

**MONITORING THE DOMESTICATION OF THE
AFRICAN MINING VISION AND BENEFIT SHARING
FROM THE MINING SECTOR:**

**ESSAY OF A PROPOSAL ON A COMPARATIVE BASIS
IN FRENCH-SPEAKING AFRICA OF BENEFIT-
SHARING MECHANISMS FOR THE CASE OF
CAMEROON**

Éric BISIL, Michel BISSOU, Éric ETOGA

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PREFACE

The Africa Mining Vision (AMV) is a pan-African policy framework established by a network of initiatives at regional, continental and global levels that aim to transform Africa's mining sector for sustainable development. The vision, supported by its action plan for implementation, is motivated by the disconcerting observation that although African countries have significant mineral resources, they rank among the poorest in the world. Poor mineral governance has knock-on effects and can often be a clear reflection of the overall weakness of governance in a country. As a consequence, and given the finite nature of these mineral resources, the overall objective of the AMV is to promote a sustainable and well-governed mining sector that efficiently harvests and deploys revenues and is safe, healthy, gender-sensitive and ethically inclusive, environmentally friendly, socially responsible and valued by mining-affected communities

Thus, the pathways to implementing the AMV require a concerted effort to domesticate it at the national level to ensure that its core principles are incorporated into national visions, policies, laws, regulations, standards and procedures. The expected outcome here is improved management and use of mining revenues (AMV Action Plan (2013)). The expected outcome for the government is that it has managed to "optimise the share of mineral revenues accruing to resource-rich economies based on the AMV Action Plan (2013)."

Revenues from mineral extraction provide governments with the fiscal space to fund the provision of physical infrastructure, such as improved education and health and facilities (water, sanitation among others) that affect the lives of all citizens on a daily basis. And the context of the COVID-19 pandemic demonstrates this sufficiently.

Cameroon is one of the developing African countries that take a particular interest in the extractive sector. It is for this reason that the country adopted a mining code in 2016, which falls under the category of so-called 4th generation mining legislation. This is confirmed in the framework of the NDS 2030; as well as the setting up of SONAMINES (National Mining Company). The advent of SONAMINES will allow Cameroon to benefit more than in the past from the benefits of the exploitation of the subsoil

Also, the tax regime, designed to ensure that the government receives an increasing share of the revenues from the increased profitability of mining activities, also provides protection against changing circumstances, notably through the time and project phase limitation of stability clauses. The current tax regime also facilitates and encourages the establishment of economic links in the mining sector. Although it can be noted that Cameroon has achieved a score of 59% of AMV expectations, 23% of these expectations are partially met according to the data from the report on the "Monitoring of the domestication of the African Mining Vision in Cameroon".

But public debate on the issue of benefit sharing by the extractive sector was already on the agenda, particularly in view of the need for better knowledge of mining revenues, their redistribution mechanisms, and the monitoring of the management of these public funds.

The study on the development of models on benefit sharing, transparency and accountability in AMV in Cameroon can induce a change in revenue management and contribute to achieving improvements in governance of the extractive industries sector after COVID-19. For the linkage of the mining sector budget system to the national development plan depends on the existence of a national mining and fiscal policy.

Furthermore, benefit sharing will involve a multitude of objectives and interest groups; and for all stakeholders to support and adapt the proposed models, transparency and accountability are essential. The legitimacy of the process is essential. Thus appropriate benefit-sharing models for AMV may provide sufficient incentive to induce change in revenue management and help achieve improvements.

Mandatory social payments correspond to social commitments made by mining companies in conventions or in ad hoc agreements. Therefore, the group of consultants composed of Michel BISSOU, Eric BISIL and Eric ETOGA (all specialists in extractive resource governance issues), considered that solemn royalty payments guarantee the transparency of the process because they allow the communities present to testify to the effectiveness of the company's payment of the said royalty.

As such, the thorough revision of Cameroon's tax system requires a complete rewriting of the national rules and tax transparency measures on which it is based. While this fundamental objective continues to underpin all our efforts, CRADEC's priority for tax justice in the coming years is to ensure that the newly codified laws and policies mobilise the much needed public funds in the fight against the pandemic and its socio-economic impact.

Jean Mballa Mballa
Executive Director of CRADEC
Member of the Cameroonian Coalition PWYP
Member of the EITI/Cameroon Committee
Member of the IIFs/PALU Task Force
Vice President of Tax Justice Network-Africa

ACRONYMES

ACE: Congolese Environment Agency
ANAFIC: National Agency of Collectivities Funding in Guinea
CAGF: Support Committee for the Management of FODEL in Guinea
CAPAM: Framework for the Support and Promotion of Mining Crafts
CED: Centre for Environment and Development
CdC: Specifications
CEA: Economic Commission for Africa
Africa
CRADEC: African Regional Centre for Endogenous and Community Development
CTD: Decentralised Territorial Collectivity
DGTCFM Directorate General of the Treasury, Financial and Monetary Cooperation in Cameroon
DMJ: Global Youth Dynamics
DPEM: Directorate for the Protection of the Mining Environment in DRC
DSCE: Strategy Document for Growth and Employment
EIES: Environmental and Social Impact Assessment
ETD: Decentralised Territorial Entity in DRC
FODER: Forestry and Rural Development
FNPSS: National Fund for Social Promotion and Service in DRC
FODEL: Local Economic Development Fund in Guinea
IDH: Human Development Index
IISD: International Institute for Sustainable Development
ITIE: Extractive Industries Transparency Initiative
MATD: Minister for the Administration of the Territory and Decentralisation in Guinea
MINFI: Ministry of Finance
MINMIDT: Ministry of Mines, Industry and Technological Development
MINEFID: Ministry of Economy, Finance and Development
NORAD: Norwegian Agency for Development Cooperation
ODD: Sustainable Development Goals
OSC: Civil Society Organisation
PCQVP: Publish What You Pay
PRECASEM: Capacity Building Programme for the Mining Sector
PWYP: Publish What You Pay
RELUFA: Anti-Hunger Network
RSE: Social and Environmental Responsibility
SONAMINES: National Mining Company in Cameroon
RDC: Democratic Republic of Congo
RSE: Corporate Social Responsibility
SND: National Strategy for Development
SWOT: Strengths Weaknesses Opportunities - Threats (in French MOFF : Menaces-Opportunités-Forces-Faiblesses)
VMA ou VAM: African Mining Vision or African Mining Regime Vision
TJN-A: Tax Justice Network Africa

ABOUT THE AUTHORS



Michel BISSOU has a degree in Public Economics and Environmental Governance. He is in his 12th year of professional experience in natural resources governance in general and extractive industries in particular. He is a trainer in Mining and Petroleum Economics. He is one of the specialists in the monitoring of international governance initiatives in the extractive sector (EITI, Kimberley Process). These skills have been put to use by many African governments. To date he is the author/co-author of more than twenty studies in the governance of extractive industries, including two on the monitoring of the domestication of the VMA by Cameroon and five on the sharing of benefits from the extractive sector. He participated in the drafting process of the Mining Code of 2016 as well as the drafting of the decree on the creation of SONAMINES and the approval of the statutes of SONAMINES. His experience in NGOs and then in the administration allowed him to contribute to the realisation of this study.



Specialist in extractive resource governance issues, **Éric BISIL** has ten years of experience in this sector. Throughout his rich professional career, he has worked in Cameroon and West Africa respectively for the Centre for Environment and Development (CED), and the Natural Resource Governance Institute (NRGI) Guinea office. In 2019, he joined the Publish What You Pay (PWYP) International Secretariat where he serves as Coordinator for Central Africa and Madagascar. Consultant for prestigious institutions such as HELVETAS, Community Insight Group, to name a few, he is also author / co-author of several works in the governance of extractive industries including some publications related to the domestication of the Africa Mining Vision, the rights of riparian communities, extractive projects and the implementation of dialogue frameworks between investors and communities. As a civil society representative, he participated in the 2016 Mining Code drafting process and regularly served on the Cameroon EITI Committee between 2013 and 2015. His rich and long experience at the national, regional and international levels was a major asset in the realisation of this study.



A lawyer by training, **Éric ETOGA** is specialised in the governance of natural resources and has 08 years of professional experience in this sector in general and the extractive industries in particular. He is responsible for the Extractive Industries Programme at Global Youth Dynamics (DMJ) and a member of the Publish What You Pay (PWYP) movement. To date, he is the author/co-author of some fifteen studies and articles on the governance of extractive industries, including two on the monitoring of the domestication of the AMV by Cameroon and the DRC. He participated in the drafting process of the Mining Code of 2016 and in the monitoring of the implementation of the EITI, including the process of pre validation of Cameroon in 2020. With several years of fieldwork with local communities, experience in civil society, including CSR, environmental and social monitoring of mining and infrastructure projects and benefits in the mining sector are assets that could be used in the framework of this study.

Table des matières

| | |
|---|-----------|
| PREFACE | 2 |
| ACRONYMES | 4 |
| ABOUT THE AUTHORS | 5 |
| GENERAL INTRODUCTION | 8 |
| CONTEXT AND JUSTIFICATION | 8 |
| PROBLEMATIC..... | 10 |
| METHODOLOGY..... | 11 |
| LIMITATIONS | 12 |
| CHAPTER I: LEGAL PRINCIPLES AND MECHANISMS | 14 |
| OF BENEFIT SHARING IN THE MINING SECTOR IN CAMEROON | 14 |
| INTRODUCTION | 14 |
| I. DESCRIPTION OF THE LEGAL PRINCIPLES AND MECHANISMS FOR BENEFIT SHARING IN THE MINING SECTOR IN CAMEROON | 14 |
| 1. <i>The principles of benefit sharing in mining and quarrying regimes</i> | 15 |
| 2. <i>Benefit sharing mechanisms in the Cameroonian mining sector</i> | 16 |
| II. EFFECTIVENESS, EFFICIENCY AND EQUITY OF BENEFIT SHARING PRINCIPLES AND MECHANISMS IN THE MINING SECTOR FOR COMMUNITY DEVELOPMENT..... | 18 |
| 1. <i>Effectiveness of benefit-sharing mechanisms from the mining sector</i> | 18 |
| 2. <i>Effectiveness of benefit sharing mechanisms from the mining sector</i> | 20 |
| 3. <i>Equity of benefit sharing from the mining sector</i> | 20 |
| III. SWOT ANALYSIS OF BENEFIT SHARING PRINCIPLES AND MECHANISMS IN THE MINING SECTOR | 21 |
| 1. <i>Strengths of the principles and mechanisms of benefit sharing in the Cameroonian mining sector</i> | 21 |
| 2. <i>Weaknesses of benefit sharing mechanisms</i> | 22 |
| 3. <i>Threats to benefit sharing mechanisms</i> | 23 |
| 4. <i>Opportunities for benefit sharing mechanisms</i> | 23 |
| CONCLUSION..... | 25 |
| CHAPTER II: INTERNATIONAL EXPERIENCES IN THE CONTRIBUTION OF MINING REVENUES TO LOCAL DEVELOPMENT | 26 |
| THE EXPERIENCE OF GUINEA..... | 26 |
| 1. <i>The surface fee</i> | 26 |
| 2. <i>Local Economic Development Fund (FODEL)</i> | 27 |
| 3. <i>Voluntary and mandatory social payments</i> | 29 |
| 4. <i>Local content</i> | 29 |
| CONCLUSION..... | 29 |
| THE EXPERIENCE OF THE DEMOCRATIC REPUBLIC OF CONGO (DRC) | 30 |
| 1. <i>Mining fee</i> | 31 |
| 2. <i>Community Development Contribution Fund</i> | 32 |
| 3. <i>Social responsibility specifications</i> | 33 |
| CONCLUSION..... | 34 |
| THE EXPERIENCE OF BURKINA FASO | 34 |
| 1. <i>Local Development Mining Fund</i> | 34 |
| 2. <i>Local content</i> | 35 |
| 3. <i>Sub-national transfers</i> | 36 |
| CONCLUSION..... | 38 |
| CHAPTER III: PROPOSED MODELS FOR SHARING MINING PROFITS FOR LOCAL DEVELOPMENT IN CAMEROON | 39 |
| 1. LINKING BENEFIT SHARING TO DECENTRALISATION..... | 39 |
| 1.1. <i>Add the region as a beneficiary entity of the share of the surface fee, the state concession fees, the ad valorem tax and the extraction tax</i> | 40 |
| 1.2. <i>Direct payment to the DTCs by the holder of a mining or quarrying right of the share of the ad valorem tax and the extraction tax due to them</i> | 40 |
| 1.3. <i>In the context of the semi-mechanised mine, transfer the communities' share to the commune</i> | 41 |

| | | |
|------|---|-----------|
| 2. | CLARIFY THE MANAGEMENT OF REVENUES FOR LOCAL DEVELOPMENT | 43 |
| 3. | ENSURE THE TRACEABILITY OF FUNDS ALLOCATED TO THE DTCS AS A CONTRIBUTION TO LOCAL DEVELOPMENT 44 | |
| 4. | ENSURE TRANSPARENCY AND ACCOUNTABILITY IN THE MANAGEMENT OF FUNDS ALLOCATED TO COMMUNITIES AS A CONTRIBUTION TO LOCAL DEVELOPMENT | 44 |
| 4.1. | <i>Establish a multi-actor and independent regional body in charge of monitoring the funds</i> | 44 |
| 4.2. | <i>Create 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.....</i> | 45 |
| 4.3. | <i>Establish a communication and open data system at regional and municipal level.....</i> | 45 |
| 5. | TO GIVE THE SPECIFICATIONS THE MISSION OF CONTRIBUTING TO LOCAL DEVELOPMENT | 46 |
| 5.1. | <i>Develop the specifications in a participatory and inclusive manner, by:.....</i> | 46 |
| 5.2. | <i>Identify the source of funding for the specifications and promote transparency in implementation:</i> | 47 |
| 5.3. | <i>Establish a monitoring and accountability mechanism by:</i> | 47 |
| 6. | ENSURE TRANSPARENCY, TRACEABILITY AND ACCOUNTABILITY IN THE MANAGEMENT OF THE SPECIAL ACCOUNT FOR LOCAL CAPACITY DEVELOPMENT | 47 |
| | CONCLUSION..... | 48 |
| | CONCLUSION AND RECOMMENDATIONS..... | 50 |
| | BIBLIOGRAPHY | 54 |

GENERAL INTRODUCTION

Context and justification

Africa is endowed with enormous natural wealth, so much so that it would not be an exaggeration to say that it is the most endowed continent in this respect. Indeed, in terms of minerals, while it has over 60 different types of minerals alone, Africa contains one-third of the world's reserves (IISD, 2019). According to the ECA, "by global standards, reserves and production of some mineral commodities, including bauxite, chromium, cobalt, gold, manganese, phosphate, platinum group metals, titanium and diamonds, are significant. In some cases, (chromium, cobalt and platinum group metals), reserves and production are concentrated in a few countries (South Africa, Democratic Republic of Congo and Zambia) but are also available in many other countries. ". It is therefore understandable that the continent is the object of so much covetousness. This is particularly the case for gold in Burkina Faso with the companies Company SA Burkina Mining, Nantou Mining Burkina Faso SA and SOMITA, which belong to the Canadian multinationals Avesoro Resources Inc, Trevali Mining Corporation and Russia's Nordgold N.V. This is also the case in the DRC with AngloGold Kilo, a subsidiary of the South African company AngloGold Ashanti, for gold mining, and Sintoukola Potash, a subsidiary of Kore Potash in the United Kingdom, for the mining of potash, which is useful in the fertiliser industry.

This wealth and greed for Africa is not new. Yet despite this wealth, the continent remains the poorest, consuming only a tiny amount of its production and exporting almost all of it. With the surge in the price of certain raw materials exploited in Africa, including gold, the value of its exports has increased tenfold since 2000 to reach 24 billion dollars, two-thirds of which came from South Africa in 2011 (Jean-Raphaël Chaponnière, Cairn 2013). This precarious status quo shows that Africa has not been able to take full advantage of the benefits of its mineral exploitation. Indeed, according to the latest (2019) edition of the United Nations Development Programme's Human Development Report, during the years 1990, 2000, 2010, 2012, 2015 and 2017, Sub-Saharan Africa had the lowest HDI with a figure of 0.398; 0.421; 0, 498; 0.514; 0.531 and 0.537 respectively.

The paradox of abundance prior to 2009 prompted African heads of state and government in February 2009 to meet to take steps to change this paradigm. The adoption of an African Mining Vision (AMV) was seen as part of the solution. The overall objective of the AMV is to promote a sustainable and well-governed mining sector that efficiently collects and deploys revenues and is safe, healthy, gender-sensitive and ethically inclusive, environmentally friendly, socially responsible and valued by mining-affected communities. It therefore promotes "transparent, equitable and optimal exploitation of mineral resources that can underpin broad-based sustainable growth and socio-economic development".

In this objectivity, the AMV identifies a set of challenges that African countries must address if mining is to contribute effectively to their development. Among these challenges, which constitute the pillars of the AMV, is the capacity of mining countries to maximise benefits and manage them, including through the mechanisms for redistributing these benefits, recognising that transparency and accountability play a key role in this mechanism. The Extractive Industries Transparency Initiative (EITI) is also in line with this logic by placing a strong emphasis on the need for resource-rich countries to put in place one or more benefit-sharing mechanisms that effectively contribute to local development. It is understandable that the principles of accountability and transparency are now required in the collection and management of benefits from the mine, whether they are fiscal or social, in cash or in kind.

Cameroon, which is part of the AMV, is a country with proven potential in this sector (PRECASEM, 2016).

In Cameroon, according to "Investir au Cameroun", in terms of potential, first of all, two major deposits are currently of particular interest. These are the bauxite deposits of Minim-Martap and Ngaoundal. In February this year, in its latest phase of research, Australian mining junior Canyon Resources said it had identified 65 additional bauxite plateaus (bringing the total to 79). By analysing only 16 of the 79 targets, the project's potential is estimated at 892 million tonnes, of which 250 million tonnes are "very high grade", ideal for aluminium production. According to the company, analysis of the remaining targets should bring the deposit's potential to around 2 billion tonnes of bauxite, making it "probably the largest deposit in the world, in terms of quantity and quality".

Secondly, in the iron sub-sector, one of the largest deposits, in Nkout, is currently estimated to have a resource of 2 billion tonnes, expandable to 4 billion tonnes.

As far as rutile is concerned, according to official data, Cameroon is home to nearly 3 million tonnes of rutile, of which 500,000 tonnes are located in Akonolinga, the second largest reserve in the world after Sierra Leone.

Finally, with a view to achieving its objective of emergence by 2035, the Cameroonian government has included the mining sector among its development pillars, engaging in a series of actions to contribute to this. This is the case of the Mining Sector Capacity Building Project (PRECASEM) which, to date, has provided better information on the national mining potential. Indeed, thanks to the World Bank's support to PRECASEM, a campaign of airborne geophysical surveys, conducted between 2014 and 2019, has identified up to 500 new virgin sites. These mining sites cover a total area of 160,000 km² and are concentrated in five regions of the country, namely: the East, West, Adamaoua, North and Centre. Minerals range from gold to rare earths, base metals and uranium.

Cameroon has been engaged for several years in a process of reforming its mining legal framework. So far, this reform has resulted in the adoption of a mining code in December 2016. As the application text is still in production, the CRADEC intends to make its contribution so that through these regulatory texts for the case in point, the face of the Cameroonian mining sector reflects the resolutions set out in the AMV. A first study carried out by the CRADEC in 2019, takes stock of the follow-up of the domestication of the AMV in Cameroon and in particular in its pillar "Tax regime and management of mining revenues".

To optimise the positive spin-offs of its mining sector, several reforms have been undertaken by the government for better management of natural resources: the adoption of the mining code in 2016, the adoption of the transparency code in 2018, the adoption of the general code of the Decentralised Territorial Collectivities (DTCs) in 2019, and the creation of the National Mining Company (SONAMINES) in 2020.

The December 2016 mining code broke new ground by making the implementation of a number of principles mandatory, including the redistribution of the surface tax, local content and the obligation to respect the EITI and the Kimberley Process, to which Cameroon is bound.

Promulgated in July 2018, the budget transparency code improves transparency in contractual matters in the natural resources sector on one hand and citizen control through parliament and the audit chamber on the other.

Adopted in December 2019 for an effective decentralisation of public affairs, the General Code of the DTCs, in turn, confers a set of prerogatives on the DTCs relating to the management of natural resources, including mining resources. This concerns, for example, the monitoring and control of industrial waste management, the fight against insalubrity, pollution and nuisances, and the

protection of underground and surface water resources. It also recognises their right to benefit from the benefits (or products).

Through decrees n°2020/749 of 14 December 2020 and n°2020/750 of 14 December 2020, the President of the Republic has respectively created SONAMINES and approved its statutes. SONAMINES' mission is to develop and promote the mining sector in Cameroon, with the exception of hydrocarbons and quarry substances, and to manage the State's interests in this field. This Company will therefore have an important role in the regulation of the national mining economy and consequently on the expected benefits of a mining project.

All this precedent shows the government's will to make the mine a real engine of the national and local economy. Unfortunately, all of these texts suffer from a lack of effectiveness due to the absence of application texts.

This is what CRADEC has been able to reveal in the two previous studies relating to the domestication of the AMV in its two pillars (i) 'Monitoring the domestication of the Africa Mining Vision in Cameroon', pillar 'Fiscal regime and revenue management' (2019) for one and (ii) 'Monitoring the domestication of the Africa Mining Vision in Cameroon. Study report on the analysis of the level of internalisation of environmental and social requirements' (2020) for the other study.

These two studies will have made it possible to identify a series of solutions based on the AMV that Cameroon could use to improve the profitability of the mine in fiscal, economic, social and environmental terms.

But as the AMV shows, optimising the benefits is one thing, managing them, in this case redistributing them, is another matter; a challenge that our country must take up if it wants the mining resource to be a real driver of national development.

Problematic

The project **"Strengthening Tax Justice in Cameroon Phase II" funded by Tax Justice Network Africa (TJNA) through NORAD (Norwegian Agency for Development Cooperation)** is supported by the CRADEC. It aims to (i) have more inclusive, equitable and accountable tax systems; (ii) have a broad range of stakeholders advocating for tax justice; (iii) strengthen the network for tax justice issues.

The importance of the mining sector to the country's emergence ambitions is well documented. The EITI reports provide ample evidence of the ineffectiveness of sub-national payments and transfers and even of a glaring lack of transparency and accountability in the redistribution of revenues, further reinforced on one hand by the outdated information contained in the reports at the time of publication and on the other by the opacity of contracts. This makes it impossible to monitor the obligations and therefore the share of the population and other stakeholders in mining projects, as demonstrated by the PWYP study on the state of transparency of contracts in Central African countries.

Other study reports produced by civil society organisations have noted that socially and environmentally this is a disaster. In the case of artisanal mining, the work of PWYP, DMJ and FODER reveals that the environment is subject to degradation without rehabilitation with significant economic effects. The contribution to social development is no better. Indeed, while no social achievements are made, the populations live in an unparalleled precariousness. On the industrial level, through the work of CRADEC, RELUFA and CED, the cases of C&K Mining or ROCAGLIA and CIMENCAM have demonstrated a weak consideration of local content, non-respect of workers' rights and weak contributions in terms of social achievements.

To improve the governance of this sector, the government has undertaken several projects to achieve these development objectives. The 2016 mining code, which is one of its results, suffers from an application text that must be influenced before it is adopted. It is important that the application texts are capable of organising the redistribution of mining revenues so that local populations are in a position to enjoy the exploitation of the country's resources instead of suffering the negative effects.

Thus, through this study, which will make it possible to make proposals to policy makers, it is a question of making proposals for models of benefit sharing from the mine which integrate the principles of transparency and accountability.

Specifically, this study aims to:

- (1) Analyse the existing premises or achievements of benefit redistribution models at national level in order to identify strategic benefit sharing challenges based on transparency and accountability in relation to AMV and its level of national domestication;
- (2) Identify and make a comparative analysis of existing benefit sharing models related to AMV in two countries of equal economic profile in Africa;
- (3) Propose benefit-sharing model scenarios in view of the completeness of the national legal framework and the commitments made in the context of transparency in the extractive sector in Cameroon.

This study is easily in line with the government's determination, despite the difficulties experienced by the mining sector to contribute significantly to the country's development, to exploit its mining resources to achieve the status of an emerging country by 2035, as indicated in its Strategy Document for Growth and Employment (DSCE 2010-2020) and more recently in its National Development Strategy (SND 2020-2030). This is further confirmed by the mining activities underway, notably with Codias SA preparing to develop the small Colomine gold mine in the east of the country, the mining company Oriole Resources which is active on the Bibemi and Wapouzé gold projects. And the French company Eramet, which is exploring the rutile blocks of Cameroon, notably in Akonolinga, in the Central region.

Methodology

The study aims to draw lessons from the past and even the present, as well as from the experiences of three other countries (Guinea, DRC and Burkina Faso) in order to propose one or more schemes that Cameroon should draw on to ensure better profitability, or rather a better contribution of the mine to local development. The choice of these countries is due to the fact that, as members of the Extractive Industries Transparency Initiative, at the end of their first respective Validations on the implementation of the 2016 EITI Standard Requirements, it emerged that they all face challenges in terms of transparency of the Requirements in relation to benefit-sharing; in particular sub-national transfers. (Michel BISSOU, 2019).

For the study team, this work should enable the CRADEC and its partners, on the one hand, to raise the awareness of political decision-makers about the challenges and issues relating to the sharing of benefits from the mine and, on the other hand, to make precise, concrete and realistic proposals based on experience.

Thus, for the drafting of this study, the following actions were considered:

1. Conduct a literature review and analysis: national legal frameworks of the countries concerned; studies related to benefit sharing;
2. Conduct surveys and interviews with selected stakeholders involved in defining and monitoring the benefit-sharing mechanism in the mining sector;
3. Visiting selected public and private institutions, including CSOs, the administration, and DTCs.

Limitations

In terms of the subject matter, i.e. the benefit-sharing mechanisms of the extractive sector, some limitations can be objectively formulated. Not all revenues from the extractive sector are necessarily profits and not all revenues are necessarily shared. The study therefore prioritised surface and mining royalties, development funds and other revenues that can be shared as long as it is the impact of mining revenues on local development that is being sought.

In terms of the phases of a mining project, the study focused on redistribution and not on the collection or expenditure of revenues. As such, the study does not question the capacity of the state to better mobilise extractive revenues or its management of revenues, or even of shared benefits. In the same vein, the study did not aim to monitor production, the tax base or even fiscal potential, as these variables are known to be essential for capturing the benefits of mining activity. On the basis of the relevant provisions of the current Mining Code, the authors analysed the existence, first of the principle, and then of the profit-sharing mechanism resulting from the application of these provisions.

The study addresses the principles and mechanisms of benefit sharing from a design perspective. It is not therefore an evaluation of the sharing mechanisms proposed in the study. However, the study did make an assessment of existing mechanisms in order to be able to identify possible justifications for the proposals made.

The study considers the DTCs, i.e. the Communes and the Regions, as beneficiaries of the sharing. However, depending on the political sensitivity of the Cameroonian government, it is possible that the administrative unit, the Commune, may be the only one retained, and that the Regions may not be among the beneficiaries. In any case, the authors take the position that the Regional Councils still need a minimum capacity to monitor and control the activities that take place in their areas of competence. This is all the more true as these activities can (and do) have impacts on health, education and culture, to name but a few areas.

The study is based on the observation that, at the time of publication, the legal corpus governing profit sharing in the mining sector in Cameroon is still incomplete. The study is therefore a reflection, based on the experience of African countries with a similar mining sector to Cameroon as well as its previous provisions, on the proposals made. Viewed in this way, the study is not a compliance audit of benefit sharing, but rather an attempt to make proposals.

Following the previous limitation, the authors of the study assume that the sharing of benefits from the mining sector is ineffective at the level of communes and communities insofar as there is not yet a specific accounting for the mining sector in the public finances of the state of Cameroon. Aware of this, the authors believe that the effectiveness of this sharing is the responsibility of the ministry in charge of finance. However, the ministries in charge of mines (particularly with regard to the mining sector development fund), the environment (particularly with regard to the fund for the restoration, rehabilitation and closure of mining and quarrying sites), domains (with regard to the surface royalty), decentralisation and local development (with regard to the special account for the development of local capacities) are also ministerial departments involved, depending on the case, in the collection, sharing and management of the said revenues

At the time of writing, CAPAM is the existing structure. However, aware of the creation of SONAMINES, the authors simply transferred the competences devolved to CAPAM in the artisanal and semi-mechanised artisanal sectors to SONAMINES. However, it is possible that these competences will be rethought, notably through the Mining Code application decree, and consequently that the profit-sharing proposals concerned in this case will also be reviewed.

With regard to the potential beneficiaries of profit sharing from the mining sector, the authors have retained the classic approach, namely the Ministry of Finance for the state revenue account, the Ministry of Mines for the monitoring account, other ministries with regard to their competences on the subject matter, SONAMINES, and finally the DTCs (regions and communes). However, the study did not go into detail about the services of the ministries or the DTCs that should receive these benefits. This was done as far as possible in comparison with what is done in other countries, but not in absolute terms.

CHAPTER I: LEGAL PRINCIPLES AND MECHANISMS OF BENEFIT SHARING IN THE MINING SECTOR IN CAMEROON

Introduction

The Cameroonian mining sector is governed by Law n°2016/017 of 14 December 2016 on the Mining Code. To this text must be added related texts that allow better consideration of sectors related to mining (environment, land, industry, indigenous peoples, etc.). The institutional framework of the mining sector is mainly defined by the 2012 decree on the organisation and functioning of the Ministry in charge of Mines. In addition to this main text, other texts, programmes or projects must also be taken into account here which aim to create, organise and operate entities which, whether or not they are part of the Ministry in charge of mines, participate in the animation of the mining sector. This is the case of the decree of 14 December 2020 on the creation of SONAMINES; a company which absorbs the missions of CAPAM.

In view of the number of exploration permits already registered and despite its mining potential, whose database continues to be enriched, Cameroon is a country with a very low level of exploitation of its mineral resources and relatively low exploitation of its quarry resources. From the analysis of its 2017 EITI Report, it appears that Cameroon had 97 quarrying permits, 37 water permits, 05 mining permits, 178 mining research permits. Despite this low level of effective exploitation of Cameroon's mining resources, it is still possible to note the impacts of these activities on the communes and communities. It is for this reason that Cameroon has adopted the principle of compensation for damages caused by a mining project. In addition to this principle of compensation for damages caused, there are also those for the contribution of the exploitation of the mining resource to local and national economic development. This principle is based on Article 5(1) of the 2016 Mining Code, according to which "The mineral substances contained in the soil and subsoil of the Territory of the Republic of Cameroon, its territorial waters and its continental shelf are the property of the State, which exercises sovereign rights over them". Thus, this State, whatever its form, must consequently define mechanisms which, on a practical level, formalise the principles acquired on a theoretical level, if one can put it this way.

Given the difference between the principles and mechanisms of benefit sharing in the mining sector in Cameroon, this chapter will focus on (1) a description of the principles and mechanisms of benefit sharing in the mining sector in Cameroon, (2) an analysis of the effectiveness, efficiency and equity of these mechanisms, and finally by (3) a SWOT analysis of these principles and mechanisms.

I. Description of the legal principles and mechanisms for benefit sharing in the mining sector in Cameroon

The Cameroonian mining sector is made up of two (02) legal regimes of natural resources, namely that of mines and that of quarries (Article 6 of the Mining Code). Each of these regimes, in addition to general provisions (Title I of the 2016 Mining Code), is subject to specific legal provisions (Title II and Title III of the 2016 Mining Code). Titles V (Rights and obligations attached to the exercise of mining activities), VI (Holding, transport, processing and marketing of mineral substances), VII (Local content), VIII (Fiscal, customs and economic provisions), IX (Monitoring, controls and inspections of mining activities), X (Administrative sanctions and repression of offences), XI (Settlement of disputes), XII (Miscellaneous, transitional and final provisions) and XII (Miscellaneous, transitional and final provisions), depending on the subject covered by the Mining Code, specify the legal provisions relating to either the mine or the quarry.

As far as profit sharing is concerned, we will find the legal basis for the principles and, as far as possible, the cases of the mechanisms, in the general and specific provisions as well as in titles V, VII and VIII of the Mining Code.

1. The principles of benefit sharing in mining and quarrying regimes

1.1. Case of the mining regime

Benefit sharing is achieved here through the ad valorem tax, the surface fee and the local content.

1.1.1. Surface fee

The surface fee is the 'sum due annually by holders of mining titles, quarrying authorisations and permits and mineral water exploitation permits in return for the surface area occupied by the activity they carry out' (Art. 4 of the Mining Code). Holders of artisanal and semi-mechanised artisanal mining permits, research permits, industrial mining permits and small-scale mining permits are subject to the payment of a surface royalty or a state concession fee (Art. 172 Al. 1).

The surface fee is not a benefit of the mining activity for the mining company or operator. However, it is because in the future it will have to be redistributed, in particular to the communities and the municipality territorially competent, that we treat it as a benefit of the activity for the communities.

1.1.2. Ad valorem tax

Cameroonian mining legislation recognises the principle of sharing the ad valorem tax. The ad valorem tax is a "*sum due to the State or to national sectoral institutions, in respect of the value of the production on the mine floor of mining products and spring, mineral and thermo-mineral waters, and geothermal deposits*" (Art. 4 of the Mining Code). The population living in the vicinity of a small or industrial mine is entitled to compensation, the amount of which is deducted from the ad valorem tax (Art. 118 para. 1 of the Mining Code). With regard to semi-mechanised artisanal mining of mineral substances, the State levies a synthetic mining tax in full discharge of twenty-five percent (25%) of the gross production of each site (Art. 28 of the Mining Code).

1.2. The case of the quarrying regime

Like the mining regime, the quarrying regime also provides for the sharing of benefits from the mining sector with third parties, including local authorities and communities.

1.2.1. Surface fee

Like holders of mining authorisations and titles, holders of authorisations and permits for the exploitation of artisanal commercial quarries, semi-mechanised artisanal quarries and industrial quarries are also subject to the payment of a surface royalty or a state concession fee (Art 172 Al. 1 Mining Code).

1.2.2. Extraction tax

People living in the vicinity of an artisanal semi-mechanised or industrial quarry are entitled to compensation from the extraction tax on quarry products (Art 118 Al. 2 of the Mining Code). The extraction tax is a "*sum due to the State or to national sectoral institutions, in respect of the value of the production of commercial artisanal quarry substances, semi-mechanised artisanal quarries and industrial quarries*" (Art. 4 Mining Code).

1.3. Local Content

Another form of benefit sharing from mining and quarrying is the practice of Local Content. Here, the social, economic, cultural, industrial and technological contribution of the mining project to the development of Cameroon in general and the localities hosting the mining projects in particular

is sought. This contribution is materialised through the creation of jobs for local people, their training, the use of local subcontractors, the elaboration of a programme aimed at the social development of the local population and, where applicable, of the indigenous population in the vicinity of the mining or quarrying activity. Title VII of the Mining Code is entirely devoted to local content. In the same vein, the local processing of products from artisanal mining and semi-mechanised mining should be taken into account (Art 28 of the Mining Code).

1.4. Social payments

Profits from the mining sector are not only in cash. They can also be non-cash. This is where sub-national social payments come in. They can be either mandatory as they are part of the legal or contractual framework, or voluntary as they are the sole responsibility of the company. Social programmes and projects aimed at the development of local or indigenous populations are part of social payments when they are directly financed at the local level.

1.5. Capital gain on the transfer of mining titles

The Mining Code provides for the possibility for the operator to carry out a direct or indirect transaction on the said title. However, this transaction is subject to a levy on the capital gain made. Although it is not stated whether this profit from the transaction on the mining title will directly benefit the communes and communities, it is at least admitted that it will be distributed (Art. 105 para. 5).

| | | |
|---------------------------|--|--------------------|
| DOMESTIC ARTISANAL | NOTHING | NOTHING TO REPORT |
| COMMERCIAL ARTISANAL | Surface fee | Art 172 |
| SEMI-MECHANISED ARTISANAL | Surface fee | Art 172 |
| | Extraction tax | Art. 118 |
| PUBLIC UTILITY QUARRY | Exemption from payment of the surface fee and the ad valorem tax | Art. 83 |
| INDUSTRIAL QUARRY | Surface fee | Art 172 |
| | Extraction tax | Art 118 |
| | Local content | Art. 28, Title VII |

Source: Law N°2016/017 of 14 December 2016 on the Mining Code

2. Benefit sharing mechanisms in the Cameroonian mining sector

Mechanisms are seen here as the operational materialisation or application of the principle that is already established in the texts. These mechanisms can be horizontal (sub-national payments) or vertical (sub-national transfers). They may therefore concern cash or non-cash flows. Vertical mechanisms include the surface royalty, the ad valorem tax and the extraction tax, which are shared between the Public Treasury, the Administration in charge of mines, the Administration in charge of domains, the Tax Administration, the Funds provided for in the present code, the communes and the riparian population, where applicable (Art. 176, para. 2). Local content is subject to either a vertical or horizontal mechanism depending on whether the action is carried out from the central level or directly at the level of the locality decentralised by the mining project

2.1. Surface fee

The surface fee is considered as a property tax. The provisions of the land tenure and property regime in force stipulate that the property tax is shared between the administration in charge of the domains, the commune and the communities bordering the project. However, as Cameroon's mining legislation currently stands, the mechanism for sharing the surface royalty is not yet defined. However, the amounts, rates and bases to be paid for surface royalties have already been defined in the Mining Code (Art. 173). Moreover, the Mining Code provides that these amounts, rates and bases are stabilised, depending on the nature of the title (Art. 190 para. 3), at their initial value at the time of signing the mining right (Art. 190 para. 2).

The Mining Code provides that non-payment of the surface royalty by holders of mining titles, authorisations and exploitation permits may result in the withdrawal of the said title or authorisation or exploitation permit as the case may be.

2.2. Ad valorem tax

Article 174 of the Mining Code specifies the frequency of payment of the ad valorem tax (monthly or on the occasion of the dispatch of lots by holders of mining titles), the quality of the substances subject to the said tax (products extracted in the merchantable state having undergone or not undergone treatments that do not lead to any essential modification of their chemical composition), as well as its method of calculation. *"The ad valorem tax is calculated on the basis of the taxable value of the products on the mine floor, ready for shipment, on the basis of the information, contracts and supporting documents that each taxpayer must provide to the competent authorities for the purposes of its determination. The reference price of the taxable value of the products on the mine floor is based on the price of the substance on the international market"* (Art. 174, para. 4).

The Mining Code also defines the amounts of ad valorem tax on mining products according to whether they are precious stones (8%), precious metals (5%), base metals and other mineral substances (5%) or radioactive substances and their derivatives (10%) (Art. 175.a).

As the amounts, rates and bases of the ad valorem tax are stabilised, depending on the nature of the title (Art. 190 Al. 3), at their initial value at the time of signing the mining right (Art. 190 Al. 2).

2.3. Extraction tax

The mechanism for payment of the extraction tax of commercial artisanal, semi-mechanised artisanal and industrial quarry substances is defined in Article 175.c of the Mining Code. For soft materials, it amounts to 200 CFA francs/m³ while for hard materials, it amounts to 350 CFA francs/m³. Like the surface royalty and the ad valorem tax, the extraction tax is payable monthly by holders of quarrying authorisations or permits. The amounts, rates and bases of the extraction tax are stabilised, depending on the nature of the title (Art. 190 para. 3), at their initial value at the time of signing the mining right (Art. 190 para. 2).

2.4. Local content

Local content is both a legal obligation (see Title VII of the Mining Code) and a contractual obligation insofar as it is provided for in the standard mining convention (see Art 44 of the Mining Code). Local content is seen as a form of mechanism for sharing the social and economic benefits of mining activity, particularly with regard to the direct and indirect jobs created, the potential improvement in the level of technical knowledge of nationals, and the involvement of national SMEs/SMIs through local supply. This type of benefit makes sense insofar as the mine should not be perceived as an industrial enclave, but rather as an activity in its own right in an inclusive economy, and of which it is a significant variable in the endogenous growth of this economy.

2.5. Social payments

The mechanism of social payments depends on whether it is voluntary or mandatory. In terms of its mandatory nature from a legal point of view, the Mining Code bases this mechanism on the standard mining convention. From a contractual point of view, it is important to analyse the contractual clauses relating to the social and economic obligations of the company. This is not an objective of the study. From the voluntary point of view, it is the observation of achievements in the field, after deduction of compulsory social payments that will allow the assessment of the effectiveness of voluntary social payments. The mechanism for sharing social payments is therefore defined in the company's social - and environmental - policy.

2.6. Capital gains on the transfer of mining titles

The mechanism of the capital gains levy for exploration permits is defined in the Mining Code. It consists of 10% of the difference between the gross amount of the transfer and the direct expenses related to the research carried out by the holder (Mining Code Art. 105 Al. 2). As regards the capital gain realised in the context of a transaction on an exploitation permit, the Mining Code refers to the provisions of the General Tax Code relating thereto. Whatever the case, the beneficiary of the transaction and the holder of the mining permit are jointly and severally liable for the payment of the levy on the capital gain realised (Art. 105 para. 4).

| | | |
|------------------|---|-------------------------|
| QUARRYING REGIME | Surface fee | Art 173, 176, 213 |
| | Extraction tax | Art 174, 175.c, 176 |
| | Capital gains on the transfer of titles | Art. 105 |
| | Local content | Art. 166 Al.4 |
| | Tax stability clause | Art 190 |
| MINING REGIME | Surface fee | Art 173, 176, 213 |
| | Ad valorem tax | Art 28, 174, 176, 175.a |
| | Capital gains on the sale of titles | Art. 105 |
| | Local content | Art. 166 Al.4 |
| | Tax stability clause | Art 190 |

Source: Law N°2016/017 of 14 December 2016 on the Mining Code

II. Effectiveness, efficiency and equity of benefit sharing principles and mechanisms in the mining sector for community development

Through a progressive evaluation, it is advisable to first ensure the effectiveness of a mechanism before questioning its efficiency. Subsequently, we will evaluate the consideration given to equity in these mechanisms.

1. Effectiveness of benefit-sharing mechanisms from the mining sector

As noted above, the principles of sub-national transfers are established. The mechanisms for these transfers have been initiated in the Mining Code. However, these mechanisms have not been completed. The Mining Code refers to regulations that must specify the modalities for the distribution of the surface fee, the ad valorem tax and the extraction tax (Art. 176, para. 3). The same applies to the synthetic mining tax in full discharge of twenty-five percent (25%) of the gross production of each site in the context of semi-mechanised artisanal exploitation of mineral substances. The modalities for deducting and distributing the State's share between the Public

Treasury, the Mining Sector Development Fund, the structure in charge of supervising and promoting artisanal mining activities, the territorially competent Commune and the local populations are set by regulation (Art. 28 Para 3).

The regulations must also define the modalities for auditing and validating the expenses, recovery and distribution of the levy on the capital gain realised on the transfer of a mining title (Art. 105, para. 5).

With regard to the mechanisms for sharing social benefits, in this case legal social payments, the importance of approving the model mining agreement by regulation also emerges (Art. 44 Para. 3).

In the end, it can be said that the Cameroonian Mining Code has enshrined the principles of profit sharing in the mining sector. It has begun to define the mechanisms for such sharing. Unfortunately, the development of these mechanisms has not been completed because there is no regulatory framework. As a result, both in theory and in practice, benefit sharing from the mining sector is not effective, if one looks at the outcome of the 2010 Mining Code reform, the current outcome of which is the 2016 Mining Code without its implementing decree. However, it is worth recalling the mechanisms for sharing benefits from the mining sector in light of Decree n°2014/2349/PM of 01 August 2014, amending and supplementing certain provisions of Decree n°2014/1882/PM of 04 July 2014 amending and supplementing certain provisions of Decree n°2002/648/PM of 26 March 2002 setting out the modalities for implementing Law n°001 of 16 April 2001, amended and supplemented by Law n°2010/011 of 29 July 2010 on the mining code.

- As for the surface fee, it was not subject to apportionment and therefore cannot be treated as part of profit sharing;
- With regard to the ad valorem tax and the extraction tax:
 - As regards the semi-mechanised craft industry, article 137.- (new - bis) in its paragraphs 3 and 4 provides that:

Article 137 - (new - bis)

(3) The State shares and the corporate tax (IS) referred to in Article 2 (new-bis) are directly levied in the form of the total gross production equivalent on the mine floor. This levy is set at 15% and is carried out by CAPAM.

(4) The revenue collected in respect of the above levy shall be allocated as follows:

 - 70% for the State of which:
 - 40% directly stored at MINFI (Ministry of Finance) in the form of gold material;
 - 30% for the continuation of the channelling of gold into formal channels by CAPAM (Framework for the Support and Promotion of Mining Craft) ;
 - 10% for support to the operation of collection teams;
 - 10% for projects for local populations;
 - 10% for the support of the Mechanised Artisanal Mining Monitoring Committee

(5) CAPAM is also designated to oversee and supervise the negotiation of contract terms between nationals and technical and financial partners. If the nationals involved in the said contracts cannot be found, their shares revert de facto to the State.
 - With regard to industrial mining, Article 137 (new) (1) of Decree n°2014/1882/PM of 04 July 2014 amending and supplementing certain provisions of Decree n°2002/648/PM of 26 March 2002 laying down the terms and conditions for the

application of Law n°001 of 16 April 2001, as amended and supplemented by Law n°2010/011 of 29 July 2010 on the mining code, provided that :

(1) The revenue collected in respect of the ad valorem tax and the extraction tax for any activity involving the exploitation of mineral substances is distributed and allocated as follows:

- i. 25% as a right to compensation for the populations affected by this activity, distributed as follows:
 - 10% for the benefit of local populations ;
 - 15% for the benefit of the territorially competent municipality.
- ii. 25% to support the monitoring and technical control of the activities concerned by the engineers and agents of the administration in charge of mines;
- iii. 50% to the Treasury.

2. Effectiveness of benefit sharing mechanisms from the mining sector

In a context of ineffective benefit-sharing mechanisms in the mining sector, it is difficult to speak of efficiency (PWYP, 2020)¹.

Effectiveness calls for the efficiency of regulatory mechanisms for the collection, redistribution and management of profits from the mining sector.

Pending the application decree of the 2016 Mining Code, it is observed that the provisions of the application decree of the previous law are those to which the administration in charge of mining refers in certain cases. This limits the effectiveness of the legal and institutional frameworks governing the mining sector. All the more so as the current socio-political context in Cameroon has seen the appearance of new texts whose implementation requires clarifications of the texts governing the mining sector. This is the case of the General Code of the DTCs with regard to non-concessible resources.

The effectiveness of local content and sub-national payments is also questioned as the mining reform process evolves. Although the 2016 Mining Code also sets out general provisions, it calls for regulatory avenues to define objective indicators for local content such as the 15% minimum for local processing of mined minerals.

3. Equity of benefit sharing from the mining sector

“Equity, from the Latin aequitas, is a principle involving fair treatment, absolute respect for what is due to each person”. Taken as it is, it is clear that the ineffectiveness of benefit sharing in the mining sector affects equity in the sector as regards the actors (population, municipality, mining administration, treasury, etc.) concerned by these benefits. The Publish What You Pay campaign has shown that, from the analysis of the issue of equity in the contribution of the mining sector to local development, numerous advocacy campaigns have been carried out by Cameroonian civil society organisations in particular (PWYP, 2020) and African civil society organisations in general, with a view to the effectiveness, and even efficiency, of benefit sharing from the mining sector. It should be recalled that in the absence of the application decree of the 2016 Mining Code, it is the previous provisions that are applied in full non-compliance with some of the new provisions of this Code.

¹ PWYP, "Revenue Sharing from the Mining Sector in Africa: Impact of Mining Reform", M. BISSOU & E. ETOGA, 2020

These include Decree No. 2014/2349 of 1 August 2014 and Joint Order No. 003950/MINFI/MINMIDT of 1 June 2015 empowering CAPAM to collect the ad valorem tax on mineral substances and the monthly advance payment of IS due by companies engaged in low-mechanised artisanal mining on behalf of the DGI. It is in this regard that the modalities for the distribution of the synthetic tax on semi-mechanised mining are defined. With the creation of SONAMINES, the missions formerly devolved to CAPAM in terms of collecting the ad valorem tax on mineral substances and the monthly advance payment of the IS due by companies can be entrusted to SONAMINES.

TABLE 03 : VERTICAL PROFIT-SHARING MECHANISMS

| MECHANISM | | EFFECTIVENESS | EFFICIENCY | EQUITY |
|---------------------|--|--|--|---|
| 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 Al.5 | | |
| | Local content | Art 166 Al.3 and Al.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 Al.5 | | |
| | Local content | Art 166 Al.3 and Al.4 | | |
| | Tax stability clause | See contractual provisions | | |

Source: Law N°2016/017 of 14 December 2016 on the Mining Code

III. SWOT analysis of benefit sharing principles and mechanisms in the mining sector

The SWOT analysis of benefit sharing in the mining sector recommends an internal analysis of the strengths and weaknesses of the legal and institutional framework governing such sharing. It also recommends external threats and opportunities to the effectiveness, efficiency and equity of benefit sharing. This approach will thus make it possible to identify the strengths and weaknesses of the benefit-sharing mechanisms of the Cameroonian mining sector in their current state.

1. Strengths of the principles and mechanisms of benefit sharing in the Cameroonian mining sector

These strengths can be identified in particular in the synthetic tax on semi-mechanised artisanal mining, the inclusion of the surface fee in the scope of profits to be shared and finally the inclusion of local content in the 2016 Mining Code.

With regard to the synthetic tax on the mining industry, it can be noted that the distribution of this tax admits the principle of a distribution in kind of the gold collected. This lifts the lock on a cash-

only redistribution of the synthetic tax. This Cameroonian specificity is to be noted as a strength, as it is a good practice in the mining sector for the effectiveness of profit sharing. Moreover, this practice implicitly allows for a trade-off between progressive and regressive taxation insofar as the stakeholders have the resource in kind and can therefore, at the time of the transaction, operate with the applicable gold price.

With regard to the surface fee, as noted in Article 176 of the Mining Code, the treatment of the equivalent of the land tax in the mining sector will be in line with that of other sectors (agribusiness, etc.). It should also be noted that the rates and bases of surface fees have increased in the 2016 Mining Code (Article 173 of the said Code) compared to what was provided for in the previous texts (Art. 139 of Decree n°2014/1882/PM of 04 July 2014 amending and supplementing certain provisions of Decree n°2002/648/PM of 26 March 2002 laying down the modalities of application of Law n°001 of 16 April 2001 amended and supplemented by Law n°2010/011 of 29 July 2010 on the Mining Code).

Local content refers to the promotion and use of local goods and services in mining projects. As such, the benefit of mining goes well beyond a monetary dimension and therefore a guarantee for decision-makers to avoid mining projects becoming industrial enclaves. It is therefore a question of greater socio-economic involvement of local people in mining projects. All of which calls on decision-makers to better supervise the activities of small and medium-sized enterprises and to better provide training adapted to the needs of qualified workers in the mining sector. Hence the interest in completing the reform process which is still underway.

Another strength at the current stage of the mining reform process is the experience gained from the level of implementation of the 2016 Mining Code in the current social, economic and political contexts. Indeed, at this stage, it may have been sufficiently observed what the expectations and needs are in terms of appropriate and adequate regulatory pathways.

The Extractive Industries Transparency Initiative (EITI), to which Cameroon has been a party since 2005, reveals through its Board Decision of 22 January 2021, that Cameroon has made significant progress in terms of transparency on revenue distribution and sub-national transfers. The implementation of the EITI Standard Requirements has shown that benefit sharing at the level of the Communes and Regions is not effective.

2. Weaknesses of benefit sharing mechanisms

The weaknesses of benefit-sharing mechanisms in their current state are legal and institutional.

At the legal level, the weaknesses of benefit-sharing mechanisms in the mining sector for local and community development can be observed in each mining sub-sector.

The redistribution of surface fees is an innovation compared to previous procedures, as they were not redistributed. Unfortunately, here again, the modalities of redistribution are not yet defined. Moreover, the land reform is not yet completed. With regard to the extraction tax, for each of the sub-sectors of the quarrying and mining regimes, it was found that the rates and bases are defined in the law. However, once again, in order for the impact of the extraction tax and the ad valorem tax on local development to be sufficiently perceptible and measurable, the quotas intended for the communes and communities should be made available to them. With regard to the mining regime, it appears that a synthetic tax is planned for semi-mechanised artisanal mining. Although this tax provides for a quota for the communes and local communities, the fact remains that this tax is levied but not redistributed. It should be remembered that public interest quarries are exempt from surface fees and extraction taxes. Therefore, they do not contribute to local development in terms of sub-national transfers.

The legal weaknesses relate to the unfinished business of mining reform, which is reflected in the fact that the Mining Code is still awaiting implementation texts.

The institutional weaknesses relate to the need to adjust the 2012 decree on the organisation and functioning of the ministry in charge of mines. The creation of SONAMINES in December 2020 is the materialisation of the provisions of Article 30 of the Mining Code of 2016 with a view to strengthening the institutional framework of the mining sector. With the creation of SONAMINES, which is responsible for monitoring and controlling the production, marketing and promotion of the processing of substances from artisanal and semi-mechanised mining activities, the organisation and functioning of MINMIDT should be reviewed. This will require further clarification of the missions of the Mining, Water and Energy Revenue Security Programme (PSRMEE), particularly in the context of the traceability of sub-national transfers. The inclusion of surface fees in the scope of sub-national transfers will require capacity building for the staff of the Ministry in charge of mines responsible for the collection, monitoring and management of these fees.

3. Threats to benefit sharing mechanisms

The main threats to benefit sharing from the mining sector are related to (i) the process of decentralisation and local development, (ii) false declarations of production by operators, (iii) undeclared extensions of explored and/or exploited areas.

With regard to the decentralisation process, it is increasingly urgent for Cameroon to complete the regulatory pathways referred to in the Mining Code so as not to allow the spectre of conflicts of competence between the ministry in charge of mines and the ministry in charge of decentralisation and local development to flourish.

As regards the declarations of operators, it should be recalled that sub-national transfers such as the extraction tax and the ad valorem tax are royalties proportional to production. If production declarations are not made or are not accurate, this will impact on the benefits to be shared. This recommends ensuring the effectiveness and efficiency of the production control and monitoring mechanism. In addition, a mining company may produce, but declare that it has not made a profit during a financial year. This results in the "theoretical" non-redistribution of profits. In the context of the EITI, this translates into the insignificance of the flows declared by a mining or quarrying company.

As well as the threats associated with royalties proportional to production, the same applies to surface fees, which are proportional to the area of the mining permit or authorisation. In the case of an undeclared extension to the ministry in charge of mines or the non-renewal of a permit, the benefits to be derived from surface fees may be minimised or mortgaged. This requires ensuring the effectiveness of the Mining Brigade and the Mining Registry in monitoring mining activities within their respective jurisdictions.

4. Opportunities for benefit sharing mechanisms

Based on the principle that Cameroon is not really a mining country, it appears that there are many opportunities in terms of benefit sharing from the mining sector which can be justified by studying the experiences of other countries with a similar economic profile, mineral potential and development prospects on the same subject (see Chapter 2 of the study). Cameroon thus has the opportunity to learn from good and bad practices in terms of benefit sharing from the mining sector in order to be able to define mechanisms adapted to its local realities (See Chapter 3 of the study).

SONAMINES is a tool that allows Cameroon to write its mining history with a view to drawing lessons and capitalising on good practices in this area.

| TABLE 04 : 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 | Contradictory provisions between the Mining Code's implementing decree and the land and property regime As a reminder, the land and property regime is still waiting to be updated |
| <i>Ad valorem 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>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 |
|--|---|--|

Source : The Authors

Conclusion

Although it is acknowledged that Cameroon has mining potential that is not yet sufficiently developed, the communes and communities bordering the authorisations and permits are still waiting for the benefits that Cameroon could gain from mining activities. In this respect, the principles of benefit sharing are an achievement of the current mining legislation. Some of these principles have been able to move from their theoretical dimension to a practical dimension in the form of mechanisms. However, some of these mechanisms are not completed. This calls into question the effectiveness of these mechanisms and therefore their efficiency and equity.

In the face of these challenges, which would like benefit sharing to be a lever for local and national development, it was important to carry out a brief analysis of the strengths (opportunities) and weaknesses (threats) of the current framework for benefit sharing in the Cameroonian mining sector. It emerged that compared to the previous Mining Code, Cameroon has made progress in this area and that the current level of implementation of the provisions of the 2016 Mining Code has sufficiently sensitised the various stakeholders on the interest of adopting mechanisms better adapted to Cameroon's economic, social and political realities.

Reading what is done in terms of benefit sharing in countries with a similar profile to Cameroon should make it possible to formulate proposals capable of guaranteeing the effectiveness, efficiency and equity of benefit sharing mechanisms in the Cameroonian mining sector.

CHAPTER II: INTERNATIONAL EXPERIENCES IN THE CONTRIBUTION OF MINING REVENUES TO LOCAL DEVELOPMENT

With a view to making mining a vehicle for development in resource-rich countries, the Africa Mining Vision (AMV) identifies a set of challenges that African countries must address if mining is to contribute effectively to their development. While placing great emphasis on maximising benefits, the AMV also places a strong emphasis on the ability to manage them, including through the mechanisms for their redistribution, recognising that transparency and accountability play a key role in this mechanism. It also invites African countries to join international instruments such as the EITI, which can promote responsible and transparent revenue sharing mechanisms. Countries that have signed up to the EITI are required to put in place one or more benefit-sharing mechanisms that effectively contribute to local development. Hence the requirement to respect a set of rules on accountability and transparency in the collection and management of benefits from the mine, whether fiscal or social, in cash or in kind.

THE EXPERIENCE OF GUINEA

Guinea has a very large mining potential which constitutes a development opportunity for the country. This mining potential contributes to the attractiveness of foreign direct investment. In 2015, Guinea became the leading producer of copper in Africa and the leading producer of cobalt in the world, positions it still held in 2018. With a view to making the mining sector a lever for local development, the government, under the impulsion of civil society and with the support of development partners, undertook the revision of its mining code in 2011.

The Guinean mining code provides for five (05) mechanisms for the contribution of the mining sector to local development. These mechanisms include:

- The surface fee ;
- The Local Economic Development Fund (FODEL);
- Voluntary social payments;
- Mandatory social payments;
- Local content.

All of these mechanisms were made applicable by the 2014 decree implementing the financial provisions of the mining code, and the specific terms were specified in subsequent orders.

In addition to these mechanisms, Article 165 of the Guinean Mining Code provides for direct support to the local budget of all local collectivities.

1. The surface fee

1.1. Levy methods

Instituted by Article 160 of the Mining Code, it is a tax levy made to contribute to the development of communities hosting mining projects. Paid annually, it is proportional to the surface area described in the Mining Title or in the Authorisation.

| Nature of the title | Surface fees USD/km ² | | |
|---------------------|----------------------------------|-------------|-------------|
| | Grant | 1st renewal | 2nd renewal |
| Research permit | 10 | 15 | 20 |
| Industrial Permit | 75 | 100 | 200 |

| | | | |
|-------------------------------|------|------|------|
| Semi-industrial permit | 20 | 50 | 100 |
| Mining concession | 150 | 200 | 300 |
| Permit to operate by dredging | 150* | 200* | 250* |

*par Km

1.2. Modalities of distribution

The modalities for the distribution of the surface fee were specified in a decision taken in 2013 by the Minister of Territorial Administration and Decentralisation (MATD), amending the 2011 decision on the provisional modalities for the management of the fee allocated to local authorities.

The payment of the fee to the commune is made annually, in a solemn manner, in the presence of the population. The cheque is received by the collector of the collectivity against a discharge receipt. The cheque is transferred to the community's investment account. 85% of the overall envelope is allocated to the investment budget and 5% to the operating budget of the beneficiary community; the remaining 10% is paid to the Prefectural Treasury and distributed as follows:

- 4% for the operation of the prefecture
- 3% for technical studies and monitoring of contracts of the Collectivity; and
- 3% for the operation of the Prefectural Mining Department.

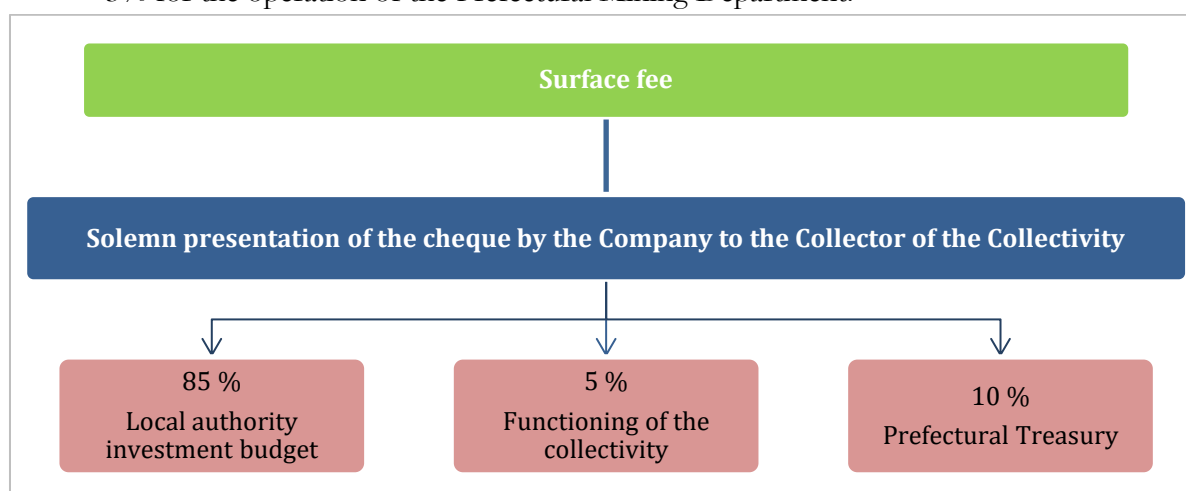


Figure 1 : edistribution of surface fees in Guinea

Solemn payments of the fee guarantee the transparency of the process because they allow the communities present to witness the effectiveness of the company's payment of the fee. However, the surface fee is not specifically tracked in the communes' annual accounts. It is therefore difficult for the citizen to follow up on the expenditures and achievements corresponding to the fee received.

2. Local Economic Development Fund (FODEL)

According to Article 130 of the Mining Code, holders of a mining title must, from their first commercial production, pay an annual Contribution to Local Development (CDL), which is set at 0.5% of turnover for category 1 mining substances (bauxite and iron) and 1% for other mining substances. This contribution is paid into a Local Economic Development Fund (FODEL).

2.1. Modalities of distribution

Article 12 of the joint order of the Ministry of Mines and Geology and the Ministry of Territorial Administration and Decentralisation on the modalities of use, management and control of FODEL establishes the following distribution key:

- 35% to the communities hosting the mines in operation within the perimeter of the mining title, in proportion to the areas occupied (half being allocated to the districts hosting the mines);
- 25% to non-operating communities within the perimeter, distributed according to the effective population of each community;
- 20% to the communities impacted, according to the environmental and social impact study, within the perimeter of the title, in proportion to population;
- 15% to the other communities in the prefecture(s) where the title is located, in proportion to the population;
- 5% to various prefectural and regional services: 1% to the FODEL Management Support Committee (CAGF); 1% to the regional administration; 0.5% to the prefectural administration; 0.75% to the deconcentrated mining administration; 0.75% to the deconcentrated administration in charge of the environment; 0.5% to the sub-prefectural administration.

Established at the level of each mining prefecture, the management of FODEL is ensured by a multi-stakeholder committee. In accordance with article 3 of the decree on the modalities of use, management and control of FODEL, this fund is intended to finance projects in the following areas:

- the development of basic infrastructure and equipment
- the development of basic social services and the improvement of the living environment
- the promotion of local employment
- development of the local economy;
- the realisation of inter-communal projects;
- the development of human capital.

2.2. Body in charge of managing the FODEL

The 2018 decree creating the FODEL creates in its article 2 a FODEL Management Support Committee (CAGF). This multi-stakeholder committee is composed of:

- even representatives of the Prefectural Development Council (CPD), namely:
 - one (1) representative of the Executive Bureau of the Prefectural Development Committee (CPD)
 - one (1) representative of the local elected officials
 - one (1) representative of the Prefectural Administration
 - one (1) representative of the youth
 - one (1) representative of women
 - one (1) representative of civil society
 - one (1) representative of the private sector.
- One (1) representative of the National Agency for the Financing of Collectivities (ANAFIC), as an observer;

- One (1) representative of each mining company with one or more mining titles in the prefecture, as an observer.

Each year, CAGF prepares a general report on the implementation of community development projects financed by FODEL, for the attention of the Minister of Mines and the Minister in charge of Local Government. This report is also freely accessible to the communities.

3. Voluntary and mandatory social payments

Voluntary social payments correspond to flows relating to projects carried out at the initiative of the company. Companies thus respond to spontaneous or implicit requests from stakeholders and retain projects following more or less structured consultations with them.

In 2016, these payments represented GNF 32.4 billion (USD 3.6 million), i.e. the bulk (74%) of the flows of the quasi-fiscal mechanism and 53% of local mining revenues, namely GNF 25.9 billion in cash and GNF 6.5 billion in kind .

The mandatory social payments correspond to social commitments made by the company in its convention or in ad hoc agreements.

4. Local content

It is enshrined in Article 107 of the Mining Code. Indeed, the latter states that *'the holder of a mining title or authorisation as well as the companies working on his behalf must give preference to Guinean companies of his choice for any contract, provided that they offer comparable prices, quantities, quality and delivery times'*.

A minimum share of SMEs, SMIs and companies owned or controlled by Guineans is set for the supply of goods and services to mining companies.

| Research phase | Development phase | Period of operation | | |
|----------------|-------------------|---------------------|------------------|-------------------|
| | | 1st to 5th year | 6th to 10th year | 11th to 15th year |
| 10% | 20% | 15% | 25% | 30% |

Holder of mining titles or authorisations must implement a Plan to support the creation of local businesses and/or capacity building of Guinean companies for the supply of goods and services widely used in their activities. In addition, each mining title holder will be required to submit an annual report on its use of Guinean companies, detailing progress towards meeting the defined minimum shares, as well as its activities in support of the creation or strengthening of Guinean capacity. This report must be "published in the Official Newspaper and on the official website of the Ministry in charge of mines, or any other site designated by the Minister".

Conclusion

Guinea has a wide range of mechanisms to make mining an important contributor to local and community development. Together, these mechanisms guarantee a very significant influx of revenue at the local level, which raises the question of the capacity of the various beneficiaries to capitalise on this revenue. In other words, in Guinea, the legislator has secured access to revenues from the mining sector for the benefit of local authorities and communities. The challenge now lies in the management capacity of the said revenues and obviously the improvement of this system to the future challenges of local and community development in Guinea.

THE EXPERIENCE OF THE DEMOCRATIC REPUBLIC OF CONGO (DRC)

The Democratic Republic of Congo (DRC) has significant mineral resources, including almost half the world's known cobalt reserves. The country is the world's largest producer of cobalt and Africa's largest producer of copper, and also has significant deposits of diamonds, gold, coltan, zinc, lithium, uranium and manganese. Despite these immense mineral resources, the Congolese people remain very poor and the DRC has generally ranked low on the Human Development Index (HDI) in recent years.

In 2018, the country adopted and published the amended version of its mining legislation through Law n°18/001 of 09 March 2018 and Decree n°18/024 of 09 June 2018. This new legal and regulatory framework was the result of a participatory process of revision of the 2002 mining code launched in 2012 by the Congolese government.

This revised legal framework is considered progressive because of its alignment with international and regional best practice, particularly with regard to the protection of human rights, the promotion of community development and the strengthening of transparency standards in the mining sector. Indeed, in terms of the mining sector's contribution to local development, the code puts in place three mandatory mechanisms:

- the direct payment of the mining fee share to the province and the Decentralised Territorial Entities (DTEs);
- the creation of an endowment (fund) for community development contributions
- the signing and implementation of a social responsibility specification by each holder of mining rights or permanent quarrying in favour of the affected communities.

"Decentralised Territorial Entities (DTEs) collect 15% of the mining fee directly from mining companies"

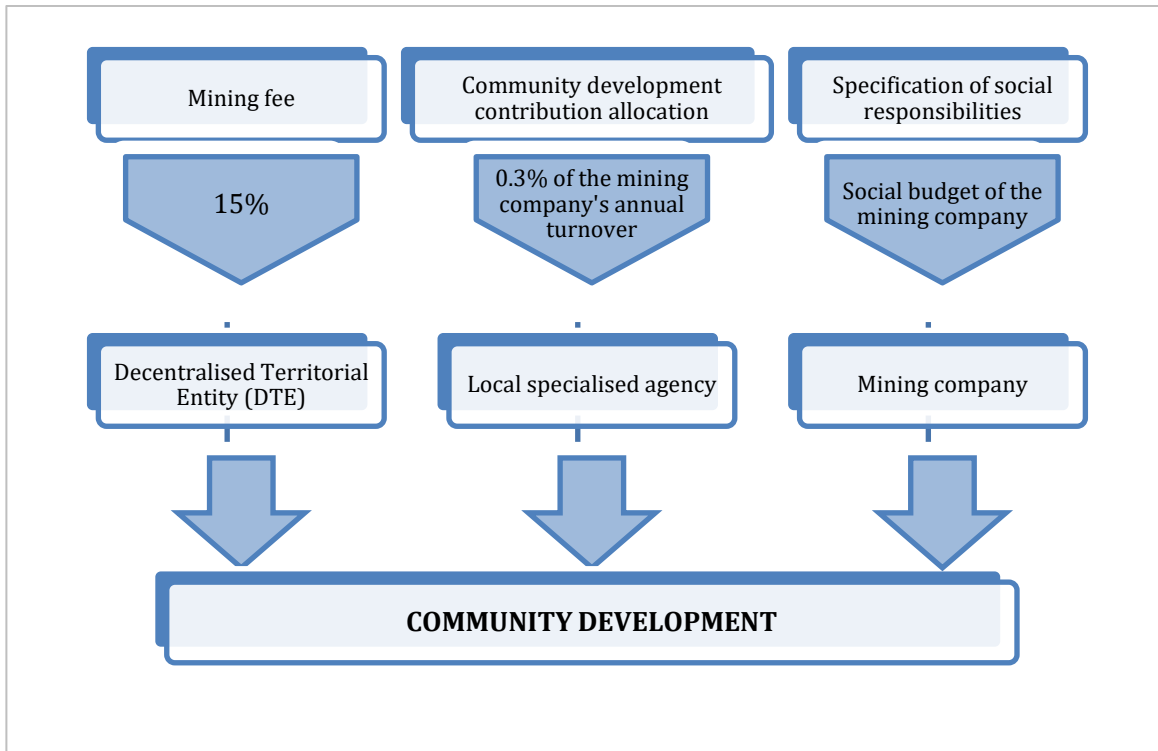


Figure 2: Profit redistribution mechanisms in the DRC
(Source: DRC Mining Code 2018)

1. Mining fee

It is calculated on the basis of the gross commercial value and is due at the time the marketable product leaves the extraction site or processing facilities for shipment. While the 2002 mining code established the collection of the mining fee by the central government and the retrocession of a share to the provinces and the Decentralised Territorial Entities (ETD), the 2018 mining code has changed this. Indeed, the share of the mining fee is now paid directly by the holder of the mining or quarrying right to exploitation or processing to the various beneficiaries according to the following distribution key².

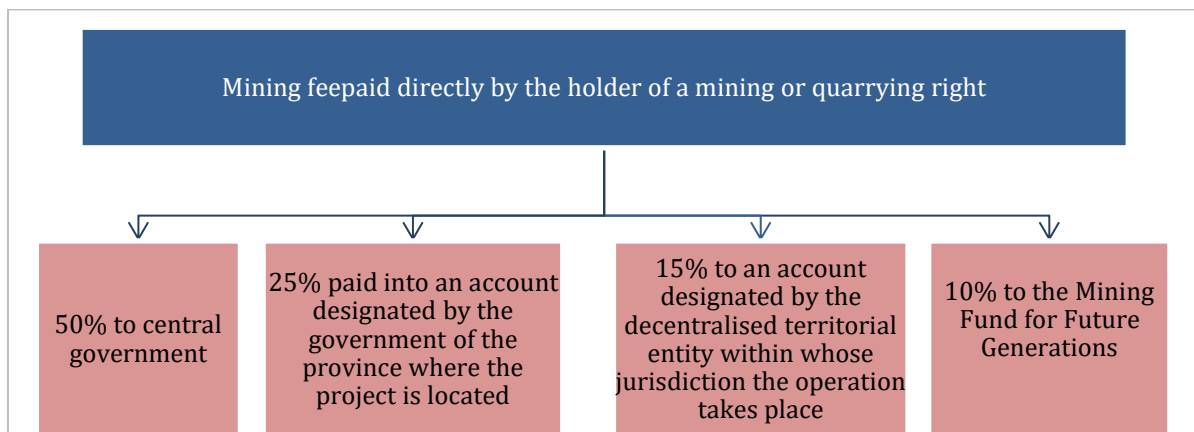


Figure 3: Mechanism for direct payment by the mining or quarrying company of the mining fee in the DRC
Source DRC Mining Code 2018

² See article 242 mining code 2018

From this distribution, it appears that 40% of the mining fee is paid directly to the regional and local level. An approach that reinforces the strategy of empowering the communes and regions.

1.1. Imprecisions in the management of the mining royalty

Although the legislator opted for a direct payment of the quota to the various beneficiaries, it should be noted that he did not specify where the revenue would go. At the level of the province and the Territorially Decentralised Entities, such imprecision is likely to make it difficult to allocate the levy in the community interest, to determine whether the results correspond to the objectives or to demand accountability for the management of the funds. The main source for assessing the management of these funds is therefore the ETD.

2. Community Development Contribution Fund

The creation of a community development fund is one of the advances of the 2018 mining code. Indeed, Article 258 bis of the Mining Code stipulates that: *"The holder of a mining right to exploit or an authorisation for the exploitation of permanent quarries is required to set up, free of tax on profits and earnings, an allocation for contributions to community development projects, the minimum amount of which is equal to 0.3% of the turnover of the financial year during which it is set up. The allocation must be made available in full to local communities before the end of the financial year following that in which it was established."* It is important to specify that this fund is set up in parallel with the other social commitments made by the company to the communities in the specifications or social responsibility.

2.1. Entity in charge of managing the allocation for the contribution to community development projects

Article 285 octies of the Mining Code stipulates that the minimum allocation of 0.3% of turnover for contributions to community development projects provided for in Article 258 bis of the Mining Code is made available to and managed by a legal entity comprising representatives of the holder and of the surrounding local communities directly affected by the project. The legal entity referred to is instituted by Article 414 sexies of Decree n°038/2003 of 26 March 2003 on Mining Regulations as amended and completed by Decree n°18/024 of 08 June 2018. It is a specialised body made up of twelve (12) members as follows:

- two representatives of local communities
- two representatives of the grassroots community organisations
- two representatives of the holder of the mining right
- two representatives of the local administrative authority
- two representatives of the National Fund for Promotion and Social Service;
- two representatives of the Directorate for the Protection of the Mining Environment.

As composed, it appears that a Specialised Body is to be set up at the local level of the project and not at central level. Article 414 septies of the Mining Code specifies that the powers and management methods of the Specialised Body are determined in a manual of procedures approved

"Mining companies contribute 0.3% of their turnover to the community development fund"

by interministerial order of the ministers responsible for mines and social affairs. However, as noted in the Evaluation Report on the level of implementation of the revised Mining Code on community development *"Two years after the adoption of the revised mining code and its implementation measures, [...] no specialised local body has*

yet been set up to manage the community development grant. Yet, mining companies in commercial production are

supposed to have already constituted and released at least the allocation for the 2019 fiscal year." (Cordaid, 2020). Therefore, it is urgent to adopt and sign the Inter-ministerial Order approving the Manual of Procedures relating to the attributions and functioning of the specialised local bodies in charge of managing the community development grant; all the more so as the draft of this Manual of Procedures and its appendices were validated by all parties (government- mining companies) during the workshop organised by the Ministry of Mines and presided over by the Secretary General of Mines in September 2019 at Cercle Elais.

In any case, the fact that the appointment of delegates from the National Fund for Social Promotion and Service and the Directorate for the Protection of the Mining Environment - services which do not necessarily have representation at the grassroots - is mentioned suggests the establishment of a unitary structure at central or provincial level. However, this option raises many questions, including: *where will the basket-fund be located, centrally or provincially? If it is decided to locate the specialised body at the central or provincial level, from which communities will the two delegates come, and what would be the criteria and mode of their appointment? Which businesses will be represented, and what would be the criteria and mode for their appointment? What mechanism needs to be put in place to ensure that stakeholder delegates, particularly those from the communities, will reflect the views of the communities in decision-making? What percentage of the fund should be allocated to the operation of the structure?*

3. Social responsibility specifications

According to Article 285 septies of the Mining Code, the social responsibility specifications are a community development agreement signed jointly by the holder of the mining right or permanent quarrying authorisation with the local communities for the implementation of projects of community interest. It is the set of periodic commitments negotiated and made between the holder of the mining right or permanent quarrying authorisation and the local communities affected by the mining project, for the implementation of sustainable community development projects.

3.1. Sources of funding and procedures for signing, appraising and approving the CSR specifications

According to Article 7 of Annex XVII of the revised Mining Regulations on the standard model of the social responsibility specifications, the projects agreed in the specifications must be financed by the social budget of the mining operator. It is therefore the mining operator who is responsible for implementing the projects in the specifications in accordance with the agreed timetable.

The process of negotiating and signing the specifications is carried out under the supervision of the Provincial Minister of Mines and must be initiated within 6 months of the granting of the mining right. It includes the following main steps:

- Determination of the geographical area jointly by the ETD manager (Head of sector/chefferie), representatives of the mining right holder, affected local communities and stakeholder representatives within the radius of the mining project following the findings of the ESIA;
- Identification of priority community needs by the local development committee;
- Community approval of priority needs identified by social categories through popular meetings;
- Negotiations between the affected communities and the representatives of the holder of the mining right or permanent quarrying permit;

- The actual drafting and signing of the specifications by the holder of the mining right and the representatives of the local communities, which must include the visa of the local administrative authority.

3.2. Mechanisms for monitoring the implementation of the specifications

In addition to the monitoring of the implementation of all obligations arising from the social responsibility regime to be carried out by the Congolese Environment Agency (ACE), the Directorate for the Protection of the Mining Environment (DPEM) and the National Fund for Social Promotion and Service (FNPSS), the Mining Regulations have set up a local committee to monitor the specifications.

Composed of the Territorial Administrator, or the Mayor of the town, the Chief Medical Officer or their delegates, a delegate of the mining right holder and at least four representatives of the local communities, the local monitoring committee's mission is to ensure regular monitoring of the implementation of the infrastructure and projects of community interest defined in the specifications, according to the related timetable³.

Conclusion

With a view to making the mining sector a lever for local development, the legislator has enshrined in both the mining code and regulations a set of profit-sharing mechanisms for the benefit of communities. However, while these mechanisms are to be praised, there are still a number of inaccuracies due to the fact that certain complementary texts to the regulatory framework have yet to be adopted and signed. These imprecisions are likely to reduce somewhat the expected impact of these mechanisms on local development.

THE EXPERIENCE OF BURKINA FASO

According to Burkina Faso's 2019 EITI report, its mining sector is considered one of the most dynamic in West Africa. The main resources are gold, zinc, copper, manganese, phosphate and limestone. Showings of diamonds, bauxite, nickel and vanadium have been recorded in various geological formations. However, gold remains the most exploited mineral in Burkina Faso.

Like many countries in French-speaking Africa, Burkina Faso operates under the single treasury principle. Thus, the mining revenues collected are also centralised in the Public Treasury before being transferred to the various beneficiaries. Adopted on 25 June 2015, the Mining Code and the standard mining convention do not provide for the possibility of paying mining fees and taxes in kind. However, in terms of revenue sharing to contribute to local development, the Mining Code institutes several other mechanisms.

1. Local Development Mining Fund

Article 25 of law n°036-2015/CNT of 26 June 2015, on the Mining Code of Burkina Faso, provides for the creation of a Mining Fund for Local Development (FMDL). The said Fund is allocated to the financing of regional and communal development plans. It is fed on the one hand by (i) 20% of the proportional fees collected by the State and linked to the value of the products extracted and/or sold; and on the other hand by (ii) a contribution of 1% of the monthly turnover before tax and/or the value of the products extracted during the month of the holders of mining permits

³ See Article 13 et seq. of Annex XVII of the revised Mining Regulations on the standard model for social responsibility specifications.

and beneficiaries of industrial exploitation authorisations of quarry substances (Article 26 of the Mining Code).

Collected by the Specialised Collection Office, the amount of the monthly contributions is calculated at the time of drawing up the statements of settlement of the proportional fee on production.

The resources allocated to the local authorities under the FMDL are included in the beneficiaries' community investment programmes. They are allocated as a priority to the social sectors.

In order to ensure the effectiveness of this fund, Decree n°2017-0035 / PRES / PM / MEMC / MINEFID / MCIA / MATDSI / MJFIP / MFPTPS / MEECVV adopting a model mining convention in its article 14 reaffirms that the investor is subject to the payment of the amounts due under the FMDL. In addition, transparency and control mechanisms have been set up for this purpose.

1.1. *Transparency and control mechanisms in the management of the Fund*

With regard to Decree No. 2017-024, which specifies the organisation, functioning and collection methods of the Local Development Mining Fund, in the context of respecting the principles of transparency and accountability, the use of the Fund's resources is subject to several public reports. First of all, an annual report is adopted by the municipal and regional councils and is then submitted to the control of the competent structures duly mandated by the State. In this way, both the annual report and the audit report are widely published (EITI Report 2019). In addition, according to art 15 of this decree, the ministries in charge of mines and finance are obliged to report to the State on contributions to the Fund. To this end, they must produce and publish in the Official Newspaper, the report on the state of contributions to the fund and comply with the EITI Standard.

Inter-ministerial Order n017-027/MMC/MINEFID/MATD on the creation, composition, attributions and functioning of the National Monitoring Committee on the collection, distribution and use of the FMDL (CNS/FMDL) was signed and promulgated on 29 December 2017 in view of the effectiveness of the CNS/FMDL. It is chaired by the Secretary General of the Ministry in charge of mines and its members include: 01 representative of the Ministry in charge of territorial authorities, 02 representatives of the Association of Municipalities of Burkina Faso and 02 representatives of the Association of Regions of Burkina Faso.

The attributions of the CNS/FMDL are specified in article 7 of the inter-ministerial decree. Among other missions of the CNS/FMDL, is the examination and issuance of an opinion on the half-yearly and annual reports prepared by the Municipal and Regional Councils on the use of resources transferred under the FMDL as well as the preparation of an annual report on the state of collection, distribution and use of the FMDL to be submitted to the Ministers in charge of mines, finance and territorial authorities.

2. Local content

As part of the promotion of local content, as set out in the chapter on rights and obligations related to mining permits and titles, the mining code includes a set of provisions related to local sourcing, employment and training of local (or national) staff).

Thus, according to Article 101, "the holders of mining titles or authorisations as well as their subcontractors shall give preference to Burkinabè companies for any contract for the provision of services or the supply of goods under equivalent conditions of price, quality and deadlines".

A national policy with a strategy for the development and promotion of local supply to the mining sector has been adopted. It is up to the decree taken in the Council of Ministers to set the conditions for the implementation of this policy.

In addition, and to further contribute to the effectiveness of the preference to be given to local companies, a tripartite framework bringing together representatives of the State, mining companies and suppliers of mining goods and services is set up to develop and monitor the growth of local supply to the mining sector.

With regard to local employment and training of local staff, under Article 102, which obliges mining title or permit holders, as well as their suppliers and subcontractors, to comply with labour law standards, they must employ, as a priority, Burkinabè managers with the skills required for the efficient conduct of mining operations, with equal qualifications and without distinction as to gender. This obligation is included in Article 07 of the standard mining agreement.

In addition, these companies must produce a local management training plan for the progressive replacement of expatriate staff and respect the progressive quotas of local jobs according to the different levels of responsibility.

To ensure the effectiveness of these provisions, two mechanisms have been instituted: First, the company must respect the progressive quotas of local jobs according to the different levels of responsibility. The nomenclature of posts and the quotas of local jobs required according to the life cycle of the mine are established by a decree issued by the Council of Ministers. Then, each year, a report on the state of execution by the companies of the requirements in terms of training, employment and promotion of local personnel is produced and transmitted to the Minister in charge of mines.

However, the mining code makes no mention of the public nature of this report. It is important to rectify this shortcoming and that, in the context of the implementation of the EITI, this information can be made public.

Finally, in order to promote local sourcing, under Article 154 of the Mining Code, operators benefit from an exemption in the case of "domestic acquisitions of locally manufactured equipment in accordance with the mining list, necessary for the realisation of the technical infrastructure of the mine and the mining estate, excluding goods excluded from the right to deduct in accordance with the provisions of the tax code". The same applies to the tax facilities granted to holders of industrial exploitation permits as well as to subcontractors of these exploitation companies working exclusively in the framework of the exploitation of mineral substances and who have service contracts.

3. Sub-national transfers

As noted above, because of the principle of universality of the funds, some of the mining revenues collected are to be transferred to the regions and communes. These include:

3.1. *Transfers of surface taxes to local authorities*

With regard to the interministerial order N°2018-009/MMC/MINEFID/MATD of 30 March 2018 which defines the modalities for the distribution of surface taxes to the benefit of the

territorial authorities, it emerges the principle that the regions and communes covered by the mining title or authorisation are the beneficiary Decentralised Territorial Authorities. According to Article 3 of this decree, this retrocession is made as follows:

- (i) 90% to the municipalities; and
- (ii) 10% to the regions;
- (iii) In the case where the mine overlaps several communes, the sharing is done in an equal manner.

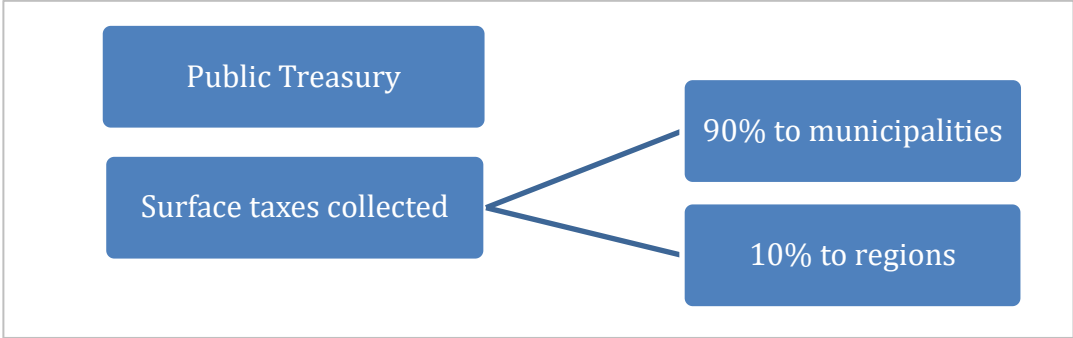


Figure 4: Mechanism for retrocession of the surface tax to the CTD in Burkina Faso
Source: Mining Code

This retrocession is made on an annual basis, starting from the Public Treasury and after the joint order of the ministers in charge of finance and mines is issued no later than 30 June of the year following the year of collection of the tax concerned.

In 2019, the total amount of surface taxes to be paid to the CTD was one billion seven hundred and twenty-seven million seven hundred and forty-three thousand nine hundred and ninety-three (1,727,743,993) FCFA. Thirteen (13) regions and one hundred and ninety-five (195) communes benefited from this.⁴

However, it should be noted that the joint order does not specify the allocation of these revenues transferred to the local level. There is therefore a risk of misuse of funds that should normally be used for local development projects.

3.2. *Transfers of revenue from the Local Development Mining Fund*

It should be recalled that, according to the mining code, this fund is fed by 1% of turnover and 20% of the proportional royalties collected by the State. However, Decree No. 2017-024 on the organisation, functioning and collection modalities of this Fund provides details on the share that must be paid to each entity.

Thus, in its article 3, the decree stipulates that the mining communes first benefit from a first half of the contribution of 1% of the turnover paid by the mining companies. For the second half, Article 6 stipulates that it is allocated to all the territorial authorities of Burkina Faso, including the mining communes, plus the State's contributory share representing 20% of the proportional fees.

Article 7 of the decree details this distribution as follows:

- The first half, i.e. 50% of the 1% of the turnover collected, for the mining areas (communes and regions) is allocated as follows:

⁴ Joint Order N°2020-019/MMC/MINEFID on the transfer of surface taxes collected in 2019 to the beneficiary local authorities

- 25% for the mining commune(s) ;
 - 50% for the other communes of the region(s) in equal shares;
 - 25% for the region(s) in equal shares.
- The second half is allocated to the communes and regions of Burkina Faso as follows:
- 75% for the municipalities, divided equally ;
 - 25% for the regions, divided equally.

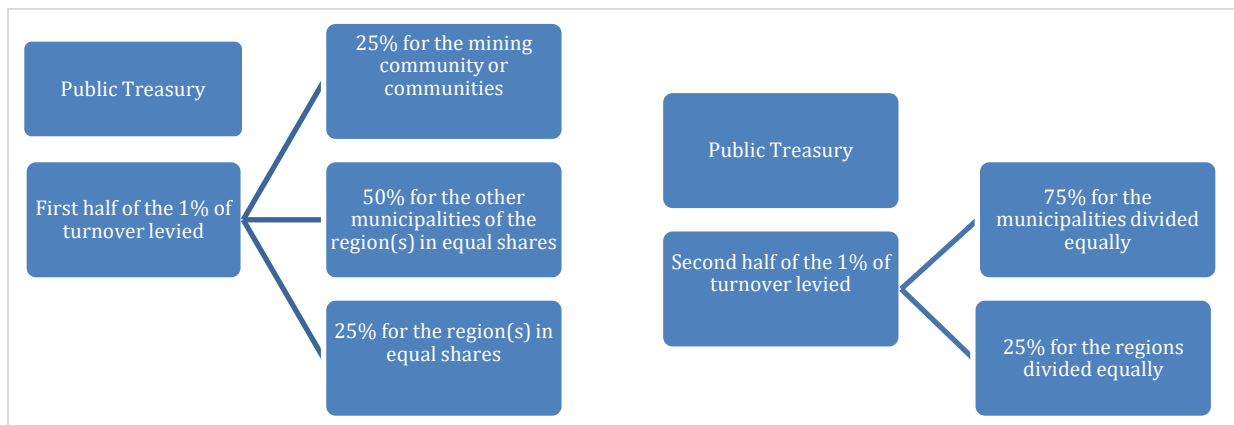


Figure 5: Mechanisms for transferring revenues from the Local Development Mining Fund
Source: Decree n°2017-024 on the organisation, functioning and collection methods of the FMDL

The Fund is repaid to the beneficiaries every six months from 1 January of each year by the Public Treasury by joint order of the Ministers of Finance and Mines and at the latest at the end of the second month following the end of the half-year.

Conclusion

An examination of the legal framework of the Burkinabe mining sector clearly shows the government's desire to make mining a vector for local development. The sharing mechanisms are indeed likely to contribute to this. However, it is important that certain clarifications are made regarding the local content and the allocation of revenues once transferred in order to guarantee the possibility of citizen control. Although monitoring the implementation of the EITI Standard Requirements, particularly those relating to "Economic and Social Contribution", allows for transparency on local content components such as employment, the Guinean case shows that it is useful to regularly update the legal framework.

CHAPTER III: PROPOSED MODELS FOR SHARING MINING PROFITS FOR LOCAL DEVELOPMENT IN CAMEROON

In line with the stages of the extractive industries value chain, prior to benefit sharing, there is a revenue collection stage, which is itself conditioned by the control of reserves - which is still questionable in the case of Cameroon - as well as the monitoring stage of exploitation, production and marketing. Seen in this light, benefit-sharing models are only relevant if the benefits exist first. It is only after the benefits have been shared that the question of how to manage these benefits can be raised.

As can be seen from the previous chapter, international experience shows that in order 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. It would be interesting to say at the outset that, given the somewhat embryonic nature of mining activity in Cameroon, and given the obvious desire of the state to attract investors, this weak experience would be one of the causes of the non-effectiveness of mining projects in Cameroon. Indeed, unlike countries with a fairly developed mining sector, Cameroon is only just starting out and would benefit more from putting in place mechanisms and infrastructures that would make it attractive, regardless of other exogenous factors such as the fluctuation of raw material prices on the international market.

However, the effective contribution of the mining sector to local development would help to make the Cameroonian mining sector a pillar of development but, above all, would guarantee a peaceful social climate conducive to the development of mining projects in the era of decentralisation. Indeed, operating in a context of social tension is a risk factor for investors. As a result, any action aimed at pacifying relations with the communities would be perceived by investors as a strong signal favourable to the development of their activities. This cannot be done without a review of the current provisions for sharing mining revenues for the benefit of local development.

It is therefore appropriate to address the issue of benefit sharing by ensuring that it is linked to the process of decentralisation, which focuses on the effectiveness of the Regions and Communes, to the need for transparency and traceability in this area, particularly with regard to international standards and initiatives such as the EITI, and also to the achievement of the objectives of international programmes and policies to which Cameroon is a party, such as the AMV, Agenda 2063 of the African Union, and the SDGs.

1. Linking benefit sharing to decentralisation

In its NDS30, in terms of 'decentralisation and local development', the government intends to (i) substantially increase the resources transferred to the DTCs; (ii) reform local taxation in order to diversify and improve its yield on the one hand, and to consolidate the mobilisation and modalities of effective transfers of the products of the said taxation to the DTCs on the other; (iii) review the mechanism for making funds available to the DTCs; and (iv) ensure better equalisation in the transfer of resources to the DTCs, in order to better take account of local disparities. In view of these objectives in the new government strategy, mining regulations should have provisions that would allow the objectives set out in the NDS30 to be achieved. In addition, the pursuit of axes 03 (Improvement of the exploitation of mining resources) and 04 (Valorisation of mining resources) of the Mining Sector Development Strategy should ensure that benefits are obtained. To this end, we make the following proposals.

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

Until now, the main beneficiaries of the share of revenues that should contribute to local development have been the communes and the local population (art 176(2) of the Mining Code). The limitation to these two entities alone will be obsolete as soon as the regional councils come into force. Consisting of Regions and Communes under the General Code of Decentralised Territorial Authorities (DTCs), the DTCs constitute the fundamental axis for the promotion of development, democracy and good governance at local level⁵.

In light of the above, it would be appropriate to reallocate the share of revenues that should contribute to community development by adding the regions as beneficiaries. In such a reorganisation, it would seem wise to remove the local population from the list of direct [although still final] beneficiaries of the share of the surface fee, the state concession fee, the ad valorem tax and the extraction tax, and to limit the list to the region and the commune. Other mechanisms for contributing to local development, such as specifications and local content, could be developed in order to contribute specifically to improving the living conditions of local populations. This is also supported by the current practice whereby their share is paid back to the commune, which is responsible for managing it in the interest of these beneficiaries. The same is true at the regional level, as the decentralisation orientation law of 22 July 2004 clarifies the roles and missions of the regional councils, including the management of the environment and natural resources, the promotion of SMEs, support for micro-projects that generate income and employment, the preparation and execution of regional development plans, etc. With responsibilities also in the areas of health, education, sport and culture, the importance of considering a revenue-sharing model for the mining sector that gives a place to improving the living conditions of the population from the sources of funding from the shares of mining and surface fees paid to the regions.

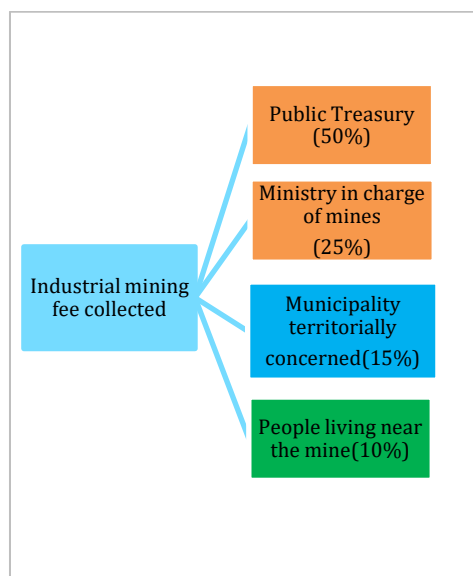


Figure 6: Beneficiaries of the redistribution of the mining fee before the 2016 mining law
Source: Implementation Decree of 2014 of the Mining Code

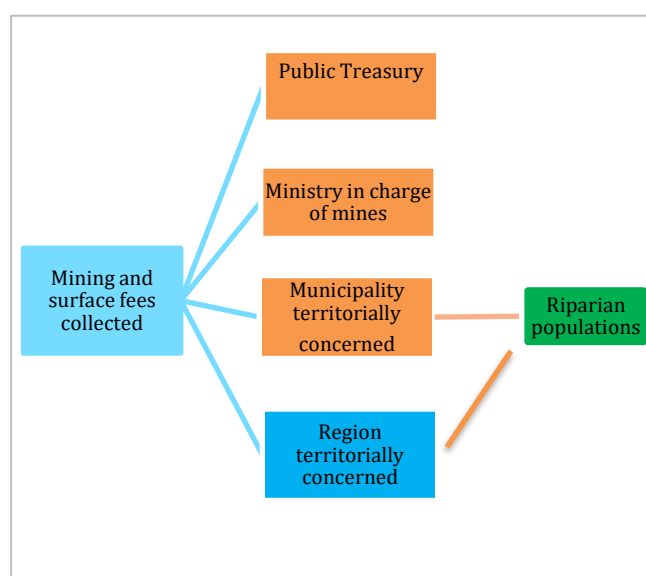


Figure 7: Proposal of Beneficiaries of the redistribution of the mining fee
Source: The Authors

1.2. Direct payment to the DTCs by the holder of a mining or quarrying right of the share of the ad valorem tax and the extraction tax due to them

⁵ See article 5(1), law 2019/024 of 24 December 2019 on the general code of the DTCs

The 13 EITI reports, including the 2018 contextual data report, published by Cameroon, covering the period from 2001 to 2016, clearly show that the redistribution of sub-national transfers to the DTCs from the share of the ad valorem tax as well as the extraction tax is not yet effective. So far, the DTCs do not always receive what is rightfully theirs. From another point of view, it is not possible to know what the share of the mining fee is in the budget allocated to the Communes. All this, in the light of the spirit of the General Code of Decentralisation, justifies the need to change the practice, thus moving from transfer to direct payment to the DTCs.

Indeed, decentralisation consists of the transfer by the State to the DTCs of specific competences and appropriate means. Providing in its article 11(1) that the DTCs 'receive all or part of the proceeds from the exploitation of natural resources on their territory under the conditions set by law', law n°2019/024 of 24 December 2019 on the General Code of the DTCs, offers the legislator the possibility of abandoning the sub-national transfer mechanism in favour of direct payment to DTCs. Indeed, as the transfer mechanism currently applied has shown its limits in terms of effectiveness, rather than allowing the DTCs to access, via a sub-national transfer, the share of the surface royalty or the state concession rights, the ad valorem tax and the extraction tax due to them, the legislator could institute the direct payment to the DTCs by the holder of the mining or quarrying right, of the share of these royalties, rights and taxes. It is important to specify that such a mechanism does not in any way contradict the provisions of the mining code insofar as the mining code only establishes the principle of sharing the revenues collected (surface fee, state concession rights, ad valorem tax and extraction tax) to the DTCs and local populations without specifying the mechanism.

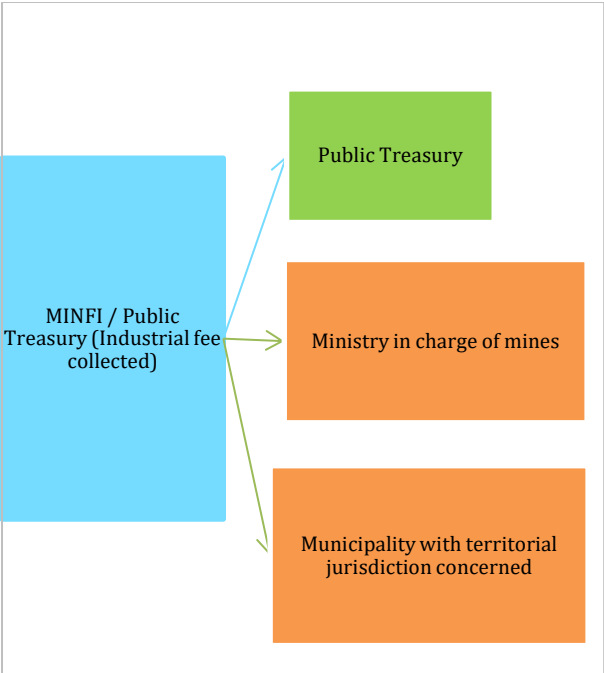


Figure 8 : Current sub-national transfer mechanisms

Source: Mining Code

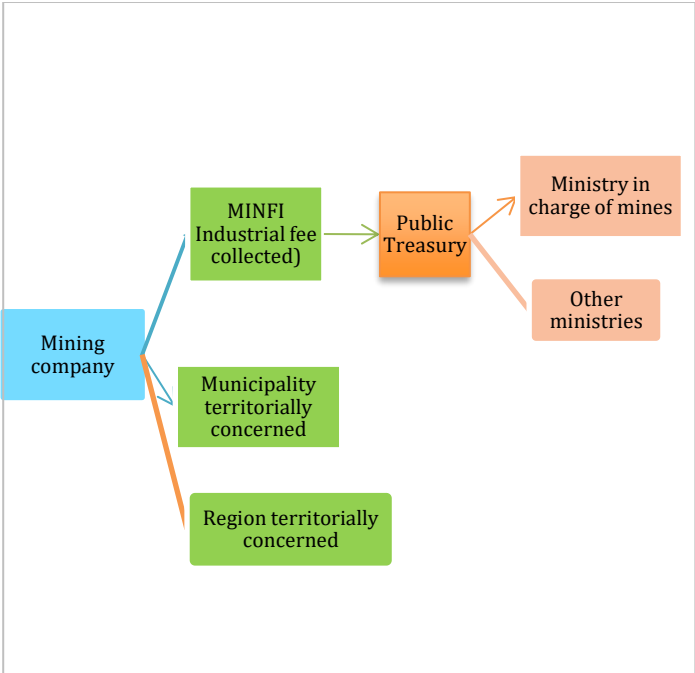


Figure 9: Proposed mechanisms for direct payment of the mining fee

Source: The Authors

1.3. In the context of the semi-mechanised mine, transfer the communities' share to the commune

As stated in Article 137 (new bis) of Decree No. 2014/2349/PM of 1 August 2014 mentioned in Chapter 1, CAPAM directly deducts, in gross form, 15% of the production of companies, as part of the State's share and the corporate tax (IS). According to the same decree, 10% of this levy by CAPAM is paid back for projects intended for the local population. While this text does not specify either the redistribution mechanism or the institution in charge of managing the communities' share, the 2015 EITI report (published in 2017) highlighted the fact that in practice, this share is paid to CAPAM, which manages it. As a reminder, one of CAPAM's missions is to collect the ad valorem tax from artisans and semi-mechanised artisans. Moreover, CAPAM will be replaced by SONAMINES.

The 2016 mining code stipulates that the state now levies a synthetic mining tax in full discharge of 25% of the gross production of each site in the context of semi-mechanised mining. In order to achieve the government's objectives defined in the NDS30 in terms of decentralisation on the one hand, and to guarantee transparent management as set out in the code of transparency and good governance of public finances to which the DTCs are bound in accordance with Article 18, it would be advisable to examine the feasibility of transferring the management of this quota to the DTCs. Although the importance of the supervision of artisanal mining by the DTCs does not need to be demonstrated, it is important to bear in mind the provisions of article 30 of the Mining Code, namely the establishment of a structure for the supervision and promotion of artisanal mining.

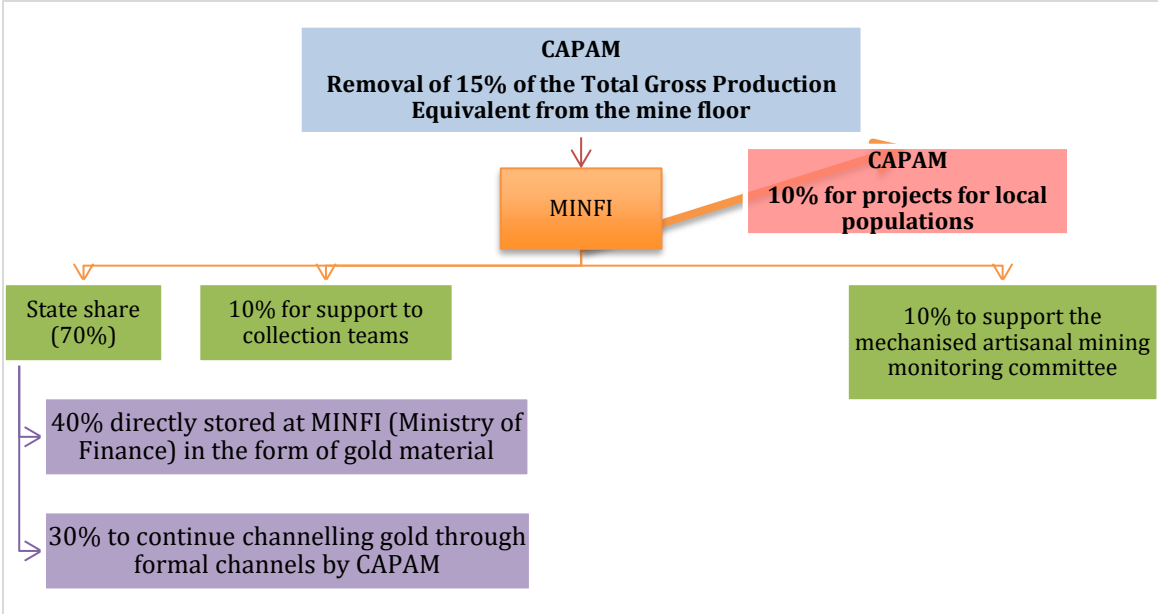


Figure 10: Income redistribution mechanism in the semi-mechanised mine before the 2016 reform

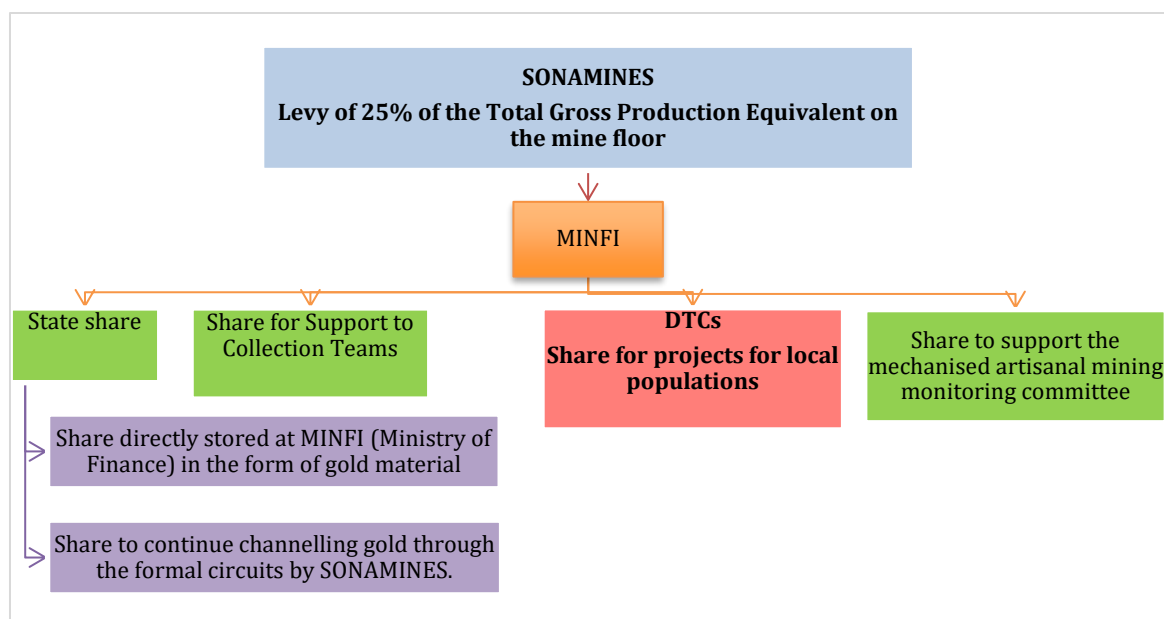


Figure 11: Proposal for a Revenue Redistribution Mechanism for Semi-Mechanized Mining

2. Clarify the management of revenues for local development

Articles 116, 118 and 120 of the Mining Code provide for compensation for populations affected by the exploitation of mineral substances. However, there is no mention of the destination of the revenues once received by the said beneficiaries.

Article 233 of the Mining Code also provides for the creation of a special account for local capacity development. This account is intended to finance the economic, social, cultural, industrial and technological development of Cameroon through the development of human resources and the development of local enterprises and industry. The amount of the contributions referred to in paragraph 1 above in CFA francs shall be between zero point five (0.5) and one percent (1%) of the total amount of the mining company's turnover before tax. The rate retained is fixed during the negotiations, as the case may be, of the mining convention or the specifications, between the parties (Article 236 of the Mining Code). In order to guarantee the use of these funds for local development, the legislator would gain by providing a minimum of precision as to the destination of these funds. 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 it coordinates, 4% for capacity building of the department in charge of monitoring.

Both the municipality and the region must, on the basis of a public and freely accessible report, account for the use of the funds collected in accordance with the requirements of the EITI Standard on sub-national payments and transfers.

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

The traceability of funds would strengthen the fight against the misuse of funds allocated to communities as a contribution to local development. To this end, the legislator could:

- As the system of a single fund currently hinders the traceability of mining revenues allocated to the DTCs, sub-accounts should be set up for each productive sector (mining, forestry, oil, fishing, etc.);
- In view of the State's commitments to transparency in the extractive industries, the information system for mining sub-accounts should provide information by project. This would be more appropriate in the case of direct payments by mining or quarrying companies;
- Establish specific traceability of payments linked to mining revenues and made by the holder of a mining or quarrying right to the benefit of communities, in particular through the finalisation of the process of setting up the digital platform of information systems from the extractive sector;
- Establish a specific traceability of revenues and expenses related to mining and quarrying revenues in the annual accounts of the DTCs;
- Establish an information system between the state and the DTCs to facilitate the traceability of information on mining and quarrying revenues received and the expenditure of these revenues by the local authorities;
- Establish a national database freely accessible to the public on the annual statements of the DTCs on revenues from the exploitation of mining and quarrying resources.

However, 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

4.1. Establish a multi-actor and independent regional body in charge of monitoring the funds

4.1.1. Mission and composition of the audit body

With the task of ensuring that the funds allocated to the communities and local authorities contribute effectively to their development, the control body, whose members must be freely appointed by their peers, must produce an annual activity report. This body could work in close collaboration with the Superior State Audit or the National Anti-Corruption Commission (CONAC). Placed under the joint control of the Ministry of Mines and the Ministry of Finance, this body would consist of:

- Representative(s) of the administrative authority (governor, prefect, sub-prefect);
- Representative(s) of the regional administrative authority
- Representative(s) of the departmental administrative authority
- Representative(s) of the communal administrative authority
- Representative(s) of the departmental delegation of the Ministry of Mines;
- Representative(s) of the departmental delegation of the Ministry of Finance;

- Representative(s) of the departmental delegation of the Ministry of the Economy, Planning and Regional Development;
- Representative(s) of the mining companies;
- Representative(s) of local communities;
- Representative(s) of indigenous communities;
- Representative(s) of civil society organisations;
- Expert(s) as required.

4.2. Create 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

4.2.1. Missions of the National Committee

Placed under the authority of the Prime Minister, Head of Government, this committee is responsible for:

- Define the national policy on the contribution of the mining sector to local development;
- Monitor the management of mining resources allocated to the DTCs as a contribution to local development;
- Ensure the coordination of the management of mining resources in projects that affect several regions at the same time.

4.2.2. Composition of the National Committee

It is imperative to ensure that the various stakeholders involved in the local management of mining revenues are represented on the committee as follows:

- Representative of the Prime Minister ;
- Representative of the Ministry of Mines;
- Representative of the Ministry of Finance;
- Representative of the Ministry of Economy
- Representative of the Ministry in charge of domains;
- Representative of the Ministry in charge of territorial administration
- Representative of the Ministry in charge of SMEs;
- Representative of the Ministry in charge of social affairs;
- Representative of the Parliament (Deputies and Senators);
- Representative of the CONAC;
- Representatives of the regions concerned;
- Representative of the Extractive Industries Transparency Initiative (EITI);
- Representatives of civil society;
- Expert(s) as required.

4.3. Establish a communication and open data system at regional and municipal level

Alongside the AMV which advocates for Transparency and Accountability in the collection and management of mining revenues, the EITI which is supported by the AMV, promotes open data and the integration of transparency practices into national systems. As Cameroon is committed to each of these instruments, in order to ensure transparency and accountability in revenue

management and to guarantee the contribution to local development, it is necessary that a local communication system with an open data approach is put in place. This would include :

- Each DTC has a website that provides information on the benefits of mining projects and their management;
- Information is formally published at the time of payment or transfer of revenues to the DTCs and of social achievements;
- Mining contracts, specifications and community agreements are published;
- Consultation of the population is mandatory for the prioritisation of local projects financed by mining revenues;
- The publication of consultation reports and project diaries is mandatory and done at formally defined intervals;
- The publication of monitoring, evaluation and audit reports on the management of shared benefits;
- The publication, by project, of information on the contribution of the implemented mining project(s) to local development;
- Publication on the DTC website, in the DTC newspaper, in the relevant chefferies, on community radio stations and through any local information channel.

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

As part of Cameroon's emergence strategy, first in its DSCE 2010-2020 and then for the period 2020-2030 in its National Development Strategy, the Cameroonian government intends to rely on mining to contribute to the country's development and economic growth, with the populations as the ultimate beneficiaries. Because of its destructive force, mining is hardly a promoter of sustainable development. Therefore, in order to lend it this character, it is imperative to add a social and even environmental dimension, by taking into account the social interests of the populations affected by the mining activities in the specifications to be respected by the mining company and its subcontractors or partners. These specifications must also be drawn up with the participation of the concerned DTC(s).

This is further supported by the current practice whereby their share is paid to the commune, which is responsible for managing it in the interests of these beneficiaries. Emphasis should therefore be placed on ensuring that the final beneficiaries, i.e. the local communities, can effectively enjoy what is reserved for them and due to them in terms of positive benefits from the mining activity.

Such a guarantee would include details on the management [allocation] of revenues transferred or paid to the DTCs and the transparency and accountability mechanisms put in place. Hence the importance and interest of the specifications being consistent in both its content and implementation with the Communal Development Plan(s) of the concerned DTC(s).

In addition, it should be noted that the guarantee of the final benefit of the riparian communities is very important in the sense that the basis of the sharing of revenues to the riparian communities is based on the respect of their right to compensation or reparation for the losses suffered and the rights infringed as a result of the implementation of the project (art 116, 118 and 120 of the mining code).

In view of the above, to ensure that the specifications can contribute to local development, it would be appropriate to:

5.1. Develop the specifications in a participatory and inclusive manner, by:

- Involving the populations through broad consultations in order to identify and validate priority needs;
- Taking into account, during the planning, implementation and monitoring-evaluation process, all the different social components of the concerned DTC(s), including indigenous populations, women and youth;
- Making the commune(s) impacted by the project the institution for defining needs, implementing and monitoring compliance with these specifications;
- Storing and updating them at defined intervals in accordance with the Communal Development Plan.

5.2. Identify the source of funding for the specifications and promote transparency in implementation:

- Backed by the mining project, the implementation of the specifications should be supported by the promoter of the mining project;
- Implemented under the DTC, projects included in the specifications should go through a tendering process; which would contribute to the promotion of local companies. This procurement process should be transparent, including the use of independent observers from civil society and the locality.

5.3. Establish a monitoring and accountability mechanism by:

- Systematically publishing the results of the consultations carried out in the framework of the elaboration and monitoring-evaluation and updating of the specifications;
- Making its publication compulsory at local level: at the town hall and in the various chefferies of the DTC(s);
- Raising awareness among the populations concerned about the information contained in it;
- Setting up an institutional control body;
- Promoting citizen monitoring by promoting free citizen control of projects planned in the specifications;
- Publishing in the project diary those projects that are planned within the framework of the mine's implementation;
- Publishing the various monitoring reports.

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

Title 7 of the Mining Code on "Local Content" stipulates that in order to ensure the effective implementation of Local Content actions ⁶, "mining companies that have concluded a mining convention or other specifications are obliged to make a contribution to a special account for the development of local capacities, starting from a date and in an amount fixed in the mining convention". While the amount of these contributions is between 0.5 and 1% of the total amount of the mining company's turnover before tax (Art 166), it is important that this account be governed by a set of rules aimed at ensuring transparency and accountability in its management. This would be done, for example, through :

⁶ According to Article 165, Local Content actions concern employment and vocational and technical training of Cameroonians, technology transfer to nationals, subcontracting of local SMEs, working conditions and protection of workers, social development of locals, strengthening and evaluation of the capacities of local enterprises

- The public information, at the latest 15 days after payment, of the amount of the contribution paid by the company present in the commune concerned;
- The recording of information relating to payments/contributions by project;
- The systematic and mandatory publication of reports on the management of this special account;
- The publication of information relating to the special account must be done:
 - On the websites of the ministries in charge of mines, finance, local development and territorial planning;
 - On the DTC website, in the DTC newspaper, the relevant chefferies, community radio stations and through any local information channel;
 - On the website of the company concerned and in situ.
- Information, awareness raising and even public debate around this special account in line with the EITI process.

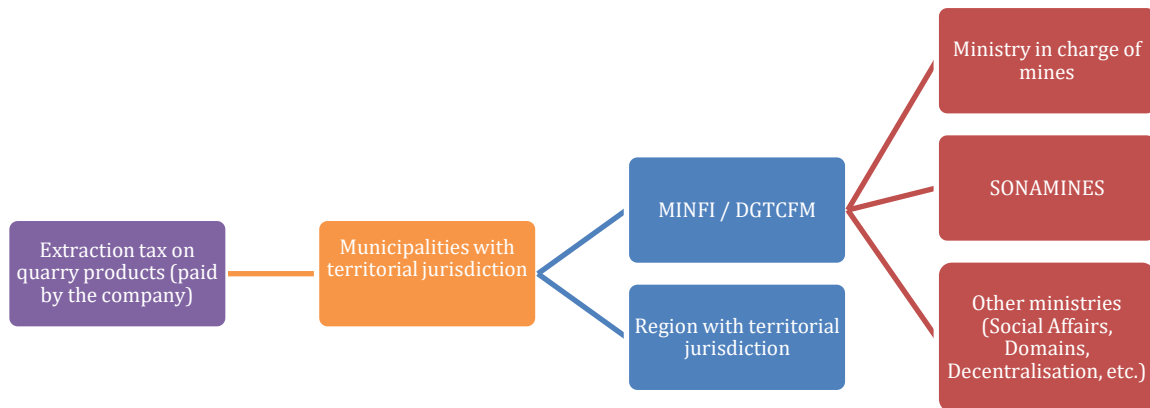
The effectiveness of the special account for the development of local capacities (Art. 233 of the Mining Code) should contribute to the achievement of local development objectives following the contribution of the mining sector. However, it should be noted that the management of an account is not the same as that of a fund. An account is intended to be a line item in the national accounts, whereas a fund may be more appropriate in the era of decentralisation and in a context of significant progress in the implementation of the EITI Requirements for sub-national transfers.

Conclusion

The comparative examination of international experiences, more specifically Burkina, DRC and Guinea in terms of benefit sharing on the one hand, and the review of benefit sharing mechanisms in Cameroon in a context of reforms, allows us to note that solid foundations exist both in the mining code and in the decentralisation process which is making steady progress.

Thus, in order to guarantee the achievement of its ambition of a mining sector contributing to the emergence of the national triangle, a series of opportunities exist. To achieve this, the government, which is working towards a better sharing of the resources it collects through the exploitation of its mining resources, must (i) ensure the integration of all the DTCs into the sharing mechanism to be defined, (ii) adopt direct payment approaches in the face of the weaknesses of the current practice of transferring revenues, and (iii) put in place tools that guarantee transparency, participation and accountability in the sharing and management of the revenues collected.

A close reading of SONAMINES' missions clearly shows that it is not responsible for the management of quarries. This would suggest that the management of these resources could fall within the competence of the territorially competent communes. Therefore, the following mechanism could be envisaged:



Source: The Authors

The special status of so-called public interest quarries invites the government to consider a better framing of this activity so that communes and communities can derive socio-economic benefits from these activities, such as local content, social payments.

CONCLUSION AND RECOMMENDATIONS

Like several countries in Africa, Cameroon is counted among the countries with a rich mining subsoil. However, it is still poorly exploited since the artisanal mining sector is the most prosperous, with industrial mining being mainly marked by research/exploration activities. This is why, convinced that Cameroon has a great potential for achieving its goal of emergence, in 2009 the Cameroonian government, alongside its African counterparts, adopted an African Mining Vision. This vision, initially organised around 7 pillars, aims to "promote transparent, equitable and optimal exploitation of mineral resources capable of underpinning sustainable growth and widespread socio-economic development".

However, it should be remembered that Cameroon has not yet managed to take full advantage of its exploited resources. This is the issue that the AMV is seeking to address, identifying a number of challenges, including the capacity of mining countries to capture the maximum benefits from these resources, manage them and redistribute them in such a way that they effectively contribute to local development in a climate of transparency and accountability.

Unfortunately, as the analysis of the Cameroonian context shows, due to the asymmetry of information on the national mining potential, since it is the operators (and not the government) who carry out research activities, logic dictates that the optimisation of mining revenues could be hypothetical. This fact easily explains why SONAMINES is in charge of carrying out the inventory of mineral occurrences and conducting exploration activities.

An examination of the EITI process in which Cameroon is engaged shows that to date, once the benefits have been collected, they do not effectively reach all the final beneficiaries identified by the texts in force on the one hand, but on the other hand, the sharing mechanism used suffers from a lack of transparency that hardly allows for the traceability of the revenues transferred or to be transferred, nor for accountability in the management of these revenues when they reach the beneficiaries.

In light of these observations, and particularly in view of the timeliness of the still unfinished mining reform in Cameroon and the State's commitments to good governance, it therefore appeared necessary, in the light of the solutions presented by the AMV and in the light of the experiences of other African countries, to propose mechanisms for sharing mining profits that integrate the principles of transparency and accountability. This has been the objective of this paper in the above developments.

Without claiming to have been an evaluation of the sharing mechanisms in force (or practised), without claiming to cover all the revenues from the mine since what was sought was the impact of the mine on development; and without having explored in detail the services of the ministries or the DTCs which should receive these benefits, the study is therefore positioned as an attempt at proposals which take into account, on one hand, the legal corpus in force at the time and, on the other hand, the political sensibility of the Cameroonian government in terms of decentralisation.

This study has shown that Cameroon has undertaken several legal and institutional reforms in the areas of mining, decentralisation and governance of public finances, which led to the adoption of a mining code in 2016, a DTC code and a code of transparency in the management of public finances, and finally to the creation of SONAMINES at the institutional level to better regulate the national mining economy and therefore all the benefits expected from a mining project.

The analysis of this legal corpus in force has made it possible to highlight that in Cameroon, as the decree implementing the mining code is still absent, the practice is such that the principles of profit sharing are materialised here through the ad valorem tax (for the mine), the extraction tax (for

quarries), the surface fee, the local content, the social payments and the capital gain on the transfer of titles. The mechanisms (or application of the principle) are in the majority called "vertical". They are referred to as sub-national transfers (surface fee, ad valorem tax, extraction tax) because they are transferred or shared by the Public Treasury to itself as well as to other administrations such as the Administration in charge of mines, the Administration in charge of domains, the Tax Administration, the Funds provided for in the present code, the communes and the riparian populations where applicable (Art. 176 Al. 2). The local content, in addition to the social payments (social achievements in kind or in cash), can either be carried out from the central level or directly at the level of the locality decentralised by the mining project.

A cross-check of the principles and mechanisms of benefit sharing in the mining sector between Cameroon on one hand and Burkina Faso, Guinea and the DRC on the other shows that even if the principles and mechanisms of the latter three countries need to be perfected, there are several similarities with the foundations that Cameroon has laid down in this area in its legal corpus. These include sub-national transfers, the adoption of an account aimed at contributing to local development, the surface fee and local content, but also and above all a context of distribution of competences of localities with a view to their economic autonomy in this case.

Thus, Cameroon could draw on the strengths and weaknesses identified both internally and in the sharing mechanisms of these countries to: (i) put in place transparency and control mechanisms in the management of the local development fund; (ii) take into account all the DTCs as defined by the 2019 DTC code; (iii) adopt an approach of direct payments to DTCs, (iv) further specify the local content and (v) give an important role to the specifications in the contribution of the mine to local development through a participatory approach in both its elaboration and its monitoring.

Therefore, in light of these results, it is recommended that Cameroon:

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*⁷ in accordance with Article 233 of the Mining Code.

However, in view of the evolution of the decentralisation and local development process, 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 budgetary transparency for the effectiveness of contracts and specifications with a view to better monitoring of mining activity, and ultimately, better supervision of the benefits of the said activity;
- To improve the control of its mining potential, notably 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 their contribution to social achievements and local content;
- With the advent of SONAMINES, clarify the missions of the programme for securing mining, water and energy revenues (PSRMEE), particularly in the context of the traceability of sub-national transfers;

⁷ Read the following recommendation

- 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 and project 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;
- 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 DTCs;
- 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.

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