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ILLICIT FINANCIAL FLOWS AND THE REGULATORY FRAMEWORK FOR MINERAL RESOURCES EXPLOITATION ARRANGEMENTS IN CAMEROON

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1. Introduction

1.1. Context and rationale of the study

The African continent is said to be the richest continent in the world in terms of natural resources endowment. The continent is gifted with such resources as forests (the so-called green gold) and wildlife; water, and mineral resources including liquefied (black gold) and non liquid minerals of all types (the so-called white gold). Paradoxically, the continent has been documented as the poorest and least developed: 'the paradox of plenty', 'resource curse', or the 'development paradox'. It therefore has the lowest development index consequent upon such factors as exponential population growth, high rate of HIV/AIDS and related health hazards, high rate of illiteracy, accelerated environmental degradation, insecurity, and a partial justice system, among others. This is not all. Foreign direct investment has increased in recent years especially with the continual discovery of mineral resources deposits and an urgent political need to encourage exploitation for purposes of enhancing economic growth and poverty reduction. In the process, Africa's problems have consequently been further compounded by illicit financial flows (IFFs) from investments generally and investments in the extractive sector exploitation in particular.

This being the case, the continent's future in terms of its development potential is therefore more and more compromised by alarming statistics that reveal such illicit outflows from the continent. The question then is what accounts for this unfortunate situation. It is increasingly acknowledged that weak governance system in the

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majority of the countries is the root cause of this state of affairs. In particular, regulatory frameworks are generally insufficient, inappropriate, obsolete, and weak as mechanisms to address illicit financial flows.

Cameroon, which has been termed Africa in miniature, undoubtedly reflects the foregoing picture. The country is today known to be one of the leading countries in the continent in natural resources endowment in general and a diversity of mineral resources in particular. Consequently, there is a mad rush by foreign investors into the mineral exploitation sector and contractual arrangements are crafted between government and mineral exploitation companies. The exact amount in US dollars, of illicit financial flows resulting from these contractual exploitation arrangements is not yet known but what is certain is that there is, as in many other African countries, a non-negligible amount of illicit financial outflows, which if checked, can be used to strengthened such key sectors as health, education, the justice system and environmental protection hence accelerate the country's transformation process.

However, in the area of natural resource exploitation in general and non liquid mineral resource exploitation in particular, a few regulatory initiatives have been undertaken at the global, continental, sub-regional and national levels. At the global level, one can refer to the UN Convention against Corruption, the UN Convention on the fight against Transnational Organised Crime, the Kimberly Process Certification Scheme (KPCS)[2], and the Extractive Industries

[2] The Kimberley Process Certification Scheme (KPCS) is a Process established in 2003 by the United Nations General Assembly Resolution 55/56 following the *Fowler Report*. The overall idea was to prevent the so-called conflict diamonds from entering the mainstream rough diamond market. In fact, the process aimed at ensuring that diamond purchases were not financing violence by rebel movements and their allies seeking to undermine legitimate governments. Many governments and organizations adhere to the process including the government of Cameroon and many more are applying to be considered as members of the process. As work of the Process in appreciated contributing to natural resources governance and recognition of legitimate governments, its effectiveness in ensuring the achievement of this goal is put to question by other organizations. A perfect example is Global Witness which criticized the process and pulled out of the Scheme on the 5th of December 2011 claiming that the latter has failed in its purpose and does not provide markets with assurance that the diamonds are not conflict diamonds. The compliance requirements for the Scheme is that each shipment of diamond crossing an international border should be: transported in a tamper-resistant container; accompanied by a government-validated Kimberley Process Certificate; each certificate must be resistant to forgery, uniquely numbered and describe the shipment's contents; and the shipment are only supposed to be exported to other KPCS participant countries.

Transparency Initiative (EITI)[3]. At the Continental level, the African Mining Vision (AMV)[4] and the Nouakchott Declaration on Transparency and Sustainable Development in Africa[5] are examples *par excellence*. Although some of these (EITI, AMV and KPCS) are, in international law, soft law initiatives or non-binding legal initiatives, they have nevertheless been instrumental in fostering some level of transparency and accountability in the mining sectors in most countries and in Cameroon in particular through the crafting of national regulatory instruments.[6] Consequently, in some small way,

[3] The Extrative Industries Transparency Initiative (EITI) is a Global Standard to promote openness and accountable management of natural resources. It seeks to strenghten government and company systems, inform public debate, and enhance trust. In each implementing country, it is supported by a coalition of governments, companies and civil society working together. Countries implement the EITI Standards to ensure full disclosure of taxes and payments made by oil, gas and mining companies to governments. Upon meeting EITI requirements, countries are recognized first as EITI Candidate and ultimately as EITI Compliant country. As of the 3rd of February 2015, EITI recorded 48 countries implementing the EITI; 32 compliant with the EITI requirements among which is Cameroon; 16 Candidate countries; US$ 1.5 TR worth of government revenues from oil, gas and mineral disclosed; 235 years covered in EITI reports; 346 people all over the world work in EITI Secretariats, implementing the EITI on a daily basis; and 1005 people together form 48 EITI National Coalitions and the International EITI Board. Tax and transparency fact-finding mission in 2014 reported that the major obstacle of EITI has been to ensure a wider involvement of stakeholders and increasing knowledge of its work by the public. It therefore recommended that it may be critical to buy in the involvement of Parliamentarians and increase civil society participation in order to build up the strength, impact and legitimacy of the institution. It also recommended that the institution engage the media in its work so as to penetrate the public more and more.

[4] The African Mining Vision (AMV) has as overall goal to create a transparent, equitable, and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development. It is not about mining,; it is about development. Basically, it essentially seeks to use Africa's natural resources sector to transform the continent's social and economic development path.The AMV was adopted by African Union (AU) Heads of State in February 2009 as a framework for developing mineral rsources in Africa and is currently being used by many African countries to reform their national mineral policies, legislative and regulatory frameworks and by Regional Economic Communities (RECs) to harmonize their mineral policy strategies. Some of such countries include Ethiopia, Lesotho, Mozambique and Tanzania.

[5] The Nouakchott Declaration adopted on the 20th of January 2015 reiterates ans affirms that Africa possess a wealth of resources, in the main, oil and gas, mineral resources among others which if well exploited can transform the lives of the African people.

[6] Cameroon, which was admitted in the Kimberley Scheme in 2011, can be praised for having already taken measures by way of national regulatory instruments, in compliance with the Scheme's requirements for transparency in dealing with rough diamond. See for instance, *Décret N° 2011/3666/PM du 02 novembre 2011 portant création, organisation et fonctionnement du système de certification du processus de Kimberley en République du Cameroun ; le Système de Certification du processus de Kimberley adopté a la Conférence Ministérielle d'INTERLAKEN (Suisse) le 05 novembre 2002 ; et l'Arrêté N°*

illicit financial flows from the continent in general and Cameroon in particular have been addressed since IFF is also about illegal exploitation and transfer of natural resources.

At the Central African sub-region, the Treaty establishing the Economic Community of Central African States (ECCAS treaty) 1983 attempts to address the question of natural resources exploitation within the sub-region. The political will of the member states is expressed in the Protocol on Cooperation in Natural Resources Exploitation in Annex XIV, and by article 92 of the treaty, such Annexes are an integral part of the Treaty. Therefore, by cooperation in natural resources exploitation at the sub-regional level, the Protocol to the ECCAS treaty does not exclude mineral resources exploitation. On the contrary, it emerges as an important focus given its importance as a source of wealth for countries of the sub-region and the negative environmental consequences that result from its exploitation. The importance of such a legal instrument lies in the fact that it provides directions for countries of the sub-region to craft appropriate and sustainable national regulatory frameworks for natural resources exploitation in general and non liquid mineral resources exploitation in particular. As to whether African countries of the sub-region in general and Cameroon in particular have been inspired by the above International Initiatives and other best practices is a question which this write-up must address.

Cameroon which is an influential state within the Central African sub-region has probably been inspired by the continental and sub-regional legal initiatives. The country now has an arsenal of legal and institutional frameworks on mineral resources exploitation. In fact, it is known to be one of the few African countries with legislation on incentives for private foreign investments[7] and piecemeal legislations for mineral resources exploitation. Such government initiatives are intended to facilitate the realization of the objectives contained in the Growth and Employment Strategy Paper (DSCE)[8].

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*002102/MINMIDT/CAB du 14 Juin 2012 fixant les modalités d'exportation, d'importation et de commercialisation des diamants brut*s

[7] Loi No 2013/004 du 18 Avril fixant les incitations a l'investissement privé en République du Cameroun

[8]The Growth and Employment Strategy Papers (known by its french acronyms as DSCE) are new forms of policy instruments which a majority of African countries have resorted to with the intention of replacing what was hitherto a blueprint for a new development paradigm, the so-called Poverty Reduction Stratey Papers, what is accronymised as PRSPs. Some countries are still in the dream to reduce poverty rather than seek ways to boost the economy and

If all these initiatives are in place and functioning, one wonders why illicit financial flows can still be recorded. However, there are certainly, *inter alia*, gaps, contradictions and obscurities in the regulatory framework which must be addressed in order to strengthen contractual arrangements if the country is truly committed to reinforce its governance system and ensure transparency and accountability in the mineral resources exploitation activities for purposes of checking illicit financial flows.

1.2. Conceptual and theoretical frameworks

Illicit Financial Flows have been given different perspectives by different researchers. One of the leading definitions has been provided by DevKar, economist at Global Financial Integrity[9]. He defines "illicit financial flows" 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." One may querry the author's definition because IFFs may be manifested not only through money but through illegal transfer of natural resources. According to the United Nations Development Programme (UNDP), "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 extractive sectors, these flows mostly originate from corruption, illegal resource exploitation, and tax evasion (including through smuggling and transfer mispricing).[10] Others[11] think that IFFs is money that ends up benefitting local and foreign elites rather than the general population, much of which is generated

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increase employment. The argument for this replacement is that the PRSPs have failed to achieve the targeted objectives. The question is whether this new paradym can move the developement agenda forward. Is it not just some new wine in old bottles?

[9] Global Financial Integrity (GFI) is a non-profit, research and advocacy organisation with headquaters in Washington, D.C. . GFI advocates and conducts research on national and multilateral policies, safeguards, and agreements aimed at curtailing illicit financial flows and enhancing global development and security.

[10]For a recent overview on IFF definitions and measurements, see Fontana (2010). For an assessment of relevance to developing countries, see UNDP (2011). DevKar's definition is available at:
http://www.financialtaskforce.org/2010/08/16/illicit-financial-flows-from-developing-countries-the-absurdity-oftraditional-methods-of-estimation/. The UNDP definition is available at: http://www.undp.org.bt/Perspectives-on-Issuesand-options-for-LDCs.htm

[11] See for instance, Le Billon, P. (2011), Extractive sectors and illicit financial flows: What role for revenue governance initiatives?, U4 Issue, No 13, Anti Corruption Resource Centre, available at: www.U4.no

by corruption, illegal resource exploitation and tax evasion [and tax avoidance][12].

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 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. Therefore, the main hypothesis that this essay seeks to demonstrate is that a well-focused, comprehensive and up-to-date regulatory framework that clearly caters, among others, for mineral rsources exploitation arrangement can be critically important in dealing with the question of IFFs.

The Regulatory Framework in the context of this paper refers to the existing legislation in the mineral exploitation sector and how they address governance issues in relation to IFFs. Since this research seeks to examine the implications of exploitation arrangements on illicit financial flows, it then becomes necessary to know what such arrangements are.

Unless where the context requires emphasis on exploration arrangements, mineral exploitation arrangements refer to contractual arrangements (mining contracts, permits, authorizations, licensing,…) between government and multilateral corporations and how these impact on IFFs.

Since the goal of this research is to check illicit financial outflows from mineral resources exploitation from a regulatory perspective and to use the resources that results from such financial outflows to forge Cameroon's development pathway, it is perhaps interesting to remind our reader of some theoretical foundations for natural resources management such as the principle of permanent sovereignty and the public trust doctrine. The principle of permanent sovereignty over natural resources is to the effect that sovereign states have the right to exploit their own natural resources pursuant to their natural resources policies for the interest of their communities and no other state or multinational corporation should own or illegally exploit such resources. The principle which was crafted from the principle of self

[12] Emphasis is mine.

determination[13] is now a stand-alone principle and has been adopted in many international legal instruments of binding and non-binding character.[14]

The Public Trust Doctrine is to the effect that it is the duty of the State to hold natural resources which constitute *rescommunis*, *respublica*, *la chose publique* in trust for the benefit of the public and not to make them a subject of private ownership[15] by perpetrating acts which compromise important governance benchmarks thereby facilitating illicit financial outflows for instance.

With the above conceptual and theoretical clarifications, this write-up therefore focuses on the identification of gaps in existing regulatory framework regarding critical governance benchmarks, in particular disclosure principles in mineral resources exploitation arrangements for instance, and how these can be improved upon in order to check IFFs in Cameroon. To effectively diagnose these, the contents analysis method is utilized to critically analyze regulatory provisions on disclosure related issues and other primary data from field research.

2. The role of governance in mineral resource exploitation

Governance, which has received the flourish coinage 'good governance' has become the watch-word in every domain of public life in contemporary times, the extracive sector is no exception. However, the term [good] governance has no shared definition and one may only borrow from Le Roy[16], when he writes in the context of natural resource management that:

> [Good] governance is the exercise of mastery on things,

[13] See the General Assembly Resolution No 545 (VI) of February 5, 1952. For a detailled development of the principle, see Atsegbua, L. (2004), Oil and Gas Law in Nigeria:Theory and Practice, 2nd edition, New Era Publications, Benin, Lagos, pp 207-227

[14] See the Genaral Assembly Resolution 1803 (XVII) of 14 December 1962, The Rio Declaration of 1992, the Convention on Biodiversity of 1992 etc.

[15] For a more detailed understanding of the public trust doctrine, see Tamasang, C.F. (2007), Community Forest Management Entities as effective tools for local-level participation under Cameroonian Law: Case study of Kilum/Ijim Mountain Forest, Ph.D thesis, University of Yaounde II, Soa p 4-6. See also Mazrui, A. (1986), The Africans: A triple heritage, University of Pensylvania Press, Pensylvania, p 83

[16] (1996), cited in, *Actes de la 3eme Conférences sur les Ecosystèmes des Forêts Denses et Humides d'Afrique Centrale* (2000), p 249

> the organisation of prerogatives associated to them, and the regulation of relations between all those associated with them more or less voluntarily in terms of rights and obligations.

From the above definition, it may be noted that good governance is used as a methodological and idealogical tool and entails *interalia* multiple features: clear and stable laws and regulations; the rule of law; fiscal, monetary and budget discipline; high level of capacity and skills in government; open dialoque between government and civil society; public/private sector balance; and a high level of transparency and accountability through disclosure of any transaction (dealings) regarding mineral resources exploitation.

Other authors[17] have also attempted to define the term governance in the following words:

> [Good] governance is the complex of ways by which individuals and institutions, public and private manage their common concerns.

The above definition, on its part, suggests that good governance is neither a system of rules nor an activity; it is a process, not based on domination but on compromise; it is not necessarily formalised and is generally based on an ongoing interaction; it involves both public and private actors.

From the foregoing therefore, it becomes increasingly clear that good governance is critical in the extractive sector in general and in mineral resouces exploitation in particular for the enhancement of economic growth and poverty reduction. Given that there are a wide array of good governance ingredients or benchmarks, this paper x-rays disclosure in relation to regulatory frameworks for the exploitation of mineral resources in Cameroon.

[17] Notably Borrini-Feyeraband, G. et al (2000), Co-management of Natural Resources: Organising, Negotiating and Learning by Doing, GTZ, IUCN, KasparekVerlag, Heidelberg, p 7.

3. Key governance benchmarks: Disclosure principles; governance indicators, dimensions and procedures related to mineral resources exploration and exploitation arrangements

This section of the paper attempts to x-ray governance indicators, its dimensions and procedures in the light of mineral resources exploration and exploitation arrangements in Cameroon. It tries to identify and diagnose the responses afforded by regulatory frameworks for the extractive sector, mineral exploration and exploitation arrangements in particular. It is important to note at this outset that the governance indicators identified and discussed are, from our modest point of view, some of the vacuums in the regulatory framework for the extractive sector including mineral resources exploration and exploitation. But before delving into these, it is imperative to bring to the frontline what disclosure is and its principles with regard to mineral resources exploration and exploitation. In fact, this part is, without exaggeration, the heartbeat of this write-up.

3.1. The meaning of disclosure and disclosure principles

As highlighted earlier, good governance is founded on a number of benchmarks among which, is disclosure. In fact, disclosure is one of the important cornerstones of good governance in general and in the mineral resources exploitation arrangements in particular. But what is disclosure as a fundamental building block of good governance? Disclosure in the context of the extractive sector is understood to mean the speech act of making something evident or disclosing information or giving evidence about another. 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 contractual agreements on their behalf. Unfortunately, until fairly recently, contractual arrangments 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 write-ups[18]as contract confidentiality. But the

[18] See for instance, Amewu J.P. (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", organised by Tax Justice Network Regional Office for Africa, 27-28 November, Nairobi, p. 6.

principle and one which is supported by many[19]is that there should be full disclosure of the terms of substantial or major contracts in the extractive 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. However, most Afican countries including Cameroon, have not adequately provided for disclosure principles and procedures in their regulatory frameworks.

The relevance of disclosure also resides in the fact that where there is full disclosure, there is increase accountability and the risk of waste and corruption is reduced. Again, the central idea in disclosure is to bring to the fore transparent intentions of the contracting parties during negotiation, signing and execution of mineral exploitation agreements. Once these are ensured, then of course, accountability is guaranteed as the risk of waste of resources, corruption, and illicit financial flows is minimized.[20]

3.2. Governance indicators, dimensions and procedures of disclosure in mineral resources exploration and exploitation arrangements in Cameroon

The central issue in this write-up is to find out how the regulatory framework in Cameroon addresses questions of governance in relation to transparency both in princples but also the dimensions as well as the procedures when it comes to concluding major contractual arrangements for mineral resources exploitation. This is discoverable in the various stages from the negotiation and conclusion of contracts tothe signing of contracts including permits, and finally to monitoring, evaluation and reporting of contract execution.

3.2.1. Open contracting as a governance indicator

It has been generally acknowledged that to ensure good governance in the mineral resource exploitation, disclosure must be

[19] Among the leading institutions holding the view that major resources contract clauses should be disclosed are, the International Monetary Fund (IMF) and Global Financial Integrity.

[20] Other related fallouts of disclosure include the fact that it forsters democratic debate, encourages development of institutional capacity, improves macro-economic management, and enhances access to finance.

reflected by way of open contracting. What this means is that mineral resource legislation must make provisions that guarantee open contracting. The question however, is what constitutes open contracting in major mineral contractual arrangements for purposes of good governance. It seems that such open contracting provisions must anticipate such elements as public notice in contract initiation, open and competitive bidding in contracting, public notice in contracting process, citizens participation in contracting, confidentiality clauses in contracting, parliamentary approval of contracts, ministerial discretion in contract awards, mandatory disclosure of contracts and beneficial ownership of contracts among others. Since this paper seeks to identify gaps in existing regulatory frameworks for mineral resources exploitation, where the law sufficiently addresses a governance indicator, we shall save the trouble of coming back to it.

3.2.1.1. Public Notice in the initiation stage of the contractual arrangement

Public notice in contract initiation is the starting point in the whole process of disclosure of contractual arrangements in mineral resources exploitation. Transparency in the conduct of state affairs especially in the domain of contractual arrangements for mineral resources exploitation necessitates that there should be public notice in the initiation stage of the contract. What this implies for the law is that the legislator must envisage provisions that mandate public authorities charged with negotiating and concluding major contracts in the extractive sector to make public notices at the initiation stage of the contract. The idea is that such open contracting element informs the general public of government intentions of eventually proceeding to negotiate contractual arrangements for mineral resources exploitation and provide opportunities to everyone to subsequently tender for the contract. In fact, a majority of African countries do not have such provisions in their mining legislation[21]. The consequence is that notice about initiating a contract process is done at the discretion of the Powers-that-be. A further consequence is that only a few persons may be aware and this is the beginning of corrupt practices inimical to the tenets of good governance. *Protem*, there is no

[21] See for instance the Ghanian Mining legislation, Zambian Mining Legislation, But See Kenya Mining Act of 2014

provision in the Cameroonian Mining legislation expressly dealing with the question of public notice in contract initiation.

In fact, the 2014 enabling instrument provides that:

> *Lorsque deux ou plusieurs demandes sont introduites pour l'attribution d'un titre minier sur tout ou partie d'un même terrain, le demandeur qui dispose le premier sa demande auprès du Conservateur aura droit à la priorité sur tout autres demandeur de voir sa demande traiter et répondue.*[22]

The above provision relates to priority in the treatment and award of a mining permit where two or more persons apply to exploit minerals resources on the same piece of land. The first applicant, by the terms of the above provision, will have the priority in the treatment and eventual award of the mining permit. A reading of this provision leads one to the conclusion that some level of transparency is exercised at this stage of the contractual process but the crucial question remains, namely is there disclosure by way of public notice in the contract initiation process? It does not seem to flow from this provision that this is so. If the Cameroonian Mining Legislator intends to improve on good governance by enhancing disclosure benchmarks, it is critical to consider public notice in initiation stage of the contractual arrangement.

3.2.1.2. Public notice in contracting process

Public notice in contracting process at negotiation and award of contract in the extractive sector is generally preceded by public notice in contract initiation. Once the latter happens, the transparent process is considered to have began or sparked up and then continues with public notice in the contracting process. Public notice in contracting process refers to the disclosure of information regarding the manner in which the contracting process for the award of major mineral contracts shall be conducted. This has the effect of preparing

[22] See article 20 of Decree N° 2014/1882/PM of 4th July 2014 which amends Decree N° 2002/048/PM du 26 Mars 2002 which fixes the modalities for the application of the Mining code of 2001 as amended by Law N° 2010/011/ of 29 july 2010.

and assuring potential bidders of transparency at this stage in the entire process of contractual negotiation and eventual award. The question now is whether the Cameroonian legislator has made a difference in this respect compared to the other African Mining legislators. The answer is in the negative. How then do we expect to check illicit financial flows from the contry's mineral resources exploitation when transparency is relegated to footnote as contratual arrangements are made in darkness.

3.2.1.3. Open and competitive bidding in contracting

Open and competitive bidding in contract award in the extractive sector ingenerally and in the mineral resources sector in particular is a critical governance indicator for disclosure in contractual arrangements. Open and competitive bidding in contractualarrangements actually concern openess and competitiveness in the bidding process for the award of major contracts. In governance terms, it relates to transparency and fairness in the process of award of major contracts in the mineral resources exploitation sector. Openess in the bidding excercise involves clear and full disclosure of terms, style or format, conditions and procedures to mount contracts. Competitiveness means, all potential bidders should be allowed to bid so that the most efficient and qualified contractor wins the day. A company's history in terms of mineral resources profile and skills, transparency and accountability, capital (fixed and circulating) are all considered before awarding the contract to one or the other company. In fact, it is one ingredient and also a procedure for ensuring transparency and consequently good governance. Here again, there seems to be a gap as the present Mining legislation in Cameroon is not articulate on the subject at least as a matter of principle. It probably happens in practice and there again it is an issue of discretion and matters of discretion are not *ipsofacto*matters of law as they depend on the whims and caprices of the decision-makers. Meanwhile, these are important considerations in attempting to check illicit financial flows from mineral resources exploitation in Cameroon. A perusal of the Mining legislation of most African countries reveal that very little is provided for in this regard[23].Hence, a majority of contractual arrangements from a

[23] See The Zambian Mining Act No 7 of 2008, Les Lois MinièresBurundais, RDC, Congo etc.

regulatory point of view, lacks this governance indicator and thus disclosure.

3.2.1.4. Citizens' participation in contracting process

Citizens' participation in contracting process is equally a fundamental ingredient of good governance tenet. A lot of literature exist in almost every domain in favour of involving citizens in the management of public affairs[24]. The domain of mineral resources exploitation is no exception. A veritable participation of citizens in contracting invariably guarantees transparency, accountability, peaceful execution of projects but also the sustainability of such projects. 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 extractive sector is not expressly articulated upon[25].However, the Cameroonian Mining Legislator has dealt with the question of citizens participation in contractual arrangement although casually in what is referred to in French as *la Convention Minière* whose equivalent in English may be a mining contract.

The Code provides as follows:

En vue du développement et de l'exploitation d'une découverte minière ou de leur financement, une convention minière est conclue entre le titulaire du permis de recherche et l'Etat. Ladite convention comprend notamment les dispositions relatives:

- *...*
- *aux relations avec les communautés affectées par le développement minier;*
- *aux obligations relatives à l'emploi, à la formation professionnelle et aux réalisations a caractère social;*
- *aux fournisseurs et sous-traitants;*
- *aux règlements des litiges relatifs a la convention ou à l'application de la présente loi par toute voie de droit y compris l'arbitrage international;*

[24] See National Programme on Governance for Cameroon: Diagnoses and Proposals (1999), published by the Government of Cameroon, p 212.

[25] See The Ghanian Mining Act 815, les Lois MinièresBurundais, RDC but see The Mining Act of Kenya, 2014.

- ...[26]

Primafacie, this provision seems to prescribe citizens involvement in the contracting process and the contractual arrangement here is the so-called*convention minière*. The first problem with this provision is that it does not provide us with an understanding of what a *conventionminiere* is or could be. In other words, the law does not define a *convention minière*. Such an omission is serious in the light of a proper understanding of a true and effective participation of citizens in the contracting process for mineral resources exploitation within the context of good governance and consequently a safeguard against illicit financial flow.

From a reading of the contents of the new article 16, it may be surmised that a *conventionminière* is a partnership contract between the state and the holder of a research permit defining provisions relating to the development and exploitation of a mineral discovery including operations of rehabilitation and closure of mining sites.

The second problem with the above provision is that it does not clearly articulate the extent of citizens 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 particiaption which, in our humble opinion, would have been the subject of a separate and well elaborated provision. We take the view once more that such an omission is serious because the level of involvement of citizens in the contracting process has a direct impact on the sustainability of the mining activities in terms of avoiding land conflicts[27] on the mining site, community development by way of social amenities and economic wellbeing and more generally corporate social responsibilities of mining companies. Lastly, veritable citizens participation in the contracting process can be instrumental in avoiding or curbing eventual illicit financial flows.

3.2.1.5. Wide Confidentiality clauses in contracts

The whole idea of inserting confidentiality clauses in contractual arrangements is an age-old practice which has survived, until fairly recently, bitter criticisms. In the extractive sector, it has

[26]See Article 16 (nouveau) de la Loi N° 2010/011 du 29 Juillet 2010 modifiant et complétant certaines dispositions de la Loi N° 001/ du 16 Avril 2001 portant Code Minier.
[27] See Tamasang, C. F. (2007), op cit, note 15 at pp 196-201.

been more rampant than any other. The argument against 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. 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[28] which they believe, can come through contractual arrangements with mining industries, a majority of them buy-in confidentiality clauses in their regulatory frameworks. 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 alot of bad contracts, breed corruption and facilitate illicit financial flows. This is equally the view of civil society organisations both at national and 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[29]. However, the question is whether such civil society demands have borne any fruits. It seems that their demands have produced some positive results in a number of African countries as several governments have elected to go the transparency route[30].

[28] See generally, Maguwu, F. (2014), The African Mining Vision: Lessons for Improved Legislative Oversight, paper presented at the International Conference on Financial Transparency, Taxation and Illicit Financial Flows, Nairobi. The author wonders whether African countries can forge a development pathway with the so-called earnings from the mining sector when the 'West' takes away, according to the United Nations Economic Commission for Africa, more than USD 50 billion annually. This amount actually represents illicit financial flows so that the thinking of African Governments, that our development can come from begging by masking contractual arrangements with exploiters is mere wistful thinking.

[29] Public funds is one of the domains in the Republic, of what is usually referred to as *respublica, 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. For further details on the understanding of what constitutes *res publica, res communis*, See Kamto, M. (2001), *La chose publique*, in, The African Law Review, Vol. 2 , No 1, published by the Faculty of Laws and Political Science, University of Yaounde II, Soa, p 18. See also, for what will constitute *res communis, res publica*, in the area of natural resources, Tamasang, C.F. (2007), *opcit*.

[30] Liberia is a perfect example with the publication of contractual clauses with LEITI.

But what is the situation in Cameroon regarding confidentiality clauses?

The Mining Code provides:

> *Les renseignements et documents sur le sous-sol et les substances minérales ou fossiles qu'il contient, communiqués à l'Administration chargée des mines en vertu de la présente loi, peuvent être déclarés confidentiels par ceux qui les ont fournis*[31]

The above provision of the law is simply stressing the fact that any information and documents relating to sub-soil and mineral substances or containing fossils which is communicated to the Administration in charge of mines in conformity with the present law may be declared confidential by those who have provided same. In the context of a mineral contract, this implies that the holder of a research permit need not have any fear when such documents or information is furnished the Administration and that the latter can release such information only in exceptional circumstances in relation to security of the state, national defence or in cases of fraud.

The 2014 Mining Decree on its part stipulatesthat:

> *Le Ministre en charge des mines préserve la confidentialité de tous documents, rapports, relevées, données, échantillons et autres informations soumis par le titulaire en vertu des*

[31] See Article 103 of the Mining Code

> *dispositions du code minier, et ses textes d'application et de la convention minière, Ces informations ne peuvent être divulguées à un tiers par l'Administration avant le rendu du périmètre sur lequel elles portent ou, en l'absence de rendu, avant la fin des activités minières.*[32]

The Decree goes further to state that:

> *Si les documents, rapports, relevées, données, échantillons et autres informations visés à l'alinéa 1 ci-dessus sont couverts par une obligation de confidentialités figurant dans la convention minière, l'Etat est tenu de se conformer à cette obligation*[33]

The Decree continues to put an accent on the confidentiality clauses by providing that:

> *Sous réserve de dispositions contraires de la convention minière, le titulaire ne divulgue pas les rapports, relevés, données, échantillons et autres information visés à l'article 153 si dessus à des tiers sans accords préalables écrit du Ministre des mines.*[34]

[32] See Article 153(1)
[33] See Article 153(2)
[34] See Article 154

The tenors of the two articles of the enabling instrument to the Mining Code are sufficiently clear. They simply reinforce the principle of confidentiality clauses in mineral resources exploitation arrangements. While article 153(1) identifies those matters which are a subject of confidentiality including the permit (this is clear from the use of the word 'document'), sub-article 2 of that article is emphatic on government's obligation to respect confidentiality clauses contained in the mining contract.

In conclusion therefore, the regulatory framework for mineral resources exploitation arrangements in Cameroon still recognizes an extensive inclusion of confidentiality clauses in contractual arrangements, thereby failing to publish such clauses,a weakness which, as we have stated earlier, has as consequence, the masking of bad contracts, enhancing corrupt practices and frustrating any attempt at checking illicit financial flows.

3.2.1.6. Mandatory disclosure of contracts

Mandatory disclosure of contracts in mineral resources exploitation arrangements is a corollary of confidential clauses in contracting. Mandatory disclosure of contracts relates to publishing information with regard to the very existence of contracts in extractive sector in general and in the mineral resources sector in particular. Extractive Industries Transparency Initiative (EITI) has prescribed publication of major contracts as a measure of enhancing governance in the sector. Such a prescription was provoked by the fact that a majority of major contracts in the extractive sector were never known by the citizens of the countries harbouring the minerals. As a consequence, revenue accruing from the exploitation of minerals was hardly known let alone how such revenue was managed. Meanwhile, as highlighted earlier, citizens have a right to information in the management of state affairs, mineral resources exploitation being critically important.

Although EITI principles and standards are not legally binding on any country, African countries that have adhered to such principles and standards and have become compliant countries have allowed the same to influence national regulatory frameworks in the extractive

sector. Hence, mandatory disclosure of contracts is becoming a regional norm. Examples abound[35].

Howerver, one may want to know the specific situation in Cameroon as regards mandatory disclosure of contracts given that Cameroon is a compliant country of the EITI and other national and international transparency organisations. Cameroon has, to date, not yet domesticated governance ideals and principles in the mineral resources exploitation sector, from international legal instruments and well respected international transparency organisations. The consequence of this vacuum is corruption and illicit financial flows out of the country to unknown destinations although there is a claim by some authorities in the Ministry of Mines, Industry and Technological Development (MINMIDT) that corrupt practises[36]are difficult in the negotiation of mining contracts. In any case, our submission is that one of the first things to be given due attention to in any new legal architecture on mineral resources exploitation in the country shall be the recognition of the importance not only to publish contracts but also the terms of such contracts.

3.2.1.7. The operation of companies in tax havens

A non-negligible source of illicit financial out flows is the operation of companies in tax havens. A tax haven is a state, country or territory where certain taxes are levied at a low rate or not at all.[37] Generally, such States, country or territory become very attractive to companies and individuals wishing to undertake large scale

[35] See The New Constitution of Niger which mandates the publication of all oil and mineral contracts in the country's official gazette; The Democratic Republic of Congo has published dozens of its mineral and petroleum contracts; Guinea's new Mining Code requires the publication of all contracts, both in the official gazette and on government website.

[36] It is alleged that corruption in the domain of mineral resources exploitation is extremely difficult in Cameroon. In recent times, unlike in the past, government solidarity in the management of state affairs is a well grounded practice. So therefore, in the negotiation and conclusion of contracts in the extractive sector in general and in the mining sector in particular, there is a committee of persons representing various ministerial departments directly concerned who ensure that the laws of the Republic in their different sectoral departments are respected and this is usually evident in a consensus document signed by each of the representatives. It will therefore be very difficult for corrupt practices to be perpetrated at this level. In an interview with some authorities of the legal department of the Ministry of Mines, Industry and Technological Development (MINMIDT), Head of the Legal Department, and Unit Head for Regulations, this point was confirmed.

[37] See SEATINI-Uganda, Tax Justice network-Africa & Oxfam (2012), Understanding Tax Justice in the Context of Transparent and Accountable Oil Management in Uganda: Is Tax Justice in the Oil and Gas Sector a Myth or Reality in Uganda, p 25

investments or businesses and plant their front/international subsidiaries because of the fiscal regimes. However, different regimes tend to be havens to different categories of persons and/or corporations for different types of taxes. A major characteristic of tax havens is that they have only nominal or no taxes and therefore impede the free exchange of information on taxpayers and government through laws and administrative practices, non-transparency and lack of substantial activities in the tax havens country or territory. A classic example of a tax avoidance operation is where there is buying and selling through tax havens companies to disguise true profits. The Shell International subsidiaries have been used by many multinationals to conduct their international operations so as not to report to host countries where its investments are located the real sum involved in the transactions and consequently avoiding taxes. The danger of tax havens is not only its tax avoidance effect and hence illicit financial outflows but also the fact that it breeds tax competition among governments.

Although there is no reliable evidence in the mineral exploitation arena that tax havens is already affecting Cameroon, there is such evidence elsewhere in Africa and legislation has sufficient coverage.[38] In any event, good governance in the extractive sector generally warrants that there should be disclosure by companies of their operation in tax havens so that the receiving country should take appropriate measures to collect full taxes for companies operating in her territory thereby checking illicit financial outflows from tax avoidance. The regulatory framework in Cameroon does not appear to deal with this situation and therefore it is our suggestion that any subsequent amendment of the regulatory framework should give due attention to this worrying situation including capacity building to monitor operations linked to tax havens to ensure that there is no tax leakage. It may not be absurd to add that in dealing with this question, the legislator should consider a related question, namely transfer pricing which produces similar effects.

[38] In Ghana, the Mining and Petroleum legislations have envisaged the operation of tax haven companies so that the dangers that come with these can be properly taken care of by government. Tax havens companies disclosed in that context are Komos and Anadarko in Cayman Island and AGM in Gilbralta.

3.2.1.8. Parliamentary approval of contracts

Parliament has a key role to play in the development of the extractive sector generally and the mining sector more specifically if compliance and implementation of governance benchmarks are government's objective. Besides its legislative functions in which Parliament is required to craft clear, precise and unambiguous laws in the domain under study, Parliament also exercise its oversight functions. The effective exercise of the latterrole enjoins Parliament to control government action in connection with the negotiation and conclusion of contracts in the extractive sector in general and in the mineral resources exploitation arena in particular. It has even been posited[39]and it is the current practice in many African countries today[40], to have Parliament partnering with government in key domains of public life (land matters, environmental issues, extractive concerns; etc) for a more efficient and effective management of state affairs.

In the exercise of its oversight role, Parliament is required to examine and approve major contractual arrangements negotiated and concluded by government in order to ensure that contractual clauses sufficiently represent common interest of the citizens and government policy in that particular sector of activity. Such a procedural mechanism is critically important that if respected, then one sees compliance with the ideals of good governance and consequently an appropriate check on illicit financial flows out of the country. Unfortunately, this is one of the governance indicators that has not enjoyed a comfortable regulatory coverage in most African countries. Meanwhile a few countries[41]in the continent have made formidable strides in the direction of involving Parliament in such contractual ventures as they have tremendous implications on public funds; such examples are worthy of replicating in other countries. The question at

[39] See *DialogueParlement-Gouvernement* initiated in 2013; a plateform for cooperation and collaboration between Parliament and Government for a more transparent and accountable governance for the interest of the state.

[40] In Cameroon today, there exist a good number of Parliamentary networks aimed at collaborating and cooperating with government in its mission. In the environmental domain for instance, there exist a network of Parliamentarians for the Central African Forest (REPAR); a network of Parliamentarians for Climate Change in Africa (REPAR/CC); and in the mineral resources exploitation sector, a network of Parliamentarians for the Extractive Industries; etc

[41] See for instance, the present Constituion of Kenya which prescribes Parliamentary ratification of any agreement relating to natural resources management in section 71 (1) (a) and (b) and (2) as the rule; the Constitution of Ghana, 1992, with similar provisions.

this juncture is what is the situation in the regulatory framework in Cameroon as concerns Parliamentary approval of contracts.

In this regard, there is no clear provision whether constitutional or regulatory that prescribes Paliamentary approval or ratification of contractual arrangements in the mining sector. The nearest equivalent can be found in the Mining Code as amended in 2010. It is therein provided that:

> *Si les dispositions de la convention dérogent à celle de la présente loi, ladite convention fera l'objet d'une loi autorisant le Gouvernement a la conclure*[42].

What the Code provides above is simple. If, in the process of negotiating the mining contract, it emerges that its clauses are not in conformity with the provisions of the present law, the mining contract shall be passed as law and the Government authorised to conclude it. In fact, it sounds good enough to be equated to Parliamentary approval but our concern here is that parliamentary approval or ratification is provided as an exception and not the rule as warranted by good governance benchmarks. What this means is that the role of Parliament in this domain should be recognized as a matter of principle and enshrined in the laws as is the practice elsewhwere. Parliamentary approval of contracts should be systematically done as a matter of law and within the framework of the exercise of its oversight functions. As it stands, the impression is that the role of parliament is only incidental and not instrumental or determinant. Parliamentary approval of contracts ought to be the rule and not the exception. Where Parliament is involved in the approval and monitor of mining contracts, the effect will be a guarantee for a more accurate check on illicit financial flows out of the country. Cameroonian law-makers may need to learn from international best practices in this respect as highlighted above.

[42] See Article 16 (2)

3.2.2. Payment Disclosure

The exploitation of minerals in any single country is subordinate to the payment of royalities and taxes to the State. In many countries across the world, these payments make up substantial portions of State's revenue. To curb illicit financial flows, good governance benchmarks require that the regulatory framework mandates disclosure of mineral revenue and production; compliance with international principles and standards on the subject; and ensure that citizens participate in prority setting for revenue distribution.

3.2.2.1. Mandatory disclosure of mineral revenue and production

It is critical for any attempt to seal the leaks of illicit financial flows in a country where mineral exploitation activities are taking place, to disclose revenue and production resulting from the aforementioned activities. As revenue from such activities is a gamut of *res communis*, *res publica*, its disclosure must be mandatory. Some African countries have ventured to mandate disclosure in this regard[43]. Under Cameroonian law, the various types of royalities and taxes have been identified and the amounts to be paid by mining operators are well taken care of[44]. What the law has done here is simply a prescription by way of identification of the royalities and taxes and the amounts involved in each of the mining activities which is a laudable iniatiative anyway from the legislative point of view. But what is of interest in this write-up for the purpose of building good governance blocks and thus checking illicit financial flows out of the country is disclosure of the exact amount of revenue collected.[45] In fact, the slogan in the extractive sector now is ''multinationals, *publish what you pay*, and the state, *publish what you earn*'' and should now be prescriptions in the regulatory frameworks for the extractor sector generally and hard mineral exploitation in particular. The importance of such a disclosure lies in the fact that the State, the public or any other concerned organisation can proceed to verify same. If this fact is

[43] See notably Ghanian Oil and Mineral Law, Act 815.

[44] See Articles 19 of the Mining Code of 2001 as amended in 2010; and Article 134-136 as well as article 140 of the 2014 Decree amending the 2002 Decree to the application of the Mining Code.

[45] In an encounter with some Treasury Officials in Yaounde concerning the collection and direction of revenue resulting from mineral resources exploitation, they intimated that they respect the procedure and distribution as spelled out in Finance Law. They went forth to state that the publication of the exact figures is not at their level.

borne in mind, then it becomes easier to check illicit financial flows as the legal prescriptions will be matched with the revenue.

From the foregoing therefore, disclosure of revenue will be helpful in checking illicit financial flows. A corollary of this is the disclosure of contents and production levels of different mineral resources explored and exploited. The raison d'être of this is simple. In the first place, contrary to conventional thinking, one manifestation of illicit financial flows is illegal exploitation of natural resources. Therefore, a knowledge of the approximate quantity of different mineral contents which constitutes part of *rescommunis*, *res publica* and the level of their production could be an important milestone in checking illicit financial flows out of the country. The Mining code adresses the question of production in a peripheric manner in relation to one of the conditions for the signing of the so-called *convention minière*. The legislator is more interested in knowing the percentage of extracted mineral substances that would be transformed at the local level[46]. Although this is equally important, the law does not mandate the disclosure of contents and eventual production levels of the mineral resources; an important governance indicator to checking illicit financial flows. It maybe argued that the Mining Code covers this fact in some way as it embraces all other matters that may be adjudged to be of interest to the contracting parties. Specifically, the Code states:

> ...
> a tout autre sujet que les parties prenantes a la convention peuvent juger digne d'intérêt[47]

Although this is a recommended technique in legislative crafting because it provides coverage of matters that might not be within the contemplation of the legislator at the time of drafting, it may not be accepted to contemplate important issues as the contents and production level of the mineral resources explored and exploited as this may not come to the mind of government officials at the time of negotiating and signing of the *conventionminière*. This fact must be

[46] See the last but one paragraph of the new Article 16 of the 2010 Law amending the 2001 Mining Code.
[47] See the last paragraph of the new article 16 of the 2010 Law amending the 2001 Mining Code.

expressly covered in the Code and to ensure effective implementation, the Enabling instrument to the Code should then enjoin the Ministry in charge of Mines to publish regular reports on production and revenue so as to inform the public, civil society organisations and other stakeholders instrumental in checking illicit financial flows out of the country[48].

Now, in the second place, a disclosure of the approximate contents and eventual production levels of mineral resources is essential in the context of sustainable development. The government needs these statistics to craft a better planing policy and to sustain its development strategies for the extractive sector in general and the non liquefied mineral exploration and exploitation in particular.

3.2.2.2 Compliance with EITI Principles and Standards

One of the guiding legal instruments at the international level on which a majority of countries of the world, African countries in particular, rely now for transparent exploitation of their extractive resources is the Extractive Industries Transparency Initiative. The principles, standards and procedures of this International Intiative have actually been instrumental in ensuring good governance in the extractive sector across the world in general and in Africa in particular. Many African countries have argued forcefully that they are very much into governance in the extractive sector as they respect the principles and standards set by EITI, hence putting formidable stumbling blocks on any attempt at perpetrating illicit financial flows. Unfortuantely, the principles, standards and procedures set by this initiative are not mandatory. Adherence by States to the Initiative is based on voluntary subscription given that the Initiative is considered in International Law as *soft law* and so non-binding on States. What this means is that a country may chose to comply or not to comply; there is therefore no obligation on the part of the States to implement its principles, standards and procedures as would normally be the case if it were a *hard law* instrument[49]. This notwithstanding, a number of

[48] This suggestion espouses the position held by some officials of Extractive Industries Transparency Initiative (EITI) - Cameroon office in an interview we conducted with them in the course of this research. It simply re-echoes the EITI position in their most recent report of February 2015 accessible at https://eiti.org/news/cameroon-mining-sector-evolving

[49] For a more detailled understanding of the soft law/ hard law debate, see Tamasang, C.F. (2011), Legislation for sustainable forest management in the Central African Sub-region: What prospects for effective implementation? in, Compliance and Enforcement in

countries that are truly committed to governance will build a strong political will to comply and implement EITI principles, standards and procedures[50]. Therefore, the respect of good governance and transparency embedded in EITI will depend more on the political will of the country concerned and not on an international obligation *strictosensu* as non directly dealing with the subject under consideration exist for the time being. Even the African Mining Vision 2050 and the Nouachoutt Declaration is legally non-binding.

In the case of Cameroon, officials of the EITI Cameroon Office intimated that the President of the Republic has declared his political will to comply with the EITI[51]. While this is true, we take the view that this can only be measured in the implementation proper given that they are policy statements and not legally binding articulations as such. This is more so as most of the governance ideals prescribed in the EITI are not sufficiently covered in the regulatory framework. A clear example is that the present legislation on Mining in Cameroon does not make mention of these international initiatives even in its preambular or introductory chapter as to lead one to the conclusion that the spirit and principles of governance have been taken on board the texts of law.

3.2.2.3 Citizens participation in priority setting for distribution and investment of mineral exploitation revenue

It has been demontrated above that citizens participation is crucial in ensuring good governance in the extractive sector in general and in non liguefied mineral resources exploitation in particular. The argument for involving citizens in priority setting for revenue distribution emanating from mineral resources exploitation is grounded on the fact that generally mineral resources within a country are not usually spread all over the territory with the consequence that revenue accruing from its exploitation is not always evenly distributed or invested within the country. The result is that some parts of the country are more often beneficiaries in the distribution and investment

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Environmental Law: Towards a more effective implementation, Edward Elgar publishing, Cheltenham and massachusetts, p 504-505

[50] *Ibid* at p 505-507

[51] This position was made known to us in a discussion we had with some of the officials. See also their intimation at http://www.eiticameroon.org. Listen especially to the interview of the Minister of Finance on the occasion of the session of EITI Committee in 2014 on the Implementation of reconciliation for the fiscal year 2012.

projects of revenue from the extractive sector than others and in most cases citizens in and around the mineral wealth are maginalised or highly disfavoured. In a majority of African countries, it is far fetched to imagine that citizens have a role to play in setting priority for the distribution and investment of mineral exploitation revenue[52]. In most countries across the continent, the practice has been for the Minister of Finance to exercise discretion to decide on priority areas to spend revenue from mineral resources exploitation without the participation of the citizens[53]. And come to think of it; there are hardly any convincing reasons for the choice of distribution or investment of the mineral revenue in one and not the other part of the country since it is based on discretion and not on clear legal prescriptions. This is anathema to good governance in the extractive sector and the weight of authority swing to the fact that the exercise of such discretionary powers may facilitate rather than check illicit financial flows out of the country.

The situation in Cameroon is slightly different. In practice, the Minister of Finance in collaboration with the Minister of the Economy and Regional Development decide on priority distribution and investments of revenue from the extractive sector and allow approval to come from the President of the Republic. But is this is what is meant by citizens participation in priority setting of mineral revenue? Both common sense and logic deny that it is so for the simple reason that it is too indirect to be termed citizens participation although it may be argued that as government representatives, they acts on behalf of the people. On the contrary, Parliamentary involvement in a true democratic governance where legitimacy is not put to doubt may be an indirect but more genuine way of soliciting citizens participation in priority setting for distribution and investment spray of mineral revenue. Some writers[54], while concurring with the fact that Parliament can be a more appropriate avenue for citizens participation,

[52] A glaring example of neglect of citizens participation in priority setting for distribution and spray of investments of revenue from the extractive sector is the Niger Delta saga in Southern part of Nigeria where most of the wealth of the country is generated but which remains the most maginalised part of the country and cannot identify where the revenue from the extractive sector is actually going to.

[53] See for example, Act 815 of the Ghanian legislation on Mining and Oil Exploitation.

[54] For greater details, see notably Othim, C. (2014), Public finance management: An analysis of the constitutional amd legal framework of public finance management and citizen participation in devolved governance, published by East African Tax and Governance Network, Nairobi, pp 21-24

have gone further to identify other avenues of participation such as local level budget and economic fori; local plans; local citizens engagement frameworks; local or regional communication platforms; local or regional civic education strategies and so on. In any event, mining legislation must define the frontiers and procedure of setting such priorities.

Unfortunately, the regulatory framework in Cameroon as in many other African countries has failed to address this question very clearly and this does not smack on governance in mineral resources exploitation. Meanwhile, the involvement of citizens in priority setting for distribution and investment spray of mineral resources exploitation revenue has at least two merites.The first is that their involvement directly gives them the opportunity to information on mineral revenue, a good governance indicator and a check on illicit financial flows. Secondly, their active participation in priority setting for distribution and spray of investments of revenue from the extractive sector may contribute substantially to avoiding conflicts thereby building peace and development.

3.2.3. Accountable and independent audits institutions

Transparency in governance is not to be measured only at the entry point or at the negotiation and conclusion of mineral exploration and exploitation contracts. It is to be felt even more at the outlet if the government is truly committed to fighting illicit financial flows. Hence, there is need for there to be independent audits of the accounts of mineral exploitation institutions to ensure their accountablility. For this to be effective, one needs to identify the existence of such independent audit institutions on the one hand and that of institutions directly concerned with management of mineral exploitation affairs on the other hand.

3.2.3.1. Audit of mineral companies accounts

In a well established governance system for the extractive sector generally and mineral resources exploitation in particular, accountability is critical and to guarantee the same for purposes of checking illicit financial flows, it is paramount to audit the accounts of mineral companies. Such audit excercises must be undertaken by State officials empowered to do so such as the Auditor General. It could also be done by an authorised independent and well reputed firm. Independence here refer to impartiality and reputation alludes to long

standing experience in successful conduct of audit missions. In principle and practice in some countries in Africa, the regulatory framework clearly stipulates for audits of the accounts of mineral and oil companies.[55] One main idea behind such a provision of the law is check of illicit financial flows out of the country.

The Cameroonian experience is different. The regulatory framework for mineral resources exploitation does not expressly provide for an audit process for mineral exploitation companies. There is a government audit institution[56]in place that effect control or audits in public and para-public State enterprises but not mineral exploitation companies. Given this state of affairs, one may not vouch to the fact that there is transparency and accountability within the ranks of mineral exploitation companies to such an extent as to check illicit financial flows. This gap in the Mining legislation is so evident that the EITI officials in the Cameroon office have recommended that the Ministry in Charge of Mines should audit mineral exploitation companies.[57]Hence, our suggestion in this regard is that an eventual amendment of the regulatory framework should clearly prescribe audits of mineral exploitation companies as these will check, *interalia*, illicit financial flows.

3.2.3.2. Approval by Parliament of appointments to relevant mining institutions

In well known democracies[58] across the world, Parliament plays a very important role in ensuring the respect of governance benchmarks. In natural resources management in general and in the extractive sector in particular, such a role should not be limited to approving contracts negotiated by government but should extend to the approval of major appointments to relevant oil, gas and mining institutions. The rationale for such thinking is that illicit financial flows out of a country can be facilitated by those who head the institutions just referred to above. It is therefore crucially important for Parliament to approve appointments to important positions in state mining institutions as well as oil and gas instituions. This should not

[55] In Ghanian Mineral and Oil Legislation (Act 815) for instance, it is provided that the accounts of mineral exploitation companies shall be audited by the Auditor General.

[56] See Supreme State Audit Bench (*ControlSupérieurdel'Etat*) having a ministerial portfolio placed under the Presidency of the Republic.

[57]*Opcit*, note 45

[58] The Western Democracies with typical examples as the United States of America, The United Kingdom, Germany, Japan for instance.

be intepreted as questioning executive discretion in matters of appointment. Far from that. It is simply a measure of making assurance double sure especially in the natural resources arena in general and the extractive sector in particular where the problem of illicit financial flows is most rampant.

In many African countries[59], the practice of seeking Parliamentary approval for appointments at the helm of extractive institutions is almost inexistent let alone having a legislative foundation. Whether in practice or arising as a matter of law, the Cameroonian regulatory framework provides no better with regard to parliamentary approval of appointments to mining, oil and gas institutions.[60] Although, as at now, no para-public State institution with general competence exist in the mining sector, evident from the field is glaring to the effect that there is no Parliamentary approval of appointments to oil and gas institutions.[61] So therefore, if the government is truly committed to checking illicit financial flows out of the country in the extractive sector, there is an urgent need to review the regulatory framework to make provisions for Parliamentary approval of appointments to relevant mining but also oil and gas institutions as this will guarantee accountability in the management of these *rescommunis* or *respublica*.

3.2.3.3. National mining companies report to Parliament

Given the perculiarity of the extractive sector and mining in particular, it is important for national mining companies to report to Parliament in order that some amount of accountability be ensured for purposes of checking illicit financial flows. Unfortuantely, neither principle nor practise dictate such a governance ingredient in

[59] In Ghana, Zambia, Burundi, Democratic Republic of Congo, Liberia, Guniea Conakry and many other countries in Africa whose regulatory frameworks on Mining, Oil and Gas we have studied, there are no express provisions for Parliamentary approval of appointments to institutions managing this sector.

[60] Talking to some Parliamentarians in the Cameroon National Assembly who are members of a Parliamentary Network for the Extractive Industries (Hon EsolaEtoa Roger and Hon Bokwe Samuel), we came to the conclusion that there is no such thing as approval of appointments to State institutions controlling oil and mining activities. It emerged from our interaction with these Law-makers that one of their objectives is to lobby and push government to adopt such a practice and to have it enshrined in the legislations on the Extractives.

[61] See for example, appointments in the National Oil Refinery Corporation (SONARA), The National Oil Storage and Transportation Company (SCDP), The National Hydrocarbons Corporation (SNH), The National Fund for Hydrocarbons Price Stabilization (CNSPH) etc.

Cameroon for instance. Meanwhile, in some African countries[62], mining and other regulations in the extractive sector clearly articulate the obligation of mining, oil and gas companies to report to Parliament including having their programme of activities approved by Parliament.

Grounded on the above best practices, it is therefore our humble opinion that any attempt at reviewing regulations on mineral resources exploitation in Cameroon should consider seriously the need for national mining companies to report to Parliament and also mandate them to table their programme of activites for approval. This will go a long way to reinforce transparency and accountability and a check on illicit financial flows.

4. CONCLUDINGREMARKS

From the foregoing discussion, a number of issues have been brought to the limelight regarding good governance in the extractive sector in general and the mineral exploitation sector in particular. Primo, that Africa in general and Cameroon in particular is caught up in the resources curse theory, the paradox of plenty, or what is more commonly known as the development paradox; and one of the main results is illicit financial flows out of the continent generally and from Cameroon particularly. Segundo, that this situation is compounded by huge challenges to the observance of the doctrines of sovereignty and the public trust in the management of natural resources in general and the extractives industries in particular. Tertio, that governance benchmarks by way of disclosure and relevant governance indicators have not been adequately addressed in the regulatory frameworks for mineral resources exploitation arrangements in most African countries generally and Cameroon in particular and this is glaring in the gaps that exist in the regulatory framework. Quatio, that as a result of these, there is little check on illicit financial flows out of the continent and in Cameroon particularly and consequent upon this is widespread poverty and attendant consequences on environmental resources. Lastly, there are however, international best practices which could be copied and contextualise for the sustainable exploitation of mineral resources in Cameroon. What then emerges as an important recommendation for a way forward is the need for an overhaul and

[62] See Mining Law of Kenya, Tanzania and Ghana for instance.

consolidation of the regulatory framework for mineral exploitation arrangements in Cameroon if the government is truly committed to good governance in the extractive sector. The key is and remains the political will of the power-that-be.