



# MINING AND HUMAN RIGHTS IN SENEGAL

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IN PROTECTION

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*Cover photo:* A miner washes stones at a gold mining area in Eastern Senegal, July 2011.  
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# GLOSSARY

<b>ACHPR Principles and Guidelines on ESC Rights</b>	African Commission's Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter
<b>African Charter</b>	African Charter on Human and Peoples' Rights
<b>Basic Principles</b>	UN Basic Principles and Guidelines on Development-Based Evictions and Displacement
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CESCR</b>	UN Committee on Economic, Social and Cultural Rights
<b>ECOWAS</b>	Economic Community of West African States
<b>ECOWAS Mining Directive</b>	Directive C/DIR.3/05/09 on the Harmonization of Guiding Principles and Policies in the Mining Sector (27 May 2009)
<b>EIA</b>	Environmental Impact Assessment
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>SGO</b>	Sabodala Gold Operations

# INTRODUCTION

Senegal has significant reserves of various minerals. The Kédougou region in particular has important deposits of gold, iron ore, marble, uranium, copper and chromium.<sup>1</sup> Kédougou, in the south-east of Senegal, falls within the Birimian Greenstone Gold Belt. This gold belt is one of the largest in the world, stretching across much of West Africa. In the Kédougou region alone, there are estimated to be around 10 million ounces of gold reserves.<sup>2</sup> Despite sitting on these precious resources, most of Senegal's population lives in poverty. The United Nations Development Programme ranks Senegal 154 on the Human Development Index out of 187 countries.<sup>3</sup> Kédougou is one of the poorest regions in Senegal. It is a rural area and the livelihood of much of its population depends on subsistence farming and artisanal gold mining. Over 70 per cent of Kédougou's population lives below the poverty line.<sup>4</sup>

Senegal has recently decided to encourage the exploitation of its mineral resources by modernizing the mining sector and promoting foreign investment. The mining sector in Senegal has traditionally been dominated by the production of phosphates.<sup>5</sup> While gold deposits were found around 50 years ago, they were typically extracted by small-scale artisanal miners.<sup>6</sup> In 2003, Senegal adopted a new mining law that offers various investment incentives for international companies.<sup>7</sup> The Government has undertaken extensive studies to map and survey the various mineral deposits and established a cadastre (registry) to implement a mineral title management system.<sup>8</sup> Following the adoption of the mining law, it invited international companies to tender for the exploration and exploitation of certain gold deposits.<sup>9</sup>

The adoption of the mining law, and the increasing price of gold over the past decade,<sup>10</sup> led to a rapid expansion in gold mining in Senegal. The Kédougou region in particular has seen an influx of both industrial and artisanal miners. Local communities have expressed various concerns about the expanding gold mining industry, reporting that due to industrial mining operations they have been forced to move to villages without adequate housing and water and suitable land for growing their usual subsistence crops and have been denied access to sites traditionally used for artisanal mining.<sup>11</sup> The concerns raised by these communities are emblematic of the human rights issues that arise generally within the context of mining and other extractive industries.

Under international law, states have a duty to protect human rights from abuses by non-state actors, such as companies. Over the past decade there has also been increasing recognition of the responsibility of companies to respect human rights. The gold mining industry in Senegal is relatively new, with only one concession having reached the production phase. As more mining concessions are granted, and exploration and production intensifies, the impacts on local communities will only increase unless their human rights are adequately protected by the State and respected by companies.

This report examines the existing legal framework in Senegal as regards key human rights issues arising within the context of industrial mining. Artisanal mining remains an important issue in Kédougou and is associated with a range of health and safety concerns related to exposure of artisanal miners to harmful chemicals. These issues are not addressed in this report. The decision to focus on industrial mining is based on discussions with stakeholders in Senegal and the opportunity to make targeted recommendations to the State authorities, as potential changes to the framework to protect mining-affected communities are being reviewed in the context of the implementation of the ECOWAS Mining Directive and other processes related to the legal and policy framework for mining in Senegal.

Based on the various concerns raised by local communities in Kédougou, interviewed by Amnesty International in 2011 and 2013, the report focuses on the following human rights issues:

- Issues that arise when moving communities from their land in order to allow mining operations, focusing on security of tenure and forced evictions.
- Issues that arise as a result of moving communities from their land, focusing on the rights to work and to an adequate standard of living (in particular the rights to food and water).

The Government of Senegal has expressed its ambition to be a leader in sustainable mining in the West Africa region. The report offers concrete recommendations in support of this goal. It sets out relevant international laws and standards and examines relevant national laws in Senegal, as well as the Mining Directive adopted by the Economic Community of West African States (ECOWAS)<sup>12</sup>, which is due to be implemented into Senegalese law by July 2014.<sup>13</sup> It identifies specific gaps in the current legal framework in Senegal in relation to the protection of human rights in the context of mining, and draws on the experience of other West African states where extractive industries have been developed.

## METHODOLOGY

This report is based on a desk-based analysis of the legal framework relevant for mining in Senegal and interviews and discussions with Senegalese and international legal experts. It focuses on industrial mining, although artisanal mining remains an important issue in Kédougou. Field research was carried out by Amnesty International in the Kédougou region in June 2011 and January 2013, and the issues raised by communities formed the basis for the legal review. The researchers visited three villages in one of the gold mining concession areas in Kédougou. Interviews were carried out with men and women from these villages. Interviews were also conducted with civil society groups based in Dakar and Kédougou. Researchers also interviewed representatives from mining companies and consultants involved in negotiations with local communities. In addition, they visited a gold mine in the area and met various government officials at the provincial and national level.

Letters were sent to the companies named in this report, seeking their comments on Amnesty International's findings and asking them to share their approach on preventing human rights abuses. The following companies responded:

- Teranga Gold Corporation: Teranga highlighted its corporate social responsibility initiatives in Kédougou and commitment to international standards, in particular under its Livelihood Restoration and Resettlement Policy relating to land acquisitions and negotiations with affected communities. The company also sent a separate response in relation to the Dambankhoto case study (see Chapter 3).
- Toro Gold Ltd: Toro stated that its activities in Kédougou had not resulted in any cases of physical or economic displacement. It highlighted its commitment to complying with Senegalese law and international standards, as well as its policies and procedures for engaging with and safeguarding the rights of affected communities.
- Randgold Resources Limited: Randgold stated that it had not caused any economic or physical displacement of people in Kédougou. It highlighted its corporate social responsibility initiatives in Senegal and commitment to international standards, as well as its engagement with local communities and assessment of environmental, health and social impacts.
- Bassari Resources Ltd: Bassari highlighted its commitment to complying with Senegalese law (including the terms of its permits) and applicable corporate governance standards, as well as its corporate social responsibility initiatives and engagement with the local community.

The following companies did not respond: Goldstone Resources Limited and IAMGOLD Corporation.

# CHAPTER 1: THE LEGAL FRAMEWORKS FOR MINING AND HUMAN RIGHTS IN SENEGAL

## MINING LAW (2003)

The mining industry in Senegal is regulated by the 2003 Mining Law and its implementing decree of 2004.<sup>14</sup> Under the Mining Law, all mineral substances in the ground and underground within Senegal are the property of the State and the State can grant rights to explore for or exploit those minerals and to occupy (not own) land required for those purposes (Articles 2, 3, 6 and 7). The State can grant three types of mineral rights to industrial miners: exploration permits, exploitation permits and (for large-scale exploitation projects) mining concessions (Article 6 and Titles III and IV).

Each permit or concession holder must enter into an overarching mining agreement with the Government, which governs the relationship between the holder and the State, and the general conditions under which it explores for or exploits the relevant mineral resources (Articles 86 and 87). In addition, the State has a free “carried interest” in 10 per cent of the project (allowing the State to own, at no charge, 10 per cent of the shares in the mining company that operates the project) (Article 30). The State can also negotiate additional shareholdings for itself and the Senegalese private sector (Article 30). On expiry of any exploitation title, any plant and outbuildings are transferred free of charge to the State (Article 29). Otherwise, any minerals extracted under the terms of an exploitation permit or mining concession belong to the holder of that permit or concession (Articles 3 and 28).

The key terms of the mineral rights granted by the State are as follows:

### *Exploration permit (Title III):*

- Granted for a maximum of three years and renewable twice for consecutive periods of a maximum of three years each (although in exceptional circumstances it may be renewed for a further period of up to three years).

### *Exploitation permit and mining concession (Title IV):*

- Exploitation permit: Granted for a maximum of five years and renewable for periods of up to five years until the deposit is exhausted.
- Mining concession: Granted for between five and 25 years and renewable for periods of up to 25 years until the deposit is exhausted.
- Original and renewed permit / concession granted by decree of the Minister of Mines.



- Grants an exclusive right to exploit in the authorized area, and sell, the relevant mineral. This right can be transferred and leased, subject to prior approval from the Minister of Mines.
- Grants a real property right (distinct from the ownership of the land) that can be registered as such and mortgaged.
- It can be granted to Senegalese companies only.

*Rights / obligations in relation to exploration and exploitation permits / concessions:*

- The permit / concession holder is granted the right to occupy lands, both inside and outside the permit or concession area, as required to carry out exploration / exploitation works and associated activities and for related infrastructure (for example, staff housing, transport networks and power stations) (Article 73). The government can declare any installation projects required to explore or exploit for minerals to be in the public interest if the conditions set out in relevant legislation apply (Article 74).<sup>15</sup>
- The owners or occupants of that land have the right to compensation from the permit / concession holder for all loss suffered (Article 76).
- The holder of a mining title is obliged to compensate the State or any natural or legal person for material damages and loss caused by it (Article 81).

### **NATIONAL DOMAIN LAW (1964)**

Under the National Domain Law almost all land in Senegal is vested in the State.<sup>16</sup> Individuals are only entitled to rights to use (but not own) the land allocated to them. Allocation of such rights is usually managed by local councils acting under the authority of the State.<sup>17</sup>

### **ENVIRONMENTAL CODE (2001)**

The 2001 Environmental Code and its implementing decree of 2001 are also important because they require environmental impact assessments to be produced for developments such as mining projects and provide for public participation in that process.<sup>18</sup> Under Article 83 of the Mining Law, anyone requesting an exploitation permit or a mining concession must undertake an environmental impact assessment in accordance with the Environmental Code and its implementing decree.

Senegal is subdivided into 14 regions (of which Kédougou is one). Each region is subdivided into departments, those departments into districts and those districts into municipalities (in urban areas) or communities (in rural areas). Each region is administered by a Regional Council, made up of representatives elected by each district. The urban municipalities are governed by elected municipal councils and the rural communities by elected rural councils.

## SENEGAL'S HUMAN RIGHTS OBLIGATIONS

Senegal is a State Party to all of the core UN human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). At the regional level, Senegal is a member of the African Union (AU) and the Economic Community of West African States (ECOWAS). It is also a State party to the AU's African Charter on Human and Peoples' Rights (African Charter).

The preamble to the 2001 Constitution of the Republic of Senegal affirms its adherence to the international instruments adopted by the UN and AU, including the Universal Declaration of Human Rights, CEDAW, the UN Convention on the Rights of the Child and the African Charter.<sup>19</sup> Both the ICESCR and the African Charter require the protection of economic, social and cultural rights.

The Constitution guarantees to all citizens certain fundamental freedoms, economic and social rights and group rights, including the right to work, the right to property, the right to health and the right to a healthy environment.<sup>20</sup> However, these can only be exercised "under the conditions provided by law".<sup>21</sup> The full protection of economic, social and cultural rights is not yet reflected in the domestic laws of Senegal. The lack of national legislation does not, however, absolve the Senegalese government from meeting its obligations under the international treaties that it has ratified.

Senegal's specific human rights obligations in the context of mining operations are analyzed in greater detail in Chapter 3 below.

## THE RESPONSIBILITY OF STATES AND CORPORATE ACTORS

Under international law, States have a duty to protect human rights from abuse by non-state actors, such as companies. Over the past decade there has been increasing recognition of the responsibility of companies to respect human rights. This responsibility has been elaborated in the UN "Protect, Respect and Remedy" Framework for Business and Human Rights<sup>22</sup> and the UN Guiding Principles on Business and Human Rights.<sup>23</sup>

### THE STATE DUTY TO PROTECT

In the context of corporate activity, the duty to protect requires States to have in place adequate and effective systems for regulating business activity. UN Treaty Bodies have made clear that States are required to take various steps in order to fulfil the duty to protect under international law, including adopting legislative measures to prevent corporate abuse, investigating and sanctioning abuses when they do occur, and ensuring that those affected receive an effective remedy.<sup>24</sup>

States also have a responsibility to regulate companies based in their country in relation to their human rights impact abroad (sometimes referred to as the home State responsibility). The scope of this responsibility has been more clearly defined in recent years through UN human rights mechanisms, the work of international law experts and – in relation to mineral

extraction and trading – by the Organization for Economic Co-operation and Development (OECD).<sup>25</sup>

The UN Committee on Economic, Social and Cultural Rights (CESCR), the expert body that provides authoritative guidance on the implementation of the ICESCR, has clarified that States have a duty to respect rights in other countries and prevent third parties – such as companies – from violating those rights, if they are able to influence these third parties by legal or political means.<sup>26</sup>

#### THE CORPORATE RESPONSIBILITY TO RESPECT

The UN Guiding Principles on Business and Human Rights confirm that companies have a responsibility to respect all human rights, and a corresponding need to take concrete action to discharge this responsibility. This requires taking adequate measures to prevent, mitigate and – where necessary – redress human rights abuses connected to their operations.

According to the UN Guiding Principles:

*The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.*<sup>27</sup>

The Guiding Principles further note that:

*Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.*<sup>28</sup>

The responsibility to respect human rights extends not only to the company's own activities but also to its business relationships (such as with business partners or any other entity directly linked to its business operations, products or services):

*The responsibility to respect human rights requires that business enterprises...[s]eek 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.*<sup>29</sup>

The Guiding Principles also state that in order to meet their responsibility to respect human rights companies should have in place a “human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights”.<sup>30</sup>

Furthermore, the Guiding Principles note that: “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”<sup>31</sup>

## THE ECOWAS MINING DIRECTIVE

On 27 May 2009, ECOWAS adopted the Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector (ECOWAS Mining Directive).<sup>32</sup> A key objective of the Directive is to promote human rights, transparency and social equity and to provide protection for local communities and the environment in mining areas. Article 15 of the Directive provides that:

*Member States, holders of mining rights and other mining related business entities have a primary obligation to respect and promote recognized human rights including the rights of women, children and workers arising from mining activities.*

*Member States and Holders of mining rights shall ensure that the rights of the local communities are respected at all times. Where such Human rights legislations do not exist Member States shall enact appropriate legislation to ensure respect for human rights.*

The Directive requires States to put in place a framework - including legislation, regulations and a competent authority – to regulate mining activities. Member states are required to develop national action plans to implement the Directive and provide an annual report on progress made with regard to implementation.<sup>33</sup> ECOWAS Member States and the ECOWAS Commission (previously the ECOWAS Secretariat) are required to adopt all necessary measures in order to comply with the Directive by 1 July 2014.

## CHAPTER 2: MINING COMPANIES IN KÉDOUGOU

Since the adoption of the 2003 Mining Law, a number of international mining companies have become involved in gold mining projects in Kédougou. Many of these projects are at the exploration and feasibility stage. Only one project (the Sabodala project) has started production.

As detailed below, international mining companies generally hold their interests in the gold projects or the mining permits / concessions through owning shares in, or through contractual arrangements with, the local companies that hold these concessions or permits. Under the contractual arrangements, the mining companies often earn their interests in the project through conducting and funding the exploration and/or feasibility stages.

### TERANGA GOLD

Teranga Gold Corporation is a multinational corporation, incorporated in Canada and headquartered in Toronto. It is listed on the Toronto Stock Exchange and Australian Securities Exchange. It holds interests in the Sabodala and Sonigol Gold Projects in Kédougou.

### SABODALA GOLD PROJECT<sup>34</sup>

The Sabodala Gold Project is split into six projects: Sabodala, Near Mine, Faleme, Dembala, Massakounda and Garaboueya. Under an overarching 2005 mining convention with the Government of Senegal, a mining concession was granted with respect to the Sabodala project in 2007 and ten exploration permits were granted with respect to the five other projects.

The Sabodala project is the only one currently in production in Senegal, producing gold since March 2009. The mining concession for the Sabodala project covers around 33km<sup>2</sup> of land and has recently been extended until 2022 (subject to renewal). There are six deposits within the Sabodala project: Sabodala, Masato, Niakafiri, Niakafiri West, Soukhoto and Dinkokhono. The exploration permits for the other five projects cover just over 1,000km<sup>2</sup> of land and expire between 2015 and 2019 (subject to renewal).

Teranga acquired its interest in the Sabodala Gold Project in November 2010, by acquiring Sabodala Gold (Mauritius) (then a subsidiary of the Australian company Mineral Deposits Limited). The Sabodala project is operated and owned directly by Sabodala Gold Operations (SGO) (a Senegalese company). The exploration permits for the other five projects are held by Sabodala Mining Company (SMC) (a Senegalese company) (SMC) or joint ventures of which SMC is the funding and managing party. Through Sabodala Gold (Mauritius), Teranga holds 90 per cent of the shares in SGO and 100 per cent of the shares in SMC. The remaining 10 per cent of the shares in SGO are held by the Government of Senegal.

### SOMIGOL GOLD PROJECT<sup>35</sup>

Under an overarching 2005 mining convention with the Government of Senegal, a mining concession was granted with respect to the Somigol Gold Project in 2010. The project is located next to the Sabodala Gold Project. The concession covers around 212.6 km<sup>2</sup> of land and expires in 2025 (subject to renewal). It covers the Masato, Golouma West, Golouma South, Kerekounda, Kourouloulou, Niakafiri Southeast, Niakafiri Southwest and Maki deposits.

It is likely that the Somigol Gold Project will go into production soon, as Teranga expects to process gold from this project at the Sabodala Project mill. Teranga also plans to merge the Somigol and Sabodala project licences into one mining concession, to be granted to SGO.

Teranga acquired its interest in the Somigol Gold Project in October 2013, by acquiring Oromin Explorations Ltd (a Canadian company). The Somigol Gold Project is operated by Oromin Explorations. Oromin Explorations operates the project through two British Virgin Islands companies: Sabodala Holding Limited (a wholly-owned subsidiary) and Oromin Joint Venture Group Ltd (OJVG) (of which it holds, through Sabodala Holding, 43.5 per cent of the shares and of which a subsidiary of Teranga holds the remaining shares). It operates the project in accordance with a joint venture agreement between the shareholders of OJVG. The Project is owned directly by Societe des Mines de Golouma SA (Somigol) (a Senegalese company). OJVG holds 90 per cent of the shares in Somigol. The remaining 10 per cent is held by the Government of Senegal.

### RANDGOLD RESOURCES<sup>36</sup> / GOLDSTONE RESOURCES<sup>37</sup>

Randgold Resources Limited is a multinational mining company, incorporated in Jersey and headquartered in St Helier. It is listed on the London Stock Exchange and NASDAQ.

Randgold has been exploring for gold in Kédougou since 2003. Under a 2010 overarching mining agreement with the Government of Senegal, Randgold holds four exploration permits in Kédougou: Kounemba, Miko, Dalema and Tomboronkoto. Through a 2007 joint venture agreement with IAMGOLD (see *IAMGOLD* below), Randgold also holds an interest in the Bambadji permit (under which it is currently carrying out exploration). The five permits cover a total of around 1,650km<sup>2</sup> and expire between 2014 and 2016 (subject to renewal).

The most advanced of Randgold's operations is the Massawa deposit (covered by its Kounemba permit). The feasibility of exploiting this deposit is currently being assessed and is expected to continue throughout 2014. The rest of Randgold's operations in Kédougou remain at the exploration stage.

Randgold holds its interests in Senegal through its wholly-owned subsidiary Randgold Resources (Senegal) Limited (a Jersey company). In particular, Randgold Resources (Senegal) holds an 83.25 per cent interest in the Massawa project.<sup>38</sup>

In April 2013, Randgold (Senegal) Limited entered into a joint venture agreement with Goldstone Resources Limited (a Jersey company listed on the Alternative Investment Market (AIM) of the London Stock Exchange) for the exploration and development of Goldstone's

Sangola project. Goldstone holds the Sangola exploration permit under a 2009 overarching mining convention with the Government of Senegal. Under the terms of the joint venture agreement, Randgold can secure a 51 per cent interest in the project. The Sangola permit covers an area of around 471 km<sup>2</sup> and originally expired in October 2013 (an application has been submitted for renewal). Randgold has recently announced its intention to terminate this joint venture.

### TORO GOLD<sup>39</sup>

Toro Gold Limited is a multinational mining company, incorporated in Guernsey and headquartered in St Peter Port. It is privately owned.

Toro holds interests in four exploration permits in Kédougou: Mako, Kenieba, Madina Foulbe and Velingara. It holds its interests in the Kenieba, Madina Foulbe and Velingara permits through joint venture agreements with local partners, who have been granted exploration permits by the Government (detailed below). The permits cover a total of around 1650 km<sup>2</sup> and expire between 2014 and 2016 (subject to renewal).

The most advanced of Toro's operations is the Mako project. The feasibility of exploiting this deposit is currently being assessed and a pre-feasibility study is expected to be completed in 2014. The rest of Toro's operations in Kédougou remain at the exploration stage.

Toro holds a 100 per cent interest in the Mako project through its wholly-owned subsidiary Mako Exploration Company S.A (a Senegalese company) (having acquired the remaining 35 per cent of the project from its local joint venture partner Kasala Resources SARL in January 2012).

Toro holds its interests in the Kenieba, Madina Foulbe and Velingara permits through its wholly-owned subsidiary Bambuk Minerals Limited (a British Virgin Islands company).<sup>40</sup> Under its joint venture agreement with respect to Kenieba, it can secure an equity holding of up to 77.5 per cent. Under its joint venture agreement with respect to Madina Foulbe and Velingara, it can secure an equity holding of up to 74.9 per cent.

### IAMGOLD<sup>41</sup>

IAMGOLD Corporation is a multinational mining company, incorporated in Canada and headquartered in Toronto. It is listed on the Toronto and New York Stock Exchanges. A subsidiary of IAMGOLD has been exploring for gold in Kédougou since the 1990s. IAMGOLD holds three exploration permits in Kédougou: Daorala, Boto and Bambadji. The permits cover a total of 579 km<sup>2</sup> and expire in 2014 (subject to renewal).

All of IAMGOLD's operations in Kédougou remain at the exploration stage. However, in 2012, it found the Malikoundi deposit (under its Boto permit) and as a result has expanded its drilling operations in the area.

IAMGOLD holds a 100 per cent interest in each permit through its wholly-owned subsidiary AGEM Senegal Exploration SUARL (a Senegalese company). The Bambadji permit is subject to a joint venture agreement with Randgold Resources (see *Randgold Resources / Goldstone*

*Resources* above), under which Randgold is paying for all exploration in return for a 51 per cent stake in any resulting project.<sup>42</sup>

### **BASSARI RESOURCES LIMITED<sup>43</sup>**

Bassari Resources Limited is a multinational mining company, incorporated in Australia and headquartered in Melbourne. It is listed on the Australian Securities Exchange. Bassari holds interests in three exploration permits in Kédougou: Moura, Sambarabougou and Bounsankoba. It holds its interests in these permits through joint venture agreements with local partners, who have been granted exploration permits by the Government (detailed below). The permits cover a total of 850 km<sup>2</sup> and expire between 2013 and 2016 (subject to renewal). The Sambarabougou permit was recently renewed and an application has been submitted for renewal of the Bounsankoba permit.

All of Bassari's operations in Kédougou remain at the exploration stage. The most advanced of Bassari's operations is the Makabingui deposit (under its Sambarabougou permit). It has also recently discovered the Konkouto deposit (under its Moura permit).

Bassari holds a 70 per cent interest in each permit through its wholly-owned subsidiary Bassari Resources SARL (a Senegalese company).<sup>44</sup>



## CHAPTER 3: ANALYSIS OF KEY HUMAN RIGHTS ISSUES

Local communities have expressed a number of concerns about the expanding gold mining industry in Kédougou. Central to these concerns is the movement of people off land to make way for mining, and the loss of access to land and natural resources that form the basis of most people's access to livelihood and food in the region.<sup>45</sup> One community interviewed by Amnesty International had already been required to move off land they have lived on for years to make way for mining activities; others believe they will soon have to move. Their case is described in the box below.

Other communities to whom Amnesty International spoke expressed concern that they would also experience relocations that would compromise their livelihoods and leave them worse off. The issues raised by these communities are very similar to the human rights issues that arise generally within the context of mining and other extractive industries in West Africa and elsewhere. As more mining concessions are granted, and exploration and production intensifies, the impacts on local communities in Kédougou will only increase unless specific measures are taken by the State and companies to ensure their human rights are adequately protected and respected.

The chapter sets out relevant international laws and standards with respect to the rights to housing, livelihood and an adequate standard of living. It then examines relevant national laws in Senegal and the ECOWAS Mining Directive to identify gaps in the current legal framework in Senegal. Gender considerations are integrated where relevant.



Dambankhoto, July 2011, shortly after the community had been resettled to make way for operations at the Sabodala Gold Project. The sign depicts the logo of Teranga Gold Corporation.  
© Amnesty International

## RELOCATION OF DAMBANKHOTO

In 2011, a group of six families from the hamlet of Dambankhoto were moved to new homes some kilometres away, near a village called Faloumbo, to make way for a waste disposal pond being constructed by Sabodala Gold Operations (SGO). SGO is a subsidiary of Teranga Gold Corporation, a multinational incorporated in Canada. The Sabodala mining concession was established in 2007, following a 2005 agreement between the company and the government. Teranga acquired its interest in the Sabodala Gold Project in November 2010, by acquiring Sabodala Gold (Mauritius) (then a subsidiary of the Australian company Mineral Deposits Limited). The Sabodala project is operated and owned directly by Sabodala Gold Operations (SGO) (a Senegalese company). Dambankhoto falls within the mining concession.<sup>46</sup>



Sabodala mine, July 2011. © Amnesty International

Amnesty International researchers met the Dambankhoto community in 2011, shortly after they had been resettled, and again in 2013. In addition to interviews with members of the community, Amnesty International researchers also interviewed local government officials in 2011 and 2013, and met with two representatives of the company in 2013.

There were several serious problems with the resettlement of the Dambankhoto families. They initially learned that they would have to move in 2007, when they heard that the company planned to construct a tailings (waste) pond on their land.<sup>47</sup> The Chief of Dambankhoto, local officials and the company negotiated the resettlement of the community. In May 2010, an agreement was drawn up between the chief of the community and SGO (*Protocole d'Accord pour le Recasement du Hameau de Dambankhoto*)<sup>48</sup>, setting out the terms of the move. Several local officials signed the protocol as well as a representative of Faloumbo village.<sup>49</sup> Representatives of Faloumbo were involved in the negotiation because the Dambankhoto families were being moved close to their village.

The agreement included: a commitment to build six brick houses, each with the same number of rooms as the homes people were losing at Dambankhoto<sup>50</sup> and an undertaking that water supply for the resettlement site was to be provided by a borehole equipped with a mechanical pump.<sup>51</sup> With respect to lost crops and vegetable gardens, the agreement stated that an evaluation would be conducted “by an authority designated by the Prefect of the Department of Saraya” to estimate the amount of compensation due for final losses, and this

would be submitted to SGO for settlement. It is not clear why the evaluation of compensation was carried out after the move, and the agreement did not provide any details on how much land the families would have access to at the new site.

The families were moved to the new site in April 2011. According to the community, both the company and local officials were present as well as the chief commander of the police. When the families arrived at the new site they found that the facilities were not what they had been promised. The housing provided was inadequate – including buildings without doors in some cases.<sup>52</sup> Of particular concern to the Dambankhoto community was the loss of access to land on which they depended for subsistence agriculture and grazing cattle, and the loss of access to their local water sources, including a nearby stream, which they used for water for domestic purposes and crop irrigation.<sup>53</sup> The relocation included a vegetable garden for the women, who had maintained gardens at the original site. However, there was no access to agricultural land at the new site.<sup>54</sup>

Access to water was problematic as taps provided by the company did not work properly.<sup>55</sup> When Amnesty International visited the new site in 2011 researchers tested the taps and found no water came out. The toilet block was also not functioning. The company had provided wells as part of the relocation. However, according to the community, in the dry season the wells do not provide enough water for domestic purposes and irrigation of the vegetable gardens. At the old Dambankhoto site, they say they had sufficient water for these purposes. According to the women the new garden sites do not even produce half of what they were able to harvest at the old site by the river.<sup>56</sup> This has reduced their overall food supply and undermined women's livelihood options, as they had previously sold some of their fruit and vegetable produce at local markets but can no longer do so.



A well at Dambankhoto, July 2011. © Amnesty International

When Amnesty International researchers visited the area for a second time in January 2013, the company had carried out some refurbishing of the houses. Doors were in place and leaking roofs and the toilet blocks had been repaired. However, the community reported that the issue of loss of livelihoods – because of their loss of access to land<sup>57</sup> and the limited water for vegetable gardens – remained a concern. A deeper well had been provided, with a water pump.<sup>58</sup> However, women told Amnesty International researchers that during the dry season this well still did not provide sufficient water for their gardens.

The community's accounts of the problems experienced at the relocation site were reported by a local NGO La Lumière and Oxfam America who had followed their resettlement.<sup>59</sup>

The issues of adequate compensation and access to arable land also remained unresolved. Alternative land identified by the company which the community could use for crop production needed to be cleared and made usable but this has not been done and the villagers are unable to use it. Monetary compensation also remained an unresolved issue; while some financial compensation had been paid it was unclear how this related to the loss of lands and livelihood. Villagers reported that the issues were being taken into account as part of a new negotiation established in 2012 in relation to a second waste system that will require another 400 hectares of land used by people from Dambankhoto, Faloumbo and Sabodala. The negotiation forum will apparently deal with both new and the outstanding compensation issues for lost land.

Amnesty International raised the issues with SGO and Teranga Gold. In a letter received on 16 May 2014, Teranga Gold stated that:

*"Following an external audit ... it was decided to organize a negotiation forum and revise past compensation paid to our host communities during the construction of the mine facilities by the previous mine operator. ... [T]he decision was made to compensate fallow lands (which is not a requirement under applicable Senegalese laws), which previously were not included in land take negotiations, and support the communities in developing new agricultural lands."*

Teranga also stated that they were undertaking other improvements at the new village, including planting trees and flowers.

While some action has been taken over the past two years to improve conditions at the new site, the relocation of the Dambankhoto families was not carried out in line with Senegal's legal obligations to protect human rights, including from the actions of non-state actors such as companies. The negotiation over relocation and compensation occurred in a context where the company had already been granted the rights to the land and the community had very limited bargaining power. The relocation process did not conform to international standards – people were moved to a location where accommodation was inadequate, water supply was limited and access to livelihoods has been compromised. While some action was taken to address these deficiencies it was not sufficient to meet the State's obligations to respect and protect the right to an adequate standard of living, including housing, food and water.

Interviews with the villagers, local officials and company representatives suggest that none of the parties involved were operating to an agreed set of standards for relocation. The lack of clarity over compensation for loss of land and livelihoods which exists in Senegal's legal framework appears to have affected the way these issues were dealt with during the Dambankhoto case: in the absence of clear standards, compensation was not related to actual losses and the process for compensation for lost land and livelihoods has yet to be fully resolved. There is also a lack of clarity about whether the company or the state must ensure access to land and not just monetary compensation – international standards make clear that communities that are dependent on agriculture can be severely disadvantaged if loss of land is only compensated financially (see discussion in Chapter 3.1, *Gaps in protection: Resettlement /relocation obligations* below).

At the time of writing, the community of Sabodala village is also facing relocation. It is imperative that the lessons from the Dambankhoto case are learned and that relocation and livelihood restoration is carried out with greater oversight of the authorities to ensure that human rights are not compromised.

## 3.1 SECURITY OF TENURE AND PROTECTION AGAINST FORCED EVICTIONS

Industrial mining operations require an extensive amount of land and resources. There are some significant gaps in the legal framework with respect to land and communities, particularly in rural areas such as Kédougou. As such, rural communities living on land subject to mining permits or concessions have no security of tenure and are vulnerable to forced eviction from their land to accommodate industrial mining operations.

### INTERNATIONAL AND REGIONAL LAWS AND STANDARDS

#### INTERNATIONAL

Senegal is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 of the ICESCR guarantees the right to adequate housing. The UN Committee on Economic, Social and Cultural Rights (CESCR), the expert body that provides authoritative guidance on the implementation of the ICESCR, has clarified the obligations of States parties to respect, protect and fulfil the right to adequate housing.<sup>60</sup> This requires States parties such as Senegal to respect the right to adequate housing by refraining from forced evictions, to protect the right to adequate housing by protecting people from interference with their rights by third parties (which would include companies) and to fulfil the right to adequate housing by adopting appropriate legislative and other measures to ensure its full realization. States parties must also guarantee the right of people to participate in and be consulted over decisions that will affect them and to provide an effective remedy if any of these rights is violated (including by its agents or third parties).

#### WHAT IS A FORCED EVICTION?<sup>61</sup>

A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards. Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives to eviction have been explored and appropriate procedural protections are in place. Such legal protections and safeguards include:

- An opportunity for genuine consultation with those affected.
- Adequate and reasonable notice for affected people prior to the eviction.
- Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected.
- Government officials or their representatives to be present during the evictions.

- Anyone carrying out the eviction to be properly identified.
- Evictions not to take place in particularly bad weather or at night unless the affected people consent.
- Provision of legal remedies.
- Provision, where possible, of legal aid to people who are in need of it to seek redress from the courts.

Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction. Adequate alternative housing and compensation for all losses must be made available to those affected.

Not every eviction that is carried out by force constitutes a forced eviction – if all the legal protections and safeguards required under international law are complied with, and if the use of force is proportionate and reasonable, then the eviction would not violate the prohibition on forced evictions.

### **The Basic Principles and Guidelines on Development-Based Evictions and Displacement**

In 2007, the UN Special Rapporteur on adequate housing, an independent expert mandated to report, advise and provide technical assistance to governments on the right to adequate housing, developed the Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles).<sup>62</sup> The Basic Principles reflect existing standards and jurisprudence on the issue of evictions. They describe in detail the steps that should be taken before, during and after evictions in order to ensure compliance with international human rights law. The Basic Principles stress in particular the role of women in this process. Basic Principle 15 emphasizes “the equal right of women and men to protection from forced evictions and the equal enjoyment of the human right to adequate housing and security of tenure” as reflected in the Basic Principles.

The Basic Principles apply to:

*acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.*<sup>63</sup>

While the Basic Principles focus in particular on evictions and displacement arising from large-scale development projects, which typically affect significant numbers of people, their guidance is useful for all kinds of evictions. They specifically recognize that development-based evictions are often linked to infrastructure projects such as mining and other extractive industries.<sup>64</sup>

As to the steps that should be taken in order to ensure compliance with international human rights law, the Basic Principles emphasize that:

- As a basic human rights principle:

*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.*<sup>65</sup>

- All affected persons, groups and communities (particularly women) have the right to relevant information and full participation and consultation throughout the entire eviction process. This includes the need to provide adequate information at all stages of the eviction and for full and prior informed consent regarding relocation. It also includes appropriate notice to relevant persons and adequate and timely consultation prior to evictions, particularly so as to enable those subject to eviction to assess any likely losses (including of possessions and goods), to challenge the decision to evict and to seek legal remedies, and to allow for the presentation and exploration of alternative options. If agreement cannot be reached on a proposed alternative, an independent body with constitutional authority should mediate, arbitrate or adjudicate.<sup>66</sup>
- Adequate alternative accommodation must be provided immediately upon the eviction, particularly in situations where people would be unable to provide for themselves and would be at risk of homelessness. Any relocation site must meet international human rights law standards on adequate housing. This includes the provision of livelihood sources, facilities and infrastructure such as potable water and natural and common resources, and habitable housing with adequate protection from the elements. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.<sup>67</sup>
- Just compensation must be provided immediately upon the eviction. All those evicted must be provided with compensation for all housing and land lost or damaged in the process (regardless of whether they hold title) and for any economically assessable damage (for example, loss of earnings). Consideration of the circumstances of each case must allow for the provision of compensation for losses related to informal property. Cash compensation does not replace real compensation in the form of land and common property resources. As such, where land has been taken, the evicted must be “compensated with land commensurate in quality, size and value, or better”. The law must also provide for the actor proposing and/or carrying out the resettlement to pay for any associated costs, including all resettlement costs.<sup>68</sup>
- States must adopt legislation and policies that prohibit the execution of evictions contrary to international human rights standards.<sup>69</sup>

- Adequate and effective remedies must be available to those affected by forced eviction. This includes applying appropriate civil and criminal penalties to any public or private person or entity within its jurisdiction that carries out evictions contrary to applicable law and international human rights standards.<sup>70</sup>

Affected communities can also be given the opportunity to participate and be consulted in decisions concerning mining projects through involvement in environmental impact assessments (EIAs). The International Court of Justice in the Pulp Mills case has highlighted the importance of EIAs, stating that “an environmental impact assessment must be conducted prior to the implementation of a project” and “once operations have started and, where necessary, throughout the life of the project, continuous monitoring of its effects on the environment shall be undertaken”.<sup>71</sup>

## REGIONAL

Senegal has ratified the African Charter on Human and Peoples' Rights (African Charter). The African Charter does not specifically recognize the right to housing. However, as set out below, this right can be implied through various other rights in the African Charter. The Government of Senegal is therefore obliged under a range of regional human rights laws to respect, protect, promote and fulfill the right to housing.

In the *SERAC* case, the African Commission on Human and Peoples' Rights (African Commission), the body charged with overseeing the implementation of the African Charter, affirmed that forced evictions contravene the African Charter, in particular Article 14 on the right to property, Article 16 on the right to health and Article 18(1) on the State's duty to protect the family.<sup>72</sup> In the case, the African Commission stated that:

*Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing.*<sup>73</sup>

Senegal has also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 16 of the Women's Protocol specifically recognizes the right to adequate housing, stating that women have the right to equal access to housing.

## THE LEGAL FRAMEWORK IN SENEGAL

### ACQUISITION / OCCUPATION OF LAND REQUIRED FOR MINING OPERATIONS

Almost all land in Senegal is vested in the State. Very little land is privately owned. Under the Mining Law, all mineral substances in the ground and underground within Senegal are the property of the State. The State, through the Ministry of Mines, can grant rights to explore for or exploit those minerals and to occupy land required for those purposes. Mining companies do not own the land on which they operate.



Although, under the National Domain Law, management of land vested in the State is generally delegated to local councils, the government can veto decisions made by rural councils and has exercised this veto when rural councils have attempted to prevent the commercial exploitation of these resources.<sup>74</sup>

In practice, therefore, the State retains a significant amount of control over land in Senegal and rights to use that land, particularly in resource rich areas.<sup>75</sup>

Article 73 of the Mining Law and Articles 86 to 93 of its Implementing Decree deal with occupation of land required for mining operations, including the matter of compensation to be paid to any people who had a prior right to the land. The land use rights granted to companies under the Mining Law are quite broad.

Mining companies have the right to occupy lands as required to carry out exploration / exploitation works and associated activities and for related infrastructure (for example, staff housing, transport networks and power stations). They are entitled to occupy land both inside and outside the area covered by the mining permit or concession. In theory, therefore, evictions of the local population could occur at either the exploration or exploitation stage.

Holders of exploration or exploitation permits / concessions must inform the Minister of Mines before occupying land inside their permit area for the purposes of undertaking work or constructing related facilities. Additionally, prior approval from the Minister of Mines to occupy land is required if: (a) for exploration permit holders only, the land is inside their permit area; and (b) for holders of exploration or exploitation permits /concessions, the land is outside their permit / concession area and is vested in the State. Companies that hold exploitation permits / concessions therefore have broad authority to occupy land inside their permit area as necessary for the carrying out of works and constructing facilities.

In both cases, the company must provide details to the Minister of Mines of the planned work and facilities, a description of the activities to be carried out and their impact on the environment and measures taken to reinstate the site after occupation. For the prior approval process, a site inspection must also be conducted before the Minister of Mines grants the order or decree approving that occupation. For land inside the permit area, the site visit is conducted by the Director of Mines and Geology. For land outside the permit / concession area, the site visit is conducted by a commission including representatives of regional government departments, local government and the relevant mining company.

Article 91 of the Implementing Decree of the Mining Law states that the granting of a mining concession is equivalent to a declaration of public interest in the occupation of those lands required for mining operations. Article 91 therefore legally establishes, when a mining concession is granted, the public necessity of occupying land for any related mining operations. It also allows the State to declare any other occupation of land for mining operations to be in the public interest. This effectively allows the State to expropriate any land required for these purposes subject to fair and prior compensation.<sup>76</sup>

The conditions under which the State may expropriate land for public necessity/interest are set out in Law No. 76-77 and its Implementing Decree No. 77-563.<sup>77</sup> This Implementing Decree sets out a procedure under which the State may, in return for prior and fair compensation, expropriate land if the government can show that the land is required for the public interest. The compensation payable in this case is based on the actual cost of the land and its “earned value” (*valeur ajoutée* - any investment on the land such as mango trees, orange trees, etc.). The amount of compensation payable is determined by a Conciliation Commission. If the relevant parties cannot agree on the amount payable, then an expropriation judge decides. While either party can request assistance from an evaluation expert, there are only limited grounds for appeal once the expropriation judge has made their decision.<sup>78</sup>

### COMPENSATION

Based on the legal text, the compensation process in the Mining Law and its Implementing Decree would appear to work as follows.

Under Article 76 of the Mining Law, the owners or occupants of land occupied by a mining company have the right to compensation from the permit / concession holder for all loss suffered. The mining company is also responsible for all expenses, compensation and other charges arising from the application of provisions relating to the occupation of land. In addition, under Article 81 of the Mining Law, the holder of a mining title is obliged to compensate the State or any natural or legal person for material damages and loss caused by it. This is supported by Article 92 of the Implementing Decree to the Mining Law. This states that, by application of Article 81 of the Mining Law, the titleholder is obliged to compensate the State and all persons for any damages or loss resulting from mining operations caused by it or by any company working on its behalf.

Compensation is also provided for when a mining company undertakes works or installs facilities on land vested in the State outside the permit or concession area or, in the case of exploration permit holders only, on any land inside the permit area (see *Acquisition / Occupation of Land Required for Mining Operations* above). Articles 89 and 90 of the Implementing Decree to the Mining Law provide that the granting by the Minister of Mines of approval for such works entitles the owner(s) or occupant(s) of the site to compensation for “proven material losses” (translation).<sup>79</sup>

Article 93 of the Implementing Decree sets out the mechanics for calculating that compensation. For privately owned land, the compensation is agreed by the holder of the mining title and the holder of the land rights or, in the absence of agreement, by a tribunal in accordance with the same rules as for expropriation of land in the public interest. For lands vested in the State (which would include land under the control of regional, municipal or rural councils, of which local populations are deemed ‘occupants’ under national land law), this compensation is fixed by mutual agreement between the holder of the mining title and the relevant local government. In the absence of such an agreement, the compensation payable is determined by a commission comprised of various State government representatives, two representatives of the relevant local government and a representative of the holder of the mining title. In both cases, if an agreement or determination by the tribunal

has not been reached within six months of approval being granted for occupation, the holder of the mining title can still occupy the land in exchange for depositing into a local account (until an agreement or determination is reached) an amount determined by the Minister of Mines.

There is, however, a lack of clarity in the compensation provisions and how they work in practice. For example, in practice, the holder of the mining title may negotiate directly with the individuals or local community concerned. The issues are discussed in more detail in the Dambankhoto case study above and “Gaps in protection” below.

## THE ECOWAS MINING DIRECTIVE

The ECOWAS Mining Directive contains no specific provisions on housing, security of tenure or forced evictions. Article 15(2) requires Member States and holders of mining rights to: *ensure that the rights of the local communities are respected at all times. Where such Human rights legislations do not exist Member States shall enact appropriate legislation to ensure respect for human rights.*

Article 4 of the Directive deals with the acquisition or occupation of land for mining. It simply states that any required land must be acquired or occupied in accordance with existing national laws. The provisions of the Directive dealing with payment of compensation or land is Article 4(3) which states that “the computation of any compensation for the acquisition of land to develop a mineral resource should take into consideration ... losses and damages suffered by the immovable assets and their appurtenances, the loss of revenue, including expected losses of agricultural income; and other reasonably proven losses”.

In addition, Article 16 of the Directive deals with sustainable development and local community interests. It states that mining companies must respect the rights of local communities, in particular to occupy, develop, control, protect and use their lands and other natural resources.

## GAPS IN PROTECTION

The legal framework described above fails to ensure protection of the human rights of communities affected by mining. On the contrary, people’s security of tenure and their right to an adequate standard of living, including housing, food and water, are being compromised by laws that give precedence to mining operations in terms of access to land. The most significant issues are discussed below.

### LAND AND EVICTIONS FROM LAND

The Senegalese government has broad powers in relation to the allocation of land for mining purposes. This is primarily because almost all land is vested in the State and, under the country’s mining legislation, the State owns the underlying mineral substances. In addition, if a mining concession is granted, this is equivalent to a declaration of public interest in the occupation of lands required for related mining operations. The State can also declare any other occupation of land for mining operations to be in the public interest. This effectively allows the State to expropriate any land required for these purposes. However, while the combination of land and mining laws give the government the power to allocate land to mining companies and – by extension – move people off land required for mining, these laws

do not contain sufficient safeguards and procedural requirements to protect communities from forced evictions.

#### THERE IS NO REQUIREMENT FOR SPECIFIC PERIODS OF PRIOR NOTIFICATION OF OR CONSULTATION WITH AFFECTED COMMUNITIES

The law in Senegal does not contain any requirement for consultation with communities who are at risk of eviction from their homes and land. There are no guarantees on public participation in relation to mining before the exploration stage. Prior to exploitation the Environmental Code calls for consultation in the context of preparation of an Environmental Impact Assessment (EIA), an issue discussed in more detail in the next section. However, this consultation is not specific to the risk of eviction. Moreover, by this stage key decisions have already been made and community land could already have been occupied by mining companies carrying out exploration activity. In this context, affected communities lack any meaningful bargaining power and therefore have no real ability to negotiate freely the terms of their eviction and relocation.

The State can also expropriate land for the purposes of mining operations without any consultation with affected individuals or communities. Law No. 67-76 provides for public consultation before the expropriation of any land is declared to be in the public interest. However, the Implementing Decree to the Mining Law states that the granting of a mining concession is equivalent to a declaration of public interest in the occupation of lands required for any related mining operations. This means that the occupation of those lands has already been declared in the public interest and no further consultation is needed. This allows the State to bypass a key procedural stage and deprives affected individuals and communities from contributing to that process.

#### THE PROVISIONS ON COMPENSATION DO NOT INCLUDE ADEQUACY

Article 76 of the Mining Law indicates that, when land is allocated for mining, the owners or occupants of that land are entitled to compensation from the licence holder. If the Minister of Mines has given the company approval to occupy that land to undertake works or install facilities under Articles 89 or 90 of the Implementing Decree to the Mining Law, this compensation is to be fixed by mutual agreement between the holder of the mining title and the holder of land rights – in the case of land vested in the State, that is the local government (rural council)<sup>80</sup> concerned. In the absence of an agreement between these parties, compensation should be set by a commission comprised of various national and local government representatives and a representative of the mining titleholder. In cases where no agreement can be reached between these parties, the Minister of Mines is legally entitled to grant an authorization for the licence holder to carry on with the land occupation, and the licence holder should pay funds to be held by a public accountant until a competent court issues a decision regarding the matter.

There are various uncertainties in these compensation provisions. It is not clear how compensation is calculated when approval from the Minister of Mines is not required (for example, because the titleholder already has the right to occupy land and undertake work or install facilities under its exploitation permit / concession). It is not clear how these

compensation provisions interact with Article 81 of the Mining Law and Article 92 of its Implementing Decree, which oblige the holder of a mining title to compensate the State and any other persons for material damages and loss. As discussed further below, it is also not clear if the company has any obligation to ensure adequate resettlement rather than cash compensation. The Dambankhoto case study highlights the impact of these uncertainties on the adequacy of compensation provided to affected communities.

Additionally, at no stage is there any legal provision for participation in the compensation process by the people who actually occupy the land in question, or by their representatives designated by themselves. In practice, however, the title holder may negotiate directly with the individuals or communities that occupy that land (see the Dambankhoto case study). Without the participation of the affected community there is a significant risk that the compensation will not be adequate and take into account all of the losses people may suffer. Nor would it be possible to satisfy the requirement set down by Article 4(3) of the ECOWAS Mining Directive which calls for comprehensive compensation including for “losses and damages suffered by the immovable assets and their appurtenances, the loss of revenue, including expected losses of agricultural income; and other reasonably proven losses”.

Where the people themselves are the owners then negotiation over compensation would be done by the owners themselves and the company. In addition, as noted above, in practice the company may also negotiate directly with the occupiers of the relevant land. This also has serious limitations. Amnesty International has documented how communities in other countries have been significantly disadvantaged in such negotiations; this is primarily because they are confronted by an actor – a mining company – that is significantly more powerful (in that the mining company already has the right to use the land). While the affected community should be fully involved in discussions about compensation, they should also receive support from the State authorities to ensure that the compensation is fair, adequate and the processes is inclusive and does not disadvantage individuals or groups within the community. It is unlikely that, without specific requirements set down by the State, long-term losses and the rights of all affected members of the community, particularly women, would be adequately addressed in negotiations between local authorities and mining companies or direct negotiations between individuals and a company.

#### RESETTLEMENT/RELOCATION OBLIGATIONS

Neither the Constitution of Senegal nor the Mining Law refer expressly to resettlement. Although the Mining Law and its Implementing Decree provide for compensation to be paid and Article 15 of the Constitution provides for the payment of compensation if land is expropriated (as described above), the UN Basic Principles make it clear that cash compensation does not replace real compensation in the form of land and common property resources. In the absence of an explicit reference, it would be relevant to enquire whether Article 15 of the Constitution or Articles 76 and 81 of the Mining Law imply that the licence holder is liable for ensuring adequate resettlement, since all costs and compensation are of the responsibility of the licence holder.

Under the Implementing Decree to the Environmental Code, the Environmental Impact Assessment (EIA) process must evaluate the potential social effects of the project,

particularly with regard to the resettlement of displaced persons. However, EIAs are not required at the outset of a mining project – they are only required if a company seeks an exploitation permit, at which point many key decisions have already been made. This is contrary to international standards on evictions and the right to adequate housing, which require that communities are consulted at an early stage while decisions are still open, and when alternatives to eviction can be considered. Moreover, the Environmental Code contains no further provisions as to resettlement and it is therefore unclear what process would be followed and what – if any – safeguards would be in place for communities who are being resettled. The Environmental Code cannot be seen as meeting Senegal's obligations in relation to eviction and resettlement. The fact that the legal framework does not explicitly recognize the need for an appropriate resettlement, with safeguards built in, is a major gap. It means people can be forcibly evicted. This is one of the most serious weaknesses in the current framework in Senegal.

In practice, eviction and resettlement of communities in the context of mining operations have already occurred in Kédougou. As noted previously, both local NGOs and communities have reported that the process failed to conform to international standards.

#### LAND AND WOMEN'S RIGHTS

Article 7 of the Constitution of Senegal provides that men and women are equal in law. Article 15 provides that “men and women have equal rights to gain possession of and own land subject to conditions determined by the law”. Article 19 states that “wives...have the same right to worldly goods and properties as their husbands”. They also have the “personal right to manage their goods and property”. In legal terms, therefore, women who occupy or own land affected by mining operations have an equal right to compensation and resettlement.

In practice, access to and use of land by women in rural areas is still dependent on local social norms that typically favour men.<sup>81</sup> Women tend to have access to land only through their husbands (meaning that their access is dependent on remaining married) or families. This lack of access is a particular issue in rural areas. Under the National Domain Law, usage rights to land in these areas are generally delegated to rural councils. Women are rarely represented on these councils and, in comparison to men, tend to be allocated land that is smaller in size and less fertile.<sup>82</sup>

Unless there is clear guidance on the processes for lawful evictions, resettlement and compensation in the context of mining there is a significant risk that discrimination in women's rights to access and use land will be entrenched. This is particularly an issue where the processes are largely carried out by companies working with rural councils and communities; in such processes the negotiating power of companies tends to be far greater than local authorities and communities and their interests can conflict with the protection of human rights. This is not a theoretical concern – Amnesty International and many other NGOs have documented serious problems arising from company-dominated processes in poor rural areas, including in several West African states.

#### CONFLICTS OF INTEREST IN DECISION-MAKING PROCESSES

Key decisions in relation to the use of land by mining companies are made by Ministry of Mines. Authorizations to occupy land inside or outside the permit or concession area are granted by order or decree of the Minister of Mines. The role of the Ministry of Mines is to develop the national mineral resources and promote international principles to attract foreign investment inflows.<sup>83</sup> The fact that the Ministry is responsible for promotion of the industry and at the same time plays a critical role in protection of rights (albeit without this being made explicit) is deeply problematic. It has been noted in other jurisdictions, including Nigeria, that the promotion of industry and the protection of the rights of people whose interests may be in conflict with the industry is inherently problematic. The roles of Ministries need to be distinct because the decision-making processes of ministries responsible for oil, gas and mining tend to favour the industry interests.<sup>84</sup>

## 3.2 THE RIGHTS TO WORK AND TO AN ADEQUATE STANDARD OF LIVING

The movement of communities to accommodate industrial-scale mining operations and the denial of access to sites traditionally used for subsistence farming can have an adverse impact on people's livelihoods and their right to an adequate standard of living, especially the rights to food and water. This is a particular issue for rural communities such as those in Kédougou, and especially women, because they often rely on subsistence farming and need adequate land and water to produce the food on which their families and livelihoods depend.

In addition, industrial-scale gold mining operations require a significant amount of water and create a significant amount of waste, including hazardous waste.<sup>85</sup> If hazardous chemicals that are used in the gold recovery process leak into rivers, groundwater and soil, this can have potentially severe impacts on local communities, aquatic species and livestock.<sup>86</sup> Mining operations can therefore have an adverse impact on the right to water, either by affecting the water supply to local communities or by polluting local rivers and groundwater. Where pollution of the local rivers, groundwater and soil affects aquatic species and livestock, this can also have an adverse impact on the right to food.

### INTERNATIONAL AND REGIONAL LAWS AND STANDARDS

The following paragraphs sets out international and regional laws and standards with respect to the rights to work and to an adequate standard of living, in particular the rights to food and water.

#### INTERNATIONAL

Senegal is a party to all of the core international human rights treaties. The Government of Senegal is therefore obliged under a range of international human rights laws to respect, protect and fulfill the rights to work and to an adequate standard of living (which includes the rights to food and water).

#### **The right to work**

Article 6 of the ICESCR obliges States parties to recognize the right to work and to take appropriate steps to safeguard this right. An important element of the right to work is the right of everyone to the opportunity to gain their living by work that they freely choose or accept. The CESCR has clarified the obligations of States parties to respect, protect and fulfill the right to work (including the right to gain a living by work). This requires States parties such as Senegal to respect the right to work by refraining from interfering directly or indirectly with the enjoyment of that right, to protect the right to work by protecting people from interference with their rights by third parties (which would include companies) and to fulfil the right to work by adopting appropriate legislative and other measures to ensure its full realization. In particular, the CESCR has clarified that the duty to protect obliges States



parties to take “all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties” (which includes companies). States parties must also provide an effective remedy if any of these rights is violated (including by its agents or third parties).<sup>87</sup>

**The right to an adequate standard of living (including food and water)**

The right to work is closely linked to the right to an adequate standard of living and with the rights to food and water.<sup>88</sup> The CESCR has specifically recognised that the rights to food and water are of crucial importance to the enjoyment of all human rights.<sup>89</sup>

Article 11 of the ICESCR establishes “the right of everyone to an adequate standard of living ... including adequate food ... and to the continuous improvement of living conditions”. Article 11(2) of the ICESCR requires States parties to take measures “to improve methods of production, conservation and distribution of food ... by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources”. While the ICESCR does not specifically mention water, the CESCR has clarified that the right to water is an essential element of the right to an adequate standard of living.<sup>90</sup> All States parties to ICESCR have recognized that the human right to drinkable water is derived from Article 11(1) of the ICESCR.<sup>91</sup>

The CESCR has clarified the obligations of States parties to respect, protect and fulfil the rights to adequate food and water. This requires the relevant government to respect these right by refraining from interfering directly or indirectly with the enjoyment of that right, to protect these rights by protecting people from interference with their rights by third parties (which would include companies) and to fulfil these rights by adopting appropriate legislative and other measures to ensure its full realization.<sup>92</sup> In particular, the CESCR has clarified the following:

With respect to the right to adequate food:<sup>93</sup>

- This right is realized when all people, “alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement”. This requires States to ensure the adequacy, acceptability, availability and accessibility of food. Availability includes being able to feed oneself “directly from productive land or other natural resources”.
- To fulfil their obligation to protect, States parties should “take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food”. In particular, States must take measures to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.

With respect to the right to water:<sup>94</sup>

- This right “entitles everyone to sufficient, safe, acceptably, physically accessible and affordable water for personal and domestic uses”. It requires States to ensure the adequacy, availability, quality and accessibility of water, including a sufficient and

continuous supply of water for personal and domestic uses. Accessibility includes the right to seek, receive and impart information concerning water issues.

- While priority in allocating water must be given to personal and domestic uses, to prevent starvation and disease and to meet the core obligation of each right in the ICESCR, the ICESCR has recognized that water is essential for securing the right to gain a living by work. In particular, the CESCR has noted the important link between “sustainable access to water resources for agriculture” and the right to adequate food. For these purposes, it calls for particular attention to be given to ensure that “disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology”. The CESCR has also noted that, in line with the State duty under Article 1(2) of the ICESCR not to deprive a people of its means of subsistence, States must ensure that there is “adequate access to water for subsistence farming”.
- To fulfil their obligation to protect, States must adopt necessary and effective legislative and other measures to prevent third parties (including corporations) from interfering in any way with the enjoyment of the right to water, including by “polluting or inequitably extracting from water resources, including...wells”. In particular, States must give special attention to individuals and groups who have traditionally faced difficulties in exercising the right to water. In this respect, “[a]ccess to traditional water sources in rural areas should be protected from unlawful encroachment and pollution”.

Article 14(2)(h) of CEDAW specifically requires States parties to eliminate all discrimination against women in rural areas and, in particular, to ensure the right to enjoy adequate living conditions, especially water supply.

The rights to an adequate standard of living, and food and water, are closely linked to the right to health. The CESCR has stated that the right to health under Article 12 of the ICESCR extends to the underlying determinants of health, including “food and nutrition”, “access to safe and potable water” and “a healthy environment”. The CESCR has further clarified that a State’s obligation under Article 12(2)(b) of the ICESCR extends to “the prevention and reduction of the population’s exposure to harmful substances such as ... harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”. A government’s failure to take necessary measures to prevent third parties from polluting or contaminating food, water supplies and air, including by the failure to enact or enforce laws, can constitute violations of Article 12 of the ICESCR.<sup>95</sup>

## REGIONAL

Senegal is a party to the African Charter. The African Charter does not specifically recognize the rights to gain a living through work or the rights to an adequate standard of living (which includes rights to food and water). However, as set out below, these rights can be implied through various other rights in the African Charter.

**The right to work**

While Article 15 of the African Charter states that every individual has the right to work under equitable and satisfactory conditions, the African Charter does not specifically recognize the right to gain a living by work. However, in the *SERAC* case, the African Commission found that Nigeria had violated various articles of the African Charter (including the rights to health and a healthy environment) and appealed to the Nigerian government to take various steps to ensure the protection of the livelihoods of the people of Ogoniland.<sup>96</sup> In addition, in clarifying the content of the right to work, Article 59(v) of the African Commission's Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter (ACHPR Principles and Guidelines on ESC Rights)<sup>97</sup> says that States parties are obliged take "appropriate steps to realize the right of everyone to gain their living by work which they freely choose and accept". This includes the promotion of the rights and opportunities of those in subsistence agriculture and taking necessary measures to recognize the economic value of subsistence and market gardening.<sup>98</sup>

**The right to an adequate standard of living (including food and water)**

While the African Charter does not specifically recognize the rights to an adequate standard of living, food or water, it does recognize the right to health and a healthy environment and links these to access to water and adequate food. In the *SERAC* case, the African Commission affirmed that:

*The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation. The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens...[T]he minimum core of the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.*<sup>99</sup>

The ACHPR Principles and Guidelines on ESC Rights clarify the obligations of States parties to the African Charter with respect to the right to food and water, stating that:

*Although the African Charter does not expressly protect the right to food the African Commission held, in *SERAC & CDESCR v Nigeria*, that the right to food is inherent in the Charter's protection of the rights to life, health and the right to economic, social and cultural development...<sup>100</sup> While the African Charter does not directly protect the right to water and sanitation, it is implied in the protections of a number of rights, including but not, limited to the rights to life, dignity, work, food, health, economic, social and cultural development and to a satisfactory environment.<sup>101</sup>*

With respect to the right to water, while the ACHPR Principles and Guidelines on ESC Rights focus on access to water for domestic and personal use, Article 92(xx) clarifies that States must ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of people. Article 92(v) also clarifies that States must take appropriate

measures for the preservation of water against pollution. Under Article 92(xiv), this includes strict controls on the “use and pollution of water resources for industrial purposes, and especially of extractive industries in rural areas”.

The ACHPR Principles and Guidelines on ESC Rights clarify that the obligation to protect “requires the State to take positive measures to ensure that non-state actors such as multi-national corporations, local companies, private persons, and armed groups do not violate economic, social and cultural rights”.

## THE LEGAL FRAMEWORK IN SENEGAL

National law does not specifically recognize the right to an adequate standard of living, including food and water. Article 8 of the Constitution, however, provides for the right to health and a healthy environment. These rights can only be exercised “under the conditions provided by law”. Under Article 17, the State specifically guarantees to women living in rural areas the right to improve their living conditions. The Constitution also affirms in its preamble, the right to “equal access to public services for all citizens”, as well as the “adherence to international human rights instruments adopted by the United Nations and the African Union”. Furthermore, Article L1 of the Environmental Code states that everyone has the right to a healthy environment under the conditions defined by international laws, the Environmental Code and other laws protecting the environment, and that this right includes an obligation to protect the environment.

The following national laws are relevant to water:

- The Water Code, which establishes the main legal framework for the management and use of water resources.<sup>102</sup> Under the preamble to and Article 2 of the Water Code, ground and surface water are considered public goods, held by the State in the public domain, and any exploitation requires authorization and monitoring from the State. In line with international standards, Article 75 of the Water Code affirms human consumption as the main priority in the allocation of water resources. The Water Code does not specifically address water rights in rural areas.
- The Law on the Public Service of Drinking Water and Sanitation, which regulates services for drinking water supply and collective sanitation in urban and rural areas.<sup>103</sup>
- The Hygiene Code, which sets out rules for the distribution of water for sanitation.<sup>104</sup> It does not establish water quality standards.
- The Sanitation Code and its implementing decree of 2001, which regulate the disposal of liquid waste and the management of pluvial waters.<sup>105</sup>

Following a 2012 ministerial restructuring, the main responsibilities for water services (previously split between two different Ministries) rests with the new Ministry of Water and Sanitation (*Ministère de l'hydraulique et de l'assainissement*). The role of the Ministry of Health is also relevant, as its Hygiene Directorate monitors the quality of drinking water and promote initiatives amongst local communities on hygiene standards.

With regard to waste from mining activities, the Environmental Code requires that any EIA assess how waste is to be managed, particularly in the case of hazardous waste (which is usually subject to more stringent regulation), as well as ensuring that an emergency or accident plan is in place. The Environmental Code sets out quite general obligations on the disposal or environmentally-sound management of waste (in Articles 30 to 43 of the Environmental Code).

When applying for an exploitation permit or concession, details of the socio-economic impact of the project and an EIA must be provided by the applicant under the Mining Law and its Implementing Decree. The Environmental Code emphasizes the importance of public participation in the decision-making and impact assessment process.<sup>106</sup> Article L52 states that a public hearing is “integral” to the process of carrying out such an impact assessment. The technical committee provided for under the Environmental Code is responsible for giving the public the opportunity to participate in the environmental evaluation process.<sup>107</sup> However, it is not clear at what point the public should be given the opportunity to participate and Article L49 of the Environmental Code provides that the relevant applicant and the State are the main actors involved in the EIA. The Mining Law does not expand on how the right to participate in the EIA process is ensured to local populations or at what stage of the process they should be involved.

## THE ECOWAS MINING DIRECTIVE

The ECOWAS Mining Directive contains no specific provisions on the right to an adequate standard of living (including food and water). However, under Article 15(3), Member States must make adequate provision for the progressive realization of economic, social and cultural rights as they relate to mining activities and the empowerment of women. In addition, Article 6 of the Directive deals with protection of the environment. It requires mining companies to operate in accordance with national and international standards on the environment.

Article 16 of the Directive states that companies shall obtain the “free, prior, and informed consent of local communities” both before exploration begins and at all subsequent phases of mining and post-mining operation. Article 16 also requires companies to maintain consultations and negotiations on important decisions affecting local communities at all stages of the mining cycle. In addition, it requires the establishment of an effective participatory framework, involving the State, mining companies, local communities and civil society organizations.

Under this article, the Directive also states that those holding mining rights should “respect rights of local people and similar communities to own, develop, control, protect, and use their lands and other natural resources, and cultural and intellectual property.”

## THE GAPS IN PROTECTION

### ENVIRONMENTAL IMPACT ASSESSMENTS

Mining processes – including exploration and exploitation – are very physically invasive and frequently have a range of impacts on the environment. Where people are dependent on the natural environment for their livelihoods and access to food and water, the way in which processes are regulated is vital to upholding rights. Internationally, a key process is the

Environmental Impact Assessment (EIA), and over the last decade EIAs have expanded in many countries to take explicit and wide account of social impacts. In Senegal, EIAs are expected to establish the potential social and cultural impacts on, amongst other things, the health and well-being of populations and the environment, marine and agricultural habitats and archaeological sites.

In light of the above-mentioned potential human and environmental impacts, it is imperative that Senegal's mining licence and authorization procedures consider every stage of the project from the research, prospecting and exploration stages to the closure and reclamation stage. Currently this is not the case. An EIA is only mandatory at the exploitation stage and provisions on prior assessment of environmental impacts for other aspects of mining are either absent or unclear in the current legal framework.

Article 16(4) of the ECOWAS Mining Directive provides that "*companies shall maintain consultations and negotiations on important decisions affecting local communities at all stages of the mining cycle*" (emphasis added). This requirement is not completely satisfied in current law, for the following reasons:

- *Exploration phase:* The Mining Law states that "the holder of the exploration permit is required to take into account all necessary measures to protect the environment". Article 14 of the Mining Law appears to suggest that, with regards to the prospecting stage of operations, a full EIA is not necessary. Hence there is no requirement of consultation with those potentially affected by exploration activity in accordance with accepted good practice for the carrying out of an EIA.
- *Exploitation phase:* There is a general requirement that prior to the granting of an exploitation permit, an EIA is submitted (Mining Law, Article 83), as well as an assessment of the socio- economic impact of the project (Implementing Decree to the Mining Law, Article 26). The EIA process must establish the potential impacts on, amongst other things, the health and well-being of populations and the environment, marine and agricultural habitats and archaeological sites, as well as social effects – particularly with regard to the needs specifically of men and women, and groups, resettlement of displaced persons and the consequences for the local populations (Environmental Code, Article 39). However, the Code does not expand on how the right to participate in this process is communicated to local populations or how that participation is to be carried out in practice.
- *Expansion:* it is not clear under Senegalese law if a further EIA is required if the project expands in ways that did not originally form part of the proposal or initial EIA. Expansion proposals for the project following licensing should require further environmental and social impact studies. This includes situations in which more land is required for expanded storage of waste resulting from existing mining operations.

Articles 16(3) of the ECOWAS Mining Directive also states that "[c]ompanies shall obtain free, prior, and informed consent of local communities *before* exploration begins, and *prior to each subsequent phase* of mining and post-mining operations" (emphasis added). There are two related aspects of this requirement. The first is that the process of obtaining this consent

be early enough in the stage of reaching decisions on mine location and design in order to have a real impact on those decisions before they are taken. This allows the company to assess alternatives with a clearer understanding of their costs and benefits. The second reason for early consultation is that it allows the parties consulted to weigh up alternatives rather than be presented with a *fait accompli*, leaving them with narrow options.

Current law in Senegal does not contain these guarantees. As noted in the case of Dambankhoto, the process of seeking agreement began *after* occupation of the land had been approved by the authorities. The families concerned therefore had only limited ability to negotiate the terms of its displacement. Since there is no equality of bargaining power, this cannot be considered to be an agreement made freely.

#### COMPENSATION FOR DAMAGE TO EXISTING LAND USE

Communities in Kédougou use land for agriculture, for access to water and for artisanal mining, amongst other things. Even when mining operations do not result in people being evicted, their ability to continue to access land for these purposes can be affected. Their physical access may be restricted due to the mining infrastructure or pollution from mining activity may mean resources are no longer viable.

Article 81 of the Mining Law establishes that the holder of the mining licence must indemnify all of those damaged by its activity. The criteria by which this compensation is to be calculated overlap with the types of damage arising from eviction from land. While this engages general principles of the civil law of Senegal, it is important to note that this also engages the problem of adequate access to judicial or quasi-judicial remedy. Such access is often lacking in the mining areas. Consequently, it is likely that compensation is agreed between the company and the affected individual(s). As noted earlier, Amnesty International and other NGOs have documented how disparities in knowledge and power between, often, poor rural dwellers and mining companies can result in unfair and inadequate compensation being paid for losses and damage caused by company operations.

#### LACK OF EFFECTIVE REGULATORY OVERSIGHT

While the EIA process identifies potential negative impacts and mitigation measures, there is a lack of ongoing regulatory oversight. Overall, there is very little in the legal framework to suggest that there would be any meaningful oversight of the environmental, social and human impacts of mining. The role of the Ministry of Mines is problematic. The environmental authorities appear weak. The local authorities' role is unclear. In effect, much is left to the companies. In almost every other context where similar regulatory ambiguity and self-regulatory processes have been applied in the context of mining activity, the result has been abuse.<sup>108</sup> Highly invasive and hazardous activities such as mining require robust independent oversight mechanisms to ensure protection of people and the environment. There is an absence of sanctions and penalties for harmful action and impacts. In summary, Senegal's Mining Law gives wide latitude to companies to use land on which communities depend for their livelihood, without adequate action to ensure such land use does not give risk to human rights violations.

# CONCLUSIONS

The legal framework for mining in Senegal is limited. The mining law primarily covers issues relevant to the commercial exploitation of minerals but makes only limited references to the rights of people affected by mining. Despite the widely available data showing how mining operations can negatively affect communities – particularly poor communities – Senegal has yet to adopt legal and policy frameworks that address the risks.

## EVICCTIONS OF PEOPLE FROM LAND IN A MANNER THAT IS INCOMPATIBLE WITH INTERNATIONAL LAW

The process by which mining companies acquire use rights to land, as currently contained within Senegalese law, is inconsistent with Senegal's legal obligations under the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights, amongst others. The State has ceded responsibility to corporate actors to deal with communities on issues such as compensation and relocation, but has not provided safeguards, despite the fact that the interests of companies and communities may be in conflict. Under the terms of Senegal's land and mining laws people can be evicted from their homes and land without adequate prior notice, without genuine consultation on alternatives or on relocation and without due regard for the impact on access to livelihoods, access to food and other economic, social and cultural rights.

Amnesty International is concerned that evictions appear to have already taken place without adequate prior consultation, transparent processes of compensation and relocation and respect for the long-term livelihoods of communities.

## RISK OF VIOLATIONS OF RIGHTS TO LIVELIHOOD, FOOD, WATER

Not only are people at significant risk of being subjected to evictions that are unlawful under international human rights law, the close link between land and livelihoods is not adequately addressed in the legal framework.

Many people in Kédougou rely heavily on their environment for livelihood, food and water. This reliance goes beyond agricultural activity and includes reliance on ecosystem goods and services. Women may be particularly affected by loss of access to ecosystem and communal resources. People who are evicted from land they have used for many years, where no equivalent alternative land and resource access is provided, face increased risks that they will become further impoverished.

While the EIA process requires consideration of socio-economic impacts, there is a lack of clarity about how EIA data is verified and how potential negative impacts will be adequately mitigated. As a result there are also significant risks that the rights of affected individuals and communities to food, water and livelihood could be compromised.

## VERY LIMITED FRAMEWORK ON PUBLIC CONSULTATION AND PARTICIPATION

Public participation and consultation is only envisaged within the EIA process, which takes place only when a company is moving to the exploitation stage. Moreover, although



consultation is mandated there are few details on how it should take place and what communities can do if the process is not adequate.

#### **INADEQUATE MITIGATION AND MONITORING OF ENVIRONMENTAL IMPACTS**

While EIAs are required prior to exploitation, Amnesty International was concerned by the lack of any assessment of social and environmental risks at the earlier exploration states and the lack of systems to monitor social and environmental impacts. Moreover the fact that EIAs are not required before exploration activity is deeply problematic as the only provision for consultation with affected communities is that mandated within the EIA process. Therefore consultation with affected people does not occur until key decisions about the mining project have already been made.

#### **SENEGAL'S LEGAL FRAMEWORK INCONSISTENT WITH THE ECOWAS MINING DIRECTIVE**

Senegal is due to implement the ECOWAS Mining Directive by 2014. However, the analysis of Senegal's laws, presented in this report, shows significant gaps between the current legal protections in Senegal and the requirements of ECOWAS. In particular Senegal's requirements for consultation with and participation of mining-affected communities in decisions that affect their human rights fall far short of ECOWAS requirements and international human rights standards.

The procedures set out in Senegalese law fail to meet either international standards in relation to the human rights impact of business or the standards set out in the ECOWAS Mining Directive. In particular there are no provisions in Senegalese law to properly and regularly inform and consult with communities who may be affected and to ensure all necessary measures to mitigate risks to their rights. Amnesty International found that, in practice, this has resulted in communities being asked to enter agreements over mining in which their rights are not protected and which expose them to abuse. In addition, Senegalese law currently allows people to be evicted from their homes and land, for the purpose of mining, in a manner that breaches international standards prohibiting forced evictions.

#### **WEAK ENFORCEMENT**

The weaknesses in the legal framework appear to be compounded by the lack of robust monitoring and enforcement of laws by State authorities.

# RECOMMENDATIONS

## TO THE GOVERNMENT OF SENEGAL

- Ensure that relevant laws, including mining legislation, is revised to reflect the following:
  - All relocations of people affected by mining to be carried out in accordance with the UN Basic Principles and Guidelines on Development-based Evictions and Displacements.
  - All possible efforts to be made to minimize loss of access to land and to replace land lost with land that has equivalent value in terms of livelihoods.
- Review the water systems in mining areas; identify the implications of mining on the ability of the water system to sustain the domestic and livelihood needs of local populations. This study should be made public along with plans to ensure that mining activities do not diminish, in the short or long term, people's access to water and do not compromise their right to water.
- Ensure that compensation processes are clear and that all negotiations over relocation and compensation in the context of mining operations involve both the affected communities – including women – and government representatives who are explicitly tasked with ensuring that the human rights of mining-affected communities are respected and protected.
- Require environmental and social impact assessments to be carried out prior to exploration activity as well as prior to exploitation, and supplementary assessment for any major developments not foreseen in the original assessments. All such documents should be made public in at least three ways: full documents available online and on request; summaries distributed in plain language, and the local language(s), to all affected people; verbal summaries presented to affected people at local meetings for which adequate notice is given – all such meetings to be recorded and made publically available.
- Ensure that the Ministry of Mines is not the main authority in relation to social and environmental impacts; decisions on social and environmental matters should be made by local and national authorities that liaise with, but are independent from, the Ministry of Mines. A process for resolving conflicts of interest between mining interests and the interests of local communities should be established by law.
- Establish a parliamentary oversight body with an explicit mandate to review all concerns about the social and environmental impacts of mining. This body should report regularly and publically to parliament.

## TO COMPANIES

- Make a public commitment to ensure all operations are carried out in line with the UN Guiding Principles on Business and Human Rights.
- Make public the company's due diligence processes and report regularly on how these processes are working in practice. Due diligence processes at a minimum should include:
  - The company's commitment not to engage in, contribute to or benefit from any evictions and relocations that are not carried out in accordance with international law and standards. To this end the company will not rely solely on information or permissions given by the national or local authorities but will proactively assess any proposed relocation against the standards.
- Processes to ensure that compensation negotiations are transparent and fair, and take into account the full range of impacts on people's livelihoods.
- Full assessment of how use of water systems will be affected by company operations – including the cumulative impact of mining (beyond the company's own operations) to ensure at an absolute minimum that existing access to water is not reduced (in terms of physical access, the quality of the water or any other restrictions).
- Establish a grievance mechanism at the local level to ensure people can raise concerns directly with the company; this mechanism should not in any way undermine people's right to seek remedies through other forums, including remedies at law. Individuals and communities must never be asked to sign away legal rights in company-based grievance processes.

## ENDNOTES

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<sup>1</sup> Mining Journal, *Special Publication – Senegal*, Aspermont UK, 2009, p2, available at: [www.mining-journal.com/\\_data/assets/supplement\\_file\\_attachment/0015/121272/Senegal-scr.pdf](http://www.mining-journal.com/_data/assets/supplement_file_attachment/0015/121272/Senegal-scr.pdf) (accessed 7 May 2014) (Mining Journal, *Senegal Report*).

<sup>2</sup> Teranga Gold Corporation, *Exploration*, available at: [www.terangagold.com/English/Operations-and-Exploration/Exploration/default.aspx](http://www.terangagold.com/English/Operations-and-Exploration/Exploration/default.aspx) (accessed 7 May 2014).

<sup>3</sup> United Nations Development Programme, *Human Development Report 2013 (The Rise of the South: Human Progress in a Diverse World)*, UNDP, 2013, p143, available at: [hdr.undp.org/en/2013-report](http://hdr.undp.org/en/2013-report) (accessed 7 May 2014).

<sup>4</sup> Agence Nationale de la Statistique et de la Démographie, *Deuxieme Enquete de Suivi de la Pauvrete au Senegal (ESPS-II 2011): Rapport Definitive* (May 2013), p29, available at: [www.ansd.sn/publications/rapports\\_enquetes\\_etudes/enquetes/Rapport\\_ESPS-2011.pdf](http://www.ansd.sn/publications/rapports_enquetes_etudes/enquetes/Rapport_ESPS-2011.pdf) (accessed 7 May 2014).

<sup>5</sup> Mining Journal, *Senegal Report*, p8.

<sup>6</sup> United States Agency for International Development, *USAID Country Profile (Property Rights and Resource Governance): Senegal*, pp1 and 19, available at: [usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Senegal\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Senegal_Profile.pdf) (accessed 7 May 2014) (USAID, *Senegal Profile*).

<sup>7</sup> *Loi N° 2003-36 du 24 Novembre 2003 Portant Code Minier (Mining Law)*.

<sup>8</sup> Mining Journal, *Senegal Report*, pp6-7.

<sup>9</sup> AMC Mining Consultants (Canada) Ltd, *Technical Report for Sabodala Gold Project*, 13 March 2014, available at: [www.terangagold.com/files/doc\\_downloads/2014/43101.pdf](http://www.terangagold.com/files/doc_downloads/2014/43101.pdf) (accessed 7 May 2014), p18 (AMC Mining, *Sabodala Technical Report*).

<sup>10</sup> See World Gold Council, *Interactive gold price chart*, available at: [www.gold.org/investment/interactive-gold-price-chart](http://www.gold.org/investment/interactive-gold-price-chart) (accessed 7 May 2014).

<sup>11</sup> Amnesty International interviews with communities in Kédougou, June 2011 and January 2013.

<sup>12</sup> Economic Community of West African States (ECOWAS), *Directive C/DIR.3/05/09 on the Harmonization of Guiding Principles and Policies in the Mining Sector* (27 May 2009) (*ECOWAS Mining Directive*).

<sup>13</sup> In 2013, the government announced that it was intending to revise the 2003 Mining Law. It has also announced that it intends to align the new Mining Law with the ECOWAS Mining Directive. The government had planned to produce a first draft of the new law in the first quarter of 2014. African Mining Indaba, *Interview with Minister of Industry and Mines, Senegal* (21 January 2014), available at: [macigindaba.com/2014/01/21/the-hon-aly-ngouille-ndiaye-minister-of-industry-and-mines-senegal/](http://macigindaba.com/2014/01/21/the-hon-aly-ngouille-ndiaye-minister-of-industry-and-mines-senegal/) (accessed 7 May 2014).

<sup>14</sup> Mining Law; *Decret N° 2004-647 fixant les modalités d'application de la Loi N° 2003-36 du 24 Novembre 2003 Portant Code Minier (Implementing Decree)*.

<sup>15</sup> This effectively allows the State to expropriate any land required for these purposes, subject to fair and prior compensation (USAID, *Senegal Profile*, pp6 and 11).

<sup>16</sup> *Loi 64-46 du 17 juin 1964 relative au Domaine National (National Domain Law)*.

<sup>17</sup> M. Ndir, *Domaine National, la Loi et le Projet de Réforme (Loi 64-46 du 17 juin 1964 relative au Domaine National)*, p5, available at: [www.fig.net/pub/fig2011/papers/ts03j/ts03j\\_ndir\\_5170.pdf](http://www.fig.net/pub/fig2011/papers/ts03j/ts03j_ndir_5170.pdf) (accessed 7 May 2014) (Ndir, *Loi Domaine National*).

<sup>18</sup> *Loi N° 2001-01 du 15 Janvier 2001 Portant Code de l'Environnement; Decret N° 2001-282 du 12 avril 2001 portant application du Code de l'environnement*.

<sup>19</sup> Constitution of the Republic of Senegal, adopted on 7 January 2001 (*Senegal Constitution*).

<sup>20</sup> Senegal Constitution, Art 8.

<sup>21</sup> Senegal Constitution, Art 8.

<sup>22</sup> UN Human Rights Council, *Protect, Respect and Remedy: a Framework for Business and Human Rights (Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises)* (7 April 2008) UN Doc A/HRC/8/5, available at: [www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx](http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx) (accessed 7 May 2014).

<sup>23</sup> UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) UN Doc HR/PUB/11/04, available at: [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (accessed 7 May 2014) (*UN Guiding Principles*).

<sup>24</sup> UN Human Rights Council, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (Addendum): State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries* (13 February 2007) UN Doc A/HRC/4/35/Add.1, available at: [www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx](http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx) (accessed 7 May 2014).

<sup>25</sup> See the OECD website at: [www.oecd.org/corporate/mne/mining.htm](http://www.oecd.org/corporate/mne/mining.htm) (accessed 7 May 2014).

<sup>26</sup> UN Committee on Economic, Social and Cultural Rights, "General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)" (20 January 2003) UN Doc E/C.12/2002/11, paras 31-36, available at: [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11) (accessed 7 May 2014) (CESCR, *General Comment 15*).

<sup>27</sup> UN Guiding Principles, Principle 11.

<sup>28</sup> UN Guiding Principles, Principle 11.

<sup>29</sup> UN Guiding Principles, Principle 13.

<sup>30</sup> UN Guiding Principles, Principle 15.

<sup>31</sup> UN Guiding Principles, Principle 22.

<sup>32</sup> ECOWAS, *Directive C/DIR.3/05/09 on the Harmonization of Guiding Principles and Policies in the Mining Sector* (27 May 2009) (*ECOWAS Mining Directive*).

<sup>33</sup> ECOWAS Mining Directive, Art 19.

<sup>34</sup> AMC Mining, *Sabodala Technical Report*.

<sup>35</sup> AMC Mining, *Sabodala Technical Report*, pp299-300; Oromin Explorations Ltd, *Form 20-F for the Fiscal Year ended 29 February 2012*, available at: [www.sec.gov/Archives/edgar/data/1109141/000117625612000495/oromin20f120229.htm](http://www.sec.gov/Archives/edgar/data/1109141/000117625612000495/oromin20f120229.htm) (accessed 7 May 2014).

<sup>36</sup> Randgold Resources Limited: *Form 20-F for the Fiscal Year ended 31 December 2012*, available at: [www.randgoldresources.com/randgold/action/media/downloadFile?media\\_fileid=14138](http://www.randgoldresources.com/randgold/action/media/downloadFile?media_fileid=14138); *Massawa Feasibility Project*, available at: [www.randgoldresources.com/randgold/content/en/massawa-feasibility-project](http://www.randgoldresources.com/randgold/content/en/massawa-feasibility-project); *Admission to the Official List and to trading on the London Stock Exchange's main market for listed securities of 6,628,769 new Ordinary Shares to be issued in connection with the proposed acquisition of Moto Goldmines Limited*, available at: [www.randgoldresources.com/randgold/action/media/downloadFile?media\\_fileid=2032](http://www.randgoldresources.com/randgold/action/media/downloadFile?media_fileid=2032); *RRL Senegal...January 2012*, available at: [www.randgoldresources.com/randgold/action/media/downloadFile?media\\_fileid=10017](http://www.randgoldresources.com/randgold/action/media/downloadFile?media_fileid=10017) (each accessed 7 May 2014).

<sup>37</sup> Goldstone Resources Limited: *Sangola Decree (Senegal) Issued* (20 October 2010), available at: [www.goldstoneresources.com/related-ann-sangola/75-SANGOLA-DECREE-\(SENEGAL\)-ISSUED.html](http://www.goldstoneresources.com/related-ann-sangola/75-SANGOLA-DECREE-(SENEGAL)-ISSUED.html); *Joint Venture with Randgold over Sangola Project, Senegal* (8 April 2013), available at: [www.goldstoneresources.com/related-ann-sangola/74-Joint-Venture-with-Randgold-over-Sangola-Project.html](http://www.goldstoneresources.com/related-ann-sangola/74-Joint-Venture-with-Randgold-over-Sangola-Project.html); *Termination of Joint Venture* (3 April 2014), available at: [online.hemscottir.com/ir/grl/ir\\_new.jsp?page=news-item&item=1731623439564800](http://online.hemscottir.com/ir/grl/ir_new.jsp?page=news-item&item=1731623439564800) (each accessed 7 May 2014).

<sup>38</sup> The remaining interests in the Massawa project are held by Compagnie Senegalaise de Transports Transatlantiques Afrique de l'Ouest (6.75 per cent) (a local joint venture company) and the Government of Senegal (10 per cent).

<sup>39</sup> Toro Gold Ltd: *Toro Gold Ltd: Annual Report 2012*, available at: [www.torogold.com/controllers/files/AnnualReport\\_2012\\_WEB\\_1.pdf](http://www.torogold.com/controllers/files/AnnualReport_2012_WEB_1.pdf); *Toro Gold Ltd: Annual Report 2011*, available at: [www.torogold.com/controllers/files/AnnualReport\\_2011\\_WEB.pdf](http://www.torogold.com/controllers/files/AnnualReport_2011_WEB.pdf) (each accessed 7 May 2014).

<sup>40</sup> The remaining interest in each project is held by local joint venture partners: 3S International (Kenieba) and SN Mineral Mining Ltd (Madina Foulbe and Velingara).

<sup>41</sup> RPA Inc, *Technical Report and Initial Mineral Resource Estimate for the Daorala-Boto Project, Kedougou, Senegal*, 30 June 2013, available at: [www.sedar.com/CheckCode.do;jsessionid=0000v5V7nCF4NUnf7ZQuInD7JvZ:17lkkk26t](http://www.sedar.com/CheckCode.do;jsessionid=0000v5V7nCF4NUnf7ZQuInD7JvZ:17lkkk26t); IAMGOLD Corporation, *IAMGOLD reports first mineral resource estimate on the Boto Gold Project in Senegal*, 29 July 2013), available at: [www.newswire.ca/en/story/1203995/iamgold-reports-first-mineral-resource-estimate-on-the-boto-gold-project-in-senegal](http://www.newswire.ca/en/story/1203995/iamgold-reports-first-mineral-resource-estimate-on-the-boto-gold-project-in-senegal) (each accessed 7 May 2014).

<sup>42</sup> Proactive Investors, *Goldstone Resources: Randgold shifts focus to new targets at Sangola project*, available at: [www.proactiveinvestors.com/companies/news/49682/goldstone-resources-randgold-shifts-focus-to-new-targets-at-sangola-project-49682.html](http://www.proactiveinvestors.com/companies/news/49682/goldstone-resources-randgold-shifts-focus-to-new-targets-at-sangola-project-49682.html) (accessed 7 May 2014).

<sup>43</sup> Bassari Resources Limited: *Permits*, available at: [www.bassari.com.au/display.asp?entityid=7280](http://www.bassari.com.au/display.asp?entityid=7280); *Annual Report: 31 December 2013*, available at: [www.bassari.com.au/skillsEDIT/clientuploads/88/310314%20AR%20MP\\_1.pdf](http://www.bassari.com.au/skillsEDIT/clientuploads/88/310314%20AR%20MP_1.pdf); *Half Year Report – 30 June 2013*, available at: [www.bassari.com.au/skillsEDIT/clientuploads/88/060913%20Half%20year%20to%20300613.pdf](http://www.bassari.com.au/skillsEDIT/clientuploads/88/060913%20Half%20year%20to%20300613.pdf) (each accessed 7 May 2014).

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- <sup>44</sup> The remaining 30 per cent interest in each project is held by local joint venture partners: Sengold Mining NL (Moura); W.A.T.I.C. Group (Sambarabougou); and Libah Investments Ltd (Bounsankoba).
- <sup>45</sup> Amnesty International interviews with communities in Kédougou, June 2011 and January 2013.
- <sup>46</sup> AMC Mining, *Sabodala Technical Report*, p16.
- <sup>47</sup> Amnesty International interview with members of the Dambankhoto community, June 2011 and January 2013.
- <sup>48</sup> *Protocole d'Accord pour le Recasement du Hameau de Dambankhoto* (29 May 2010) (*Dambankhoto Protocole d'Accord*).
- <sup>49</sup> Amnesty International has a copy of the *Dambankhoto Protocole d'Accord* on file.
- <sup>50</sup> *Protocole d'Accord*, para 8.
- <sup>51</sup> *Protocole d'Accord*, para 16.
- <sup>52</sup> Amnesty International researchers witnessed the problems with the houses during a research visit in June 2011.
- <sup>53</sup> Amnesty International interview with members of the Dambankhoto community, June 2011. The loss of access to land and water was confirmed by local officials interviewed by Amnesty International in June 2011 and January 2013.
- <sup>54</sup> This was confirmed by local officials interviewed by Amnesty International in June 2011 and by a representative of the company in 2013.
- <sup>55</sup> Amnesty International researchers witnessed the problems with the taps during a research visit in June 2011. When turned on no water came out. In addition, the villagers reported problems with the amount of water accessible from the borehole well, which they said was less than had been available from the river they had used at Dambankhoto.
- <sup>56</sup> A representative of the company who spoke to Amnesty International in January 2013 acknowledged that there were problems with the garden plots and their lack of productivity.
- <sup>57</sup> A. Ahne, *Les populations entre deguerpissements et faiblesses des indemnisations: Degats collateraux de l'exploitation de l'or de Sabodala* (10 August 2013), available at: [seneplus.com/article/les-populations-entre-deguerpissements-et-faiblesses-des-indemnisations](http://seneplus.com/article/les-populations-entre-deguerpissements-et-faiblesses-des-indemnisations) (accessed 7 May 2014).
- <sup>58</sup> In a letter to Amnesty International, received on 16 May 2014, Teranga Gold stated that: "Potable tap water is in each house in the new Dambankoto village, a hand pump to supply water for irrigation purposes, and since 2013, an additional borehole equipped with solar panels to supply water to the market garden."
- <sup>59</sup> Oxfam and La Lumière, *Resume du rapport de l'etude sur les compensations en zones minières* (October 2012). Amnesty International has a copy of this report on file.
- <sup>60</sup> UN Committee on Economic, Social and Cultural Rights: "General Comment 4: The right to adequate housing (Art. 11 (1) of the Covenant)" (13 December 1991) UN Doc E/1992/23; "General Comment 7: The right to adequate housing (art. 11.1 of the Covenant): forced evictions" (20 May 1997) UN Doc E/1998/22, annex IV (CESCR, *General Comment 7*), each available at: [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11) (accessed 7 May 2014).
- <sup>61</sup> Based on CESCR, *General Comment 7*, particularly paragraphs 3 and 11-16.

<sup>62</sup> “Basic Principles and Guidelines on Development-Based Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living” (5 February 2007), UN Doc A/HRC/4/18, available at: [www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf) (accessed 7 May 2014) (*Basic Principles*).

<sup>63</sup> Basic Principles, para 4.

<sup>64</sup> Basic Principles, para 8.

<sup>65</sup> Basic Principles, para 16.

<sup>66</sup> Basic Principles, paras 35, 37-44, 53 and 56(e), (h) and (i).

<sup>67</sup> Basic Principles, paras 43 and 52-58.

<sup>68</sup> Basic Principles, paras 52, 56(c) and 60-63.

<sup>69</sup> Basic Principles, para 22.

<sup>70</sup> Basic Principles, para 22.

<sup>71</sup> *Case concerning pulp mills on the River Uruguay (Argentina v Uruguay)*, Judgment, I.C.J. Reports 2010, p14, paras 205 and 209.

<sup>72</sup> *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, African Commission on Human and Peoples’ Rights, Communication 155/96, Decision of 27 May 2002 (*SERAC v Nigeria*).

<sup>73</sup> *SERAC v Nigeria*, para 60.

<sup>74</sup> J. Bruce, M. Freudenberger and T. Ngaido, *Land Tenure in Development Cooperation (Old Wine in New Bottles: Creating New Institutions for Local Land Management)* (GTZ 1995) pp13-14 and 16, available at: [www2.gtz.de/dokumente/bib/00-0590.pdf](http://www2.gtz.de/dokumente/bib/00-0590.pdf) (accessed 7 May 2014) (Bruce, *Land Tenure*).

<sup>75</sup> Bruce, *Land Tenure*, pp13-14 and 16.

<sup>76</sup> USAID, *Senegal Profile*, pp6 and 11.

<sup>77</sup> *Loi n° 76-67 du 2 Juillet 1976 Relative à L'expropriation Pour Cause D'utilité publique et Autres Opérations Foncières D'utilité Publique; Decret N° 77-563 du 3 Juillet 1977 portant application de la Loi N° 76-67 du 2 Juillet 1976 Relative a L'expropriation Pour Cause D'utilite Publique et Autres Operations Foncières D'utilite Publique.*

<sup>78</sup> USAID, *Senegal Profile*, p11.

<sup>79</sup> Articles 89 and 90 of the Implementing Decree to the Mining Law (“*L’arrêté d’occupation ouvre droit à l’indemnité pour le préjudice matériel et certain causé au(x) propriétaire(s) ou occupant(s) des terrains faisant l’objet de l’autorisation d’occupation*” (emphasis added)).

<sup>80</sup> “Local Collectivities represent the administrative and geographic agglomerations. The institutions are respectively the Regional Council, the Municipal Council, and the Rural Council.” S Bandiaky-Badji, *Gender equity in Senegal’s forest governance history: why policy and representation matter*, 13(2) *International Forestry Review* 177 (2011), p183.

<sup>81</sup> USAID, *Senegal Profile*, p9.

<sup>82</sup> USAID, *Senegal Profile*, pp9-10.



- <sup>83</sup> République du Senegal, Ministère des Mines, de l'Énergie et de l'Hydraulique, *Declaration de Politique Minière (Mineral Policy Statement)*, 6 March 2003, p3, available at: [www.dirmingeol.sn/principal-pages/docs\\_dmg/DPM.pdf](http://www.dirmingeol.sn/principal-pages/docs_dmg/DPM.pdf) (accessed 7 May 2014).
- <sup>84</sup> Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta* (30 June 2009), Amnesty International Index: AFR/44/017/2009.
- <sup>85</sup> Teranga Gold Corporation, *Environment*, available at: [www.terangagold.com/English/CorporateResponsibility/Environment/default.aspx](http://www.terangagold.com/English/CorporateResponsibility/Environment/default.aspx) (accessed 7 May 2014).
- <sup>86</sup> For example, in August 1995, the banks of a tailings pond at the Omai gold mine in Guyana collapsed into the local river, flooding it with cyanide and heavy metals and causing serious harm to local livelihoods. See Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* (2014), Amnesty International Index: POL 30/001/2014, pp65-79.
- <sup>87</sup> UN Committee on Economic, Social and Cultural Rights, "General Comment No. 18 (2005): The right to work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)" (24 November 2005) UN Doc E/C.12/GC/18, paras 22-28, 35 and 48, available at: [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) (accessed 7 May 2014).
- <sup>88</sup> See the discussion on the drafting history of Article 11 of the ICESCR in M Craven, *The International Covenant on Economic, Social and Cultural Rights* (Oxford University Press 1995), p293.
- <sup>89</sup> CESCR: *General Comment 15*, paras 1 and 6; UN Committee on Economic, Social and Cultural Rights: "General Comment No. 12 (1999): The right to adequate food (art. 11)" (12 May 1999) UN Doc E/C.12/1999/5, paras 1 and 4 (CESCR, *General Comment 12*), available at: [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) (accessed 7 May 2014).
- <sup>90</sup> CESCR, *General Comment 15*, para 3.
- <sup>91</sup> UN General Assembly Third Committee (68th session), "The human right to safe drinking water and sanitation" (19 November 2013) UN Doc A/C.3/68/L.34/Rev.1, available at: [www.un.org/en/ga/third/68/propolist.shtml](http://www.un.org/en/ga/third/68/propolist.shtml) (accessed 7 May 2014); UN Human Rights Council, "Resolution 24/18: The human right to safe drinking water and sanitation" (23 September 2013) UN Doc A/HRC/24/L.31, available at: [ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/24/L.31](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/24/L.31) (accessed 7 May 2014).
- <sup>92</sup> CESCR, *General Comment 12*; CESCR, *General Comment 15*.
- <sup>93</sup> CESCR, *General Comment 12*, paras 7, 8, 12, 15 and 27.
- <sup>94</sup> CESCR, *General Comment 15*, paras 2, 6, 7, 11, 12 and 23.
- <sup>95</sup> UN Committee on Economic, Social and Cultural Rights, "General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)" (11 August 2000) UN Doc E/C.12/2000/4, available at: [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) (accessed 7 May 2014), paras 4, 15, 36 and 51.
- <sup>96</sup> *SERAC v Nigeria*, para 69 (Holding).
- <sup>97</sup> African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, available at: [www.escr-net.org/docs/i/1599552](http://www.escr-net.org/docs/i/1599552) (accessed 7 May 2014) (ACHPR, *Principles and Guidelines on ESC Rights*).

<sup>98</sup> ACHPR, *Principles and Guidelines on ESC Rights*, para 59(xii).

<sup>99</sup> *SERAC v Nigeria*, para 65.

<sup>100</sup> ACHPR, *Principles and Guidelines on ESC Rights*, Art 83.

<sup>101</sup> ACHPR, *Principles and Guidelines on ESC Rights*, Art 87.

<sup>102</sup> *Loi N° 81-13 du 4 mars 1981 Portant Code de L'eau*.

<sup>103</sup> *Loi N° 2008-59 du 24 septembre 2008 sur le service public de l'eau potable et de l'assainissement*.

<sup>104</sup> *Loi N° 83-71 du 5 juillet 1983 Portant Code de L'hygiène*.

<sup>105</sup> *Loi N° 2009-24 du 8 juillet 2009 Portant Code de L'assainissement; Decret N° 2011/245 fixant les modalités d'application de la Loi N° 2009-24 du 8 juillet 2009 Portant Code de L'assainissement*.

<sup>106</sup> Environmental Code, Arts L4, L48, L52 and L53.

<sup>107</sup> Implementing Decree to the Environmental Code, Art R43.

<sup>108</sup> See Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* (2014), Amnesty International Index: POL 30/001/2014, Chapter 3.



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## **MINING AND HUMAN RIGHTS IN SENEGAL CLOSING THE GAPS IN PROTECTION**

Over the past decade there has been an expansion of gold mining in Senegal. The Kédougou region, where artisanal mining has been carried out for many years, is now seeing an influx of industrial mining interests. However, Kédougou is one of the poorest regions in Senegal, and local communities have expressed concerns about the impacts of the expanding mining industry.

This report examines the existing legal framework in Senegal as regards key human rights issues arising within the context of industrial mining. In particular the report focuses on human rights risks associated with the relocation of communities to make way for mining projects, including forced evictions, damage to livelihoods, abuses of the rights to food and water, and the failure to properly consult those affected.

The Government of Senegal has expressed its ambition to be a leader in sustainable mining in the West Africa region. This report offers concrete recommendations in support of this goal. It identifies several gaps and inconsistencies in the existing legal and policy frameworks related to land use and industrial mining which increase the risk of human rights violations and abuses.

The report also makes recommendations to mining companies operating in Senegal, including on the importance of proper consultation with affected communities at the earliest stages of investment.

While industrial mining in Kédougou is only beginning, there is already evidence that the lack of effective legal protections is leading to negative impacts for rural communities. As mining operations intensify, the impacts on local communities will only increase unless their human rights are adequately protected by the State and respected by companies.

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