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Fédération Internationale des Ligues des Droits de l'Homme
ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO, ET DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES
INTERNATIONAL FEDERATION OF HUMAN RIGHTS
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Gold Mining and Human Rights in Mali

Introduction

Gold mining has become a major economic activity in Mali since 1990, its second source of export revenue after cotton. Its fast growth has led to much hope for development, a hope that has been bolstered by the past few years' boom in the price of gold on the global markets.

Gold mining, an economic activity bearing high potential, could indeed contribute to improvement in the country's Human Rights situation by generating employment in the mining sector, which in turn could pull up other sectors of the economy. It should also improve state revenue and therefore the state's capacity to assume social expenditure (education, health, infrastructure, etc.). In addition, the establishment of a mining industry is often accompanied by local-development programmes intended to attenuate or offset the effects of mining activity, particularly on the environment.

Yet in all these aspects the contribution of the mining sector to Malian development has been negligible, when not negative. Mali remains poor, very poor, nearly the poorest of countries: it ranks 175th among 177 countries in terms of human development. Though it is the third gold producer in the continent, its per capita GNP is equal to USD 380 whereas the average in sub-Saharan Africa is USD 745. Behind this economic data lies a social reality made up of daily violations of many basic Human Rights, specially in their economic and social dimensions: nearly one-third of the population is underfed, less than one out of two persons has access to drinking water, just one out of five persons can read and write, more than one out of ten babies die before the age of one and life expectancy is 48 years.

What can explain that Malian gold is of such little benefit to the population? First of all, the strong position of the companies gives them an advantage in every aspect: they play up their voluntary programmes in favour of the local communities as per their "corporate social responsibility" (CSR), even though the programmes have very limited, and sometimes perverse results; at the same time, behind the scenes, they obtain exemption from taxes and social obligations so they can draw the highest possible profits from their activity, and sometimes they go as far as violating existing regulations when they consider them to be too binding.

Another explanation factor can be found in the way the Malian gold sector actually works, with practically no stimulating effect on the rest of the economy. The sector is in fact largely cut off from the other economic sectors and is completely export-oriented. Mali has thus developed a "gold monoculture" analogous to its cotton monoculture, as another primary resource that is to be processed and marketed abroad. The problem here is the economic development model that has been implemented by Mali's successive governments under the pressure of the international financial institutions.

This situation is also the result of the state's weak position and ambivalence despite its prime responsibility to national development guidelines and to the population's economic and social rights. Suffering as it is from inadequate resources and endemic corruption, the Malian state's role has been made even weaker by the way the previously state-owned mining sector is now set up: the state now plays the schizophrenic role of regulator and tax collector on the one hand, and shareholder on the other. As a consequence, either because it cannot or will not, the state does not play its role as regulator and supervisor of these companies' activity, nor that of distribution of the national revenue for the benefit of the population.

The Malian population therefore reaps practically no benefit from its gold, whether in terms of employment, related economic activities, public revenue or social expenditure.

1. Companies favour voluntary actions but avoid legal obligations

Multinational corporations are at the heart both of the globalisation process and of its dysfunctions. Their economic – and also political – power, gives their actions significant impact on the respect of individual freedoms. This is especially true of the mining companies. The World Bank presents this economic sector as an opportunity for major development in the developing countries. Yet the richest countries in minerals are also the most politically unstable, usually featuring internal and/or external violence. Even when the mining industry does not actually support the militias or feed a conflict, local populations rarely benefit from mining activity in their area and mostly suffer, instead, from the environmental deterioration the activity induces.

These findings have given rise to broad discussions at the international scale to prompt these companies to respect their Human Rights obligations. The companies have also implemented a number of voluntary initiatives, including the development of codes of conduct and projects in favour of local communities. The case of gold mining in Mali, however, clearly shows how these large corporations, while they are playing up the local initiatives they take on a voluntary basis in favour of the communities, they are also benefiting from significant tax exemptions and eschewing part of their legal obligations and social responsibilities.

1.1 A strategy for buying "social peace"

Local-development programmes…

Mali's two main gold mine operators, SEMOS in Sadiola and Morila SA on the Morila site, have set up community-development programmes aimed at supporting local development in the mining zone.

For instance, Morila SA set up a community-development fund covering four townships, with an annual budget of USD 250,000, 60% of which are assigned to the mayor of Sanso for community development in four villages, the remainder being distributed between the Bougouni circle and the Sikasso region. According to the company's reports, the fund has financed the construction of several classrooms or schools, the recruitment of ten teachers, the electrification of a health centre, the construction of a maternity clinic and that of two mosques. It also finances part of the wages and the infrastructure of the state police of Sanso, the city closest to the mine.

… and their failings

The funds, intended to attenuate the negative impact of mining activity and even to contribute to the improvement of the local populations' living conditions, mostly have a limited impact and sometimes carry perverse effects. Their contribution to respecting Human Rights is therefore ambiguous.

First, because these funds are often assigned by the company at its own discretion. Thus, although the fund was set up in 2000, local officials knew nothing of its existence until the new director of Morila SA was appointed in late 2005. Similarly, the decision to build mosques was made at a time when the consultation process was opaque and did not include the voices of the different population groups (elected officials, young persons, women, etc.). In any case, it is the company that makes the final decision on the projects to be funded according to its own evaluation of priorities and of what constitutes "sustainable development".

Compared with the company's total turnover, the sums granted to local development are skimpy and the financed projects limited, for lack of state funds. Thus, in the newly built schools and classrooms, there are more than one hundred children per class, which is the standard in Mali. These conditions are far from complying with the children's right to education.

Another problem connected to this type of local development project: the companies often cover the financing and are also in charge of the actual implementation of general interest services, which in principle are supposed to be either directly supplied or regulated by the state. What is the state's voice or control with regard to the qualifications of the teachers that are hired or to what is taught at school? What guarantees respect of the right to safety and the independence of the police force, from the moment that the local state police is financed by the private corporation occupying the site?

Moreover, it is important to stress that the financed projects are inevitably short-term ones, the operating life of the mines often being limited to between ten and twenty years. In the case of Morila, the mining is planned to last about 15 years, ending in 2015. The projects currently developed by the Morila SA fund do not support sustainable development and the departure of the mining company will leave the region to its own resources once again. Company projects are thus in fact not part of a long-term development plan fixed by the state.

1.2 Insufficiently respected obligations

States must not only respect but also protect the Human Rights of every individual under their jurisdiction. They must in particular guarantee: the right of equality and non-discrimination; the right to individual safety; workers' right of association and of collective bargaining; and freedom of speech. In addition, they must guarantee the right to enough food, the right to adequate housing and the right to education. The Malian state has ratified a series of international instruments that protect these rights: in 1974, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights; in 1987 and 1998, the International Labour Organisation (ILO) conventions on the freedom of association and in 1960, the ILO right to collective bargaining; in 1980, the African Charter on Human and Peoples' Rights.

Even when the state of the territory on which a transnational corporation operates does not take all the necessary steps to guarantee these rights, the corporation is held to abstaining from benefiting from these shortcomings: according to the OECD Guidelines for Multinational Enterprises, they must 'respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments' international obligations and commitments'.[1] In 2003, the U.N. Sub-commission on the Promotion and Protection of Human Rights

[1] Chapter II (General Principles), Paragraph 2, of the "OECD Guidelines for Multinational Enterprises".

adopted the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,[2] which proposes an authorised interpretation of the obligations of business enterprises with regard to Human Rights, defined on the basis of existing international law on Human Rights. The text states: ‘Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognised in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.’ (Principle 1)

At the national level, even though – as we shall see further on – companies negotiate significant social and tax exemptions, all existing national legislation is to be applied to companies (labour laws, the right to individual physical safety, anti-corruption regulation, etc.). Mining companies also have specific rights and obligations in terms of the mining code that regulates the conditions for the opening, mining and closing of the mines, as well as the working conditions of mine employees and the role of state.

To what extent do the mining-sector companies fulfil these national and international obligations to respect, to protect and to promote these different Human Rights? Let us take a few examples.

Labour laws

In Mali, mine employees are for the most part specialised skilled workers benefiting, in the main sites, from good safety and wage conditions. Yet workers’ rights are still being violated: limitations imposed on the right of association, insufficient access to health infrastructure and qualified health staff on the mining site, non-payment of production bonuses (see Part 3.)

As for the workers’ living conditions, the Malian mining code contains specific provisions protecting the workers’ rights. It imposes on the companies to make certain that the workers are housed ‘in conditions of hygiene and health as stated by the law’ (Article 125) and to contribute to the improvement of the infrastructure in health and education ‘responding to the ordinary needs of the workers and their families’ and ‘to the organisation at the local level of leisure facilities for their staff and their families’ (*ibid.* and Article 24 of the Collective Labour Agreement of the mining sector). As we have seen, these obligations are partially fulfilled by the local-development fund and presented as initiatives implemented voluntarily by the company as per its social and environmental responsibility.

Right to health

Access to the health centre is de facto reserved for the mine employees and their families. Several employees, laid off after invalidating occupational accidents, were not able to benefit from the necessary care because they were unable to pay for it. This type of practice is not only contrary to workers’ rights, but also to everyone’s right to good health.

Otherwise, the opening of the mines brought with it considerable development of HIV/AIDS in the regions involved as a consequence of the growth of prostitution around the sites. In the case of Morila, the only step taken by the company was to approach the issue with posters encouraging employees to take prevention measures against the epidemic.

Protection of the environment

Other than the obligations connected to the respect of the person’s right to health, which is affected by the companies’ activities, companies are held to respecting the environment-related provisions of the mining code. According to the mining code of 1999, companies must: present an environmental-impact evaluation; before their establishment, complete a survey on the state of the environment of the site;

[2] U.N. Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003).

provide yearly reports on the state of the environment; and rehabilitate the site after termination of the mining activity.

Yet after the closing of the Syama mine, Mali's oldest gold-mining site, studies showed that the subsurface water had been contaminated by sludge-basin effluents, that the air had been polluted by the dewatering of the basin and the mining, and that the soil had been contaminated by oil and petroleum seepage.

The air and water pollution issue is precisely at the heart of the conflict currently opposing the residents of the region of Sadiola to the mining company SEMOS. The first stage of a survey conducted by the National Hygiene and Health Department on the sanitary and environmental situation of the communities affected by the Sadiola mine revealed an abnormally high incidence of lung diseases and miscarriages in the villages around the mine. Since mid-2005, the National Department has been waiting for the release of the funds that will allow it to operate, so it can conduct the second stage of its survey and confirm the first results. Ironically, these funds have been requested from SEMOS (which had financed the first part of the survey), which is obstructing the pursuit of this survey by constantly asking for changes in the research protocol to be applied. The power to accept – or to block – control of the environmental and sanitary impact of this mine is therefore totally dependent on the mining company itself.

The right to individual safety

As in the case of Morila, financing the local state police seems to be a usual practice of the mining companies in Mali and Burkina Faso. For the Burkinabe Minister of Mines, the police is thus rewarded for the additional work induced by the massive inflow of migrant workers without the government's having to review the collective labour agreement for civil servants.

This situation constitutes a serious threat for the safety of the local communities and for workers' rights, and questions the impartiality with which the police is assumed to exercise their mission. Thus, in Morila, following a trade-union conflict conducted in 2005, former strikers and trade-union leaders were arrested and detained, some for more than a year, with no real ground nor probative element (see box).

The Shortcomings of the State Police and of Justice in Sanso:
The Bougouni Detainees

On 14 September 2005, at 3:50 a.m., two buses rented by Somadex and parked about ten yards away from the Sanso state police burned down. The incident occurred during a months-old conflict between the trade-union committee and management at Somadex, which runs the mining operations in Morila.

The high point of the conflict had been a 72-hour strike in early July 2005. All through the summer, dialog remained impossible, despite mediation attempts of the trade-union central and Malian political and administrative authorities. Out of 500 employees, 311 had refused to go back to work and tensions among the strikers, the non-strikers and management had spread to the neighbouring village of Sanso, where the mine workers lived.

In the hours following the fire, policemen made 32 arrests for complicity in arson. All those charged were former strikers, and all of them stated their innocence. A series of elements questioned the reasons for their arrest and the way the investigation was conducted:
* the policemen who were sleeping nearby to where the buses caught fire saw and heard nothing;
* there was no exploration of the possibility that the fire may have been accidental, and yet the policemen declared that the engine of one of the two buses had been left on;
* an inquiry was opened against X, those charged were therefore considered as the authors of an arson for which there was no chief guilty party.

In addition, the connections between the state police and Somadex are at the very least disturbing. In the framework of the financing of the local communities in which it operates, Morila SA (the company for which Somadex subcontracts the mining) subsidises the wages of the Sanso police. The policemen admitted, in the background description of their inquiry, that they had received, not long before, a list of about thirty "main ringleaders" of the protest movement, to be closely watched. The list had been provided to them by the human resources department of Somadex...

Auditioned by the justice of the peace of the court of Bougouni, after one month and six days of detention, 23 of the 32 persons charged were freed on parole awaiting trial. According to the nine other persons that were charged, their continued detention was explained by their reputation as leaders of the protest movement. Thus: Mamadou Sogoba was in charge of posting the trade-union leaflets; Adama Traoré hosted the trade-union committee meetings in his home; Karim Guindo is the administrative secretary of the trade-union committee, and declared that he was not present in Sanso on the day of the fire; Oumar Touré, a former miner laid off by the company, has remained close to the trade-union committee. These detainees were finally freed after 14 months of detention, in November 2006.

Under pressure from Malian civil-society organisations and the international community, companies are taking steps to respond to the criticism, in particular by setting up community-development funds. As mentioned above, the funded programmes are far from constituting a panacea: they are not always participatory, are not designed for the long term, and all too often, they serve to camouflage some of the companies' failure to meet their legal obligations to protect Human Rights and the environment. Moreover, they sometimes generate confusion between what comes under the responsibility of companies and what comes under that of the state. It is in fact the latter's prime responsibility to respect Human Rights and to enforce them. States are thus in particular held to auditing the companies' activities to make sure that there is no violation of Human Rights and no environmental pollution; they are also held to ' . . . take steps . . . to the maximum of [their] available resources, with a view to achieving progressively the full realisation of the [economic, social and cultural] rights recognised in the . . . Covenant . . . .' (Article 2 of the International Covenant on Economic, Social and Cultural Rights).

2. An economic sector of no profit to the Malian population

The international financial institutions, followed by the Malian government, had high expectations that the growth of the mining sector would be a source of development for Mali. It turns out that this sector has hardly any impact on the overall economic development of the country[3] and on the improvement of the population's living conditions. This is explained by a number of factors.

2.1. An autarkical sector aimed at exporting raw materials

Gold is a primary product with low added value, which contributes very little to the national economy, all the less that its autarky is aggravated by the structural shortcomings of the Malian economy: enclosure, poor state of the infrastructure and underindustrialisation. The gold sector has not engendered local processing activities. Asll the gold produced in Mali is exported to South Africa (59.2%) and Switzerland (40.8%). The mining sector has therefore not led to the establishment of any processing industry, which could have been a source for jobs, technological investments, infrastructure development, supplier activities, etc. In Mali, gold therefore constitutes a revenue but not a source of industrial development.

[3] In 2004, the mining sector generated 7% of the national wealth, i.e. barely more than the breeding and fishing sectors. Source: *Mali: Statistical Appendix*, IMF Country Report N° 06/89, 2006.

Moreover, the mining sector generates very few jobs. It provides work for only 12,000 people, that is to say barely one-tenth of the employees of the formal sector, while cotton employs 3.3 million people.

In addition, the gold sector has very little pulling effect on the other economic sectors. According to the Malian national assembly, out of the approximately 690 billion CFA francs injected by the gold sector into the Malian economy between 1997 and 2005, nearly 50% went to the state via the Public Treasury, 42% to suppliers and 6.5% to employees. The part going to suppliers is therefore small, and concentrated in very few sectors: electricity, fuel, lubricants, office equipment, etc.

2.2. A sector geared to the profit of foreign investors

In the beginning of the 1990s, the World Bank advocated the development of the mining sector in Africa to boost growth in the continent. At the same time, it came to the conclusion that African states were unable to own and manage this economic activity, which requires large investments, high technological capacities and good management skills, and is also risky because of its volatility. The World Bank therefore advised the sector to be privatised in order to attract private investors, which it judges as the only ones able to ensure its competitiveness.

The Malian authorities spared no efforts in seducing international investors by granting them financial aid[4] as well as by adopting regulations favourable to them. The mining codes of 1991 and 1999 are as attractive as can be, particularly with regard to taxes. The 1991 code thus offers exemption from payment for the first five years of activity on Malian soil: companies pay no VAT, no taxes on services, no taxes on their profits. Companies are also free to transfer their earnings to foreign accounts. According to the World Bank, Mali is today the best performer in sub-Saharan Africa in the area of investor protection.[5] These tax exemptions and other privileges granted to the companies have major consequences on the state's budget, as well as on economic development (fund repatriation is detrimental, for example, to the development of the banking sector), and even on the working and living conditions of the population.

Through its direct investments, its loans and its credit guarantees, the World Bank has also actively contributed to the establishment of foreign investors.[6] Today, however, it acknowledges that countries' efforts to attract foreign investors were mostly unproductive and that the development of the mining sector did not really contribute to reducing poverty and to sustainable development. Henceforth, making certain that these industries' benefits actually reach the poorest is at the top of its official objectives. In its view, this does not mean that the tax burden on private companies should be increased, and even less that the state should be entrusted with the mission of managing mining activity on its territory, but rather that the tax system for mining should be rebalanced in such a way as to act as an incentive for private enterprises to invest in initiatives in favour of local communities and the region. We have seen in the first part of this paper the limits and inherent risks of such initiatives.

Today, the Malian gold sector is still dominated by foreign investors: three international giants (Anglogold Ashanti, Rangold and IAMGold) monopolise all the mining activities, while about fifteen smaller companies, most of them Canadian, are exploring non-mined zones in search of new deposits. Extraction of Malian gold is particularly profitable for these companies: in addition to the generous tax exemptions they are granted, Malian gold is the cheapest and most cost-effective in Africa. Despite the fact that Mali is enclosed and the price of electricity exorbitant, Malian mines are highly competitive because the mines are at the surface and the wages are low. This is evidenced by the global accounts of Ashanti Anglogold, the operator in Sadiola and Morila: in 2005, its cash costs amounted to USD 220 per ounce in Mali, compared to USD 300 in Tanzania and in Guinea, USD 330 in Ghana and USD 430 in

[4] Between 1992 and 2002, the state granted 123 billion CFA francs to the mining industries as support to the private sector. Source: "Growth Support Project", Report N° 31388 ML, World Bank, 21 January 2005.

[5] *Country Brief*, World Bank, September 2006, see: www.worldbank.org/ml

[6] It has invested USD 108 million in the Malian mining sector, has become minority shareholder in the mines (through one of its branches), has guaranteed credits for AngloAmerican, etc. Source: "An Independent Review of the World Bank. Support to Capacity-building in Africa: The Case of Mali", Report N° 32908, 14 May 2005

the South African mine Savika.[7] With the price of gold on the rise and costs maintained at low levels, the profits gained from Malian gold are constantly growing: USD 108 per ounce in 2003, USD 230 in 2004 and USD 245 in 2005.[8]

In the end, all of the Malian authorities' efforts to attract foreign investors to the mining sector did not contribute to improving the attractiveness of Mali for investors in other sectors.

3. A far-from-perfect exercise of the state's responsibilities

As seen previously, the privatisation of the mining sector begun in the 1990s gave the lion's share to private investors. It also contributed to destabilising the state, the position of which was already usually weak with regard to the economic, and sometimes political weight, of multinational corporations. At the same time, the state still has interests, as shareholder, in the mining-industry sector. It is therefore simultaneously tax collector/auditor and shareholder, as well as regulator and regulatee. In the end, it is often in a position where it either does not wish to, or simply cannot exercise its role as public authority.

3.1 A schizophrenic position

The 1991 mining code, which marked the free-market turn in Mali's mining policy, reserves for the state a minority share of the capital of the mining companies.[9] The state is therefore systematically a minority shareholder of the country's gold mines, alongside the large international corporations. This situation places the state in a schizophrenic position: on the one hand, it is tax collector and regulator, and on the other it is shareholder. The state is therefore simultaneously regulator and regulatee, tax collector and taxpayer, auditing body and economic agent.

This situation is all the more detrimental that there are important conflicts of interest among its different roles. Thus, while the state-as-tax-collector's interest is to maximise tax revenue, therefore the taxes on the companies, the state-as-shareholder's interest is to maximise its profits after taxes, therefore to get the taxes lowered. The life span of a mine may be where the divergent interests of state and operators are most clearly opposed. Indeed, tax exemption incites companies to overexploit the mine reserves during the initial five-year period during which they do not pay any taxes. Thus, when its tax exemption ended in 2005, the Morila mine had already extracted more than half the gold reserves, whereas its initial extraction plan was for a 13-year mining period. This "mining race" is contrary to the interest of the state as guardian of the general interest of the Malian population; the state's interest is for the life span of the mine to be as long as possible so as to obtain tax revenue during a more extended period and to maintain employment and economic activity for the population.

By thus assigning two divergent roles to the state and its representatives, Malian regulation, drawn up under the ferula of international donors, forces the government into a permanent split and neutralises its capacity to defend the Malian people's interests. This duality was officially denounced in a 2004 report of the General Geology and Mines Department: "The Commission notes that the auditing of these companies by these bodies (the Ministries) has always been carried out in such a way as to favour the state as shareholder to the detriment of the state as public authority." In labour-dispute or environmental-pollution cases, the Malian state has thus either taken the companies' side or simply ignored their violations.

For instance, when in 2002-2004, Morila SA employees disputed company management to obtain the

[7] *Annual Report 2005*, www.anglogold.com

[8] *Fourth Review of the Three-year Arrangement under PRGF*, IMF, 29 June 2006.

[9] The state can own up to 20% of the capital in mining companies. It should be stressed that public participation in the mining companies' pool is not practised in all countries (not in Tanzania, for instance). Its advantage is to open the doors of the board to representatives of the Ministries of the Economy, of Mines and of Public Domains.

payment of unpaid production bonuses, the government abstained from taking sides. According to Article 265 of the Collective Labour Agreement, employees are to receive production bonuses when mining objectives are topped; the amount of the bonus is correlated to the number of units produced beyond the objective. While employees were demanding strict application of the Collective Labour Agreement, management wished to allocate the bonuses according to its own discretion. A long legal battle ensued: everyone, from the Sikasso labour inspector to the national arbitration council, judged in favour of the employees, but management appealed the decisions. As for the government, it abstained from taking a stand. In the end, the employees obtained only 500 million CFA francs of bonuses out of the 17 billion they had demanded. Payment of this bonus, which constitutes a legal obligation, was therefore left to the free appreciation of the private operators.

Another example: the total absence of reaction of the Malian authorities to the disastrous environmental impact of the Syama mine, although numerous documents indicate that the authorities as well as the World Bank have been informed of these problems for at least ten years.[10]

Tax collector, shareholder and regulator-auditor, the Malian state is wearing three different robes. The resulting contradictions are exploited by the mining companies in their rush to maximise their profits.

3.2. The state in a weak position

A very understanding tax collector

In the early 1990s, the mining companies in Mali obtained important tax breaks and they have endeavoured to keep them ever since. Moreover, they usually pay their taxes late, or only part of them.

According to the 1991 mining code, mining companies are exempted of all taxes during the first five years of mining. In 1999, the government adopted a new mining code, which reduced the tax exemption period from five to three years. None of the already established companies chose to “migrate” to the new code[11] and even the newly opened mines benefited from special authorisation not to have to comply with the provisions of the new code.

Thus the Loulo mine, opened in 2005, benefited from tax exemption on its profits for a period of five, and not three years. This provision constitutes a considerable advantage and guarantee for the companies that exploit it. Rangold, 40% owner of the Morila mine and 80% owner of the Loulo mine, thus benefited in 2005 from a tax refund of USD 11.5 million, thus making a net profit of USD 40 million. If ordinary tax regulation had been applied, this profit would only have amounted to USD 28.5 million, and share value would have lost USD 0.18.

It was because mining companies could choose to keep the 1991 code or obtain significant special authorisations regarding the new 1999 code that Mali was not able to take advantage of the historic production peak of 2002 to increase its tax revenue. The pressure from the companies to preserve their “tax exception” is once again in action today. Indeed, the Malian government, wishing to improve its tax revenue and pressed by the donors to optimise its tax collection, is currently considering eliminating the ad hoc tax exemptions accorded to certain economic sectors or agents. However, the exemptions conceded to the mining sector will not be questioned, which constitutes an additional indication of the privileged position that investors in this sector have been able to conquer.

Another problem for the Public Treasury: mining companies usually pay only part of what they owe the state. Thus, in the early 2000s, a tax conflict opposed the Malian administration to the mining

[10] See *Tarnished Legacy: A Social and Environmental Analysis of Mali's Syama Goldmine*, Oxfam America, February 2004.

[11] Yet this code also contains provisions that are favourable to investors, such as absence of supplementary taxation for supplementary profits.

companies. In December 2003, a public audit concluded that the Sadiola and Yatela mines owed the state about USD 15.6 million in unpaid taxes on profits plus penalties for 2000-2002. In its Annual Report of 2005, IAMGold, one of the shareholders of these mines, noted “that all taxes were properly paid and that the audit report was without merit”. The stand-off lasted to the end of 2005. As accord and satisfaction, the state obtained only one-third of the amount it was demanding… A new public audit is in progress today for fiscal years 2003 and 2004.

The state-as-shareholder captured as a hostage

The state obtains dividends in its capacity as minority shareholder of the mining companies. These amounted to 64 billion CFA francs for the 1997-2005 period, that is to say barely 10% of the contribution of the gold sector to the Malian economy. These are fairly small amounts compared to the profits acquired by the mining companies in Mali. Yet, just as in the area of taxes, the companies are in fact bad payers. Using their above-mentioned tax conflict with the state as an excuse, the companies claim they are warranted to take retaliatory measures, which they call conservation measures, by refusing to pay up the dividends they owe the state. Thus at the end of 2004, the state obtained only 4.6 million CFA francs out of the 25 billion that were due to it as dividends. The same situation was reproduced in 2005. In short, the majority shareholders are holding the state-as-shareholder as a hostage to keep it under pressure and to “punish” it for its tax-collection-related activities.

Even though the dividends are fairly moderate amounts, it is important to underscore their late payment and sometimes even non-payment, which reveals the mindset of the mining companies as having no qualms about further endangering the country’s fragile budgetary structure. To make ends meet every month, the government has no other choice than to solicit aid from the donors as emergency budgetary support, all of which further weakens its position with regard to the international financial institutions. In return for its financial support in 2005, the IMF has thus requested the state to reduce public expenditure by nearly 13% and to abandon its plan to subsidise the inland revenue tax on oil products, which would have made it possible to limit the hike in the prices of goods and services.

A powerless regulator and controller

As illustrated by the various examples of violation of the tax, social and environmental obligations committed by the mining companies, the Malian state does not always have the will or the capacity to enforce its legislation, nor to adopt legislation and policies in the long-term interest of its population. The non-application of the 1999 mining code is in this respect particularly symptomatic.

In addition, the state does not even have the resources to manage and to audit the mining sector, as it has neither the necessary financial and human resources nor the necessary instruments. It can therefore not audit the companies’ activities and their compliance with existing standards. A case in point is the production of refined gold of Malian origin. Once it is given up to the Swiss company Hargor Heureus SA, Malian gold disappears from the public radars; the state is not associated to any of the stages of ingot refining, and it so happens that goldsmiths do not pay the entire value of gold until the latter is refined …

Another example: one of the only three devices in all of Africa used to analyse the cyanide rate – an ordinary form of pollution in the mining industry – is in Mali. However, this technology, which costs nearly 30 million CFA francs apiece, belongs to the analysis laboratory of the company Morila SA., which turns over its data to the officials in charge of auditing the environmental impact of the Morila mine, the latter having no means to check the data.

Neither is the state able to obtain a general overview of the mining sector and its potential, given that it cannot count on reliable and updated data on the state of the reserves, the deposits discovered and the mines in operation. In September 2006, the Sysmin Project, financed by the European Union, gave the mining administration 4 geological maps and 21 geochemical maps of the topographic trenching carried out in several regions of the country. It took six years and 600 million CFA francs to complete these maps. It would therefore take a fortune to explore the 673 mineral sites counted on the territory, a large part of which would probably be profitable. Such deficiencies are keeping the Malian state from taking full advantage of its mining resources, but also from controlling the companies that explore them and those that exploit them.

It should finally be underscored that beyond the shortage of financial resources, it is specially human resources that are lacking in Mali to audit the mining sector. For Malian geologists, a job in the public mining administration is hardly attractive. Differences in pay between the public and private sector are indeed considerable: in five years, a geologist in a private company earns the equivalent of 25 years of wages in the public administration.

Findings and recommendations

Fifteen years after the boom in gold mining began in Mali, the population is still waiting to be able to benefit in any real way from its effects, whether in terms of industrialisation, the job market, the state of public finances or the level of social expenditure. Mali has offered international investors an environment that is excellent for them to make money but includes no guarantee for either the respect of basic rights or the long-term improvement of the population's living conditions. Companies maximise their profits with the complicity of a state that cannot, or does not wish to audit their activities and force them to respect their Human Rights and environmental-protection obligations. At the local level, companies buy social peace cheaply for communities with which they remain no more than a couple of dozen years at the most.

Yet the Malian state, the companies and the donors all have obligations to respect, protect and promote Human Rights. The Malian state, which ratified the International Covenant on Economic, Social and Cultural Rights in 1974, is in particular held to ' . . . take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the [economic, social and cultural] rights' recognized in the Covenant , the right to health, the right to education and labour rights, among others (Article 2). It has prime responsibility for and is the prime guarantor of these rights, which it is to respect and to enforce among all other actors, in particular companies, including foreign ones. Companies also have a clear obligation to respect, protect and promote Human Rights, in accordance with the principles of national and international law.

The FIDH therefore recommends

to the Malian state, that it should

- respect is obligation to respect, protect and promote Human Rights, in particular economic, social and cultural rights;
- fully assume its role as public authority, in particular by making certain its regulations are complied with (mining code, social legislation, taxing requirements) and by auditing the companies' activities;
- make certain that social and environmental obligations are integrated into negotiations on investment agreements and their implementation, and into future revisions of the mining code, as well as to make sure it has the resources to enforce them;
- facilitate the adoption of a collective labour agreement offering extensive protection of labour rights in the mining sector;

to the mining companies operating in Mali, that they should

- fulfill their obligations to respect, protect and promote Human Rights, such as these obligations proceed, in particular, from the OECD Guidelines for Multinational Enterprises and from international Human Rights law;
- abstain from soliciting exemptions to the obligations set out by Malian legislation, tax requirements in particular; in the terms of the OECD Guidelines for Multinational Enterprises, these enterprises must: 'Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.';
- fully submit to Malian legislation, in particular by respecting its social legislation, by paying on time the taxes and dividends due to the state and by respecting the environmental provisions of the mining code;
- not develop voluntary aid projects for the local communities unless they are founded on broad and representative participation of the populations involved, set up for the long term and respect state prerogatives;
- make certain that the infrastructure, sanitary in particular, built in the vicinity of the mine benefits not only the mine employees but is also accessible and affordable to the other members of the community;

to the international financial institutions and other donors, that they should

- not encourage the Malian state to set up foreign-investment-friendly provisions that infringe its international obligations with regard to the respect, protection and promotion of Human Rights;
- adopt regulations aiming at the protection of human and environmental rights and not provide financial guarantees to companies for which operation plans and the rehabilitation plans after the mine closes do not respect these social and environmental requirements, nor be part of their pool;
- help the Malian state to improve its knowledge of its own mining resources and to audit company activity (environmental impact, yearly production, payment of taxes, etc.) by allowing it to reinforce its human and technical capacities;
- not push local-development projects implemented by companies as a solution for poverty reduction with no guarantee regarding their sustainable, participatory nature and their respect of state prerogatives.