

Improving Revenue Sharing from the Mining Sector in Cameroon: Pathways for Stakeholder Action

Policy note

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Introduction

Why a policy note?

This policy note aims to share the proposals of the African Regional Centre for Endogenous and Community Development (CRADEC) with the public authorities of Cameroon for a better sharing of revenues from the extractive sector in general and mining in particular. It contributes to the materialisation of the vision that natural resources in general and mining in particular should contribute to the improvement of the living conditions of the populations instead of being perceived by them as a curse. It was prepared in consultation with various stakeholders and draws on the experiences of other African countries rich in mineral resources

Why improve revenue sharing from the mining sector?

The reform of the legal framework governing the mining sector, which led in 2016 to the adoption of *Law n°2016/017 of 14 December 2016 on the mining code*, was initiated with a view to making the mining sector a lever for the growth and development of Cameroon. In observing the above-mentioned law and in the absence of its implementing decree, it has been observed that Cameroon does not have sufficiently effective mechanisms to ensure transparency and accountability in the management of mining revenues. CRADEC strongly supports the need to put in place mechanisms for sharing mining revenues which, in addition to guaranteeing the improvement of the living conditions of citizens, would make it possible to reduce the conflicts between investors and communities that are too often observed around mining sites. Furthermore, with the creation of the National Mining Company (SONAMINES) and the effectiveness of decentralisation, it is timely for actors in the development of the mining sector to fulfil their mission of decision support in advance of the publication of the decree implementing the mining code in force

Context

With a view to "*promoting transparent, equitable and optimal exploitation of mineral resources to underpin sustainable growth and broad-based socio-economic development*", in 2009, the member countries of the African Union adopted the **Africa Mining Vision (AMV)**. To ensure the achievement of this objective, the AMV is based on seven (07) pillars which are (i) Fiscal Regime and Revenue Management; (ii) Geological and Mineral Information Systems; (iii) Human and Institutional Capacity Building; (iv) Artisanal and Small Scale Mining; (v) Mineral Sector Governance; (vi) Linkages, Investments and Diversification; and (vii) Environmental and Social Issues.

Among the challenges identified in the AMV is the capacity of countries to optimise the benefits of exploitation but also, and above all, to redistribute these benefits, via mechanisms that guarantee

transparency and accountability, so that they can play their full role as a lever for economic development.

In the context of the reform of the mining legal framework that has been underway in Cameroon for a number of years, CRADEC has, through two studies carried out in 2019 and 2020 respectively, assessed the level of domestication of the 'fiscal and revenue management regime' and 'environmental and social issues' pillars of the AMV. These previous studies show that revenue sharing from the exploitation of extractive resources remains a major challenge for Cameroon. This is particularly true given that the AMV aims to be precise about the impact of redistribution and management of revenues from the mining sector under the constraint of good governance.

Vision

Based on the lessons learned from the implementation of the current mining legislation in Cameroon, taking into account the positions of various stakeholders, and the experiences of other mining countries, this policy note conveys elements of a vision that would contribute to making revenues from the mining sector effective levers for growth and development. These visionary elements are:

1. Revenues to serve the National Development Strategy (NDS 30), contributing to the distribution of wealth at national and local levels;
2. A vehicle for development and not a source of conflict.

1. The benefits management model in Cameroon: What are the findings?

An examination of the management model for mining profits in Cameroon shows that there are principles and mechanisms for sharing that have evolved from the 2001 mining code to the current one of December 2016. In the quarrying regime as in that of the mine, this is materialised through the introduction of the ad valorem tax, the extraction tax, the surface fee which is now subject to sharing, the taking into account of the capital gain on the transfer of titles. The same is true of the improved framing of local content, voluntary or compulsory social payments and the tax stability clause. However, these principles and mechanisms suffer from limitations in terms of effectiveness for some, efficiency for others, and even fairness, as the following table shows:

TABLE 01 : VERTICAL PROFIT-SHARING MECHANISMS				
<u>MECHANISM</u>		<u>EFFECTIVENESS</u>	<u>EFFICIENCY</u>	<u>EQUITY</u>
QUARRYING REGIME	Surface fee	Effectiveness for collection (Art 173), but not for redistribution (Art 176)	Not efficient with regard to local development on the basis of the 2016 Mining Code. However, the provisions of the implementing decree of the previous Mining Code are applied	Due to the overlap of texts (application modalities of the previous Mining Code while the current Mining Code does not yet have an application text), equity is hypothetical.
	Extraction tax	Effectiveness for collection (Art 174), but not for redistribution (Art 176)		
	Capital gain on the transfer of titles	Art 105 A1.5		
	Local content	Art 166 A1.3 and A1.4		
	Tax stability clause	See contractual provisions		

MINING REGIME	Surface fee	Effectiveness for collection (Art 173), but not for redistribution (Art 176))	Not efficient with regard to local development on the basis of the 2016 Mining Code. However, the provisions of the implementing decree of the previous Mining Code are applied.	Due to the overlap of texts (application modalities of the previous Mining Code while the current Mining Code does not yet have an application text), equity is hypothetical.
	Taxe ad valorem	Effectiveness for collection (Art 174), but not for redistribution (Art 176)		
	Capital gain on the transfer of titles	Art 105 A1.5		
	Local content	Art 166 A1.3 and A1.4		
	Tax stability clause	See contractual provisions		

The review also shows that the current sharing scheme has some assets that could be exploited (strengths and opportunities). However, it also suffers from a number of handicaps which it is important to be aware of in order to circumvent or transform them.

TABLE 02 : SUMMARY OF THE SWOT ANALYSIS OF BENEFIT SHARING FROM THE MINING SECTOR FOR LOCAL DEVELOPMENT

	STRENGTH	WEAKNESS
<i>Surface fee</i>	<ul style="list-style-type: none"> Redistribution to municipalities and communities (new) Increase in the rates and base of assessment of surface fees compared to the previous provisions 	<ul style="list-style-type: none"> Lack of implementing regulations in the current Mining Code on redistribution and management Outdated text for the application of the Mining Code
<i>Ad valorem tax</i>	<ul style="list-style-type: none"> Increase in the rates and base of surface fees compared to previous provisions Signature of the Instruction of the Director General of the Treasury, notably on the monetisation of gold 	<ul style="list-style-type: none"> Lack of implementing regulations in the current Mining Code on redistribution and management Outdated text for the application of the Mining Code
<i>Extraction tax</i>	Increase in extraction tax rates and base compared to previous provisions	<ul style="list-style-type: none"> Lack of implementing regulations in the current Mining Code on redistribution and management Outdated text for the application of the Mining Code
<i>Local content</i>	Title on Local Content (new)	Lack of implementing regulations
<i>Capital gain on the transfer of titles</i>	New provisions	Lack of implementing regulations
	OPPORTUNITY	THREAT
<i>Surface fee</i>	Harmonisation of land management between the ministries in charge of mines and land	<p>Contradictory provisions between the Mining Code's implementing decree and the land and property regime</p> <p>As a reminder, the land and property regime is still waiting to be updated</p>
<i>Ad valorem tax</i>	<ul style="list-style-type: none"> Strengthening the sources of 	Public finance regime: uniqueness of funds, lack of

	funding for decentralisation and local development <ul style="list-style-type: none"> • Harmonisation of texts governing the mining sector , decentralisation and local development 	interfacing between the MEASURE and FRAMEWORK applications of the Treasury and the Tax Office
<i>Extraction tax</i>	<ul style="list-style-type: none"> • Strengthening the sources of funding for decentralisation and local development • Harmonisation of texts governing the mining sector , decentralisation and local development 	Public finance regime: uniqueness of funds, lack of interfacing between the MEASURE and FRAMEWORK applications of the Treasury and the Tax Office
<i>Local content</i>	Improved contribution of the mining sector to economic and social development	The lack of skills and supply of goods and services that meet the norms and standards in the mining sector
<i>Capital gain on the transfer of titles</i>	Possible redistribution to the Decentralised Territorial Collectivities	Non-realisation of capital gains due to the fall of shares on the stock market

The comparative review shows that internationally, to ensure that sharing mechanisms are in place to guarantee local development, some countries have opted for direct payments while others have opted for indirect payments via transfers. One widely used mechanism is the establishment of Local Development Funds, which are replenished by a share of the turnover of mining companies. Alongside sub-national transfers, surface fee and local content, this mechanism is provided for in the 2016 mining code, which unfortunately lacks effectiveness, as well as in related texts, namely the Code of Decentralised Territorial Collectivities (DTCs) and the Code of Transparency and Good Governance in Public Finance Management.

II. Proposals for a better sharing of revenues from the mining sector

Thus, even if the mechanisms of these countries are not perfect, Cameroon could draw inspiration from them to put in place profit-sharing mechanisms that would effectively contribute to local development. The consideration of structural reforms in the Cameroonian mining sector through the creation of *SONAMINES* in December 2020, the signing of the *Instruction of the Director General of the Treasury on the creation and operation of accounts 31130 "Stock of gold material", 51710 "Monetary gold", 60321 "Variation of stock of gold material", "70350 "Variation of stock of monetary gold"* calls into question the relevance and effectiveness of existing mechanisms. On this basis we propose the following principles and mechanisms:

1. Linking benefit sharing to decentralisation:

- a. Add the region as a beneficiary entity of the share of the surface fee, the state concession fee, the ad valorem tax and the extraction tax;

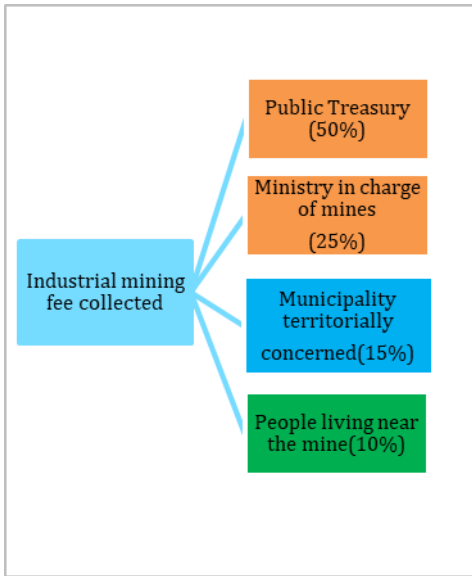


Figure 6: Beneficiaries of the redistribution of the mining fee before the 2016 mining law
 Source: Implementation Decree of 2014 of the Mining Code

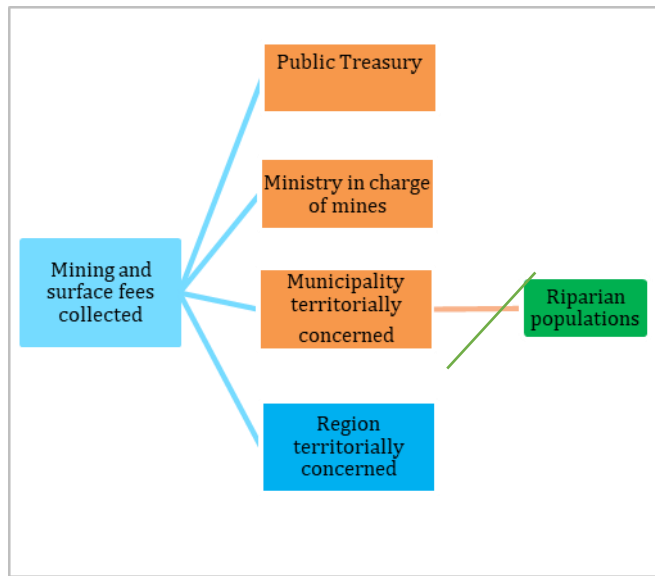


Figure 7: Proposal of Beneficiaries of the redistribution of the mining fee
 Source: The Authors

- b. Direct payment to the DTCs by the holder of a mining or quarrying right of their share of the ad valorem tax and the extraction tax

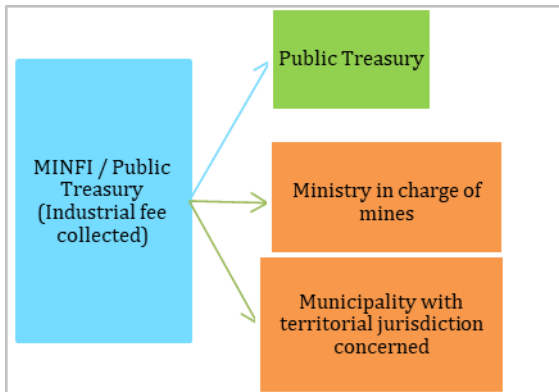


Figure 3: Current sub-national transfer mechanisms
 Source : Mining Code

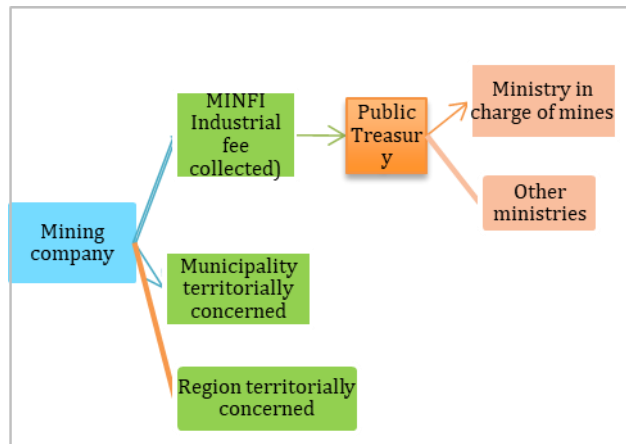


Figure 4: Proposed mechanisms for direct payment of the Mining fee
 Source : The Authors

- c. Transferring the communities' share to the commune, in the context of the semi-mechanised mine

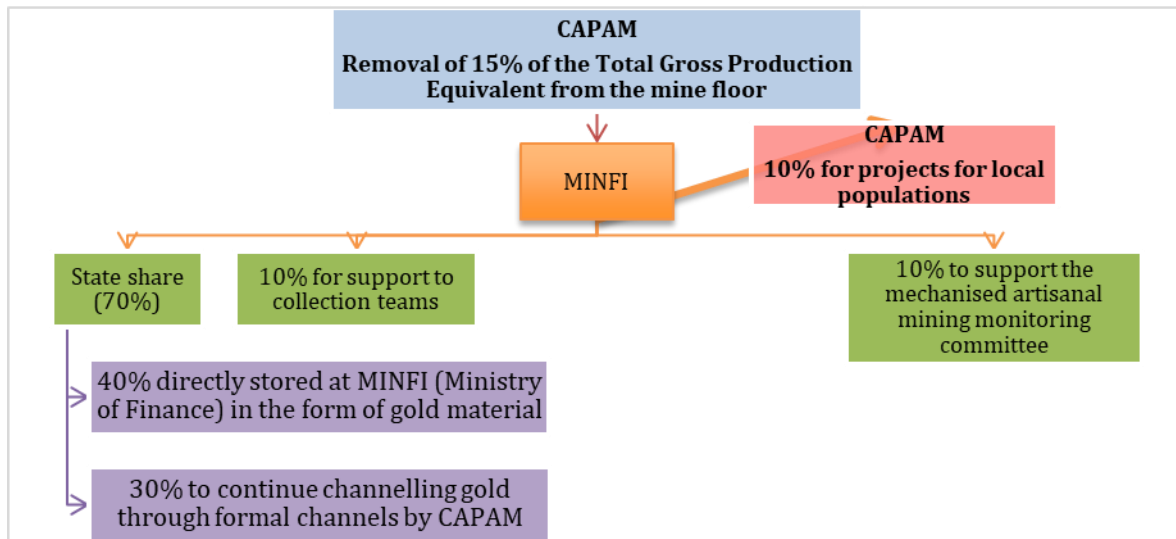


Figure 5: Income redistribution mechanism in the semi-mechanised mine before the 2016 reform

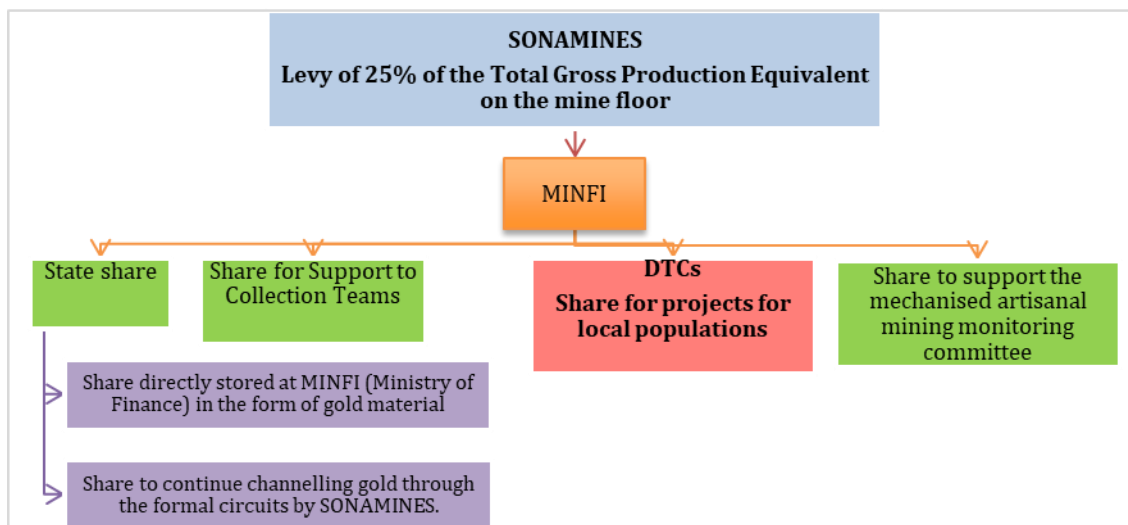


Figure 6: Proposed revenue redistribution mechanism for semi-mechanised mining

2. Clarify the management of revenues for local development

Indeed, with regard to the share of revenues intended for local development (surface fee, state concession fees, ad valorem tax, extraction tax), the legislator could, for example, indicate that:

- 80% of the funds should support the implementation of the Communal Development Plans (CDP) available at the communal level;
- 5% must be allocated to the functioning of the Commune;

- 15% is paid to the region, of which 3% is for its operations, 8% for monitoring the management of funds collected by the Communes for which it is responsible, and 4% for strengthening the capacities of the department in charge of monitoring.

3. *Ensure the traceability of funds allocated to the DTCs as a contribution to local development*

This principle of revenue traceability should also apply to other beneficiaries such as SONAMINES.

4. *Ensure transparency and accountability in the management of funds allocated to communities as a contribution to local development by:*

- a. Setting up a multi-actor and independent body at regional level in charge of the control of the funds;
- b. Establishing a national committee in charge of designing, coordinating and monitoring the implementation of the national strategy on the contribution of the mining sector to local development;
- c. Establishing a communication and open data system at regional and communal level.

5. *To give the specifications the mission of contributing to local development by:*

- a. Developing the specifications in a participatory and inclusive manner;
- b. Identifying the source(s) of funding for the specifications ;
- c. Establishing a mechanism to ensure transparency and accountability in the management of funds allocated for the implementation of the specifications.

6. *Ensure transparency, traceability and accountability in the management of the Special Account for Local Capacity Development, notably through:*

- The public information, at the latest 15 days after payment, of the amount of the contribution by the company present in the Commune concerned;
- The recording of information relating to payments/contributions by project;
- The systematic and compulsory publication of reports on the management of this special account;
- The publication of information relating to the special account on the websites of the ministries in charge of mines, finance, local development and land use planning; on the DTC website, in the DTC newspaper, the chefferies concerned, community radio stations and through any local information channel; and on the website of the company concerned and in situ;
- Information, awareness raising and even public debate around this special account in accordance with the EITI Standard Requirements.

III. What recommendations for the different actors involved in the mining sector value chain?

1. To government in general:

- Complete the mining reform process by adopting all the implementing texts provided for in the mining code with regard to the provisions relating to the principles and mechanisms of benefit sharing from the mining sector;

- Ensure the effectiveness of the mining sector development fund, the fund for the restoration, rehabilitation and closure of mining sites and quarries, as well as *the local capacity development account*¹ in accordance with Article 233 of the Mining Code.

However, in view of the evolution of the decentralisation and local development project, the government should:

- Consider conducting a study on the transition from an account to a special fund for the development of local capacities;
- Adopt the text for the application of the Code relating to transparency and good governance in the management of public finances to ensure the effectiveness of contracts and specifications with a view to better monitoring of mining activity and, ultimately, better supervision of the benefits of this activity;
- Improve the control of its mining potential, in particular by equipping itself with internal capacities to be able to negotiate contracts allowing a better optimisation of its revenues, prior to the deduction of profits;
- As public interest quarries are exempt from paying surface fees and extraction taxes, emphasise contributions to social achievements and local content as far as they are concerned;
- With the advent of SONAMINES, clarify the missions of the Mines, Water and Energy Revenue Security Programme (PSRMEE), particularly in the context of the traceability of sub-national transfers;
- Promote open data in the management of mining revenues at all levels of benefit allocation (regional, communal, SONAMINES and other beneficiaries);
- Clarify the modalities related to Local Content provided for in the 2016 mining code;
- Give the specifications a mission to contribute to local development, notably through a participatory elaboration process, the identification of its source of financing as well as the principles of control and accountability;
- Encourage the establishment of an effective mechanism for the management of revenue from profit-sharing for local development;
- Ensure improved monitoring of EITI implementation in Cameroon, particularly with regard to compliance with the EITI Standard requirements on sub-national transfers, social payments, the economic impact of mining activity and project-based reporting. For example, the communes hosting mining projects, those holding quarrying permits and SONAMINES must finally be included in the scope of reporting entities.

2. To the administration in charge of finance:

- Define specific accounting for the mining sector;
- At a time of decentralisation, failing to improve the current process of redistribution of profits to the Communes through the establishment of specific accounts for the mining sector at the level of national public finances, envisage in the long term the direct payment to the DTCs of the shares of certain profits intended for them;
- Ensure the effective implementation of the provisions of the Instruction of the Director General of the Treasury on the creation and operation of accounts 31130 "Stock of gold material", 51710 "Monetary gold", 60321 "Change in stock of gold material", 70350 "Change in stock of monetary gold".

3. To the administration in charge of mines:

- Improve the production control system to avoid false declarations;
- Implement an open data system to promote control, traceability and accountability of mining revenues transferred to them;

¹ Read the following recommendation

- Strengthen the capacity of the Mining Brigade and the Mining Registry to monitor mining activities.

4. To the administration in charge of the domains:

- Work with the administration in charge of mines to take stock of the mining titles granted since the publication of the Mining Code with a view to redistributing the surface fee shares to the various beneficiaries;
- - Ensure the completion of the land reform, particularly with regard to issues relating to the state tax (surface fee).

5. To the administration in charge of decentralisation and to the DTCs:

- Put in place a mechanism for the traceability of revenues that are allocated to the CTDs;
- Put in place transparency and accountability tools in the management of benefits allocated to the DTCs;
- Put in place monitoring tools for the management of the special account for local capacity development;
- Strengthen their participation in the EITI process by joining the group of reporting entities for flows paid and/or received at the communal level.

6. To parliamentarians :

- Make an assessment, in the light of the expectations of the Africa Mining Vision in general and its pillar 'Fiscal regime and revenue management' in particular, of the effectiveness of the current provisions of the Mining Code and the General Code of the DTCs in ensuring local development;
- Harmonise the mining code with the General Code of the DTCs and the ongoing decentralisation process, in particular by adding the regions to the ranks of direct beneficiaries of the benefits of the mine;
- Make an assessment of their level of control over public action in the mining sector for local development.

7. To Civil Society Organisations:

- Advocate for the successful completion of the mining reform process;
- Advocate for the completion of the process of transparency reform in public finance management;
- Advocate for the harmonisation of mining legislation with the decentralisation process;
- Ensure the transparency of the specifications in the process of elaboration as well as in its content and follow-up;
- Ensure transparency, traceability and accountability in the management of the special account for local capacity development;
- Improve their level of commitment to monitoring EITI implementation in Cameroon. They could, for example, draw inspiration from what CSOs in the DRC, Guinea and Burkina Faso are doing in the EITI process.