

DISPLACEMENT, REHABILITATION AND RESETTLEMENT IN THE CASE OF ANGLO GOLD ASHANTI IN GUINEA

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Abstract:

Purpose: The Company had recently supported an initiative in Guinea, led by the American Bar Association Rule of Law Initiative, on supporting community rights, including key rights to information, participation, and involuntary resettlement in accordance with international norms. The government involved, the Republic of Guinea, is one whose representatives had participated in international meetings of the Voluntary Principles on Security and Human Rights, and whose government is implementing the Responsible Mineral Development Initiative process.

Displacement has been studied entirely in relation to programs aimed at reducing the opportunity to commit crime in specific geographical areas.

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

Findings: Physical violence and intimidation; contested legality of signed resettlement agreements; lack of legally required information and consultation; paltry compensation; inadequate measures to restore communities' livelihoods; and Serious barriers to access to remedy.

Originality/value:

The beginnings of the investigation, CECIDE and MDT have been in contact with government entities, SAG and AngloGold. CECIDE met with the deputy CEO of SOGUIPAMI and the legal advisor of the Ministry of Mines and Geology in December 2015 to discuss the situation at "Area One". These individuals facilitated the first field mission that took place in May 2015 in Kintinian, involving CECIDE, MDT and SAG.

Key Words: Displacement, Mineral Development, Resettlement, Socio-Economic.

1. Introduction:

Since AngloGold Ashanti de Guinea (SAG) announced in 2015 that its operations at the gold mine of Siguirri would end in May 2016 if it remained limited to its current perimeter, the mining company and

public authorities have done everything possible to ensure the extension of SAG's operations to at least one more area within SAG's concession, "Area One". Extension of SAG's operations required the resettlement of around 380 Kintinian families. The displacement of people refers to the forced movement of people from their area or environment and occupational activities. It is a form of social change that is caused by a number of factors, the most common being armed conflict.

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

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

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

In practice, displacement has been studied entirely in relation to programs aimed at reducing the opportunity to commit crime in specific geographical areas (e.g. shopping centers, parking lots, housing estates and neighborhoods). Because such situational crime prevention efforts do not aim to alter the root causes of crime, researchers are faced with the threat of displacement, in which the offenders who are deflected simply shift to other targets or places, severely limiting the net reduction in crime achieved. Most authors view displacement as the result of the implementation of effective measures against crime. Thus, displacement has been defined as "...a change in offender behavior, along illegitimate means, which is

designed to circumvent either specific preventive measures or more general conditions unfavorable to the offender's usual mode of operating, Crime may be displaced in any manner of ways. Offenders, for instance, may displace to other times, places, methods, targets or offenses.

2. Review of Literature

Monika Mandal (2009) the conflict-affected internal displacement in India. Insurgency and retaliatory operations by security forces are a major factor of displacement example, Kashmir, the Northeast and in many states of central India civilians have fled fighting zones and have sometimes been directly targeted by militant groups, mostly the majorities of internally displaced people have not been able to return for many years either due to protracted conflicts or unresolved issues related to land and property. The first step to enhance assistance to internally displace would be to conduct surveys in conflict-affected areas in order to document the magnitude of the problem as the needs or the wants of the displaced. They have mentioned that the status of Kashmir has been hug challenge since the creation of independent India and Pakistan in 1947, and the two countries have twice gone to war over the issue. The Islamic militant groups have continued to laugh attacks against local authorities and civilians to sabotage the peace process therefore Indian security has improved with the ceasefire concluded in November 2003.

More than 90 per-cents of the Hindu people in Kashmir Valley, the government have estimated that Pandits groups 350,000 people and 250,000 fled from the Valley during the 1990s were displaced. Today, almost 100,000 are living in the capital New Delhi and some 240,000 people are living in the city of Jammu. Conclusion is that the process of development should be stopped in the state having said that the serious fallout's of the development process, which have so far been lost in the generalist socio-economic studies, the main important is that the government and the non-governmental agencies including of course the academics must reflect the views of the people as to change the state and allow the legitimate space for marginalized sections of the indigenous populations with the development framework to prevent or reduce the process of emerging problem of the Internally Displaced people in the state.

Sato et al (2011), The 11 March 2011 magnitude 9.0 Tohoku-Oki mega thrust earthquake just off the Eastern coast of Japan was one of the largest earthquakes in recorded history. These authors have also mentioned that Japan's considerable investment in seismic and geodetic networks allowed for the collection of rapid and reliable data on the mechanics of the earthquake and the devastating tsunami that followed describe the huge displacements from ocean bottom transponders-previously placed directly above the earthquakes hypocenter-communicating.

Guancheng Ma et al (2004) have mentioned the evolution of the reliability and accuracy of a new air-displacement plethysmography (ADP) system for body-composition assessment in infants.

Repetto's classification of the forms of displacement is rather static, and it is surprising that most authors do not acknowledge that the different forms of displacement could occur in combination. For example, a burglar may move to a different neighborhood, employ new tactics, and offend at a different time of day: in

practice, the number of expressions of displacement can be great. Only a few authors acknowledge this fact, and they suggest that given the extent to which different forms of displacement operate at the same time, it may be impossible to confirm empirically the existence or magnitude of displacement. Studies of displacement tend to assume rational decision making on the part of the offender. Offenders are most likely to displace when other crime targets are familiar to them or share the same "choice-structuring characteristics" as the original crime from which the offender was deterred.

Bennett and Wright (1984) that displacement is a short-term psychological process in that displacement occurs when alternative offenses are committed subsequent to the offender being prevented from his or her initial target. Thus, displacement is related to the same, earlier decision to offend. With some exceptions, displacement has been studied empirically in two different ways: by conducting ethnographic studies of offenders' motives and decision-making processes, and by evaluating the impact of programs to reduce crime. Most studies of displacement take the latter approach, evaluating the amount of displacement resulting from a crime prevention measure by examining crime rates in adjacent areas or for other offenses. If researchers observe an increase in crime rates, they typically assume that displacement has occurred as the result of the crime prevention project. It is possible; however, that other factors independent of the project are the cause of these findings, such as changes in the offender population, the opportunity structure, or the overall trend in crime rates. Only a few authors have stressed these other factors in their explanations of the displacement effects of crime prevention projects.

M Herson (2008) said that all displaced people need some form of shelter, and circumstances dictate that in reality not much of it conforms to the typical picture of a tent or tarpaulin nor meets official standards. And he mentioned that the displaced people profoundly affect their experience of displacement. It should provide some protection from the elements and physical security for those who dwell in it, and the articles in this issue of FMR give a glimpse of just some of the many ways this is possible.

G Robert and Andrew N, Cleland (2003) it has been a long-standing goal to detect the effect of quantum mechanics on a macroscopic mechanical oscillator. The position measurements of an oscillator are ultimately limited by quantum mechanics, where zero-point motion fluctuations in the quantum ground state combine with the uncertainty relations to yield a lower limit on the measured average displacement. One implementation that might allow near quantum-limited sensitivity is to use a single electron transistor as a displacement sensor. The exquisite charge sensitivity of the SET a cryogenic temperature is exploited to measure motion by capacitively coupling it to the mechanical.

Atila Novoselac and Jelena Screbric 2001 have done the studies and design of cooled and ceiling and displacement ventilation (CC/DV) systems in buildings. If the building is properly designed, the combined CC/DV systems can provide better indoor air quality but also the thermal comfort level compared to the widely used variable air volume mixing systems. The cooling load removed by displacement (DV) is an important key design parameter and the low DV load has a positive effect on thermal comfort due to a small

vertical temperature gradient, yet also has a negative effect on door air quality due to the increased mixing of room air. Mostly, the impact of the room height on the temperature and contaminants concentration profiles is unimportant in the occupied area. One of the most important in CC/DV is that the systems are more effective in removing active contaminants (as indicated by CO₂) than passive contaminants (example: VOC_s). There are several points that same to very important like, the consideration risk on the chilled ceiling panel is high because of the high humidity ratio in the region that is close to the panel. To prevent that condensation on the panel, it is important to properly control the system for transient regimes, such as to minimized infiltration of humid outdoor air and startup and to considerate the shutdown periods. CC/DV system may or not decrease energy consumption depends on the supply air temperature, cooling load and outdoor airflow rate. The authors concluded that, it is important to develop design guidelines for CC/DV systems for US buildings because of many raisons, like, climate, building layout, and cooling load can be different from those studied elsewhere.

Young-Seog Kim and David J. Sanderson (2004) relationship between maximum displacement and fault length has been studied widely, mainly in attempts to understand how fault geometry varies over different length scales. Individual data sets are sampled over limited length scales and value of the maximum displacement and length are generally poorly correlated, thus relationships are usually postulated on the basis of combining different data sets. Failure to resolve low-displacement tips and damage area leads to underestimates of length and exclusion of fault drag leads to underestimate of displacement maximum. The measurement of non-central fault traces leads to underestimates of both displacement maximum as well as length and understanding of displacement maximum over length. The authors suggest that there may be systematic differences between the displacement maximum and length ratios where length is measured parallel or normal to the displacement vector, and where the growth histories of individual faults vary due to the nature and number of slip events, connection, and reactivation.

3. Objective, Methodology and Data sources:

A large number of documentary sources were reviewed ahead of the field mission in Kintinian, including press articles covering the investments of AngloGold in Guinea and the involuntary resettlement of the Kintinian communities after collection of secondary data, the data have been suitably considered, theoretically. The objective of this study is to find out how and why the population of Kintinian suffers while displaced by AngloGold Ashanti in Guinea, and also the raison why the people of Kintinian have been displaced without telling to the population.

a- About the mining company:

AngloGold Ashanti Limited (“AngloGold”) is a South African mining company listed on the Johannesburg stock exchange that operates in South America, Australia and other African countries. In

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

b- About the NGOs leading the investigation:

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

4. Physical violence and intimidation

a. Factual findings

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

Failed negotiations about local job creation and other demands communicated to SAG. A delegation of eleven negotiators allegedly met with the then-Siguiiri Prefect, M. Cheick Mohamed Diallo (“former Prefect”) on several occasions in September and October 2016. It is reported that the former Prefect

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

b. Responses from other actors

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

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

c. Analysis of the facts in light of applicable standards

Consistent statements made by interviewees, press articles published at the end of 2015, the personal impression of the Siguiiri Prefect about the truthfulness of the Declaration issued by CECIDE and MDT, and the mission report authored by the Captain of the 3rd military region of Kankan, all support concluding a

certain level of collaboration between SAG and security forces during the inventory process at the end of 2015. SAG's isolated position, denying all the allegations against it without any reliable element of proof, cannot stand in the face of witness statements and contemporaneous reports. SAG's position further fails to answer two key questions: (1) Why did SAG wait for security forces to arrive on November 24 to start the inventory on December 5, a process it had planned to begin on September 11 and end on October 6? (2) Why did SAG not wait for the complete and final withdrawal of all security forces to launch its inventory process?

SAG's responsibility

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

Guinean State's responsibility

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

5. Contested legality of signed resettlement agreements

a. Factual findings

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

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

Refusal to sign the resettlement agreements. At the time, around one hundred households were refusing

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

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

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

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

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

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

Households were forced to sign the agreements. It is also relevant that most interviewees did not feel

like the terms of the agreement were negotiable or that they could refuse to sign. One can hardly identify a single individual who understood that signing the agreement and handing over his land was his choice to make. For example, property owners said that “it took it or leave it,” “they told me that if I didn’t accept I would lose”, we were threatened.” In certain instances, the negotiation and the discussion cannot have occurred as several people reported having signed the covenant the day it was presented to them.

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

a. Responses from other actors

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

b. Analysis of the facts in light of applicable standards

Voluntary transaction, not expropriation. All parties agree that the resettlement of Area One residents does not fall within the legal framework of an expropriation. Indeed, Guinean law requires three steps for any involuntary resettlement to qualify as legal expropriation: a public interest decree, a land study and a transferability decree.⁵⁰ Outside of this strictly defined legal framework, a mining project may not affect anyone’s constitutionally-protected right to property without the voluntary consent of its holder. The relevant legal Irregularities in the signed agreements impact their legality. Everyone was forced to sign the agreements memorializing an allegedly voluntary transaction. The lack of consent is blatant here, as detailed in the factual findings section above. Yet, without a public interest decree, each property owner should have been free to refuse to sign the agreement – here, no one felt like they could refuse to sign. Prior to the signature phase, a number of irregularities were found in the agreements that directly impact their legality. The Guinean Civil Code provides that legal agreements require the parties’ consent, consent that is not valid if given by mistake (e.g., without understanding the scope or subject matter of the contract) or obtained through violence, including the threat of physical violence or harassment. The facts uncovered during the investigation confirm that the Area One resettlement agreements were signed based on incomplete – sometimes nonexistent – information and in a context of threat and intimidation. In addition, the resettlement

agreements include provisions referring to documents that were unavailable to signatories. Indeed, the agreements refer to the RAP on several occasions even though the RAP was not shared with the affected communities. Signatories cannot be held to contractual provisions they were unable to understand – or know, even – and that they agreed to by mistake. This means that the agreements may be null and void and that SAG may be liable for damages.

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

It is important to note here that article 653 of the Guinean Civil Code provides that “violence renders a contract null and void if it was exercised by a person other than the one benefiting from the agreement.” Thus, even if SAG was not the direct perpetrator of the violent actions, the resettlement agreements would be null and void.

6. Lack of legally required information and consultation

a. Factual findings

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

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

community consultation has a detrimental impact, including on women, who are particularly vulnerable in the resettlement context.

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

No local access to the RAP. At the start of the investigation, CECIDE and MDT contacted SAG to request a copy of the RAP. Despite several requests by telephone and email, SAG did not provide the document. SAG also failed to respond to similar demands made by Communities First. It took an in-person meeting between Communities First and an AngloGold official during an IFC workshop in Washington DC for the civil society organizations to finally obtain a copy of the RAP, without its annexes. It took another four months for them to receive all annexes to the RAP.

b. Responses from other actors

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

c. Analysis of the facts in light of applicable standards

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

Failure to verify effective consultation by local community representatives. SAG failed to follow the RAP's recommendation that a single committee would not be sufficient to represent the different interests and opinions within the affected communities. Regardless of this advice, SAG created only one local negotiation committee. SAG also disregarded the IFC Performance Standards (PS) that it committed to respect. Under PS1: "when the stakeholder engagement process depends substantially on community representatives, the

client will make every reasonable effort to verify that such persons do in fact represent the views of Affected Communities or citizen and that they can be relied upon to faithfully communicate the results of consultations to their constituents.” Here, SAG does not appear to have satisfied itself that the representatives of the community had expressed the opinion of affected communities.

The standard further requires that “the client will undertake a process of consultation in a manner that provides the Affected Communities with opportunities to express their views on project risks, impacts and mitigation measures that allows the client to consider and respond to them.” Here, affected communities were not allowed to express their views; the former Prefect detained their alleged representatives when they came to express their opinion.

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

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

7. Paltry compensation

a-Factual findings

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

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

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

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

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

b. Responses from other actors

SAG asserts that it has met all of its commitments. AngloGold denies all allegations regarding flaws in the inventory process and notes that Siguiiri’s planning director and the director of urbanism had been involved. Lots in the village were compensated at 10,000 GNF/m² (less than USD1/m²) for land located

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

8. Inadequate measures to restore communities' livelihoods

a. Factual findings

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

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

b. Response from SAG

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

When asked about projects designed to compensate communities' project-related damages, SAG answered: “an economic development program was designed for the larger area of Siguiriri that will also benefit affected residents of Area One. The economic development program includes: the production of fruit and vegetable (including cashew nut), fish farming, brick production, sewing and embroidering as well as capacity training. This program will be presented to the affected communities for assessment and adoption when appropriate.”

c. Analysis of the facts in light of applicable standards

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

9. Serious barriers to access to remedy

a. Factual findings

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

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

b. Response from SAG

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

c. Analysis of the facts in light of applicable standards

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

12- Conclusions and recommendations

The capability approach has proved to be a powerful analytical tool in the case of internal displacement through its evaluation of social arrangements and process according to the extent of freedom people have to promote or achieve functioning of value (otherwise known as capabilities) (Alkire, 2005). Unresolved protracted internal displacement situations are an indicator of capability deprivation because they continue to perpetuate poverty, social and political deprivation. This has also highlighted the need to focus on IDPs as a distinct category. Consequently, if human development is to be seen as the expansion of capabilities (Sen, 1999a); internal displacement represents a situation of distinct 'non-freedom' and so is an affront to human development. The good life is a life of genuine choice, not one in which a person is forced into (Sen, 1999a). The causes and consequences of internal displacement are complex and varied but the strength of CA lies in its ability to incorporate a plural informational base and in doing so highlight the multidimensional nature of well-being.

Although population displacement has been a prerequisite of growing economies especially in developing countries it affects the livelihoods of the households which are involuntarily displaced to allow such development projects to take off. According to Cernea, the most vulnerable households are mainly affected and they lose both natural and man-made physical

Capital as well as human and social capital, by destructing the patterns of social organization and mutual help networks.

During the last two decades of the previous century, the magnitude of forced population displacements caused by development programmes was on the order of 10 million people each year or some 200 million people globally during that period. Thus, by their frequency, size, and dire consequences, development-caused displacements have become a problem of worldwide proportions.

The most widespread effect of involuntary displacement is the impoverishment of considerable numbers of people. In India, for instance, researchers found that the country's development programs have caused an aggregate displacement of more than 20 million people during roughly four decades, but that 75 percent of these people have not been "rehabilitated"⁵. Their livelihoods have not been restored; in fact, the vast majority of development resettles in India has become impoverished Kerala has emerged as a model of development by achieving many significant social indications, inspire of its failure to attain proportionate growth. In a state like Kerala, with its dense population having predominantly small land holding, the impact of development induced displacement is quite serious. The displaced and the project affected have been invariably the poor and the marginalized. From time to time, Kerala has also acquired 4% of her geographical areas for various projects. Considering the population density of Kerala, the rate to displace is more than the national level.

13- References:

- 1- Adam, A. B., Owen, J. R., & Kemp, D. (2015). Households, livelihoods and mining-induced displacement and resettlement. *The Extractive Industries and Society*, 2(3), 581-589.
- 2- Adeola, R. (2017). The Legal Protection of Development-Induced Displaced Persons in African. *African Journal of Legal Studies*, 10(1), 91-104.
- 3- Messenger, L. A., Arnez, A. M., Stiles-Ocran, J. B., Coulibaly, M. B., Larsen, M. L., Miller, N., ... & Rowland, M. (2012). Insecticide-treated durable wall lining for malaria control: multicentre studies from Africa and South-East Asia. *Malaria journal*, 11(1), P121.
- 4- Boubacar, B. (2015). Regolith Mapping and Gold Geochemical Anomalies in the Siguiri Gold Mine of AngloGold Ashanti, Guinea, West Africa (Doctoral dissertation, Rhodes University).
- 5- Hilson, G., & Nyame, F. (2006). Gold mining in Ghana's forest reserves: a report on the current debate. *Area*, 38(2), 175-185.
- 6- Dabo, A. (2015). The impact of bauxite mining on the health of women and children in Sangaredi (Guinea-West Africa)(Doctoral dissertation, Indiana University).
- 7- Brundin, L., Flock, B., & Flock, Å. (1992). Sound induced displacement response of the guinea pig hearing organ and its relation to the cochlear potentials. *Hearing research*, 58(2), 175-184.
- 8- Kaplan, S. S., & Reckling, F. W. (1971). Fracture separation of the lower humeral epiphysis with medial displacement: review of the literature and report of a case. *JBJS*, 53(6), 1105-1108.
- 9- Owen III, A. H. (1987). Orthodontic/Orthopedic Therapy for Craniomandibular Pain Dysfunction Part A. Anterior Disk Displacement, Review of Literature. *CRANIO®*, 5(4), 357-366.
- 10- Diccico-Bloom, B. (2004). The racial and gendered experiences of immigrant nurses from Kerala, India. *Journal of Transcultural Nursing*, 15(1), 26-33.
- 11- Shanavas, A., & Kumar, B. M. (2003). Fuelwood characteristics of tree species in homegardens of Kerala, India. *Agroforestry Systems*, 58(1), 11-24.
- 12- Kuriakose, S. L., Sankar, G., & Muraleedharan, C. (2009). History of landslide susceptibility and a chorology of landslide-prone areas in the Western Ghats of Kerala, India. *Environmental geology*, 57(7), 1553-1568.
- 13- Kletzer, L. G. (1998). International trade and job displacement in US manufacturing, 1979-1991. Imports, exports, and the American worker, 423-72.
- 14- Dempster, P., & Aitkens, S. (1995). A new air displacement method for the determination of human body composition. *Medicine and science in sports and exercise*, 27(12), 1692-1697.
- 15- Verhoef, A., McNaughton, K. G., & Jacobs, A. F. G. (1997). A parameterization of momentum roughness length and displacement height for a wide range of canopy densities. *Hydrology and Earth System Sciences Discussions*, 1(1), 81-91.
- 16- Szablowski, D. (2002). Mining, displacement and the World Bank: A case analysis of compania

- minera antamina's operations in Peru. *Journal of Business Ethics*, 39(3), 247-273.
- 17- Lavie, S., & Swedenburg, T. (Eds.). (1996). *Displacement, diaspora, and geographies of identity*. Duke University Press.
- 18- Michael JS Williams, & Duke University Press. (1988). *A world of words: language and displacement in the fiction of Edgar Allan Poe*. Duke University Press.
- 19- Escobar, A. (2003). Displacement, development, and modernity in the Colombian Pacific. *International Social Science Journal*, 55(175), 157-167.
- 20- Kuwert, P., Braehler, E., Freyberger, H. J., & Glaesmer, H. (2012). More than 60 years later: the mediating role of trauma and posttraumatic stress disorder for the association of forced displacement in World War II with somatization in old age. *The Journal of nervous and mental disease*, 200(10), 911-914.
- 21- Terminski, B. (2013). Development-induced displacement and resettlement: Theoretical frameworks and current challenges. *Development*, 10, 101.
- 22- Novoselac, A., & Srebric, J. (2002). A critical review on the performance and design of combined cooled ceiling and displacement ventilation systems. *Energy and buildings*, 34(5), 497-509.
- 23- Kim, Y. S., & Sanderson, D. J. (2005). The relationship between displacement and length of faults: a review. *Earth-Science Reviews*, 68(3-4), 317-334.

