



AMBATOLAMPY - BRICKAVILLE:
THE CANADIAN MINING COMPANY DNI
LAYS HANDS ON THE LOCAL POPULATION'S LANDS

An open Letter to the Gendarmerie Nationale Secretary of State, Toamasina Group Commander and Brickaville Company Commander

Do not support the violation of the population's property rights carried out by the mining company DNI in the village of Ambatolampy, located in the Fokontany of Vohitsara, Rural Commune of Ambinaninony, District of Brickaville

Mr. Secretary of State,

Just a week ago, you declared during your appearance on the mass media that the main task of the gendarmerie is to protect the population and their property. But the situation in the village of Ambatolampy-Brickaville demonstrates the opposite of what you have just said. On Saturday, September 2, 2017, DNI was assisted by elements of the gendarmerie in its forcible endeavor to excavate the parcels of land belonging to the members of the population in this village without the latter's consent, and for the benefit of the said company, within the framework of its activities in graphite ore exploration.

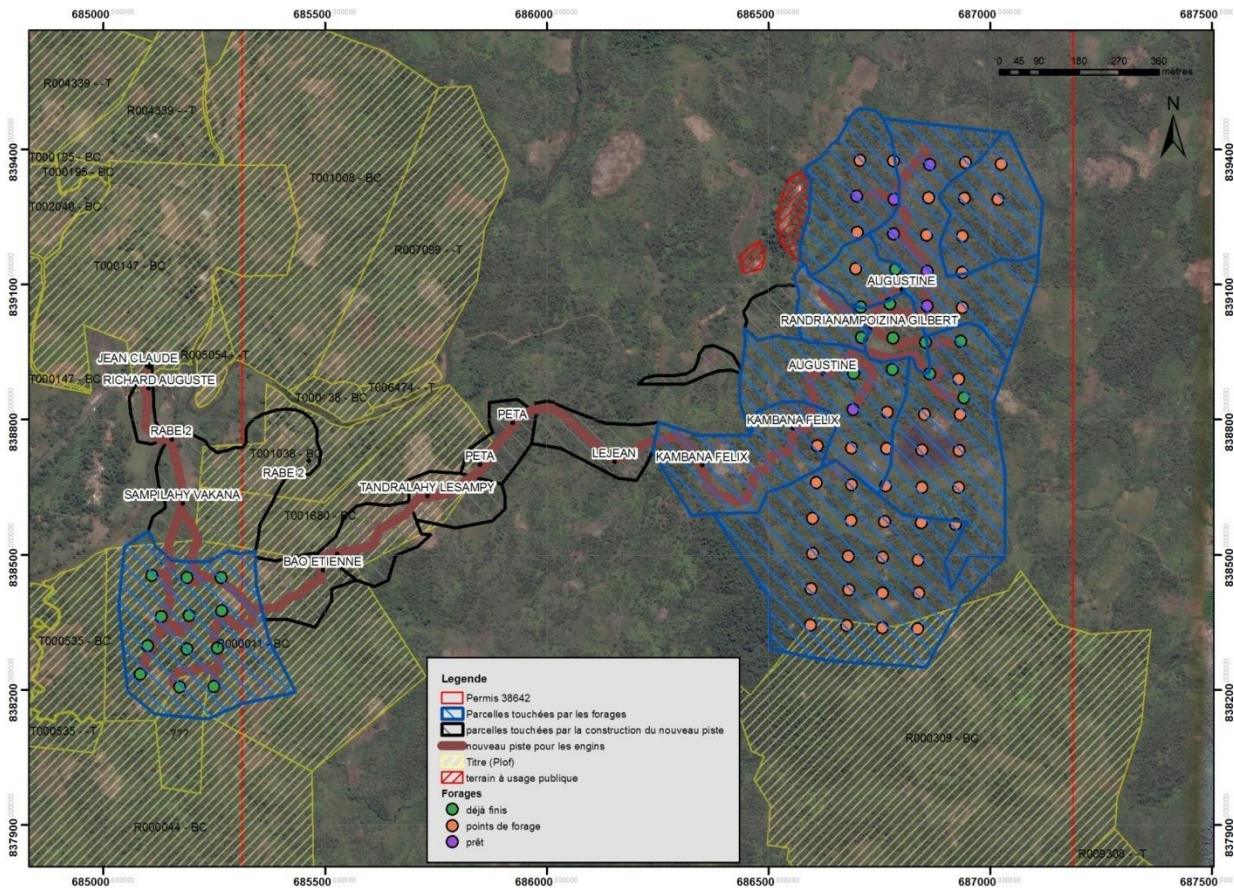
In the first place, the company you are defending is in a situation of irregularity with respect to the provisions of the Mining Code, in view of the incompatibility of its legal status as regards the category of mining permit it holds. As a matter of fact Mining Permit No. 3842, of which DNI claims to be the holder, is classified in the "PRE" category. According to Article 11 and 26 of Act No. 2005-021 of October 17, 2005 on the Mining Code, the "PRE" category mining permit is intended only for **private individuals of Malagasy citizenship** and for groups legally constituted of **individuals of Malagasy nationality** and **using artisanal techniques**. In other words, PRE is intended specifically for small domestic miners. DNI, however, headquartered in Ontario, Canada, is a major international mining company (see:

www.dnimetals.com). During our visit to the site on August 25, 2017, we saw large modern mechanical equipment intended to carry out mining activities which do not have the so-called "artisanal" aspect in line with this "PRE"-type License. Additionally, the mining permit No. 3842 granted by Order No. 38642-1 of December 1, 2010 is still registered in the name of a natural person of Malagasy nationality, Mrs. Mamy Randrianasolo, information provided, once again, by this decree.

As far as investors' environmental obligations are concerned, though DNI holds a PRE-type mining permit, and in view of the scope of its research activities (construction of a long track [4 km] for its large machinery to move along, digging canals of large widths and great lengths, destruction of trees, etc.), it should have carried out an Environmental Impact Assessment (EIA) instead of an Environmental Commitment Program (EEPR) (Article 4 and Annex I and II of Decree 2004-167 of February 3, 2004 pertaining to the investment accounting in matters of environment). Yet the company did neither of them. The members of the population of the village of Ambatolampy affirmed that they were never contacted by the company DNI for questions related to environmental and social impacts prior to its exploration activities.

DNI does not respect the individual property rights laid down in Article 34 of the Constitution: *"The State guarantees the right to individual property. No one shall be deprived thereof except by way of expropriation for public utility, and with fair and prior compensation ..."* The DNI mining company is a commercial company looking for profits, so its exploration actions that affect the private property of individuals in the locality of Ambatolampy are not considered to be in line with public interest. Thus, the Company has no right to tamper with the lands without the permission of their owners. However, this request for consent from the owners was not made properly. With the help of the local administrative authorities, DNI used tricks to deceive the landowners. In February 2017, a meeting of the Fokonolona was organized by the Mayor of Ambinaninony, in the main room of the EPP of Vohitsara, as a follow-up to DNI's request, with a view to discussing the compensation measures in anticipation of the destructive impact that the landed property in this locality could suffer. A few days later the Mayor of Ambinaninony issued a report unilaterally signed by himself, which mentions that all Fokonolona members present at the meeting agreed that the DNI Company should settle in and start its research on their lands and build the 4 kilometer-long road that also passes on private property. The mayor had the attendance record attached to the minutes, alleging that it was proof of acceptance by the Fokonolona. From the legal point of view, every individual has complete sovereignty over their property. Neither the meeting of Fokonolona nor the minutes signed by the Mayor have the power to decide the fate of an individual's property. Moreover, a signed attendance list in a meeting is not tantamount to a lease or sales agreement. Thus, the minutes considered by DNI as the landowners' authorization do not howsoever have the character of a contract, based on an exchange of consent according to the law on the theory of obligations (OTGO).

It should be noted that in most cases the lands affected by exploration, and which are the object of this conflict, have already been certified to its owners since 2008, that is, 9 years earlier.



This map shows the legal status of the plots affected by DNI mining exploration

After the deception by the minutes, the Company DNI, starting from May 2017, continues to trick the few members of this locality by having them sign a one-page letter—a letter of one page only—for each owner of land, which the Company qualifies as contract. This letter did not meet either the substantive or the formal requirements of the WGTA to be considered a proper contract. In substance the objectives of the contract are unclear because they deal with both the owner's authorization to use a part of the land in favor of DNI and a contract of employment. The duration of use is not specified; nor is the work that the owner of the land should be doing. The prices—a paltry sum of 30,000 Ariary—mentioned in the so-called contract (i.e. the letters), are also confusing: it covers both the compensation for trees and crops that could be destroyed by the exploration activities of the company DNI as well as the wages that could be paid to the landowner in return for the work he will provide for DNI.

DNI uses the divide-and-conquer strategy. According to the coordinates mentioned in the mining permit, the DNI mining site is located exactly in the village of Ambatolampy, which is 4 kilometers to the east of the fokontany chief town. Most of the landowners in the village of Ambatolampy live in this locality. Few people with land in Ambatolampy reside in Vohitsara. During the construction and maintenance of the 4-km runway which is still under construction, almost all the people recruited for its construction came from Vohitsara. Faced with the claim of the Ambatolampy people who were victims of the violation of their land rights, both in terms of road construction and destructive excavation, DNI manipulates the people of Vohitsara by

telling them that Ambatolampy inhabitants are the saboteurs of job creation that the mining company is generating for them.

In the face of these irregularities and fraudulent maneuvers, we beseech you to take the necessary measures to ensure that the people and their property involved in this situation, especially the Malagasy citizens, be protected by you as "Tandroka aron" ny Vozona."

For our common homeland - Ho an'ny Tanindrazana lombonana.

Drawn up in Antananarivo, on September 4,
2017

The President of the Civil Society Platform
In for Landowning Rights - SIF,



Haingoarison RANDRIANOMENJANAHARY,