to have been a key item in the negotiations between SAG and local communities for a long time. Affected communities remember that 5 years ago, SAG had offered 45 jobs for the Seguelen project. Then, for Damani-Tinti Kan 2 or 3 years later, SAG offered 75 jobs (for an unlimited period). For this third project, «Area One », it was therefore expected that more jobs would be created. This persistent demand for more jobs was confirmed during the investigation. For example, many interviewees asked us how we could help them get a job with SAG. Communities also made other demands, including:

²³ Letter from clan Elders, *Consensus de tous les clans du village de Kintinian sur l'attribution de la bande d'Area-One à la Société Ashanti Goldfield (SAG) à des fins d'exploitation de l'or*, signed by 23 clan chiefs, not dated.

²⁴ Area One Residents' Council, *Aide-Mémoire pour l'exploitation du reste de la Colline d'Area 1*.

FIGURE 2 PROTESTS IN KINTINIAN IN LATE OCTOBER



between the eleven negotiators and the Siguiri Prefect occurred on October 29, 2015. The then-Prefect, M. Cheick Mohamed Diallo, and the negotiators were in disagreement and the Prefect enabled their arrest, which led to protests against the « dictatorship » of the Prefect and his deputy (see Figure 2).²⁶ It was reported that the former Prefect would have informed the President that the negotiations had failed. On October 30, residents set two security forces vehicles on fire and blocked the road the entire day. Several victims were hospitalized after stones were thrown and significant property damage was reported.²⁷

Arrival of military and security forces, including Red Berets (bérêts rouges). On November 23, 2015, a delegation of 210 men from the regional military services (including from the Third Military Region of Kankan, but also *bérêts rouges* from the national army, see Figure 3) arrived on site with the official mandate to oust foreign gold miners (predominantly from Burkina Faso and Mali) who were engaged in semi-industrial gold mining without

- Payment of 500,000,000 GNF resettlement premium to each concession
- Connection to drinking water and electricity for the entire village of Kintinian
- Construction projects to be finalized
- Coverage of all health needs for 5 years, etc.²⁵

Negotiators arrested after negotiations failed.

The last meeting

FIGURE 3 BERETS ROUGES IN KINTINIAN AT THE END OF 2015



²⁵ Area One Residents' Council, *Aide-Mémoire pour l'exploitation du reste de la Colline d'Area 1*, 11 April 2016.

²⁶ Guinée Matin, *Deux véhicules endommagés à Kintinian : Les onze 'négociateurs' sont libérés*, 30 October 2015 ; Aminata, Siguiri : *deux véhicules de la police calcinés et des blessés dans un affrontement entre forces de l'ordre et population*, 31 October 2016 ; Guinée 50, *Dossier : Les clés pour comprendre le conflit minier qui oppose la SAG à la communauté de Kintinian*, 13 January 2016.

²⁷ Guinée Matin, *Deux véhicules endommagés à Kintinian : Les onze 'négociateurs' sont libérés*, 30 October 2015.

authorization.²⁸ The delegation included all military units as was confirmed by the communities that were interviewed and who recalled having seen “a lot of soldiers: *bérets rouges*, military, policemen.” The reputation of the *bérets rouges* for their violation of human rights is widely known among Guineans; notably, they were implicated in serious human rights abuses during the 28 September 2009 massacre.²⁹

Violence perpetrated by security forces. Several witnesses report a true “hostage situation” for the community at the end of 2015, accompanied by theft, violence and arrests forcing many residents to flee the area.³⁰ Sources report that approximately five hundred (500) people fled Kintinian and slept in the bush during that time. The arrival of security forces was accompanied by theft, violence and arrests.³¹ Witnesses describe the military and security forces looting businesses, taking all kinds of merchandise (motorcycles, telephones, rice bags, large sums of money, etc.). Property owners recall having been beaten by officers before spending several days in jail. Residents were apparently not spared as armed forces used tear gas in their homes, beating their occupants and even, on occasion, overturning the food that was being prepared.

These acts of violence continued and live bullets were shot resulting in several victims, including a young woman who was shot in the chest.³² The military and security forces reportedly set huts on fire and looting was widespread. Security forces scuffled with the local community.³³ The mayor of Kintinian, El Hadj Lancei Camara, and other public officials fled to Siguiri.³⁴

Reasons for the presence of security forces in Kintinian. While a report by the Captain of the 3rd Military Region asserts that the official purpose for the presence of the armed forces was to stop semi-industrial miners, residents stated almost unanimously that “it wasn’t true” and that another motive was to bring the residents of the area to accept the inventory of their lands and other assets, which they had refused for a long time. Consistently, in early December 2015, the press widely reported that the military presence was also a response to

²⁸ Eviction Mission Report by the Captain of the 3rd military region of Kankan, 28 November 2015.

²⁹ Human Rights Watch, *Guinée : Le massacre du 28 septembre était prémédité*, 27 October 2009.

³⁰ Guinée News, *Guinée : Forces de l’ordre et populations s’affrontent*, à Siguiri, 5 December 2015 ; RFI, *Guinée : Pour expulser les habitants de Kintinian, les grands moyens*, 6 December 2015 ; AFP, *Guineans under pressure to quit gold mining hub*, 2 December 2015 ; RFI, *Guinée : les habitants de Kintinian chassés par l’exploitation de l’or*, 4 December 2015.

³¹ AFP, *Guineans under pressure to quit goldmining hub*, 2 December 2015 ; Conakry Planète, *Siguiri : des militaires assiègent Kintinian!*, 4 December 2015.

³² RFI, *Guinée : Pour expulser les habitants de Kintinian, les grands moyens*, 6 December 2015 ; AGP, *Des échauffourées entre les forces de l’ordre et un groupe de femmes à Kintinian dans la préfecture de Siguiri*, 7 December 2015.

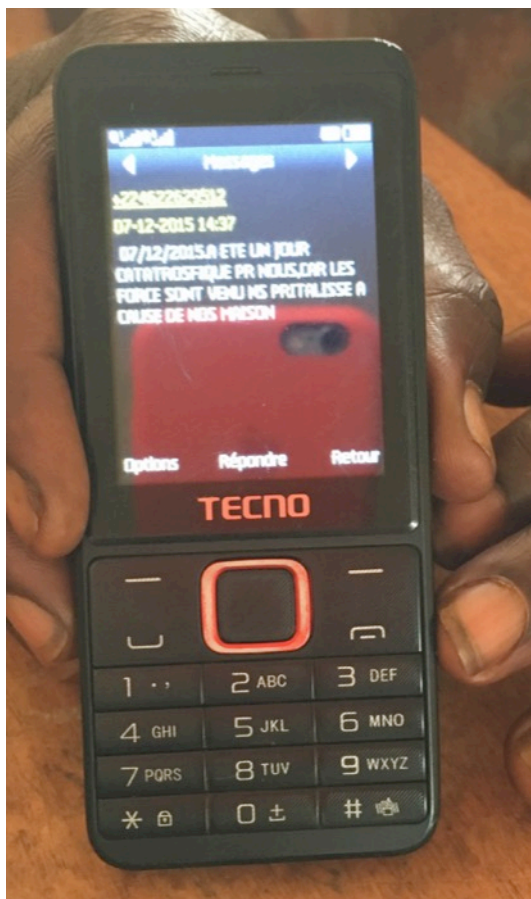
³³ Guinée News, *Guinée : Forces de l’ordre et populations s’affrontent*, à Siguiri, 5 December 2015.

³⁴ RFI, *Guinée : Pour expulser les habitants de Kintinian, les grands moyens*, 6 December 2015.

Area One residents' refusal to leave.³⁵

Military and security forces' involvement in the inventory process. The following week, on December 5, 2015, while the military and security forces were still present in the area, SAG began the inventory process – a process strongly criticized by Area One's property owners. The involvement of the military and security forces during the inventory is heavily documented.³⁶ The report by the Captain of the 3rd military region of Kankan mentions

FIGURE 4 TEXT MESSAGE SENT ON DECEMBER 7



regular visits to SAG, and a field visit including Area One. According to the report, the delegation from the 3rd military region went on SAG's land, including to SAG's AP, which was the meeting point: "We conducted a field visit together on the entire SAG perimeter, including Area One."³⁷ The

report further her men

*"Why did they demolish my house and why won't SAG hire me?"
– PAP from "Area One"*

tions necessary collaboration between SAG and the military: "To secure SAG's perimeter, the prefectoral authority, prefectoral security services and SAG's management itself have to be involved."³⁸

According to witnesses, the military "surrounded the village and were looking for residents one by one to force them to participate in the inventory process" (see also Figure 4). Every witness who was interviewed (those who were present during the inventory) testified that members of the

military were with SAG during the inventory. As stated by 65 individuals who were present during the inventory of their house, SAG's agents with their GPS were accompanied by at least 2 or 3 and up to 7 or 8 soldiers. One witness noted that: "during the inventory, there were more soldiers than family members." The soldiers were carrying various weapons:

³⁵ Guinée News, *Siguiri : Accord entre la SAG et les habitants cinq mois après les violences de Kintinian*, 12 April 2016.

³⁶ Guinée News, *Guinée : Forces de l'ordre et populations s'affrontent, à Siguiri*, 5 December 2015.

³⁷ Eviction Mission Report by the Captain of the 3rd military region of Kankan, Addendum No 2 to Colonel Diane Mohamed's Report, 30 Novembre 2015.

³⁸ Eviction Mission Report by the Captain of the 3rd military region of Kankan, Addendum No 2 to Colonel Diane Mohamed's Report, 30 Novembre 2015.

guns, war weapons, pistols, rifles, tear gas, handcuffs, etc. Soldiers entered concessions and houses with SAG agents. They surrounded the individuals subject to the inventory and placed them in quincunx (one soldier on all four sides with the individual in the middle with the fifth soldier) to threaten them. One witness recalled: “the soldiers told me that they were there to avoid protests and prevent any resistance.” Others recall vividly the proximity of soldiers during the inventory “at 0 meters with threatening faces” or “side by side.” One witness declared: “the military told me that if I refused to sign [the inventory summary] I would die.” Others stated: “the military participated in the inventory process to scare affected people.” Only one individual testified that military did not come inside his house during the inventory.

Interviewees expressed their dissatisfaction with the inventory process to the extent that armed military were present along with SAG’s inventory agents, thereby intimidating and influencing the process.³⁹ On this point, several witnesses said: “they forced us to sign [the inventory summary] under military supervision and with intimidation.” Others even added “people were forced to sign [the inventory summary] in the presence of military who argued that we should bother SAG too much.” Witnesses allege that the military presence in Kintinian only ended once the inventory process was completed. According to SAG, the inventory was completed on December 31, 2015.

It is worth noting that several interviewees allege that SAG was distributing food to security forces. One witness specifically recalled seeing SAG’s “Land Cruiser” vehicles distribute sardine cans and water to the military.

b. Responses from other actors

❖ SAG

SAG confirms that security forces were present in Kintinian during the inventory but believes that “there was never any coordination between SAG and the military” and that the military “did not, under any circumstances, participate in the inventory process.”⁴⁰ SAG admits, however, that several walls that had been built after the beginning of the inventory were taken down.⁴¹ Without denying allegations that it had provided food to security forces, SAG states that it did not house, transport or pay a stipend to the military during its stay in Kintinian. SAG asserts that it never knew of “any demonstration planned in Kintinian when it began to proceed with the asset inventory.”⁴²

❖ Guinean State

³⁹ Guinée News, *Forces de l’ordre et populations s’affrontent à Siguiri*, 5 December 2015.

⁴⁰ Letter from SAG dated 28 September 2016.

⁴¹ Letter from SAG dated 28 September 2016.

⁴² Letter from SAG dated 28 September 2016.

On December 6, 2015, Albert Damantang Kamara, Minister of Labor and Professional Training and spokesperson for the Guinean government stated that it “was the responsibility of the government to ensure that the agreement it had with this company [SAG] was enforced” and acknowledged that “there had been some violence.”⁴³ While he believed that the August 2016 Declaration of CECIDE and MDT was “the truth”, the Siguiroi Prefect, Ibrahima Kalil Keita (nominated on March 15, 2016), informed the investigators that, despite wrongdoings by security forces, the intervention by the 3rd military region mission had been necessary. In his view, the Siguiroi Prefecture had become a Republic within a Republic and without this intervention, he could never have governed it. Mr. Keita was nonetheless disappointed to see that the [CECIDE and MDT] Declaration had failed to mention the positive measures taken by the State to reach a peaceful resolution of the Kintinian crisis.

c. Analysis of the facts in light of applicable standards

Consistent statements made by interviewees, press articles published at the end of 2015, the personal impression of the Siguiroi Prefect about the truthfulness of the Declaration issued by CECIDE and MDT, and the mission report authored by the Captain of the 3rd military region of Kankan, all support concluding a certain level of collaboration between SAG and security forces during the inventory process at the end of 2015. SAG’s isolated position, denying all the allegations against it without any reliable element of proof, cannot stand in the face of witness statements and contemporaneous reports. SAG’s position further fails to answer two key questions: (1) Why did SAG wait for security forces to arrive on November 24 to start the inventory on December 5, a process it had planned to begin on September 11 and end on October 6? (2) Why did SAG not wait for the complete and final withdrawal of all security forces to launch its inventory process?

❖ SAG’s responsibility

Whether the collaboration between SAG and the military was direct or indirect, whether it was intentional or not, SAG failed to fulfil its obligation to conduct a human rights risk assessment, to use its influence to limit the use of force and to help remedy any negative impact related to its operations. This responsibility is derived from AngloGold’s Human Rights policy as well as its adherence to the Voluntary Principles on Security and Human Rights (VPSHR).

❖ Guinean State’s responsibility

The violence and intimidation perpetrated by security forces during the inventory process also implicate the liability of the State. The Guinean Constitution protects each Guinean

⁴³ RFI, *Guinée : Pour expulser les habitants de Kintinian, les grands moyens*, 6 December 2015.

citizen's dignity and physical integrity, as well as the unalienable nature of their homes.⁴⁴ The facts as they were established during the investigation confirm that violence, thefts and other damage were perpetrated by the military during the inventory process, including in private houses. The State of Guinea has therefore failed to fulfil its duty to protect as prescribed by the Constitution.

2. Contested legality of signed resettlement agreements

a. Factual findings

Lack of public interest decree. SAG acknowledges the absence of a public interest decree as provided in articles 56 and 57 of the Guinean Land Code in the context of an expropriation. Indeed, SAG confirmed that "SAG's mining activities were not declared Project of National Interest (PNI). Accordingly, no public interest declaration was granted in relation to this project."⁴⁵

History of the resettlement agreements. According to SAG, on January 25, 2016, sample resettlement agreements were allegedly finalized and approved by the former Prefect, his secretary general, and the directors of mines, urbanism, the environment and agriculture.⁴⁶ The presentation of the agreement and signature by the affected individuals occurred between February and May 2016, with the last agreement signed at the end of May 2016.

Refusal to sign the resettlement agreements. At the time, around one hundred households were refusing to sign the resettlement agreements as they were presented to them. In order to convince the household heads to sign the agreements, the new Prefect organized a meeting on April 8, during which he promised to protect and defend their interests. After this meeting, which sadly did not bring any change to the substance of the agreements, the hundred households who had refused to sign until then finally decided to sign the agreements in the youth center. SAG donated cattle to celebrate the signatures. Several witnesses confirmed having attended the meeting with the Prefect and signed the agreements not by choice but out of respect for the new Prefect, himself a local from Siguiri.

Flawed inventory, yet the basis for the resettlement agreements. In addition, although the inventory was the basis for the resettlement agreements that provide the conditions and compensation relating to the resettlement, irregularities tainting the former necessarily impacted the validity of the latter. The inventory process took place without warning or sufficient initial information, making it incomprehensible for most affected people. Several interviewees explained that they had never been informed about the upcoming inventory, "received no date" and that SAG "only came with force to proceed with the inventory."

⁴⁴ Guinean Constitution, arts. 5-6, 12.

⁴⁵ Letter from SAG dated 28 September 2016.

⁴⁶ Email from SAG and AngloGold dated 28 May 2016.

Further, as detailed above, the inventory took place in a context of violence and intimidation, and therefore without the communities' freely given consent. Finally, the inventory process took place without substantial involvement of women, thereby truncating the asset pool for each household.

Beyond the violence and intimidation that tainted the inventory, the process was obviously incomplete. A number of interviewees testified that they were not present at the time because they had fled or were imprisoned. Others – including women – deplore an incomplete or non-existent inventory. For example, one woman explained that having recently lost her husband, she had left Kintinian to observe the period of mourning. Several women stated that they had no knowledge about the resettlement steps or their rights in the process, and note that they were not involved during the inventory, which was managed by their son or husband.

Signatories did not understand the substance of the agreements. Regarding the resettlement agreements, interviewees confirmed that most of them did not know how to read or write. Thus, when the documents were presented to them, they were unable to understand them. Out of 90 interviewees, only two stated that they received assistance from SAG to understand the substance of the contract. None of the others received any help, and a few people were assisted by friends or acquaintances – often only after signing the agreement.

Impossibility for signatories to understand certain clauses of the agreements because they had no access to the RAP. The people involved had no access to the RAP – which is referenced in the individual agreements – or the compensation matrix and therefore were not in a position to make an informed decision. Over 75% of interviewees confirmed having never heard of a RAP, let alone one that would be relevant to this mining project as referenced in the agreements.

Households were forced to sign the agreements. It is also relevant that most interviewees did not feel like the terms of the agreement were negotiable or that they could refuse to sign. One can hardly identify a single individual who understood that signing the agreement and handing over his land were his choice to make. For example, property owners said that “it was take it or leave it,” “they told me that if I didn’t accept I would lose” or “no question, we were threatened.” In certain instances, negotiation or discussion cannot have occurred since several people reported having signed the agreement the day it was presented to them.

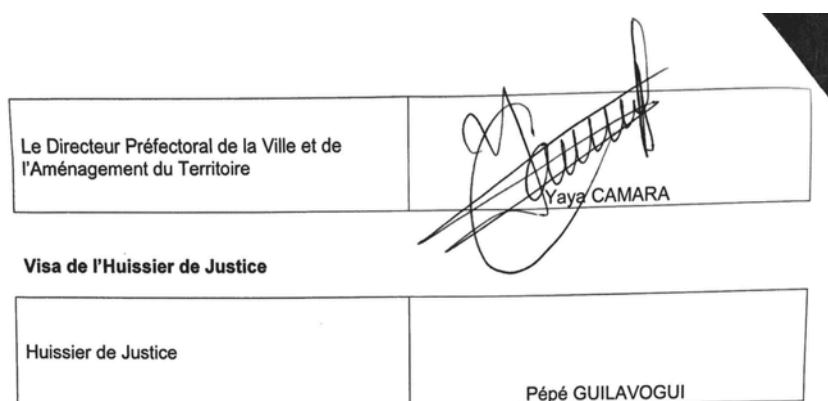
Lack of legal protection for affected people. Most of the resettlement agreements that were reviewed during the investigation were signed by the household head, the head of SAG, as well as town representatives and the prefectural director for the town and urbanism. None was signed by a bailiff, despite the presence of a specific placeholder (see Figure 5). It is also

worth noting that in February – when the first agreements were handed out – SAG preferred not to facilitate access to legal support, fearing it would cause additional delays for the project.⁴⁷

Temporary housing. At the end of 2016, virtually every family

was asked to leave their house and find temporary housing. SAG started destroying local houses in June 2016 to proceed with the excavation. Families had to find rental housing and SAG planned on paying stipends.

FIGURE 5 BAILIFF DID NOT SIGN THE AGREEMENTS



b. Responses from other actors

SAG acknowledges that no public interest decree was issued. AngloGold further admits that no efforts were made to raise awareness among the community regarding the RAP before the inventory process.⁴⁸ AngloGold affirms however, that SAG representatives and the Prefect explained the substance of the resettlement agreement to affected people and advised that they take time to think about it and consult each other before signing. AngloGold also believes that no agreements were signed on the day they were handed out. AngloGold highlights that some people asked for additional information, which was provided by state officials and Kintinian’s village chief.⁴⁹

c. Analysis of the facts in light of applicable standards

Voluntary transaction, not expropriation. All parties agree that the resettlement of Area One residents does not fall within the legal framework of an expropriation. Indeed, Guinean law requires three steps for any involuntary resettlement to qualify as legal expropriation: a public interest decree, a land study and a transferability decree.⁵⁰ Outside of this strictly defined legal framework, a mining project may not affect anyone’s constitutionally-protected right to property⁵¹ without the voluntary consent of its holder.⁵² The relevant legal

⁴⁷ Teleconference with SAG, end of February 2016.

⁴⁸ Meeting with AngloGold, 8 July 2016; Teleconference with AngloGold, 31 August 2016.

⁴⁹ Teleconference with AngloGold, 31 August 2016.

⁵⁰ Land Code, arts. 57-60.

⁵¹ Guinean Constitution, arts. 13, 19, 39.

⁵² Mining Code, art. 123. Most systems and modes of occupation in Guinea are based on customary law, which is dominant in rural areas and recognized in article 39 of the Land Code.

framework for the resettlement agreements is therefore not one of expropriation, but rather a voluntary transaction between a seller, who is not obligated to sell, and a buyer who cannot resort to expropriation proceedings if negotiations fail.⁵³

Irregularities in the signed agreements impact their legality. Everyone was forced to sign the agreements memorializing an allegedly voluntary transaction. The lack of consent is blatant here, as detailed in the factual findings section above. Yet, without a public interest decree, each property owner should have been free to refuse to sign the agreement – here, no one felt like they could refuse to sign. Prior to the signature phase, a number of irregularities were found in the agreements that directly impact their legality. The Guinean Civil Code provides that legal agreements require the parties’ consent, consent that is not valid if given by mistake (e.g., without understanding the scope or subject matter of the contract) or obtained through violence, including the threat of physical violence or harassment.⁵⁴ The facts uncovered during the investigation confirm that the Area One resettlement agreements were signed based on incomplete – sometimes nonexistent – information and in a context of threat and intimidation. In addition, the resettlement agreements include provisions referring to documents that were unavailable to signatories. Indeed, the agreements refer to the RAP on several occasions even though the RAP was not shared with the affected communities. Signatories cannot be held to contractual provisions they were unable to understand – or know, even – and that they agreed to by mistake. This means that the agreements may be null and void and that SAG may be liable for damages.

Inventory for an allegedly voluntary transaction in a context of violence. The context of violence and the military presence during the inventory appears incompatible with a voluntary process. Articles 650 and 652 of the Guinean Civil Code provides that consent may not be extorted through violence whether physical or psychological. The devastating testimony of many property owners describe the intimidation, threats and for some of them the physical violence that tainted the inventory process, thereby confirming that residents could not have freely signed the inventory summary, and that resettlement agreements based on that inventory are null and void.⁵⁵ Any inventory conducted without the relevant property owners (who had fled or were imprisoned) is necessarily incomplete and unenforceable. For example, in several cases, women were not invited to participate in the inventory process, which was sometimes managed by a son or husband, but sometimes without any alternative.

It is important to note here that article 653 of the Guinean Civil Code provides that “violence renders a contract null and void if it was exercised by a person other than the one benefiting

⁵³ Land Code arts. 57-60; Mining Code art. 125.

⁵⁴ Civil Code, arts. 649 à 655.

⁵⁵ Civil Code art. 649.

from the agreement.” Thus, even if SAG was not the direct perpetrator of the violent actions, the resettlement agreements would be null and void.

3. Lack of legally required information and consultation

a. Factual findings

Key affected communities were excluded from consultations regarding the RAP. The RAP itself states that the villages of Kintinian and Setiguia were “excluded” from consultations during INSUCO’s work on the RAP.⁵⁶ The document notes “the impossibility to conduct any consultation in the villages of Kintinian and Setiguia” and affirms that “no consultation was conducted [in Kintinian].”⁵⁷

Consultations between SAG and the local negotiation committee failed. AngloGold informed the investigators that the RAP had been duly explained to a local negotiation committee from the impacted areas to enable the consultation of all affected communities. AngloGold specified that government officials and village chiefs had, in this context, answered questions raised by residents.⁵⁸ This local negotiation committee did not, however, conduct any additional consultation with the wider community. In addition, there was only one local committee, even though the RAP informed SAG that “the evolution of the situation does not enable us to envision whether a single consultative organ could represent in one voice the community as a whole.”⁵⁹ The RAP advised that “various interest groups [should be] approached separately” in order to ensure that diverging interests within the community are represented.⁶⁰ The attempted negotiation with the communities at the end of October ended with the arrest of eleven negotiators. This blatant lack of community consultation has a detrimental impact, including on women, who are particularly vulnerable in the resettlement context.

No one heard of the RAP. Based on the field investigation, nearly 76% of interviewees stated having never heard of the RAP and only 3% had a vague idea of what it covered. This minority explained that SAG officials had told them about the content of the Plan, mainly in Malinké (local dialect).

No local access to the RAP. At the start of the investigation, CECIDE and MDT contacted SAG to request a copy of the RAP. Despite several requests by telephone and email, SAG did not provide the document. SAG also failed to respond to similar demands made by Communities First. It took an in-person meeting between Communities First and an AngloGold official during an IFC workshop in Washington DC for the civil society

⁵⁶ RAP, October 2013, pp. 18-19.

⁵⁷ RAP, October 2013, pp. 18-19.

⁵⁸ Teleconference with AngloGold, 31 August 2016.

⁵⁹ RAP, October 2013, p. 82.

⁶⁰ RAP, October 2013, p. 82.

organizations to finally obtain a copy of the RAP, without its annexes. It took another four months for them to receive all annexes to the RAP.

b. Responses from other actors

AngloGold admitted that nothing had been done to raise awareness within the community about the RAP prior to the inventory process.⁶¹ Representatives of AngloGold further admitted that the consultation they had conducted had its limits, acknowledging that they had relied on the restricted committee to take care of the wider consultation with the communities as a whole, which evidently never happened. In effect, AngloGold admits that most of the directly affected parties were never consulted during the RAP development process.

c. Analysis of the facts in light of applicable standards

Violation of Guinean law. Articles 37 and 142 of the Mining Code clearly require that a RAP be established for any exploitation license, including international principles of participation and consultation of local communities. Because it failed to involve affected local communities, the RAP could not have incorporated a compensation mechanism compliant with international principles of participation and consultation, in violation of article 142 of the Mining Code. Indeed, residents of Kintinian and Setiguia were not informed about their rights and options regarding the resettlement. The consultation was insufficient because it provided no information on the anticipated project, and no plan regarding the resettlement and rehabilitation was made available to local communities and civil society at a relevant time and in an accessible format.

Failure to verify effective consultation by local community representatives. SAG failed to follow the RAP's recommendation that a single committee would not be sufficient to represent the different interests and opinions within the affected communities. Regardless of this advice, SAG created only one local negotiation committee. SAG also disregarded the IFC Performance Standards (PS) that it committed to respect. Under PS1: "when the stakeholder engagement process depends substantially on community representatives, the client will make every reasonable effort to verify that such persons do in fact represent the views of Affected Communities and that they can be relied upon to faithfully communicate the results of consultations to their constituents."⁶² Here, SAG does not appear to have satisfied itself that the representatives of the community had expressed the opinion of affected communities.

The standard further requires that "the client will undertake a process of consultation in a manner that provides the Affected Communities with opportunities to express their views

⁶¹ Meeting with AngloGold, 8 July 2016.

⁶² IFC PS1, paragraph 27.

on project risks, impacts and mitigation measures, and allows the client to consider and respond to them.”⁶³ Here, affected communities were not allowed to express their views; the former Prefect detained their alleged representatives when they came to express their opinion.

In addition, no special measure was taken to ensure the full and effective involvement of women and other vulnerable people of Area One, contrary to the requirements of the IFC PS.⁶⁴

Failure to share relevant information. The PS require that SAG share relevant information regarding the project. IFC PS5 provides: “Disclosure of relevant information and participation of Affected Communities and persons will continue during the planning, implementation, monitoring, and evaluation of compensation payments, livelihood restoration activities, and resettlement to achieve outcomes that are consistent with the objectives of this Performance Standard.” As widely documented in the factual findings established during the investigation, no such information was shared with the affected communities, including the substance of the RAP which determined each step of the process and should have been publicly available.⁶⁵

4. Paltry compensation

a. Factual findings

Failure to inform affected communities about the compensation matrix. Annex 1-3 of the RAP regarding the compensation matrix provides that “restrictions on movement in Kintinian during the field mission as well as the prohibition to discuss the topic of compensation with local authorities and key stakeholders seriously restricted the scope of action during the investigation regarding property values in the relevant area.”⁶⁶

Lack of transparency regarding the compensation price scale. The compensation matrix was not shared with the communities, and nothing was done to raise awareness about it – which would have been key to explain the entitlement amounts included by SAG in each resettlement agreement. In fact, for some impacted persons, when they tried to negotiate the compensation amount, SAG refused to discuss any terms of the resettlement agreement. Interviewees stated that negotiating was not an option and for those who tried to negotiate, SAG refused.

Flawed inventory process. The compensation of affected persons depends on the inventory outcome. The reliability and quality of these processes were widely insufficient for several

⁶³ IFC PS1, paragraph 30.

⁶⁴ IFC PS5, paragraph 10; IFC PS1.

⁶⁵ IFC PS1, paragraph 29.

⁶⁶ RAP, Annex 1-3 *Détail et justification des calculs de compensation*, October 2013, p. 57.

reasons: first, the context of violence surrounding the inventory tainted its credibility, especially when witnesses describe the destruction of assets such as huts set on fire by security forces. Further, the inventory process failed to include residents who had fled or were imprisoned during the “hostage situation” that affected the entire village of Kintinian at the end of November. Finally, the inventory was not conducted by experts or specialists who could have ensured that the process was conducted in compliance with international standards. The consulting firm INSUCO was supposed to manage the inventory. But when local communities refused to allow the inventory to proceed and after several weeks of delay, SAG eventually completed the inventory itself with a team that did not include specialists and with the involvement of public officials who did not master international standards.

Insufficient compensation. Interviewees do not believe that the compensation that they were offered is sufficient to restore their livelihoods, and over 96% of them consider the compensation to be unfair. Interviewees describe insufficient amounts, agreements failing to include “all our concerns and assets” and “a blatant injustice with a complete omission of certain assets.” Several residents also noted that they had not received any financial compensation from SAG to date.

Attempts to resettle affected persons before the completion of the resettlement site. Moreover, SAG had planned on beginning to resettle the affected persons on the new site built between Bokaria and Kintinian in September, the day before the investigation team’s visit. Construction was far from completed on that date. Indeed, interviewees explained that SAG had offered to hand them the keys for the new housing, but they had refused because the houses were not finished, they were not connected to running water, electricity, or sewage, some houses did not have kitchens, etc. Residents also noted that the surface area of the houses was reduced, rooms were too small. For example, one woman explained “we refused to accept the keys because the houses don’t suit our needs, there is no running water and they told us that motor-tricycles would deliver water on the site, which is not acceptable. They want to send us over there and simply forget about us.” Another interviewee stated “people from SAG went to see the authorities so they could ask the community to go live in the new houses ... When he arrived on site, even the Prefect understood that SAG had not met its commitments.” In September 2016, seven months after the settlement agreements were signed, no one knew when they would have access to their new houses.

b. Responses from other actors

SAG asserts that it has met all of its commitments. AngloGold denies all allegations regarding flaws in the inventory process and notes that Siguirí’s Planning director and the

director of urbanism had been involved.⁶⁷ Lots in the village were compensated at 10,000 GNF/m² (less than USD1/m²) for land located inside the village and 8,000 GNF/m² (less than USD0.8/m²) for lots located outside the village.⁶⁸ In all, the mining company allegedly paid USD 600,000 in financial compensation to affected communities.⁶⁹ The mining company alleges that the land value on the resettlement site is higher than that of the original land. AngloGold acknowledged that the inventory was not conducted by INSUCO because all access to Area One was blocked. Instead, SAG conducted the inventory with the involvement of the Director of urbanism and members of the committee created by the village chief and the Prefect.⁷⁰

The Prefect acknowledged the communities' demands regarding basic services: insufficient water, missing kitchen, no sewage, no electricity while the cables for the Bokaria District run right outside the new houses.⁷¹

c. Analysis of the facts in light of applicable standards

The compensation matrix was not updated to reflect the increased cost of living. Based on available information, the only value that was modified from the matrix included in the 2013 RAP was property value. Despite several requests by NGOs for SAG to provide the RAP's annexes, including any revisions to the documents, SAG did not share the updated version. One can only conclude that SAG applied at the end of 2015 a compensation matrix that had been designed in 2013 and not been updated to reflect an increased cost of living. This means that SAG did not comply with the RAP, which reads: "it appears necessary that SAG take into consideration the evolving cost of living in Guinea when designing the compensation matrix for affected persons if the resettlement and compensation program lasts several trimesters or several years. We recommend that SAG revise the compensation amounts to incorporate the level of inflation in the country on a regular basis (bi-annual or annual)."⁷²

We recommend that SAG revise the compensation amounts and take into account the level of inflation in the country on a regular basis (bi-annual or annual).

The current level of compensation does not enable communities to restore their livelihoods. The mining company failed to ensure that property owners would keep their assets, be resettled or compensated for the loss of their housing and means of subsistence in order to restore or improve their livelihood, in violation of its commitment to respect IFC Performance Standard 5. Area One residents were offered no compensation for lost assets at

⁶⁷ Notes of August 1, 2016 meeting with AngloGold.

⁶⁸ SAG's responses to questions raised about Area One, 28 September 2016, Response 3.6.

⁶⁹ Email from AngloGold, 31 May 2016.

⁷⁰ Teleconference with AngloGold, 31 August 2016.

⁷¹ Meeting with the Prefect, 16 September 2016.

⁷² RAP, Annex 1-3 *Détail et justification des calculs de compensation*, October 2013, pp. 68-69.

their real value, nor financial help sufficient to restore or improve their livelihood or to resettle in the appropriate manner (IFC PS5, paragraph 9 and 20(iii)). No consideration was given to the creation of similar professional activities on the new site.

Lack of transparency regarding the compensation matrix. SAG also failed to meet its transparency obligation regarding the applicable compensation standard by sharing insufficient information with affected residents (IFC PS5 paragraph 5).

Attempts to resettle residents before the new facilities were ready. SAG also violated IFC PS5, paragraph 10 when it asked the affected communities to accept the keys of their new housing before said housing was ready and before appropriate compensation was paid.

5. Inadequate measures to restore communities' livelihoods

a. Factual findings

Negotiations regarding the restoration of communities' livelihoods ended with the arrest and imprisonment of some of its members. As explained above, regarding the communities' means of subsistence – local jobs—they had been a key element of negotiations between the community and SAG for a long time. The community remembers that in 2011, SAG created 45 local jobs as part of the Seguelen project; two or three years later, SAG created 75 local jobs (unlimited duration) as part of the extension project of Damani-Tintikan. It was therefore expected that communities would demand the creation of approximately 200 local jobs for this extension to Area One, which is much larger than the other two projects. Instead of working on the negotiations, the Prefect detained the negotiators.

No livelihood restoration plan. No plan was designed to restore the affected communities' livelihoods – a plan that should be established prior to the resettlement.

b. Response from SAG

SAG stated that it found the communities' demands regarding livelihood "unreasonable", especially a demand from the youth to hire 200 people. Considering that SAG was already too heavily staffed, this would have been a deal breaker for the company.⁷³ SAG admits that "no formal livelihood restoration plan was established because Area One is mainly a residential area with only a small number of businesses operated by tenants working out of rented facilities."⁷⁴

When asked about projects designed to compensate communities' project-related damages, SAG answered: "an economic development program was designed for the larger area of Siguiri, that will also benefit affected residents of Area One. The economic development program includes: the production of fruit and vegetable (including cashew nut), fish

⁷³ Meeting with AngloGold, 11 July 2016.

⁷⁴ SAG's responses to questions regarding Area One, 28 September 2016, Response 3.7.

farming, brick production, sewing and embroidering as well as capacity training. This program will be presented to the affected communities for assessment and adoption when appropriate.”⁷⁵

c. Analysis of the facts in light of applicable standards

No livelihood restoration plan. SAG admits that no formal livelihood restoration plan was created for reasons that cannot stand under IFC PS5, which requires that such a plan be put in place. The development program that was designed for the Siguirí area isn’t specifically tailored to address resettlement issues. The “mainly residential [nature of Area One] with only a small number of businesses operated by tenants” does not bar the creation of a livelihood restoration plan. Many Area One residents are artisanal gold miners or merchants. The location of the new site will affect artisanal gold miners’ transit and their access to artisanal mining sites. SAG must take this access into account based on IFC PS1.⁷⁶ The location also impacts other individuals in their work. For example, their commute will be longer. Regarding tenants, no analysis appears to have been conducted about whether the occupation rate of the new site would come close to those at Area One. The cost of living in smaller houses at the new site also appears to have never been compared to the cost of living at Area One, which absolutely impacts livelihood.

6. Serious barriers to access to remedy

a. Factual findings

Lack of information about or access to SAG’s grievance mechanism. Nearly 76% of interviewees stated that they did not know that SAG had a complaint mechanism and only four answered that they had already filed complaints with SAG. These answers are puzzling and show that Area One communities’ access to SAG’s complaint mechanism was clearly deficient. 75% of interviewees noted that having no alternative remedy they protested to oppose the expropriation.

The dispute resolution clause included in the resettlement agreements provides that disputes will be brought before SAG’s grievance mechanism. Article 3 of the resettlement agreements reads “any dispute between the affected household or one of its members and other parties to the Agreement or in relation to it shall be filed and processed according to the grievance mechanism established in compliance with the RAP.” The RAP was never explained to the community and neither was the complaint mechanism – during the inventory, the presentation of the agreement or its signature. No one in the community had access to the RAP.

b. Response from SAG

⁷⁵ SAG’s responses to questions regarding Area One, 28 September 2016, Response 3.8.

⁷⁶ IFC PS5, paragraph 6, footnote 10 (referring to PS1).

AngloGold asserted in August 2016 that a grievance mechanism was operational on site and that no complaint had been submitted relating to the resettlement of Area One. The mining company stated that the mechanism had been effectively put in place and meetings had been organized to address any concern voiced by affected persons. SAG did not open any investigation regarding the violent intervention of security forces in Kintinian at the end of 2015, and did not otherwise facilitate the community's access to remedy.

c. Analysis of the facts in light of applicable standards

SAG's complaint mechanism fails to meet international standards. In its internal Human Rights Policy, SAG commits to respect the UN Guiding Principles on Business and Human Rights, including Principle 31 regarding effectiveness criteria for non-judicial grievance mechanisms. Under this principle, the grievance mechanism must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue. Pursuant to IFC PS1 (paragraph 35), grievance mechanisms should "seek to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate and readily accessible, and at no cost and without retribution to the party that originated the issue or concern. The mechanism should not impede access to judicial or administrative remedies." Here, the grievance mechanism is neither known nor used by communities for grievances relating to the resettlement.

The dispute resolution clause in the resettlement agreements excessively restricts the community's access to remedy. Under the Guiding Principles and PS1, the grievance mechanism cannot restrict access to other remedies, especially judicial or administrative remedies. Because the dispute resolution clause clearly limits available remedy to SAG's grievance mechanism, it creates a serious barrier to alternative remedy.

SAG failed to react to the massive presence of security forces on its concession. SAG did not react to the violence perpetrated by security forces. Pursuant to the Voluntary Principles on Security and Human Rights, SAG should "record and report any credible allegation of human rights violation by public security in their areas of operation to appropriate host government authorities. Where appropriate, companies should urge investigation and that action be taken to avoid recurrence." Here, SAG took no measure regarding the massive presence of Guinean security forces—including *bérets rouges*—on its concession.

V. RECOMMENDATIONS

In light of the findings and analysis described above, we issue the following recommendations to the key players involved:

1. To the State of Guinea

- ✓ *Remedy any harm caused by your military and security forces and ensure that human rights are respected.* The State must remedy any damages (material and emotional damages) caused to the Kintinian population during the intervention of security forces led by a delegation of the 3rd military region of Kankan at the end of 2015. The State must face its responsibilities, including: (1) establish the facts; (2) rapidly set up a compensation mechanism in coordination with the communities affected by the violence perpetrated by security forces; and (3) take any measures that would prevent such events from happening again. On this point, we recommend that the State develop an action plan describing the steps it will take to promote and enforce the Voluntary Principles on Security and Human Rights (VPSHR) and that it join the international initiative on VPSHR. It is the State's responsibility to find peaceful solutions to disputes between mining companies and affected communities in the context of involuntary resettlement. To that end, and in compliance with national and international standards, the State should always favor mediation processes rather than violence and the material damages or casualties that too often follow security forces' intervention.
- ✓ *Provide a clear legal framework that is respectful of local communities' customary rights in terms of compensation.* The Ministry of Mines and Geology must take urgent and effective measures to finalize the Mining Code enforcement documents, including one relating to the compensation of residents including for any disturbance (art. 124 Mining Code). Moreover, the State must reform the Land Code so it better protects property rights and all expropriation and compensation procedures are harmonized.
- ✓ *Ensure better compliance with the Mining Code.* The State must punish all violations of the Mining Code by mining companies. The State should oversee SAG and its parent company's implementation of actions to assess and remedy its involuntary resettlement at Area One. The State should ensure that its representatives ensure that the law is enforced, rather than be complicit in violations of the rights of communities. The BGEEE should confirm that local communities are participating in the establishment of RAPs and should not endorse any document that clearly indicates that key affected communities were excluded from that process.

2. To SAG and its parent company, AngloGold

- ✓ *AngloGold should conduct a public audit to assess and remedy SAG's involuntary resettlement of Area One.* The audit should identify any and all persons who believe that their land or other lost assets were undervalued in the inventory. This

exhaustive list should be reviewed by an independent assessment under the supervision of a committee gathering representatives of SAG, the Prefecture of Siguiri, the Ministry of Mines and Geology, the Commission on Mines of the National Assembly, and technical experts from the Ministries of Agriculture, Environment and Decentralization. The audit should also include the negotiation and implementation of a livelihood restoration plan for Area One affected communities. To carry all of this out, SAG should allocate the resources necessary to complete this operation. An independent agency could be mandated to manage the funds. The applicable compensation matrix should be based on an international standard and clearly explained to the residents of Area One.

- ✓ *AngloGold and SAG should facilitate affected communities' access to remedy.* SAG should reform its grievance mechanism to make it efficient and effective. AngloGold should also facilitate the communities' access to judicial remedies concerning the violence perpetrated by security forces around the inventory process.
- ✓ *AngloGold should strengthen its supervision of SAG with regards to human rights, involuntary resettlements and VPSHR.* AngloGold should strengthen its supervision of its subsidiary regarding the enforcement of its internal policies. Three policies are mainly relevant here. First, regarding its Human Rights policy oversight, conducted by AngloGold's relevant subcommittee, AngloGold should ensure that SAG does not create barriers to access to remedy, through its own grievance mechanism or through dispute resolution clauses in resettlement agreements. Second, on the resettlement policy oversight, AngloGold should not tolerate that a RAP be created without the involvement of directly affected communities. When tensions exist between local communities and SAG, the company should seek the assistance of a professional mediator with a strong experience dealing with conflicts between local communities, mining companies and government players, instead of ignoring the issue by relying on illegitimate representatives. Finally, regarding AngloGold's oversight of SAG's enforcement of the VPSHR, stronger measures should be put in place to better identify the risks of any intervention by security forces on SAG's concession. This would enable the company to avoid the involvement of *bérets rouges* (for example) in any operation designed to ensure SAG's safety, and to use its influence to ensure that human rights are respected when security forces get involved in SAG's operations.
- ✓ *SAG should improve its consultation and access to information processes.* We invite SAG to develop processes to improve its communication with local communities and facilitate access to information and remedy. Given the clear divisions within the Kintinian community, SAG should put these processes in place instead of relying on communication made by potentially illegitimate representatives. SAG could, for example, conduct an investigation on the community's favored communication methods or experiment with new communication tools via telephone (text or voice messages) enabling the spread of information in real time with community members.

Generally, SAG should comply with IFC PS1, paragraph 27, which provides: “when the stakeholder engagement process depends substantially on community representatives, the client will make every reasonable effort to verify that such persons do in fact represent the views of Affected Communities and that they can be relied upon to faithfully communicate the results of consultations to their constituents.” Then, SAG should raise awareness about the RAP and compensation matrix through a range of communication tools. SAG should also continue to inform Area One community members about its grievance mechanism, also making it more accessible and transparent.

- ✓ Similarly, SAG and AngloGold should ensure that their communication with local NGOs is in the official language. If they insist on using English, they should ensure interpretation and translation into French. If SAG communicates in writing with local NGOs in English, they should favor French.
- ✓ SAG should facilitate mediation between local chiefs who are divided as a result of its actions.

3. To the Kintinian community

- ✓ *Act peacefully in defense of its interests.* Affected communities of Area One and the wider community of Kintinian should refrain from violence in order to improve the social stability in the village. In defending their rights and interests, they should favor open dialogue through legal and peaceful means.
- ✓ *Avoid social divisions and engage in reconciliation with the traditional chiefdom.* To date, the traditional chiefdom is deeply divided and it has been this way since the events in Area One. Mistrust is rampant, which impacts the rest of the community and benefits SAG.
- ✓ *Stop artisanal gold mining activities on SAG’s concession.*
- ✓ *Avoid any behavior that would nurture or foster conflicts with SAG.* (e.g., occupying areas that are subject to SAG’s operations, excessive harvesting of cashew trees to increase the level of compensation, etc.).
- ✓ *Encourage responsible mining practices.*

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