



## COMPLIANCE WITH CORPORATE SOCIAL RESPONSIBILITY OBLIGATIONS UNDER THE CAMEROON MINING CODE

---

Rachael Eben

Ph.D. Maritime Law

Department of Law, University of Buea, Cameroon

[ebenrah@yahoo.com](mailto:ebenrah@yahoo.com)

**Key words: Cameroon, compliance, CSR, mining sector, regulation, and environment.**

### ABSTRACT

Although there is increasing evidence that Corporate Social Responsibility (CSR) can help promote growth and development in the local community where a business is located, the case of the mining sector in Cameroon is fraught with challenges. In addition to concession fees, winning bids also have to pay other taxes, including royalty fees; which should go towards satisfying the neighbouring community's social development and environmental needs. Mining companies are therefore expected, under the revised Mining Code of 2016, to make royalty payments to both the Mining Site and Quarry Restoration, Rehabilitation and Closure Fund; and the Special Local Capacity Building Account; both of whose purpose is to carry out rehabilitation, economic, cultural, industrial, technological and even the social development needs of the community where the concessionary is located. By collecting funds into these accounts for these related CSR purposes, the government is invariably taking away CSR responsibilities from the companies. Findings reveal that there is a disconnect between the legislation and mining contracts since mining contract agreements still contain CSR obligations and local content commitments. Indeed, mining companies are weary to engage in any further meaningful CSR endeavors once they have honoured their royalty fees commitments to the State, under the Mining Code and in their contract agreement. Recommendations relate to the provision of better resources to enable mining inspectors undertake worthy field trips to mining communities to assess and verify CSR projects, for further training on good governance to be accelerated, better transparency and accountability on funds collected for CSR purposes, and for better synergy between the State and mining concessionaries with respect to CSR affairs.

## **Compliance with Corporate Social Responsibility Obligations Under the Cameroon Mining Regulation**

### **Introduction**

#### **I. Historical Perspective**

The mining industry in Cameroon dates back to about 1930, with mining activities peaking around the 1940s. The mining industry first started being commercially exploited during the colonial period, with a contribution of about 20% registered during this era to the Gross Domestic Product (GDP).<sup>1</sup> Decline to the financial contribution of mining to the State treasury started cropping up with the wave of independence on the continent from colonial powers during the 1960's and plummeted sharply to about 1% of the GDP or 4.8 billion CFA in 1997/98 fiscal year.<sup>2</sup> After independence, the new government placed little emphasis on expanding the mining sector, which further led to both the dilapidation of the existing infrastructure and total collapse of Foreign Direct Investment (FDI) in the mining sector. The newly found political dispensation also led to a gradual drift from industrialized to artisanal mining, a phenomenon which gripped the sector for more than fifty (50) years. However, with the steady rise in minerals prices in later years, government's interest is gradually shifting back to mining as a viable source of revenue to propel the nation's growth. Furthermore, multinational companies are willing more than ever to invest in the country's mining sector. This pull in Foreign Direct Investment (FDI) is mostly due to verifiable reserves of minerals already discovered in prospection work covering just over 50% of the national territory, with prospects of firm presence of more minerals in the entire national territory.<sup>3</sup> It must be noted that even though most mining in Cameroon is currently being carried out by artisanal miners or through small-scale industrial mining activities, the Mobilong and Minim-Martap industrial mines have already started production in the East and Adamawa Regions of the country respectively, and many more multinational concessions are expected to go operational in the coming years. At the present time, 167 mining licences have already been issued to commercial concessionaries in the country,<sup>4</sup> which is an indication of the mining potential of the country.

#### **II. Mining Potential of Cameroon**

Cameroon is one of Africa's gold rich countries, although most mining in the country is still being carried out by artisanal miners. From 1960-1990, the Government of Cameroon together with the United Nations Development Programme (UNDP) and the Office of Geological Mining of Cameroon (BRGM) undertook studies to identify the country's mining deposits. With only 50% of the national territory mapped out by these geological surveys, there are indications of encouraging mining potentials of the country. In addition to the work conducted by these bodies, the Ministry of Mines, in conjunction with CAPAM (Small-scale Mining and Promotion

<sup>1</sup>Sale C, 'Information Review for the Promotion of Mining Activities in Cameroon, Time for Action' 2006 Editorial (Bimonthly) Yaoundé CAPAM 3

<sup>2</sup>PN Gweth, and others, 'Resources Minérales du Cameroun' 2001 Sopecam Yaoundé

<sup>3</sup>Ministry of Mines and Technological Development (MINMIDT) <https://minmidt-gov.net/en/major-projects/capam.html>

<sup>4</sup>Business in Cameroon, 'Mining Potential of Cameroon' <https://businessin cameroon.com> 30 May 2019

Framework Unit), have also discovered substantial deposits of gold in the Northwest and Southwest regions of the country, specifically in Misaje and Mamfe.<sup>5</sup> According to Geovic Mining Company (an Australian entity), its Nkamouna-Mada project in the East region of Cameroon holds the world's largest known primary cobalt deposit, with significant nickel and manganese potentials as well.<sup>6</sup>

Indeed, the country is endowed with huge reserves of minerals including iron ore, nickel, cobalt, manganese, uranium, diamond, gold, sapphire, pozzolana (siliceous volcanic ash used for the production of hydraulic cement), limestone, clay, marble, bauxite and many different types of minerals. It is estimated that the country has up to one billion tons of bauxite reserves, which is largely untapped due to the weak infrastructure system<sup>7</sup> as well as lack of sufficient Foreign Direct Investment geared towards reviving the mining sector. Nonetheless, limited production of bauxite, petroleum, uranium, cassiterite, cobalt, gold, diamond, iron ore, lignite and nickel is taking place currently in the country. The most exploited minerals as of 2010 include petroleum, cement, aluminum and pozzolana, but petroleum remains the main export contributor to the country's export value in 2010, to the tune of about 50%.<sup>8</sup>

According to The US Geological Survey, Cameroon currently has an annual output of gold of about 10,000kgs, with that volume expected to increase following growing commercial interests in the sector. In addition, about 140 gold deposits have been identified, with more expected to be found in other parts of the country as government is determined to shift from artisanal to commercial mining. Other minerals like limestone and gold reached 290,000 metric tons production and 20,000kg respectively in 2004. At least more than 50 uranium sites have been identified in the country, with about 1300 tons discovered in Poli in the North of the country alone. More than 65 targets of titanium have also been discovered and 2.5 million tons of marble, 600,000 tons of limestone and large deposits of pozzolana have also been found in the volcanic regions of the Southwest, West and Northwest regions. Also, considerable amounts of sand and gravel do exist, needed to feed the growing construction industry in the country.

Notwithstanding the fact that most mining is currently being done by artisanal miners, Business Monitor International (BMI) expects the country's rich iron ore potential to attract significant Foreign Direct Investment (FDI), especially from the Chinese, in the years to come. Canada's investment in the energy sector, alongside its mining assets of about \$35million, is testament to the great potential of minerals reserves in the country.<sup>9</sup> Canada's Foreign Investment Promotion Agreement (FIPA) signed with the government of Cameroon in March 2013 to protect and promote Canada's investment abroad has also been vital in fostering trade between the two coun-

<sup>5</sup>Weng L, Endamana D, Boedhihartono AK, Levang P, Margules C R ,and Sayer J A, "Asian Investment at Artisanal and Small-Scale Mines in Rural Cameroon" The Extractive Industries and Society 2 64,72 2014

<sup>6</sup>KPMG Global Mining Institute Cameroon – Country Mining Guide- Assets 2014 [www.https://assets.kpmg](http://www.https://assets.kpmg)

<sup>7</sup>KPMG Global Mining Institute Cameroon – Country Mining Guide 2013 [www.kpmg.com/mining](http://www.kpmg.com/mining)

<sup>8</sup>Supra 5

<sup>9</sup>Supra 7

tries, especially in the mining sector. The country's potential in the mining sector is further consolidated by two World Bank loan extensions to PRECASEM (The Mining Sector Capacity Building Project) to continue to intensify its conduct of work on the mapping and expansion of geological databases of mining deposits of the entire country.<sup>10</sup> Cameroon therefore has promising prospects of becoming a great mining country, which could shift the economy from purely agricultural to commodities.

On the whole, this mining potential of Cameroon has attracted many multinational companies in the country that are keen to invest in the mining sector viz: Hanlong Group from China; Geovic Mining Corp. from Australia; Sundance Resources Ltd. from Australia; C&K Mining Inc. from South Korea; Nu Energy- a subsidiary of Mega Uranium Ltd. from Canada; and Cameroon Alumina (a joint venture between Dubai Aluminium Company and Hindalco Industries). However, factoring CSR in the mining activities of these commercial mining concerns with respect to the new Mining Code of 2016 is a challenge.

### III. Contextualizing Corporate Social Responsibility (CSR)

CSR is seen by the European Commission as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. It is about enterprises deciding to go beyond minimum legal requirements and obligations stemming from collective agreements in order to address societal needs.”<sup>11</sup> The Business for Social Responsibility (BSR) captures the ethical consideration of CSR and encapsulates its essence in terms of “... operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business.”<sup>12</sup> These definitions no doubt contrasts sharply with the old business mantra which stated that, “the purpose of doing business is business,”<sup>13</sup> and provides a leeway for socially sensitive projects to be accomplished by companies. CSR is therefore increasingly becoming a ubiquitous and versatile concept which is found in nearly all modern day industries in the world, including the sports industry, as companies take into account the “legal, ethical, moral and social repercussions of their decisions,”<sup>14</sup> not just the profits or economic benefits that they can garner.

The centrality of the value of CSR to society is further highlighted by the World Business Council for Sustainable Development which stresses that, “CSR is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families, as well as of the local community and society at large...”<sup>15</sup> Most critically, Bowen sees CSR as “... the obligations

<sup>10</sup>World Bank, 'Funding Cameroon Strengthens Capacity in the Mining Sector' <https://www.worldbank.org/en/news/press-release/2012/06/28/cameroon-strengthens-capacity-in-the-mining-sector> accessed 2 July 2019

<sup>11</sup> European Commission [www.ec.europa.eu](http://www.ec.europa.eu)

<sup>12</sup> Business for Social Responsibility (BSR) [www.bsr.org](http://www.bsr.org)

<sup>13</sup> Jan Jonker and Marco de Witte (eds.), *Management Models for Corporate Social Responsibility* 2006 Springer 3

<sup>14</sup> Berrin Felizoz and Mucahit Fisne, “Corporate Social Responsibility: A Study of Striking Corporate Social Responsibility Practices in Sport Management” *Procedia Social and Behavioral Sciences* 24 1405,1417 2011

<sup>15</sup> World Business Council for Sustainable Development

of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of the society.”<sup>16</sup> Archie Carroll evokes the social responsibility of a company which “encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time.”<sup>17</sup> These iterations are essential in that they highlight the preeminence of the society where the business is located, where the business aligns the society’s values to its own. In this circumstance, the symbiotic relationship which exists between a business and the local community must be upheld so that it becomes morally and ethically right to sustain that partnership through CSR projects, without defraying the essence of corporate bottom-line. This way, CSR does not become an avenue for corporations to simply showcase philanthropic overtures, but they become genuine partners in the growth of the local community. This approach thus views CSR “as a commitment to rents sharing and distribution, not just a route to redress developmental failures.”<sup>18</sup>

In addition to these observations, various international guidelines for CSR in general, and the mining sector in particular, do emphasize the need for certain standards to be adopted in order to make improvements to CSR for the interest of different stakeholders. These guidelines are rooted in the United Nations Global Compact Initiative; the International Finance Corporation (IFC) Performance Standards on Social and Environmental Sustainability; the Extractive Industries Transparency Initiative (EITI); the European Commission’s Renewed EU Strategy 2011-14 for Corporate Social Responsibility and Sustainable Consumption and Production, and Sustainable Industrial Policy; the International Council on Mining and Metals (ICMM); and even the International Organization for Standardization’s (ISO) 26000 Standards. Hence, the benchmark for the assessment of CSR compliance, according to these organizations, is set against the parameters of externalities, the transfer of knowledge and the sanctity of the environment. The externalities highlighted by the IFC, United Nations Global Compact Initiative, the EITI and even the ISO, set the thrust on companies to adopt and align sustainable business policies along social issues, incorporate transparency and accountability into the extractive industry, and minimize the negative impact of World Bank funded development initiatives on the environment and society.<sup>19</sup> Nonetheless, one key setback to CSR is that in spite of most governments’ apparent understanding of the CSR needs of their local communities, the real needs can sometimes be at variance with the priorities established either by the government or the mining company. This means that, for a local community to benefit fully from any CSR program, the local community’s real needs must be properly investigated and taken into account when planning CSR projects. In Zambia, for example, the building of hospitals to treat those infected with HIV in

<sup>16</sup>Howard R. Bowen, *Social responsibilities of the businessman* Harper & Row pp.xi 1953

<sup>17</sup>Archie B. Carroll “Carroll’s Pyramid of CSR: taking another Look” *International Journal of Corporate Social Responsibility* 3 2016

<sup>18</sup>Bruno Boidin B and Abdelkader Djeflat, “Spécificités et Perspectives du Développement durable dans les Pays en Développement” *Mondes en développement* 37 [148] 7- 14 2009

<sup>19</sup>Corporate Social Responsibility in the Mining Sector- *Corporate Social Responsibility for Broad Based Empowerment in the Mining Sector in Zimbabwe* [http://adapt.it/adapt-indice-a-z/wp-content/uploads/2014/08/masawi\\_csr.pdf](http://adapt.it/adapt-indice-a-z/wp-content/uploads/2014/08/masawi_csr.pdf) May 2018

mining communities was seen as real need, whereas, hospital closure was the preferred option in Czech mining communities because of the existence of few HIV patients.<sup>20</sup> So, when it comes to CSR, the real needs of the community must be taken into account, such that the development needs reflect the realities of the community and not those of the foreign mining company or the perception of the government.

Unfortunately the CSR agenda of some companies has sometimes simply been pushed to the communication unit, without it being given the full attention and importance that it deserves.<sup>21</sup> Still, other companies have converted CSR into a propaganda agenda, making overtures that are rarely fulfilled. Yet, others have indulged in fragmentation; by separating environmental concerns from health, governance and other social issues, instead of tackling environmental and social aspects as being part of CSR.<sup>22</sup>

#### **IV. Mining Legislation and CSR Compliance Obligations in Cameroon**

##### **A. Mining Code - Law no.2016/017 of 14 December 2016<sup>23</sup>**

The new Mining Code of 2016 is intended to make significant revisions to the industry in order to transform and revamp the mining sector and attract foreign investors. It repeals Law no.2001/001 of 16 April 2001<sup>24</sup> and its amendment instrument - law no.2010/011 of 29 July 2010.<sup>25</sup> This new Code is robust in its goal to address the country's development needs, enhance transparency and accountability in the sector, improve equitable distribution of mining benefits, and revolutionize critical environmental paradigms needed to favour the country's emergence. Based on its desire to attain transparency and accountability, the Code has set-up three different funds<sup>26</sup> aimed at tackling mistrust and repair linkages between local communities, the State, and mining companies. The text adopts a vigorous approach to close past loopholes related to CSR and local content development in the mining industry and so deals with a number of areas viz:

##### **A. Setting up a Funds System - Three Main Funds-**

1. **The Mining Sector Development Fund**-This fund is specifically intended to be used for financing of mining inventory in the country in order to detect geologic anomalies and expand mining infrastructure.<sup>27</sup>
2. **The Mining Site and Quarry Restoration, Rehabilitation and Closure Fund**- As the name states, it is meant to conserve and restore the environment from degradation caused by mining. It also has a dedicated commitment to Environmental and Social Impact Assessment. <sup>28</sup>

<sup>20</sup>Sylvie Gurská and Adriana Válová, "Corporate Social Responsibility in Mining Industry" Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis LXI [7] 0000-0000 2013

<sup>21</sup>Youssoufou Hamadou Daouda, "CSR and Sustainable Development: Multinationals are they Socially Responsible in Sub-Saharan Africa? The case of Areva in Niger" Cadernos de Estudos Africanos 28 147 2014

<sup>22</sup>Cecile Renouard, "L'Interet Economique aux prises avec la visee ethique: Le cas de Rio Tinto au Ghana" Mondes et Developpement 4[144] 63-74 2008

<sup>23</sup>Mining Code Law no.2016/017 of 14 December 2016

<sup>24</sup>Mining Code -Law no.2001/001 of 16 April 2001, as amended by 2010 law

<sup>25</sup>Mining Code- Law no.2010/011 of 29 July 2010

<sup>26</sup> Mining Code -Law no.2016/017 of 14 December 2016 Section 233

<sup>27</sup>Section 234(1)

<sup>28</sup> Mining Code- Law no. 2016/017 of 14 December 2016 Section 235(1)

**3. The Special Local Capacity Building Account** -This last Fund deals with the social dimension and is designed to benefit the local community from mining contributions made by concessionaries to the State.<sup>29</sup>

The second and third funds are attuned to societal and environmental constructs of CSR, while the first fund is more focused on transparency and accountability to complete the construct on CSR. These funds set-up by the government have lofty idealisms, which if judiciously implemented, can dramatically transform Cameroon's mining industry.

### **B. Fund Contributions**

The Code sets out how contributions to each of these funds will be achieved by indicating that, for The Mining Sector Development Fund, “the resources of the Fund shall be derived from the annual contribution of holders of small-scale and industrial mining permits...depending on the gross production of the permit or licence holder,”<sup>30</sup> while that of the Mining Site and Quarry Restoration, Rehabilitation and Closure Fund proffers “the resources of the Fund shall be derived from the annual contribution of holders of small-scale and industrial mining permits...depending on the estimated costs of implementing the conservation and environmental programme as established in the environmental and social impact assessment.”<sup>31</sup> For the Special Local Capacity Building Account, “the amount of the contributions referred to in Section 236(1) above in CFA francs shall be between 0.5% (zero point five percent) and 1% (one) percent of the total turnover of the mining company, exclusive of tax,”<sup>32</sup>with the final percentage dependent on negotiations between the parties; government representatives on the one hand and mining concessionaries' representatives on the other.

### **C. Fund autonomy**

Thus, financial autonomy of all three Funds is assured by contributions emanating from the mining activities of the concessionaries, with a guarantee that all funds collected will be fairly distributed amongst all the parties involved in the State's mining sector value chain. Hence, “the proceeds from area-based royalties and States land concession fees, the advolorem tax and the extraction tax shall be shared between the Treasury, the authority in charge of mines, the authority in charge of State property, the taxation authority, the Funds provided for in this Code, councils and neighbouring community, as the case may be.”<sup>33</sup> Even so, conditions for collecting and managing the funds shall be “mutually agreed between the State, anybody duly authorized for this purpose, representatives of the population and the contributing mining companies.”<sup>34</sup> It is evident that the financial competence of all three funds is guaranteed by government's resolve to fund the Funds from proceeds collected from

<sup>29</sup> Section 236(1)

<sup>30</sup> Mining Code- Law no. 2016/017 of 14 December 2016 Section 234(2)

<sup>31</sup> Section 235(2) The Mining Site and Quarry Restoration, Rehabilitation and Closure Fund - The resources of the Fund shall be derived from the annual contribution of holders of small-scale and industrial mining permits, holders of semi-mechanized non-industrial mining licences, and holders of industrial or semi-mechanized non-industrial substance quarry licences, depending on the estimated costs of implementing the conservation and environmental programme as established in the environmental and social impact assessment.

<sup>32</sup>Section 236 (2)

<sup>33</sup> Section 176(2)

<sup>34</sup>Section 236 (3)

the mining concessionary and distributed evenly amongst all stakeholders involved in the development of the country. By and large, contributions from royalty payments, land concession fees, and taxes made by mining companies shall be distributed fairly and equitably by the State to all the beneficiaries.

#### **D. Transparency and Accountability**

Apart from instituting the Fund system in order to properly manage funds collected for the purpose of effectively and efficiently undertake CSR projects for the wellbeing of its local mining communities, the government, through the new Mining Code, has also adopted the benchmark of transparency and accountability set by international organizations in the attainment of veritable CSR objectives. Therefore, “holders of mining titles in Cameroon shall be obliged to comply with the international commitments made by the State and applicable to their activities, to improve governance in the mining sector, particularly those related to the Kimberly Process (KP) and Extractive Industry Transparency Initiative (EITI).”<sup>35</sup> Therefore, these recitations in the Mining Code denote transparency and accountability as prescribed by the Extractive Industries Transparency Initiative (EITI) that the country is party to.

#### **E. Local Content Development**

Furthermore, government has expanded its approach to the concept of CSR by instituting a Local Content dimension to specifically address the concerns and aspirations of its local mining communities. In this respect, Section 165(1) of the Mining Code states that: “The local content referred to in Section 164 above shall include a human resources component and a domestic industries and business development component. Both components must be detailed out in the standard mining agreement that will be drafted.”<sup>36</sup> Indeed, the Mining Code highlights some key local content development components that the fund shall tackle, they include:

- The development of local human resources, particularly by upgrading, adapting or creating local training institutions or mining professionals,
- The development and upgrading of home-based companies likely to be involved in the mining sector, as service providers, subcontractors or mining companies,
- Social programmes and projects for the promotion of indigenous and local populations in the vicinity of mining sites,
- Programmes and projects to fight against the worst forms of child labour,
- Programmes for maternity protection,
- Monitoring the mining companies’ compliance with their commitments towards the local content.<sup>37</sup>

Therefore, the revised mining code is ambitious in its desire to transform and revamp the mining sector in the country with the institution of the Fund system, adoption of international standards, and the local content development component.

<sup>35</sup> Section 142

<sup>36</sup> Section 165(1)

<sup>37</sup> Mining Code –Law no.2016/017 of 14 December 2016 Section 166 (2)



## B. THE ENVIRONMENTAL FRAMEWORK LAW 1996

Another fundamental legal instrument critical in the industry is the Environmental Framework Law 1996<sup>38</sup> which addresses the protection of the atmosphere, the marine and continental waters, the soils, sub-soils and human settlements, which mining can easily impact. In order to curb the degradation of the environment from any such activity, the law states that, “waste shall be treated in an ecologically rational manner to eliminate or curb their effects on human health, natural resources, the fauna and flora, and on the quality of the environment”<sup>39</sup> hence, “mining resources and quarries shall be explored and exploited in an ecologically rational manner, making allowance for environmental consideration.”<sup>40</sup> This requirement for the proper treatment of waste spelt out in the Environmental Framework Law 1996 and reechoed in the 2016 Mining Code, is designed to give reassurances to local communities of government’s resolve to attend their wellbeing and safeguard their health. Apart from ensuring the sanctity of the environment through proper waste management from mining activities, the framework law also highlights the need for the “polluter pays principle,”<sup>41</sup> which ensures that all polluters of the environment are liable for their actions - through cleanup and rehabilitation of polluted sites.

## C. ENVIRONMENTAL IMPACT ASSESSMENT (ESIA) 2005

In addition to the regulatory obligations in the new Mining Code intended to establish decorum and meet CSR obligations, all Category 2 projects in the country must also satisfactorily comply with mandatory Environmental and Social Impact Assessment (ESIA) stipulations,<sup>42</sup> as seen in the case between *SEFE v. S.G Sustainable Oils Ltd & Dr. Timti Isidore*.<sup>43</sup> The Order classifies projects requiring an ESIA into two categories- Category 1 projects require a simple ESIA, while Category 2 projects require detailed ESIA.<sup>44</sup> Section 235(2) of the Mining Code further highlights its commitment to the implementation of ESIA outcomes in mining projects through the Mining Site and Quarry Restoration, Rehabilitation and Closure Fund whose contribution will be calculated “depending on the estimated costs of implementing the conservation and environmental programme as established in the environmental and social impact assessment.”<sup>45</sup>

Therefore, commercial mining companies must comply with their environmental and social impact assessment obligations under the remit of ESIA, their contract obligations, as well as provisions contained in the new Mining Code of 2016. In essence, CSR compliance in the mining sector in the country is guided by provisions of the

<sup>38</sup>Law No. 96/12 of 05 August 1996 relating to environmental management

<sup>39</sup> Environmental Framework Law 1996 Article 42

<sup>40</sup> Article 67(1)

<sup>41</sup> Article 9 (c)

<sup>42</sup>In accordance with Ministerial Order N°.0069/MINEP of 8 March 2005 which prescribes the different categories of projects that would necessitate an ESIA.

<sup>43</sup>Suit no.HCN/03/OS/2011- in the case between *The Struggle to Economise Future Environment (SEFE) v. S.G Sustainable Oils Ltd & Dr Timti Isidore*, the Ndian High Court ordered defendants to conduct an EIA and compensate all victims in the Mundemba and Toko sub-divisions affected by their development project in accordance with EIA rule and to comply with the requirements for the Category 2 project they were undertaking.

<sup>44</sup>According to Article 2 of this Decree n°2013/0065/PM of 13 January 2013, “EIA is a systematic analysis aimed at the determination of whether or not a project has a harmful effect on the environment.”

<sup>45</sup>Section 235(2) The Mining Site and Quarry Restoration, Rehabilitation and Closure Fund - The resources of the Fund shall be derived from the annual contribution of holders of small-scale and industrial mining permits, holders of semi-mechanized non-industrial mining licences, and holders of industrial or semi-mechanized non-industrial substance quarry licences, depending on the estimated costs of implementing the conservation and environmental programme as established in the environmental and social impact assessment.

revised Mining Code of 2016, the Environmental Framework Law of 1996, and the Environmental and Social Impact Assessment (ESIA) stipulations of 2013.

## **V. CSR compliance gridlock within the mining sector in Cameroon**

### **1) Lack of a compliance culture**

In spite of the fact that CSR has come to take centre-stage within the activities of most Multi-National Companies (MNCs), its application within the mining sector in Cameroon is still being tested, especially with the revised mining regulation designed to obligate MNCs to undertake CSR in the sector. Even so, CSR practices in Africa tend to be more of an advertising tool designed to appear to be in line with the aspirations of the community rather than a real tool to promote key issues such as compliance with environmental standards, the fight against poverty, compliance with labor laws and inclusive social dialogue. Some companies even view CSR compliance as simply conforming to legal mandates, rather than embrace it as an avenue through which they can gain a competitive advantage economically on the market.<sup>46</sup> It is not surprising therefore that an investigation by Institut Afrique RSE of 16 companies in Cameroon, with combined sales of about 710 billion CFA and a workforce of 20,000, revealed that human resources managers in these large establishments have a very faint understanding of the concept of CSR and sustainable development. 57% were unaware of ISO 26000 standards, and 73% did not have either a CSR or sustainable development unit within their organization.<sup>47</sup>

### **2) Lack of veritable communication between agencies**

Furthermore, lack of communication as well as miscommunication between government departments and local administration within the Cameroon mining sector is common, where Divisional Delegations and The Small-scale Mining and Promotion Framework Unit (CAPAM),<sup>48</sup> two bodies in the same ministry, fail to coordinate with each other.<sup>49</sup> CAPAM is active in 28 mining sites dealing in gold, diamond, sapphire, rutile, tin, salt and ornamental stones, and also provides technical support to miners in channeling their production into markets, using formal routes.<sup>50</sup> But the two organs have overlapping roles; lack a clear remit of functions, with wastage and discord reigning on both sides.<sup>51</sup>

### **3) No clear distinction between local content development and economic affairs**

The Mining Code states that the purpose for The Special Local Capacity Building Account is “intended to finance Cameroon’s economic, social, cultural, industrial and technological development through the develop-

<sup>46</sup>Oyewole S Oginni and Adewale D Omojowo, “Sustainable Development and Corporate Social Responsibility in Sub-Saharan Africa: Evidence from Industries in Cameroon” *Economies* 11 2006

<sup>47</sup>Thierry Tene, ‘CSR gets the cold shoulder from most Cameroon companies’ Available at: <https://www.businessincameroon.com/business/2102-4669-csr-gets-the-cold-shoulder-from-most-cameroon-companies> accessed on 23 August 2018

<sup>48</sup>CAPAM is the main agency established by government to provide support for artisanal mining on issues related to conservation, alternative livelihoods and disputes between artisanal miners and large scale mining concessions

<sup>49</sup>Mbianyor Bakia, “East Cameroon’s artisanal and small-scale mining bonanza: How long will it last?” *Futures* 62 40-50 2014

<sup>50</sup>USAID, ‘Country Profile: Property Rights And Resource Governance’ USAID\_Land\_Tenure\_Cameroon\_Profile.pdf

<sup>51</sup>M Anselme Kamga, S Nzali, C O Olatubara, A Adenikinju, E A Akintunde, M P Kemeng, F W D Nguimatsia, E A Ndip and C Fuanya, “Sustainable Development and Environmental Challenges of Cameroon’s Mining Sector in Cameroon: A Review” *Journal of Mining and Environment* 7 2018

ment of human resources and local enterprises and industries”<sup>52</sup> and goes ahead to pinpoint some of the aspects to suit local content development. Hence, section 164 highlights:

- The development of local human resources, particularly by upgrading, adapting or creating local training institutions or mining professionals,
- The development and upgrading of home-based companies likely to be involved in the mining sector, as service providers, subcontractors or mining companies.
- Social programmes and projects for the promotion of indigenous and local populations in the vicinity of mining sites
- Programmes and projects to fight against the worst forms of child labour
- Programmes for maternity protection
- Monitoring the mining companies’ compliance with their commitments towards the local content.<sup>53</sup>

This is as overstretch of what local content development is all about. Parts of these recitations are clearly related to local content development, but they also extend to economic, industrial and technological development through the setting up of enterprises which any government is required to undertake to meet the needs of its people, which cannot be couched as local content development attributes. This bunching of CSR with purely economic development affairs suggests that there is no clear focus on either construct. There is no doubt therefore why a stalemate exist in the monitoring and evaluation of CSR projects by inspectors whose remit is unclear.

#### 4) Multiplication of purposes

The Code states that: “The proceeds from area-based royalties and States land concession fees, the advolorem tax and the extraction tax shall be shared between the Treasury, the authority in charge of mines, the authority in charge of State property, the taxation authority, the Funds provided for in this Code, councils and neighbouring community, as the case may be.”<sup>54</sup> Of the three Funds, only that of the Mining Site and Quarry Restoration “... shall be held in an escrow account at the Central Bank,<sup>55</sup> while the others are shared accordingly as spelt out above. This implies that government can use the funds in the Special Capacity Building Account to address the social needs of its communities (as spelt out in the funds remit), although mining concessionaries are still being required to fulfill local content commitments on top of their funds contributions.

In addition, the Code states that “Each operator shall be responsible for the restoration, rehabilitation, and closure of mining and quarry sites,”<sup>56</sup> and demands that the “former mining and quarry sites must be restored to stable conditions of security, agro-sylvo-pastoral productivity and appearance close to their original state or conducive to any new sustainable development deemed suitable and acceptable by the authorities in charge of

<sup>52</sup>Section 166(2)

<sup>53</sup>Section 166 (2)

<sup>54</sup>Section 176(2)

<sup>55</sup>Section 136(3)

<sup>56</sup>Section 136(1)

mines, the environment and any other relevant authority.”<sup>57</sup> To ensure mine rehabilitation, contributions received for the Mining Site and Quarry Restoration, Rehabilitation and Closure Fund “... shall be held in an escrow account at the Central Bank,<sup>58</sup> and such an amount will be determined based on “... the estimated costs of implementing the conservation and environmental programme as established in the environmental and social impact assessment.”<sup>59</sup> The multiplication of purposes is perceived when the government asks mining companies to perform mine rehabilitation and undertake local content development for which it is already collecting funds. In addition, the new Code highlights the fact that all mining companies are required to make contributions into the Special Capacity Building Account, including those signed before the 2016 law came into force. “For the implementation of the activities referred to in Section 165 above, the mining companies that had signed a mining agreement, or other specifications documents, shall be required to pay a contribution into the Special Local Capacity Building Fund, with effect from a date and up to an amount fixed in the mining agreement.”<sup>60</sup> However, the Code should have made an exception to companies that are already making related contributions for local content or CSR purposes. The exploitation agreement between the government and C&K Mining Inc. signed in 2010 in its Article 7 and 10 illustrate the point:

*“Durant la validite des permis d’exploitation, la Societe C&K Mining Inc. doit mettre a la disposition des population riveriane des infrastructure sociales, sportives, educatives et sanitaires pour favoriser leur epanouissement.”<sup>61</sup>*

[Personal Translation - C&K Mining Inc. is required, during the period of validity of its exploitation permit, to provide social, sporting, educational and medical infrastructure for the benefit of the local community].

*“C&K Mining Inc. doit se conformer aux recommandation de l’etude d’impact sur environnement menee prealablement a l’exploitation et remettre en l’etat initial les sites d’exploitaion. Au demurrage ouvrir un compte de rehabilitation de l’environnement, domicile dans un compte sequester aupres d’une banque agree de la place par garanti le rehabilitation du site lors de sa fermeture en fin d’exploitation.”<sup>62</sup>*

[Personal Translation - C&K Mining Inc. must conform to recommendations made in the initial Environmental Impact Assessment related to the reinstatement of the mine site to its original state. It is required to open an escrow bank account into which deposits to guarantee rehabilitation of the mine site at the termination of the contract shall be made].

## **VI. Implications of compliance with CSR Contract Agreements**

On the whole, complying with provisions in the legislation is critical since doing what is morally and ethically right is more beneficial for the mining industry’s image. By resisting engaging in CSR activities, a mining com-

<sup>57</sup>Section 136(3)

<sup>58</sup>Section 136(3)

<sup>59</sup>Section 235(2) The Mining Site and Quarry Restoration, Rehabilitation and Closure Fund - The resources of the Fund shall be derived from the annual contribution of holders of small-scale and industrial mining permits, holders of semi-mechanized non-industrial mining licences, and holders of industrial or semi-mechanized non-industrial substance quarry licences, depending on the estimated costs of implementing the conservation and environmental programme as established in the environmental and social impact assessment.

<sup>60</sup>Section 176 (2)The proceeds from area-based royalties and States land concession fees, the advolerem tax and the extraction tax shall be shared between the Treasury, the authority in charge of mines, the authority in charge of State property, the taxation authority, the Funds provided for in this Code, councils and neighbouring community, as the case may be.

<sup>61</sup>Resource Contract, ‘Cameroon and Korea Mining, Exploration Licence’ <https://www.resourcecontracts.org/contract/ocds-591adf-6203514165/view#/> January 2020

<sup>62</sup>Resource Contract, ‘Cameroon and Korea Mining, Exploration Licence’ <https://www.resourcecontracts.org/contract/ocds-591adf-6203514165/view#/> January 2010

pany may be sending the wrong signal to the local community where the concessionary is located. It looks and feels morally inappropriate when mining companies that benefit financially from mining activities fail to participate in developmental affairs of the local community because the state has already collected funds for CSR purposes. Establishing a conducive working relationship with the local mining community through CSR engagements will eventually be beneficial to the reputation of the mining company, as the initial knock on the company's profits will be evened out by friendly overtures those community relations will garner for their overall bottom-line.

Mining involves intensive mechanized activities which have a negative impact on the environment, mostly from excarvation and degradation of land, especially farm lands. Some local community members lose farm lands, habitation, and even hunting/fishing access for the benefit of the establishment of a mining concessionary. In addition to the considerable visual damage inflicted on the terrain, the auditory/olfactory effects of mining can be aggravating to members of the community where the mining concessionary is located. Also, the presence of expatriates in the local community, with privileges which the local community lacks, is another ground for tensions. Therefore, neglecting to undertake CSR because the mining concessionary is already making substantial contributions to the state is the wrong approach to adopt by mining companies in the country. In spite of discrepancies observed, it is in the best interest of mining companies in the country to participate in the development of the community where their concessionary is located since CSR is always a sound way of "getting-to-know" the community and develop a harmonious relationship with them.

One company that has quickly learnt the lesson of CSR engagement is SONARA (the state refining company), which has built a school for its local community,<sup>63</sup> with a hospital engagement as well. The company has sought to polish its image and uplift its reputation with the local community after years of frustration. This could be a good example for other companies in the mining sector in the country to emulate in order to showcase a sense of concern and empathy for the local community where their concessionary is located. Mining companies can use CSR as a way to appease mining communities in order not to be on the receiving end of the frustrations of the local mining community, as the Chinese have already experienced, with hostilities and deaths in the East of the country.<sup>64</sup>

## VII. CONCLUSION

There is a overlap between the legislation and contract agreement related to CSR in the country, with fortuitous provisions in the Mining Code and contract agreement. The legislation and the contract agreement should be more consistent on CSR related provisions- which the Mining Code and agreement refer variously to as social, sporting, educational, medical facilities, local content, ESIA and mine rehabilitation. These different constructs

<sup>63</sup>Noela Ebob Bisong, "Anglophone Section of SONARA College Goes Operational Next Academic Year" *The Sun*

<sup>64</sup>France 24, "Fury at Chinese Company after deadly cave-in at Cameroon Mine" <http://france24.com>

all relate to corporate social responsibility which the government is keen to uphold, especially with its adherence to principles laid down by the Kimberly Process and the Extractive Industries Transparency Initiative, amongst other standards. Nonetheless, government should be more rigorous in its implementation of the key tenets of the standards set by these international guidelines as well as the domestic regime which has been upgraded in the 2016 Mining Code. In this respect, there should be better synergy between the government and the multinational companies that are keen on benefitting from the extremely rich sub-soil of the country.

© GSJ

## REFERENCES

- [1] C.Sale, “Information Review for the Promotion of Mining Activities in Cameroon, Time for action” CAPAM Editorial (Bimonthly) Yaoundé 3 2006
- [2] PN Gweth, “Resources Minérales du Cameroun” Sopecam Yaoundé 2001
- [3] Ministry of Mines and Technological Development (MINMIDT) <https://minmidt.gov.net/en/major-projects/capam.html>
- [4] Business in Cameroon, “Mining Potential of Cameroon” available at <https://businessincameroon.com> May 2017
- [5] L.Weng, D.Endamana, A.K.Boedhihartono, P.Levang, C.R.Margules, and J.A.Sayer, “Asian Investment at Artisanal and Small-Scale Mines in Rural Cameroon” *The Extractive Industries and Society* 2 pp. 64-72 2014
- [6] KPMG Global Mining Institute Cameroon – Country Mining Guide- Assets 2014 available at [www.kpmg.com/assessments](http://www.kpmg.com/assessments) May 2019
- [7] KPMG Global Mining Institute Cameroon – Country Mining Guide 2013 available at [www.kpmg.com/mining](http://www.kpmg.com/mining) May 2019
- [8] World Bank, ‘Funding Cameroon Strengthens Capacity in the Mining Sector’ available at <https://www.worldbank.org/en/news/press-release/2012/06/28/cameroon-strengthens-capacity-in-the-mining-sector> July 2017
- [9] European Commission available at [www.ec.europa.eu](http://www.ec.europa.eu).
- [10] Business for Social Responsibility (BSR) available at [www.bsr.org](http://www.bsr.org)
- [11] J.Jonker and De Witte Marco (eds.), “Management Models for Corporate Social Responsibility” Springer 3 2006
- [12] B.Felizoz and M.Fisne, “Corporate Social Responsibility: A Study of Striking Corporate Social Responsibility Practices in Sport Management” *Procedia Social and Behavioral Sciences* 24 pp.1405- 1417 2011
- [13] World Business Council for Sustainable Development
- [14] H.R. Bowen, *Social Responsibilities of the Businessman* Harper & Row pp.xi 1953
- [15] A.B.Carroll, “Carroll’s Pyramid of CSR: taking another Look” *International Journal of Corporate Social Responsibility* 3 2016
- [16] B.Boidin and A. Djeflat, “Spécificités et Perspectives du Développement durable dans les Pays en Développement” *Mondes en développement* 37 [148] pp.7- 14 2009
- [17] Corporate Social Responsibility for Broad Based Empowerment in the Mining Sector in Zimbabwe available at [http://adapt.it/adapt-indice-a-z/wp-content/uploads/2014/08/masawi\\_csr.pdf](http://adapt.it/adapt-indice-a-z/wp-content/uploads/2014/08/masawi_csr.pdf) May 2016
- [18] S.Gurská and A.Válová, “Corporate Social Responsibility in Mining Industry” *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* LXI [7] pp. 0000–0000 2013
- [19] Y.H.Daouda, “CSR and Sustainable Development: Multinationals are they Socially Responsible in Sub-Saharan Africa? The case of Areva in Niger” *Cadernos de Estudos Africanos* 28 pp.147 2014
- [20] C. Renouard, “L’Interet Economique aux prises avec la visee ethique: Le cas de Rio Tinto au Ghana” *Mondes et Developpement* 4 [144] pp. 63-74 2008
- [21] Mining Code Law no.2016/017 of 14 December 2016 –current law in use related to mining in the country
- [22] Mining Code –Law no.2001/001 of 16 April 2001, as amended by the 2010 law
- [23] Mining Code- Law no.2010/011 of 29 July 2010
- [24] Environmental Framework Law No. 96/12 of 05 August 1996 relating to environmental Protection
- [25] Ministerial Order N°.0069/MINEP of 8 March 2005, prescribes the different categories of projects that would necessitate an ESIA.
- [26] *The Struggle to Economise Future Environment (SEFE) v. S.G Sustainable Oils Ltd & Dr Timti Isidore*, High Court of Ndiang Suit no.HCN/03/OS/2011 (unreported)
- [27] O.S Oginni and A.D. Omojowo, “Sustainable Development and Corporate Social Responsibility in Sub-Saharan Africa: Evidence from Industries in Cameroon” *Economies* 11 2006
- [28] Thiery Tene, “CSR gets the cold shoulder from most Cameroon companies” available at <https://www.businessincameroon.com/business/2102-4669-csr-gets-the-cold-shoulder-from-most-cameroon-companies> August 2017
- [29] M.Bakia, “East Cameroon’s artisanal and small-scale mining Bonanza: How long will it last?” *Futures* 62 pp. 40-50 2014
- [30] USAID, “Country Profile: Property Rights and Resource Governance” USAID Land Tenure Cameroon Profile.pdf
- [31] M.A Kamga, S.Nzali, C.O Olatubara, A. Adenikinju, E. A Akintunde, M P Kemeng, FWD Ngūimatsia, E.A Ndiip and C.Fuanya, “Sustainable Development and Environmental Challenges of Cameroon’s Mining Sector in Cameroon: A Review” *Journal of Mining and Environment* 7 2018
- [32] Resource Contract, “Cameroon and Korea Mining, Exploration Licence” available at <https://www.resourcecontracts.org/contract/ocds-591adf-6203514165/view#/> January 2012
- [33] France 24, “Fury at Chinese Company after deadly cave-in at Cameroon Mine” available at <http://france24.com> April 2016
- [34] N.E Bisong, “Anglophone Section of SONARA College Goes Operational Next Academic Year” *Online The Sun* June 2018
- [35] Law No. 96/12 of August 5, 1996 Environmental Management Framework Law and the application decree No. 2005/057 PM of February 23, 2005, on the modalities of undertaking an Environmental Impact Assessment.