

# Illicit Financial Flows and the Petroleum Sector in Cameroon: Hitches and Policy Considerations

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## Abstract

Cameroon depends to a large extent on the extraction of petroleum resources for their exports and tax revenue. However, this sector has been prone to generate illicit financial outflows over the years, causing the State to lose billions of dollars to this activity. In 2019, it was estimated that Cameroon lost over 7 billion US dollars which was approximately 4,200 billion XAF to IFFs. The loss was attributed to multinational companies operating in the oil, mining and gas sector in Cameroon. This study therefore aims at examining how the regulatory frameworks in the petroleum sector have been able to curtail the rise of IFFs in this sector. The paper also sheds light on the role of transparency in curtailing illicit financial flows, the catalysts of IFFs, the effects of and the hitches faced in curtailing IFFs in petroleum sector in Cameroon. The study underscores the fact that though the Cameroonian government has made laudable efforts through enactment of laws and putting in place regulatory structures to curtail this activity, lack of transparency, limited State participation in petroleum contractual arrangements, corruption, weak regulatory frameworks, tax evasion, trade mispricing and tax heavens remained the principal hitches to IFFs. Based on these findings, this study recommends strengthening of transparency mechanisms for oil licenses and contract awards, increased in State participation in oil contractual arrangements, citizen's inclusivity during the negotiation processes and signing of oil contracts, regular publication of oil data and revenue to the public amongst others.

**Keywords:** illicit financial flows, petroleum sector, hitches, policy considerations

## 1. Introduction

Illicit financial flows have become a major concern for governments and international development agencies. The United Nations General Assembly (UNGA) has on various occasions identified IFFs as a global problem that requires international cooperation.<sup>1</sup> Governing illicit financial flows has become one of main challenges confronting the surge for structural transformation in Africa. Illicit financial flows perpetuate Africa's economic dependence on other regions and undermine the capacity of the African governments to articulate and implement a developmental State approach that prioritize capacity building-expanding, transformative and distributive economic and social development policies.<sup>2</sup> Illicit financial flows are increasingly attracting attention because of their scale and negative effect on countries' development. Thus, illicit financial flows have become a real

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<sup>1</sup> UNGA, (2016), Promotion of International Cooperation to Combat Illicit Financial Flows in order to Foster Sustainable Development, A/Res/71/213. Available at <https://undocs.org/en/A/Res/71/213>

<sup>2</sup> UNECA, (2013). The State of Governance in Africa: The Dimension of Illicit Financial Flows as Governance Challenge, p. 1.

challenge to resource mobilization for financing development in Africa and Cameroon in particular.<sup>1</sup>

Large sums of money have been reported to have illegally left the African continent due to illicit financial flows. Though this amount cannot be stated with exactitude, over the last 50 years, Africa received nearly \$2 trillion in foreign direct investment (FDI) and official development assistance (ODA), but emitted over \$1 trillion in illicit financial flows.<sup>2</sup> Currently, Africa losses around 89 billion US dollars annually to illicit financial flows, equating to 3.7 percent of its gross domestic product, while tax incentives contribute to a further US dollars 222 billion loss.<sup>3</sup> The loss through IFFs increased from what was reported through the findings of the *High-Level Panel on Illicit Financial Flows* in 2015, that shows Africa was losing more than 50 billion US dollars annually in IFFs.<sup>4</sup>

Illicit financial flows and corruption are inhibiting African development by draining foreign exchange, reducing domestic resources, stifling trade and macroeconomic stability and worsening poverty and inequality.<sup>5</sup> These illicit flows rob Africa and its people of their prospects, undermining transparency and accountability and eroding trust in African institutions. Thus, African countries through what is known as the “Addis Ababa Action Agenda”, held in Addis Ababa, made commitment to redouble efforts to substantially reduce illicit financial flows by 2030 with a view to eventually eliminating them, including by combating tax evasion through strengthened national regulation and by scaling up international tax cooperation, including to support access to beneficial ownership information for competent authorities and progressively advance towards automatic exchange of tax information among tax authorities as appropriate.<sup>6</sup>

Cameroon has, since the confirmation of the existence of commercial oil taken steps to ensure that; the resource is well governed, and the right revenues are generated from it and spent in a transparent and accountable manner. In this regard, the country has put in place a relatively comprehensive legal and policy regime for the regulation of the petroleum operations as well as, the management of oil revenues. These regulatory frameworks stem from the international, regional and domestic levels. In this light, the country has signed and ratified several International Conventions like the United Nations Convention against Corruption (UNCAC), United Nations Model Double Taxation Convention between Developed and Developing Countries and Manual for Negotiation of Bilateral Tax Treaties between Developed and Developing Countries and the Extractive Industry Transparency Initiative which all has as aims to curtail IFFs.

Domestically, Law No. 2019/008 of April 25, 2019 instituting the Petroleum Code and its decree of application, Decree No. 2023/232 of 04 May 2023 fixing the modalities for the application of Law No. 2019/008 of April 25, 2019 instituting the Petroleum Code, Law No. 2018/11 of 11 July 2018 to lay down the Cameroon Code of Transparency and Good Governance in Public Finance Management and the 2024 Finance Law have been enacted by the national legislators to also curtail the growing rise of IFFs in the petroleum sector in Cameroon. Cameroon’s commitment to curtailed IFFs can be further seen as she became a signatory country in what was known as the “Yaounde Declaration” in 2017 which urges the African Union to begin a high-level discussion on tax co-operation, the fight against illicit financial flows and their link to domestic resource mobilization.<sup>7</sup>

Similarly, an elaborate institutional framework has also been put in place to facilitate the collection, administration and management of oil revenues for the benefit of all citizens, such as the National Hydrocarbons Corporation (popularly known in its French abbreviation as SNH), the Ministry of Mines, Industry Technological Development Ministry (MINMIDT), National Agency for the Investigation of Financial Crimes (ANIF) and National Anti-Corruption Commission (NACC).

It worth noting that revenue from the natural resource sector has a vital role to play in the accomplishment of the country’s vision of becoming emerging by 2035. In 2019, it was estimated that Cameroon lost over 7 billion US

<sup>1</sup> Micheal, P., & Kenneth, M., (1994). Capital Flight, External Debt and Domestic Policies. NBER Working Paper No, 4793, p. 18.

<sup>2</sup> Kar, D., et al, (2010). Illicit Financial Flows in Africa: Hidden Resource for Development. Global Financial Integrity, p. 3.

<sup>3</sup> Global Tax Reforms and Stemming Illicit Financial Flows: Expert Meeting on Strengthening Africa’s Leadership on Tax Reforms. Available at <https://au.int/en/newsevents/20240508/3rd-sub-committee-tax-and-illicit-financial-flows> (Lastly Accessed on 17<sup>th</sup> June 2024).

<sup>4</sup> AU/ECA, (2015). Illicit Financial Flows: Report of the High-Level Panel on Illicit Financial Flows from Africa”, AU/ECA Conference of African Ministers of Finance, P. 13.

<sup>5</sup> Neumaye, E., (2006). Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries? *Journal of Development Studies*, 43(8), pp. 1501-1519.

<sup>6</sup> Global Forum on Transparency and Exchange of information for Tax Purposes. Available at <https://www.yaounde-Declaration-signatories.com>(Lastly Accessed on 17<sup>th</sup> June 2024).

<sup>7</sup> *Ibid.*

dollars which was approximately 4,200 billion XAF to IFFs.<sup>1</sup> The loss was attributed to multinational companies operating in the oil, mining and gas sector in Cameroon.<sup>2</sup> Reducing illicit trade and flows linked to the exploitation of petroleum resources as well as improved management could lead to higher revenue to finance developmental projects in Cameroon.

However, the major challenge that the country has to manage is how to guard against and/or minimise external petroleum revenue leakages, and in particular to ensure that oil companies pay their fair share of revenues as provided for under the law. Illicit financial flows are high in the Cameroonian petroleum sector due to high scale confidentiality that surrounds this sector stemming from the awarding procedures of oil authorizations, oil contracts, trading and transportation, refining, marketing and revenue allocation in this sector. The failure to safeguard against this has perpetuated underdevelopment and poverty in the country. It is against this background that this paper aims to investigate how the regulatory frameworks have been able to curtail illicit financial flows in the petroleum sector in Cameroon. Specifically, this paper also examines the efforts that have been made to achieve transparency in petroleum contractual arrangements in Cameroon. In addition, the paper also sheds light on the catalysts/hitches of IFFs in the petroleum industry in Cameroon.

This paper is divided into 6 sections. Section 1 provides the introductory aspects of illicit financial flows, Section 2 provides a comprehensive understanding of the term illicit financial flows, section 3 focuses on transparency as a benchmark principle to curtail illicit financial flows in the Petroleum Sector in Cameroon, section 4 provides a succinct explanation on the Hitches of illicit financial flows in the petroleum sector in Cameroon, section 5 of this paper is limited on the effects of illicit financial flows, while section 6 is termed conclusion and policy considerations.

## 2. Conceptual Contours of Illicit Financial Flows

There is no widely agreed-upon definition of which specific forms of capital movement constitute illicit financial flows. As such, IFFs have been given different perspectives by different researchers.<sup>3</sup> One of the leading definitions has been provided by Dev Kar,<sup>4</sup> lead economist at Global Financial Integrity. The author defines IFFs or illicit money as “money that is illegally earned, transferred, or utilised. Somewhere at its origin, movement, or use, the money broke laws and hence it is considered illicit.”<sup>5</sup> This narrow definition of illicit financial flows covers activities including hiding the proceeds of crime, channeling funds towards criminal destinations, and evading tariffs and taxes through misreporting of transactions.

One may quarrel the author’s definition because IFFs may be manifested not only through money but through illegal transfer of natural resources. Wider definitions generally focus on actions that are not strictly illegal, but which are undesirable because they result in reduced tax revenues, including tax avoidance actions such as strategic transfer pricing.<sup>6</sup> The term encompasses the international transfer of moneys generated by bribery, tax evasion and illegal markets.<sup>7</sup>

According to the United Nations Development Programme (UNDP),<sup>8</sup> illicit (financial) flows include, but are not limited to, cross border transfers of the proceeds of tax evasion, corruption, trade in contraband goods, and criminal activities such as drug trafficking and counterfeiting. In the oil sector, these flows mostly originate from corruption, illegal resource exploitation, and tax evasion (including through smuggling and transfer mispricing).

<sup>1</sup> <https://www.cameroon-tribune.com/article.html/26430/fr.html> (Lastly Accessed on 17<sup>th</sup> June, 2024).

<sup>2</sup> *Ibid.*

<sup>3</sup> Tamasang, C., (2017). Illicit Financial Flow and Regulatory Framework for Mineral Exploitation Arrangement in Cameroon. *Illicit Financial Flows Research Series*, (8), p. 5; Chowa, P., et al, (2016). Illicit Financial Flows: Concepts and Scope. Financing for Development Working Paper Series, p. 1; Cobham, A., et al, (2017). Measurement of Illicit Financial Flows. UNCTAD Working Paper, p. 5.

<sup>4</sup> Kar, D., (2010). Illicit Financial Flows from Developing Countries: The Absurdity of Traditional Methods of Estimation, Global Financial Integrity. Available at <https://www.gfinancialintegrity.com> (Lastly Accessed on 4<sup>th</sup> June 2024).

<sup>5</sup> Kar, D., & Deron C., (2010). Illicit Financial Flows in Africa: Hidden Resource for Development. Global Financial Integrity, p. 3; Reteur, P., (2012). Drawing Development? Controlling Illicit Funds from Developing Countries, World Bank, p. 2.

<sup>6</sup> Forstater, M., (2018). Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?’, Center for Global Development Policy Paper, P.123.

<sup>7</sup> Reteur, P., (2017). Illicit Financial Flows and Governance: The Importance of Disaggregation. Background Paper for the World Development Report, p. 2.

<sup>8</sup> UNCTAD, (2016). Trade Misinvoicing in Primary Commodities in Developing Countries: The Cases of Chile, Cote d’Ivoire, Nigeria, South Africa, and Zambia. Working Paper No. 12323, p. 13.

Others think that IFFs is money that ends up benefitting local and foreign elites rather than the general population, much of which is generated by corruption, illegal resource exploitation and tax evasion (and tax avoidance).<sup>1</sup> In fact, according to Le Billion,<sup>2</sup> fuel exporters were responsible for nearly half of the illicit financial flows from Africa between 1970 and 2008. This explains why oil price increases are associated with increases in illicit flows.

Moreover, Boyce and Ndikumana find a statistically significant relationship between oil exports and illicit financial flows: specifically, they estimate that, for every extra dollar in oil exports, an additional 11 to 26 cents leaves the country in the form of illicit financial flows.<sup>3</sup> In addition, oil is not the sole resource conducive to illicit outflows of capital. In South Africa, the vast majority of illicit capital flows arise out of transfer pricing from the mining sector.<sup>4</sup>

In fact, IFFs are usually understood as the international flow component of corruption but this may be a restricted view because the phenomenon of corruption happens not only at the international level but also at the national level as well. Be all these as they may, the bottom line is that the activity is tainted with illegality, hence illicit and thus making the law one of the useful and determinant parameters of combatting IFFs.

### **3. Transparency as a Benchmark Principle to Curtail Illicit Financial Flows in the Petroleum Sector in Cameroon**

It worth noting that there exist several principles that can be used to curtail illicit financial flows. However, this paper pays attention only to the transparency principle. The importance of this principle can be underscored as it has been embedded into different piece of treaties conventions and legislations either directly or indirectly. For the purpose of clarity, this section of the paper provides a comprehensive understanding of the principle, its tenets and shed lights on its role in curtailing IFFs in the petroleum industry in Cameroon.

#### *3.1 Understanding Transparency Principle and Its Value*

Around the world, national authorities are increasingly aware of the value of transparency in combatting IFFs. Transparency is the centre stage in the international struggle for the past 2-3 decades to improve accountability in licensing, tax agreements, and payments. Transparency in the context of the oil industry is understood to mean the speech act of making something evident or disclosing information or giving evidence about another.<sup>5</sup> It is actually about making available information which may be useful to the public and on basis of which the public can evaluate the activities of those involved in negotiation, signing and execution of oil contracts. Transparency improves enforcement, brings better accountability and trust in processes and institutions and deters wrongdoing by increasing the risk of detection.<sup>6</sup> There is a strong link between weaknesses in transparency on the one hand and the incidence of illicit financial flows on the other hand.<sup>7</sup>

Transparency principle has seen a step change in international actions, when advocacy by the Global Witness, the Open Society Foundations, and others rallied under the banner of *Publish What You Pay* (PWYP).<sup>8</sup> This culminated in an international conference convened in London by the UK's DFID (now FCDO) in June 2003, which agreed a Statement of 12 Principles to increase transparency payments and revenues in the extractive industries. The Extractive Industry Transparency Initiative was founded to give effect to these principles. The Extractive Industries Transparency Initiative (EITI) is a voluntary mechanism aimed at strengthening the good governance of public revenues derived from extractions in countries rich in oil, gas, and mining resources.<sup>9</sup> The EITI requires the annual publication of EITI Reports, including the disclosure of significant State revenues from

<sup>1</sup> Le Billion, P., (2021). Extractive Sectors and Illicit Financial Flows: What Role for Revenue Governance Initiatives? U4 Issue, No 13, p. 3.

<sup>2</sup> *Ibid.*

<sup>3</sup> Ndikumana, L., & Boyce J., (2001). Is Africa a Net Creditor? New Estimates of Capital Flight from Severely Indebted Sub-Saharan African Countries-1970-1996. *Journal of Development Studies*, 38, pp. 27-56.

<sup>4</sup> Ashman, S., & Newman, S., (2011). Amnesty International? The Nature, Scale and Impact of Capital from South Africa. *Journal of Southern African Studies*, 37(1), pp. 7-35.

<sup>5</sup> <https://www.community-oil.com> (Lastly Accessed on 16<sup>th</sup> May 2024).

<sup>6</sup> Jay Purcell & Ivana Rossi (2019). Privacy v. Transparency. *Finance and Development*, 19.

<sup>7</sup> Ostensson, O., (2020). Transparency in Extractive Industry Commodity Trading. WIDER Working Paper 2020/172, Helsinki; Tonny Addison & Alan Roe, (2024). Extractive Industries: Addressing Transparency, Corruption and Theft, WIDER Working Paper No. 32, p. 6.

<sup>8</sup> Van, Orange & Parham, H., (2009). Publishing What We Learned: An Assessment of the Publish What You Pay Coalition. Oslo, Extractive Industries Transparency Initiative/Publish What You Pay.

<sup>9</sup> <https://eiti.org/fr>. (Lastly accessed 5<sup>th</sup> June 2024).

the extractive industries, as well as the disclosure of all significant payments made to the Government by oil, gas and mining companies.

Unfortunately, until fairly recently, contractual arrangements have often been cloaked in secrecy and this is a natural upshot of the regulatory framework. This is what has been referred to in many papers as contract confidentiality.<sup>1</sup> But the principle and one which is supported by many that there should be full transparency of the terms of substantial or major contracts in the oil sector. The reason is simple. The terms of such major contracts should be made public because they involve significant public funds whose management has important development implications for the country harbouring the mineral resource, subject of a contractual arrangement.<sup>2</sup> Most African countries including Cameroon have not adequately provided for transparency principles and procedures in their regulatory frameworks.

That notwithstanding, Cameroon announced its intention to join the EITI in March 2005 at the Lancaster House Conference in London and was accepted as EITI candidate country during the board meeting held in Accra on 27<sup>th</sup> September 2007. The current governance structure of the Initiative in the Republic of Cameroon was created by a decision of the Prime Minister in June 2005.<sup>3</sup> It consists of a Tripartite EITI Committee composed of representatives of the state, civil society organizations and extractive companies. The functions and operating procedures of this body have been specified in Decree N° 2005/2176/PM dated 16 June 2005.<sup>4</sup> Cameroon became an EITI compliant country on 17<sup>th</sup> October 2013. In order to remain EITI compliant, Cameroon must regularly publish EITI reports in conformity with the requirements. Cameroon has so far published fourteen (14) EITI Reports covering the period from 2001 to 2018. It is quite unfortunate that in March 2024, Cameroon was suspended from the initiative for failure to comply with its requirements.

### *3.2 Tenets of Transparency in the Petroleum Sector in Cameroon*

The three tenets of transparency considered in this paper include transparency in the selection criteria and awarding of petroleum contracts, publication of oil revenues and inclusiveness of citizens during the negotiation processes of petroleum contracts.

#### *3.2.1 Transparency in the Selection Criteria and Awarding of Petroleum Contracts*

Recent international efforts to address resource revenue governance challenge posed by IFFs have been devoted mostly to improving contract and revenue transparency. Contract transparency initiatives in particular have made some headway since 2010.<sup>5</sup> Contract transparency in the petroleum industry is essential for fighting against illicit financial flows. Contract transparency means that officials and companies will be subject to increased scrutiny. This can deter contracts with weak or poor fiscal terms. It also allows governments to compare the quality of contracts with other jurisdictions. Transparency allows government agencies other than the agencies that formally enter the contract, civil society, to monitor contract compliance.<sup>6</sup>

In its 2022 Progress Report, EITI stated that:

By shedding light on the rules and terms that governs oil projects, contract transparency can help fight corruption and empower citizens to assess whether they are getting a fair deal for their resources. This information can be crucial in contexts where valuable resources like oil are impacted by market volatility and energy transition policies.<sup>7</sup>

The issue of transparency as an international concern has been adumbrated in the United Nations Convention Against Corruption as well. The Convention has as aim to promote integrity, accountability and proper

<sup>1</sup> For instance, Amewu, J., (2014). Disclosure of Extractive Industries Financial Flows and Contractual Arrangements in Ghana. Paper Presented at the International Conference on “Financial Transparency, Taxation and Illicit Financial Flows”, Organized by Tax Justice Network Regional Office for Africa, 27-28 November, Nairobi, p. 6.

<sup>2</sup> Isabel, M., & Kathleen, B., (2018). Contract Disclosure Survey: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies. Oxfam Briefing Paper, p. 12.

<sup>3</sup> Bissou, M., & Bamenjo, J., (2014). EITI and Mining Governance in Cameroon: Between Rhetoric and Reality. Natural Resource Governance Institute Report, p. 15.

<sup>4</sup> *Ibid.*

<sup>5</sup> Philippe, Le Billion, (2011). Extractive Sectors and Illicit Financial Flows; What Role for Revenue Governance Initiatives. U4 Issue 13, pp. 1-45.

<sup>6</sup> Idriss, L., (2022). Glencore and Sinosteel cases in Cameroon: Practical cases of the Need for More Transparency on Extractive Contracts in Africa. Available at [taxjustice.net](https://taxjustice.net) (Lastly Accessed on 17<sup>th</sup> June 2024).

<sup>7</sup> EITI Report, (2022). Available at <https://eiti.org/fr>. (Lastly Accessed on 17<sup>th</sup> June 2024).

management of public affairs and public property.<sup>1</sup> Furthermore, the UNCAC encourages public reporting by providing that:

Taking into account the need to combat corruption, each State party shall in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency.<sup>2</sup>

Similarly, the Natural Resource Charter (2014), re-echoed contract transparency and disclosure as a benchmark for good governance. It provides that:

Governments should disclose information on the allocation procedures; the contracts awarded, including fiscal and tax terms; the beneficial ownership of all license holders; the agreed work program; and financial commitments and any fiscal terms particular to the license.<sup>3</sup>

The Cameroonian government has made some moves to ensure contract transparency by adopting national legal instruments. In this light, Law No. 2018/11 of 11 July 2018 to lay down the Cameroon Code of Transparency and Good Governance in Public Finance Management provides that:

Contracts signed between the administration and the public or private enterprises, in particular those exploiting natural resources and those operating public service concessions shall be clear and made public. These principles shall be applicable to the award procedures as well as the contents of contracts.<sup>4</sup>

One may be tempted to say that the provisions of the aforementioned law conflicts with the 2019 Cameroonian Petroleum Code. There is no provision in the Cameroonian Petroleum Legislation expressly dealing with the question of transparency in the negotiating and publication of petroleum contracts. In fact, the 2019 Petroleum Code provides that:

..... *Petroleum contract shall be concluded between the State and the applicant. It shall be negotiated on behalf of the State by a standing commission set up by a public body duly mandated to that effect, comprising representatives of the relevant ministries and those of the said public establishment or body.*<sup>5</sup> *The petroleum contract shall be signed on behalf of the State, jointly by the Minister in charge of Hydrocarbons and the legal representative of the public body duly mandated.*<sup>6</sup>

*The holder of a petroleum contract shall provide the Minister in charge of hydrocarbons and/or any duly mandated government body with data within a maximum period of thirty days with effect from the date the data was generated. Such data shall include all field measurements, documents, information, samples and periodic reports derived or resulting from petroleum operations...*<sup>7</sup> *All the data generated during petroleum operations, shall be and remain the property of the State. The data generated during petroleum operations and relating to the national mining estate shall remain confidential...*<sup>8</sup>

*The State shall process offers for petroleum contracts and applications for authorizations at its full discretion.*<sup>9</sup> *Outright or conditional rejection shall not entitle the applicant to any remedy or to any compensation whatsoever. Subject to the rights acquired, no right of priority may be claimed in case of competing applications or offers received simultaneously.*<sup>10</sup>

*All the data referred to above, generated during petroleum operations, shall be and remain the property of the State. The terms and conditions for submitting such data to the state shall be*

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<sup>1</sup> Article 1 of UNCAC.

<sup>2</sup> Article 1 of UNCAC.

<sup>3</sup> Natural Resource Governance Institute, (2014), 2<sup>nd</sup> Ed., Natural Resource Charter, p. 14.

<sup>4</sup> Section 6(1) of the 2019 Cameroonian Petroleum Code.

<sup>5</sup> *Ibid*, Section 12(1).

<sup>6</sup> *Ibid*, Section 12(2).

<sup>7</sup> *Ibid*, Section 97(1) (2).

<sup>8</sup> *Ibid*, Section 98(1).

<sup>9</sup> Section 10(1) of the 2019 Cameroonian Petroleum Code.

<sup>10</sup> *Ibid*, Section 10(2).

*specified in the petroleum contract.<sup>1</sup> The data referred to above generated during petroleum operations and relating to the national mining estate, shall remain confidential for periods specified in the implementing decree of this Code. Beyond these periods, such data shall become part of the public domain and may be accessed by any interested natural or legal person.<sup>2</sup>*

One aspect glaring from reading and interpretation of the above legislative provisions are that contract data are secret open only to the State. However, despite this upshot of the Petroleum Legislation, this paper examines transparency in the selection criteria and awarding of petroleum contracts in three dimensions:

### 3.2.1.1 Procedures for the Selection Criteria and Awarding of Petroleum Contracts in Cameroon

According to Decree No. 2000/465 of 30<sup>th</sup> June 2000 setting conditions for implementing Law No. 99/013 of 22<sup>nd</sup> December 1999 on the Petroleum Code in Cameroon as amended in 2023, there are two methods of awarding a free block for the signing of petroleum contracts.<sup>3</sup> These procedures are: by tender and mutual agreement.

#### *a) By tender*

Tenders are among the most common ways of negotiating oil contracts in Cameroon today. The request for tender for petroleum contracts is done by the Cameroon's National Oil company SNH. The term tender has been defined in the Commonwealth Government's Procurement Guidelines 2008 as:

*A published notice inviting suppliers who satisfy the conditions for participation to submit a tender in accordance with the requirements of the request for tender and other request documentation.<sup>4</sup>*

Issuing a Request for Tender (RFT) by a party requesting that a tenderer submit a tender, is no more than an invitation to treat,<sup>5</sup> which has been described in Butterworths legal dictionary as *a request to negotiate or make an offer with a contract in mind*.<sup>6</sup> Issuing an RFT is not in law regarded as an offer. However, this is not a hard and fast rule as there are exceptions to the rule.<sup>7</sup> In *Pratt Contractors Ltd v. Palmerston North City Council*,<sup>8</sup> Justice Gallen<sup>9</sup> stated that:

*Authority makes it clear that, the starting point is that, a simple uncomplicated request for bids will generally be no more than an invitation to treat, not giving rise to contractual obligations, although it may give rise to obligations to act fairly.*

The submission of a tender by a party in response to an RFT is regarded in law as an "offer" by the tenderer. An offer has been described as a *"clear statement of the terms by which the person making the offer is prepared to be bound"*.<sup>10</sup> The mere provision of a price would not amount to an offer as the offeror (tenderer) has not stated the terms under which it is prepared to commit to the price given.<sup>11</sup>

#### **i. Types of tenders in petroleum contracts**

Tendering for oil and gas contracts can take several forms, varying from traditional tender process to open tendering and multi-stage tendering (or pre-registered/prequalified tendering).

#### *a) Traditional tender process*

The traditional tendering process, also known as conventional tender process, is characterized by well-defined instructions to bidders setting out the terms and conditions governing the competitive process and requiring their

<sup>1</sup> *Ibid*, Section 97 (2).

<sup>2</sup> *Ibid*, Section 98 (2).

<sup>3</sup> Article 5 Decree no. 2000/465 of 30<sup>th</sup> June 2000 setting conditions for implementing Law No. 99/013 of 22<sup>nd</sup> December 1999 on the Petroleum Code in Cameroon.

<sup>4</sup> Commonwealth Procurement Guidelines, (2008). Part C Definitions, p. 46.

<sup>5</sup> NSW Government Procurement Guidelines, Tendering Guidelines, (2011), p. 8.

<sup>6</sup> Butt, P., (2004). *Butterworths Concise Legal Dictionary*. 3<sup>rd</sup> Ed., Butterworth, Lexis Nexis, p. 235.

<sup>7</sup> *Carlill v. Carbolic Smoke Ball Co's*, (1982). EWCA Civ 1, 1QB 256(CA).

<sup>8</sup> (1995) 1 NZLR 469.

<sup>9</sup> *Ibid*, pp. 478-479.

<sup>10</sup> Seddon, N., et al, (2008). *Law of Contract*, 9<sup>th</sup> Ed., Butterworths, Lexis Nexis, p. 109.

<sup>11</sup> *Harvey v. Facey* (1893), AC 552.

revocability of bids.<sup>1</sup> Subject to any enforceable rights of an owner under a privilege clause, non-compliant bids will be rejected. Security for the bid in the form of a bid bond, deposit, letter of credit, or guarantee may be required. Upon submission of a bid, a contract arises between the owner and bidder creating binding contractual relations. During the tendering process, all bidders and tenderers who meet the requirement must be treated fairly. As noted in *Chinook*<sup>2</sup> and *Power Agencies Co. v. Newfoundland Hospital and Nursing Home Assoc.*,<sup>3</sup> the owner is held to a duty to ensure that all bidders are treated equally so as not to give one an unfair advantage over another. In *Martselos Services*,<sup>4</sup> the Northwest Territories Court of Appeal held that in order to protect the integrity of the bidding system, there should be “a duty to treat all bidders equally but still with due regard for the contractual terms incorporated into the tender call”.

Similarly, in *Force Construction Ltd. v. Nova Scotia (Attorney General)*,<sup>5</sup> the bid instructions specified that a certain type of window had to be used when performing the project. Bidder A named window world as its supplier in its bid package. After bids had closed, concerns as to bidder A’s ability to perform and, in particular, concerns regarding availability of supply from window world, were raised. The owner requested bidder A to provide written confirmation by a specified date from window world confirming that it could supply the required type of window. When bidder A was only able to secure oral assurances from window world by the specified date, the owner rejected the bid of bidder A and awarded the contract to the second lowest bidder. The instructions to bidders stated that bidders “shall be evaluated on contract price” and also included a privilege clause giving the owner “the right to accept or reject any or all offers or to accept any offer deemed most satisfactory” and the right to “waive any informality in any or all bids”.<sup>6</sup>

The Nova Scotia Supreme Court held that Contract A arose when bidder A submitted its compliant bid, as bidder A agreed to provide the specified windows and maintained this intention throughout the bidding process. It further held that the owner breached the terms of contract A by requiring bidder A to provide written confirmation from its window supplier, a condition the other bidder was not subject to.<sup>7</sup> The bid documents did not contemplate that the owner could impose such a requirement on a single bidder, nor did it permit a contract to be awarded on the basis of an undisclosed term. In addition, the deadline imposed by the owner for obtaining confirmation from the window supplier was unreasonable and amounted to a breach of the owner’s duty to deal with bidder A in good faith. In the result, the Nova Scotia Supreme Court found that bidder A was not treated fairly and equally and awarded damages in excess of \$200,000. Therefore, if an owner is concerned about the financial stability of a subcontractor or the availability of a product to be supplied by a sub-contractor that is material to the timely execution of the project, it should request evidence of the same from all bidders at the time of bid submission.

### **b) Open tendering**

Open tendering process has also been adopted by the Cameroonian government in awarding petroleum contracts. Open Tendering involves inviting submissions from the open market.<sup>8</sup> An open tendering process is an invitation to tender by public advertisement without restrictions regarding whom may submit a response to the tender.<sup>9</sup> Tenderers must demonstrate in their tenders how they satisfy the evaluation criteria and how they meet the specific tender requirements.

Open tendering is generally used where there is a broad competitive market, and it is not efficient or cost effective to establish pre-qualified or preregistered tenderer lists. Dorter, J.,<sup>10</sup> however, notes that the disadvantage of an open tendering process (“inviting the entire world to tender”) is that it exposes *the industry to irresponsible tenderers who, if a tender be accepted, destroy not only themselves but others in the industry who*

<sup>1</sup> Buckingham, J., & Paula, O., (2010). Tendering and Purchasing Law in Upstream Oil, Gas, and Oilsands: The Competitive Bidding Process and Obligations when Contracting for Work. *Alberta Law Review*, 47(2), p. 506.

<sup>2</sup> *Chinook Aggregates Ltd. v. Abbotsford (Municipal District of)* (1987), 28 C.L.R. 290 (B.C. Co. Ct.), aff’d (1989), 40 B.C.L.R. (2d) 345 (C.A.) (Chinook).

<sup>3</sup> (1991), 90 Nfld. & P.E.I.R. 64 (Nfld. S.C. (T.D.)).

<sup>4</sup> *Martselos Services Ltd. v. Arctic College*, (1994) N.W.T.R. 36 (C.A.).

<sup>5</sup> (2008), NSSC 327, 270 N.S.R. (2d) 292, Para 36.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid*, Para, 38.

<sup>8</sup> Buckingham, J., et al, (2010), *Op. Cit*, note 55, p. 509.

<sup>9</sup> Geoff, W., (2015). *Everything you wanted to know about Tendering but were Afraid to Ask*, 1<sup>st</sup> Ed., Butterwod, Baker & McKenzie, p. 13.

<sup>10</sup> Dorter, J., (1996). Contracting and Tendering: A Legal Perspective. *Building and Construction Law Journal*, 12, pp. 234-245.



*have thereby been deprived of the work.*

**c) Multi-stage tendering**

Multi-stage tendering, also known as Pre-Registered or Prequalified Tendering involves a number of stages the ultimate aim of which is to create a panel of suppliers who meet certain criteria and therefore may be relied upon to be “prequalified” to perform certain work.<sup>1</sup> An owner should consider a pre-qualification process if the owner wants bidders or proponents to be able to comply with particular standards, possess certain qualifications, or demonstrate certain skills, experience, and resources to carry out the project or provide the goods or services required.<sup>2</sup>

Given the specialized nature of the work required for oil and gas projects, a prequalification process is often used as a first step in the contract process to confirm that the oil companies that will be considered have the relevant experience, proper safety certifications and procedures, and the necessary resources to perform the work.<sup>3</sup> Multi-stage tendering may be used to cull a large number of respondents and identify the best service providers in a mature supplier market. It enables the number of final tenderers to be limited to those that can demonstrate the requisite capability to perform the contract. Multi-stage tendering may be used to:

- establish a panel of service providers for several contracts in an ongoing work program;
- establish potential service providers for a single contract; or
- identify respondents with the best proposals, usually for more complex or unusual procurements.
- for low value, low risk, off-the-shelf procurement.<sup>4</sup>

The implementation of a pre-qualification procedure, however, may later fetter an owner’s discretion in relying on a privilege clause. In *Ed. Brunet*,<sup>5</sup> the plaintiff bidder successfully argued that once a pre-qualification process was complete and possible tenderers chosen, the owner could not reconsider any of the criteria in the pre-qualification process in awarding the contract. As a result, including a pre-qualification process as part of the process of awarding oil contracts may limit the flexibility granted to owners under a privilege clause included in the bid documents. The tendering process that the Cameroonian government has adopted in awarding petroleum contracts is the traditional and open market tender. Thus, the procedures under which these tenders are offered are examined below.

**ii. Procedures for Petroleum Contract Tender’s in Cameroon**

Petroleum contracts are significant contracts. They epitomize the sovereignty accomplishing the best returns and benefits that derives from such a resource.<sup>6</sup> As a result of this, lay down procedures have been put in place to avoid the country’s resources from being wasted in poor investment. The procedure for awarding a block by call for tenders in Cameroon follows several steps:

- Publication of Terms of Reference (TOR) of the blocks on promotion in specialized magazines as well as the website of SNH;
- Organisation of sessions to review technical data on the prospectively of the blocks (data rooms) at the SNH head office in Yaoundé as well as in the major petroleum capitals of Houston (USA) and London (UK);
- Submission of bids;<sup>7</sup>
- Opening of bids at the SNH head office by the Permanent Commission for Checking and Evaluation of Bids, in the presence of bidders or their representatives;
- Analysis of bids by the above-mentioned Permanent Commission, who see to it that the bidding companies have the technical and financial capacities to conduct hydrocarbons prospecting and production activities in Cameroon;

<sup>1</sup> Geoff, W., (2015). *Loc. Cit*, note 63, p. 18.

<sup>2</sup> *Ibid.*

<sup>3</sup> Massinissa, M., (2017). Decision Aiding Methodology for Developing the Contractual Strategy of Complex Oil and Gas Development Projects. A Thesis Submitted in Partial Fulfilment of the Requirements for An Award of a Ph. D in Law, University of Paris-Saclay, p. 123.

<sup>4</sup> Geoff, W., (2015). *Op. Cit*, note 63, p. 14.

<sup>5</sup> *Ed. Brunet and Associates Inc. v. 154469 Ontario Inc.* (2002), 19 C.L.R. (3d) 173 (Ont. Sup. Ct. J.).

<sup>6</sup> Ali, K., & Noor, F., (2015). The Legal Nature of Oil Contracts. *Australian Journal of Basic Applied Sciences*, 9(37), p. 44.

<sup>7</sup> SNH, (2019). Licensing Procedures for Oil Contracts in Cameroon, pp. 1-2.

- Publication of results and notice to the bidders;
- Negotiation of an oil contract between the preferred bidder and the Permanent Commission for the Negotiations of Oil and Gas Contracts, comprising a team of representatives of SNH and the Ministries in charge of Mines, Energy, Finance, Economy, Trade and Environment.

**a) By Mutual Agreement**

The procedure by mutual agreement is similar to the one by call for tenders, except for the following items:

- Publication of TORs of the blocks on offer is labelled “Consultation by mutual agreement” instead of “Open International Call for Tenders”;
- Each bid received is immediately opened and evaluated by the permanent commission for checking and evaluation of bids for the award of mining titles, and the results are made known to the bidder.<sup>1</sup>

In principle, bids for petroleum contracts are received only from oil companies.<sup>2</sup> Nevertheless, several companies, of which at least one must be an oil company, may come together within the framework of a consortium and bid for a given block. The consortium will name one of the companies as operator, that is, an oil company which is given the responsibility to lead and conduct oil operations. The operator is bound to have proven experience in the conduct of petroleum operations, notably in zones and conditions similar to the solicited block and regarding environmental protection.

### 3.2.1.2 Contents of the Proposal Submitted for the Award of Petroleum Contracts

Within the mandate of the State to promote and valorise hydrocarbon resources in the mining property of the Republic of Cameroon, the National Hydrocarbons Corporation (SNH) has been empowered to sign petroleum contracts with oil and gas industries on behalf of the State.<sup>3</sup> It is worth noting that, petroleum contracts are subjected to the rules of ordinary contracts like offer, acceptance and consideration. However, there are some peculiarities when it comes to petroleum contracts. These conditions however can be negotiated upon between the State and the oil companies depending on the block where exploitation and production is to take place. However, the proposals submitted to win petroleum contracts in Cameroon must fulfill these basic conditions:

a. Pertinent documentation on the company or group of companies submitting the proposal, and in particular, on the petroleum company which shall act as operator in the PSC, including its organization, technical and financial capabilities. The required documentation includes:

- Names and experiences of the members of the exploration and production staff, as well as geoscience capabilities of the company(ies);
- Names and activities of each company’s shareholders;
- Company’s portfolio of assets in the petroleum industry, especially in the upstream;
- Evidence of company’s capabilities, expertise and experience in environmental impact management and protection, notably in areas similar to those of the blocks of interest in Cameroon;
- Company’s practices and references in local content development and fulfillments in Africa;
- Track record on exploration drilling activities and discoveries during the last five years.<sup>4</sup>

b. technical evaluation(s) report, elaborated on the basis of up-to-date data, including the SNH/CGG newly enhanced and/or reprocessed data set addressing the regional geology and the prospectively of the blocks; and an outline of the company exploration strategy and targets;

c. Work programme and corresponding budget for the first period of the exploration phase which is normally three years, extensible to a maximum of five years for the special petroleum operations zone.<sup>5</sup> The company soliciting for the contract is also to give indications on how the work programme will be financed;

d. Work programme and corresponding budgets for the two possible renewal periods of up to two years each, and indications on how the work programme will be financed;

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<sup>1</sup> *Ibid.*

<sup>2</sup> Section 8(1) of the 2019 Cameroonian Petroleum Code.

<sup>3</sup> SNH, (2021). Terms of Reference for Proposals on nine free blocks in the Republic of Cameroon, p. 1. Available at <https://www.snh.cm> (Lastly Accessed on 4<sup>th</sup> June 2024).

<sup>4</sup> *Ibid.*

<sup>5</sup> Section 32(1) of the 2019 instituting the Petroleum Code.

e. Proposed contractual terms.<sup>1</sup>

### 3.2.1.3 Conditions for Acceptance and Publication of the Petroleum Contracts

The conditions for the acceptance of proposals submitted for petroleum contracts are set in Law No. 2019/008 of April 25, 2019, instituting the Petroleum Code, and are as follows:

- The proposal should be submitted by a petroleum company, or by a group of commercial companies among which, at least one is Petroleum Company with relevant financial and technical capabilities.<sup>2</sup>
- Proof of documentations showing the above must also be submitted.
- The bid is submitted by a consortium of companies with only one of them being a petroleum company, the said petroleum company should own the majority of the interest shares in the consortium, and act as operator. If this not done, the petroleum companies in the consortium will determine which amongst them will act as operator.
- Full compliance with the terms of the contract.

Once the above procedures have been complied with, oil contracts will be signed with published in the official gazette in English and French.

### 3.2.2 Publication of Oil Revenues

World Bank Statistics show that more 90 percent of countries have introduced legislation requiring financial disclosure at least some public officials.<sup>3</sup> However, the specific requirements and level of implementation vary according to countries. Disclosure can help to advance multiple anti-corruption objectives, from prevention and enforcement. They also help fight money laundering. In modern times, providing public access to financial disclosures represents a valuable crowdsourcing opportunity.<sup>4</sup> This requirement has been concretized into our domestic law.

It is worth noting that the principles of transparency require the State to inform citizens without any discrimination on the sales of public goods including petroleum resource.<sup>5</sup> In this light, based on EITI's publication, in 2019, cash payments made by extractive companies reached XAF 261.91 billion. Payments in kind made during the same period were valued at XAF 646.37 billion,<sup>6</sup> bringing the total payments made by Extractive companies during 2019 to a value of XAF 908.28 billion. Petroleum companies account for the bulk of these payments with 93.58%. SNH, DGI and DGD represent the main destinations for these payments.<sup>7</sup> However, it should be noted that on 1<sup>st</sup> March 2024, Cameroon was suspended from EITI until the next validation scheduled to take place on April 2027. The suspension comes as a result of Cameroon's breaches of the EITI protocol notably participation of civil society related to freedom of expression and association.<sup>8</sup>

### 3.2.3 Inclusiveness of Citizens' Participation in Petroleum Contractual Arrangements

The role of citizen participation in governmental decision making has been a predominant and reappearing theme in African political thought. In fact, efforts to limit greater citizen participation is often denounced as undermining the foundation of democracy.<sup>9</sup> Citizen participation takes many forms and has many definitions. Yet, most generally, citizen participation is any "purposeful activity in which citizens take part in relation to government."<sup>10</sup> While there is general agreement on the need for more citizen involvement in decision making, most appropriate form for this participation is typically unspecified.<sup>11</sup> Within this broad trend toward more

<sup>1</sup> The contractual terms include for instance, minimum work programme, exploration and exploitation terms, local content and fiscal clauses.

<sup>2</sup> Section 2 and 4 of the 2019 Cameroonian Petroleum Code.

<sup>3</sup> Jay, P., & Ivana, R., (2019). Privacy v. Transparency, Finance and Development, p. 19.

<sup>4</sup> *Ibid.*

<sup>5</sup> Section 6(1) of Law No. 2018/11 of 11 July 2018 to lay down the Cameroon Code of Transparency and Good Governance in Public Finance Management.

<sup>6</sup> Valuation of in-kind oil payments at the market price and in-kind payments of gold at CFAF 18.500/gram

<sup>7</sup> Extractive Industries Transparency Initiative in Cameroon, (2019). EITI Executive Summary Report, BDO Tunisia Consulting, p. 8.

<sup>8</sup> Business in Cameroon, (2024). Available at [www.businessincameroon.com](http://www.businessincameroon.com) (Lastly accessed on 5th June 2024).

<sup>9</sup> Brent, K., & Robert, E., (2005). Citizen Participation in Natural Resource Management: Does Representativeness Matters? *Sociological Spectrum*, 25, pp. 715-737.

<sup>10</sup> Langton S., (1978). *Citizen Participation in America*, Lexington, Heath and Company.

<sup>11</sup> Tuler S., & Thomas W., (1999). Voices from the Forest: What Participants Expect of a Public Participation Process. *Society and Natural Resources*, 12, pp. 437-453.

participatory forms of governance is a transition towards grassroots citizen participation in natural resource management.

Citizens' participation in contracting process is equally a fundamental ingredient of transparency tenet. A lot of literature exists in almost every domain in favour of involving citizens in the management of public affairs.<sup>1</sup> The domain of mineral resources exploitation is no exception. Subsoil resources are often considered the property of citizens and are managed on their behalf by the government. Though the State may exhibit permanent sovereignty over the resources, their development and use should be able to improve on the wellbeing of the citizens. Thus, a veritable participation of citizens in contracting will invariably guaranteed transparency, accountability, peaceful execution of projects but also the sustainability of such projects.<sup>2</sup>

It should be pointed out that in most instances oil contracts constituting multibillion-dollars deals spanning decades are made between company heads and select government officials in closed-door negotiations. The terms of these deals can impact the trajectory of a country's national budgets and investments for generations and affect legal obligations on mitigating environmental and social risks.<sup>3</sup> However, the oil communities who live near the pipelines carrying millions of barrels of oil generating billions in revenues, often have no knowledge of the details of the projects, and often do not reap any benefits. Thus, it will be unfair to preclude citizens during the negotiation process of oil contractual arrangement.

In the mineral resources' exploitation arena, their participation is encouraged in contractual arrangements. In Cameroon, as in many other African countries, citizens' participation in contracting process in the petroleum sector is not expressly articulated upon. The petroleum Code provides that:

*... petroleum contract shall be concluded between the State and the applicant. It shall be negotiated on behalf of the State by a standing commission set up by a public body duly mandated to that effect, comprising representatives of the relevant ministries and those of the said public establishment or body.*<sup>4</sup>

From the readings of the above provision, negotiation procedures are done by the State and kits duly authorized public body. Citizen's participations are excluded during his phase. The Cameroonian Petroleum legislation passively dealt with the question of citizens participation in contractual arrangement. The Petroleum Code provides as follows: *The development of national petroleum resources must help to assess local content. The local content shall comprise a human resources development components pertaining to the use of local services and goods supply companies. The local content adopted in the Petroleum Code includes:*

- *a vocational and training programme for Cameroonian in order to scale up their skills in the petroleum trade;*
- *any other skill likely to enhance local content;*
- *the employment in priority qualified personnel of Cameroonian nationality for the purposes of petroleum operations;*<sup>5</sup>
- *the setting up and finance a training programme for Cameroonian personnel of all qualification by petroleum operators.*<sup>6</sup>

However, one may quarrel this provision in that it does not clearly articulate the extent of citizen's participation in the contracting process. What the legislator has done has simply been to weave into a gamut of matters a critical issue such as citizens' participation which, in our humble opinion, would have been the subject of a separate and well elaborated provision.

One of the main sets of governance indicators is the World Bank World Governance Indicators (WGI) which greatly favour citizen participation in matters of national interest to which oil exploitation is not an exception.<sup>7</sup> We take the view once more that such an omission is serious because the level of involvement of citizens in the

<sup>1</sup> National Programme on Governance for Cameroon: Diagnoses and Proposals, (1999). Published by the Government of Cameroon, p. 212.

<sup>2</sup> Oyobom, S., (2012). Assessing Competitive Tenders as an Option for Petroleum Resource Allocation Sub-Saharan Africa. SAIIA Occasional Paper No.150, p. 19.

<sup>3</sup> Isabel, M., & Kathleen, B., (2018), *Op. Cit*, note 28, p. 7.

<sup>4</sup> Section 12(1) of the 2019 Cameroonian Petroleum Code.

<sup>5</sup> *Ibid*, Section 88.

<sup>6</sup> *Ibid*, Section 87.

<sup>7</sup> Kaufmann, D., et al, (2002). Governance Matters II-Updated Indicators for 2000/2001. World Bank Policy Research Working Paper No.2195, p. 67.

contracting process has a direct impact on the sustainability of the Petroleum activities in terms of avoiding land conflicts on the petroleum sites, community development by way of social amenities and economic wellbeing and more generally corporate social responsibilities of the petroleum companies. Lastly, veritable citizen's participation in the contracting process can be instrumental in avoiding or curbing eventual illicit financial flows.<sup>1</sup>

#### **4. Hitches of Illicit Financial Flows in the Petroleum Sector in Cameroon**

Resource-exporting countries like Cameroon are more prone to exporting large amounts of illicit financial flows due to several factors.

##### *4.1 The Existence of Tax Havens Jurisdictions in Cameroon*

Tax heavens are jurisdictions whose legal regime is exploited by non-residents to avoid or evade taxes. A tax heaven usually has low or zero tax rates on accounts held or transactions by foreign persons or corporations. Tax heavens are the main channel for laundering the proceed of tax evasion and routing funds to avoid taxes.<sup>2</sup> Oil companies operating within the Cameroonian petroleum industry benefits from many tax exemptions. They include; exemption of tax levied on profit and investor dividends, exemption of customs duties and export tax, exemption of tax levied on sales and VAT, exemption of direct tax levied on petroleum related projects and application of preferential tax rate of 5% on customs duties for specific facilities.<sup>3</sup> Existing production sharing agreements (PSAs) gives oil companies undue advantage over the State to the extent that they contain stabilization clauses aimed at restricting the State's capacity to tax the companies.<sup>4</sup> These oil companies are now using this medium, coupled with concealed ownership structures to perpetuated a high illicit financial flows risk.

##### *4.2 Weak Regulatory Frameworks in the Petroleum Sector*

The inadequacies of the regulatory frameworks in the petroleum industry will be seen in terms of the petroleum legislations and regulatory structures. One of the fundamental challenges that encourages massive capital flight and illicit financial flows in the petroleum sector today in Cameroon is with the lacunae of petroleum legislation. The 2019 Cameroonian Petroleum Legislation provides that:

non-disclosure to the State of the information, documents or data that must be submitted to it by petroleum companies will be subjected to the payment of fine of 200,000,000 (two hundred million) XAF.<sup>5</sup>

Stipulating an amount of fine of 200, 000,000 XAF is not sufficient to discourage tax evasion and falsification of documents among big oil and gas industries. The punishments seem deficient, bearing in mind the billions of dollars that are engendered by the industry. Added to this is the fact that, the Cameroonian government hardly reprimand petroleum companies for non-disclosure of vital documents and data to the State. This suffice the writer to hold the opinion that the petroleum legislation is "a piece of paper which fails to meet the international requirements to deter illicit financial flows".

Weak regulatory structure is another important enabler to illicit financial flows in Cameroon. Though the country has put in place structures like the ANIF and CONAC, these structures have not sufficiently been able to curtail issues of corruption and tax evasion. The efforts made by these institutions aimed at curbing IFFs and related magnitude of the challenges experienced by these institutions overwhelms their capacity. These institutions face problems such as inadequate capacity (including adequate and relevant skills), shortages of funding and in some cases, inadequate support from the judicial system.

These constraints are further complicated by duplication of functions among the different agencies which hinders coordination between them and insufficient expertise to deal decisively with IFFs. If this was not the case, one cannot explain why Cameroon had to adhere to the Kimberly Process to stop the trade in "blood diamonds" and the Extractive Industry Transparency Initiative to strengthened transparency and disclosure of oil revenues despite the presence of these institutions.

##### *4.3 Limited State Participation in Petroleum Contractual Arrangements*

The limited participation of the State in oil contracts in Cameroon is another indicator that has led to illicit

<sup>1</sup> Ndiaye, A., (2014). Capital Flight from The Franc Zone: Exploring the Impact on Economic Growth. African Economic Research Consortium Research Paper No. 269, p. 33.

<sup>2</sup> AU/ECA (2015), *Op. Cit* note 6, p. 10.

<sup>3</sup> Section 116 of the 2019 Cameroonian Petroleum Code.

<sup>4</sup> Section 124 of the 2019 Cameroonian Petroleum Code.

<sup>5</sup> Section 132 (l)(e) of the Petroleum Code.

financial flows. Participation is a process whereby the Host country gains an amount of equity within the operating company in the existing petroleum contract.<sup>1</sup> The concept stems from a desire by oil-producing countries to acquire a greater share of the profits from producing and exporting operations within their borders and to exercise a greater control over such operations. Participation is very necessary to the Host country because it is through this that it can carry out proper checks in the industry and exercise control over its petroleum resources. It gives the people the assurance that the benefits of the petroleum resources are not being swindled away by the oil companies.

In Cameroon, the participatory rate of the State in a production sharing contract is 5 percent.<sup>2</sup> The author is of the opinion that this rate is insufficient given the fact that the oil companies will have more information as to the quality and quantity of the petroleum resources which the State might not be aware of. This will cause disparity as to what is declared to the State, enhancing oil revenues to be swindled out of Cameroon, leading to the continuous rise of IFFs in the petroleum industry.

#### 4.4 Corruption

It is generally established that IFFs in Africa and corruption are closely interrelated.<sup>3</sup> Corruption is variously defined as concerning the use or misuse of public office for private gain, state capture, patronage and nepotism and administrative corruption.<sup>4</sup> More specifically, the United Nations Convention against Corruption list a series of acts associated with corruption as follows: the active or passive bribery of domestic or foreign public officials, including staff of international organizations; the embezzlement and misappropriation or other diversion of property by a public official; the obstruction of justice; the active and passive trading in influence; and the abuse of functions and illicit enrichment.<sup>5</sup>

Reed and Fontana, identify three main mechanisms through which corruption contributes to IFFs. First, corruption is a source of proceeds, often in the form of bribes. Second, it is a means to facilitate the creation of illicit funds, such as corrupt tax administrators who ignore tax evasion or interpret tax regulation to reduce the tax burden of a taxpayer in return for a bribe. Third, corruption can be an enabler of IFFs by compromising the institutions tasked with anti-money-laundering obligations. For example, entities with anti-money-laundering obligations may collude with clients to not fulfil their obligations or financial intelligence units may be prevented from performing their function by not being provided with sufficient independence, legal powers and resources.

Though the Cameroon has taken steps to fight against corruption, Cameroon still remains among the most corrupt nations in the world. Following the report of the Transparency International for Cameroon, Cameroon was ranked No. 140 corrupt country in the world in 2023.<sup>6</sup> With an interview held with one of the officials in the Ministry of Mines, Industries and Technological Development, he decried the growing rate of IFFs in this sector to bribery and weak administrative measures to bring to book oil companies caught in such activities.<sup>7</sup> Corruption has bred opacity in the management of the petroleum sector. In the words of barrister Akere Muna, “the opacity in the management of our extractive industry is the direct result of systematic corruption”.<sup>8</sup>

#### 4.5 Problems of Technical-Know in the Petroleum Industry

Furthermore, the petroleum industries require a high level of expertise, which leads to relatively low levels of competition, creating oligopolies that may collaborate with governments and competitors for contract negotiations, joint ventures, and other arrangements.<sup>9</sup> This creates inequalities in contract negotiations. The low

<sup>1</sup> Bannon, I., & Paul, C., (2003). Natural Resources and Violent Conflicts: Options and Actions. World Bank Working Paper No. 28245, p. 36.

<sup>2</sup> Section 12(1) of the Cameroonian 2007 Model Production Sharing Contract in Cameroon.

<sup>3</sup> Reed, Q., & Alessandra, F., (2011). Corruption and Illicit Financial Flows: The limits and Possibilities of Current Approaches. U4 Issue No. 2, Anti-Corruption Resource Centre, Christian Michelsen Institute, p. 4.

<sup>4</sup> Campos, J., (2007). The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level. World Bank, Working Paper, p. 12.

<sup>5</sup> Article 15-25 of the 2003 United Nations Convention Against Corruption.

<sup>6</sup> Cameroon: Corruption Perceptions-Transparency International, [https://www.the\\_globeconomy.com](https://www.the_globeconomy.com) (Lastly Accessed on 7<sup>th</sup> September 2024).

<sup>7</sup> Interviewed conducted on 15<sup>th</sup> January 2023.

<sup>8</sup> The Guardian Post Daily, (2024). Available at [theguardianpost.cameroon.com](https://theguardianpost.cameroon.com). (Lastly Accessed on 20<sup>th</sup> June 2024).

<sup>9</sup> Martin, A., et al, (2010). Global Petroleum Industry Model Contracts Revisited. *Journal of World Energy Law & Business*, 3(1), p. 13.

levels of competition can also lead to companies working together to export illicit capital outflows.<sup>1</sup>

#### 4.6 Problem of Transparency and Accountability

Moreover, the funds created from the country's extractive industries provide political leaders with a certain level of independence, then removing the need for accountability from politicians involved in those industries.<sup>2</sup> It should be noted that one key feature that surrounds the petroleum industry in Cameroon is secrecy. How oil contracts are been awarded still remains discrete to some few people. This unfortunate scenario has been further encouraged by the Petroleum Legislation by providing that, all the data generated during petroleum operations, shall be and remain the property of the State. The data generated during petroleum operations and relating to the national mining estate shall remain confidential.<sup>3</sup>

However, of recent times, the most controversial iron ore contract that was negotiated in Cameroon in 2022 was that of Glencore and Sinosteel, a Chinese multinational company. Though not directly related to the petroleum sector, this contract was flooded with opacity beginning from how they obtained the contract and publication of revenues. It was established that this contract favoured the Chinese company and what only published due to pressure from the Cameroonian parliamentarians and some activists who denounced the contract and demanded its cancellation.<sup>4</sup> The company admitted among several other violations, to having made payments of the order of 79.6 million US Dollars, via front companies to obtain advantageous contracts in the oil and gas sectors including in Cameroon.

Also, on the part of oil companies, the French newspaper "Le FIGARO" of January 17, 2010, announced the preliminary inquiry initiated by the Paris state counsel in charge of financial affairs, with respect to: "the suspicious financial transactions of Total petroleum company, involving the National Hydrocarbons Company and its local subsidiary TRADEX PLC."<sup>5</sup> This problem of lack of transparency has resulted to tax mispricing and evasion in the oil sector.

#### 4.7 Wide Confidentiality Clauses in Oil Contractual Arrangements

Secrecy has been the norm in the oil industry in Cameroon since the beginning of oil production.<sup>6</sup> While the Government of Cameroon has agreed to gradually provide more transparency over the period, mainly in response to donor pressure, the situation, as we will see, is still very far from full transparency and accountability. The whole idea of inserting confidentiality clauses in contractual arrangements is an age-old practice which has survived, until fairly recently, has faced bitter criticisms. In the extractive sector, it has been more rampant than any other. The argument against transparency/disclosure of the terms of major resources contracts has been, from the perspective of industry and government, that publication will jeopardize sensitive commercial and negotiation strategies.<sup>7</sup>

Secondly, industry and government argue that if the terms of major contracts are put in public domain, this will steer companies away from any country that publishes. Since African countries are in dire need of financial resources for their socio-economic development which they believe, can come through contractual arrangements with petroleum industries, a majority of them buy-in confidentiality clauses in their regulatory frameworks.<sup>8</sup> But, in accepting such confidential clauses, government negotiators simply do not only lack the technical capacity to negotiate, but are also suspected for "eating under the table". While it is true that wide confidentiality clauses are necessary in some strategic contractual commercial arrangements, a natural upshot of such wide confidentiality clauses in the mineral resources exploitation sector is that it masks a lot of bad contracts, breed corruption and facilitate IFFs.<sup>9</sup> This is equally the view of civil society Organizations' both at national and

<sup>1</sup> *Ibid.*

<sup>2</sup> *Ibid.*

<sup>3</sup> Section 98(1) of the 2019 Cameroonian Petroleum Code.

<sup>4</sup> Idriss, L., (2022). *Op. Cit*, note 32.

<sup>5</sup> Onga, T., (2012). Cameroon's War: The Fight Against Impunity-A Normative Analysis. *Antrocom Online Journal of Anthropology*, 8, pp. 116.

<sup>6</sup> <http://www.transparency-initiative.org/wpcontent/uploads/2011/09/Opening-Government>(Lastly Accessed on 9<sup>th</sup> August 2024).

<sup>7</sup> McGee, R., et al, (2010). Review of Impact and Effectiveness of Transparency and Accountability Initiatives: A Synthesis Report. Department for International Development, p. 4.

<sup>8</sup> Barrete, G., (2015). Review of Impact and effectiveness of Transparency and Accountancy Initiatives. TAI Work shop October 14-15, p. 52.

<sup>9</sup> Smith, E., et al., (2011). Enforcing the Rules: Government and Citizen Oversight of Mining. Available at <http://www.revenuewatch.org/publications/enforcing-rulesexecutive>(Lastly Accessed on 8<sup>th</sup> September, 2024).

international level which have continued to press for disclosure by publication of contractual clauses arguing forcefully that these have to do with significant public funds.<sup>1</sup> It should be noted that despite the fact that Cameroon has enacted a Law on Transparency and Good Governance in the Management of Public Finances in 2018, the 2022 Financial Secrecy Index revealed that there was no evidence anywhere that Cameroon published its oil and mining contracts.<sup>2</sup>

#### 4.8 Trade Mis-Invoicing

Finally, large exports of oil provide more opportunities for trade mis-invoicing.<sup>3</sup> Trade mis-invoicing is one method of laundering money for illegal transfer to another country.<sup>4</sup> It occurs when exporters or importers deliberately misreport the value, quantity, or nature of goods and services in order to evade taxes, take advantage of tax incentives, avoid capital controls, or launder money.<sup>5</sup> It also occurs when exporters understate the value of exports and importers overstate the value of import, and is attributed to the desire of firms to evade trade restrictions and custom duties by illicitly shifting profits between countries.<sup>6</sup> Multinational oil companies operating in Cameroon regularly evade taxes through trade mis-invoicing, among other schemes.<sup>7</sup>

### 5. Effects of Illicit Financial Flows in Cameroon

The effects of illicit financial flows in Cameroon cannot be over emphasized. These effects stems from draining resources and tax revenue, affects economic growth and development, weakening governance and transparency and structural transformation in Cameroon.

Illicit financial flows have caused the Cameroonian government to forfeit huge amount of revenue through the erosion of the tax base. Natural resources constitute 5 percentage of the country's Gross Domestic Product with oil accounting for approximately 40 % of export earnings.<sup>8</sup> However, it is quite unfortunate that Cameroon is among the countries with a high rate of illicit financial flows in Africa. Between 1980-2019, it was estimated that Cameroon lost 26, 599 million of US Dollars to IFFs representing 14.9 % of illicit financial flow trade.<sup>9</sup>

This decreased in government revenue further depresses investment and has led to higher levels of inflation tax, while depreciating the value of domestic assets. A glaring example can be seen with the recent price hikes in petroleum products in February 2024 from 730XAF per litre to 840 XAF and gasoline from 730 XAF per litre to 828 XAF per litre, representing approximately 15 % of price increase. The side effect of this is that has further encouraged the sale of illegal fuel. No wonder it has been reported that Cameroon loses about 32 billion of Francs yearly to illegal sale of fuel.<sup>10</sup>

The prices of basic commodities in Cameroon are also increasing sporadically due to increase taxes on these basic commodities. Corporate tax and value added taxes stands at 33% and 19.2 % respectively. This discourages entrepreneurial activities when compared to other countries like Nigeria or Rwanda.

Another potential negative outcome of IFFs is that it has resulted to slow levels of economic growth and development in the country. The huge amount of money that is lost to this activity, has sprouted underdevelopment in many parts of the country, poor living standards and poor economic transformation efforts. Through studies carried out covering the period 1995-2012, the oil sector would have contributed to the economy growth rate of Cameroon to increase to 0.33 point in the absent of capital flight which serves as one of the channels of IFFs.<sup>11</sup>

<sup>1</sup> The Public funds is one of the domains in the Republic, of what is usually referred to as *res publica*, *res communis* literally expressed in English as common concerns, collective goods, public goods, or goods of general interest. This is the more reason why Republicans (citizens) must be informed about how these are managed.

<sup>2</sup> Idress, L., (2022). *Op. Cit*, note 32.

<sup>3</sup> Mpenya, H., (2016). Natural Resources and Capital Flight in Cameroon. *African Development Review*, 28, pp. 88-99.

<sup>4</sup> Yeon, S., (2018). Illicit Financial Flows via Trade Mis-Invoicing. W C O Study Report, p. 5.

<sup>5</sup> Forstater, M., (2018). Illicit Financial Flows, Trade Mis-invoicing, And Multinational Tax Avoidance: The Same or Different. CGD Policy Paper No.123, p. 21.

<sup>6</sup> Cobham, A., et al, (2017). *Op. Cit*, note P.12.

<sup>7</sup> <https://www.cameroon-tribune.com/article.html/26430/fr.html> (Lastly Accessed on 5<sup>th</sup> September 2021).

<sup>8</sup> *Ibid*.

<sup>9</sup> Dan. N., (2022). Tackling Illicit Financial Flows in Africa Arising from Taxation and Illegal Commercial Practices. United Nations.

<sup>10</sup> CRTV News, (2021). Available at [www.crtvzeb.com](http://www.crtvzeb.com) (Lastly accessed on the 29<sup>th</sup> June 2024).

<sup>11</sup> Mpenya, H., Metseyam C., & Ngah B., (2015). The effects of capital flight from the oil and wood sectors on economic growth in Cameroon, Paper Presented at Centre for The Study of African Economies (CSAE), p. 16.



Illicit financial flows through its various channels negatively affect the opportunities for structural transformation in Cameroon. Unleashing Cameroon's productive capacity requires increasing investment in infrastructure, promoting technology transfer and innovation for value addition, and boosting agricultural activities, among others.<sup>1</sup> These activities require significant resources. Thus, resources savings from curbing IFF could help spur domestic resource mobilization. However, it is unfortunate that the primary sector is the dominant sector in Cameroon. The secondary sector which is the transformational sector is still at its infancy stage. Through studies, it has been revealed that the tertiary or service sector precedes the secondary sector.<sup>2</sup> One reason that accounts for this is the lack of capital by the State to develop this sector which has been eroded through IFFs.

The effects of IFFs also affect income distribution as the government has increased taxes and austerity measures designed to finance external debt obligations. Public debt in Cameroon reached 45.8 %of GDP in 2023.<sup>3</sup> Communal stamp for instance increased from 1000 XAF to 1500 XAF. Higher tax burdens disproportionately fall on the poor citizens and impinge on the ability of the State to provide social services.<sup>4</sup> Added to this, illicit flows can contribute to reduced investment and high unemployment.

## 6. Conclusion and Policy Considerations

Oil revenue has a great role to play in the developmental progress of every country. No matter how small a country can be, oil proceeds can bring economic growth in the country. However, it has been seen from the discussions in this paper that Cameroon has a long history of poor governance and corruption which has contributed to the illicit financial flows of Cameroon's oil revenue and poor management of oil revenue as well. The country has been evolving under donor-supported adjustment programs for the last 20 years. During this period, the level of transparency in oil revenues has improved slightly, yet the impact on the level of estimated corruption has been slight. Donors have been actively trying to move the country along the path to reforms, including those related to governance issues. With the coming of the EITI pressure has been mounted on the transparency and publication of oil revenue in the country. This will help eliminate the wide secrecy that surrounds Cameroon's oil sector and revenue as well as reduction of illicit financial flows in the sector. The researcher therefore recommends the following policy considerations as means to curtail illicit financial flows:

Strengthen Transparency mechanisms for oil licenses and contract awards. The Cameroonian government, in collaboration with its anti-corruption agencies, should create a robust and transparent mechanism for issuing oil licenses and contract awards to private oil companies in Cameroon. This mechanism should act as a yardstick for explaining the "who-and-why" reason(s) for granting oil contracts to a private oil company. It should be able to identify and understand the business entity of such an oil company, its financial capacity, and its possible connection with a politically exposed person to prevent money laundering schemes and other fraud activities.

Also, increased in State participation in oil contractually arrangements can help curtailed the growing rise of IFFs in the petroleum industry in Cameroon. The 5percent of State intervention in production sharing contracts should be revised. This will able the State to keep a watchful eye over the declarations that that made by the oil companies.

Citizen's inclusivity during the negotiation processes and signing of oil contracts should be domesticated in our national law especially in the areas of natural resources. This is because they are the most affected in the areas where oil exploitation and production are carried. The local population should be given the opportunity to be represented during the signing of oil contracts. They should not only be represented, but also have a say when these contracts are signed. Also, a permanent committee should be set up by the State to ensure compliance of the contractual obligations by oil companies in those areas. However, community involvement in oil contractual arrangements can be archived by passing through the parliament. This will guarantee effective monitoring of the activities of the oil companies and will go a long way to abate unpleasant practices from them.

The government should encourage and strengthen cooperation with the oil companies on the development and use, as well as access to and transfer of, sound petroleum technologies. This will curb the problem of insufficient petroleum technology transfer in the country. The government should equally create a national institution where Cameroonians will be trained on petroleum technologies.

Regular publication of oil data and revenue to the public. To eliminate the opportunity of IFFs the Cameroonian

<sup>1</sup> UNECA & AUC, (2012). Economic Report on Africa: Unleashing Africa's Potential as a Pole of Global Growth, Addis Abba.

<sup>2</sup> Acemoglu, D., (2002). Technical Change, Inequality and the Labour market. *Journal of Economic Literature*, 40(1), pp. 7-72.

<sup>3</sup> African Economic Outlook, (2023).

<sup>4</sup> Ajayi, S., (1997). An Analysis of External Debt and Capital Flight in the Severely Indebted Low-Income Countries in Sub Saharan Africa. Washington D.C, International Monetary Fund.

government should ensure that the public can have access to national and substantial budget information, and processes and procedures for budget development and auditing are open and transparent to the public. Information about oil revenue should be put online especially on the Ministry of Mines platform. It is sad to note the online platform of this ministry is not up to date.

Furthermore, the different institutions responsible for preventing illicit financial flows in Cameroon should render regular reports on their activities and findings to national legislatures. Similarly, relevant legislations that have been enacted but fall short to succinctly addressed the issues of IFFs, should be amended and crafted to meet the requirements to tackled IFFs. The domestic legislators should clearly provide the transparency principle in the petroleum legislation obliging the State to declare information about oil contracts and revenues to the public.

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