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Gauging the modalities of balancing fiscal flexibility and predictability in the mining sector: The trends and challenges in Cameroon

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Abstract
Large investments in natural resource extraction can contribute significantly to sustainable development, through revenue generation, infrastructure development and technology, and capital transfer, among other channels. Despite this, the manner and extent to which these benefits actually accrue to the host countries depend heavily on the policies and practices of such countries and the extractive companies. This is because the well-known "resource curse" can become a reality if the benefits of the mining sector are squandered through overvalued exchange rates and mismanagement of the revenues. Likewise, in the absence of fiscal mismanagement or poor governance, there can be missed opportunities for leveraging large investments in the mining sector to maximise the development impact of the investments for current and future generations. As such, fiscal policies need to always strike a balance between protectionism and nurturing competitiveness, so that the growing mining sector can benefit from major investments and transfers of technology and know-how. Nonetheless, the lack of information about the sharing of mining resource rent between the host governments and investors is an easy statement to make for developing countries. As the existing datasets are often insufficient for a deep analysis of their tax laws as applied to the mining sector, which has limited the academic and operational approaches. In this regard, the paper assesses the modes of balancing fiscal flexibility and predictability in designing and initiating the bargaining process for sustainable contracts in the extractive industries, with a special focus on the trends and challenges associated with the legal framework and tax regimes applicable in the mining sector of Cameroon. On this base, the three major innovations identified are - an inventory of taxes and duties payable during the prospecting phase and mining phase of the project, a new mining code covering the link between each piece of tax information, and its legal source. These illuminate the key points in the mining lifecycle where the fiscal policies can be most effective, as well as providing the road map identifying the key steps to develop effective fiscal policies to strike the balance between investment and sustainability.

Keywords: fiscal, flexibility, predictability, mining sector, trends, challenges, Cameroon

Introduction

Explicitly, the legal and regulatory framework that governs the relationship between the host government and the investors in the extractive industries (EI) forms the backbone of the long-term investor-state relationship. This framework can include several pieces of domestic legislation (including the constitution, mining or petroleum code, tax code, etc.) and international treaties (including bilateral investment treaties, double taxation treaties, etc.). On this account, the details of the partnership between a specific investor and a State are often enshrined in a separate contract or license. That's why this particular piece of the framework is essential, thus, prompting the recent reform efforts in the EI. Especially as it is noted that it is this part of the framework that is not often available for public view, although, in some jurisdictions, it functions as the 'law of the project'. Nonetheless, it is worth noting that the legal framework, including the contract, usually covers myriad issues like fiscal terms, community rights and benefits, health and safety, environmental obligations, and disclosure of information, among many others. Despite this, it is observed that where the legal and regulatory institutions are not strong, the context of the aforementioned may be too simple. This often leads other actors to play more influential roles than those prescribed by the law - with the cultural and societal institutions playing significant, though, less formal roles in reaching 'the bargain'. On this base, some countries are formalising these previously 'extra-legal' influences in the drafting and negotiating of contracts, through community consent laws and civil society advisory boards during contract negotiations. As such, although in this contemporary era, it is standard to have specific oil, gas, and mining legislation in most countries, however, it is observed that these industries have developed globally without the relevant legal frameworks in the host countries (Yergin, 1991) [20].

This is because the increased need for extractive resources concurrent with the industrialisation of the United States (US) and Europe has resulted in a significant depletion of domestic resources and a need to go to other countries in search of available resources. On this account, the early agreements for these resources took the form of "concession contracts" in lieu of legal and regulatory frameworks in the host countries (Likosky, 2009) [9]. But subsequently, there has been a continuous range of legal frameworks globally, with some States having detailed domestic legislation with only brief licenses for individual projects, while others have no legal framework for the EI, leaving all terms of the agreement to the contract. Although the latter is probably rare - since most states have at some point sought to have their land explored for its extractive potential, while some others do not have legislation if the state's resource potential does not justify creating a unique policy regime (Tordo, n.d.) [17]. In this vein, it is worth thinking of two different systems, that is, the "license and legislation" versus the "contract-based" or "concession" systems (Ibid.). Similarly,

some commentators use "contractual" versus "concessionary" to describe these legal arrangements. Despite this, the legal arrangements are, in some respects, different between hydrocarbons and other minerals. That being the case, for minerals, it is observed that the granting of the exploration and exploitation rights in the sector is predominated by the systems of "first-come, first-served" - as seen in some countries like Chile, Democratic Republic of Congo (DRC), Mongolia, Mozambique, and Zambia. Equally, these States also "bundle" the right to explore with the exploitation right, granting both at the same time, while others like Peru require a second process for transforming the exploration right into an exploitation right. Besides, bidding or auction processes are rare, though some States like Australia allow it in exceptional circumstances, with some commentators suggesting the method as a means to increase government take from the industry (Jourdan, 2010) [8]. As such, among States, there is a range of license and contract-based systems. While for the hydrocarbons, it is observed that the bundling of the exploration and exploitation rights is much more common in the sector (Tordo, n.d.) [17].

Indeed, as bid auctions are common, the "first-come, first served" systems are also used. Nevertheless, the range of the legislation versus contract balance varies from State to State. For instance, in Peru, companies bid for exploration and exploitation agreements on only two variables - the royalty rate and the exploration plan. With the State using a relatively brief model contract, with other rights and obligations contained in the legal and regulatory framework. While the contracts signed in the former Soviet States, like Kazakhstan and Azerbaijan's Production Sharing Agreements from the late 1990s, are incredibly lengthy, with up to 250 pages long, due to the absence of legislation (Ibid.). In this connection, the recurrent debate centred on whether and how States should favour the license and legislation schemes. Thus, on the one hand, it is worth noting that the legislation schemes provide one consistent legal framework that applies to all industrial hydrocarbons or mineral activities. On this account, for governments, the one framework is easier to administer than a myriad of divergent fiscal, health, safety, and environmental regimes. Since the legislative regime in place will take care of some projects falling under the previous legal frameworks and old contracts. Likewise, for companies, there would be a more level playing field – as all competitors would be operating under the same framework on key aspects. While on the other hand, several reasons are cited in favour of a contractual-based system. With some arguing that the geology of a State is too diverse to legislate under one framework, though some States like Liberia and Nigeria, opt to have different provisions for on-shore and off-shore hydrocarbons development, and different royalty rates for different types of minerals in their mineral legislation – as seen in the 'Code Miniere' of the DRC. Nonetheless, some States may not know their geologic base well enough to invest in designing a system to meet its needs (Tordo, n.d.) [17].

While others argue that State-risk and development level militate in favour of a contractual regime until the State is more stable, has attracted sufficient investment, and has a better sense of its geology. As such, this approach would need the host government to exercise restraint in contracting, to keep from having hundreds of contracts, all with different legal frameworks along the various categories of issues. One example of the difficulties of relying on contracts would be the DRC – whose mining legislation prior to the 2003 reforms was very sparse in terms of specific rights and obligations, with most left to contracts. From these, it is essential to note that this debate of legislation versus contracts has direct implications for contract monitoring and implementation. On this base, policy documents on best practices like the Natural Resource Charter, recommend robust legislation and minimal contracts to facilitate better contract implementation by governments (Jourdan, 2010) [8]. In this vein, the paper aims to assess some of the most significant fiscal, economic, and governance issues, together with the less formal institutions relevant in reaching a better bargain, both at the macro-level of institutions, as well as at the bargaining table itself, and the gaps between them. As such, it uses the qualitative method to elaborate and analyse the critical issues raised. Thus, it is presented in two parts, with the first part dwelling on the modalities of balancing the design and implementation of a viable fiscal regime, while the second part assesses such modalities in the Cameroonian context, by critically examining the legal and fiscal structure of the mining sector, with the aim to provide some recommendations to fill the lacunae in legislation to enhance sustainability.

Modalities of balancing fiscal flexibility and predictability in the mining sector

Aptly, it is worth highlighting that the debate about what to fix in law versus contracts is particularly acute in discussions about how to create durable, administrable, and attractive fiscal regimes. This is because it is a difficult task for the legal framework governing all foreign direct investment (FDI) for the host states. Since certain aspects make the EI much more difficult. Especially as the dramatic spikes in resource prices and their non-renewability make it hard to know ex ante, what a contract for a deposit is 'worth'- since getting that right is critical – as once the resources are sold, they cannot be returned. Equally, one may see the recurrent renegotiations and changes in fiscal regimes as an attempt by the governments to correct for these miscalculations, although some can be the result of corrupt and enterprising governments (Waelde, 2008) [19]. As a consequence, companies often seek relief through changes to fiscal regimes, as well as when prices have been at troughs. For example, the US Legislation "Deep Water Royalty Relief Act" lowered royalties for the oil industry when oil prices were low in the early 1990s. On this basis, this raises the crucial questions about how to balance seemingly opposite and changing dynamics, that is, "How can States ensure fiscal flexibility, allowing the State to benefit when prices rise and bear a reasonable share when they fall - while providing the predictability and profitability that investors seek?" In this context, it is worth noting that the classic 'balance' of these competing goals is said to be in the mix of the royalty/tax system that is widely used in the oil, gas, and mining fiscal regimes around the world (Bryan and Daniel, 1994 [2]; Otto *et al*., 2000 [11]). With royalty providing the government with a return for the non-renewable resource that is independent of the profitability of the extracting company, while the tax provides the government with the opportunity to share in the profits of the extraction project. Despite this, it is observed that there

are many pitfalls of this system in practice, including that the ratio of royalties to taxes is no simple matter for a state trying to decide how much predictability of revenue it wants versus its overall take from a project. Although windfall profits taxes have been attempted as one means to ensure that the States benefit in high-price booms. As such, the general clue of the way to move beyond this and ensure companies remain profitable in such a system is assessed in this paper, with a focus on the mining sector in Cameroon. Similarly, another important issue worth emphasising is whether the attraction of FDI is not enough in contributing enormously to the sector. As some scholars aver that the World Bank in particular is placing too much emphasis on providing generous incentives to transnational corporations while neglecting its impact on development (UNCTAD, 2005a) [18]. Nonetheless, it is worth noting that various means are being employed by States to 'claw-back' the perceived imbalances in profit-sharing from the EI. Since the contractual systems like the 'production sharing agreement' was an attempt to re-frame the relationship between the governments and extractive companies, by making the governments active partners in the wake of this shift, which has ushered in a new dimension of 'sustainable contract'.

The major elements of a viable legal framework and sustainable contract

Generally, the fiscal arrangements between the investors and the governments have always been appreciated in the contracts of the EI as addressed in the appropriate legal frameworks. However, with the rise of environmental awareness, sustainability, anti-corruption initiatives, poverty reduction, and the transparency movement, several other issues are now considered critical aspects of the investor-state agreements as well. This is because the classic colonial extraction is long gone and the 'enclave' model is increasingly seen as archaic and out-dated. As such, enabling sustainable investment in the EI to become the ideal goal in this contemporary era. Since some of these matters are now clearly accepted as within the realm of how companies should operate mines and wells, others are still widely varying outside the norm and practices. For instance, should contracts determine who should build, operate, and maintain schools, clinics, and other social infrastructure around the mine site. From this perspective, a recent IIED publication on sustainable contracts (Lorenzo, 2010) [10], and the ongoing process to develop a Model Mineral Development Agreement (MMDA) suggests many of the same issues for inclusion in EI contracts, or, implicitly, the legal framework. Among these are - local content and/or linkages and employment, training, and technology transfer; environmental protection, mitigation, and rehabilitation; consultation with local communities and protection of artefacts and practices of social and cultural importance; grievance mechanisms for affected citizens; giving the government more say in its regulatory role and protecting its right to legislate (i.e. reform of stabilisation clauses) (Ibid.). Despite this, the crucial issues are, how important are these new 'sustainable contract' contract clauses? Equally, what of the provisions that may not be allowed by international law, such as local content provisions that are technically not allowed under TRIMs, but often included in contracts (Akama and Bande, 2018) [1]. Besides, the most crucial issue concerns that of corruption in contracting and contract negotiations in the EI.

Debility of corruption in contracting

A related issue that continues to arise is that of corruption in the contracting process. With the EI being considered unique in this regard as many of the contracts are often confidential - since the governments usually use confidentiality as a veil from public scrutiny. Indeed, this is paradoxical because if the institutions are weak, then corrupt public officials can easily avoid scrutiny. Similarly, companies also have the incentive to make questionable payments, enjoy favourable fiscal terms, or just turn the other way when something that does not seem quite right appears to be afoot. In this regard, there has been a push for more transparency in the revenue streams produced by the EI as well as preventing corruption. As such, there are some initiatives that have the potential to have a significant impact. The first amongst these is the Extractive Industries Transparency Initiative (EITI), and others like Revenue Watch Institute, Development and Peace Foundation, and Transparency International - endorsed by the Group of Eight in Heiligendamm and the United Nations Conference on Trade and Development (UNCTAD), which seek to increase transparency in payments from companies to governments. While the second, which is far less new, but remains significant, is the US Foreign Corrupt Practices Act (FCPA), which makes it unlawful for certain classes of persons and entities to make payments to foreign government officials to obtain or retain business. Equally, responding to the FCPA, the OECD, and the United Nations also have conventions against corruption (OECD, 1999 [15]; UN Convention against Corruption, 2003 [16]). Likewise, in the recent past, the Dodd-Frank Wall Street Reform and the Consumer Protection Act require companies to make report payments made to foreign governments for the purpose of the commercial development of oil, natural gas, or minerals.

Imbalance in contract negotiations

Due to the very nature of EI contracts, it is observed that contractual imbalances are readily borne due to the asymmetries in the bargaining power between the companies and governments. This is because the governments do not often have the subject matter expertise, time, and money to negotiate as the companies. On this account, it is appropriate and necessary for the governments to equip themselves with such viable capacity and capabilities, to enable them to negotiate and conclude more sustainable and durable contracts. This is precarious as the government negotiators usually have better prospects for lucrative future employment with the company they are negotiating with than in continued public service, thus, leading to misaligned incentives. Likewise, the absence of public scrutiny of the final contract to align with the incentives has led some negotiators not to have enough reason to drive a 'hard bargain' for their country. With several initiatives aiming to provide legal, economic, environmental, geologic, and other support to the States negotiating contracts. That's why state-owned enterprises (SoEs) and State equity is an older practice than the 'sustainable contracts' to increase the benefits of the host country from the natural resource extraction by creating national oil and mining companies. From this, it is observed that while SoEs have become increasingly important in the EI - they are, obviously, not the only players influencing the current state of play in the industries of exploring and developing mines and wells. As there is a range of

companies in terms of size, expertise, and desire to see the development of a project. In this vein, one could categorise the players into four categories: (i) the mega-companies that primarily develop oil, gas, and mineral resources; (ii) mid-size companies that develop but also explore; (iii) junior companies that primarily explore but may be involved in early funding of project development; (iv) so-called "suitcase" companies that gain rights to concession areas with little intention of developing, but rather selling them on to other investors.

The crucial issues and initiatives in the contractual bargaining process

As a matter of fact, although it is impossible to provide an exhaustive summary of the initiatives, innovations, and solutions suggested, to reach more sustainable and durable bargains in the EI. However, it is worthwhile discussing the following pertinent issues: legal/contract negotiation aid facilities, contract transparency and contract database, model contracts, and regional mining codes.

Contract negotiation aid facilities and model contracts

In this light, the three initiatives to provide contract negotiation assistance although still in their initial development, focus more on Africa. Indeed, such initiatives were led by the African Development Bank, African Centre for Economic Transformation and the Revenue Watch Institute, and the United Nations Development Programme. From this perspective, it is observed that one model that has been proposed but not yet adopted is the Investment Contract Aid Facility, which would depend on companies providing funds to an independent escrow account that would be managed under the purview of a well-respected and trusted international organisation (Sauvant, 2008) [12]. This is because while several private databases that are pay-for-access exist, citizen oversight is difficult when the costs are prohibitive. Besides, it is observed that some States may not be able to afford access to such databases as well. As such, the greatest issue is, how can contract transparency and a database collecting these contracts that is free and accessible to the general public be promoted? In this regard, in 2009, the Mining Law Committee of the International Bar Association was established to help draft a Model Mining Development Agreement (MMDA) that States may use as a base for their negotiations (www.mmdaproject.org.). Indeed, the MMDA project was developed in recognition of several developments within the global mining industry like the fundamental role that foreign investment plays in the mining sector in the growth of many developing economies and, in turn, the improvement of the living standards in a mine or near mine communities; the negative impact, for example, environmental damage, that mines can have on surrounding communities; the role that mining companies should play in the sustainable development of mine communities as strongly developed by host governments – since there is a need to address the growing resistance of such communities to mining operations that may be of little benefit to them; the increased focus by international organisations, non-governmental and civil society organisations on human rights issues related to foreign investment; the pervasive nature of anti-corruption legislation under both the law of several developing countries and international law. This, in turn, led to a call by international organisations, non-governmental and civil society organisations, for increased transparency in international resource extraction agreements (Ibid.). Likewise, such an initiative was conducted by reviewing the various contracts, thus, selecting the various clauses that are representing the best for a sustainable partnership.

Regional mining codes

Some countries have realised that their failure to work together is driving a race to the bottom in contracting instead of a race to the top. Similarly, scholars have also shown that the sporadic actions of isolated host States cannot create change (Shaxson, 2007) [13]. Notwithstanding, progress in the direction of a general framework of norms has been made with the recent announcement by the Economic Community of West African States of a directive to implement a common mining code by the end of 2012. This directive is designed to contribute to the macro-economic development of the Member States, promote development and infrastructure at local and regional levels, and ensure fair allocation of minerals income to local communities as well as to the Member States in enabling the promotion of sustainable development policy. As such, its supranational nature aims to reinforce the bargaining power of the host States. However, it is observed that the implementation of the new code is facing serious challenges, since it requires individual governments to revoke their existing licenses deemed non-compliant with the regional legislation. In a nutshell, the discussion in this part has provided the crucial issues and modes to consider in balancing fiscal flexibility and predictability in the EI, which developing countries like Cameroon can adopt to enhance the transparency, accountability, and sustainability of the extractive activities. The preceding part assesses the extent to which Cameroon has adopted and incorporated such viable initiatives in its mining sector.

Trends and challenges of the fiscal regimes of the mining sector in Cameroon

In point of fact, before delving into the legal and fiscal structure of the mining sector, it is worth stressing that the contribution of the sector to the socio-economic development of Cameroon still remains marginal with cement and aluminium, as the main commodities. In addition, the other minerals extracted in the country include clay, diamond, gold, granite, kyanite, limestone, pozzolanic materials, quartzite, sand, and gravel. Besides, the mineral processing facilities in the country are mostly private, with the notable companies being "les Cimenteries du Cameroun", which produces cement from clay, limestone, and pozzolanic materials, as well as "la Compagnie Camerounaise de l'Aluminium (Alucam)", which produces aluminium. However, other minerals like iron, bauxite, cobalt, and zinc oxide still remain undeveloped. With bauxite reserves being located in the Adamawa Region (Minim, Martap, and Ngaoundal), and the Western Region near the town of Dschang (Fongo Tongo), while cobalt reserves are located in the eastern region, near the town of Lomié. Equally, the main gold deposits are concentrated in the northern part of the eastern region (Bétaré Oya, Ngoura, Garoua Boulai, Batouri, Béké and Ndélélé) and the Adamaoua region (Meiganga), with diamond deposits discovered around the city of Yokadouma/Mobilong, in the eastern part of the country (Strategic Environmental and Social Assessment of the Mining Sector in Cameroon, 2016)

[14]. In this light, a geological and geochemical mapping programme and a geological and mining information system were launched in 2016 by the capacity building project in the mining sector (PRECASEM) with the support of the World Bank, with the aim to allow Cameroon to develop and promote its mining potential (www.irgm-cameroun.org.) [4]. Some of the vital mining exploration activities of the country are: (i) The Mbalam-Nabeba project, which involves the construction of a mine, a 510 km railway between Mbalam and Kribi, a 70 km extension to the Nabeba mine and a mineral terminal in the Kribi industrial-port complex. With Cam Iron Company SA to operate an area of 783 km2 for 25 years. The overall cost of the project is estimated at 87 billion dollars (about FCFA 5,334 billion), with the hope of ultimately bringing 2.5% of fees to the State, or FCFA 6,000 billion over 25 years, and generating about 3,000 jobs. The Australian operator Sundance Resources Limited obtained a new 6-month period in July 2017 from the Government of Cameroon (GoC), until 26 January 2018, to operate the Mbalam mining site - an extension that allows the company to seek new financing to start exploiting the mine. Besides, the postponement of the exploitation works of the Mbalam-Nabeba iron mine, which is straddling the border between Cameroon and the Republic of Congo, is due mainly to the announcement of the postponement of the signing of the engineering contract between the GoC and the Chinese construction company, relating to the construction of the railway between the site of exploitation and the deep-water port of Kribi (Financial Afrik "Cameroon/Congo: Mbalam-Nabeba railway mine). Indeed, according to the latest estimates from Sundance Resources, 40 million tonnes of iron could be produced annually from the first phase of exploitation of the Mbalam Nabeba deposit compared to 35 million tonnes initially planned (Investing in Cameroon, N° 48 / April 2016). (ii) The Nkout iron deposit project - that in December 2014, the British company - International Mining & Infrastructure Corporation (IMIC) took over the assets of the project through its subsidiary Caminex. It assesses the potential of the Nkout deposit to 2.7 billion tonnes of iron resources, which is considered the largest in Cameroon ahead of that of the Mbalam-Nabeba (in the eastern region of the country). Despite this, the British company is looking for new sources of financing in the Asian market, including Hong Kong and mainland China for the project. And in December 2015, IMIC declared its intention to sell 49.5% of the assets of Caminex. (iii) The Mobilong diamond deposit project, with C&K Mining, holding since December 2010 the exploitation permit for the project, located in the commune of Yokadouma, in the eastern region of the country. However, it sold the majority of its assets in this area at the end of 2014 to a Chinese - American investor. Indeed, although the potential of the Mobilong diamond deposit is controversial, no reliable study has so far been made to the latest estimate by C&K Mining of 420 million carats (Cameroon EITI Report 2017: 65). From this, it is worth assessing the trends and challenges of the legal and fiscal regimes of the mining sector in Cameroon.

The scope of the legal and institutional framework of the mining sector

Legal framework

Until 2016, mining activities were mainly governed by the uniform acts of Law No. 2001/001 of 16 April 2001 establishing the Mining Code and its implementing Decree No. 2002/648/PM of 26 March 2002, as well as subsequent amendments introduced by Law No. 2010/011 of 29 July 2010, modifying and supplementing certain provisions of Law No. 2001/001; Decree No. 2014/1882 of 4 July 2014; Decree No. 2014/2349 of 1 August 2014; Joint Order No. 003950/MINFI/MINMIDT of 1 June 2015, empowering CAPAM to collect on behalf of the General Directorate of Taxation (DGI), the ad valorem tax of mineral substances and the monthly deposit of the Corporation Income Tax (CIT) payable by companies engaged in artisanal mining with a low level of mechanisation; and Order No. 001125 of 8 December 2016, setting the minimum monthly production threshold for companies engaged in mechanised artisanal gold mining. In addition, companies carrying out mining activities are also subject to the uniform laws adopted by OHADA as well as to the customs and exchange regulations applicable in the CEMAC region. Subsequently, in 2016, Law No. 2016/17 of 14 December 2016 promulgated a new Mining Code. Thus, according to the new Mining Code, mining activities in Cameroon can only be carried out under a mining title or a mining agreement, and holders of such mining titles must prove domicile in Cameroon. Moreover, as per the new Code, the provisions of an agreement cannot derogate from the provisions of the Code. Despite this, the Code does not impose any restriction on foreign investments, which are treated in the same way as local investments except for the artisanal activity which is reserved for Cameroonians. In addition to the Mining Code and the OHADA Uniform Acts, it is worth noting that the mining sector is governed by the General Tax Code (www.impots.cm) [5]; Law No. 96/12 of 5 August 1996 on a framework law for environmental management; Decree No. 2013/0171 of 14 February 2013, setting the procedures for carrying out environmental and social impact studies; and Order No 0069 of 8 March 2005 setting the various categories of operations subject to an environmental impact study. Nevertheless, this legal framework is only useful if there are viable institutional frameworks to implement and monitor its implementation.

Institutional framework

The mining sector is regulated and supervised by several governmental agencies including the Ministry of Mines, Industry and Technological Development (MIMIDT). In addition, payments from mining companies are made to government agencies placed under the supervision of the Ministry of Finance. In fact, the main governmental entities involved in the extractive sector and their roles are: (i) The MINMIDT, which designs and coordinates the implementation of the mining policy. As such, it has a right of oversight over all mining activities on the national territory including determining the areas for mining operations, authorising the transfers of rights and obligations attached to mining agreements, authorising prospecting activities, and approving mining agreements; (ii) the Directorate of Mines (DM), which is placed under the supervision of MINMIDT with the mandate to implement the national mining policy, monitor the management and control of activities in the national mining sector, participate in mining exploitation control activities, and monitor the participation of the State in the exploitation of the mineral substances; (iii) the Mining Cadastre Sub-Directorate, which is placed under the supervision of

MINMIDT, with its main tasks being to examine the authorisation and renewal requests and preparation of awards, renewal and transfer orders for mining permits, developing and updating of the mining cadastral map, and keeping and preserving cadastral, geological and mining documentation; (iv) the Support and Promotion Framework for artisanal Mining (CAPAM), created in 2003 under MINMIDT as a project to play the role of coordination, organisation, facilitation, support, promotion, development and standardisation of artisanal mining. In this light, one of its major responsibilities is to channel the artisanal production of gold, diamond, sapphire, quartzite, tin, kyanite, rutile, and other minerals in the formal sector of the State. In addition, since June 2015, it also has the responsibility of collecting the ad valorem tax on mineral commodities, the monthly deposit of CIT and the share of the State payable by companies operating in the mechanised artisanal mining; and (v) the Ministry of Finance (MINFI), which through its three agencies - the General Directorate of Taxation (DGI), General Directorate of Customs (DGD) and the Treasury, ensures the collection of taxes from the extractive sector on behalf of the State and the municipalities (www.minfi.gov.cm) [5].

Accordingly, Law No. 2007/006 of 26 December 2007 on the financial regime establishes the principle of the single cash account of the Treasury. As such, the latter is the unique collector of the State revenues including those relating to decentralised local authorities (payments to the benefit of municipalities) and legal persons under public law. This makes the Treasury to be a one-stop shop for the GoC cash-in and cash-out operations. Although initially, payments from extractive companies are made in cash with the following three main government agencies: (i) the Directorate General of the Treasury, and Financial and Monetary Cooperation (DGTCFM) for dividends from State participations, transfers from SNH-Mandate as income from the sale of government share (received in kind) in the production of hydrocarbons as well as under other payments it receives from oil companies under petroleum contracts; (ii) the Directorate General of taxes (DGI) and Department of Large Companies (DGE) for taxes governed by the General Tax Code and mining taxation; and (iii) Directorate General of Customs (DGD) for customs duties, transit duties, and customs fines. However, as per Section 239 of the Finance Law of 2015, commencing from 1 January 2015, the collection and control of taxes, fees, and charges from the mining sector are the responsibility of the DGI.

Despite this, there are three exceptions to the principle of the single cash accounts of the Treasury, which are: (1) Income in kind corresponding to the government share in production sharing contracts, the sales of which are sold by SNH on behalf of the State. Since sales revenues as well as royalties and bonuses paid by oil companies are collected first by SNH and then transferred to the Treasury after the deduction of operational costs shared with private oil companies; (2) SNH may incur certain expenses on behalf of the state from oil revenues collected as per previous point. These 'direct operations' by the SNH are deducted from the amounts due by SNH in respect of the revenue to be transferred to the State; and (3) for semi-mechanised artisanal mining, the collection of the revenues is done in kind by CAPAM, which thereby transfers the collected in-kind revenues to MINFI before its allocation to the beneficiaries provided for by the regulations (www.minfi.gov.cm) [5]. Equally, to improve revenue collection for mechanised artisanal mining, new legal provisions (like Order No. 001125/A/MINMIDT/SG/DM/DAJ/CAPAM of 8/12/2016, coupled with the Finance Law of 2016) relating to artisanal mining introduces a minimum monthly production threshold for mechanised artisanal gold mining, which took effect as from 2017. Indeed, the minimum production threshold used to calculate taxes is set at a minimum of 50 grams of gold dust per mining machine and per day of use, with the minimum number of days of use per machine set at 20 days per month. As such, copies of the monthly samples operated are transmitted by CAPAM to the DGI, Directorate of Mines, Permanent National Secretariat of the Kimberley Process, and the Regional Delegations of MINMIDT.

The trends of the fiscal regimes of the mining sector before 2016

Generally, before the advent of 2016, the fiscal obligations of the mining sector in Cameroon were contained in Law No. 2001/001 of 16 April 2001 establishing the Mining Code, as amended by Law No. 2010/011 of 29 July 2010, Law No. 2002/848 PM of 26 March 2002 on the Text of Application (Implementing Decree) of the Mining Code, the General Tax Code, the law on local taxation, and finally the 2010 Mining Agreement.

Fiscal obligations under the 2001 mining code

In line with Section 95 of the Mining Code, some tax incentives are granted to mining companies in the form of exemptions, especially during the pre-production phases, i.e., reconnaissance, exploration, and even construction. Besides, it is worth noting that many of such exemptions are maintained throughout the production phase; with the raison d'être to induce potential companies to come in and develop the mining sector. As such, according to Section 19 of the Mining Code, before an exploration or exploitation permit is granted, the company is required to pay caution to secure the execution of its activities, with such amount and its terms of payment often determined by the regulations in force. Thus, in the pre-production phase, the fiscal obligations related to the activities of the mining companies can be summarised as: Indemnities on the one hand or payments of fees or royalties on the other hand, prescribed by law in compensation for damages and settlement of litigations for work not declared as in the public interest (Section 74(1)); fixed fees on requests for issuance, renewal or transfer of mining titles (Section 90(1)); a surface royalty after obtaining the mining permit (Section 91); custom duties on passenger vehicles, office equipment and supplies (Section 96(1)); and tax penalties (Section 108). Likewise, in as per Section 89 of the Mining Code as amended, it is observed that from the effective start of exploitation through the first productions and marketing, the companies conducting mineral exploitation activities are supposed to compensate the local residents with the ad valorem tax. The modes of distribution of such tax are specifically provided for in the implementing decree of the Mining Code. Besides, the company shall instead pay a tax on extraction, if it exploits quarry resources. However, in addition to the ad valorem tax, other tax obligations, such as fixed fees paid to the Treasury as per Section 90(1), are raised when it comes to the renewal of a permit. Equally, Section 91 provides that surface royalties are also part of it in the case of

modification or extension of the mining title. Notwithstanding, the mining companies are exempted from several taxes of common law during the pre-production phase (www.minmidt.cm) [6]. As such, it is worth examining the fiscal obligations imposed on the mining companies by other legal instruments, such as the Text of Application of the Mining Code, and the General Tax Code.

Text of application of the mining code

It contains sections that provide for fiscal obligations of companies, especially Section 23(1) which states that "Any attribution of an exploration or exploitation permit is subject to the establishment of a caution whose amount is fixed by the present decree". As such, the caution is supposed to be deposited within thirty (30) days by either a letter of guarantee from an insurance company, cash deposit in a local bank, or by any other form recognised by the Cameroonian legislation on the matter. Moreover, Section 135 specifies that "Fixed fees, surface fees, taxes on quarry extractions and ad valorem taxes are assessed and collected as described in this title. These rights, royalties, and taxes do not exclude holders of mining titles, authorisations and exploitation permits from being subject to various taxes and tax duties on any industrial or commercial activity". Indeed, from this, it is worth noting that, in addition to the fiscal obligations specific to the mining sector, i.e., fixed fees, royalties, Ad Valorem tax, or tax on extraction, the companies are also subject to related obligations, such as the corporate income tax, trading license, pay as you earn taxes, etc. In this light, Section 136 provides the clarification that these obligations common to the mining sector are payable in a single instalment against the presentation of a receipt issued by the Public Treasury. While Section 137 requires the distribution of the Ad valorem tax as follows: 25% of the right to compensation of the population affected by this activity and whose distribution is as follows: 10% to the benefit of the local populations, 15% in favour of the concerned territorial jurisdiction, 25% in support of the monitoring and technical control of the activities concerned by engineers and agents commissioned by the Directorate for Mining, and 50% to the Public Treasury. Despite this, it is observed that the practical arrangements for the implementation of Section 137(2) are still expected for greater accuracy of the payment of the royalties to the local communities and councils. This is because the Joint Ministerial Order of the Ministry of Mines, Industry and Technological Development (MINMIDT) and the Ministry of Finance (MINFI) has not yet been signed, thereby mortgaging the effectiveness of the sub-national payments and/or transfers as per Section 89(2) of the Mining Code. In addition, the Ad valorem tax, which is paid at the time of the shipment of the goods by the holders of mining titles on notice drawn up by the competent authorities as per Section 141(2), is calculated according to the provisions of Section 144(2) of the Text of Application of 2002, i.e., precious stones (diamond, emerald, ruby, sapphire) at 8%, precious metals (gold, platinum, silver, etc.) at 3%, base metals and other mineral substances at 2.5%, and geothermal deposits (spring water, mineral, and thermos-mineral water) at 2%. Likewise, the modes of payment of fixed duties, specifically for the industrial exploration and exploitation of quarry substances, are also described in the Text of Application.

General tax code of 2010

Indeed, Section 97 of the 2001 Mining Code as amended states that, "Subject to the specific benefits provided by the present law, the holder of a mining permit is subject to a common law tax regime…" In addition, Section 99(1) provides that, "Throughout the period of validity of an exploitation permit, regulated scheme rates of the tax base, duties, and taxes will be stabilised at the level they were on the date of award of the exploitation permit". In this light, according to Sections 17 and 18 of the General Tax Code (CGI), tax payers and mining companies are subject to the following tax principles: "(i) For the calculation of the tax, any fraction of taxable income less than 1000 FCFA is neglected with the tax rate being 35% (Section 17 of the CGI); equally, for the base of this tax, tax payers are required to sign a declaration of the results obtained in their operations during the period used as a basis for taxation by March 15, latest. The said declaration shall be made in accordance with the OHADA accounting system. (ii) Taxpayers must also mandatorily provide the documents prepared in accordance with the OHADA accounting plan. (iii) Companies under the structure responsible for the management of Large Firms must also provide a statement of their shareholdings in other corporations if these holdings exceed 25% of their share capital. (iv) Also, remain subject to these obligations, are legal persons who have not opted for the corporate income tax or are exempt from it". In addition, since the tax obligations of common law are prominently those of Individual Income Tax (IRPP), Section 25 provides that, "Subject to the provisions of international conventions and those of Section 27, the IRPP is due from any person who has Cameroon as tax residence..." Moreover, under the scheme of developmental projects of the 'Corporate Business Plan', Section 115 provides that, "Corporate Businesses eligible for a special scheme of developmental projects benefit from tax advantages hereafter: Exemption from business taxes under the first two years of operation; recording to the fixed duty of 50 000 FCFA of acts of constitution, extension, and increase of capital and real estate transfers directly related to the implementation of the project; VAT exemption on local purchases of building materials and imports for the implementation of the project; application of the accelerated depreciation rate of 1.25% of the normal rate for the specific assets acquired during the installation phase; and extension of the duration of loss carried forward from four to five years' (www.impots.cm) [5]. Likewise, Sections 115 and 117 of the CGI, and the "Provisions relating to the Mining Sector" in the CGI, provide an all-embracing understanding of the planning of the mining tax system as appreciated in the Mining Code, the contract, or agreement. In this light, it is worth stressing that the mining companies have common law fiscal obligations as well as obligations, which are specific to their activities.

Local taxation

Indeed, Section 55(2) of the 1996 Constitution of Cameroon as amended requires that Decentralised Local Authorities (DLA) have a minimum of financial autonomy. As such, local taxation is part of the provisions of the CGI, subject to Law No. 2009/019 of 15 December 2009, which covers all duties and taxes whose proceeds are allocated to the DLA (urban and rural councils, and city councils). Thus, as per Section 2 of the Law, these include municipal taxes, municipal surcharges on state taxes, local taxes, duties, regional taxes, and other types of levies provided by law. On this base, mining activity could be identified in the

following legal provisions to enhance local taxation. Since Section C7 provides that, "products of municipal taxes levied by the state come from the contribution of trading taxes, contribution of licenses, withholding tax, property tax on real estates, tax on gambling and entertainment, transfer of property rights, car stamp, forestry, and mining royalties". As such, the mining companies are required to pay trading tax after the first two years of commercial production as enshrined in the Joint MINFI/MINMIDT order - with the car stamp also being added as part of the sources of municipal revenue. In addition, Section C8 provides that, "Every physical or legal person of Cameroonian or foreign nationality, who practices in a municipality an economic, commercial or industrial activity, or any other profession not included in the exemptions established by this Law, is subject to the trading tax". From this, it is worth noting that the provision applies to subcontractors and affiliates of the mining company but not the company itself, since Section 97 of the Mining Code clearly states that, "... firms and mining companies remain exempt from contributing to the trading tax". Besides, Section C12 of the CGI provides that "(1) New firms are exempt from the contribution to the trading tax for (2) years. (2) Is issued to newly exempted firms, on their request, a trading license marked 'Exonerated'". Nonetheless, these fiscal provisions are corroborated with the provisions of the various mining agreements, to appreciate their applications and implementations in practice.

An appraisal of the fiscal obligations of the mining companies

In this connection, the case of C&K Mining Inc. is worthwhile considering, since it clearly illuminates the fiscal obligations of mining companies, as presented in the Mining Agreement and the Decree of the Exploitation Permit of Mobilong. Thus, as per the C&K Mining Convention, the fiscal obligations of the company are contained in Sections 22, 23, 24, and 30 of the Agreement signed between C&K Mining Inc. and the GoC - with Section 22 presenting the overall tax regime applicable to the company and its subsidiaries, while Section 23 provides for mining taxes and royalties. As such, C&K Mining Inc. is subject to the payment of the following taxes and mining duties: Fixed fees for the grant, renewal, and transfer of exploitation permits; annual area taxes established according to the surface of the permit; and the percentage of the 'FOB' value of the production operations. Nevertheless, the amount of fixed fees, surface charges and proportional fees due, the terms of payment of these fees, taxes, and royalties are determined according to the mining regulations on the matter. In addition, Section 24 provides for the tax and customs regime applicable during the preparatory work phase. From this, it is noted that C&K Mining Inc. benefited during the preparatory work phase like: Exemption from registration rights relating to the mining operations, except those relating to leases and rentals for residential use; exemption from corporate taxes (IS), taxes on industrial and commercial profits (BIC), proportional taxes on income from capital (TPRCM), a special tax on remunerations paid abroad, value added tax. Equally, the company also benefited during the preparation phase, from the exemption of taxes and customs duties on equipment, materials, and inputs, with the equipment, materials, and machines used in the exploration and exploitation phases included in the list of operating equipment. However, any transfer to third parties of the aforementioned materials and equipment is subject to prior payment of customs duties and taxes thereon. In fact, notwithstanding these provisions, if it happens that during the preparatory work phase, C&K Mining Inc. is already engaged in diamond exploitation in particular regarding the alluvial part, then the said exploitation is subject to the common law tax regime as defined by the Mining Code, the CGI, and the customs code. As such, relative to the application of the provisions referred to above, C&K Mining Inc. must hold two separate accounts, with one relating to the exploitation of the alluvial part, while the other to the works of research and construction of the conglomeratic part. In a nutshell, Section 30 clearly provides for the possibility of the "suspension of the rights and benefits granted by the agreement" in case of non-compliance with the fiscal obligations. By stressing in paragraph 1 that the untimely payment of all taxes, charges, and fees, after notice as per the CGI and under the conditions laid down in the Agreement shall lead to sanctions. From this, it is worth noting that the obligations, which are applicable to C&K Mining Inc. are binding and any non-compliance to such fiscal obligations can lead to the sanctions specified by the relevant legal instruments. Furthermore, concerning the decree granting the Mobilong mining permit, it is important to note that the main provisions addressing fiscal obligations are contained in Sections 10 and 11 - with such obligations being those of fixed duties relating to the rehabilitation of the environment account and caution to enable the payments due under Sections 10(2) and 11(1), (2) of the Mining Code as amended. What's more, it is worth considering the other fiscal obligations of C&K Mining Inc.

Common law taxes, fees, and surface royalty

Since the first commercial production is yet to be established by a joint order signed by MINMIDT and MINFI - it is deductible that the tax and customs obligations of the company are reduced. As the joint order has to show when certain exemptions will expire. This is the case of the exemption from the business tax, which ends after the second year of commercial production established by the joint order. Similarly, the annual surface royalty has as a tax base, the surface area of the exploitation permit. Its rate is 50 000 FCFA/km^2/year. As such, C&K Mining Inc. is expected to pay annually 11,812,500 FCFA (50 000 FCFA x 236.25 km^2) per year. Besides, according to the company, this fee is not being paid because it is still awaiting the finalisation of ownership rights, i.e., emphyteutic lease; as the public Administration concerned with mining issues is divided on this issue. Thus, with the exploitation permit and agreement clearly stating that the 'Mobilong' permit, which C&K Mining Inc. holds is deemed to be equal to 236.25km², although perceived differently by the various administrations. As the officials of the Ministry of state properties and land tenure argue that it is the land title i.e., the emphyteutic lease that grants ownership of the site to C&K Mining. While for the Territorial Administration, the Senior Divisional Officer of Yokadouma emphasized that there is no doubt that the concession is already granted to C&K Mining Inc. to build the mine. While for MINMIDT, it is the administrative bottlenecks that are blocking the process because it is unacceptable that since the time the Agreement and Decree were signed, the lease has not yet

been legally done. Indeed, it is argued that since there was no payment of the surface royalty during the operational phase, there is no need to ask for payment of the surface royalty in the exploration phase. Notwithstanding, Section 139 of the Implementing decree of the Mining Code has set the payment terms of the surface royalty in the exploration phase, which has not yet been paid. As such, in examining the obligation to pay the surface royalty, it is observed that the existing inconsistencies between the mining code and the legal framework governing land issues in Cameroon are to the benefit of the C&K mining company, which cheerfully takes advantage of the situation to justify the non-payment of the surface royalty.

Ad valorem tax and customs duties

For the ad valorem tax, which is a tax proportional to production, it is observed that the company paid it during the first export as evidenced by Receipt No. CMR 000001/2013/SNPPK/SNPAPK/BEED/E1E2, labelled "Certificate of Evaluation and Expertise of Rough Diamonds". However, no monitoring has been sought to verify whether the ad valorem tax has been paid, nor the fee received by the municipalities and local communities. Thus, from the monitoring of the transfer of this proportional tax springs out again the problem of the absence of the joint ministerial order to be signed between the MINMIDT and MINFI, laying down the mode of transfer of the portion of the tax destined for the local communities and local council. Although the transfer of a portion of the revenue for the Public Treasury and MINMIDT supervising the project has no issues of effective transfer, it is observed that though the joint order is not yet signed, the transfer at the sub national level can only be done first of all via the signing of a "decision" by the MINFI and the establishment of a nominal roll of staff from Yaoundé with the title of "revenue manager". Despite this procedure, it is realised that the town and surrounding communities have not yet benefited from the ad valorem tax from the exploitation of the Mobilong Diamond. While for the custom duties related to exportation and operating charges of SNPK, by Receipt No. CMR 000001/2013/SNPPK/SNPAPK/BEED/E1E2, it appears the company paid its customs duties equivalent to 2% of the monetary value of production. It also paid the operating costs of the National Permanent Secretariat of the Kimberley Process (SNPPK) in Cameroon, to the equivalence of 2.5% of the monetary value of production. However, monitoring closely the fiscal obligations of the mining company, it is observed that there is ample 'centralisation of information', such that at the local level (Regional Delegation of the East and local municipality), there is no available information relating to the payment of C&K Mining Inc.; as well as there is 'low traceability of revenues', as it is not possible for the Programme for Securing Mines, Water and Energy Revenues (PSRMEE) to provides such sensitive information for effective monitoring. Besides, there is the issue of 'non-payment of the surface fee by the company', whether it concerns the payment of the fee on the obtainment of the exploration permit, or the exploitation permit. Equally, it is observed that there are lapses in this procedure as the delays or non-treatment of files relating to the emphyteutic lease of the Mobilong permit is certainly not sufficient to solve the question of surface royalty. In this vein, it is appropriate for the company to launch a compensation procedure for the population that resides near the mine - since the administrative authorities are lagging in implementing and monitoring the fiscal obligations of the company. In addition to the surface royalty, is the ad valorem tax that is yet to reach the municipalities and local communities - with the specified penalties and sanctions still to be applied. Moreover, there is a delay in signing the different MINFI/MINMIDT joint orders" including the order establishing the first commercial production and that of fixing the mode of transfer of the ad valorem tax at the local level. Likewise, there is "insufficient monitoring capacity of the different actors" mainly because of the limited knowledge of mining taxation and the near inexistence of appropriate logistic, human, financial resources.

The emerging fiscal challenges of the mining sector after 2016

Explicitly, as reiterated above, fiscal obligations are one of the means by which the government can maximise the benefits from the extractive sectors. Thus, the general framework of the fiscal obligations applicable to the mining companies and the key actors involved in the collection and monitoring of fiscal obligations of the mining companies in Cameroon are: (i) The directorate of mines of MINMIDT in charge of the technical follow up and control; the programme for securing mines, water and energy revenues (PSRMEE); the directorate of large firms in accordance with Section 167 of Decree No. 2008/365 of 8 November 2008 on the organisation of the Ministry of Finance; and the General Directorate of Taxation and its decentralised services. Indeed, they are charged among others, with the organisation, management of the information system, the fiscal exploitation of land information, and the follow up of the application of the conventions and agreements on taxation matters in conjunction with the department of legal affairs. Similarly, as per Section 84 of the Decree, the General Directorate of Customs among others - is charged with the implementation and follow up of the specific legislations in terms of importation and exportation, economic and specific regimes, foreign exchange and trade, entry and exit prohibitions and other restrictions. Equally, as per Section 4 of Law No. 2004/017 of 22 July 2004 on the Orientation of Decentralisation, the decentralised local authorities - notably the local councils, enjoy administrative and financial autonomy for the management of regional and local interests. Despite this, other viable stakeholders like the local, national, and international civil society organisations, as independent monitoring agents, are creating the enabling fora for the reforms of the fiscal regime in the mining sector of Cameroon.

(a) Major reform domains in the new Mining Code: Indeed, towards the end of 2016, the regulatory framework of the mining sector underwent a major reform with the release of Law No. 2016/01 of 14 December 2016 instituting the new Mining Code - with the provisions of the new Code having entered into force in 2017, notwithstanding the pending publication of its Implementing Decree. Since the new Code aims to encourage and promote investments in the sector for a better contribution to the socio-economic development of Cameroon. The three key reforms brought about by the new Code are in the following domains: (i) For governance and transparency, it recognises EITI as an important element of the governance in the mining sector, thus, obliging permit holders to comply with EITI and the principles of

transparency, thereby recognising the right of access to geological and mining information. Equally, it has introduced conflict of interest measures prohibiting the exercise of mining activity by civil servants in the government administration and the personnel of government agencies under the supervision of MINMIDT - therefore, introducing the first legal framework relating to the communication of information on "beneficial ownership", obliging mining companies to communicate all persons holding 5% or more of shares or voting rights. Likewise, it also made it obligatory for the publication of acts of allotment, extension, renewal, transfer, withdrawal, or relinquishment of an operating permit in the official journal and newspapers, and the usage of the standard template of mining agreement in compliance with the provisions of the new Mining Code. This is buttressed by the provisions of Law No. 2018/011 of 11 July 2018, enacting the Transparency and Good Governance Code in the management of public finances - whereby the GoC is committed to making publicly available the contracts between the government and public or private companies, in particular natural resource companies; submit the mining contracts to the regular control of the Jurisdiction of the Accounts and the relevant Parliamentary Commissions; and make legible and traceable the products of all revenues including those related to natural resource development activities in a detailed and justified manner in the presentation of annual budgets. Although the implementing decree to elaborate the implementation of the above commitments is still pending. (ii) For mining policy and local development, it has created several funds like the Mining Sector Development Fund, Restoration, Rehabilitation and Closure Fund for mining sites and quarries; and included "local content" obligations in mining agreements, with the creation of a special local capacity development account that will be funded by the mining companies through a new contribution of 0.5 to 1% of turnover, excluding taxes. In addition, the new Mining Code provides in Section 16 that the mining agreement should include provisions relating to obligations for employment, professional training, and social achievements, relations with local suppliers and subcontractors, percentage of the minerals production to be used for local processing, and any other relevant subjects agreed between the parties. As such, it is worth noting that the mining agreements are supposed to include provisions on local content and those relating to social expenditure according to the new Code and Requirement 6.1 of the EITI Standard. Despite these, it is observed that some companies were already voluntarily contributing to the funding of social programmes or infrastructure works for the benefit of local communities. These contributions are generally made voluntarily in accordance with the Corporate Social Responsibility (CSR) policy of the company. (iii) For the tax system, it has introduced a more favourable tax system by lowering the rate of the ad valorem tax on mining products fixed at 8% for precious stones and 5% for precious metals (Gold), instead of 20% and 15% foreseen in the 2015 Finance Law. Equally, it has provided clear taxation for transactions on mining permits. As such, introducing the "arm's length" principle for the evaluation of expenditure and transactions on mining permits and the obligation to audit expenditure/transactions in the event of the sale of mining permits. As it introduces three limits for the deduction of interest on loans contracted from partners (rate, loan amount, interest amount).

(b) Emerging fiscal updates: Correspondingly, with regards to the types of taxes, it is important to note that in addition to the taxes foreseen in the common law, the new Code affirms and enshrines that the mining activities are subject to the following specific taxes: (1) Ad valorem tax, which for industrial activity is payable in cash based on the market value. Although before 2015, it was 8% for precious stones, 3% for precious metals, 2.5% for base metals, and 2% for deposits and spring water. However, after 2015, the tax rate is set at 15% for precious metals, 20% for precious stones, and 10% for base metals, as per the 2015 Finance law. While for mechanised artisanal gold activity, the tax rate is 15% in the form of an equivalent in gross production. (2) Extraction tax, which is payable in cash on the basis of FCFA 200/m^3 for loose materials and FCFA 350/m^3 for hard materials. (3) Corporate income tax (CIT), which for industrial activity is also payable in cash at the rate of 30%, as per the 2015 Finance law, with exemptions for holders of the exploration permits who also benefit from accelerated depreciation at the rate of 1.25% of the normal rate for specific fixed assets, and an extension of the duration up to five years for the losses carried over. Nonetheless, for mechanised artisanal activity, the CIT as well as the State share are levied at the rates of 15%, in the form of equivalent in gross production. (4) Area fee, which is payable in cash, and paid annually based on the area of the permit. Indeed, the fee rate is CFA 200,000/km/year for industrial exploitation permits and FCFA 50/m/year for artisanal exploitation permits. (5) Fixed fees, which vary from FCFA 10,000 to FCFA 15,000,000 depending on the nature and type of permit. (6) Progressive bonus, which is between 3-5% of the capital gain on the sale of the mining title (i.e., amount of the sale minus the invested expenses), as per Section 27 of the Decree of 4 July 2014. (7) Withholding tax, which is also between 3 to 5% of the capital gain on the sale of the mining permit (i.e., amount of the sale minus expenses). (8) Value Added Tax (VAT), which for import operations, the common rate of 19.25% is applicable with an exemption for holders of exploration permits for the material and equipment necessary for mining operations. While exports of mining products are subject to VAT at the rate of 0%, and submission of local sales to ordinary law. (9) Import duties, where there are exemptions for equipment and materials necessary for research mining operations, with subcontractors also entitled to special customs regimes. While export duties are also exempted from export operations. Most importantly, the new Mining Code awards mining companies with rates stabilisation for the entire period of validity of their exploitation permits.

(c) Pertinent challenges of contract disclosure: The regulatory framework governing the sector provides for the conclusion of several types of contracts between the GoC and extractive companies. These main types of contracts are: The production sharing contract (PSC) and the concession contract (CC), as per Sections 12-15 of Law No. 99/013 of 22 December 1999, enacting the Petroleum Code; the gas agreement (downstream sector) as per Section 10 of Law No. 2012/06, enacting the Gas Code; and the Mining agreement, as per Law No. 2001/001, enacting the Mining Code as amended. Notwithstanding this, it is worth noting that the legal framework governing the extractive sector does not provide for measures to disclose contracts

concluded with holders of the mining permits. Although the content of the mining contracts is specified by the regulations, the templates used are not formalised by legal texts. As such, it is worthwhile for the GoC to undertake the same actions to improve the transparency of contracts as it did by enabling the SNH to publish a template contract in the petroleum sector (www.snh.cm) [7]. Similarly, although the GoC has also adopted the Transparency and Good Governance Code in the management of public finances, which provides, in particular, the obligation to make public contracts between the Administration and public and private companies, especially companies that exploit natural resources; and the submission of mining contracts to the regular control of the Jurisdiction of the Accounts and the relevant Parliamentary Committees. However, it is not clear whether such measures will have a retroactive effect - since the initiatives can be interpreted as a mere commitment by the GoC to make all contracts publicly available, as the text of application is still pending. Besides, the framework governing the sector has not changed with regard to the disclosure of contracts after the implementation of the new Mining Code. As such, it is of great public interest to adopt the same confidentiality provision identified in Section 105 of Decree No. 2000/465 of 30 June 2000, setting the modalities of implementing Law No. 99/013 of 22 December 1999 relating to the Petroleum Code, to the mining sector. Since it is also observed that in practice, the mining contracts are not often published. This is because the provision of Section 6 of Law No. 2018/011 of 7 November 2018, regarding the disclosure of contracts, is pending, due to the delay in signing the text of application - setting out the terms of implementation in particular of contracts in force before the promulgation of the 2018 Law.

Conclusion and recommendations

Explicitly, from the discussion above, it is noted that the extractive industry is complex and diverse, as thousands of companies, hundreds of governments, and millions of citizens are affected in some way by this industry. This is because the industry affects everyone, whether those living by a mine, using gasoline for a commute, working on a rig, or negotiating a mega-merger of two global extractive companies. As such, the complete coverage of all these areas and a comprehensive discussion of improving their sustainability would be wonderful. Although such is certainly well beyond the scope of this paper, which merely assesses the design, impact, and challenges of the legal and fiscal frameworks of the mining sector. Since in addition to the proliferating national laws, a myriad of new legal, financial, and institutional rules has also emerged at the international level, to buttress and enhance the sustainability of mining. Thus, staying abreast with such emerging international rules and regulations, by utilising them to take maximum advantage is considered as one of the greatest challenges and opportunities for the GoC. In seeking to negotiate and promote sustainable development in its mining sector for the long-term benefit of its resource-based economies, environments and peoples. Moreover, the implementation and monitoring of the fiscal obligations of the mining companies in Cameroon is producing mitigated results. This is owing to the lapses of the legal and fiscal frameworks of the mining sector, which have given leeway for the mining companies to take absolute advantage of the tax exemptions, as well as the gaps in legislation due to the poor alignment of the institutional framework, to obtain low tax bases.

Notwithstanding, it is noted that while several countries like Cameroon, are actively developing a range of legal and fiscal frameworks, a set of best practices that fit all is yet to emerge. As such, the initiatives discussed in this paper offer examples of the different design options that could be considered carefully in the context of where they operate. Since the context in a given country may mean that elements that work in one country may not work in another. For instance, national or subnational legislation requiring specific targets to be met in areas with small or weak industrial bases and a limited number of skilled workers may lead to economic inefficiency and increased corruption. Thus, there is a clear need for more empirical research that answers questions of the effectiveness of the different fiscal policies and practices in different contexts, the factors contributing to success, how the fiscal policies can support industry development in subnational regions, and how the governments can maximise benefits for its citizens through the right mix of fiscal arrangements and local content obligations. Although some aspects of the fiscal regime offer greater certainty, it is noted that as a growing field of practice, there is a need to build the capacity to support, monitor and influence the development of viable legal frameworks and fiscal regimes, whether among the government, industry, civil society organisations or donors. Since the role of partnerships spanning the public and private sectors in the design, implementation, and monitoring of such initiatives is very imperative. As such a move can enable the key stakeholders to readily enhance the transparency, accountability, and sustainability of the fiscal regimes. This is because depending on the context and capacities, the national and subnational governments, industry, and civil society organisations will often have different roles in the different stages of the initiative. As such, some of the key issues to focus on initiating and adopting such viable legal framework and fiscal regime include - active and informed citizen participation in fiscal and local content planning, implementation and monitoring; transparency and accountability in contracts and bidding processes; and alignment of company activities with government plans. Similarly, incorporating and realigning the fiscal and local content into EITI processes could address both the varying local contexts and the need to engage different stakeholders in the consultative processes. Equally, it is also credible to make the disclosures of contracts, and agreements mandatory as of the process to enhance the dynamics in Cameroon. In addition, to build partnerships, policymakers could draw on lessons from EITI's innovative multi-stakeholder approach. Thus, bringing all the relevant players together to discuss the goals and challenges of developing viable fiscal policies will likely be the necessary first step toward future progress on this issue.

From this perspective, in order to revitalise the legal and fiscal frameworks in Cameroon, the following recommendations are worthwhile adopting: Create a commission for monitoring and evaluation of the execution of the fiscal obligations and local content; strengthen the capacities of different agents in charge of monitoring the local content and fiscal obligations; harmonise the different laws and legal frameworks linking the land tenure issues to mining taxation; ensure the respect, or reinforce penalties

already specified in case of non-compliance with the tax obligations by a company; formulate a tax model for the mining sector, updated and adapted to the local, national and international contexts; plan for penalties for non-compliance of the development schedule of the mining project as specified by the compliant and valid feasibility study, and the decree establishing the permit; improve on the monitoring of production; define a uniform sub regional framework applicable to all mining projects taking into consideration the tax obligations and those of the local content: contract type, harmonised mining code; follow-up on the recommendations of the 2016 EITI Report; monitor the implementation of the provisions of Law No. 2018/011 of 11 July 2018; computerise the government revenue collection chain; make it compulsory to provide data on the municipalities receiving sub-national transfers.

Despite this, in reviewing the fiscal obligations of C&K Mining Inc. within the context of its Mobilong diamond exploitation project, the following suggestions can be added: Promote greater transparency of tax revenues and their circulation through the effective implementation of the "Unit for the Promotion and Monitoring of Mining, Industrial and Technological Revenues" as per Section 14(1) of Decree 2012/432 of 01/10/2012 organising the MINMIDT extractive resources; call for a better inter-ministerial coordination of the Ministry in charge of activities directly and indirectly relating to land planning and mining public register of lands; sign the joint MINFI/MINMIDT orders relating to the establishment of the first commercial production and transfer of the ad valorem tax to local communities and local councils, as per Sections 96 and 97 of the 2016 Mining Code; fixing the mode of transfer of the ad valorem tax at the local level; review the relevance granted to tax exemptions by conducting an analysis of the losses at the local and national level due to these exemptions and to obligations which are not respected; execute and reinforce the penal provisions already provided for, in case of notice of non-compliance with tax obligations; adopt a flexible tax model, by project phase, would allow a better monitoring of tax obligations and a greater optimisation of tax revenues; decide on the current phase of the 'Mobilong' project by making binding, the development schedule of the project as specified in the establishing the exploitation permit; strengthen the capacities of the different actors in charge of the monitoring, in a continuous matter and using specific themes; improve on the monitoring of production by setting up a decentralised monitoring body for production which integrates all the different stakeholders - competent public administration, partners to development, international governance initiatives, civil society organisations and local residents; publish and systematically disseminate to the public at large, contracts, agreements, and information about payments and sub national transfers of the production, processing and marketing of mineral resources.

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