Business and Human Rights: The case of extractive industries in Niger
Baseline Study

This translation to English of the Executive Summary of a report by Réseau des Organisations pour la transparence et l'Analyse Budgétaire (Network of Organizations for Transparency and Budgetary Analysis, or ROTAB), and selected sections concerning SOMINA (pp. 2-3 below) and CNPC (pp. 3-4 below), has been carried out by Business & Human Rights Resource Centre.

- *Full original report in French here*
- *Response by SOMINA to this report:*
  original response (in Chinese)
  unofficial English translation of response
- *Full coverage of this report by Business & Human Rights Resource Centre, with additional response by Sopamin (mining company owned by Govt. of Niger; response in French only), non-response by Sonichar (Société nigérienne du charbon)*

We also invited CNPC to respond. It has not yet responded.

Executive Summary

Management of extractive industry revenues raises the crucial issue of "rents". The breakneck race to control these revenues by multinationals, States and government officials often cause negative impacts on human rights. Niger, which has produced uranium for 50 years, gold for a decade and petroleum for the past three years, has not escaped this fate. This baseline study on "**Business and Human Rights: The case of extractive industries in Niger**" has been carried out by the Réseau des Organisations pour la transparence et l'Analyse Budgétaire (Network of Organizations for Transparency and Budgetary Analysis, or ROTAB) with the support of the Danish Institute for Human Rights. It raises concerns about several cases of abuse and risks of abuse of human rights.

Numerous negative impacts of extractive industries' operations are tallied in this report, following missions to exchange experiences and consult with 1006 people including both human rights holders and duty bearers. These people included individuals within, and in contact with, local and national government bodies and extractive companies in the cities and towns of Niamey, Agadez, Arlit, Tchirozérine, Ingal, Diffa, Ngourti, Nguigmi, Tahoua, and Malbaza. The rights implicated include the rights to health, to education, to a healthy environment, to information, to work, to enjoy fair working conditions, to equal pay for work of equal value, to health and safety at work, to an adequate standard of living, to housing, the rights of children and adolescents to be protected from economic exploitation, etc.

For example: the millions of tonnes of radioactive and/or toxic waste and residue left in open air, and contaminated metal waste coming from the mills owned by SOMAIR, COMINAK [both joint ventures of Areva & Niger Govt.] and SOMINA [joint venture CNNC International, Sopamin (owned by Niger Govt.), ZXJoy Invest (Zhongxing Joy Investment), Korea Resources Corp.] to be sold and used in the construction of houses in Agadez, Arlit, Azélik, Ingal, and the rest of the country

Fumes emitted by the SORAZ and SONICHAR factories; gas flaring from oil wells operated by CNPC (China National Petroleum Corp.); dust caused by explosions and airborne emissions from mining and oil companies; the process of crushing of stone containing gold ore by artisanal mining operations; the use of dangerous chemicals such as cyanide and mercury by artisanal miners as well as Société des mines du Liptako (SML) [now owned by Sopamin]; the lack of protective gear for artisanal miners on gold mining sites, and inadequate protective and safety gear for those working for SOMINA; and dumping of wastewater in zones used for grazing livestock, which are then consumed by animals. These activities harm and negatively impact **the rights of populations neighbouring extractive industry sites to a healthy environment, to health and safety**, and even the right to life in the case of Ngourti, where in 2008 two young shepherds picked up and consumed a blue chemical product dumped in an open area [and subsequently died], according to the Vice-Mayor of Ngourti. We also note the flight and loss of both domestic and wild animals (camels, goats, ewes, gazelles, etc.) toward nearby countries (Nigeria and Chad). In addition, some animals have died after consuming wastewater dumped by extractive companies, notably in Ngourti, Arlit and Azelik.

Furthermore, there have been **violations of the right to potable water** in adequate quantities, in Zinder, Azelik, Arlit and Tchirozérine, where mining and oil drilling have aggravated the problems of inadequate water and caused a decline in water quality; at certain artisanal gold mining sites, where the miners and their families consume water pumped out of the mines; in Ngourti municipality, seismic vibrations caused by exploration operations of CNPC and its contractors have caused the collapse of water wells in the villages of **Kribole Est, Burburé Ouest, Gagrina and Grain**.

Most extractive firms do not respect the **rights of neighbouring populations to information** about the impacts of these companies on health and the environment.

In addition, victims of expropriation for public use of land are not compensated prior to the expropriation as required by law; in nomadic zones, pastoralists whose rights to use grazing lands have been upended by the use of these lands, do not even have a legal right to compensation, much less to more active measures of support [to help them adapt to the loss of land]. These impacts therefore harm **the right of populations to an adequate standard of living**, including the right to protection of their means of subsistence, as well as to preserve their way of life.

Finally, **economic exploitation of children** is found on all artisanal mining sites. As a result, most of these children are denied their right to an education. Most of them refuse to register for school, or abandon it, and become dependent on artisanal mining of gold and natron (soda ash), in order to contribute to the food and clothing needs of their parents.

These human rights abuses result primarily from:

- ✓ Non-respect by duty bearers (the State, extractive firms and their contractors) of legal, regulatory and contractual requirements in force;
- ✓ Gaps and vagueness in certain legal and regulatory provisions;
- ✓ Failure to provide adequate means to the State structures charged with monitoring and enforcing respect by companies of their legal and contractual obligations.

To remedy or prevent human rights violations, this report presents recommendations aiming to improve governance of the extractive industries and respect for legal and contractual obligations related to human rights.

Concerns regarding SOMINA in Niger

Impacts on environment, human health, livestock & livelihoods: Air quality has been compromised by fumes and exhaust of SOMINA's vehicles and industrial equipment… The ground is also likely to be contaminated, particularly in the unpaved maintenance area for the open pit mine. In addition, chemicals have been spilled or dumped, oils have leaked out from the site, and metal waste has been buried in the ground… Nitrate packaging and plastic waste have been dumped in open natural sites. Some ponds containing industrial wastewater and water pumped out from the mines are not waterproof, and at risk of eroding. The storage of mine wastewater in a grazing pasture presents real dangers. The groundwater table has fallen substantially since the company began operations, and groundwater quality has been compromised by dumping or leaking of lixiviation fluids… There is a high risk of contamination of groundwater due to the leaking of wastewater from ponds… Noise pollution from industrial machinery and vehicles has disturbed local wildlife, which has fled the area. In addition, livestock and other animals have drowned in large open ditches dug by the company, which filed with water during the rainy season. In Azélik, according to SOMINA management, 10 stations have been set up to monitor environmental impacts… According to the representative of SOMINA's employees, "*the Chinese are not in compliance with applicable rules. During our visits in 2013, they told us that they ignored most of the recommendations made by [government] technicians. Copies of the documents were provided to them, but upon our next visits, they continued to ignore them.*" According to the mayor of the town of Ingal, "*in two years of operations, all the impacts have been negative, as they have destroyed an enormous quantity of water in artesian aquifers. Wells are dry in a 50 km radius. Wastewaters used to refine minerals are dumped in the wild, and the environment is damaged. We are surrounded by waste, and no one is talking about it…"* (pp. 68-69)

Residents also told the research mission that in several cases animals died in Ingal, a rural village in Agadez region, where SOMINA mines uranium. Team members carried out a visit to Azélik and observed the corpses of animals beside a large pond where three camels had also become stuck in the mud. SOMINA's facilities [for water storage] are not waterproof; the water leaking out attracts animals, who then can become stuck in the mud. (p. 75)

Mr. El Hadj Mohamed Gabdoua, mayor of the village of Ingal, and Vice-président des Associations des Municipalités du Niger (AMN), said, "*Our expectations are simple: We want our resources to be used to improve the well-being of our communities. But we have observed instead that exploitation of our resources continues to compromise our existence and our environment." "The Chinese have made no investment in the community's social development. SOMINA does nothing to provide social benefits."* (p. 90)

The women of Azélik are well known for their artisanal production of mineral salts and natron. According to these women, since SOMINA began operations, the number of water sources and the amount of water they provide [which are necessary to produce the salt and natron] have substantially decreased. As a result, many of the women have lost their work. (p. 94)

Other concerns raised by the report include poor or substandard housing for workers. (p. 100)

Concerns regarding CNPCN and SORAZ (affiliates of CNPC) in Niger

Impacts on environment, human health, livestock & livelihoods: Residents living in the Agadem zone near the companies' operations claim that waste from the oil wells is mismanaged, for example "toxic mud" from the wells that is then consumed by residents' livestock, and has sickened and even killed some animals. Animals have gotten stuck in the mud; some that could not be rescued in time have died… According to the vice-mayor of the town of N'gourti, two children from a pastoralist family picked up a bottle that had been discarded in the open containing a blue chemical liquid, and drank from it. The two children subsequently died… Trucks carrying heavy equipment and materials have caused significant degradation of air quality…but also harm to livestock, such as miscarriages and stillbirths, and certain animals fleeing and being lost… (pp. 76-77)

Compensation paid by CNPC for the loss of livestock is insufficient, according to nearby residents: "*The Chinese give us only the market price (highly volatile) for camels that are killed, while customary law requires the payment of seven times the market price if an animal such as a camel is intentionally killed,*" says the mayor of N'gourti. "*If there were no mining [or oil] companies, our grazing and animal rearing could have continued, and even prospered; there would still be wild animals here, too,*" said the chief… (pp. 85-88)

Expropriation of land: Under Niger's mining and petroleum legislation, mining permits supersede individual land titles. This has opened the door to a number of cases of displacement and expropriation, with few guarantees or support for local communities, whose land is affected by extractive industry projects. In most cases, there is no guidance in place to assist the community in protecting the rights to education, health, housing, access to water, or to other means of subsistence for populations displaced by extractive projects. The law relating to expropriation provides that, in case of expropriation for a public purpose, landofawners have the right to fair compensation prior to the expropriation. In practice, however, there are numerous problems. Litigation has been before the courts since 2010, concerning expropriations in the region of Zinder for land used by SORAZ. Landowners in the village of Zangouna Mallam kalla, at the gates of the SORAZ refinery, have cried foul, claiming that they have been swindled out of the real value of their land, the compensation they are owed and their rights. (p. 85)

Violations of the right to information and lack of consultation of local populations: Seydina Boubacar Moustapha [a local leader] said, "*While CNPC was preparing to operate here, we had*

only one visit by the governor [of the region]; we were not consulted, nor even informed of what would happen." According to the mayor of N'gourti, "*The Government of Niger violated its own laws by allowing CNPC to operate without first conducting an environmental impact study. When the study was finally conducted in 2009, it was carried out in complete secrecy, and the report was never disseminated."* (p. 89).

Other concerns raised in the report include:

- Insufficient jobs and other benefits to local populations, leading to social conflicts (p. 91)
- Specific impacts on women's livelihoods, including dispossession from lands that they used for subsistence farming (p. 93)
- Impacts on women's health, including stillbirths and illnesses following dumping of toxic waste near Zinder (p. 97)
- Impacts on access to water, including collapse of wells allegedly due to seismic testing by CNPCN at Agadem (p. 98)
- Workers' rights violations and poor working conditions, including substandard housing (pp. 100-101), inadequate training and technical development of local workers (p. 102)