

***MONITORING LOCAL CONTENT AND
FISCAL OBLIGATIONS OF MINING
COMPANIES IN CAMEROON: Case of
the DIAMOND MINING PROJECT of
Cameroon and Korea Mining
Incorporation MOBILONG, EAST
CAMEROON***



Table of Contents

LIST OF ACRONYMS..... 3

GENERAL INTRODUCTION..... 8

METHODOLOGY 10

CHAPTER 1: PROVISIONS ON LOCAL CONTENT OF MINING PROJECTS IN CAMEROON 11

Section 1: General framework of local content applicable to mining companies in Cameroon 12

I. Actors monitoring social obligations of mining companies 12

II. Legal framework 13

Section 2: Local Content in the Mobilong project..... 14

I. Mining Agreement..... 14

II. Exploitation permit of C&K Mining Inc..... 16

III. Environmental and Social Management Plan..... 16

I. Local employment 18

II. The transfer of skills 19

III. Use of local goods and services..... 20

V. Company contribution to the Local Added Value..... 20

VI. Participation in local projects 21

CONCLUSION AND RECOMMENDATIONS 21

TITLE 2: TAXATION IN THE MINING SECTOR IN CAMEROON..... 23

CHAPTER 3: PROVISIONS ON FISCAL OBLIGATIONS OF MINING COMPANIES IN CAMEROON 23

Section 1: General framework of fiscal obligations applicable to mining companies in Cameroon..... 23

I. Actors of the monitoring of fiscal obligations 23

II. Regulatory framework..... 24

Section 2: Case of the Mobilong project 29

I. C&K Mining Convention 29

CHAPTER 4: MONITORING THE FISCAL OBLIGATIONS OF C&K MINING INC. 31

THIS CHAPTER EXAMINES THE COMPLIANCE OR NON COMPLIANCE OF C&K MINING INC. TO THEIR FISCAL OBLIGATIONS PREVIOUSLY IDENTIFIED. A BRIEF ANALYSIS OF TRENDS WITH REGARD TO COMPLIANCE WITH THESE OBLIGATIONS WILL ALSO BE CONDUCTED. HOWEVER, WE NOTE THAT WE HAVE IDENTIFIED THE MANY EXEMPTIONS FROM WHICH THE COMPANY BENEFITS. 31

Conclusion 34

vii. An "insufficient monitoring capacity of the different actors " mainly because of a limited knowledge of mining taxation and the near inexistence of resources (logistic, human, financial). 35

Recommendations..... 35

- **PUBLISHING AND SYSTEMATICALLY DISSEMINATING TO THE LARGE PUBLIC, INFORMATION ABOUT PAYMENTS AND SUB NATIONAL TRANSFERS OF THE PRODUCTION, PROCESSING AND MARKETING OF MINERAL RESOURCES..... 36**

CONCLUSION AND RECOMMENDATIONS OF THE STUDY 36

List of Acronyms

CED: Centre for Environment and Development

CEFAID: Centre for Education, Training and Support for Development Initiatives in Cameroon

CFC: Credit Foncier du Cameroon

CCPCQVP: Publish What You Pay Cameroonians Coalition

CGI: Tax Code

FPIC: Free Prior and Informed Consent

C&K: Cameroon and Korea Mining Inc.

ESIA: Environmental and Social Impact Assessment

FOB: Free On Board

EITI: Extractive Industries Transparency Initiative

MINFI: Ministry of Finance

MINEPDED: Ministry of Environment, Nature Protection and Sustainable Development

MINMIDT: Ministry of Mines, Industry and Technological Development

OHADA: Organization for the Harmonization of Business Law in Africa

NTFP: Non Timber Forest Product

ESMP: Environmental and Social Management Plan

RELUFA: Network for the Fight Against Hunger.

CSR: Corporate Social (or Societal) Responsibility

RWI: Revenue Watch Institute

KPCS: Kimberley Process Certification System

Acknowledgment

The need to ensure the compliance of mining companies with their contractual obligations prompted the conduct of this study by the Network for the Fight Against Hunger (RELUFA) and the Centre for Environment and Development (CED). Local content as well as fiscal obligations are considered the most important components of the participation of mining companies to local development as well as to generating public revenues.

Many people contributed to the production of this report. Michel BISSOU and Eric Bisil led this research study under the supervision of Samuel NGUIFFO and Jaff Napoleon BAMENJO. We thank the Revenue Watch Institute and the World Bank Institute for the technical and financial assistance provided for the conduct of this study. We are grateful to Evelyne TSAGUE, Ousmane DEME and Desai DEVAL for their useful comments and guidance.

We equally benefited from the assistance of many institutions and individuals to whom we extend our appreciation: Ms. CHOUNG SUNG HEE of C&K Mining Inc. who provided information about the C&K Company, representatives of the Ministry of Mines, Industry and Technological Development in the Eastern Region provided information on the mining taxation. We acknowledge the openness of the Secretary General and some councilors of the Yokadouma council for their openness to discussions during our field consultations.

Mr. AMOUGOU AMOUGOU Victor and his team from CEFAID helped us in data collection around the Yokadouma area; we thank them for their unwavering commitment.

We are also thankful to Charles GALL, Divisional Officer of Yokadouma for their hospitality during our stay. Willy Cedric FOUMENA, Sandrine BIKELE, Brendan SCHWARTZ and Mireille FOUDA provided important comments and constructive criticism. LAMERO MASSOBE Flora, Colette KALA DONGMO and Osrich YIMBU have also immensely contributed to this study.

Finally, the Populations of Mang Massiembo, Mparo, Mobalo, Long, Mboy I and II, the Baka community, receive our special thanks for their openness and availability to share their experiences and perceptions of the C&K diamond Mining Inc. project.

We hope that this study will mobilize all stakeholders involved in monitoring the operations of mining companies, with the hope that it effectively contributes to social and economic development.

PREFACE

The Centre for Environment and Development (CED) and the Réseau de Lutte Contre la Faim (RELUFa) work together in promoting the respect of the rights of local communities impacted by extractive industries projects in Cameroon. Our objective is to ensure that extractive projects can contribute to the development of communities affected by these projects. The current project, which seeks to monitor the fiscal and the local content obligations of the Cameroon and Korea (C&K) industrial diamond mining project in Mobilong, East region of Cameroon is a step in this direction.

The enactment of a business friendly mining code in Cameroon in 2001 has attracted several mining companies to the country. Some of the companies have already obtained industrial mining exploitation licenses and effectively started mineral exploitation. The C&K industrial diamond project is one of the first companies to start industrial mineral exploitation among the new wave of mineral exploitation companies in Cameroon. Many more of such mining companies may also start their operations in the coming years. But beyond the need for effective monitoring of the respect of the contractual obligations between the mining companies and the government of Cameroon, it is necessary that the government signs contracts or conventions that allow it to capture maximum benefits from these projects. This entails having clear, precise and measurable obligations that can be effectively monitored.

This study assesses the level of respect of fiscal and local content obligations by the C&K mining company towards the government of Cameroon and the local communities impacted by the project. This is very important as tracking the respect of company obligations in the convention it signed with the government of Cameroon can give an idea about the contribution of the industrial diamond-mining project to local development. However, vague local content obligations in terms of local training, employment and infrastructure development does not facilitate effective monitoring of company compliance to their contractual obligations.

Effective government control and monitoring of extractive projects is hampered by insufficient personnel and capacity, rendering community and independent civil society monitoring of extractive projects equally important. Considering that the government of Cameroon is relying on industrial mining projects to become an emerging country by 2035 according to the Growth and employment Strategy Paper, the quality of contracts it signs with extractive companies is important in determining the contribution of the mining sector to national development. Fiscal and local content terms inserted in the contracts are the main means through which governments can generate benefits from mining projects but when these terms are weak and the companies fail to respect their engagements, it is difficult for mining to contribute to development as expected. Transparency and respect of the contractual obligations by the mining companies is essential for the government to effectively capture the benefits expected from the mining projects. As such, monitoring of company obligations is an important tool for citizens, parliamentarians, civil society organizations, media etc to hold governments and corporations accountable for the engagements they sign. Our hope is that existing gaps in fiscal and local content issues around the C&K diamond mining project highlighted in this study finds lasting solutions.

Samuel Nguiffo

Jaff Bamenjo

Secretary General CED

Coordinator, RELUFa

Executive Summary

Cameroon is endowed with important mineral resources that are attracting mining companies. Since the publication of a business friendly mining code in 2001, over 167 exploration permits have been issued to mining companies, for only 40% of the Cameroonian territory explored. Cameroon has established a regulatory framework for mining activities. It is mainly the Mining Code (2001), its Application Decree (2002), its Amendment (2010) including the Mining Agreement signed between the State and the Companies and exploitation permits that have been issued.

Despite the fact that these legal standards have clear contractual obligations, the observance of these provisions by the companies in some instances remains a problem. Yet it is indeed through compliance with these contractual provisions that economic and social development could be achieved.

This study was conducted under the assumption that effective compliance with fiscal obligations and local content by companies contribute to economic and social development.

The Cameroon and Korea Mining Incorporation (C&K), having signed a Mining Convention with the government in 2010 and proceeded to export the first industrial diamonds in January 2013, it was chosen for this case study in order to ascertain their level of compliance to their local content and fiscal obligations.

The absence of clear indicators does not allow monitoring of compliance with local content obligations like employment and training by the company. Under such circumstances, philanthropic actions of the company should not be confused with the contractual obligations of the company. The Cameroonian government has not anticipated the establishment of necessary and appropriate training in mining related domains. Significant efforts therefore must be made to reap the benefits expected from mining projects.

The main conclusions arrived at are:

- i. A reform of the mining legislation (Mining Code, its Application Decree and other mining sector related regulations) concerning variables that are subject monitoring.
- ii. Mining agreements signed between the state and the Companies should have a larger scope in favor of local and national development which are measurable through reliable indicators ;
- iii. The problematic of sub-national transfers from (ad valorem tax) should be addressed before industrial mineral exploitation becomes an economic reality. This requires, in addition to the signing of the joint MINFI / MINMIDT inter-ministerial order fixing the modalities of transfer of mining royalties, more effectiveness and efficiency of decentralization;
- iv. The government and development partners need to build the capacities of Cameroonians working in the mining sector.
- v. Monitoring of local content and fiscal obligations can produce reliable information if and only if the monitoring of the production is done upstream. This requires previous knowledge by the State of its mining potential and the accuracy of Feasibility Studies.

GENERAL INTRODUCTION

Cameroon is a country endowed with diverse extractive resources unevenly distributed throughout the national territory. The granting to date of five (05) exploitation permits (nickel-cobalt, diamond, limestone and marble) and 167 exploration permits¹ on only 40% of the national territory, reflects this fact.

Cameroon & Korea Mining Incorporation (C&K Mining Inc.), a Korean company established in Cameroon since 2007, is in the process of industrial production of diamonds in the locality of Mobilong, located in the Yokadouma sub division in the Boumba and Ngoko division of the Eastern Region of Cameroon. The company holds an exploitation permit issued in 2010 by *Decree n°2010/374 of 16 December 2010 on the establishment of a valid exploitation permit for diamond mining and related substances* after an exploration permit *Order n° 024/MINIMDT/SG/DMG/SDAM of April 26, 2006*. This permit covers 236.25 Km² valid for 25 years² and is inscribed in the special register of the Department of Mines and Geology. On the financial aspect, the company plans to invest between 1 and 1.3 billion dollars in the project over a quarter century. However, it is at this time in search of potential financial partners to extend its industrial diamond production.

C&K Mining Inc. is 10% owned by the Support Unit for Promotion of Artisanal Mining CAPAM, 10% by the State of Cameroon³, 10% by Cameroonian nationals and 70% by the Koreans, notably **KOKO Enterprise Company**⁴. The 10% state participation is free of charge as set out in the Mining Agreement.

In addition to its industrial mining title "Mobilong", the company operates semi industrially gold at Bétaré Oya and Bindiba/Garoua Boulai in the East region of Cameroon. It has a third exploitation permit for gold (small mine) in the locality of Woumbou (East).

According to earlier reports by C&K Mining Inc., the potential of the Mobilong field was estimated at 736 million carats⁵. In other declarations, reserves were estimated at 420 million carats, which is more than three times the annual world diamond production in 2009. This potential was questioned at the end of 2011 by authorities in Seoul, causing a stock exchange scandal in South Korea⁶ in January 2012. A Korean member of opposition in September 2011 declared that proven reserves in 2009, when C&K was still in the exploration phase, were actually 18 million carats, or 23 times less than the 420 million earlier announced. Paradoxically, the government of Cameroon does not also have information on the exact diamond reserves in Mobilong.

¹ Consult the website of the [Cameroon International Mining Conference and Exhibition \(CIMEC\)](#)

² See article 3 of the decree on the establishment of the mining permit ; also see the Agreement signed between C&K Mining and the State of Cameroon.

³ According to article 6 of the Mining Agreement signed between the Republic of Cameroon and C&K Mining Inc.

⁴ Koko Enterprise Co., Ltd is a Korean based company involved in the entertainment and leisure industry. This company was founded in 1990 and its headquarters are in Seoul, Korea

⁵ [Le Secteur Minier Camerounais](#), EITI Cameroon website

⁶ [En Corée du Sud, le scandale des diamants du Cameroun prend de l'ampleur](#)

Concerning the conglomeratic part, the Decree instituting the "Mobilong" permit specified that the construction of the mine should have started in 2011⁷ but this is not the case for now. This situation gives the project the status of *preparatory phase* to industrial exploitation.

Compliance with legal, economic, environmental and social obligations by mining companies is a way for Cameroon to benefit from the exploitation of its mineral resources. However, we have chosen to limit this study to monitor economic and social aspects relating to fiscal obligations and Local Content of the C&K diamond mining in particular.

The mining sector has contributed on average, from 2009 to 2011, to just over 1.5% of revenues in the extractive sector⁸ in Cameroon and fiscal obligations are the main source of revenue collection for the State. Best practices of local content could promote the direct improvement of living standards of local residents through, notably employment and skills transfer.

In their role to watch and protect the rights of minority and vulnerable groups, CED and RELUFA led the present study whose purpose is the monitoring of fiscal obligations and local content of C&K Mining Inc.

The analytical approach we have adopted consists firstly, to introduce the legal framework with respect to monitoring obligations, secondly, to compare the written rules with reality, and thirdly to analyze and evaluate in order to come out with recommendations. In other words, it will therefore be for us to consider in turn:

- i. What are the legal provisions relating to mining activities, mainly in terms of fiscal obligations and Local Content of the C&K Mining project on the one hand, and on the other hand the modalities of their monitoring;
 - Fiscal obligations considered as all obligations relating to taxes, direct and indirect fees that a mining company would pay. These obligations are both local and national;
 - Local content considered as the level of local involvement in the form of participation and funding of local projects and purchase of local goods and services.
- ii. Does C&K Mining Inc. respect these obligations?
- iii. What analysis can we make of the monitoring of obligations of mining companies in Cameroon?

⁷ According to article 6 of the said decree signed on 16 December, 2010, C&K has the obligation to begin works within one year from the issue date of the exploitation permit.

⁸ According to the EITI Cameroon 2009, 2010 and 2011 reports, the mining sector contributed to 2%, 2% and 1% respectively, to the country's extractive revenues.

METHODOLOGY

The methodology used consisted:

- i. Literature review of legal norms relating to fiscal and social obligations of mining companies in Cameroon, with an emphasis on those related to C&K Mining Inc. ;
- ii. Data collection through field trips. It involved conducting semi-structured and structured interviews and opinion polls from all resource persons⁹ at the local level (Yokadouma, Mang, Mobalo, Mparo, Long, Massiembo, Ampayah, Mboy I and II) and national (Yaoundé and Bertoua), which could provide information on the compliance or not of C&K Mining Inc. to its fiscal and social obligations. Data collection from local residents was also made by a *focus group*.
- iii. By the end of data collection, a first validation workshop attended by the Company, the local residents, administrative and municipal authorities was organized in Yokadouma, April 20, 2013;
- iv. A comparative analysis of facts, information and observations obtained from the field with the legal provisions in force and the agreement signed by C&K

⁹ See the questionnaires as annex

Part 1 : LOCAL CONTENT

Chapter 1: Provisions on Local Content of Mining projects in Cameroon

The concept of "Local Content" is relatively new as a study subject in the extractive industries in Cameroon and thus requires some elements of explanation about its content and scope.

Local Content in general, may be defined as:

- Perceived in the sense of local participation, Local content could be defined as "*the level of social adherence in the form participation in, and funding of local projects.*"¹⁰
The support of local people through training and capacity building of employees and/or non-employees of the company is part of this approach of Local Content.
- In an economic perception, local content is similar to the ***local added value***.
- According to the Cameroonian Gas Code¹¹, Local Content is defined as "*All the activities focused on local capacity development, the use of local human and material resources, technology transfer, the use of industrial companies and local services, and the creation of additional values measurable to the local economy.*" A definition that seems to reconcile the different previous definitional approaches of Local Content.

Thus, the components of Local Content can be summarized as: the use of local labor force together with capacity building (technology transfer) by the company and its partners as well, the use of local industries and services, subcontracting and finally, the funding of local development projects.

The question of the extent of Local Content focuses on the field it covers. Two approaches can be confronted at this level. One approach considers the local as the "community" where the company is located, and the other considers it as "the nation".

The approach of local content that will be adopted in the present study is one whose components will focus on employment, training, capacity building, suppliers and subcontractors, participation of the company in social projects and local added value. The field chosen in the context of our study is that corresponding to the national territory with some focus on immediate local communities.

¹⁰

¹¹ Article 02 of the Law issued from the 8th session during the 2012 legislative year in its 1st ordinary session of March 2012

Section 1: General framework of local content applicable to mining companies in Cameroon

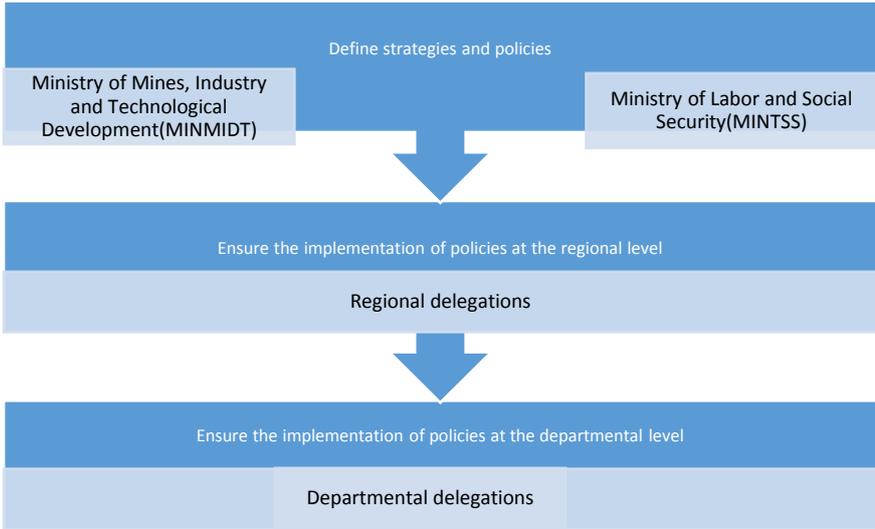
A reading of the local content requirements of mining companies could be done through actors of monitoring and the legal framework of their obligations.

I. Actors monitoring social obligations of mining companies

Monitoring of social obligations in mining companies is done by two main groups of actors in Cameroon, namely those in the public sector and nongovernmental organizations

- i. Actors in the public sector¹²:

Generally, some actors in the public sector through the Ministry of Mines, Industry and Technological Development (MINMIDT) are involved in the control of mining projects. The ministry of Mines, Industry and Technological Development works with other administrations such as the regional offices of ministries in the monitoring of local content requirements.



¹² Article 101 of the Mining Code clearly specifies the supervision role of mining engineers, civil servants and public agents of the Department of Mines and Geology, at the moment divided into two departments, as well as agents of tax and customs administration commissioned to this effect.

ii. Other actors

Other organizations are involved in monitoring the social obligations of mining companies. This is particularly true of national and international civil society organizations.

II. Legal framework

The legal framework of the obligations in the mining sector is made up of law n° 001-2001 of 16 April 2001 establishing the Mining Code and its amendment of 2010 together with its application decree (Law n°2002/848 PM of 26 March 2002) and also Law n° 92-007 of 14 August 1992 establishing the Labor Code in Cameroon.

1 Provisions of the mining code (amended)

Within the framework of a mining agreement signed between the Government of Cameroon and a mining company, Article 16(1) of the Amended Mining Code states that "***For the development and exploitation of a mineral discovery or for its funding, a mining agreement is concluded between the holder of an exploration permit and the State. The said agreement includes provisions on:***

- ...
- ***Obligations relating to employment, vocational training and social achievements;***
- ***Relationships with suppliers and subcontractors;***
- ***(New) the percentage of the production of minerals extracted to devote to local transformation. This percentage cannot be less than fifteen percent (15%).***
- ***Any other matter that the parties to the agreement may find of interest "***

It comes out clearly from this provision that local processing, source of employment and wealth creation at the local level, is of utmost importance in the Agreement. This involves the transfer of skills and capacity building. The production-marketing chain in which suppliers and sub-contractors are involved is also included among the obligations of companies.

2 The application decree of the Mining Code

The provisions relating to the obligations in terms of Local Content are mentioned in Articles 65 and 128 of Decree No. 2002/648/PM of March 26, 2002 - laying down detailed rules for the application of Law No. 001 of 16 April 2001 on the Mining Code. Thus: in Article 65 (2), it states that "***The application for the award of an exploitation permit is addressed and compiled with the Minister of Mines before the expiration date of the exploration permit from which it is derived.***

It states:

- ✓ ...
- ✓ *The period for which the exploitation permit is requested*

It is accompanied by :

- ✓ *a feasibility study, including notably:*
 - ...;
 - *f) a note on the socio-economic impact of the project, on local residents in particular ;*
 - *k) proposals of the applicant on the recruitment and training of Cameroonians. "*

In Article 128, it also states: *“During the exploitation phase, the management plan describes the management of impacts due amongst others to the following: [...] eventually positive social impacts such as jobs, training opportunities and the provision of communications and infrastructure.”*

We note here that the Mining Code and its application decree contain elements that are part of all provisions relating to local content requirements. However, it seems important to note that this concept has proved to be insufficiently integrated into the objectives of the Cameroonian legislator as formulated in the gas code of 2012.

Section 2: Local Content in the Mobilong project

Within the framework of the Mobilong project, the local content provisions emerge from:

- The Mining Agreement signed between the Republic of Cameroon and Korea Mining Incorporation in 2010 (I).
- Decree No. 2010/374 of 16 December 2010 on the establishment of a valid mining exploitation permit for diamond and related substances.
- The Environmental and Social Management Plan (ESMP) of the company contained in its Environmental Action Plan (2010).

I. Mining Agreement

Articles 07, 08, 15(8) and 18(2) of the Mining Agreement are those that address the provisions relative to Local Content.

- i. According to Article 07, relating to subcontractors and affiliates of C&K Mining Inc., the matter is to make local content an option in a context of trade liberalization and free competition. Thus, *"C&K Mining Inc., its affiliates and subcontractors will use as much as possible the services and raw materials from local sources as well as*

products manufactured in Cameroon as far as these services, raw materials and products will be available at competitive conditions in terms of price, quality, warranties and delivery dates. "

ii. Article 08 for its part brings out provisions for the use of national and local staff. The goal of the promotion and protection of national labor throughout the exploitation project is the one sought. Thus, for:

- Article 08(1) *"During the term of this agreement, C&K Mining Inc. is committed to:*
 - *Employ in priority local staff to enable it to access all jobs related to its professional qualifications. To this end, C&K Mining Inc. will implement and in consultation with the competent authorities of the State, a training plan and a system of promotion of this staff;*
 - *Respect the laws and regulations of labor in force, particularly in terms of hygiene, safety and health at work, social security and overtime working practices;*
 - *Progressively promote the replacement of expatriate qualified personnel by local staff who have completed the same training and acquired the same experience during employment;*
 - *Practice no discrimination of any kind be it based on race, nationality, gender or sex.*

A brief analysis of this provision clearly shows that, despite the desire to promote the replacement of expatriate staff, it would be difficult to assess the performance of such an initiative. In fact, even if substitutions are made, the issues on the number of initial workforce of national and local labor, replacement rate and frequency of replacement remain.

- *Similarly, "C&K Mining Inc. will include in its contracts with its co-contractors, a similar requirement and a commitment on their part to include this same requirement in their contracts with subcontractors."*

It is understood that the enhancement and protection of national and local workforce needs to be integrated into the various components of mineral exploitation in Cameroon by C&K Mining Inc.

- Article 15(8) of the Agreement provides, in accordance with Article 16 of the Amended Mining Code that *"C&K Mining Inc. will process fifteen percent (15%) of the production of diamond extracted in Cameroon. This processing will start from the first year of its conglomerate production."*

On reading these obligations relative to the Local Content in this mining agreement, it appears that an effort to benefit from a fallout in terms of employment, training, local processing, subcontractors, local affiliates and local added value of the exploitation of diamond and related substances of Mobilong is consented by the State. This actor also has the obligation in accordance with Article 18(2) of the Agreement, to *"... is committed not to undertake towards C&K Mining Inc., its affiliates and subcontractors as well as to their staff, any action on labor or social law that could be considered discriminatory against those that would be imposed on companies engaged in similar activities in Cameroon. Similarly, the State guarantees that these staffs are in no way subject to discrimination. "*

Thus, the Mining Code, its Amendment and its application Decree present general provisions regarding the Local Content, but the Agreement is intended to be slightly more precise about it. Without any system of reference, the assessment of Local Content practices of mining companies will rely primarily on its programs and/or initial activities (Human Resource policy, CSR etc).

Note that in our literature review, we could not find provisions on Local Content in other legal norms. In this case, the latter would not be fundamentally in opposition with those raised here.

II. Exploitation permit of C&K Mining Inc.

The Exploitation Permit refers to provisions already mentioned by the Mining Code and its application Decree but is particular in that it specifies in its article 7 that *"During the validity of the exploitation permit n° 36, the Company C&K Mining Inc. shall make social, sporting, educational and health infrastructures available to the local residents to support their development. "*

In addition to the Local Content obligations of C & K Mining Inc. analyzed, the development of local infrastructure has equally been considered important.

III. Environmental and Social Management Plan

Elements of Local Content can be spotted out from a reading of the identified impacts and the method of their internalization in the Environmental and Social Management Plan.

As reflected in paragraphs 2.3.1.1 (*Positive impacts of the project*) of the Environmental Action Plan for C&K Mining Inc.:

- The creation of jobs and access to training opportunities are impacts with direct interaction;

- Job creation is an impact of a relatively major character;
- Access to training opportunities, opportunities to access energy supply, information and telecommunication are considered as important impacts.

We note that except for local processing (15%), no other obligation has indicators. These provisions are general in nature. Such an approach will make it difficult to assess the effectiveness of Local Content. Indeed, although monitoring mechanisms in terms of employment, vocational training and sub contracting can be set up, if the base data is not significant, the result we will get will not be either. For example, "***The obligations relating to employment, vocational training and social achievements***" do not indicate the threshold of local and/or national labor to grant proportionate to the total workforce employed by the company.

Chapter 2: Monitoring of Local Content obligations of Cameroon and Korea Incorporation

The analysis of this practice concerns both its local and national scope on issues of employment, training, priority use of local goods and services by affiliates and subcontractors, the participation of the company to local projects and local added value.



Working session with local residents of Mobilong: Mang Village. By Michel BISSOU

I. Local employment

The manpower of C&K Mining Inc. is divided into a local, national and foreign staff.

Out of the hundreds of C&K employee, foreigners are the administrative staff, mostly Koreans (05) and expert workforce handled by South Africans (04).

Regarding the national workforce, in contrast to the 57 national workers the company employed in 2011, in 2013 it is composed of 60-63 contractual employees, including temporary and seasonal workers. Positions of responsibility are primarily entrusted to staff with the required skills and a mastery of the English language. It comes out clear from this study that no Baka, who are the indigenous people of the project area is employed by C&K despite the agreement signed¹³ in April 2013 between C&K Mining Inc. and the Ministry of Employment and Vocational Training (MINEFOP) through the National Employment Fund (FNE), whose objective is to ensure a fair recruitment nationwide.

¹³ Read the article « *Le FNE ouvre son fichier de chercheurs d'emploi à C&K Mining et Justin Sugar Mills* » in the May 2013 edition – n° 14 of the daily *INVESTIR AU CAMEROUN*. P. 16

Perceived this way, it appears that C & K Mining Inc. employed local labor, but recent mood changes that were observed in late 2012, let appear disagreements between the company and the local residents. For the latter, the company could do better not only in terms of numbers but also in terms of treatment of its employees.

Health and safety of workers:

Apart from the local content requirements, those of health and safety of workers are a major concern for mining companies. In the case of the Mobilong project, working conditions do not always meet with the requirements in terms of mineral exploitation. The workers do not use Personal Protective Equipment (PPE) which meet international standards and do not have adequate medical coverage. The safety device inside the site is almost nonexistent, which increases the risk of accident¹⁴. Cameroon is a member of the ILO but has ratified none of the conventions whose purpose is to ensure the social protection of workers and to safeguard fundamental human rights in the mineral exploitation sector. These are convention n° 31 limiting the hours of work in the mines (coal mines), convention n° 124 concerning the medical examination for fitness of adolescents to work underground in mines, convention n° 176 concerning safety and health in mines.

The extractive sector is undoubtedly one of the sectors that has many risks to the health of workers. Issues on health and safety of workers in the mining sites are not sufficiently taken into account in the legal framework governing employment issues in Cameroon. Now engaged in a major political development in the mining sector, the revision of Law n° 92-007 of 14 August 1992 establishing the Labor Code is imperative to ensure the safety of the men and women who will work there.

Box 1

II. The transfer of skills

Capacity building (knowledge transfer and/or training) is an essential element of local content. Indeed, a project can only really be beneficial to a community if it can continue the said activity or those related to it. Employees of C&K affirm that the company trains them on certain working techniques specific to the mining industry and the driving of their heavy engine vehicles. However, the question of choice of individuals to train, the nature of the training and sustainability of acquired skills after training remains.

¹⁴ In 2012, Mr. MARA Jérôme was victim of an accident after which he lost his job

Law n° 92-007 of 14 August 1992 establishing the labor code in Cameroon

Chapter 2: Apprenticeship

Art.45 -. The apprenticeship contract is one in which a commercial, agricultural or an industrial undertaking or a craftsman undertakes to give or make give a thorough and comprehensive training to a person whereby the latter undertakes, in return, to comply with the instructions he receives and execute works that will be assigned to him for his training.

Art.46 -. The apprenticeship contract must be in writing, under penalty of absolute nullity. It is free from all stamp duties and registration.

Box 2

A reading that we could make of the state of training of employees is that it is insufficient because the needs are important in the context of industrial mineral exploitation in Cameroon. This training should also extend to the residents and school syllabuses as required by the Environmental Management Plan contained in the Action Plan of the Company. This approach would meet the expectations of the eight neighbouring communities, including the Bakas.

III. Use of local goods and services

The Company employees get food from some peasant organizations such as those created by people of Yokadouma and Ngola. Nevertheless, it should be pointed out that the supply is only done in very few villages bordering the exploitation. One of the proposed solutions by the local population would be to support them in creating Common Initiative Groups to start such projects because they do not always have sufficient means to start such organizations involved in agricultural production.

IV. Subcontractors and local suppliers

The main activities of subcontracting observed so far is limited to the completion of the Environmental and Social Impact Assessment (ESIA) by Soft Business Management Consulting Group which is a Cameroonian consulting firm based in Yaoundé. C&k also affirm that they use dynamite supplied by a local subcontractor of which we did not have the contact information.

Although the project is at its early stage, we could logically question the non-involvement of local suppliers in the construction of the base camp of the company and on the origin of the materials used to build them. That said, it is clear that the local content requirements for subcontracting are insufficient and cannot as such help to create local wealth.

V. Company contribution to the Local Added Value

A study of the follow up of the local added value obligations could result from those made previously. The lack of initiatives related to the construction of social infrastructure as specified by the Decree of 16 December 2010 on the establishment of the mining license "Mobilong" reflects the weak fallouts in terms of VAL.

VI. Participation in local projects

The participation of the company in local projects is not visible on the field. However, few activities under the company's philanthropy can be identified.

Philanthropic actions of C&K Mining

Following a mass movement initiated in 2012 by the inhabitants of seven villages surrounding the exploitation site of C&K who claimed among others, the construction of sanitary infrastructure, schools etc, each village received the sum of 1 000 000 FCFA. It should be noted that the Baka community did not benefit from the consideration of the company.

Rightly pointed out by the administrative and municipal authorities, the existence in fact of Municipal Development Plan and Book of Grievances written respectively by the Municipality and the Residents should be the basis for such action. The municipal authorities also questioned the lack of initiatives of the company in local projects, yet the needs are significant and clearly identified in the locality.

The company, for its part says that this action entered in of a context of appeasement of tension between it and the local populations. This is not sufficient reason for the company's non-participation in local projects since then.

Box 3

Conclusion and recommendations

Despite the existence of provisions on local content in the Mining Code, its application decree, the Labor Code, the Mining Convention, mining permits and the environmental action plan of C&K, the implementation of these obligations proves to be ineffective due to the use of general formulas without a binding character and the absence of clear and measurable indicators. For example in terms of:

➤ Local employment

Article 08 (1), " *During the term of this agreement, C&K Mining Inc. is committed to: **Use in priority local staff** to enable it to access all jobs related to their professional qualifications.*"

➤ Transfer of competences

Article 08 (1) of the Agreement of C&K states that " *During the term of this agreement, C&K Mining Inc. is committed to: **Progressively promoting**, the replacement of expatriate personnel by qualified local staff having followed the same training and acquired the same experiences on the job.* "

➤ **Use preferential products and local suppliers**

According to Article 07 " *C & K Mining Inc., its affiliates and subcontractors use as much as possible the services and commodities from local sources as well as products manufactured in Cameroon as far as these services, raw materials and products are available under competitive conditions in terms of price, quality, warranties and delivery times.* "

➤ **Participation in local development**

Article 7 of the exploitation permit stipulates that "*During the validity of the exploitation permit, the company C&K Mining Inc. is to put at the disposal of local residents, social, sporting, educational and sanitary infrastructures to enhance their development.*"

In view of the limitations found in terms of implementing local content we can make the following recommendations:

1. Improve on the legal and operational regime of local content

- Define quantitative and qualitative indicators (specify quotas such as the quota of Cameroonian employees, by category, at the different phases of evolution of the company, the quota of local suppliers,
- Define a detailed schedule for the implementation of local content obligations (have a detailed calendar of the application of local content obligations)
- Formulate penalties: gradual regime of sanctions for non-compliance of local content obligations by a company
- Involve local and indigenous communities in the definition and the formulation of objectives of local content

2. Improve on the control of the execution of extractive contracts

- Systematically publish extractive industry contracts in order to enable CSO and local residents to control the respect of local content engagements by a company
- Create a monitoring-evaluation commission of the execution of local content requirements
- Define a uniform framework applicable to all mining projects (e.g. standard contract) that could also respond to national needs as well as to prospects for a harmonized Mining Code in the CEMAC zone.

Title 2: TAXATION IN THE MINING SECTOR IN CAMEROON

Chapter 3: Provisions on fiscal Obligations of Mining Companies in Cameroon

Fiscal obligations are one of the means by which the government can maximize the benefits from the extractive sector.

Section 1: General framework of fiscal obligations applicable to mining companies in Cameroon

I. Actors of the monitoring of fiscal obligations

The main actors involved in the collection and monitoring of fiscal obligations of mining companies are:

i. the public sector

- The Directorate of Mines in charge of technical follow up and control,
- The Program for Securing Mines, Water and Energy Revenues (PSRMEE),
- The Directorate of Large Firms in accordance with article 167 of decree n° 2008/365 of 8 November 2008 on the organization of the Ministry of Finance;
- The General Directorate of Taxes and its decentralized services¹⁵. They are charged among others, with the organization, management of the information system and the fiscal exploitation of land information and of the follow up of the application of conventions and agreements on taxation matters in conjunction with the department of legal affairs¹⁶;
- The General Directorate of Customs¹⁷ among others in charge of the implementation and follow up of specific legislations in terms of importation and exportation, economic and specific regimes, foreign exchange and trade, entry and exit prohibitions and other restrictions;
- The decentralized local authorities notably the local councils (Mayor). Councils enjoy administrative and financial autonomy for the management of regional and local interests (see Article 4 of *Law n° 2004/017 of 22 July 2004 on the Orientation of decentralization*).

ii. Other stakeholders

Other stakeholders consist of, local, national, and international civil society organizations in their role of independent monitoring.

¹⁵ See Title VI (Of Decentralized Services) in its Chapter III (The decentralized services of the General Directorate of Taxes) of decree n°2008/365 of 8 November 2008 on the organization of the Ministry of Finance.

¹⁶ See the website of the General Directorate of Taxes, in its section "[Overview](#)" in the number 6 and 12 charges.

¹⁷ See Article 84 of Decree n°2008/365 of 8 November 2008 on the organization of the Ministry of Finance.

II. Regulatory framework

Fiscal obligations of the Cameroonian mining sector are contained the mining code (2001), its amendment (2010) and its application decree (2002), the General Tax Code (2010), the law on local taxation (2009) and finally the Mining Agreement (2010).

A more extensive analysis would have been to review international tax legal framework, including treaties and economic agreements between Cameroon and South Korea. However, for the purpose of this study, we limited ourselves to the Agreement signed between the company and the government and also national legal and regulatory framework

1 Fiscal obligations under the Mining Code

Reading through the Cameroon mining code, some tax incentives are granted to mining companies in the form of exemptions especially during the pre-production phases, namely reconnaissance, exploration and even construction (Art 95). The fact remains that many of these exemptions are maintained throughout the production phase. The reason cited by the state so far is the concern induce companies to come in and develop the Cameroonian mining sector.

Before the granting of an exploration or exploitation permit, the company is required to pay a caution to secure the execution of its activities. The amount and terms of payment of the caution shall be determined by regulation, that is, by the application decree of the Mining Code (Cf. Article 19 of the MC).

In pre-production phase, the fiscal obligations related to the activities of mining companies can be summarized 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 (Article 74 (1));
- Fixed fees on requests for issuance, renewal or transfer of mining titles (Art 90(1));
- A surface royalty after obtaining the mining permit (Art 91);
- Custom duties on passenger vehicles, office equipment and supplies (Article 96(1));
- Tax penalties (Art. 108).

From the effective start of exploitation through the first productions and marketing, any company conducting mineral exploitation activities must compensate local residents: it is the Ad Valorem tax (Art 89). The modes of distribution of this tax are specified in the

Application Decree of the Mining Code. If it happens that the company exploits quarry resources, it will instead pay a *tax on extraction*.

In addition to the Ad Valorem tax, other tax obligations such as fixed fees paid to the Treasury (Article 90(1)) are raised when it comes to renewal of a permit. The surface royalties (Article 91) are also part of it in the case of modification or extension of the mining title.

Thus, mining companies are exempt from many taxes of common law during the pre production phase. A richer appreciation of different fiscal obligations will be made after reading their application modalities. Other fiscal obligations within the jurisdiction of common law as we will see from reading the Application Decree and the 2010 Tax Code are imposed on mining companies.

2 Application decree of the Mining Code

Just like the Mining Code (2001) and its Amendment (2010), the Application Decree contains articles that provide for fiscal obligations of companies. However, the most important cited include:

- Article 23(1), *"Any attribution of an exploration or exploitation permit is subject to the establishment of a caution whose amount is fixed by the present decree."* This caution should be deposited within thirty (30) days by letter of guarantee from an insurance company, by cash deposit in a local bank or by any other form recognized by the Cameroonian legislation on the matter.

- Article 135, *"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, authorizations and exploitation permits from being subject to various taxes and tax duties on any industrial or commercial activity."* Presented this way, it is clear that, in addition to the fiscal obligations specific to the mining sector (fixed fees, royalties, Ad Valorem tax or tax on extraction), companies are subject to related obligations such as the corporate income tax, the trading license, pay as you earn taxes etc...

- Article 136 provides the clarification that these obligations common to the mining sector are payable in a single installment against presentation of a receipt issued by the Public Treasury;

- Article 137 provides for the distribution of the Ad Valorem tax as follows:

a) 25% for the right to compensation of the population affected by this activity and whose distribution is as follows:

- **10% to the benefit of local populations;**
- **15% in favor of the concerned territorial jurisdiction;**

b) 25% in support of monitoring and technical control of the activities concerned by engineers and agents commissioned by the Directorate for Mining;

c) 50% to the Public Treasury.

Practical arrangements for the implementation of paragraph 2 of this Article are still expected for greater accuracy of the payment of royalties to local communities and councils. It is the joint ministerial order of MINMIDT and MINFI which is not yet signed and which thereby mortgages the effectiveness of sub-national payments and/or transfers¹⁸.

The Ad Valorem tax which is paid at the time of shipment of the goods by the holders of mining titles on notice drawn up by the competent authorities (see Article 141 (2)) is calculated according to the provisions of Article 144 (2) of this decree. Namely:

- **Precious stones (diamond, emerald, ruby, sapphire): 8%;**
- **Precious metals (gold, platinum, silver, etc ...) 3%;**
- **Base metals and other mineral substances: 2.5%;**
- **Geothermal deposits (spring water, mineral and thermo mineral water): 2%**

The modes of payment of fixed duties, specifically for industrial exploitation and exploitation of quarry substances are described in Article 138 of this decree:

<u>Nature of the payment</u>	<u>Attribution</u>	<u>Renewal</u>	<u>Transfer</u>
Quarry exploitation authorization	1 000 000 FCFA		
Quarry exploitation permit	1 000 000 FCFA	1 500 000 FCFA	2 500 000 FCFA/km ²
Reconnaissance permit	500 000 FCFA	1 000 000 FCFA	
Exploration permit	2000 FCFA/km ²	3000 FCFA/km ²	5 000 000FCFA
Mining permit	5 000 000 FCFA	10 000 000 FCFA	25 000 000 FCFA
Authorization to export and transit	50 000 FCFA		

Source: Application Decree of the Mining Code of Cameroon, 2002, Article 138

¹⁸ The term " payment" is used, strictly in reference to the provisions of Article 89 (2) of the Mining Code. However, because it is the Public Treasury that centralizes payments received, it would be appropriate to speak of " transfer".

- Article 139 determines the modes of payment of the surface fee:
 - Authorization for artisanal exploitation: 5 CFA francs/m²/ year
 - Authorization and quarry exploitation permit: 10 CFA francs/ m²/ year
 - Exploitation of geothermal deposits, spring water, mineral and thermo mineral water: 10 CFA francs / m²/ year
 - Exploitation permit: 50 000 CFA francs /km² /year

3 Tax Code 2010

According to Article 97 of the Mining Code, "*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, according to Article 99(1), "*Throughout the period of validity of an exploitation permit, regulated scheme rates of tax base, duties and taxes will be stabilized at the level they were on the date of award of the exploitation permit*".

Therefore, as tax payers, mining companies, in accordance with Articles 17 and 18 of the Tax Code are subject to the following tax principles:

Article 17: *For the calculation of the tax, any fraction of taxable income less than 1000 FCFA is neglected. The tax rate is 35%. ...*

Art 18(1): *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.*

(2) Taxpayers must also mandatorily provide the documents prepared in accordance with the OHADA accounting plan.

(3) 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.

(4) Also remain subject to these obligations, legal persons who have not opted for the corporate income tax or who are exempt from it. "

As tax obligations of common law, are prominently those of Individual Income Tax (IRPP). According to Article 25 "*Subject to the provisions of international conventions and those of Article 27 below, the Individual Income Tax is due from any person who has Cameroon as tax residence ...*" In view of the definition of tax residence as a result of this article, the staff of C&K Mining Inc. should pay the Individual Income Tax.

However, under the scheme of developmental projects in its sub-section "I - Corporate Business Plan", article 115 provides that "*Corporate Businesses eligible for special scheme of developmental projects benefit from tax advantages here after:*

- *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;*
- *Extension of the duration of loss carried forward from four (04) five to (05) years. "*

Following Article 115, article 117 and the "**Provisions relating to the Mining Sector**"¹⁹ of the Tax Code allows us to understand that the Mining Code, the contract or the agreement have already planned everything relating to the mining tax. We can note that mining companies have common law fiscal obligations as well as obligations which are specific to their activities.

4 Local Taxation²⁰

Local taxation is also part of the provisions of the 2010 Tax Code. It is also the subject of a law which is n°2009/019 of 15 December 2009. It covers all duties and taxes whose proceeds are allocated to Decentralized Local Authorities, in this case urban and rural councils and urban municipalities. These include (see Art 02): Municipal taxes, municipal surcharges on state taxes, local taxes, duties, regional taxes and other types of levies provided by the law.

The mining activity could be identified in the following legal provisions that enhance local taxation:

Article C7: Products of municipal taxes levied by the state come from the contribution of trading taxes, *the contribution of licenses*, the withholding tax, *the property tax on real estates*, the tax on gambling and entertainment, the transfer of property rights, *the car stamp*, the forestry and mining royalties.

¹⁹ Cf. Livre Premier – IMPOTS et TAXES du Code Général des Impôts 2010 en son Titre V – Fiscalités Spécifiques, Chapitre II

²⁰ Article 55 (2) of the Constitution requires that the CTD have a minimum of financial autonomy, that is to say, a budget and the free provision of financial resources.

Mining companies are required to pay the trading tax after the first two years of commercial production identified by joint MINFI/MINMIDT order. The car stamp is also part of these sources of municipal revenue.

Article C8: *"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 Act, is subject to the trading tax."* This provision applies to subcontractors and affiliates to C&K Mining Inc. but not the company itself, because, as noted in Article 97 of the Mining Code, "... *firms and mining companies remain exempt from contributing to the trading tax.*" And Article C12 of the Tax Code: *"1) New firms are exempt from the contribution to the trading tax for a period of two (02) years. 2) Is issued to newly exempted firms, on their request, a trading license marked "EXONERATED". "*

The main local taxes are described in Articles 02 and 07 of this Act.

Section 2: Case of the Mobilong project

Here we will visit the C&K Mining Inc. Mining Agreement and the Decree on the "Mobilong" exploitation permit.

I. C&K Mining Convention

Fiscal obligations of C&K Mining Inc. are contained in Articles 22, 23, 24 and 30 of the agreement signed between the company and the State of Cameroon.

- Article 22 presents the overall tax regime applicable to C&K Mining Inc. and its subsidiaries;
- Article 23 for its part, provides for Mining Taxes and Royalties. In this regard,

(1) C & K Mining Inc. is subject to the payment of the following taxes and mining duties:

- *Fixed Fees for the grant, renewal, transfer of exploitation permits;*
- *Annual area Taxes established according to the surface of the permit;*
- *The percentage of the "FOB" value of the production operations.*

(2) 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.

Article 24 provides for the *"Tax and customs regime applicable during the preparatory work phase."* These provisions to be those identified below

(1) C&K Mining Inc. will benefit during the preparatory workphase from:

- *The exemption from registration rights relating to mining operations except those relating to leases and rentals for residential use;*

- *The exemption for the following taxes:*
 - *Corporate Taxes (IS);*
 - *Taxes on industrial and commercial profits (B.I.C);*
 - *Proportional Taxes on Income from Capital (T.P.R.C.M);*
 - *Special Tax on Remunerations paid abroad;*
 - *Value Added Tax.*

(2) C&K Mining Inc. shall benefit, during the preparation phase, from the exemption of taxes and custom duties on equipment, materials, and inputs

(5) The equipment, materials, and machines that were used in the exploration phase and to be used in the exploitation phase should be included in the list of operating equipment.

(6) Any transfer to third parties of the aforementioned materials and equipment is subject to prior payment of customs duties and taxes thereon;

(7) Notwithstanding the provisions mentioned above, 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, the said exploitation is subject to the common law tax regime as defined by the Mining Code, the Tax Code and the customs code;

(9) For the application of the provisions referred to in paragraph 6, 7 and 8 above, it is the obligation of C&K Mining Inc. to hold two separate accounts, one of which related to the exploitation of the alluvial part and the other concerning works of research and construction of the conglomeratic part.



Mobilong diamond. Photograph taken by Michel BISSOU

Article 30, for its part, finally, clearly provides for the possibility of "**Suspension of rights and benefits granted by the agreement**" in case of non-compliance with fiscal obligations.

In its paragraph 1, the untimely payment of all taxes, charges and fees, after notice in accordance with the General Tax Code and under the conditions laid down in this agreement leads to sanctions.

It emerged from this paragraph that the obligations which are applicable to C&K Mining Inc. are binding and non-compliance to their fiscal obligations by the company can lead to sanctions specified by the legal provisions.

II. The decree instituting the Mobilong mining permit

It is mainly articles 10 and 11 which address fiscal obligations. These obligations are those of fixed duties relating to the rehabilitation of the environment account (Article 10 (2)) and to the caution that has to enable the payments due under the Mining Code (Cf. Article 11 in its paragraphs 1 and 2).

Chapter 4: MONITORING THE FISCAL OBLIGATIONS OF C&K MINING INC.

This chapter examines the compliance or non compliance of C&K Mining Inc. to their fiscal obligations previously identified. A brief analysis of trends with regard to compliance with these obligations will also be conducted. However, we note that we have identified the many exemptions from which the company benefits.

Common law taxes and fees

Since the first commercial production has not yet been established by a joint order signed by the MINMIDT and MINFI, it is deductible that tax and custom obligations of the company are reduced. Thus the business tax and other taxes (IS, Taxes on Industrial Benefits, Proportional Taxes on Income from Capital (TPRCM), VAT, special tax on salaries paid abroad, VAT, registration fee for mining operations except those relating to leases and rentals for residential use, etc..) are not yet paid.

The interest of this order enables to know 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 this joint order.

The surface royalty

The annual surface royalty has as a tax base, the surface area of the exploitation permit. Its rate is 50 000 FCFA/Km²/Year. Thus, C&K Mining Inc. is expected to pay annually (50 000 FCFA x 236.25 km²) = 11,812,500 CFA francs per year.

However, according to the company, this fee is not being paid. The reason they bring forward is that it is still awaiting the finalization of ownership rights that is, emphyteutic lease.

Public Administration concerned with mining issues is divided on this issue. The exploitation permit and the agreement have already been signed and clearly state that the "Mobilong" permit that C&K Mining Inc. holds is deemed to be equal to 236.25km² and below are the perceptions of the various administrations

- ❖ To officials of the Ministry of State properties and land tenure, it is the land title and more precisely here the emphyteutic lease which grants ownership of the site to C&K Mining, the procedure to grant this is still ongoing.
- ❖ To the Territorial Administration, there is no doubt that the concession is already granted to C&K Mining Inc. As evidence, "it was left to the company to build the mine" said the Divisional Officer of Yokadouma.
- ❖ For an officer of the Ministry of Mines, "it is the administrative bottlenecks that are blocking the process because it is unacceptable that since the time the Agreement and the Decree were signed, the lease has not yet been legally done. Many expectations on mineral exploitation are formulated by the Government. We each have at all levels interest in having everything going on according to the norms".

Observation made of the non-payment of the surface royalty during the operational phase in progress, there is no need to ask for payment of the surface royalty in the exploration phase. Indeed, notwithstanding the provisions of Article 139 of the application decree of the Mining Code, which sets the payment terms of the surface royalty in the exploration phase, it is clear that it was not paid.



Source: *Mobilong site, one of the alluvial parts Photograph taken by Michel BISSOU*

From the monitoring of the obligation to pay the surface royalty, it comes out that the existing inconsistencies between the mining code and the legal framework governing land issues in Cameroon are to the benefit of C&K which cheerfully takes advantage of the situation to justify the nonpayment of the surface royalty.

I. Proportional fee: Ad Valorem Tax

The Ad Valorem tax which is a tax proportional to production was paid during the first export as evidenced by Schedule No. **CMR 000001/2013/SNPPK/SNPAPK/BEED/E1E2** labeled *Certificate of Evaluation and Expertise of Rough Diamonds*. Its value was 5,830,495 CFA

francs, corresponding to 08% of the value of production, that is evaluated at 72 881 187.5 FCFA during the diamond export.

Monitoring haven sought, not only to verify whether the Ad valorem tax is paid, it also wanted to see if this fee was received by municipalities and local communities. We noticed that this was not the case ever since the tax was paid in January 2013.

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 local communities and the local council. But the transfer of portion of the revenue for the state treasury and the ministry of mines supervising the project has no issues of effective transfer.

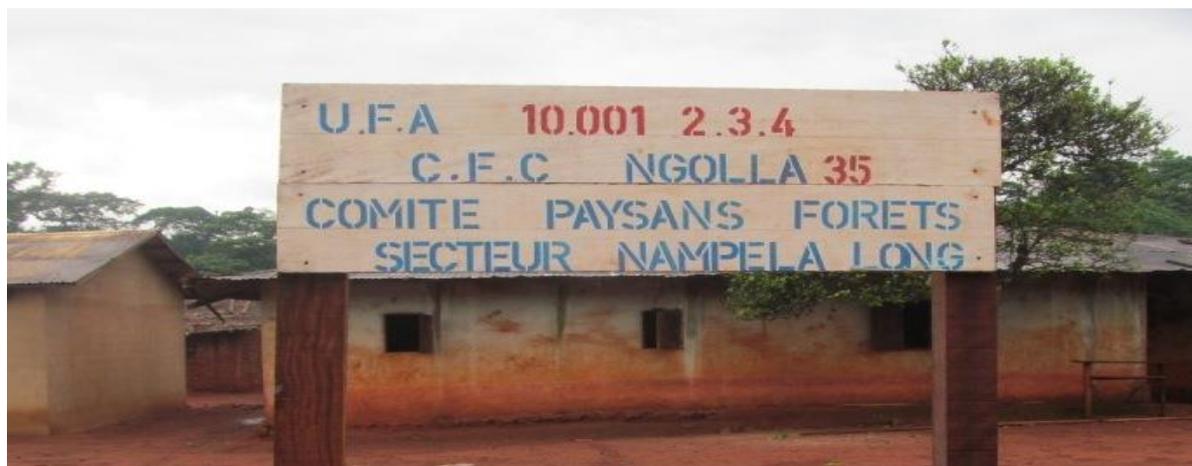
However, we learned that although the joint order is not yet signed, transfer at the sub-national level can be done first of all via the signing of a "**decision**" by the MINFI and the establishment of a nominal roll of staff from Yaoundé with the title of "*revenue manager*". Despite this procedure, the town and surrounding communities have not yet benefited from the Ad Valorem tax from the exploitation of the Mobilong Diamond.



Baka children from Ampayah village. Photograph by Michel BISSOU

One item that drew our attention in the monitoring of obligations of the Ad valorem tax of the Company is the participatory mapping of villages bordering the mine. Some villages do not feel they have been taken into account as communities directly affected by the project. This is

the case of the Ngola village which specifies that the mine's access road passes through a community Forest Management Unit (FMU).



Sign board of the Forest Management Unit 10.001 2.3.4 in the Mang village. Photograph taken by Michel BISSOU, April 2013

V. *Custom duties related to exportation and operating charges of SNPK*

According to receipt n° **CMR 000001/2013/SNPPK/SNPAPK/BEED/E₁E₂** establishing the *Certificate of Evaluation and Expertise of Rough Diamonds*, it appears that the company paid its custom duties (1 457 630 FCFA) 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 (1.822.030 FCFA) equivalent to 2.5% of the monetary value of production

Conclusion

At the end of the monitoring of fiscal obligations of the mining company C & K Mining, it appears clearly that there exists:

- i. a "**centralization of information**". At the local level (Regional Delegations of the East and local municipality) any information relating to the payment of C&K Mining Inc. is not available;
- ii. a "**low traceability of revenues**". The Program for Securing Mines, Water and Energy Revenues (PSRMEE) did not allow us to trace the information for an effective monitoring;
- iii. A "**non-payment of the surface fee by the company**". Whether it concerns the payment of this fee on the obtainment of the exploration permit (2006) or the exploitation permit (2010), that has not been done;
- iv. Divergent perceptions **on land issues of the "Mobilong" permit by the administrative authorities**". It concerns the MINTAD, MINDCAF and MINMIDT. Treatment of files relating to the emphyteutic lease of the Mobilong permit is certainly not sufficient to solve the question of the surface royalty but it is necessary

- for the launching of the compensation procedure by the company for the population that resides near the mine;
- v. Inadequate monitoring by administrative authorities of the fiscal obligations of the company. In addition to the case of the surface royalty, should also be noted that of the ad valorem tax that has still not reached the municipalities and local communities. The specified penalties and sanctions are not applied;
 - vi. **"Administrative delays in the signing of the different MINFI/MINMIDT joint orders"** including the order *establishing the first commercial production* and that *fixing the mode of transfer of the ad valorem tax at the local level* ;
 - vii. An **"insufficient monitoring capacity of the different actors "** mainly because of a limited knowledge of mining taxation and the near inexistence of resources (logistic, human, financial).

Recommendations

Out of the monitoring of fiscal obligations by C&K Mining Inc. within the context of its Mobilong diamond exploitation project, the following recommendations can be made :

- i. **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*²¹ ;
- ii. **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;
- iii. **Sign the MINFI/MINMIDT joint ministerial order on the transfer of sub national revenues:**
 - Noticing the first commercial production (Art 96 and 97 of the Mining Code)
 - Fixing the mode of transfer of the ad valorem tax at the local level (Article 89 of the Mining Code)
- iv. **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;**
- v. **Execute and reinforce the penal provisions already provided for, in case of notice of non-compliance with tax obligations.**
- vi. **Adopt a flexible tax model, by project phase** , would allow a better monitoring of tax obligations and a greater optimization of tax revenues;
- vii. **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;
- viii. **Strengthen the capacities of the different actors in charge of the monitoring, in a continuous matter and using specific themes.**
- ix. **Improve on the monitoring of production by:**
 - **Setting up a decentralized monitoring body of for production** which integrates all the different stakeholders: competent public administration, partners to development,

²¹ Article 14(1) of decree 2012/432 of 01/10/2012 on the organization of the MINMIDT

extractive resources' international governance initiatives, civil society organizations and local residents;

- **Publishing and systematically disseminating to the large public, information about payments and sub national transfers of the production, processing and marketing of mineral resources.**

CONCLUSION AND RECOMMENDATIONS OF THE STUDY

Monitoring local content and fiscal obligations of mining companies in Cameroon produced mitigated results. In view of the legal provisions, it is difficult to assess compliance or not of obligations of local content in the absence of a clearly defined methodology in the Cameroonian mining sector. Also, companies take advantage of tax exemptions as well as gaps in legislation due to a poor alignment of the institutional framework, to obtain low tax bases.

The main recommendations that can be made are:

1. There is need to define quantitative, qualitative, reliable and verifiable indicators of local content;
2. Need for a detailed schedule of the implementation of local content requirements;
3. Formulate sanctions via a gradual regime of sanctions for non-compliance with local content obligations;
4. Strengthen capacities of the national workforce as well as suppliers and other national service providers on jobs related to mineral exploitation;
5. Involve local and indigenous communities in the definition and the formulation of objectives of local content;
6. Create a commission for monitoring and evaluation of the execution of fiscal obligations and local content;
7. Strengthen the capacities of different agents in charge of monitoring local content and fiscal obligations;
8. Harmonize the different laws and legal frameworks linking land tenure issues to mining taxation;
9. Respect, or reinforce penalties already specified in case of non-compliance with tax obligations by a company;
10. 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;
11. Formulate a tax model for the mining sector, updated and adapted to local, national and international contexts;
12. 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;
13. Improve on the monitoring of production;
14. Define a uniform sub regional framework applicable to all mining projects taking into account the tax obligations and those of local content: contract type, harmonized mining code;
15. Publish and systematically disseminate contracts/agreements in the extractive industry.

ENDNOTES

1. Decree of 07/21/1932 establishing in Cameroon Land Tenure Registration
2. Ordinance n°74-1 of 06/07/1974 fixing the land tenure
3. Law n° 80-21 of 14/07/1980 amending and completing certain provisions of Ordinance n° 74-1 of 4 06/07/197
4. Law n° 92-007 of 14 August 1992 on the labor code in Cameroon
5. Law n° 001-2001 of 16 April 2001 on the Mining Code
6. Law n° 2002/848 PM 26 March 2002 on the application decree of the Mining Code 2002
7. Law n° 2004/017 of 22 July 2004 on the orientation of decentralization
8. Decree n° 2008/365 of 8 November 2008 on the organization of the Ministry of Finance
9. Law n°2009/019 of 15 December 2009 on local taxation
10. Confidential contract: to end the secret agreements in the extractive sector, RWI, 2009
11. Cameroon EITI report to reconcile mining payments and receipts of the year 2009
12. Tax Code 2010
13. The Amendment of the Mining Code 2010
14. Decree n° 2010/374 of 16 d e c ember 2010 on the establishment of valid exploitation permit for diamond and related substances
15. Cameroon EITI report to reconcile mining payments and receipts of the year 2010
16. Environmental Impact Assessment of the exploitation project of diamond, gold and other precious metals in Mobilong-Yokadouma, East region, Volume 1: Main Report, Soft Business Management Consulting Group (ISBMCG), 2010
17. Environmental Action Plan of the Mobilong project, 2010
18. Mining Agreement between the Republic of Cameroon and Cameroon and Korea Mining Inc.
19. Cameroon EITI report to reconcile extractive payments and receipts for the year 2011
20. Enforce the rules, RWI 2011
21. Bill n°909/PJL/AN on the Gas Code, 2012
22. Decree 2012/432 of 01/10/2012on the organization of MINMIDT
23. Revenue management from natural resources at the level of local authorities in Cameroon, RELUFA, 2012
24. Planning of the Monitoring of Contracts, World Bank Institute, 2012
25. Schedule n° CMR 000001/2013/SNPPK/SNPAPK/BEED/E₁E₂ on Certificate of E valuation and Expertise of Rough Diamonds, National Permanent Secretariat of the Kimberley Process, 2013
26. Governance Index of Natural Resources 2013, RWI, 2013
27. Web sites:
 - www.eiticameroon.org
 - www.impots.cm
 - www.prc.cm