

The Social Responsibility of Mining Companies in Congolese Legislation: Expression of Equitable Sharing of National Resources

Tuponaye Ruvugiro Germain

PhD Student, Open University of Tanzania

Abstract:

Corporate social responsibility (CSR) in the mining sector in the DRC is a crucial subject, given the country's abundance of natural resources and the resulting socio-economic challenges. CSR in this context refers to the commitment of mining companies to operate ethically and sustainably, taking into account the impact of their activities on local communities and the environment. One of the main challenges of CSR in the DRC is the equitable sharing of national resources. Companies must not only respect internal and international regulations, but also contribute to the socio-economic development of the regions where they operate. This includes job creation, support for local infrastructure, education, health, etc. However, effective implementation of CSR is often hampered by governance issues, corruption, and lack of transparency. Local communities often express concerns that the economic benefits derived from mining do not sufficiently benefit the population. For CSR to be truly effective, it is essential to establish a constructive dialogue between business, government and local communities. This may involve benefit sharing initiatives, community development projects and better resource management to ensure that mineral wealth contributes to sustainable and inclusive development for all Congolese. Beyond that, we also need binding measures against mining companies that do not fulfill their obligations within the framework of CSR. These measures also include the mechanisms of appeals.

Keywords: CSR, Mining Companies, National Resources, Sustainable Development, Human Rights, Community, Environment,

I. Introduction

Corporate social responsibility (CSR) is a concept that encompasses a company's commitments and actions aimed at promoting sustainable and ethical development, beyond its simple legal obligations.¹ It revolves around taking into account the environmental, social and economic impacts that its activities can generate.² CSR recognizes that businesses, as economic actors, have a role in society that goes beyond the simple pursuit of profit. They must, therefore, integrate social and environmental concerns into their business strategies and their relationships with stakeholders, including employees, customers, suppliers, local communities and shareholders.

¹Asan V w, *Corporate social responsibility (CSR): The role of government in promoting CSR*, journal of the knowledge economy, vol. 15, 2024, Pp 7428-7454

² Ibid

In this context, companies are encouraged to adopt practices that respect human rights, reduce their ecological footprint, promote transparency and contribute to the well-being of their employees. CSR is based on several pillars: corporate governance, business ethics, respect for labor standards, preservation of the environment, as well as local development and economic contribution. Although the concept of CSR is global, it is often influenced by the legal and socio-cultural context of each country. Thus in the Democratic Republic of Congo, CSR takes on a particular dimension, particularly in the mining sector where questions of transparency and respect for human rights are at the heart of social concerns.

Corporate social responsibility (CSR) is a growing concept that refers to a wide diversity of corporate strategies and initiatives based on self-regulation.³ The expansion of its scope, gradually integrating local development objectives, is the subject of lively debates. In this debate, from a sectoral and regional perspective, we question the real potential of CSR to sustainably respond to the economic and social development problems of communities hosting mining projects in Africa.

Corporate Social Responsibility (CSR) is fully part of the framework of sustainable development. And it is a concrete expression of this applied to the business world. The concept of sustainable development is based on three fundamental pillars: the economy⁴, the social⁵ and the environment⁶. Likewise, CSR pushes companies to integrate these three dimensions into their strategies and practices, beyond the simple search for profit. The integration of ethical and transparent practices into business management is also a key aspect of CSR, which meets the sustainable development objective of a fairer economy.

This reflection aims to find out how corporate social responsibility can be seen as a means of ensuring a fair distribution of national wealth, while respecting the rights of local communities and promoting sustainable development?

In the DRC, although to date no law formally sets the framework for the practice of social responsibility, this reflection will analyze the internal legal framework relating to CSR by establishing the existing link between it and the sustainable development of local communities. Secondly, it analyzes challenges to be met and propose possible solutions for the implementation of CSR.

II. Legal framework relating to CSR an expression of sustainable development of local community

1. Overview of the CSR obligations under the Constitution

Article 58 of the DRC constitution states that “All Congolese have the right to enjoy national wealth. The State has the duty to redistribute them equitably and guarantee the right to development.”

The redistribution of wealth can be defined as all the operations which contribute to the sharing of wealth created during a given period; the distribution of income results from participation in production and redistribution operations.⁷ Essentially, the argument linking the sharing of wealth can be formulated

³Hamed A et al, *Corporate social responsibility and self-regulation*, MM science journal, n°10, 2016, Pp 1121- 1126

⁴ Companies are encouraged to adopt business models that ensure their long-term viability, while creating value for all stakeholders (customers, employees, communities, shareholders).

⁵ CSR involves paying particular attention to workers' rights, the promotion of equality, diversity and health and safety at work. Responsible companies also invest in the development of local communities, by promoting access to education, supporting social initiatives and strengthening social cohesion.

⁶ CSR encourages companies to adopt environmentally friendly practices, such as reducing greenhouse gas emissions, sustainable management of natural resources and even reducing waste. Businesses are encouraged to innovate in clean technologies or production practices that minimize environmental impact.

⁷Carles B, *Democracy and redistribution*, Cambridge University press, Cambridge, 2003, p.24

as follows: “natural resources play a capital role in the economic development of countries and the well-being of their inhabitants”. They are used to feed the population, are used as an energy source and as a raw material. It is used in the manufacture of most consumer goods. Given that they are produced by nature without being the result of human labor, it would be normal that they belong collectively to all humanity and that they are managed for the benefit of all.⁸

Economic development will only be sustainable for businesses if the fruits of this growth are shared equitably to build the social peace necessary for businesses and to stimulate internal markets and if it respects the environment to preserve natural resources.⁹

Thus, being aware of the wealth that the DRC abounds and enjoying the prerogatives of ensuring that citizens enjoy full rights as article 58 of the constitution as specified above, the legislator advocates good redistribution of the latter by interacting with public services in the management of resources from extraction to marketing.

In countries where growth is satisfactory but benefits the poor much less than others, everything argues in favor of a redistribution of resources from the top to the bottom of the income pyramid.

By giving poor children access to quality education and financing it by taxing the richest, a country reduces inequality while boosting its future growth and reducing poverty. Poverty reduction measures also reduce the gap between rich and poor in countries with high inequality, or social and political tensions or the rise of populist regimes could harm long-term growth. It is one thing to know that a more equitable distribution of resources is favorable to development.

Almost excluded from the international political debate for years, economic inequality is now at its heart. In advanced countries, the apparent impact of globalization and technological change and the cost of countering these forces are becoming a growing source of concern. In developing countries, where inequality is even more pronounced, the problem is whether it constitutes a major obstacle to growth and poverty reduction. In both cases, income redistribution can not only improve equality but also stimulate growth and in developing countries accelerate poverty reduction. And, therefore, let us understand that respecting the obligations of corporate social responsibility also constitutes a way of redistributing wealth equitably as advocated by the constitution in the aforementioned article.

And so the constitution provides for the right of everyone to enjoy national wealth. This entails that the State has the duty to redistribute the wealth equitably and to safeguard the right to development and call for the enactment of laws to guarantee this enjoyment.¹⁰ In addition, article 53 of the DRC Constitution establishes the right to a healthy environment that is favorable to the development of every person. In recognizing to all persons the right to defend the environment, the constitution enacts, however, the obligation to everybody, including mining companies, to protect the environment and health of the population. Thus, to respond to the obligations above-mentioned in the mining sector, the DRC has enacted laws that should frame the mining activities with regard to the need of local populations and protection of the environment against extractive activities. In this context, any pollution or destruction resulting from their activities gives rise to compensation and/or reparation’.¹¹

⁸ Ibid

⁹ Tatyana P.S, *Beyond economic growth: An introduction to sustainable development*, second edition, The world bank, Washington DC, 2004, p.20

¹⁰ DRC Constitution, article 58.

¹¹ DRC Constitution, Article 54(2).

Apart from the above-mentioned provisions, there are some other rights recognized in the constitution which are relevant to CSR. As an example, mining activities impact children, environment with incidence to health, food, drinking water, and housing... Article 47 of the constitution protects the health and food security, article 43 recognizes the right to education, article 24 regulate the right to information, article 48 relating to access to drinking water. The fulfilment of human rights obligations as mentioned above can lead to the development of local communities.

It has been clearly shown that the bill of rights binds both the state and individuals, including mining companies. However, all the constitutional provisions applicable to CSR have been integrated into different laws in which the Mining code and the Environmental Code are found. The following development will give an overview of this aspect.

2. Overview of the CSR under the Congolese Mining Code and Environmental Code

From the social and environmental aspects of CSR, two main legal documents define the obligations or responsibility of mining companies in the DRC: the Mining Code adopted in July 2002¹² but revised in 2018¹³ and the Law on fundamental principles on the protection of the environmental.¹⁴ The Mining Code accompanied by a set of decrees¹⁵ sets out rules governing the cycle of mineral activities starting from the acquisition of mining permits to their termination.¹⁶ Along with its additional regulation, it establishes a wide range of guidelines that aims at protecting the environment. It introduces the environmental certificate as one of the requirements to obtain an exploitation permit.¹⁷

In DRC, one of the requirements for obtaining the exploitation license by mining actors is the submission of ‘a plan that shows how the project will contribute to the development of the surrounding communities in the mining area of operations’.¹⁸ This requirement instituted by the Congolese law-maker gives the responsibility of mining exploits to contribute to the development of local communities.¹⁹ The analysis of the above provision leads to confirm that the mining companies and exploits become the duty bearer of the right to development of local communities. Although this provision of the mining code transfers the primary responsibility of the states to the mining companies, the state, and its organs still maintain control over the realization of this broad right.

Moreover, legislation does not explain the content of the plan for development. It gives the option to mining companies to analyze the context of the area they will operate in to propose a plan for the development of this area. The obligation of mining companies to contribute to the development call for the analysis of the right to development as established under various human rights instruments. In fact, this obligation of mining companies to contribute to the development of local communities is as broad as the right to development is. It remains controversial and contains a variety of components. Although the right to development contains a moral and reactionary basis,²⁰ it, goes beyond the economic importance.

¹² Law n°18-001 modifying and completing the la Law n° 007/2002 of 11 July 2002 relating to Mining Code

¹³ Ibid

¹⁴ Law No 11-009 of 9 July 2011 on Basic Principles Relating to the Protection of the Environment

¹⁵ Decree N ° 038-2003 of 26 March 2003 relating to mining regulations as amended and completed by Decree 18-024 of the 08 June 2018.

¹⁶ Kabila (n41 above) at 19.

¹⁷ Mining Code, Article 42. And Article 71 litteras b, c, d, e, f, g et h

¹⁸ As above, article 69(g).

¹⁹ As above, article 69(g).

²⁰ J Donnelly ‘In search of the unicorn: The jurisprudence and politics of the right to development’ (1985) 15 California Western International Law Journal at 489-494.

It embraces the social, cultural and political progress and interaction' which embodies the entire spectrum of human rights.

Kihangi found that this right is²¹

not an end in itself but a process that leads toward a goal...this right to development fits coherently into and is interdependent with, all other international human rights, especially to the right to life, peace, security, freedom, justice, and a healthy environment.

This supposes that the development plan of mining companies should consider all those sectors and then contextualize them in the area they operate. However, in most cases, mining companies sometimes fail to draw a line between the real needs of the population for its development and focus only on activities they want. Jaynet asserts that²²

Mining companies sometimes base their decisions on what they think people want but in effect, it is not what is needed. For instance, companies can decide to implement agricultural programs instead of programs that will give the young people and the youth lifelong skills such as capacity building skills as (carpentry, masonry, mechanical and simple technical expertise) that will be usable beyond the mine's operations after the reserves have been depleted and the mines closed down. These constitute more of a sustainable kind of occupation.

Regarding this, the Congolese legislator has established the duty to companies to consult with local communities in the process of drafting the plan for their development.²³ This must then pass by the identification of the priority needs of the communities by the local committee of a development composed of the local authority and representatives of local communities and the holder of mining rights.²⁴ The results from this identification should get the community approval of identified priority needs through popular meetings.²⁵ Among the needs of local communities, the improvement of employment opportunities, job creation, infrastructure improvement, education, and health sector improvement.²⁶ For instance, article 212 of the Mining code state that the holder of the mining rights or permanent quarry exploitation license is required to build all the infrastructures necessary for the activities related to the permits or the environmental authorization.

This provision of the mining code is not specific enough because it does not set out the meaning of 'infrastructures necessary'. Regarding the nature of the duty to the enterprise to contribute to the development of communities, the companies can build roads to facilitate the transfer of the mining products from the mine site to the cities. This road can also benefit to local communities to bring their agriculture products from the field to the cities. In addition, companies can build health centers necessarily for their employees but such infrastructure is also beneficial to other members of the local communities.

This is justified by the fact that the exploitation of mineral resources raises the important distributional issue of how revenues (...) from mining are re-invested. In addition to using the revenue to finance

²¹ Bindu K. K., 'Environmental and Developmental Rights in the Southern African Development Community with specific reference to the Democratic Republic of Congo and the Republic of South Africa's unpublished thesis, University of South Africa (2010) 110

²² Kabila (n41 above) at 61.

²³ Mining Rule, Article 414 bis.

²⁴ Ibid

²⁵ Ibid

²⁶ An infrastructure, poverty, Reduction and jobs, retrieved from <https://www.ilo.org> (on 23 October 2024)

infrastructure and essential social services in mining areas, investment in alternative forms of economic development will be necessary.²⁷

Mining investments have a great potential. From the social point of view, they provide a positive impact on human capital because mining companies are able to provide training and education; factors for increasing human capital. Thus the infrastructure should facilitate access road construction, educational and health infrastructures²⁸ which are necessary to local communities because of their potential for long term use.²⁹ What counts when establishing the morality and health of a society is not so much the overall wealth of a given society but rather the extent to which this wealth is distributed: the more wealth is equitably distributed, the better the health of the population is guaranteed and directly the socioeconomic status is improved.³⁰

The environmental aspect of CSR highly preoccupies the mining regulation in DRC. The State and its components, as well as any individual or organization, must protect and participate in the environmental quality improvement. The Environmental Protection Law introduced the obligation to conduct an environmental and social impact assessment, an environmental audit, and to establish an institutional framework to manage this. The protection of the environment is materialized by the requirement imposed to conduct the Environmental Impact Study (EIS).³¹ The requirement is not only a tool for the quest for sustainable development but constitutes an obligation for any application for authorization to carry out a project likely to directly or indirectly damage the environment. Mining projects here are even more critical from pollution and the destruction of ecosystems. The environment in CSR is protected by two principles: the prevention and restoration.

III. The challenges to be met for the implementation of CSR

Every mining company has a legal responsibility to implement projects aimed at developing communities located in the area they operate.³² For doing so, mining companies must propose themselves the plan for community development with clear cut activities to engage in. Although the development plan for communities is established after consultation with the representatives of the latter, there is no authority to impose activities to be carried out by companies. After establishing the development plan, the mining companies must only ensure that the implementation of it is effective in accordance with the environmental report and social impact report which is the result of the study which is one of the main requirements for obtaining a mining permit or license for exploitation or exploration. This part shows how mining sites are often located in rural zones. Those zones are characterized by poverty, so that mining activities seem to rhyme with poverty and conflict, especially since it often

²⁷ CN Boocock 'Environmental Impacts of Foreign Direct Investment in the Mining Sector in Sub-Saharan Africa' Presentation paper on the OECD global forum on international investment: Conference on Foreign Direct Investment and the Environment, Lessons to be Learned from the Mining Sector <https://www.oecd.org/env/1819582.pdf> (accessed 22 September 2019).

²⁸ Farole and others 'Context, Objectives, and Methodology' in The Farole and D Winkler (eds) Making Foreign Direct Investment Work for Sub-Saharan Africa Local Spillovers and Competitiveness in Global Value Chains (2014) 44.

²⁹ *ibid*

³⁰ C Mwaanga 'A Study of the Economic and Environmental Impacts of Foreign Direct Investment in the Mining Sector in Zambia' (2017) 9 Journal of Business Administration and Education.

³¹ Article 331, 407, 450 of the Mining Regulation.

³² Kendra E.D, Community development requirements in mining laws, The extractive industry and society, vol1, Issuer 2, 2014, Pp 200-215

involves land conflicts. Besides, production areas often find themselves in institutional contexts undermined by corruption, so that mining has been associated with these practices. In addition, the significant environmental impacts of mining include toxic products used for extraction, high water, and energy consumption for production and physical degradation of soil composition, textures and landscapes. All these sectors are related to sustainable development.

However, the development of local communities is still far from what is expected. Regarding the socio-economic situation of riverine communities, it has been reported that in most Eastern Congo mining sites, local populations do not have access to better schools, quality care or even road infrastructure.³³ The research finds that most development plans proposed by mining companies do not necessarily seek to achieve the need of local communities. Some are not suitable to meet developmental challenges communities face.

1. Social impact of Mining activities on human rights and the development of communities in DRC

There are no specific activities or defined specific measures imposed on mining companies for the development of communities. The development has a variety of components and constitutes an ideal situation that rests on a multitude of factual and legal elements.³⁴ Referring back to the ideas introduced earlier on the linking mining sector to the development of local communities, the CSR of mining companies is used to establish a framework for broader private sector involvement in poverty alleviation and development of communities.³⁵ In exploring the role of corporations in the development of communities, Uwen argued that oil companies are expected to provide facilities to communities for them to access information, water and sanitation, education and professional training including technology transfer; access to health care, agriculture, and business development as well as infrastructure including rural electrification and roads.³⁶ Such expectations that amount to the CSR in extractive industries are paramount regarding the extent to which the development of communities can be understood, and the effects of extractive activities on the lives of local populations. However, the first stage of effectiveness of CSR is to provide information to local communities for them to be aware of the extent to which their rights are protected and how they can be claimed.

2. Right to information and community participation in CSR

The right to information in CSR for local communities is established under the obligation of transparency of mining companies while the right to participation is enriched under the obligation of the companies to consult local communities.³⁷ As earlier stated, mining companies have a range of obligations vis-à-vis the riverine communities. In the first view, the right to information and the right to be consulted must be fully respected regarding the nature of mining activities and rights conferred. The mining project presents numerous risks and threats to human rights, which must be taken into account by the company in compliance with national legislation. It is realized that ‘one of the challenges

³³WRM ‘La problématique de l’Exploitation minière en province du Nord-Kivu : Situation actuelle et analyse sur les questions environnementales’ retrieved from <https://www.wrm.org.uy> (on 25 April 2024)

³⁴Tomuscha C, *Human rights: Between idealism and realism*, Academy of European Law / European University Institute / Oxford University Press New York, vol. 51, 2003, p. 34.

³⁵Uwem I E ‘poverty reduction in resource-rich developing countries: what have multinational corporations got to do with it?’ *Journal of International Development*, vol. 17, 2005, p.921.

³⁶ Ibid

³⁷ Mining Regulation, Article 414 bis.

communities face is the lack of information about their rights and the law that applies to mining³⁸ due to the complexity of the mining law and the governance of the mining sector. This is why mining companies should be transparent and should consult the community to take any decision that can impact the local population.

In this process, the government, companies and civil society are involved.³⁹ This requirement is beneficial to the local population because knowing how much money is gained by the companies and the details of the project for their development is the first step for accountability for the realization of the economic rights of the population.⁴⁰ Transparency enhances good governance, improving the accountability in the extractive sector⁴¹ through the collection, verification, reconciliation, and publication of all payments by public and private enterprises on the State account.

In accordance with article 258 of the Mining Code, the holder of a mining license is required to establish, free of profit and profit tax of 0.3 % of the revenue for the year during which it is performed. This provision seeks to rehabilitate the site on which the mining operations are conducted. The endowment must be fully available to local communities before the end of the financial year following the year in which it was formed. Mining companies in the DRC have been criticized for not disclosing information regarding such contributions.⁴² Many reports have raised the claims by local population against mining companies according to the lack of clarity of information about undertaken mining activities. Among them, the investigation report on the Bisie Tin⁴³ project explains coherently this aspect. For instance, the companies AlphaminBisie Mining agreed to not disclosing their commitments, in accordance with the human rights, vis-à-vis local communities, their priorities submitted to the government and the realistic timetable for the implementation of the development plan to local communities in North Kivu.⁴⁴ This lack of transparency does not facilitate the follow up of the realization of the obligations of companies for community development.

In addition to that, reports have been published denouncing their involvement in frauds which is jeopardizing their collaboration with local communities as well as from the Directorate for the Permanent Evaluation Committee to look into the Environmental and Social Impact Assessment filed by the applicant in the Cadastre.⁴⁵ The right to information in the mining companies is also helpful both to companies and local communities. It helps local communities to know the extent to which their rights

³⁸ Lawyers for Human Rights 'Mining and your Community: Know your Environmental Rights', retrieved from <https://cer.org.za> (on 30 April 2024)

³⁹ Article 1(54bis) of the Mining code

⁴⁰ Mbuyu Kabwe T'Le mouvement de révision des codes miniers en Afrique: l'exemple de la République Démocratique du Congo' Master thesis, PanthéonUniverity, 2014, p. 42

⁴¹ Morand C'Pétrole et industries extractives, la société civile africaine se mobilise' Annuaire suisse de politique de développement, vol 26, 2017, p.100

⁴² Initiative Industries Transparency Initiative 'Informations Contextuelles sur les Entreprises Extractives de l'Etat', retrieved from <https://eiti.org> (on 26 April 2024)

⁴³ A Muhima 'ALPHAMIN BISIE MINING /SA : rupture dans la continuité : Le géant projet minier Bisie Tin Project face au dilemme du consentement libre et éclairé des populations de Walikale 20/03/2017' retrieved from <https://www.escri-net.org> (on 26 April 2024)

⁴⁴ Franciscains International 'Vers un traité international pour une responsabilité effective des entreprises pour les abus de droits de l'homme cas du site minier de Bisie dans le territoire de Walikale en République Démocratique du Congo' retrieved from <https://franciscainsinternational.org> (on 01 May 2024)

⁴⁵ According to article 208 of the Mining Rule, the Permanent Evaluation Committee is composed of the Congolese Environment Agency and the Protection Branch of the Mining Environment.

are evaluated. This prevents them from expecting more than what they have to receive from companies. In most of the case, local populations expect the end of misery from the implementation of the companies. Although this expectation is not totally wrong, it is better for them to not have an exaggeration in their thoughts. It is acknowledged that mining companies can contribute to the reduction of poverty by employing some members of the communities, establishing philanthropic activities in the communities or paying the tax but their contribution is usually proportionate to their capacity in doing so regarding some complex elements.

3. CSR and the right to participation

Mining companies have the obligation to consult local communities when they devise development plan, to disclose all information relevant and act in a transparent way.⁴⁶ Thus, the development plan must be specified in the specifications which is a document signed as an agreement between the companies and local communities. According to article 414 bis of the mining rule, the specifications establishes the priority needs of the communities by the local development committee composed of the local authority and representatives of the local communities and the holder of mining rights. This document must be approved by the community which verifies if the needs identified through popular meetings were considered.

This requirement is established by the Congolese legislation for the companies to obtain the exploration or exploitation license. It helps local communities to get information about 'the mining activities for them to participate in the decisions taken about the mine and to raise objections to the granting of a license to mine. ... in addition, 'having this information about how the mining company is supposed to mine to allow' communities to 'monitor the mining company and to know when it is breaching its license conditions and in so doing, breaking the law'. They 'can use the information to raise awareness' areas 'about the risks' they 'all face or the benefits' they should demand.⁴⁷ In the same context, mining companies must inform the local communities the extent to which their rights are protected how they can be exercised and the impact of mining activities on their lives. Be clear about what the company will do and will not do. This communication presupposes the use of the best language of communication as well as adequate means (especially the material). Thus, the mining operators are supposed to inform these communities in the languages they speak and understand better, in order to ensure transparency, since these languages are part of the Congolese cultural heritage of which the State protects in accordance to article 1 of the constitution.

Practically, although the law guarantees the right of local communities to be consulted and informed on the mining projects and their rights to benefit the development resulting from the mining activities, many reports and investigations have clearly established that this right is ignored by mining companies. For instance, instead of doing a consultation with the local communities, some companies consult only the local authority of one community⁴⁸ even if there are several communities around the mining site.⁴⁹

⁴⁶ S Chevrel 'Le concept de « mine responsable » : Parangonnage des initiatives mondiales, 2017, p. 62.

⁴⁷ Ibid

⁴⁸ ACIDH, Rapport sur les impôts des activités minières au Katanga: cas de la société d'exploitation de KIPOI sur les communautés locales, retrieved from <https://www.somo.nl> (on 25 April 2024)

⁴⁹ Plateforme des Organisations de la Société Civile intervenant dans le secteur minier au Katanga (POM) 'Etude comparé sur les pratiques de constitution et de gestion de fonds communautaire pour le développement local dans secteur extractif, retrieved from <http://congominer.org> (on 25 April 2024)

4. CSR and infrastructures for the community development

In fact, the mining sector occupies a prominent place among major investments currently underway in eastern Congo. Agricultural concessions, transport infrastructure (railways, auto routes, etc.) to facilitate trade of goods and services, filling the energy gap through the creation of hydro-electric dams, plants and gas-fired power plants must be added to the development projects to sustainably ameliorate the local communities' lives and promote their social and economic standards. The challenges for developmental in Eastern Congo are highly characterized by poverty in the rural areas due to the absence of viable state infrastructure which can contribute to the realization of the economic needs of local communities for its development in accordance with the actual purpose of CSR. It is acknowledged that Economic growth in rural areas can be highly contingent on expansion on the improvement in infrastructure such as energy,⁵⁰ roads, water supply. Thus, as long as the development agendas are not focused on the improvement of transportation and inland access to facilitate trade and other economic activities, the expectations for there will still be issues of development of local communities in eastern Congo which necessarily live on agriculture and mining activities requiring significant infrastructure to transport products from production sites to shipping centers and then to final destinations.⁵¹

With regard to the increasing presence of global mining companies, the rural in eastern Congo, as well as the country in general, can be greater mechanized though the mining activities in developing such infrastructure can support the overall development of the country.⁵² This position interprets article 69(g) requiring the community development of the mining companies.⁵³ The DRC legislation requires every applicant that the mining license to describe activities to be carried out. Regarding this, it is expected to license holder to contribute to the development of local communities in implementation of infrastructures such as pathways, diversion of traffic lanes, and the road infrastructure for populations in or around the perimeter of exploitation, are listed⁵⁴ amongst the activities to be conducted by mining companies.⁵⁵

Infrastructure in the mining zone in eastern Congo is a complex area of intervention of companies. Some companies initiate projects to build schools, hospitals for riverine communities⁵⁶ and others extend their activities and build roads.⁵⁷ However, several sites of south Kivu are not opened up with the urban areas. They are then only accessible by air because of the very poor quality of roads.⁵⁸ The direct consequence of this lack of infrastructure quality roads is the difficulty of transporting agricultural products which

⁵⁰ KPMG Global Mining Institute 'Democratic Republic of Congo: Country mining guide' retrieved from <https://assets.kpmg> (on 01 May 2024)

⁵¹ As above at 12

⁵² E Reed & M Miranda 'Assessment of the Mining Sector and Infrastructure Development in the Congo Basin Region', WWF Macroeconomics for Sustainable, 2007, p.15.

⁵³ Article 69 (g) of the mining code

⁵⁴ Article 12, 20, 38 of the Annex VIII: Directive On Environmental And Social Impact Assessment

⁵⁵ Article 212 and 64(b) of the Mining Code

⁵⁶ For instance, the SOKIMO in Oriental Province sponsors sports teams and other activities and finance churches to build hospitals, Orphanages, sports fields, schools, and universities. G Mthembu-Salter & Phuzumoya Consulting 'Étude de l'état initial n°3 : Production, commerce et exportation de l'orene Province Orientale, République Démocratique du Congo.

⁵⁷ Some mining companies such as Alphamin started with the construction of an access road of 32 km from the project area to the village and in June 2016, has built approximately 30 km of access road for light vehicles to accelerate mobilisation contractors for the construction accessed on

⁵⁸ Kamundala, (n16) at 16.

often deteriorate before reaching the main centers of consumption where the prices are then very high.⁵⁹ In the same context, the mining site of Bisie requires two walking days through the forest to reach the macadamized road which is used extensively by planes that load the ores to transport them to Goma town.⁶⁰ Without transport infrastructure serviced, modernized and rehabilitated, the rural people in general, and those living in and around the sites in particular, risk remaining long poor and disengaged.⁶¹

5. CSR and respect for land property: expropriation and the right to compensation

It is acknowledged that 'land ownership can be a vital source of capital, which opens personal credit markets, leads to investments in the land, provides a social safety net, and transfers wealth to the next generation.'⁶² In community areas, the land is frequently tied to the spiritual, cultural and their social identities⁶³ and its ownership guarantees the right to adequate housing proclaimed by article 11 of the ICESCR. As land 'impacts directly on the realization of a number of human rights and, given the interrelation and interdependence of rights, land issues may potentially impact all human rights'⁶⁴, the restriction or infringement of the enjoyment of the property on land must follow some strict regulations. This is why, in the expropriation case, the enjoyment of the right to land guarantees the right to adequate housing which is protected against forced evictions.⁶⁵ In the expropriation procedures, 'international agencies should scrupulously avoid involvement in projects which ...involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation.' Thus, 'every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account'.⁶⁶

The Mining Code established the exclusivity of the mining permit which supposes that they cannot be concomitantly exercised with other rights on the same concession. Hence, the license holder should strictly observe the rules of expropriation for his establishment process. One of the major requirements for the expropriation is Compensation.⁶⁷ The compensation is defined under Article 1(2) of the mining rule as a replacement in kind of certain specific properties, including dwellings and other immovable property lost by the communities affected by the activities of the mining project. ⁶⁸Thus, any occupation of land depriving the beneficiaries of the enjoyment ... any modification making the ground unfit for cultivation entails, for the holder or lessee of the rights mining and/or quarrying, on-demand the beneficiaries of the field and their suitability, the obligation to pay a compensation corresponding to either the rent or the value of the land at its occupation, increased by half.⁶⁹

⁵⁹Ibid

⁶⁰ D de Faily 'le secteur minier en RDC : quelle transformation pour quel développement ? politique étrangère, vol 2, 2013, p. 115.

⁶¹ Ibid

⁶²Janvry A et al 'Access to Land and Land Policy Reforms' in Ade Janvry, G Gordillo, JPhPlatteau& E SadouletAccess to land, rural poverty, and public action, Oxford Univ. Press, vol 4, 2001, p.17.

⁶³ E Wickeri& A Kalhan 'Land Rights Issues in International Human Rights Law' retrieved from <https://www.ihrb.org> (on 24 April 2014)

⁶⁴ UNHCR 'land and Human Rights: Annotated compilation of case64law' retrieved from <https://www.ohchr.org> (on 24 April 2014)

⁶⁵ CESCR General Comment 7, the right to adequate housing (Article 11.1): forced evictions: 20/05/97.

⁶⁶ CESCR General comment 2 on article 22 of the CESCR

⁶⁷ Articles 51, 64, 65, 88 and 99 of the Mining Code

⁶⁸ Art 1 para 2 of the mining regulations

⁶⁹ Article 281 of the Mining Code

In analyzing the implementation of this provision, the Women's International League for Peace and Freedom has reported Mining companies sometimes expel local populations without just and proportionate compensation. For example, Luishi Mining which is a company in Luisha expelled populations from their homes. In the expulsion procedure, the company granted them some small amount which was not consistent with the loss they experience. Some of the populations claimed that they did not receive any amount at all. Another example, in the site of Kikanda, is in the annex commune of Lubumbashi, so these are inhabited areas and the women who were visited who are expelled, are part of this area.⁷⁰ The Carter Center has also reported that the number of households affected by housing evictions and expropriations of fields amounts to around ten thousand in only two mining projects.⁷¹

Conclusion

The implementation of Corporate Social Responsibility (CSR) in the Democratic Republic of Congo (DRC) represents a crucial issue for the sustainable development of the country. The DRC, rich in natural resources, faces significant challenges such as poverty, political instability and negative environmental impacts linked to resource exploitation. In this context, the integration of CSR principles into business practices can play a decisive role in improving not only the economic performance of companies, but also their social and environmental impact.

CSR is essential to promote sustainable development that benefits all stakeholders, including local communities. By adopting responsible practices, companies can help reduce social and economic inequalities while preserving the environment. This includes initiatives such as respecting human rights, improving working conditions and protecting the environment.

The regulatory framework in the DRC must be strengthened to encourage companies to adopt CSR practices. Although certain laws already exist to regulate economic activities, their application often remains insufficient. Increased institutional support, both at the government level and from non-governmental organizations (NGOs), is needed to raise awareness among businesses of the benefits of CSR and provide them with the tools to implement it.

Despite its importance, the implementation of CSR in the DRC encounters several obstacles. These include a lack of awareness of the concept of CSR itself, a corporate culture often focused on the short term, and a misperception that investing in social responsibility is costly rather than a strategic asset. Additionally, there is an urgent need for education and training on sustainable practices within the private sector.

For CSR to become a tangible reality in the DRC, it is essential to encourage dialogue between the government, the private sector and civil society. Businesses must be encouraged to take a proactive approach to their social and environmental responsibilities. By fully integrating CSR into their business

⁷⁰Women's International League for Peace and Freedom 'Enquête sur les violations des Droits Humains subies par les femmes congolaises dans l'exploitation des mines artisanales dans la province du Haut Katanga' (2016) retrieved from www.ilpf.org (on 23 April 2023).

⁷¹ The Carter center 'Les Investissements Miniers en République Démocratique du Congo : Développement ou Appauvrissement des Communautés Locales?: Rapport d'impact des investissements miniers étrangers sur les droits humains Cas des investissements Chemical of Africa (Chemaf) et Ruashi Mining au Katanga' retrieved from www.cartercenter.org (on 24 May 2023).

strategy, they can not only improve their reputation but also contribute positively to the socio-economic development of the country.

BIBLIOGRAPHY

1. Constitution of the Republic Democratic of Congo modified by law No. 11/002 of January 20, 2011 relating to revision of certain articles of the Constitution of the Democratic Republic of Congo from February 18, 2006
2. Law n°18-001 modifying and completing the la Law n° 007/2002 of 11 July 2002 relating to Mining Code
3. Law No 11-009 of 9 July 2011 on Basic Principles Relating to the Protection of the Environment
4. Decree No. 038/2003 of March 26, 2003 relating to mining regulations as amended and supplemented by Decree No. 18/024 of June 8, 2018.
5. ACIDH, Rapport sur les impôts des activités minières au Katanga: cas de la société d'exploitation de KIPOI sur les communautés locales, retrieved from <https://www.somo.nl>.
6. Asan V w, *Corporate social responsibility (CSR): The role of government in promoting CSR*, journal of the knowledge economy, vol. 15, 2024.
7. Bindu K. K., 'Environmental and Developmental Rights in the Southern African Development Community with specific reference to the Democratic Republic of Congo and the Republic of South Africa's unpublished thesis, University of South Africa (2010).
8. Boocock CN, 'Environmental Impacts of Foreign Direct Investment in the Mining Sector in Sub-Saharan Africa' Presentation paper on the OECD global forum on international investment: Conference on Foreign Direct Investment and the Environment, Lessons to be Learned from the Mining Sector <https://www.oecd.org>
9. Carles B, *Democracy and redistribution*, Cambridge University press, Cambridge, 2003.
10. CESCR General comment 2 on article 22 of the CESCR
11. CESCR General Comment 7, the right to adequate housing (Article 11.1): forced evictions: 20/05/97.
12. Chevrel S 'Le concept de « mine responsable » : Parangonnage des initiatives mondiales, 2017.
13. Donnelly J 'In search of the unicorn: The jurisprudence and politics of the right to development' (1985) 15 California Western International Law Journal.
14. Faily D 'le secteur minier en RDC : quelle transformation pour quel développement ? politique étrangère, vol 2, 2013.
15. Farole and others 'Context, Objectives, and Methodology' in The Farole and D Winkler (eds) Making Foreign Direct Investment Work for Sub-Saharan Africa Local Spillovers and Competitiveness in Global Value Chains (2014).
16. Franciscains International 'Vers un traite international pour une responsabilité effective des entreprises pour les abus de droits de l'homme cas du site minier de Bisie dans le territoire de Walikale en République Démocratique du Congo' retrieved from <https://franciscainsinternational.org>.
17. Hamed A et al, *Corporate social responsibility and self-regulation*, MM science journal, n°10, 2016.
18. Initiative Industries Transparency Initiative 'Informations Contextuelles sur les Entreprises Extractives de l'Etat', retrieved from <https://eiti.org>.

19. Janvry A et al 'Access to Land and Land Policy Reforms' in Ade Janvry, G Gordillo, JPhPlatteau& E Sadoulet Accessto land, rural poverty, and public action, Oxford Univ. Press, vol 4, 2001.
20. Kendra E.D, Community development requirements in mining laws, The extractive industry and society, vol1, Issuer 2, 2014.
21. KPMG Global Mining Institute 'Democratic Republic of Congo: Country mining guide' retrieved from<https://assets.kpmg>.
22. Lawyers for Human Rights 'Mining and your Community: Know your Environmental Rights', retrieved from<https://cer.org.za>.
23. Mbuyu Kabwe T'Le mouvement de révision des codes miniers en Afrique: l'exemple de la République Démocratique du Congo' Master thesis, PanthéonUniverity, 2014.
24. Morand C'Pétrole et industries extractives, la société civile africaine se mobilise' Annuaire suisse de politique de développement, vol 26, 2017.
25. Muhima A 'ALPHAMIN BISIE MINING /SA : rupture dans la continuité : Le géant projet minier Bisie Tin Project face au dilemme du consentement libre et éclairé des populations de Walikale 20/03/2017 retrieved from<https://www.escr-net.org>.
26. Mwaanga C ' A Study of the Economic and Environmental Impacts of Foreign Direct Investment in the Mining Sector in Zambia' (2017) 9 Journal of Business Administration and Education.
27. Plateforme des Organisations de la Société Civile intervenant dans le secteur minier au Katanga (POM) 'Etude comparé sur les pratiques de constitution et de gestion de fonds communautaire pour le développement local dans secteur extractif, retrieved from<http://congominer.org>.
28. Reed E& Miranda M'Assessment of the Mining Sector and Infrastructure Development in the Congo Basin Region', WWF Macroeconomics for Sustainable, 200.
29. Tatyana P.S, *Beyond economic growth: An introduction to sustainable development*, second edition, The world bank, Washington DC, 2004.
30. The Carter center 'Les Investissements Miniers en République Démocratique du Congo : Développement ou Appauvrissement des Communautés Locales?: Rapport d'impact des investissements miniers étrangers sur les droits humains Cas des investissements Chemical of Africa (Chemaf) et Ruashi Mining au Katanga' retrieved fromwww.cartercenter.org.
31. Tomuscha C, *Human rights: Between idealism and realism*, Academy of European Law / European University Institute / Oxford University Press New York, vol. 51, 2003.
32. UNHCR 'land and Human Rights: Annotated compilation of casellaw' retrieved from <https://www.ohchr.org>.
33. Uwem I E'poverty reduction in resource-rich developing countries: what have multinational corporations got to do with it? Journal of International Development, vol. 17, 2005.
34. Wickeri E& Kalhan A 'Land Rights Issues in International Human Rights Law' retrieved from <https://www.ihrb.org>.
35. Women's International League for Peace and Freedom 'Enquête sur les violations des Droits Humains subies par les femmes congolaises dans l'exploitation des mines artisanales dans la province du Haut Katanga' (2016) retrieved fromwww.ilpf.org.
36. WRM 'La problématique de l'Exploitation minière en province du Nord-Kivu : Situation actuelle et analyse sur les questions environnementales' retrieved from<https://www.wrm.org.uy>.