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SOCIAL RESPONSIBILITY IN MINING VERSUS INVESTOR PROTECTION IN THE DEMOCRATIC REPUBLIC OF CONGO

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SUMMARY :

Speaking about the question of the legal regime of investments in the mining sector Democratic Republic of Congo (DRC), arose the problem of the meeting between capital and development of this state of affairs that warnings remain considered as an added value that can meet the needs of the population.

In view of the content of the subject which has been the subject of this study, we can in no way claim to have been exhaustive. Nevertheless, we are convinced that we have to the extent of our means, emphasized the essence of the matter that we have set ourselves to analyze.

It is therefore a typical example of a regulation that has become increasingly complex over the years. This defect was accentuated by the large number of texts sometimes very old and fragmented. The fragmentation of rules applicable to foreign investment in the DRC causes more problems than it solves. It is therefore incumbent on the Congolese State to pursue a strategic policy to put its investment law in order, with a view to improving the business climate, which is undermined by corruption, and thus attracting many foreign investors and investments to its territory.

Keywords: Liability, Operations, Mining, Protection, Investors

RESUME :

Parler de la question du régime juridique des investissements dans le secteur minier République démocratique du Congo (RDC), s'est posé la problématique de la rencontre entre les capitaux et le développement de cet état de fait que les avertissements restent considérés comme une valeur ajoutée qui peut répondre aux besoins de la population.Au regard de la teneur du sujet qui a fait l'objet de la présente étude, nous ne pouvons en aucune manière prétendre avoir été exhaustif. Néanmoins, nous avons la conviction d'avoir dans la mesure de nos moyens, mit l'accent sur l'essentiel de la matière que nous nous sommes assigné d'analyser.

Aussi constitue-t-elle l'exemple type d'une réglementation qui au fil des années est devenu de plus en plus complexe. Ce défaut été accentué par le nombre importants des textes parfois très anciens et éclatés. L'éclatement des règles applicables aux investissements étrangers en RDC suscite plus des problèmes qu'il n'en résout. Il est incombe donc à l'État congolais de mener une politique stratégique pour mettre de l'ordre dans son droit de l'investissement, en vue d'améliorer les climats des affaires, miné par la corruption et d'attirer ainsi de nombreux investisseurs et investissements étrangers sur son territoire.***Mot clés : Responsabilité, Exploitation, Minière, Protection, Investisseurs***

1. INTRODUCTION

talk about the issue of the legal regime of investments in the mining sector Democratic Republic of Congo (DRC), arose the problem of the meeting between capital and development of this state of affairs that warnings remain considered as an added value you can meet the needs of the population see real absolutely contribute to economic development the second country located in the heart of Africa.

The investment codes appear to be a set of laws instituted by the legislators wishing to ask economic operators and potential investment a mode of behavior in the achievement of economic objectives that can obtain the development of the country just now providing certain tax advantages customs and see forestry. Social responsibility is the implementation of sustainable development at the corporate level. For these last cases, it considers efforts for the protection of the environment and learning the initiative in the social field. And can also be understood as a concept that refers to the voluntary integration by companies of social and environmental concerns into their business activities of their relationships with stakeholders. The break-up of investor rules in the Democratic Republic of Congo (DRC) is the problem it solved. It is therefore incumbent on the Congolese State to pursue a strategic policy to order its investment law with a view to improving business climates.

The issue of investor protection and revenue maximization has always been at the center of concern for both investors and the State these hours of law in all sectors; But in the last decade the question has become more acute in the mining sector than in others. In the Democratic Republic of the Congo, the legislator lays down some legislative guidelines and principles envious of investor protection through the treaties and international agreements ratified for this purpose and then through the constitution itself providing that the State encourages and ensures the security of investors, nationals and foreigners; then by a special legislative framework the investment codes which was drafted in the spirit of providing a framework and an incentive environment for the sector to create national wealth and employment. Thus, The Code in question was not only incentive-oriented and competitive, but also, and above all, a code that encourages investors in the areas of key sectors declared by the government to enable it to achieve the objectives of its economic development program.

In view of what it is a known universal principle that it is up to each state to dispose of its natural resources as "it understands, Congolese legislator through the constitution provides that the State exercises permanent sovereignty over the soil and subsoil. However, to promote its national wealth, the state needs investors, who are capitalists and come for needs to increase their activities by seeking a framework that promotes an incentive environment and adapted to their objectives.

In the same vein, the State itself also seek to maximize revenue and capitalize on its economic development. it is precisely here that the fiddles do not agree between investor in the sector in the Democratic Republic of Congo (DRC) and the Congolese State the need to have a regime applicable to mining investor , quickly imposed itself in the Democratic Republic of Congo envious of the economic potential of the country and contained the risks

associated with the old legal system source of insecurity for the Congolese State itself and for investor and for a good relation. Congolese legislator has enshrined a regime by which it requires the investor to provide all information and to monitor compliance with the commitments made in the granting of the authorization. The Democratic Republic of the Congo provide for two main regime ; Regime The investment regime and the mining code The legal framework is Law N°. 007/2002 of 11 July 2002 on the Mining Code as amended and supplemented by Law N°. 18/001 of 9 March 2018 and Decree N° 20/004 of 5 March which set the advantage and the space for implantation. The aim is to attract foreign capital.

2. SOCIAL RESPONSIBILITY

Here it is a question of making an approach on social responsibility from the legal and moral point of view and also of making an interaction between social responsibility and other branche. Corporate social responsibility, also known as corporate social responsibility, is the implementation of sustainable development at the corporate level. For the latter, it consists of making efforts to protect the environment and learning from initiatives in the social field. But behind these relatively simple objectives lies a whole range of actions and values adapted according to needs and means. Find out what your company can do and what is corporate social responsibility.

It can also be defined as "a concept that refer to the voluntary integration by corporate of social and environmental concern into their business activity and their relation with their stakeholders". Corporate Social Responsibility is therefore the implementation of sustainable development at the corporate level. It therefore consists of taking initiatives that respect the environment and sustainable development but also their employees and their customers and partners, as well as society in general.

a) The objective of Societal Responsibility

The objectives of corporate societal responsibility concern all company, regardless of their size or activity. It correspond to the application of a global sustainable development approach that must integrate environmental, social and human strategy. In short, corporate social responsibility is about making companies responsible, which must now get involved in the development of society and ensure the development of people.

Initially with ethical and non-financial objective, we now recognize corporate social responsibility and the ability to improve the economic performance of the company. The latter must provide information on environmental indicators (energy consumption, CO2 emissions...) and social indicator (job creation diversity policies...) that are easy to follow from year to year, especially in the annual report. This is an obligation in France for company with 500 employees.

By making sure to strengthen its participation in the improvement of society, the company boosts its reputation and attractiveness to its customers and prospects. By paying particular attention to human, social and environmental issues, it promotes the personal development and fulfillment of its employees. These will strengthen their application as well as their loyalty to the company, and even their results and performance. Certainly all company not a baby food showed on television to convince the good atmosphere at work. On the other hand, everyone now knows the strong impact externally and internally that the corporate

social responsibility approach brings. The latter is an effective lever to help companies adapt to changes in their markets.

b) The role of Societal Responsibility

It is the transversal domain of all the company's business lines that is to say (the recent, emerging and increasingly central role as well as a coordinating role at the heart of the company), responsibility seen as the integration of environmental and social issues into strategic decisions mobilizes by essence the integrity of internal and external. The role of the Social Responsibility teams is to bring out culture of impact so that everyone integrates into their daily lives the concern not only for the objectives of profitability but especially for the environmental, social and societal impact of this choice. The nature of societal responsibility is therefore to raise awareness and train. Each employee, so that he integrates his challenges daily in his work regardless of the department in which he works, social responsibility must appear at each stage of the production process as well as in the reflections of human resources as in the definition of the strategy by the general management.

c) The principle of societal responsibility

Societal responsibility adopts a responsible approach at the level of the environment, at the societal level and inherited by the 7 generic principles which are:

- Accountability ;
- transparency of ethical behaviour ;
- respect for the interests of stakeholders ;
- respect for the principles of secularism,
- compliance with international standards of behaviour ;
- respect for human rights.

This first principle of corporate social responsibility materializes most of the time in a balance sheet of corporate social responsibility or in the writing of reports or reports, indeed these tools including reporting, are widely implemented in corporate social responsibility policies because they promote the communication of important information about the company's corporate social responsibility strategy and activities and they expect this information to be clear and accessible to all internal stakeholders (employee).

As external (customers, consumers, suppliers, and partners...) ethical behavior can be characterized by fairness, honesty and also the integrity of the attitude. Acting ethically therefore implies being concerned about what surrounds us in our environment.

Thus it refers in more concrete way to the fact of adapting a governance and a merry-go-round brings human development, qualities, respectful and responsible. Respecting the interests of stakeholders requires the company to identify stakeholders, their needs and interests and to take them into consideration. The identification of all stakeholders as well as the needs desired relationship and interaction are the central steps.

As reminder, stakeholders in owner groups, members, customers but also any group that can express requests or specific interests. It is therefore necessary to take into account all individuals and groups of individuals. Thus, customer suppliers, consumers, employees... are all stakeholders and actors that need to be identified and integrated into the

decision-making process, particularly with regard to the implementation of the corporate social responsibility strategy.

Respect for the principle of equality means that the company must understand that no one is above the law and there must be full compliance with leisure (in France). Thus, the company must ensure that its activity, its products, its employees and its practices are in equation with the law published in France. Indirectly this means that the company must take the step of being constantly on the lookout for new legislation, to comply when the time comes. To do this, there are nowadays many resources available to companies to be able to obtain information concerning the evolution of the law.

Respect for international standards of behaviour when there is legal silence, in other words, when national law, here in France says nothing about a subject. In this case it is necessary to refer to the international standard of behaviour, in fact of Many organizations set international standards to which companies can refer in terms of the environment but also concerning the use of social practices. One example of international standards is the International Labour Organization, the United Nations, the Organization for Economic Cooperation and Development for the European Community.

Respect for human rights The principle of respect for human rights implies knowledge of the importance and universal character of this norm. In other words, companies must apply or respect, in all cases, regardless of the situation, or the countries in which it is located, the rights set out in this standard standard.

d) Legal basis and limitation of social responsibility

Societal responsibility is an important concept in the market sphere present in the public sector and more particularly in the mining sector. Social responsibility was born in the context in which economic, social and environmental pressures have been increasingly strong for European company as this seat of their future the financial scandal, the environmental disaster and the increase in social inequalities on an international scale have led the European public authorities to supervise and commit themselves to making more transparent the actions of companies in the Community area vis-à-vis society in terms of preserving the environment and not financial corruption, respect for human rights and the fight against social exclusion, The notion of responsibility implies the voluntary participation of companies in the consideration of sustainable development issues in the context of their activity but also in relations with their various interlocutors.

Through corporate societal responsibility, they are committed to the impacts of their decision-making and operating activity on society as a whole, which is why a walking land can only be guided by values shared with the various stakeholders to fully assume this responsibility. It is understood that companies must not simply respect the legislative frameworks and collective agreements implemented, but must on the contrary take into consideration the social issues in which they operate in order to engage in an informed manner in this global initiative.

Social responsibility thus integrates three consecutive dimensions into the sustainable development framework.

- ✓ The social aspect: safety and health at work, improvement of working conditions, fight against discrimination, professional equality, job management, etc. ;
- ✓ The environmental component: ecological fight against climate change problematic relating to the saving of resources and energy etc ...
- ✓ the societal aspect: the company's relationship with the partners of the various stakeholders of civil society, users, communities from the perspective of sustainable development.

Societal responsibility adds an essential dimension which is that of governance and stakeholder participation that unfolds at different levels. Social responsibility is contribution of sustainable development company.

3. COMPOSITION OF SOCIETAL RESPONSIBILITY FOR ENVIRONMENTAL MATTERS

The role of private enterprise in society is a concept that has sunk many since the beginning of emergence. The notion of "legal person" and corporations is all the more reviving the debate on corporate ethics. Indeed, having to attribute to us the ethical duty and Moreaux to companies that are not yet individuals and even more, are companies bound by voluntary environmental obligations (moral? or ethical?) beyond that prevails in the laws and regulations enacted by the public bodies responsible for representing the interests of society? How should we conceive potential dichotomies between the quest for profit fundamental to the notion of enterprise of society and the environment in the broad sense, these questions, perhaps seemingly polarized, are at the very heart of reflections on corporate social responsibility. We are therefore beginning to review the various concepts surrounding the notion of corporate societal responsibility.

The tools used to implement corporate responsibility are described, all in order to offer an overview of the different current practices, although the concept of Corporate Social Responsibility includes both societal and environmental aspects. They propose us to study more particularly the environmental components of this concept in order to understand the issues of application of corporate social responsibility, the history of the development of the concept is essential, followed by Proposed definition review.

Since the 1950, the concepts have undergone several changes, and the contours are constantly being defined.

- ❖ *Historical overview and theoretical framework*

Following the industrial revolution, the company occupies a growing place in the world economy, however the reflection on the place of industry within society and the environment was done later. Indeed, it was only around the 1950 that the terms corporate social responsibility began to appear in the literature of economics and management.

the authors focusing on determining the general contours of the company's responsibility towards society (Roady 2007) the first works dealing with the subject of the person concerned predominantly the "businessman" or manager ethic rather than that of the company itself.

The authors then mainly question the philanthropic actions of the latter, rather than actions related to the company's activities. Then, around the 1980, towards the beginning of the multinational rise and the increase in the size of companies, the study of corporate social responsibility became more concerned with issues at the organizational level.

Thus the analysis of corporate responsibility has distanced itself from the vision centered on the "businessman" to move to the study of the functioning and management of the company itself this evolution of the subject under study has contributed to the development of different theories and schools of thought relating to the role of private enterprise in society much of the debate in the application of corporate social responsibility and centered around the different models.

Economic of the enterprise proposed by theorists. . Two models frequently cited in the corporate social responsibility literature are: the theory of shareholder primacy, which in opposition to the stakeholder theory. These two theories have also influenced current definitions of corporate social responsibility as well as the different forms of location it can take within company.

First, the theory of shareholder primacy developed by much of the economist MILTON FRIENDMAN proposes that the activities of the company are essential to the generation of profits for the owners of the company. According to this theory, social responsibility is a concept inherent to natural persons concept which can therefore only apply to the legal person which constitutes that the company, The individuals who manage the activities of the company, the directors and other employees have a fiduciary duty that is to say a duty to act in the best interests of the company they must therefore meet the expectations of the owners of the company or the shareholders. In a second step, the theory of the stakeholder proposes rather that the company does not operate in a vacuum and can not concentrate all its activities solely on the quest for profits according to its business models must be the environment in which it operates. The difficulty of applying this theory, however, lies in identifying the company's stakeholders a frequently used definition and discrediting stakeholders as "any group or individual who may influence or be affected by the objectives of the company).

This vision sees the company as working in a complex network of interconnected action such as employees, directors, community, consumers, lobby groups, government and others.

The divergences between these theories are fundamental to the current form that corporate social responsibility takes, in particular with regard to the legal obligations that may arise from the theoretical current adopted on the one hand the proponent of the theory of shareholder primacy cannot conceive of a form of ethical and legal responsibility detached from that of a natural person on the other hand the theory of stakeholders expanded the sphere of societal responsibility of the company by proposing several different actors including those external to the company must be taken into account in decisions relating to the activities of companies implications can be important especially for directors and managers who must respond to the concerns of these different groups.

- *Portrait of practice for the implementation of societal responsibility*

After proposing an operational definition of corporate societal responsibility, we will review the implementation of the various practices of corporate social responsibility commonly used, this service is not intended to be exhaustive considering that there may be as many variants as companies that implement this method.

We will describe different practices in order to be able to evaluate legal issues that may potentially arise from the implementation of this practice contained to the extent we will limit ourselves to exploring environmental tools earlier than social.

- Codes of conduct

Are formal declarations adopted by companies aimed at framing commercial practical values, respected by the company beyond the applicable regulatory requirements. It should be noted that this type of document can take different forms for example it can be known as voluntary codes, codes of practice, guideline and other.

This type of tool is particulary used by company in the consumer goods production sector, their appearance having historically followed boycott campaigns or in the face of pressure from the population, in the face of the supply practices of certain companies.

It is also common to find the code of conduct produced by companies and intended for their suppliers these codes can then become tools including if included in the contract with its suppliers.

- Raporting

In terms of the environment it is a method used by companies finally to increase their transparency and improve the dissemination of information to the public, the production of reports on the environment and safety and frequent in several companies. The sustainable development report for example is a type of report aimed at disseminating information relating to the economic, environmental and social impacts generated by its activities, its types of report can help the company to measure the impacts caused and represents a key document finally to communicate the performance measurement to the public and potential investors, The tool is, in a way, equivalent to financial reporting on environmental matters.

However, in the absence of a standard, the nature and content of this report can vary greatly from one company to another, as erroneous environmental reports or reports containing false information have been disseminated in the past.

- Socially responsible investment

Also sometimes known as the ethical fund, is a relatively new method that helps promote corporate responsibility.

This type of investment is defined as a type of investment that is concerned about its impact on society and the environment. The trend of socially responsible investments

seems to be gaining popularity among investors, and therefore many mining companies have economic incentives to adapt to their practice at the social and environmental level.

- The pillar of societal responsibility

The corporate social responsibility approach translates into a commitment by economic actors to sustainable development. Corporate social responsibility is based on 3 fundamental pillars which are:

- Economic responsibility: through the quality of service, the support of local suppliers and producers, transparency and payment of invoices within the legal deadlines.
- Social responsibility: by advocating diversity and equal opportunity, ensuring health and safety for employees, enforcing workers' rights and working fairly with global producers.
- Environmental responsibility: by reducing the impact of Carbonne's activities, using resources responsibly, reducing waste and raising employees' awareness of environmental games.

4. MECHANISMS FOR THE PROTECTION OF MINING ACTORS IN THE DRC

The constitution is the law of the land that states that the property (private and collective) of any person in the DRC is sacred. However, no one may touch it in the case provided for by law, in particular, in the event of a judicial conviction for certain offences. The law (the Investment Code) formally excludes the nationalization and expropriation of an investment made in the country (except in extreme cases for reasons of public utility and this subject to a fair and equitable prior compensation).

The law guarantees equal treatment to all domestic and foreign investors. The Investment Code guarantees the respect of acquired rights by investors: no subsequent legal or regulatory provision can undermine or restrict an advantage previously granted legally and regularly to an investor it also guarantees the freedom of transfer abroad without restriction and income, dividend and other remuneration from investors made in the Democratic Republic of Congo.

A. INCREASING INCLUSION OF A CLAUSE ON COMPLIANCE WITH PROTECTION STANDARDS

Due to the increasing attention that civil society is paying to the issue of sustainable development, a number of investment agreements that have entered into force have begun to include provisions in this regard and references to the principles of corporate social responsibility, the law as a legal instrument provides in particular for mechanism and amicable settlement cannot be privileged beneficiary in the DRC of investors who are subject to the provisions below.

1. The procedure to be followed by foreign investors under the new mining code

Four years after its promulgation, the new mining code has given another face to the mining environment of the Democratic Republic of Congo. With this reform, the Republic of Congo is currently at the center of major geostrategic issues. This position is justified by the immensity of its natural resources of the soil and subsoil. Several investors, recruited in

various sectors of economic life, are currently jostling at the door of this country. Many of them want to invest as a result of the reforms carried out in this sector.

The new Congolese mining legislation has provided for a number of support structures for the harmonious management of this sector. The most important of these is the Mining Cadastre. The mining cadastre is endowed with several prerogatives including the management of procedures for narrow, forfeiture and cancellation of mining rights throughout the Democratic Republic of Congo. By implementing this new mining legislation, the Congolese legislator has highlighted its desire to create a client conducive to investment.

The legislator banishes all discrimination in this sector by opting for the eligibility of both nationals and foreigners in the granting of mining rights. The new Mining Code maintains the same eligibility conditions that were provided for in the 1981 mining law. Nevertheless, it innovates in that natural persons of foreign nationality and legal persons under foreign law may be eligible for mining or quarrying, provided that you elect domicile with a mining and quarrying agent and act through him.

As result, the new mining code puts nationals and foreigners on an equal footing with regard to eligibility for mining rights. This option, which has just been lifted by the legislator, is a vibrant appeal to investors. It is true that the legislator's desire to open up to the outside world is manifest through this provision, but it is, on the other hand, important to question the manifestation of this desire for openness through the other provisions of the present Mining Code relating to procedure. Notwithstanding the full eligibility offered to him by the Congolese legislator, the foreign investor must follow the procedure that may lead to the admissibility of his request or its rejection.

In order to ensure transparency, objectivity, efficiency and speed in the process of receiving, investigating, deciding and notifying applications for mining or quarrying grants and the issuance of the related titles, the Congolese legislature devotes 18 articles to the procedure for granting such rights. To invest in the Democratic Republic of Congo, the candidate must proceed as follows:

A foreign investor must, from the outset, draft his application for mining rights or quarries on a form issued to him, for this purpose, by the mining cadastre as provided for in the article and the contact details of the applicant and/or his representative if the application is submitted by him.

The applicant must also mention the professional and legal situation of the applicant and the address of the registered office of the legal person, if applicable, the type of mining right or quarry is requested, the geographical location of the perimeter requested, the number of quarries constituting the area of the required perimeter the identity of the affiliated companies of the applicant, the nature, The number and area of the required perimeter, the identity of the applicant's affiliated companies, the nature, number and area of mining or quarry law already held by the new Mining Code aims to promote transparency in the granting of mining rights to investors wishing to invest in this sector. This procedure applies throughout the national territory. Regardless of the location, the investor in the mining sector must follow the procedure provided for by the new mining code.

The application validly fulfilling all these conditions will be declared admissible. For the speed of this operation, the mining cadastre is required, in the absence of Article 38 in its second paragraph, to decide, immediately, at the time of submission of the file. Immediately after submitting his application, the applicant for mining rights must be kept informed of the admissibility or not of his file.

The candidate for mineral rights, as soon as he submits his file, immediately he must know if his file is declared admissible or inadmissible. That is, the conditions required by the legislator are substantial. They therefore determine the admissibility of the application. When the application is declared admissible, the mining cadastre shall issue the applicant with a receipt indicating the day, time and date of deposit and enter the application in the corresponding register, indicating the days, hour and minute of filing. All these details are intended to establish the order of submission of files to the mining cadastre which examines them and responds according to the order of filing according to the prescription of article 34 of the new mining code which provides that: "... As long as an application is pending, no other application concerning the same perimeter, in whole or in part, may be heard."

The perimeters solicited by both domestic and foreign investors are areas occupied for decades by indigenous populations. Once the investor's request is approved by the mining cadastre, the surrounding populations have difficulty understanding the distinction that the legislator makes between land law and mining law. The inhabitants of these perimeters are forced to vacate the place and go and live elsewhere. Clearly, the application of the provisions of the mining code poses other problems, in particular those relating to the places of the land occupants. In this regard, indigenous peoples are unaware of the difference between mining and land rights.

The lack of representation of the mining cadastre in some provinces with its tentacles in mining cities is the main cause. Indeed, the weak popularization of the mining code has given way to several erroneous interpretations, particularly with regard to the preponderance of mining rights over land rights, the cohabitation of mining rights with land occupancy rights and the exclusion of grassroots communities from the enjoyment of subsoil products. At these days, there is in the DRC, serious hostility of the population vis-à-vis investors following this ignorance that characterizes it. Both domestic and foreign investors are seen as predators of the land it occupies. This confusion sharply raises the issue of rights of use over land occupied by local communities raises the question of both the legal nature of peasant land rights and the legal regime for attaching such land.

In this regard, if the doctrine seems to consider the peasant occupation of land as not a right, nor constituted in law, but as a legal tolerance, the jurisprudence does not succeed in removing the ambiguity on the regime of attachment of these lands. Indeed, the Supreme Court of Justice has delivered two contradictory judgments on the matter. One acknowledged that, as evidenced by the Presidential Order, the rights of use acquired over such lands are governed by customary law. The other has rather enshrined the so-called land law as the only reference in terms of land occupation. In addition, in determining jurisdiction over land, the law expressly excluded the customary authorities of the rand from the managers of its domain e, reserving land management to public administrations.

However, in the practice of land transactions, it is clear that peasants resort to customary categories, whereas custom is no longer a formal source of land rights since the unification of land tenure. Moreover, although they were dispossessed of their land power by the Act of 20 July 1973, customary authorities continue in practice to play a decisive role in the allocation of land. This situation leads to confusion of rights and land insecurity.

This issue of land tenure security is not the subject of this article at all. On the other hand, it allows us to dismantle the origin of hostility between local populations and investors in the mining sector. Far from realizing that these investors also have obligations towards indigenous peoples, these populations prefer hostility to remove them from their lands. The popularization of this new code and the awareness of indigenous populations are real sesames for the effectiveness of the new mining code.

After this parenthesis on the question of securing land tenure for indigenous peoples, let us return bluntly to the question relating to the procedure for granting mining rights. The investor in this sector will therefore in no way be satisfied with the fact that his application has been declared admissible and registered by the cadastre minier.il will then have to be patient, of course within the period prescribed by law, in order to allow the mining cadastre to proceed with the investigation. This instruction is multifaceted as required by Article 39 of the President of the Mining Code. To grant mining rights to prospective investors, Congolese law requires the mining cadastre to carry out a triple investigation at the same time cadastre, technical and environmental.

2. Cadastral instruction

By cadastre, it is necessary to mean all the documents on which are recorded the division of territory into properties and crops as well as the names of the owners of the different parcels.

This instruction will therefore consist in determining the geometric configuration of the perimeters solicited. In the light of Article 40 which governs this instruction, the mining cadastre shall proceed within a maximum of ten working days from the filing of the application. Thus, by declaring an application admissible, the mining cadastre is, at the very moment, under the legal deadline prescribed for the cadastral examination of the file declared admissible subject to the requirements of Article 34 which largely returns to the respect of the chronology in the examination of application files by the mining cadastre. During this investigation, the mining cadastre verifies the following:

- ✓ The applicant's eligibility for the type of mining right or quarry sought. Compliance with the limits of the number of mining rights or quarries, the shape and the area of the requested perimeter;
- ✓ The cadastre checks whether the requested parameter encroaches on a perimeter subject to a mining or quarry right or an application pending investigation. Article 30 of the Congolese legislator enshrines the exclusivity of the perimeters of mining rights or quarries.

That said, the perimeters of mining and quarrying rights as well as artisanal mining zones are exclusive. When an application for mining rights and/or research quarries relates to a perimeter of which more than 25% encroaches on another mining perimeter or quarries in validity or is submitted while another application is under investigation, this application is rejected. The misinterpretation of this article by the instructors of the mining cadastre is at the origin of several conflicts. As an example in Kamituga, in June 2007 we almost witnessed a pitched battle between the supporters of the company SOMICO and those of the company BANRO.

Both companies competed over the mining perimeters left by the company SOMIKA after its liquidation. The imbroglio sown by the supervisory authority in the attribution of the titles constituting the origin. The two companies were vying for the same titles. Curiously, they all held valid titles issued by the supervisory authority. In addition, instead of complying with the related jurisdiction, as defined by law, mining cadastre instructors are subject to influences from all walks of life. It therefore appears that the mining cadastre does not exercise the full of its legally recognized powers to settle such disputes. The highest bidding investors eventually triumph and snatch the securities already awarded. On the ground, these tensions are being felt.

Local populations are instrumentalized for the benefit of one or the other investor who seems to embody their aspirations. The artisanal mining areas allocated to some people suffer horribly from the same problems of marginal encroachment. The discretionary power of the supervisory authorities is in place, in most, if not always, for the appropriate related jurisdiction in the arbitration of encroachments by Article 40 of this Code. The rigorous application of this provision by the mining cadastre and the reinforced control of the instructors can solve, a little, this squaring of the circle, generating countless problems in the city of Kamituga and everywhere else, in the mining squares scattered in the hinterland.

Mining cadastre instructors should regularly go into the field to feel the geographical configuration of the perimeter assigned to one or the other investor. During these raids, they will be able to check the boundaries without difficulty and further avoid conflicts of encroachment between investors even if, the cartographic archives of the mining cadastre already allow it. It is clear that the application file can only be transmitted by the mining cadastre to the competent services for technical and environmental instruction when the cadastral opinion has been favourable. The cadastral notice is therefore of significant importance in the process of granting mining rights in the Democratic Republic of Congo.

3. Technical instruction

Unlike the cadastral notice, the technical instruction is done in a relatively short time. The department authorized to conduct technical instruction is the Mining Division. In the light of Article 14 of the Provisional Code, the Directorate of Mines is responsible for the inspection and control of mining and quarrying activities in matters of safety, hygiene, work management, production, transport, marketing and social matters. The Division is the only unit authorized to monitor and inspect industrial mining, small-scale mining and artisanal mining. After these two stages, the new mining code provides for a final step which is environmental instruction.

4. Environmental instruction

From the outset, it should be revealed that the Congolese legislator has added a major innovation. The new mining code has incorporated provisions devoted mainly to measures. The environmental dimension was absent from the old mining code. These measures undoubtedly represent a significant step forward in the search for the necessary and sufficient guarantees to make mining an activity that contributes significantly to the sustainable development of the Democratic Republic of Congo.

Indeed, under the new mining regime: "any mining operation must be the subject of an environmental impact study of the project and an environmental management plan previously established and approved in light of Article 407 of the mining regulations. According to this article, these studies must be filed at the same time as the application for the right of exploitation. As such, the new mining code makes permit holders liable for damage to the environment that are not previously registered in their approved environmental plan. It should be clarified that with regard to the Holder's environmental liability for mining and quarrying rights, the Holder is liable for environmental damage caused by its activities only to the extent that it has failed to comply strictly with the terms of its approved environmental plan including modifications during the project, or has violated one of the environmental obligations provided for in this Title under Article 405 of the Mining Regulations.

In addition, the Code specifies that in the event of a transfer of an exploitation mining right, liability for damage resulting from work prior to the transfer lies jointly and severally with the old and new holder according to Article 280 which enshrines liability for land use. This article is of particular importance insofar as it raises the question of the legacy of environmental liabilities and the responsibility of the various actors in the rehabilitation of ecosystems. The discussions held at a symposium in Kinshasa under the World Bank church are sufficient evidence of investors' concern about this article, which makes them responsible for previous ecological damages.

At the conclusion of the investigation, the department responsible for conducting the environmental investigation transmits its environmental opinion to the cadastre within the period, of course, prescribed for each type of mining or quarrying rights ends on the day of notification of the decision to grant to the applicant or the decision of the judge provided, as we shall see, Article 46 of this Code.

From all its procedural provisions of the new mining code, it emerges the manifest will of the legislator to print the speed on all these application operations. The file is transmitted to the competent authority by the mining cadastre by any means of communication such as e-mail, fax, registered mail or bearer mail with acknowledgments of receipt. The legislator goes so far as to establish a largely irrebuttable presumption by providing that the file is supposed to be received only one working day in the case of transmission by e-mail or fax and eight working days in the case of other means of communication.

In the event of failure of the mining cadastre, the legislator provides for registration by judicial means in Article 46 of this Code. Indeed, if the mining cadastre does not register the mining or quarry right in accordance with the requirements laid down in paragraph 4 of Article 43 of this Code within five working days, the applicant may, by way of a request addressed to the territorially competent regional court, with a copy and the elements

of the file to the officer of the public prosecutor's office at that court, obtain a judgment equivalent to mining or quarry title as the case may be. Speed being the rule in the new code, the president of the territorially competent High Court sets, within forty-eight hours of receipt of the quest, the case at the first useful hearing of his jurisdiction.

The Public Prosecutor's Office opinions on the benches. Without the need for postponement, the case is called, heard, pleaded and taken under advisement at the hearing determined in the writ of notification of the date of hearing. The court must take its decision within 72 hours from the date on which the case under consideration is taken under advisement. The judgment obtained by the applicant is, in any case, worth the mining or quarry title. All of them, in the event of a decision to grant or in the event of a decision or careers. In the event of a decision to grant or in the event of a decision to register by judicial means, the mining cadastre shall issue to the applicant, subject to payment of the fees requested.

Without prejudice to Article 198, which deals with the obligation to pay the annual surface charge per square, the annual fee per square, the annual surface duty per square must be paid, for the first year, not later than thirty working days from the date on which the right applied for is granted. After this period, the right granted automatically lapses. The Congolese legislator goes further by giving the numerical details of these superficial rights.

In view of the above, it is increasingly clear that speed characterizes the new mining code, despite multiple requirements provided for by the legislator. As much as the applicant emerges as a beneficiary following the rapid execution of the requested operations, the Congolese State gains not only by collecting surface rights in the event of a decision to grant the requested right and by preserving the environment whose protection is erected as a real in the granting of the requested right.

B. THE LEGAL REGIME PROTECTING FOREIGN INVESTORS BY NEW MINING CODE

Since independence, the various African governments have put in place development policies which, from the sixties to the late seventies, were characterized by strong state intervention in the economy. The mining sector is no exception, so many mining companies have been nationalized. In the Democratic Republic of Congo, this period was marked by Zairianization. Following the debt crisis and the intervention in the eighties of the international financial institutions, the role of the State in the economy underwent a major metamorphosis, notably through the introduction of stabilization and adjustment programmes.

It is necessary to point out that it was in the Democratic Republic of Congo, then Zaire, in 1982, that structural adjustment policies were invited, only to be interrupted three years later, since they were systematically applied in most other African countries over the last twenty years. One of the objectives of these policies is the opening up and liberalization of national economies.

It should be noted that it is within the framework of this program, the resumption of cooperation between the Democratic Republic of Congo, that the reform of the mining code was undertaken in perfect consultation with World Bank experts. A World Bank document from 2001 states, he recalls, that: "with the support of the World Bank, the government

prepared an investment code which was approved by Parliament, and a first version of the mining contract, which was sent to parliament for approval. With significant natural resources, the DRC has a potential that can make it one of the richest countries on the continent. To access this potential, it is important to implement peace and good governance. »

1. Investors' obligations towards local communities

Holders of mining or quarry rights are subject to certain obligations once deployed on their site of activity. They are required to observe a line of conduct clearly defined by the new code that is the holder are subject to a number of restrictions defined by Article 279 of the text under consideration. They may derogate from its obligations only when they receive authorisation from the competent authorities. Indeed, the holders of a mining or quarry right may not occupy land reserved for the cemetery.

The holder of the mining or quarrying right will therefore refrain from carrying out mining activities without Laval from the competent authority. This branch opened by the Congolese legislator in favor of the authority led to a spectacular land disaster. For some time now, there have been abuses by land authorities who only work under its derogation regimes. Corruption he took up residence. The cemeteries are devastated on a daily basis to the point of causing the uprisings of the population living in the vicinity of its sites. In granting authorization to the holder of a mining or quarry right to carry out activities there, the competent authorities in this area have no idea of an alternative.

In addition, it should be noted that any occupation of land depriving the beneficiaries of the use of the land, any modification making the land suitable for cultivation entails for the holders or the lessee of right and/or quarry, at the request of the beneficiaries of the land and at their convenience, the obligation to pay fair compensation corresponding either to the rent or to the value of the land at the time of occupation. Increased by half under Article 281 of this Code. it turns out that the Congolese legislative authorities have adopted in this text a behavior tending not to harm the inhabitants of the mining sites subject to the decisions of grant. Despite the issue of non-regulation, to this day of right of use on the lands occupied by the local communities the Congolese legislative gives them the rights to be compensated in case of loss of this enjoyment.

This raises the question of whether legislators are not conferring the rights of perpetual concessions in doing so, sufficiently local community? Does this provision not fill the gap in the so-called land law of 20 July 1973 on the legal nature of land occupied by local communities? The legislator specifies that the balances in question in article 281 mean the land on which individuals have always carried on or actually carry on any activity. The holder of mining rights, which of the rest of the separate mothers of the ownership of the soil and subsoil belonging to the State, must settle amicably the question of compensation for the occupants of the site as stated in paragraph 3 of article 281 of the new Code.

2. Security and protection of investments in the DRC

Investors and investments are secure in the DRC the consolidation efforts undertaken in the country make them a state of law conducive to investors in its titles the Doing Business 2015 report has just ranked the DRC among the 10 best reforming countries in the world by the way :

- The right to private property and freedom of trade and industry without guarantees either by the Constitution or by the investment school;
- Equality treatment between all domestic and foreign investors and also guaranteed (no discrimination);
- The prohibition of nationalization and expropriation except for reasons of public interest and subject to justice and fair compensation;
- Full freedom of transfers abroad of income generated by investments in the country;
- The accession of the DRC to Modern Business Law in Africa (OHADA);
- DR Congo's membership in MIGA (Multilateral Investment Guarantee Agency), World Bank Group ;
- Respect for acquired rights by investors;
- Belonging in the ACA (African Trade Insurance Agency) and ICSID (International Centre for Settlement of Investment Disputes)

CONCLUSION

In view of the content of the subject which has been the subject of this study, we can in no way claim to have been exhaustive. Nevertheless, we are convinced that we have to the extent of our means, emphasized the essence of the matter that we have set ourselves to analyze.

This is how we open a door to research because it is by reading this present that other researchers (authors) will be able to open other avenues of research for other orientations. We are hardened to get lost in legal science if we cannot conclude our field of research. However, our work is entitled *"From Social Responsibility in Mining to Investor Protection"* At the beginning of this study, we saw that investment is considered today as a key factor for the development of the Congolese state. However, its development is only possible if it is supported by a propitious, predictable and coherent legal framework. From this point of view, the role that law can play is decisive for the development of the State.

As we can see, the law appears here as a useful instrument that can support in the development of this State. It therefore seems important to observe here the internal regulations enacted by the Congolese State in order to admit investments on its territory is scrutinized, analyzed and judged by investors, in order to know if it corresponds to their expectations and seems to be at least close to international standards in this area.

It should be noted, however, that international law requires the State to comply with minimum standards of investment protection. In reality, international law does not oblige the State to follow a particular way of admitting foreign investors and investments to its territory, preferring to leave the State free to accept them or not, in accordance with its domestic law. The fact remains that this freedom to let the State direct foreign investments according to national economic policy is not absolute, since international standards here call to order the international commitments entered into by the host State implies the will for the latter to revive the process of economic development, but also and above all for the State to seek to lift its population out of poverty, which it has set itself as an objective to achieve. But this desire to attract investors to its territory will not go without consequences, since the legal

and judicial security of investors and their investments depends on the treatment that this State will grant them on its territory.

Thus, the examination of the legal framework for foreign investment becomes the central or even indispensable element, because it makes it possible to answer the question of whether or not the domestic legal money of this State, in a global way in terms of investment. Can we ultimately obey a logic of openness to foreign capital on the one hand and attract the many foreign investors on the other? On this issue, and it is throughout our developments, we have had the opportunity to realize that we must first study all the legal instruments applicable to foreign investment in these countries in order to understand the system as a whole.

Then, it was necessary to make a choice between the different hypotheses put forward given that the country is also involved in various African international and regional organizations that follow rules for the admission and security of foreign investments. The interest of such an approach has led us to note, on the one hand, that the rules applicable to foreign investment in this state remain highly inadequate and fragmented; Hence the challenge of codifying and simplifying these rules, on the other hand, the inadequacy of national law on securing investments has been revealed.

Such an assertion is based on the fact that we have been able to bring out deep reasons as obvious as they are unavowed, which make the tax system - a substantial element and influence the decision to invest or not in a given country - complex or even inadequate; becoming a source of uncertainty for the State itself but also for investors have made Congolese taxation hardly encourage investors to invest, since it remains heavy unclear and incoherent. it plays to this the regulatory instability insofar as the standards applicable to investment are changing, which is not favoring the security of investments yet the State to adopt a system that makes it possible to secure investors and investments through the various legal instruments it has instituted including the investment code the mining code, The Forest Codes Law No. 15/012 of 1 August 2015, yet general regime of hydrocarbons but also so many other texts that we have not been able to cite here. To tell the truth, the security of investments in this country is well framed by the constitutional provisions that prohibit exploitation and unjustified nationalizations. However, the study of national regulations has allowed us to observe when the DRC the fragmentation of the law applicable to foreign investments raises the problems of its adaptability in the face of the rapid evolution of international investment law, which raises by way of consequences the question of the attractiveness of the DRC; but also the adaptation of treaty law into Congolese law.

We have also noted that the security of investments in this state is insufficient because the sources of information available to investors to know the global ways of the sectors of activity derive mainly from the data collected and published by the National Agency for Investment Promotion (ANAPI), based in the Congolese capital, while decentralized entities also need information to popularize the devices. regulatory regulations to protect investors included at the Local level. In fact, it is noted that the information that this agency provides to investors is insufficient and does not allow for an assessment of existing legal mechanisms.

In other words, it is a mechanism that only makes it possible to evaluate the legal mechanisms for securing investments in partial ways. Several factors highlight this lack of legislation, including the very often excessive judicial delays and the lack of specific training of certain magistrates who rule on commercial cases. Added to this list are other concerns related to the various pressures to which judges are subjected. Similarly, by studying the country's foreign investment law, we note that Congolese law and judicial policies aimed at regulating investment reveal, on the one hand, very frequent intervention by the public authorities and, on the other hand, problems in the implementation of the many scattered and in some cases obsolete legal texts.

In other words, Congolese investment law has garnered more disappointment than success. Moreover, Congolese investment law is undoubtedly one of the most reformed branches of law. It is therefore typical example of a regulation that has become increasingly complex over the years. This defect was accentuated by the large number of texts sometimes very old and fragmented. The fragmentation of rules applicable to foreign investment in the DRC causes more problems than it solves. It is therefore incumbent on the Congolese State to pursue a strategic policy to put its investment law in order, with view to improving the business climate, which is undermined by corruption, and thus attracting many foreign investors and investments to its territory.

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