



Corporate Social Responsibility in Tunisia CSR and human rights in Tunisia: a label law to rescue of companies

The Tunisian observatory of Economy

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Abbreviations

- WB: World Bank
- CPG: Gafsa Phosphate Company
- SD: Sustainable Development
- GCT: Tunisian Chemical Group
- ISO : International Standardization Organization
- OECD: Organization for Economic Co-operation and Development
- ILO : International Labor Organization
- PM: Global Compact
- CSR: Corporate Social Responsibility
- AU: African Union
- EU : European Union
- UN: United NationsUN
- VMA: African Mining Vision

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Introduction

¹ Proposed law on In charge Community institutions – Explain the reasons. 28 February 2017 – People's Congress

²Video of the assemblye plenary

³Video of the Plenary Assembly

⁴ At UN Assembly, Tunisia's President cites African 2063 Agenda as vital to continent-wide development | | UN News

⁵ Continental Frameworks | African Union (au.int)p.95-115.

Tunisia has seen CSR gradually integrated into companies since the end of the 90s, particularly through the adoption of major international standards. However, the integration of CSR by companies remains marginal in the country.

It was only in 2018 that Law No. 35-2018 of 11 June 2018, on corporate social responsibility (known as the CSR Law), was proposed in February 2017 to the ARP by a set of 28 deputies, mostly part of the Committee on Industry, Energy, Natural Resources, Infrastructure and the Environment, as a possibility of reconciliation between polluting companies and communities. victims of this pollution, considering that «the lack of knowledge concerning the fate of the funds allocated under social responsibility as one of the main causes of the protests» and that «this law would guarantee social appeasement». Thus, the law initially targeted companies exploiting resources to ensure their «social acceptability».¹Indeed, «full of good intentions», as the deputies who proposed it claims, this law seems to seek to make the environmental and social effects of extractive industries more acceptable to local populations and social movements².

Studied and validated in less than a year, this law seems to have reached consensus. However, between the text tabled and the text validated, this law has undergone several changes. The law passed was largely «emptied of its meaning» and criticized by the first signatories. Composed of only six articles, it is also a law that remains vague in its definition of CSR concept and contains few tangible elements, which risks making it ineffective if no regulatory framework accompanies it.³

Several years after the law was passed, there is little information on the subject. In fact, no measures have been taken by the government: there is currently no order or decree. Companies, on the other hand, also seem to react less to this new regulation.

After a study of CSR, its concepts and standards, as well as its development in the country, this Policy Brief first proposes to dissect this law. Second, we will propose a reading of the implications of this law, its expected effects on companies as well as on social movements.Finally, in a fourth part, we will address recommendations in the light of two standards that today appear fundamental and urgent to apply in Tunisia: The African Mining Vision (AMV), as well as the United Nations Guiding Principles on Business and Human Rights.

While some states such as Tanzania and Ghana have officially expressed their adherence and have since demonstrated an adaptation of their legislation to implement the AMV Since its adoption in 2009 by the African Union, Tunisia has never officially expressed its support for the AMV However, the African Mining Vision (AMV) presents a relevant action plan and dedicates one of its 8 clusters to measures and to act on the social and environmental impacts of mining operations.What is more, Tunisia having renewed its commitment to the African Union's Agenda 2023 in 2016⁴, the State must apply the AMV which constitutes one of the framework programs of this African Agenda⁵.

On the other hand, the United Nations Guiding Principles on Business and Human Rights (UNHPR) present a rich and concrete framework for action that describes the obligations and operations to be undertaken by States and by companies to ensure respect for human rights. It is all the more urgent and timelier for Tunisia to seize these CSR Principles as a United Nations Treaty is being prepared and should soon make these founding and operational principles binding obligations for the States that ratify it.

II. What is Corporate Social Responsibility?

With globalization and the emergence of the concept of sustainable development SD, corporate social responsibility has become a prominent component of society and companies are increasingly under pressure public authorities and civil society. It must then consider its social and environmental impacts, referred to as Corporate Social Responsibility (CSR).

there are several definitions of CSR. numerous studies highlight the multiplicity of its definitions, often divided into theoretical or academic definitions and institutional definitions (cf. Box 1)⁶.

Box 1: Multiple definitions of CSR: between institutional and academic definitions

Some institutional definitions:

ISO 26000: CSR is defined as «the responsibility of an organization with regard to the impacts of its decisions and activities on society and the environment, resulting in transparent and ethical behaviour that: contributes to sustainable development, including the health and well-being of society; takes into account the expectations of stakeholders; complies with applicable laws and is compatible with international standards; and is integrated throughout the organization and implemented in its relationships»

UN Global Compact: CSR is about companies adopting, supporting and applying within their sphere of influence a set of core values in the areas of human rights, labour standards, the environment and anti-corruption.

OECD: Companies are expected to comply with the various laws applicable to them and, in practice, they often have to meet societal expectations that are not recorded in the law.

Some academic definitions

Bowen (1953): CSR refers to the obligation of businessmen to carry out policies, make decisions, and follow courses of action that meet the goals and values that are considered desirable in our society

Mc Guire (1963): The idea of social responsibility implies that the company not only has legal or economic obligations, but also has responsibilities to society that go beyond its obligations

Carroll (1979): CSR incorporates the full range of economic, legal, ethical, and philanthropic expectations that society may have of a company at any given time

Jones (1980): the idea that companies, beyond legal or contractual requirements, have an obligation to societal actors

Wood (1991): The meaning of societal responsibility can only be understood through the interaction of three principles: legitimacy, public accountability and managerial discretion, these principles resulting from the distinction of three levels of analysis, institutional, organizational and individual.

Source: Dejean, F., Gond, J.-P., 2003, La responsabilité sociétale des entreprises: enjeux stratégiques et stratégies de recherche, notes from LIRHE Laboratoire Interdisciplinaire de recherche sur les Ressources Humaines et l'Emploi, Research Unit at the University of Social Sciences of Toulouse, France.

However, the widely accepted definition of CSR relies on incorporating three concerns: social, environmental and economic in the activities of the company, on a voluntary basis and especially through the integration in its strategy other actors and stakeholders (see Figure 1). The company's partners are therefore not only the shareholders but all those who are affected by its activities (stakeholders): employees, consumers, neighbors, NGOs, subcontractors, communities, etc. The company must be able to communicate with them, integrate them into its concerns and «report» to them via reporting (see Figure 1)

⁶ Ammar Belaid A., Bouhassine Gharbi I. (2015) The CSR approach of Tunisian banks: feedback from the BNA. Moroccan Journal of Research in Management and Marketing, n°12, p.95-115.

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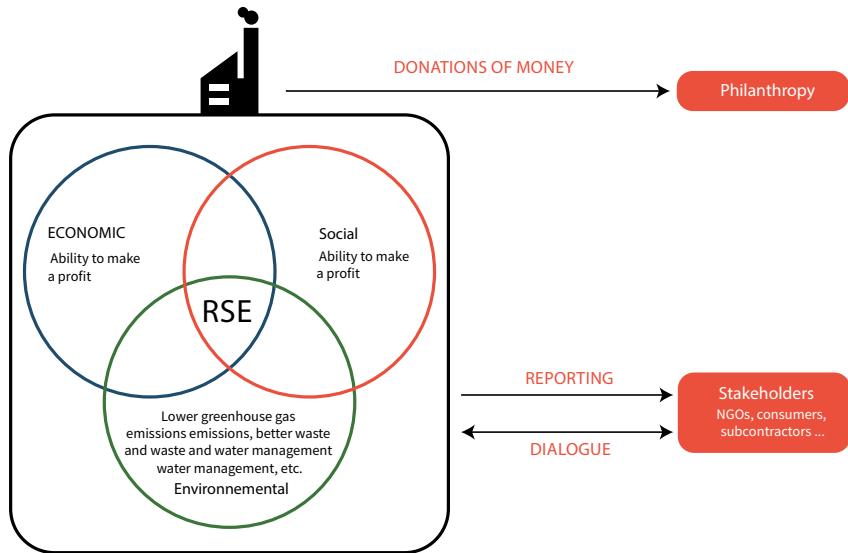


Figure 1: The various components of CSR.

Source : Authors

CSR should be set apart from philanthropy (see Figure 1). Philanthropy takes the form of contributions, usually financial but also sometimes in time and resources, offered by companies to generate social change. It often takes the form of foundations (Orange Foundation in Tunisia for example) and is very old. Corporate philanthropy (or patronage) depends on the structure's ability to generate profit. It must then be distinguished from CSR, which is more «sustainable», not subordinated to the financial performance of the company and especially integrated into the company's activities. It is then the application of SD by companies as a managerial principle. The company must ensure a balance sheet more only economic but a «triple⁷⁸ bottom line» including a social and environmental balance. However, the economic pillar (the capacity to generate profits) remains the first concern of companies and is a condition for the implementation of the other two. CSR is even often perceived as bringing an additional financial benefit to the company. These various responsibilities, both social and environmental, explain the use of the term «social», enabling the whole society to be included in its broadest dimension. This is also the term used by Tunisian law No. 35-2018 on CSR.⁹⁻¹⁰⁻¹¹

III. The CSR law in Tunisia

A. Tunisia's CSR commitments

CSR was first indirectly recognized through the conventions of the United Nations (UN), in particular the two International Covenants, and the International Labor Organization (ILO) on human, labor and environmental rights, which Tunisia has signed (see Figure 2).

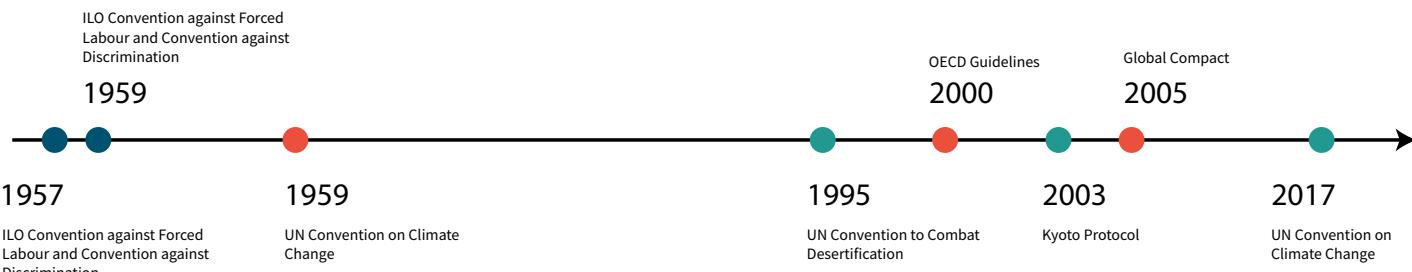


Figure 2 : Frise chronologique : les engagements conventionnels de la Tunisie.

Source : auteurs

Since the early 2000s, the country has been engaged in major CSR standards, with Governments seeking to adapt these standards to national companies to increase trade with the European Union. These benchmarks include adherence to the OECD guidelines in 2000 and implementing the Global Compact in 2005 to boost companies' competitiveness (see Box 2) but without putting in place commitment measures. Following the agreement with the EU and joining to the World Trade Organization, the government also set up an upgrade program (PMN) in 1995 which includes, among other things, a diagnosis of the company's socio-economic environment. These benchmarks make it possible to operationalize the announced objectives and to give stakeholders the assurance that CSR is well implemented. However, these frameworks are all voluntary and non-binding:¹²¹³¹⁴ they are referred to as «soft law» or «soft law», based on self-regulation.¹⁵

Box 2: The major international CSR standards

The United Nations Global Compact, launched in 2000, is at the heart of the regulation of corporate responsibility, of this «soft law». The basis is voluntary: member companies commit to respecting the ten principles of the Global Compact (GC), but there are no legal sanctions in case of breach. The principles are organized into four themes: respect for human rights, international labor standards, the environment and the fight against corruption. The GP is based on commitment and visibility: member companies must issue reports on their progress in SD, the «Communication on Progress» (COP). These COPs are annual, and in the event of failure to do so, the company is considered as «non-communicating» and excluded from the MP, which makes it the most engaging CSR initiative². The other fundamental text on CSR is the OECD Guidelines for Multinational Enterprises. Adopted in 1976 and regularly amended, they are an intergovernmental standard that sets out guidelines for better business strategy. Its concepts are broader than the GP, including not only the social, environmental and human rights dimensions, but also taxation and competition³. Like the Global Compact, they are non-binding: states cannot impose sanctions but only make recommendations to companies⁴.

1 The ten principles of UN Global Compact.

2 Interview with Chalbi A., coordinator of the Institute of Corporate Social Responsibility in Tunisia (IRSET)

3 OECD. (2011). OECD Guidelines for Multinational Enterprises.

4 Daugareilh I. (2013) OECD Guidelines: A Critical Dictionary of CSR. Villeneuve d'Ascq: Presses universitaires du Septentrion.

In addition, the integration of CSR standards proposed by the International Organization for Standardization (ISO), in the field of management and the environment, is implemented by the National Institute for Standardization and Industrial Property (INNORPI). It manages the main international social and environmental certifications in response to WTO requirements such as ISO 14001 which measures environmental impact and ISO 9001 standard for quality management, as well as ISO 26000 as a non-binding or certifying CSR standard, based on PM recommendations.¹⁶⁻¹⁷⁻¹⁸

¹² Koleva, P., Gherib, J. (2012) La responsabilité sociale des entreprises en Tunisie : une lecture institutionnaliste. *Revue Tiers Monde*, 212(4), 83-99

¹³ ITCEQ (2017). Programme de mise à niveau : bilan, réalisation et perspectives.

¹⁴ Capron, M., Quairel-Lanoizelée, F. (2016) L'instrumentation de la RSE. La responsabilité sociale d'entreprise. Chapitre VI. pp. 91-112. Paris: La Découverte.

¹⁵ Morth U. (2004) Soft Law in Governance and Regulation: an interdisciplinary analysis. Edward Elgar, Cheltenham.

¹⁶ Law No. 2009-38 of 30 June 2009 on the National Standardization System.

¹⁷ In particular, the emissions to air and water, soil contamination, waste management or raw material management

¹⁸ Ministry of Local Affairs and Environment. (2018). Study for the development of a national strategy for corporate and organisational social responsibility. Development strategy, synthesis report.

¹⁹ Ministry of the Environment, Sustainable Development Branch. (2011) National Sustainable Development Strategy.

²⁰ Ministry of Local Affairs and environment, Directorate-General for Sustainable Development. (2016) National Green Economy Strategy

²¹ Republic of Tunisia, INLUCC (2016) National Strategy for Good Governance and the Fight against Corruption 2016-2020.

²² Article 12: The objective of the State is to achieve social justice, sustainable development, regional balance and the rational exploitation of national wealth, with reference to development indicators and based on the principle of positive discrimination; the State also works for the rational exploitation of national wealth

²³ Article 45 : The State guarantees the right to a healthy and balanced environment and contributes to climate security. The State shall provide the necessary means for the elimination of environmental pollution

²⁴ According to the French independent research institute Respeco (Responsible economy), specialized in the promotion of the responsible economy and which proposes the main world ranking of national economies according to their CSR.

²⁵ Article 3 of Law 35-2018 of 11 June 2018 on corporate social responsibility

Programs indirectly related to CSR in Tunisia are particularly important after the revolution, with different national strategies: the National Strategy for Sustainable Development (NSDS) in 2011, the National Green Economy Strategy (SNEV) in 2016, and the National Strategy for the Fight against Corruption (2016).

The 2014 Constitution also devote several principles related to sustainable development, and in particular social justice and sustainable development (Article 12), and the right of citizens to a healthy environment (Article 45).¹⁹⁻²⁰⁻²¹⁻²²⁻²³

While the State is not very committed in terms of CSR, new CSR actors have emerged after 2011 through the creation of dedicated private institutions, such as the Institute of Corporate Social Responsibility in Tunisia (IRSET) created in 2013, which is in charge of liaison with the UN Global Compact, or the CONECT, the recent employers' union, which is also creating an unofficial CSR label.

These factors explain the gradual development of CSR in Tunisia, which rose from 92nd out of 195 in 2013 in the global ranking of countries that have integrated CSR into their national economy to 59th in 2017.²⁴

B. Promulgation of a CSR law

The CSR law was published in the Official Journal under the number 35-2018 of 11 June 2018 and contains six articles. It states, in its first article, that its objective is to enable reconciliation between institutions and their natural and social environment by following the principles of sustainable development and good governance (see Annex 1). It also affirms its conformity with various higher standards: the Constitution, the UN Global Compact, the Universal Declaration of Human Rights, the ILO conventions or the Rio Declaration on Sustainable Development. It defines CSR as the «principle adopted by institutions to ensure that they are responsible for the impact of their activities on society and the environment through the adoption of transparent behavior that benefits the community at the regional level». The law is intended to apply to both public and private institutions, encouraging them to allocate funds to finance CSR projects. These CSR projects must be implemented in different areas: environment and SD, rationalization and development of natural resources, development of skills and employment and good governance.²⁵

In addition, to these general considerations, the law establishes several institutions to enable the implementation of these CSR projects. Then there is the creation of a regional steering committee that establishes the priorities for intervention in section 4 of this act. The membership and powers of this committee shall be determined by a governmental decree. This committee will ensure that CSR projects are monitored, transparent, communicated and proposed to regional committees. Finally, a national CSR observatory will be put in place within the government to monitor and coordinate CSR activities in the country. It must evaluate the reports submitted by the regional commissions and then prepare an annual report on social to be submitted to the three presidencies (of the republic, the government and the ARP). It should also create an online platform on CSR and can highlight CSR projects or institutions. It also has to be created through a governmental decree.²⁶⁻²⁷

C. The objectives of the CSR law

The bill was introduced on February 28, 2017 by 28 elected representatives, and the law was passed on May 29, 2018, within a year. According to the deputies who proposed the text, the law aimed to comply with the new Constitution (and in particular articles 12 and 45), but above all to improve the situation in marginalized regions. Ameur Larayedh, chairman of the Committee on Industry, Energy, Natural Resources,

²⁶ Article 5 of Law 35-2018 of 11 June 2018 on corporate social responsibility

²⁷ Article 6 of Law 35-2018 of 11 June 2018 on corporate social responsibility

²⁸ Tuesday evening plenary session 08 May 2018 tried to propose the Law no. 28/2017 on community responsibility for institutions

²⁹ Tunisian companies are working on the achievement of the Sustainable Development Goals.

³⁰ Ministry of Local Affairs and Environment. (2018). Study for the development of a national strategy for corporate and organisational social responsibility. Development strategy, synthesis report..

³¹ Second edition of the RESPECO ranking (2018).

³² Application of SD principles to investment: financial assets in which extra-financial criteria have been integrated: environmental, social and governance

³³ The Community Responsibility of Institutions Act aims to enshrine the principle of reconciliation between institutions and their environmental and social environment by contributing to the path of sustainable development and good governance in accordance with For the public. It's ongoing

³⁴ Ministry of Local Affairs and Environment. (2018). Study for the development of a national strategy for corporate and organisational social responsibility. Development strategy, synthesis report. P. 7/21.

³⁵ Interview with CHALBIA., coordinator of the Institute of Corporate Social Responsibility in Tunisia (IRSET) and interview with KRIDAGH A., Solidary Tunisia

Infrastructure and the Environment at the ARP at the time, said in April 2018 that «CSR has been of great concern to MEPs in view of the situation in the regions²⁸, [...]. Despite the sums of money spent by several companies on CSR, the expected results remain below expectations.»²⁹

The national report on the CSR strategy published at the end of 2018 by the Ministry of Local Affairs and the Environment mentions the various benefits expected from this law in the country:³⁰

- «A better attractiveness of the country and easier access to foreign capital» by improving the image of the country while Foreign Direct Investment (FDI) is falling
- «Financially more efficient companies thanks to the implementation of CSR», which allows better operational efficiency (reduction of energy consumption, waste, etc.)
- «Better relations with employees with social peace resulting in better productivity» by easing «tensions» and «strikes»
- «A better reputation and a better corporate brand image.» by ensuring compliance with legislation by companies

This National CSR Strategy of 2018, clearly expresses the country's ambition to enter the top 30 countries engaged in CSR of the Respeco international ranking, to develop Socially Responsible Investment (SRI) and finally to promote CSR labelling.³¹³²

But the CSR law, proposed right after the famous sit-in against the oil site of El-Kamour, is clearly addressed to the extractive industries. It specifies in its introduction that its objective is to enable reconciliation between institutions and their natural and social environment by following the principles of sustainable development and good governance. Under the 2018 national CSR strategy, one of the challenges of the law is to achieve³³ « Better relations with employees with social peace resulting in better productivity. Particularly after the revolution, the country experienced a rise in strength of the trade union organizations with tensions and strikes sometimes blocking production for several months. Some companies have sometimes closed or relocated their activity. The implementation of a CSR strategy and its operationalization is a way to promote better relations between managers and workers and to establish social peace. In fact, from its inception, the law explicitly intended to limit criticism of extractive companies, in particular with regard to³⁴ pollution and employment.³⁵

D. A law with little tangible evidence

The CSR law is characterized by its lack of content, preventing it from having a real impact with the absence of real incentive mechanisms or sanctions to implement it. The bodies established, namely the Government Council as well as the regional chambers, do not have an explicit mandate and seem to have a purely advisory and supervisory role. On the other hand, the establishment of a new agency may be questioned, while many other institutions exist and could take on this responsibility. Establishing another body will further dilute responsibilities and actions. It also illustrates the fragmented nature of sustainable development activities. Among the bodies that could have taken on this responsibility (Ministry of the Environment, local authorities, etc.), the Observatory of the Environment and Sustainable Development (OTEDD). In charge of monitoring the environment since its establishment in 1994, the OTEDD works under the supervision of the Ministry of the Environment, but also with many other institutions such as the Ministry of Energy, Social Affairs, or public companies in the water sector. Giving it the prerogative of monitoring and evaluation in terms of CSR with companies would allow a real dialogue. It would also

³⁶ Interview with Kridagh A., Solidary Tunisia

³⁷ Ditto

³⁸ Ministry of the environment and the sustainable development, (2015) Observatory and indicators of the environment and sustainable development, Tunisia, Report of Synthesis

allow the integration of CSR in a more global vision and policy around sustainable development.³⁶⁻³⁷⁻³⁸

On the other hand, the law does not create a reporting obligation despite the affirmation of a principle of transparency. However, accountability has proven to be effective in building meaningful dialogue among stakeholders, a dialogue that is fundamental to the implementation of CSR(see Figure 1). This is observed in the French CSR law, with the progressive integration of reporting obligations to companies. Indeed, since 2001, French companies listed on the stock exchange must provide social and environmental information in addition to economic performance. Since 2017, these parent companies and the issuing companies are also required to assess the social and environmental risks of their subsidiaries and sub-contractors (see Box 3.). The obligation to report and publish to stakeholders is necessary to allow CSR within the company. Reporting is also an important tool for dialogue and, at times, consultation with the various stakeholders. It also allows some kind of control of the company's activities by them.

In addition, the original text included11 articles which were amended during the discussions. in the course of these exchanges, speakers from civil society were invited, including the IRSET which proposed a day of study and discussion on the law. The negotiations mainly focused on the integration of a rate of the turnover or profits of the company that it must devote to CSR, on the Indian model which devotes 2% of the turnover of large companies to CSR initiatives (see Box 2). In Tunisia, this percentage only concerned companies that exploit natural resources and receive a concession, as well as companies listed on stock exchanges. The initial version provided for a rate of 1% of turnover devoted to the benefit of the region where these extractive companies are located. The obligation of a sum allocated to regional development or environmental protection projects would have a positive impact on the region and divert part of the profits generated by companies to improve society. However, this provision was removed from the text during the discussions. The unions, particularly UTICA and CONECT, opposed it, highlighting a CSR «culture», namely the voluntary integration of values within the company, shared by all employees. In addition, many extractive industries are public (ETAP, GCT, CPG), and this percentage, considered counterproductive and contrary to the voluntary spirit of CSR would then be indirect financing by the State in these regions. Indeed, CSR is often defined as a voluntary commitment of the company for the development of society that goes beyond its legal, regulatory and conventional obligations. These arguments were perceived as a means to avoid any obligation to allocate a specific amount to CSR.³⁹⁻⁴⁰⁻⁴¹⁻⁴²⁴³

Indeed, others, mainly in the associative environment, regret this withdrawal, considering that without this percentage the law would be inefficient . Indeed, the example of the Indian law, the most successful in this field, has shown a real increase in the amount allocated to CSR thanks to the prevention by law of a predefined rate of turnover, despite circumvention strategies by companies.⁴⁴

A law made more restrictive and which promotes the integration of environmental and social concerns within companies could be really effective in giving Tunisian companies a boost in their adoption of CSR principles, in particular by ensuring better living and working conditions for employees, limiting social conflicts; enable the implementation of long-term national policies on sustainable development; and in general, to direct part of the profits of companies towards the common good. In addition, a 2009 study on SMEs in Tunisia showed that the lack of leadership involvement in CSR is usually due to a lack of time and resources. Indeed, unanimously,⁴⁵«SMEs would be more involved in the SD if they were required by law». Similarly, a study of the same year showed that many companies following the

³⁹ Interview with Chalbi A., Coordinator of the Institute of Corporate Social Responsibility in Tunisia (IRSET)

⁴⁰ [Corporate Social Responsibility \(CSR\): a draft law in preparation.](#)

⁴¹ Article 2 of the draft law n°28-2017 on CSR

⁴² Article 6 of the draft law n°28-2017 on CSR

⁴³ Small B., Nicolai I. (2015) Law and environmental protection: limits of corporate social responsibility without state social responsibility. Conference paper.

⁴⁴ Interview with L. Jeribi, President of Solidary Tunisia

⁴⁵ Konadu V. (2015) Debate on mandatory corporate social responsibility. Conference paper presented at National Seminar on Strategies for Business Excellence in Global Era.

⁴⁶ Ben Boubaker Gherib J., Spence M., Ondoua Biwolé V. (2009) Sustainable Development and SMEs in Emerging Countries: Between Proactivity, Opportunism and Compromise. Journal of Small Business & Entrepreneurship, 22:3, 355-375

⁴⁷ Ps2D Laboratory (2009) On the effectiveness of incentive systems for the commitment of companies in Sustainable Development: the case of Tunisian companies. Symposium Energy, Climate Change and SD.

⁴⁸ Interview with Chalbi A., Coordinator of the Institute of Corporate Social Responsibility in Tunisia (IRSET)

⁴⁹ Interview with Mrouki Z., Project Coordinator at Avocats sans frontières frontières.

⁵⁰ Interview with Kridagh A., Solidary Tunisia

⁵¹ Interview with Chalbi A., Coordinator of the Institute of Corporate Social Responsibility in Tunisia (IRSET)

⁵² Ministry of Local Affairs and Environment. (2018). Study for the development of a national strategy for corporate and organisational social responsibility. Development strategy, synthesis report.

principle of SD do so above all in compliance with the regulations⁴⁶: « Companies rarely want to exceed the laws and wait, to engage more, either a hardening or a compliance with existing laws. ». It is therefore important to introduce legislation to recognise and promote corporate CSR initiatives. However, the law can only be effective if it is effectively enforced and if it is followed by a real condemnation of companies.⁴⁷⁻⁴⁸

Even in the absence of a clearly stated percentage, the CSR law still includes the need for the company to allocate the sums that must be dedicated to the financing and implementation of social or environmental projects. However, this is not a CSR approach but a philanthropic one. Thus, it does not mention the obligation to respect human rights, the environment or the fight against corruption, as is the case with most international standards. CSR should take the form of social and environmental actions aimed at improving production methods within the company and making progress towards greater transparency. Rather than spending money on development projects, CSR has to be integrated into the production system and into the company's relationships with stakeholders. Thus, more than a law that promotes the donation of money, the law should mention the company's relationships with stakeholders. Thus, more than a law that promotes the donation of money, the law should mention an obligation to report on turnover, recruitment methods, production processes, environmental and social impacts. In addition, there is a fear that even if companies actually use part of their profits to finance projects outside the company, but without changing their production model, they will only do so to relieve themselves of their responsibilities by injecting money. Philanthropy would above all allow the company to show that it acts at the local level and that it respects the law but without changing its relationships with its employees, stakeholders and the environment. The approach of this law, which aims to be «CSR» but which rather promotes philanthropy, is therefore biased, legalizing this system that aims to give money but without having a real impact.⁴⁹⁻⁵⁰

E. A law awaiting application

The real application of the CSR approach in Tunisia can be evaluated according to several aspects: first on the government side, with the implementation of the law through decrees, orders and programs; but also on the side of companies, by observing the adhesions to the Global Compact or the certification procedures with standards and standards like ISO.

At the governmental level, it is first necessary to highlight to date the absence of decrees or orders annexed to this law, and in particular those creating the regional committees or the governmental commission provided for in the law by articles 4, 5 and 6. However, decrees should be promulgated to enable the creation of the Regional Councils and the Governmental Commission, whose membership is still under discussion⁵¹.

On the other hand, a national strategy on corporate and organizational social responsibility was developed by the Ministry of Local Affairs and environment at the end of 2018.⁵²

On the business side, it is clear that the law has not given the necessary impetus to integrate CSR. After a peak in 2017, the number of organizations (companies and NGOs) newly joined the Global Compact has declined widely, with only three in 2018 and one in 2019, for a total of 44 memberships, including 36 companies (see Figure 3). This sharp decline is mainly due to the fact that membership in the PM became profitable in 2018 with annual obligations based on turnover and the type

⁵³ UN Global compact. See who's involved.

⁵⁴ [Global Compact. Are there any financial obligations in becoming a Global Compact participant?](#)

⁵⁵ MQuality management within an organization

⁵⁶ MEnvironmental management

⁵⁷ Interview with Chalbi A., Coordinator of the Institute of Corporate Social Responsibility in Tunisia (IRSET), and interview with Gharbi D., Vice-President of the Confederation of Citizen Enterprises of Tunisia (CONECT)

⁵⁸ Interview with Gharbi D., Vice-President of the Confederation of Citizen Enterprises of Tunisia (CONECT)

⁵³of commitment (signatory/partner). The PM has also made its⁵⁴ membership more restrictive: if a company does not issue its Communication on Progress every year, it is automatically excluded.

While the various certifications, such as ISO 9001 and 140001 have increased steadily since 2010, they have decreased in 2017. There would therefore be fewer products certified by ISO in 2017 (see Figure 4).⁵⁵⁻⁵⁶

What is also striking is the lack of both State and private programs and communications, on the subject of CSR. However, this new law generates many questions among companies, who regularly contact private organizations such as IRSET or CONECT and request training. But for these companies there is a funding problem: CSR support by experts would cost between 6,000 and 10,000 dinars, which companies would not be willing to pay.⁵⁷⁻⁵⁸

The proposal of the CSR law has therefore lost its meaning as well as any binding aspect in the course of negotiations with the partnership unions, which has resulted in the adoption of a law without real content, without any real obligation for companies and which has not succeeded in installing a CSR «culture», with the voluntary integration of these principles. Moreover, since the implementing decrees have still not been adopted, government and regional bodies have not been set up. It is therefore not surprising how little influence the law can currently have on companies.

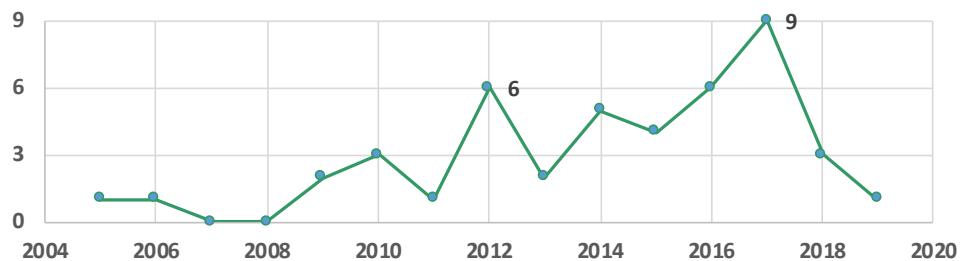


Figure 3: Number of companies joining the Global Compact between 2005 and June 2019.

Source: based on UN Global Compact data

While the various certifications, such as ISO 9001⁵⁵ and 140001⁵⁶ have been trending upwards since 2010, they fell in 2017. There would therefore be fewer ISO-certified products in 2017 (see Figure 4).

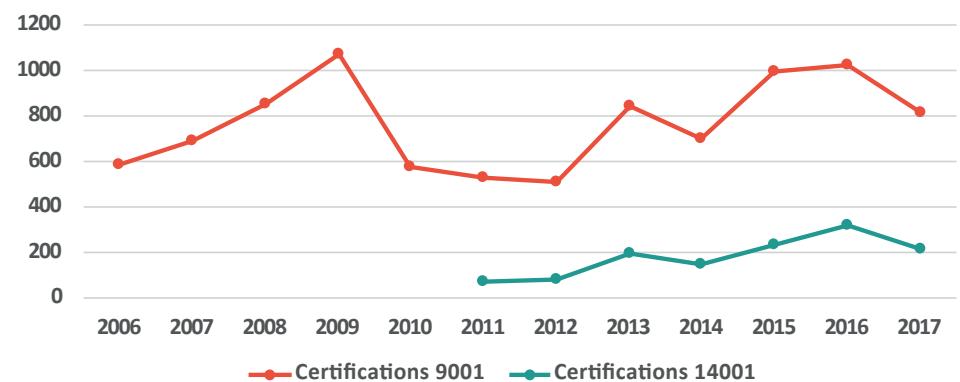


Figure 4: Number of 9001 and 14001 certifications in Tunisia between 2006 and 2017. Source: based on data from The ISO Survey 2017

IV. Is it possible to access social acceptability of extractive industries via the CSR law?

A. The opposition of social movements around the extractives model in Tunisia

⁵⁹ Annual Report on Social Protests For a year.(2018) FTDES

⁶⁰ Tunisian Social Observatory (2019). Report of the First Half of 2019 of social movements suicides and violence. FTDES. Number 70

⁶¹ According to the head of the National Agency for Environmental Protection Dalila Betaieb : « everyone knows that the most polluted cities in the country are Sfax, Gabès or Gafsa

⁶² Sana E. (2016) La Tunisie est confrontée à la pollution et au manque d'eau. Reporterre

⁶³ Chiffres INS 2018. Le taux de chômage était de 15,5% fin 2018 pour l'ensemble de la population, mais de 33,4% pour les jeunes et de 28% pour les diplômés de l'enseignement supérieur.

⁶⁴ Cette corruption a été qualifiée « d'endémique » par Transparency International. Source : Lee-Jones (2018). Country profile: Tunisia. Overview of corruption and anti-corruption. Transparency International.

⁶⁵ Younga Solidaire. Extraction et transformation du phosphate : son impact sur l'environnement et la santé.

⁶⁶ Quatre millions de phosphogypse par an seraient rejetés dans la mer avec des effets dévastateurs sur l'agriculture et la pêche. Source : Chapelle S., Gouin S., Crubézy N. (2015) La malédiction des phosphates: les dessous de l'agriculture chimique. Reportage Basta !

⁶⁷ Idem

⁶⁸ [Pollution in Gabes, Tunisia's shore of death.](#)

⁶⁹ Par exemple avec, en 2008, la révolte du bassin minier de Gafsa qui a secoué le régime de Ben Ali, finissant dans le sang avec 4 morts et des dizaines de blessés. Les mines ont également été bloquées en 2012 et 2015.

⁷⁰ Boubaker S., Hassen M. (2017) La Compagnie des Phosphates de Gafsa (CPG) : état des lieux de la gouvernance et recommandations. IACE. Instauring

The emergence of many social movements in Tunisia after the revolution was linked to major social and environmental problems. In its annual report, the Tunisian Forum for Economic and Social Rights identified 9356 social movements during the year 2018, and 4948 in the first half of 2019. These problems are often industry-related, resulting in significant air and water pollution. These industries are also contested on the social level, with social movements mobilizing against the lack of jobs, mostly graduates as well as against the country's extensive corruption.⁵⁹⁶⁰⁶¹⁶²⁶³⁶⁴ Much of the social movement has its origins in contesting the effects of the extractive industries. These protests may lead to the blocking of these industries, which explains the desire of the CSR law to buy back social peace.

The mining industry, mainly phosphate, is particularly targeted. In Tunisia, phosphate is extracted in the Gafsa mining basin by the Gafsa Phosphate Company (CPG), and its processing is carried out in the industries of Sfax, Gabès and Skhira by the Tunisian Chemical Group, the GCT (see Figure 5). However, phosphate production is one of the most polluting activities, especially because of the phosphogypsum discharged into the sea. This environmental damage poses real social problems in the Gabes region, including major effects on the health of neighboring communities, with poisonous heavy metals (lead, cilice, cadmium ...) in the water and in the air. Gabes is believed to be the most polluted city in the country, causing infertility, frequent miscarriages and cancers. Moreover, while phosphate represents regional wealth, these regions are among the poorest and most affected by unemployment, which raises the issue of the absence of redistribution. That explains the long history of protests in the Gafsa region. These major movements explain the decline of the phosphate industry: in ten years production decreased by half⁶⁶⁶⁷⁶⁸⁶⁹⁷⁰



Figure 5: Map of major extractive industries protest sites.

Source: Authors.

The phosphate industry is then an illustration of «extractivism», a model based on «activities that extract large quantities of natural resources that are not processed (or are only to a small extent) mainly intended for export». This mode of development is then based on the exploitation of a resource to the detriment of other activities, generating a rise in poverty and inequality in these regions. The other sectors are reduced to a minimum and can no longer provide⁷¹⁻⁷²sufficient and, above all, varied employment, particularly in agriculture or tourism. This sectoral concentration has been favored by state policies that have aimed since the 60s to specialize a region in a type of production. Thus, in Gabès, the chemical industry was promoted. This omnipresence has been amplified by the polluting activity of companies, which has had disastrous implications for fishing and tourism by soiling water (especially with phosphogypsum but also ammonia) and air. However, the region has an exceptional nature ,representing the only maritime oasis in the world.⁷³⁻⁷⁴⁻⁷⁵

Other examples of this extractivism can be found in the field of energy, with extractive companies, often multinationals, also strongly contested for their pollution and lack of participation in local development (see Figure 5⁷⁶). In 2017, sit-ins at the oil site El Kamour in the name of the right to work and to demand stable employment for graduates in the region resulted in a compromise negotiated by the UGTT.

⁷¹ Acosta A. (2013) Extractivism and neoextractivism: two sides of the same curse. *Beyond Development*, p. 61.

⁷² This phenomenon is called the «resource curse» or «Dutch disease».

⁷³ Interview with Debaya K.E., from the stop Pollution social movement in Gabès

⁷⁴ Chapel S., Gouin S., Crubézy N. (2015) The Curse of Phosphates: The Underside of Chemical Agriculture. Report Basta!

⁷⁵ Interview with Debaya K.E., from the stop Pollution social movement in Gabès

⁷⁶ PGE Gabès. (2019). The impact of industrial emissions in Gabès: a considerable cost to the region's economy. Press release.

⁷⁷ Blaise L. (2017) To The Kamourthe resistance will continue during the Ramadan. Middle East Eye.

⁷⁸ Hamouchene H. (2016) Off the coast of Tunisia, the Kerkennah archipelago is suffering from the effects of climate change, the oil industry and repression. Observatory of multinationals.

⁷⁹ Hakyma Dadci L. (2014) Water, public service and extractive industry in Tunisia: human rights hostage to private interests. Aitec

⁸⁰ The debate on shale gas is (also) inflaming Tunisia.

⁸¹ Feriani breaks a taboo on environmental societies.

⁸² [Tunisia: 13,500 receive pay without working and 113 complaints filed.](#)

⁸³ Interview with Gharbi D., Vice-President of the Confederation of Citizen Enterprises of Tunisia (CONECT)

⁸⁴ [Gafsa: contestation of the results of the competition of the environmental society](#)

⁸⁵ Interview with Debaya K.E., from the stop Pollution social movement in Gabès

⁸⁶ Phipps S. (2014) Extractivism and social acceptability. MICLA.

⁸⁷ Bardelli Hotels P. (2005) Nouveau Monde, Nouvelle régulation sociale: Démystifier la Responsabilité Sociale des Entreprises. Management & Avenir 2005/4 (n° 6), p. 111-129.

⁸⁸ Walley N.; Whitehead B. (1994) It's not easy being green. Harvard Business Review

⁸⁹ Interview with Gharbi D., Vice-President of the Confederation of Citizen Enterprises of Tunisia (CONECT(CONECT)

On the island of Kerkennah, the British oil group Petrofac was arrested by demonstrations for local development and employment, but also against water pollution caused by oil leaks into the sea and finally left the country in 2018. Finally, in Kebili, the governor denounced the tax evasion by the company Winstar/ Serinus, which would never have paid the tax to the local authorities. All these companies then took advantage of local natural resources without any concern for regional development, triggering widespread opposition. Many social movements have also opposed shale gas, which is particularly damaging to the environment, and a hastily reached agreement with Shell by the government, without any environmental impact assessment carried out.⁷⁷⁻⁷⁸⁻⁷⁹⁻⁸⁰

B. CSR law: nth strategy to buy social peace to revive the mining industry? ?

With the protests of these extractive companies, various solutions were then sought to restore social peace and resume the exploitation of these natural resources. One of those is that of environmental societies. Environmental societies are companies that were created in 2011 by the CPG and the GCT «under social pressure». In 2018, approximately 17,000 agents are hired by these environmental companies, including 6,000 for those under the CWG and 11,000 for the CPG. According to Khaled Kaddour, a former energy minister, these salaries are paid but without the work. These environmental companies and the fictional employment they offer are strongly criticized. Some consider that the environmental and transport societies are part of «disguised unemployment», which⁸¹⁸² is only intended to calm the social movements protesting the mining industry: it is therefore a «firefighter» action, in order to manage the crisis but without any long-term action or substantive work. Environmental companies have also been criticized in their recruiting process, with suspicions of fraud and corruption in Gafsa. Finally, these environmental societies have not really made it possible to limit social movements: there is in fact a multiplication of demonstrations that demand an increase in recruitment, because some want to take advantage of its privileges and wages without⁸³⁸⁴ real work in return⁸⁵. This strategy, which consists in buying social peace through fictitious jobs, can then be regarded as a failure.

With these failures, CSR was seen as another means to ensure the social acceptability of companies. Indeed, foreign studies have shown that, to counter conflicts between local communities and companies that exploit natural resources, companies have developed new methods to establish their legitimacy among affected communities, especially by CSR. It then becomes, for the extractive industries, a way to buy their social acceptability by appearing more legitimate.⁸⁶

C. Confusion between the reasons of the CSR law and the motivations of companies

If the objective of passing the CSR law in Tunisia is to restore mining and oil activity blocked by social movements, for large companies the adoption of CSR is mainly motivated by economic benefits. The social responsibility strategies developed by companies are limited by price and competitiveness imperatives. Companies then engage in CSR as long as the expected benefit (brand image, market share gain, worker productivity) exceeds the costs. Thus,⁸⁷ integrating environmental issues into the company's strategies allows it to improve its productivity and competitiveness. Indeed⁸⁸, according to CONECT, the motivation of Tunisian companies to adopt CSR principles is based on the expected gains in competitiveness, on the impact on the sustainability and development of the company as well as its image.⁸⁹

⁹⁰ Mkaouer S. (2015) Are companies in Tunisia socially responsible? Results of the 2013 competitiveness survey. TRIBUNE OF THE ITCEQ, n°6.

⁹¹ Ditto

⁹² Interview with Chalbi A., Coordinator of the Institute of Corporate Social Responsibility in Tunisia (IRSET)

⁹³Ghozzi-Nekhili C., Desire-Oueslati And., Labaronne D. (2015) Standardization and Corporate Social Responsibility in Tunisia: the role of international certifications. Recherches en Sciences de Gestion, vol. 109, no. 4, pp. 101-124.

⁹⁴ Ditto

⁹⁵ Interview with Mrouki Z., project manager at Avocats Sans Frontières Tunisia

⁹⁶ Ditto

CSR is also driven by international trade. In fact, most of the companies that are members of the PM are exporting companies (42% of exporting companies have implemented CSR programs compared to 26% of local companies), or «offshore», which⁹⁰ benefit from the dissemination of best practices via their international partners. CSR makes it possible for them to gain market share and facilitate their integration into the global value chain. Their integration into responsible programs also stems from a major demand from business partners, donors and investors. According to Ghozzi-Nekhili et al.⁹¹⁻⁹² In Tunisia, some exporting companies or those that want to develop a partnership with foreign companies must set up models of organizations that comply with international standards, which can be certification standards (SA 8000, ISO 14001, OHSAS 18001...) or non-certification (ISO 26000, SD 21000). Their⁹³ study confirms that the main motivation of companies to adopt CSR principles was the requirement of international clients, who are increasingly sensitive to these standards. Good governance through CSR also enables greater access to external funding. The stakes, therefore, are primarily economic.

However, the reasons for the CSR law, which have been explained from the start of the discussions, concern the guarantee of social appeasement. This would restore social peace by strengthening the legitimacy of extractive industries. But taking into consideration the motivations of companies to integrate a CSR approach on the one hand and the fact that this law is without any constraint and without any reporting obligation on the other hand, we can then fear a «greedy law», motivated solely by the revival of extractive industries.⁹⁴ This also allows companies to avoid really implementing environmental programs by hiding behind a CSR facade.⁹⁵Indeed, in Kebili, for example, oil companies use a few million dinars to make CSR, a very small amount of their turnover and which is not concerned with the development of the region⁹⁶. Also, the phosphate industry continues to pollute the Gabès region despite the implementation of an important CSR program funded by the European Union. We are then witnessing a staging or coaxed by polluting industries under the banner of CSR, without any concrete effect on the environment, employability or even on regional development.

The extractive industries, both mining and oil, therefore seem to have difficulty in adopting a voluntary and non-binding CSR approach, content that meets the demands and pressures of civil society. However, these companies should, more than others, work on their responsibility and their impacts on their environment because they use natural resources, limiting their use by other activities and local populations, and polluting them.

The case of the CPG and the GCT illustrate these difficulties: in the face of these many social protests targeting the extractive mining industries, companies have been implementing CSR programs for several years. The CPG and the GCT have devoted a very large budget for CSR but without real impact because of a lack of coordination of these actions, but also because these actions are in contradiction with their own activity.⁹⁷The integration of the CPG and the GCT into the Global Compact would be more a matter of improving the image of these companies rather than a real desire to integrate an effective CSR approach and only as a result of the pressure exerted by social movements and not proactively. The scale of the damage caused by these extremely polluting mining industries also prevents CSR from having an impact.

Thus, un-polluting the region of Gabès would cost thousands of millions of dinars, far from the amount already allocated⁹⁸, and which would be in perfect contradiction with the financial objective of these companies.

⁹⁷ Interview with Chalbi A., Coordinator of the Institute of Corporate Social Responsibility in Tunisia (IRSET)

⁹⁸ Interview with Debaya K.E., from the Stop Pollution social movement in Gabès

V. The disengagement of the State through CSR and the emergence of new actors

A. Major CSR projects of donors

Key players in CSR in Tunisia include international donors, who are responsible for the major CSR programs.

One of the main projects is the Project to Support the Environmental Governance of Industrial Activity in Gabès (PGE-Gabès), funded by the European Union and implemented by Expertise France between 2014 and 2018. The EU had already funded a support program for the TCG, which failed because of the excessive citizen blockade and the rejection of all negotiations by the social movements. The EMP program⁹⁹ is then included in a regional scale. After an observation of intense pollution and lack of development of the region, the project aimed to reduce coastal and marine pollution in the region and to establish a dynamic of local environmental governance between all local actors. The project has been endowed with a budget of 5 million euros, divided into four areas of intervention, including the «strengthening of skills and support in social responsibility (CSR) of industrialists». As a result of these activities, 5 companies in the region were able to join the PM. A year later, the program was considered a failure due to difficulties in recruiting experts as well as the lack of involvement of companies:¹⁰⁰⁻¹⁰¹ most did not show up for meetings. Ultimately, only five companies have implemented¹⁰² a CSR program and joined the PM.

While an environmental consultation chamber has been established with representatives from all types of actors, only a part of civil society is represented, the most established. Other social movements, more subversive, such as Stop Pollution, preferred to boycott the program, considered too little inclusive.¹⁰³

Later, the French Development Agency (AFD) offered the Tunisian Chemical Group (GCT) a grant agreement to support the company's CSR and governance approach to the tune of 900,000 dinars (300,000 euros) in April 2018. According to G. CHAUSSÉ, Director of AFD in Tunisia: « This support is part of the commitments made by the AFD Group to support Tunisia and to accompany all private and public actors towards an ecological transition and to support a large Tunisian public industrial group in its desire for social responsibility ». This envelope is specifically designed to carry out an expertise on the CSR of the public company. In 2016, AFD had already lent €45 million to finance an environmental upgrading program for the group's plants.¹⁰⁴⁻¹⁰⁵

These CSR programs show increasing donor engagement since the Revolution on the implementation of the Sustainable Development Goals. The CSR law should in future facilitate the implementation of such CSR programmes. Mr Peignaux, from the EU Delegation to Tunisia, believes that if the CSR law had been adopted before the PGE-Gabès programme, it would undoubtedly have greatly helped in its implementation, in particular by allowing the more active involvement of both companies and ministries.

B. Predominant role of private institutions

The second type of major actor in the area of CSR are private and employer institutions.

One of the most active, although still of marginal influence, is the CONECT (Confederation of Citizen Enterprises of Tunisia), which strongly promotes CSR and should therefore benefit from the new law. CONECT was created in 2011, with a

⁹⁹ Ditto

¹⁰⁰ Expertise France. Brochure of the PGE-Gabès project.

¹⁰¹ Expertise France. PGE-Gabès Press Kit

¹⁰² Interview with Q. Peignaux, Responsible for International Aid and Cooperation, Environment and Energy, EU Delegation to Tunisia

¹⁰³ Interview with Debaya K.E., from the stop Pollution social movement in Gabès

¹⁰⁴ [CSR: AFD grants Tunisian Chemical Group €300,000 in financing](#)

¹⁰⁵ [Tunisia wants an eco-responsible phosphate industry.](#)

focus on SMEs. CSR was quickly integrated into the union's activities, first through a «Corporate Citizenship Charter», inspired by ISO 26,000, through conferences and cooperation with associations, donors (OXFAM, Bird International Bank for Reconstruction and Development) and ministries (Ministries of environment; women's rights; and industry and SMEs). He also created a CSR label divided into three levels of engagement : bronze, silver and gold. It is a rather minimal label, the conditions of obtaining the bronze label being quite low, consisting essentially in conformity with the legislation in force. The label is still being implemented, with two labeled companies and a dozen in the process of labeling. For the CONECT, the law is a good step forward but is not sufficiently inclusive (for SMEs in particular), not very concrete and deals more with philanthropy.¹⁰⁶

¹⁰⁶ Interview with Gharbi D., Vice-President of the Confederation of Citizen Enterprises of Tunisia (CONECT)

¹⁰⁷ [Corporate Social Responsibility \(CSR\): a draft law in preparation.](#)

The other employers' union, Utica, initially criticized the CSR law for a long time when it included the obligation for companies that exploit natural resources to devote part of their profits to local development, considering that it was a «disguised tax» and calling for a purely incentive framework. Their position has been criticized by several interviewees, believing that, while promoting a voluntary view of CSR as more effective, they are not promoting CSR within their ranks.¹⁰⁷

The other major institution promoting CSR is an independent and private institute: the Institute of Corporate Social Responsibility in Tunisia (IRSET), created in 2013 and which offers trainings. IRSET stands out as the point of contact between academia and business. Specifically, IRSET helped draft the 2018 law and encouraged the removal of the mandatory percentage. It is also the host institution for the Global Compact Network in Tunisia created in 2015: it is therefore the body responsible for preparing companies and organizations to join the Global Compact. However, it should be noted that these courses are remunerated and that the IRSET thus benefits from its status of host organization¹⁰⁸.

In Tunisia, it is up to international donors and private organisations to promote and implement CSR.

The State, despite the CSR law passed last year, is very little present in the application of CSR. Its promotion is mainly carried out by these two associations, IRSET and CONECT, which derive benefits from it and which seek to impose their form of labelling in a competitive manner.

C. Does CSR mark the withdrawal of the State from development issues?

The omnipresence of different actors mentioned: donors and private institutions, and a weak CSR law lead us to question the real role of the State. In fact, on a global scale, the emergence and strengthening of CSR issues goes hand in hand with the globalization of the economy, but especially the weakening of legislative social systems in most countries. Some researchers have observed the substitution of State law, which is binding by a voluntary soft law. As the social and environmental situation deteriorates, CSR helps to assure stakeholders that the new globalized and financialized world is favorable while it generates a significant weakening of social safety nets.¹⁰⁹ As for managing the major environmental issues of our time, it is feared that «the proliferation of states' declarations in favor of the development of CSR will mask [...] the temptation for them to shift their own responsibility towards that of companies». Beyond the considerations of its real effectiveness, CSR poses a major problem if it constitutes for States a means of shirking their responsibility as a major social actor.¹¹⁰

¹⁰⁹ Bardelli Hotels P. (2005) New World, New Social Regulation: Demystifying Corporate Social Responsibility. Management & Avenir 2005/4 (n° 6), p. 111-129.

¹¹⁰ Small B., Nicolai I. (2015) Law and environmental protection: limits of corporate social responsibility without state social responsibility. Conference paper 2nd International Colloquium Law, Business and Environment, University ScottRabat.

¹¹¹ Interview with Peignaux Q., Responsible for International Aid and Cooperation, Environment and Energy, EU Delegation to Tunisia

¹¹² Interview with Debaya K.E., from the stop Pollution social movement in Gabès

¹¹³ Laughlin, B. (2008) Governing capital? Corporate social responsibility and the limits of regulation. *Development and Change*. 39(6) *Development and Change*. 39(6)

¹¹⁴ Chouikha L., Gobe And. , (2009) Tunisia between the «revolt of the Gafsa mining basin» and the electoral deadline of 2009», *The Year of the Maghreb*, V | 2009, p.387-420.

¹¹⁵ Interview with Debaya (Khayreddine), of the social movement Stop Pollution in Gabès

¹¹⁶ Small B., Nicolai I. (2015) Law and environmental protection: limits of corporate social responsibility without state social responsibility. Conference paper 2nd International Colloquium Law, Business and Environment, University ScottRabat.

We can then fear that the vote of the Tunisian law on CSR will express the temptation for the Tunisian State to step aside its societal and environmental responsibilities in favor of self-regulation by companies. The law allows for environmental activism, to hide the government's inaction on real environmental protection and to deflect public attention from the real problems. The danger is that the promotion of CSR decreases or even replaces the responsibility of States in crucial areas. An example of this disengagement of the Tunisian state in favor of companies is still in the same region: that of Gafsa. The CPG has historically been the largest employer in the region. But with the application of the structural adjustment plan (PAS) at the end of the 80s, the number of jobs fell by 75%, while investment remains almost non-existent and the State is totally absent. This abandonment and the difficult situation of the region result in^{111,112,113,114} the revolt of the mining basin in 2008. The CSR law, by specifically targeting the phosphate industries, will make these companies more responsible in regional development. However, environmental and social issues are primarily in the public interest and therefore the responsibility of the State. The state should do more for national and especially local development, intervene in the regions and inject money into infrastructure and different projects. CSR should not be a substitute, but should be accompanied by a «social responsibility of States»^{115,116}. One manifestation of this disengagement of the State is the lack of involvement of the ministries and the total absence of coordination between the various state bodies in charge of CSR issues. This lack of coordination prevents the state from taking concrete action and being effective.

VI. Recommendations for effective CSR and for the protection of rights

Although it refers to international texts on human rights and the environment, the CSR law in its content does not contain any provisions that guarantee compliance with their principles and the follow-up of their recommendations. In view of the impact of companies, particularly mining companies denounced by social movements on one hand, and the lack of a solution proposed to these problems by the current CSR law on the other hand, two reference frameworks seem essential to us to formulate recommendations in order to improve the legal framework of CSR and the protection of rights : the United Nations Guiding Principles on Business and Human Rights (UNHPR), as well as the African Mining Vision (VMA) and its action plan (cluster 7).

A. Relevant international benchmarks to the Tunisian context

1. United Nations Guiding Principles on Business and Human Rights.

The Guiding Principles on Business and Human Rights is a framework, also known as «Protect, Respect and Remedy»¹¹⁷, which was endorsed by the United Nations Human Rights Council in 2011.

This reference framework contains founding principles and operational principles relating to the obligation's incumbent on the State, the obligations incumbent on companies, but also on the establishment and effectiveness of judicial and non-judicial remedies for victims of violations.

The Guiding Principles «clarify the implications of their duty to protect 'any person under their jurisdiction from human rights violations committed by businesses ... [and] also provide companies with practical advice on the steps to be taken to ensure that they respect internationally recognized rights and to remedy any «possible

¹¹⁷ [P_Guiding Principles on Business and Human Rights, Implementation of the United Nations «Protect, Respect and Remedy» Framework](#)

violations». The mechanism thus establishes a common framework for action and establishing responsibilities, and thus for «assessing the behavior of States as well as companies.»

In June 2014, the Human Rights Council established an open-ended intergovernmental working group to develop «a legally binding international instrument to regulate, within the framework of international human rights law, the activities of transnational corporations and other business enterprises». The draft treaty is still under preparation but has already undergone three revision sessions¹¹⁸, the latest of which took place in autumn 2021.

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2. African Mining Vision (AMV) and its action plan (cluster 7)

The AMV is a pan-African policy framework established by a network of initiatives at the regional, continental and global levels that aim to transform Africa's mining sector for its sustainable development. The birth of this AMV was guided by several sub-regional and continental political initiatives, culminating in 2009 in its final version¹¹⁹. The AMV is based on several areas of intervention that guide the use of Africa's mineral wealth towards its sustainable development, according to a framework for action in the short, medium and long term.

The interest in this vision is linked to the primary importance that the AMV attaches to the creation of added value at the local level. Indeed, the AMV radically breaks with other policy frameworks for the mining sector, advocating the establishment of links to derive the greatest possible value from mining activities. These links are articulated in the AMV and its Plan action through a process that spans the entire value chain of the mining industry, from geological mapping, procurement and licensing, to mining activities and the mobilization and allocation of mineral resources.

Under the AMV, governments need to strengthen the capacity and effectiveness of regulation and improve the culture of their interaction with citizens and communities affected by mining. This would minimize conflicts and tensions with communities due to displacement and disruption of livelihoods through mining activities.

The AMV Action Plan (2011)¹²⁰ dedicates one of its nine clusters to «environmental and social issues» urging countries and stakeholders to implement several mandatory actions to prevent or act on the negative impacts of mining activities on local communities and their environment.

The Guiding Principles and the AMV are international documents that provide policy frameworks and technical guidance for their implementation that inspire recommendations to address the weaknesses and shortcomings of the current Tunisian CSR law.

¹¹⁸ [United Nations website, Human Rights Council](#)

¹¹⁹ [Vision of the African Mining Regime, 2009](#)

¹²⁰ [Action Plan for the Implementation of the Vision of the African Mining Regime, 2011](#)

B. Recommendations on the vocation and general conditions of CSR

1. Making CSR an instrument for the protection of human rights

The right to life, the right to health, the right to a healthy environment, the right to water are among the human rights that are claimed by the populations affected by the impacts of companies in Tunisia. Despite the fact that Tunisia has ratified a large number of international human rights conventions, and that the CSR law refers to them, it is clear that these commitments have not further inspired the vision, objective and operational provisions of the current law. The areas referred to in the law («environment and sustainable development, rationalization of the exploitation of natural resources and their valorization, development of skills and employment, good governance») do not reflect a human rights-based approach.

Although the Guiding Principles do not identify the specific human rights that companies have a responsibility to respect, they also refer to this series of international human rights instruments ratified by States, and make these rights the keystone of the founding and operational principles incumbent on the State and business, to protect these rights, enforce them and redress violations.

For its part, the AMV makes «the fight against human rights violations» a short-term goal, and its action plan advocates «giving human rights institutions the means to monitor and enforce human rights standards with regard to mining operations».

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companies have a responsibility to respect, they also refer to this series of international human rights instruments ratified by States, and make these rights the keystone of the founding and operational principles incumbent on the State and business, to protect these rights, enforce them and redress violations.

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2. Forcing companies to respect economic, social and environmental rights

Although the very purpose of a CSR law implies the need to make companies responsible in addition to existing economic, social and environmental legislation, CSR in Tunisia today is based on proactive approaches by companies.

Far from the incentive-based approach of the current CSR law, the Guiding Principles make it a binding obligation when they stipulate that «companies must be aware of human rights and show that they respect them in all their activities. »

For CSR objectives to be achievable, the AMV goes further by stating that the deployment of environmental and social funds must be made a mandatory requirement for the continuation of mining operations. While Article 2 of the CSR Law does stipulate that «companies must allocate grants to finance social responsibility programs», it must be ensured that the funds do not support projects that would

«compensate» for violations without stopping them. Labeled CSR, projects are thus totally disconnected from the company's own activities and their consequences on the rights of local communities and their environment. The creation and objective of environmental companies in Gafsa is an example: dedicated to the cleanliness and green spaces of the cities of the Mining Basin, this project still does not solve the health and environmental ravages related to the methods of extraction, washing and transformation of phosphate of the CPG or GCT.

The current framework does not exclude that CSR projects/measures are completely independent of the company's activities and therefore of their impacts. Corporate responsibility must therefore be exercised as a priority with regard to the company's impacts on its environment, and be part of the company's activities and its relations with its stakeholders.

While CSR is based on the protection, respect and redress of human rights, it cannot be optional or depend on the goodwill of companies. Thus, beyond the incentive, the legal framework must be binding and companies must not only fulfil their obligations to guarantee the protection of economic, social and environmental rights but also be accountable for their obligation.

This condition, sine qua non of a CSR at the service of human rights, does not however go without a framework and control of the State.

3. Strengthening the responsibility and means of the State

The dilution of the State's responsibility in favor of the goodwill of companies, reflected in the current CSR law, must not make us forget the State's duty to adopt and operationalize legislation that protects these rights effectively and ensures compensation in the event of a violation, beyond the case of companies. This duty is established by several international treaties, including the African Charter on Human and Peoples' Rights drawn up by the Organization of the African Union and ratified by Tunisia. The United Nations Guiding Principles recall the State's obligation to protect human rights from abuses perpetuated by all actors in society. They also establish operational principles to make it a reality when it comes to companies.

To prevent infringements first of all, the State must provide guidance to companies on the objectives and means on which they must commit, but also «encourage companies to make known how they manage the impact of their activity on human rights, and oblige them to do so, if necessary».

The principles thus set out the obligation to assess the impacts and to stop the human rights violations induced by these impacts. The AMV also states that «governments must strengthen the frameworks that govern the assessment, management and regulation of environmental and social impacts». Governments must, according to the AMV, thus «strengthen the capacity and effectiveness of regulatory bodies and improve the culture of how these institutions interact with citizens and communities affected by mining».

Also, like any binding regulation, the law should provide for sanctions so as not to allow abuses to go unpunished, but the State must also guarantee reparation, and in this respect access to an effective remedy, as stipulated in founding principal No. 25 which states that «States must take appropriate measures to ensure, through judicial means, administrative, legislative or otherwise, only when such infringements occur in their territory and/or under their jurisdiction». Thus, this obligation «requires the adoption of appropriate measures to prevent such violations, and when they occur, investigate them, punish the perpetrators, and remedy them through policies, laws, rules and judicial procedures».

In summary, despite the existence of strong demands and relevant references to respond to them, the philosophy and vocation of the current law does not guarantee a CSR in the service of human rights that would be binding on companies and directed on their impacts, and whose application would be controlled and guaranteed by the State and its institutions.

In practice, moreover, implementing legislation for the provisions of the Act has not been drafted. Concrete measures and measures can thus be recommended on the basis of the provisions of the current law but also on the recommendations of the Principles and the AMV.

C. Recommendations for an effective and impactful implementation of CSR

1. Mandate existing and competent institutions

The establishment of new bodies or institutions provided for by law may be called into question, since many institutions exist and could assume their intended functions.

By providing that the prioritization of CSR interventions is initially established at the regional level, the CSR law certainly gives a chance or at least better conditions to further promote the participation of local communities. The creation of a «regional steering committee for social responsibility» (Article 4) has yet to be the subject of a decree to determine the composition, competences and attributions. We recommend that these committees be established within the framework of existing bodies such as regional development councils, and that their role should not be confined to a mere «opinion», but rather to a decision-making power to decide on CSR program submitted by companies. These committees will thus have the power to invalidate these programs in the event that they do not meet the needs and priorities linked to the development of the region and/or do not guarantee the protection of the rights of local communities.

Secondly, a competent body at national level must be mandated to provide guidance and approval of measures to ensure that they correspond to the CSR framework set and will meet the objectives. This body could also perform advisory functions to support companies.

The creation of an observatory on social responsibility mentioned by law (Article 6), which should also be the subject of a decree, is likely to dilute responsibilities and action¹⁰. Among the bodies that could take on this responsibility of control and approval at the national level, the Observatory for Environment and Sustainable Development (OTEDD) should be an opportunity to be further considered. In charge of monitoring the environment since its creation in 1994, the OTEDD works under the supervision of the Ministry of the Environment, but also with many other institutions such as the Ministry of Energy, Social Affairs, or public companies in the water sector¹¹. Giving it the prerogative of monitoring and evaluation in terms of CSR with companies would allow a real dialogue. It would also make it possible to integrate CSR into a more global vision and policy around sustainable development.

The AMV makes institutional strengthening the spearhead of the actions necessary to achieve the regulatory role and protective responsibility of the State. To this end, the State must also provide human rights institutions with the means to monitor and enforce human rights standards in the context of mining operations (cluster 5). On this aspect of monitoring and control, the Sustainable Development and Rights of Future Generations Authority (constitutional body created in 2019), or even the Higher Committee on Human Rights and Fundamental Freedoms could possibly play a specific role and mission in the context of CSR, the Committee already having complaint mechanisms.

2. Adopt measures that ensure «beneficial transparent behaviour» of companies

The current CSR framework must be equipped with very concrete instruments and measures «this principle (CSR) adopted by companies as part of their commitment to take responsibility for the impact of their activity on society and the environment» (preamble). The Guiding Principles and the AMV are valuable resources here to ensure the «transparent and beneficial behavior» (preamble) of the companies covered by the law.

The Guiding Principles require companies to conduct «human rights due diligence», a process that consists of «assessing actual and potential human rights impacts, consolidating and acting on findings, monitoring actions taken and communicating how these impacts are being addressed. (Operational Principle 17). Due diligence is a mechanism that should be put in place as part of the application of the CSR law, in addition to the existing impact studies in Tunisia.

The AMV indicates precisely to which types of evaluations it is desirable to subject companies and it requires States to «integrate the Evaluations environmental and social policy, environmental impact assessments, social impact assessments and health impact assessments in national policies, laws and regulations, and make them mandatory tools for the approval of mining projects».

Throughout the process, transparency and reporting must be effective, to guarantee the right to information and citizen participation. UN Principle 21 goes in this direction by emphasizing the need to «provide sufficient information to assess the effectiveness of measures taken by a company to address the impact on human rights».

There are documents that guide companies in their understanding and support them in their appropriation of CSR8 objectives. Based on their knowledge of the impacts of their actions, they must then adapt their production patterns and relationships to respect human rights, as well as «provide for remedial measures or collaborate in their implementation through legitimate procedures, where they have had negative impacts» (principle 22).

The law by not creating a reporting obligation despite the affirmation of a principle of transparency, accountability or reparation, the assessment and control of the behavior of companies remain uncertain. However, due diligence and reporting are prerequisites and essential to set up a concrete dialogue between stakeholders, and an impactful CSR.

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3 .Ensuring the participation of communities potentially exposed to business impacts

By setting itself the objective of «Concretizing the principle of reconciliation between companies and their environmental and social environment through their contribution to the process of sustainable development and good governance», the CSR law superficially refers to communities that do not have the privilege of being once mentioned and concretely targeted. Their participation is left to the chance of a good practice of «good governance» of a regional steering committee. . For its part, the AMV notes that «Inadequate participatory approaches can lead to conflicts with communities dissatisfied with mining projects» (CLUSTER 5 of the AMV). The AMV thus makes community participation a central element, arguing that there is a need to «develop and implement guidelines for impact and benefit agreements with communities in mining areas and strengthen the capacities of communities and CSOs to negotiate impact and benefit agreements».

In assessing human rights risks, Principle 20 states that companies should conduct «genuine consultations with groups and other relevant factors that may be affected» and «draw on the assessments of both internal and external sources, including relevant actors».

The CSR law cannot thus do without implementing decrees that will give substance to this «good governance», and this must involve an evaluation of existing mechanisms and practices with communities to really concretize their place in the decision and implementation of CSR programs.

Conclusion

CSR law number 35-2018 of 11 June 2018 is problematic for various reasons. On the one hand formally: the law does not really aim to promote CSR but philanthropy, favoring the transfer of money to a reform of the functioning of companies. It does not mention figures, does not create a binding mechanism for companies, merely creating a new body without taking into account the already existing bodies. Finally, its application is for the moment made impossible by the absence of decrees, and until now.

On the other hand, the creation of the law was motivated by the legitimization of the extractive industries, strongly contested by various social movements. The law aims to buy social peace in a tense context, but also risks promoting a withdrawal of the state from environmental and social problems in these regions by highlighting corporate responsibility.

While the corpus of CSR standards is abundant and advanced, the Tunisian legal framework has been neither inspired nor ambitious. In view of the impact of mining companies denounced by the communities and the lack of solution proposed to these problems by the current CSR law, this Policy brief thus addresses recommendations in the light of two essential references to improve the legal framework of CSR and the protection of rights. The African Mining Vision (AVM), for which Tunisia has never explicitly expressed a commitment, nevertheless presented a relevant action plan and dedicates one of its 8 clusters to measures to act on the social and environmental impacts of mining operations. The United Nations Guiding Principles on Business and Human Rights (UNHPR) outline the obligations and operations to be undertaken by States and businesses to ensure respect for human rights. It is even more urgent and opportune for Tunisia to adopt these CSR Principles as a United Nations Treaty is being prepared and should soon make these founding and operational Principles binding obligations for the States that ratify it.

These two standards show us that Tunisia can make CSR much more than a label or a philanthropic action disconnected from the violations perpetrated by companies, but rather a real human rights protection mechanism binding on companies and provided by the State. Finally, these two standards also give us concrete measures that should inspire the planned implementing decrees but also invite us to think about the imperative of other implementing measures for effective and impactful CSR.

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Annexes

ANNEXE 1: Law 35-2018 of 11 June 2018 on corporate social responsibility

Law No. 35 of 2018 dated June 11, 2018, relates to the community res-

Source: Tunisian legal information portal. http://www.legislation.tn/fr/detailtexte/Loi-num-2018-35-du---jort-2018-049__2018049000351?shorten=m8bs

Law No. 35 of 2018 dated June 11, 2018, relates to the community responsibility of institutions (1). To enshrine the principle of reconciliation between institutions and their environmental and social environment by contributing to the path of sustainable development and good governance in accordance with the ongoing legislation. Community responsibility is a principle pursued by institutions to ensure that they are responsible for the impact of their activity on society and the environment by adopting transparent behavior that benefits society regionally. The Parliament's deliberation and approval of its session on May 29, 2018. Chapter 3 accomplishes projects within the framework of the community responsibility of institutions, especially in the following areas: environment and sustainable development, rational use and valuation of natural resources, skills development and employment Chapter 4, a regional community responsibility command committee sets out the priorities for intervention in accordance with Chapter 3 above. In accordance with chapter 2 above, the institutions are able to follow up on issues relating to community responsibility and propose and follow up on projects in coordination with the regional committee. Submitted to him annually by regional committees. Preparing an annual report on the status of community responsibility referred to the President of the Republic, the Speaker of the People's Congress and the Head of Government. Tunisia on June 11, 2018. President Mohamed Beji Caid Essebsi



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