



**OWNERSHIP RIGHTS OVER OIL AND GAS RESOURCES IN CAMEROON: FROM
CONCEPTS TO PRACTICE**

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ABSTRACT

Oil and gas resources are invaluable for the wealth and wellbeing of a country. As such, ownership over these 'treasures' should not and never be treated with levity. In Cameroon, the state exercises ownership rights over oil and gas resources as occasioned by its legislative framework. However, despite the impressive laws regulating ownership over oil and gas resources and notwithstanding the energy, zeal, and actions envisaged in the enactment of these laws, with its language raising expectations of good behavior, national realities routinely fail to keep to pace with the aspirations of lawmakers as illegal dealings in the oil and gas sector continue to thrive. This is aggravated by recurrent conflicts being fueled inter alia by the quest to exercise ownership over oil and gas resources in the country. Adopting content analysis of primary a secondary sources of data information, this paper investigates the effectiveness of extant laws regulating ownership over oil and gas resources in Cameroon. Findings revealed that the high rate of corruption, poor governance, increased demand for contraband fuel, and the non-implementation of laws and policies are the foremost reasons for recurrent violation of rules regulating ownership over oil and gas resources in Cameroon. Hence, it is recommended that the Government commits herself genuinely to fight against corruption, adhere to the terms of the Green Tree Accord, synergize with key players at the national and international frontiers and step up the enforcement of already existing legislations on oil and gas.

Key Words: Ownership, Rights, Oil and Gas, Natural Resource.

INTRODUCTION

Oil and gas resources are unarguably the life wire of the modern economy and they have now become the most essential commodity in the world. Hence, no nation today can survive without oil, that is why Smil¹ describes it as the “lifeblood of modern world”, adding that, “without oil, there would be no globalization, no plastic, little transport, and a worldwide landscape that few would recognize.” In recognition of its significance, Feyide² aptly stated that:

Oil is raw material as well as a convenient and effective source of energy. In the form of energy, it increases man’s capacity to get work done. As a raw material, it provides feedback for the fast-expanding industry in the world, -the petrochemical industry...All over the world, the lives of people are affected and the destinies of nations are probably determined by the results of oil industry operations. Oil keeps the factories of the industrialized countries working and provides the revenues which enable oil exporters to execute ambitious national and economic development plans. Developing countries that have no oil are faced with a grim struggle for survival; If they lose, they are relegated to the fourth world; The march of progress would be retarded and life itself would become unbearable if the world was deprived of oil and gas. That is why oil has become the concern of governments, a vital ingredient of their policies, and a crucial factor in their political and diplomatic strategies.

Ownership over these ‘treasures’ are very crucial to a country’s wealth and wellbeing and must therefore not be treated with levity.³As important as it is, ownership rights over oil and gas resources takes various forms and vary from one jurisdiction to another depending on the country’s socio-political, historical background, and particularly its legal system which has a direct impact on the oil and gas industry. The enduring legal regime provides the rules and

¹ Smil V., *Oil: A Beginner’s Guide*, 1st ed. (Oxford: One world Publications, 2008), P. 1.

² Feyide M.O., *Oil in World Politics*. The J.I.C. Taylor Memorial Lecture Series (Lagos: University of Lagos, 1986).

³ Okonkwo T., “Ownership and Control of Natural Resources under the Nigerian Constitution 1999 and Its Implications for Environmental Law and Practice” (2017), *International Law Research*, Vol.6, N0.1, Pp.162-184:163.

procedures governing the allocation, maintenance, and transfer of oil and gas rights and the obligation of title holders of the varieties of oil and gas rights available.⁴

Cameroon as a country is gifted with oil and gas resources. In terms of its distribution, oil and gas are largely concentrated in the South West Region of the country.⁵ Its exploration could be traced to the early 1950s during the colonial period.⁶ In 1972, commercial deposits of oil and gas were discovered.⁷ Production of oil and gas started in 1977 in Rio del Ray Basin and by the year 1985 production level was 18600 barrels per day.⁸ Its exploitation was carried out by a French oil company, Elf-Aquitaine. At the global scene, Cameroon is considered a small producer of oil and gas as its proven oil reserves are relatively small compared to other nations like Nigeria, Africa's largest producer.⁹ However, with the retrocession of the potential oil and gas-rich peninsula of Bakassi¹⁰ by Nigeria in 2006, new explorations have been registered and discoveries are expected to boost the countries' reserves considerably.¹¹

Cameroon has expressed commitment to exercising sovereignty over oil and gas resources by enacting several laws and incorporating duly ratified international legal instruments on oil and gas. The problem however is that these laws do not reflect the reality on the ground as several individuals carry out oil and gas operations without the necessary authorization from competent

⁴ Aileen Mcharg *et al.*, *Property and the law in Energy and Natural Resources*, 1st ed. (Oxford University Press, 2010) P. 115.

⁵ "Cameroon Overview – World Bank Group" Available at <https://www.worldbank.org/en/country/cameroon/overview&ved> (visited on the 14/03/2021).

⁶ Crude oil prospecting was started by a French exploration company, Elf-Aquitaine and was continued by its local subsidiary ELF-SEREPCA. During the first eight years (1951 – 1959) exploration activities were limited only to on-shore areas which proved not commercially viable. After several unsuccessful attempts, attention was directed to off-shore prospecting. Here too, success was slow. It took almost a decade for ELF-SEREPCA to produce any convincing evidence that there were indeed oil reserves in Cameroon. See Bikas C., & Wilfred A., *et al*, *Development of the Oil Industry in Cameroon and its Implications for Education and Training*, IIEP Research Report No. 79, 1990, P. 34 - 35

⁷ Gauthier B, & Zeufack A, "Governance and Oil Revenues in Cameroon" (2009) *Revenue watch project, OxCARRE, Oxford University* Pp. 7-24: 7.

⁸ Found at Ndian Division of the South West Region of Cameroon.

⁹ Collier P and Venables J, *Plundered Nations? Successes and Failures in Natural Resource Extraction*, Palgrave Macmillan, 1st ed, 2011, P. 31.

¹⁰ The Bakassi Peninsular is situated in the Ndian Division of the South West Region of Cameroon.

¹¹ Gauthier B, & Zeufack A., (2009) *Ibid*, note 6.

authorities.¹² Without enforcement, the law becomes akin to a shallow code riddled with dubious rationalizations.¹³ The enforcement of a legal instrument is therefore imperative to ensure respectability and sanction perpetrators.

Despite the efforts at the global, regional and sub-regional levels to enhance international dialogue and cooperation to combat illegal undertakings in the oil and gas sector,¹⁴ illegal dealings with oil and gas resources in Cameroon continue to thrive.¹⁵ More so, history reveals that the discovery of oil and gas resources in most states always results in conflicts for ownership. In Cameroon, the discovery of natural crude oil in the Bakassi Peninsula led to the tussle between Cameroon and Nigeria over Bakassi. As observed by F.B Menjo,¹⁶ “It is possible that in some cases conflicts originated before the discovery of petroleum, but became interwoven with oil issues as the importance of oil as a factor of production increased.”

It is noted that long before the discovery of natural crude oil in Bakassi, Cameroonians and Nigerians in the region lived in harmony although few squabbles were registered.¹⁷ However, when oil and other natural resources were discovered in the Peninsula, attention from both countries was ignited thereby creating tension, argument, and in some cases death.¹⁸ It is therefore problematic to note that the discovery of oil has always tantamount to conflicts for ownership.¹⁹ As such, the strategic economic importance²⁰ of the Peninsula to both countries was

¹² As enshrined in Article 4 of the Cameroonian Petroleum Code.

¹³ Andrew Watson, “Enforcement of International Environmental Treaties: An Analysis” (2011), *Fordham Environmental Law Review*, Pp.273-282: 273.

¹⁴ Bernard Mommer; *The Governance of International Oil: The Changing Rules of the Game*, (Oxford institute for Energy Studies 2000), P 26.

¹⁵ Illegal dealings such as unauthorized importation and sale of oil and gas resources has become a new normal in the territory. This in violation of the provisions of the 1999 Petroleum Code and the 2002 Gas Code which enjoins dealers in oil and gas to obtain license from the Minister in charge of Hydrocarbons before carrying out any activity in the oil and gas sector.

¹⁶ Menjo F.B, “Implications of the Bakassi conflict resolution for Cameroon”, (2010) *African journal on Conflict Resolution*, Pp. 9-34: 14 & 15.

¹⁷ Ngang K., “Understanding the Bakassi Conflict; A Showcase of conflict Prevention in Practice”, (2007) *European University Center for Peace Studies Research papers*, Pp.203 – 219: 203.

¹⁸ Andrew Watson (2011), *Ibid*, note 11.

¹⁹ In consequence, the Peninsula has witnessed military aggressions and tribal squabbles since the 1980s. The signing of the Green-tree Accord by Cameroon and Nigeria in 2006 was occasioned by the desire to resolve the

a pivotal factor for the escalation of the conflict.²¹ In consequence, the Peninsula has witnessed military aggressions and tribal squabbles since 1981.²²

CONCEPTUAL DISCOURSE ON OWNERSHIP OVER OIL AND GAS RESOURCES

The concept of ownership is amorphous and should not be limited to a single definition. It is expressed as the rights to *Udendi* (use and enjoy), *Fruendi* (dispose or transfer) and *abutendi* (abuse, consume or destroy).²³ Generally, to “own” connotes the possession of the legal title of a property or something.²⁴ It entails the bundle of rights allowing one to use, manage, and enjoy the property, including the rights to convey it to others.²⁵ Ownership rights are therefore general, permanent, and heritable.

Ownership may be either corporeal or incorporeal. It is corporeal when it relates to physical objects such as chattels or real property. It is incorporeal when it relates to conceptual things.²⁶ It is a jurisprudential concept which vests proprietary interest, liabilities, or encumbrance and benefits over the subject matter. Worthy of mention is the fact that the concept of ownership is an instrument of social policy which is often used to define the scope of use of the *res*²⁷ owned, as well as to exercise control over the *res* owned.²⁸ It is akin to a body of separate but related

dispute pitting Cameroon and Nigeria over the Peninsula. This notwithstanding, fresh claims made by the Nigerian Government in August 2020 over the Peninsula makes it possible to affirm that the conflict remains unabated. See The Guardian Post Daily News Paper, No. 1953 Yaounde, August 21, 2020, P. 3 where it was revealed that “fresh trouble looms over oil-rich Bakassi”.

²⁰ The natural resources of the Bakassi Peninsula included an estimated 24 billion barrels of proved oil reserve, as well as rich fish stock. See J. Ndumbe Anyu, “The International Court of Justice and Border Conflict Resolution in Africa: The Bakassi Peninsula Conflict”, 18 *Mediterranean Quarterly*, 2007, P.53.

²¹ <http://www.epu.ac.at/fileadmin/downloads/research/rp-0407>, (visited, 01/02/2021).

²² Ibid.

²³ Michael T. and Miebaka N. “Ownership of Mineral Oils in Nigeria: The need for Judicial Review of Legislations Affecting the Niger Delta Region” (2019) *International Journal of Law, Humanities and Social Science*, Vol.3 Pp. 1-29:2

²⁴ Raj Balla, “Legal Analysis of the Right of property” (1981), 10 *Anglo American Law Review* p.833.

²⁵ Bryan A. Garner, *Black’s Law Dictionary*, 10th ed, (West Publishing, 2014), P. 1280.

²⁶ Funsho Adaramola, *Jurisprudence*, LexisNexis, 4th ed. 2008, P. 185.

²⁷ Latin word used by jurists to mean property or thing

²⁸ Bolande E. Oduntan, *Comparative Assessment of ownership and Regulation of Petroleum Resources*, (LLB Thesis, Faculty of Laws, Olabisi Onabango University, Ago-Iwoye, Ogun State, Nigeria), November 2011, P.15.

rights, which includes the right to possession,²⁹ the right to use the thing at one's discretion, the right to manage the thing,³⁰ the right to the income and the capital,³¹ the right to security,³² the incidence of the transmissibility,³³ absence of a fixed term,³⁴ and the duty to prevent harm.³⁵ It is the ultimate proprietary interest and the means by which we signify the person or persons with primary control of a thing. An owner is the one who has dominium over the property, the one in possession of and in control over property. He maintains the right to protect and defend such possession against intrusion or trespass of others, the right to dispose of the property as he pleases, provided that the rights of others are not infringed or some laws violated.³⁶

Over the years, oil and gas resources have proven to be a major source of National Incomes and are usually a major cause of strife and socio-political volatility if mismanaged or allotted unfairly. The regime governing ownership over oil and gas resources therefore requires a balancing of claims to private ownership, communal, customary rights, and state ownership.³⁷ The power to control, manage, regulate, and allocate oil and gas resources depends on who retains ownership rights over these resources.³⁸ Therefore, ownership should entail the power of enjoyment; the power to determine the use to which the thing is to be put; the right to deal with, produce or destroy the thing, as the owner pleases; possession, the right to exclude others, the right to alienation, and the power to charge the thing as security.³⁹ Beyond the great diversity of national law regimes, it is commonly recognized that a contracting party cannot transfer rights

²⁹ Having exclusive control over a thing or to have such control as the nature of the thing admits.

³⁰ The right of being capable of deciding how and by whom the thing shall be used.

³¹ An owner has an unrestricted power to alienate and the liberty to consume, waste or destroy the whole or part of what he owns.

³² The ability to remain indefinitely as the owner, if he chooses and if he remains solvent.

³³ The incidence can be transferred to another.

³⁴ The interest is for an indeterminable term.

³⁵ The owner of a thing has the liberty to use the thing subject to the condition that he must not harm others and prevent others from using the thing to harm others.

³⁶ See *Higgins Oil & Fuel Co v. Gauranty Oil Co* (1999) 145 La 233.

³⁷ Nicholas Hayson and Scan Kate, "Negotiating natural resources for peace: Ownership, control and wealth sharing". (2009) *Henry Dunant Centre for Humanitarian Dialogue*, P.6. Available at, <https://www.constitutionmaking.org/files/resources-peace.pdf> (visited on the 26/03/2021).

³⁸ *Ibid.*

³⁹ Paton G.W, *A Textbook of Jurisprudence*, (1936), 517.

that it does not hold.⁴⁰ Put it differently, who holds the resource rights, and the substantive content of those rights will affect the identity of the contracting parties and the nature of the transaction.⁴¹

The determination of what constitutes ownership over oil and gas resources under various regimes may not raise the debate as to who owns the resources since the law specifically vests ownership of petroleum to the state. Owing to the principle of sovereignty, states have the right to determine what constitutes ownership. Put it differently, the state has the right to determine and organize its property rights. When ownership of a particular resource is vested in the State, the right of other entities is usually limited to the rights to use, manage, control, or enjoy benefits derived from the resources.⁴² In other words, industries or companies in jurisdictions where ownership of mineral resources is vested in the government cannot legally extract and sell any mineral commodity without first obtaining authorization from the one who exercises proprietary interest - the state.⁴³ Hence, a sovereign state can accord itself certain rights, which include the right to ownership and control of oil and gas resources.⁴⁴ The resources, being the common heritage of the state, should be harnessed for the benefit of all.⁴⁵

EVOLUTION OF OWNERSHIP OF OIL AND GAS RESOURCES

When the first oil well was drilled,⁴⁶ the prevailing principle of mineral ownership was the *ad coelum*⁴⁷ doctrine, which is expressed by the latin maxim, *cujus est solum, ejus est usque ad*

⁴⁰ As expressed in the Latin Maxim, *nemo dat quod non habet*, which when translated means; “you cannot give what you do not have.

⁴¹ Lorenzo Cotula “Reconsidering Sovereignty, Ownership and consent in Natural Resource Contracts: From concepts to Practice” (2018) *European Yearbook of International Economic Law*, Vol.9, Pp. 143-174: 144.

⁴² Clerk A. & Kohler P, *Property law: Commentary and Materials*, (Cambridge University Press, 2005) P. 40.

⁴³ *Ibid.*

⁴⁴ Aileen Mcharg *et al* (2010), *Ibid*, note 4.

⁴⁵ This is in tandem with the preamble of the 1996 Cameroonian Constitution which provides that “We the people of Cameroon resolve to harness our natural resources for the well-being of all Cameroonian citizens without discrimination, by raising living standards, we proclaim our right to development as well as our determination to devote all efforts to that end”

⁴⁶ The first oil well was drilled by Edwin L Drake at Titusville, Pennsylvania of 69 feet in 1859.

coelum et ad inferos. When translated, it meant that; the owner of the bundle of legal rights that we call “ownership” of property, owned everything from the heavens above the surface of his land to the core of the earth beneath it. At Common law, ownership over oil and gas resources *in situ*⁴⁸ was in tandem with the *ad coelum* doctrine. With time, it was realized that the *ad coelum* doctrine could only work well when it comes to “hard” minerals but not oil and gas because unlike other mineral resources, oil and gas are fugacious⁴⁹ and fungible.⁵⁰ This, therefore, speaks for itself that continued adherence to the “*ad coelum*” doctrine would have hamstrung drilling of oil and gas as mineral owners would have been discouraged as drilling oil and gas would have resulted in liability for drainage from neighbors' property.⁵¹

The harsh nature of the “*ad coelum*” doctrine necessitated the development of the rule of capture. The rule was expounded by Robert E. Hardwicke⁵², when he stated that, “...The owner of a tract of land acquires title to the oil and gas which he produces from wells drilled therein though it may be proved that part of such oil and gas migrated from adjoining land.”⁵³ This language was quoted verbatim by the courts in the case of *Eliff v. Texon Drilling Co*⁵⁴ to which the courts stated that; “...he may thus appropriate the oil and gas that have flowed from adjacent lands without the consent of the owners of those lands, and without incurring liability to him for drainage. The non-liability is based upon the theory that after drainage, the title or property of the former owner is gone.”

⁴⁷ The *Ad coelum* doctrine was the common law rule that a landlord owns everything below and above the land, up to the sky and below the earth to its core. This doctrine applies to all minerals in the land as well. This doctrine includes ownership of hard minerals such as coal, but not volatile minerals such as oil and gas. See *Ad Coelum Doctrine Law and Legal Definition*, Available at; <https://definitions.uslegal.com/a/ad-coelum-doctrine/> (visited on the 04/03/2021).

⁴⁸ Latin meaning “In its place”.

⁴⁹ They move from place to place within the sedimentary rock.

⁵⁰ As it is difficult to determine whether a given quantity of oil and gas produced has been drawn from under one tract of land or another.

⁵¹ Lowe J, *Oil and Gas law in a nutshell*, 5th ed, (West Academic Publishing, 2010), P. 8 – 9.

⁵² Robert E Hardwicke, “The Rule of Capture and its Implications as Applied in Oil and Gas”, (1935) *Tex Law Review*. Vol. 13, No.4,P. 391

⁵³ *Ibid.*

⁵⁴ 146 Tex. 575 S.W.2d 558 (Tex.1948),15.

It was also held in the much heralded case of *Like Kelly v. Ohio Oil Co*⁵⁵ that “whatever gets into a well belongs to the owner of the well, no matter where it comes from.” The Rule of capture therefore made it possible for persons who are not primary owners of oil and gas resources to drill the same if it happens to get into their well. The rule protects an oil and gas developer against liability for drainage from neighboring land⁵⁶ but fails to protect a trespasser.⁵⁷ The rule of capture was further developed by the doctrine of correlative rights and applies in jurisdictions where private ownership operates as norm. In Cameroon, pursuant to specific provisions of the law, it is the state that retains ownership over oil and gas resources.

LEGAL AND INSTITUTIONAL FRAMEWORKS REGULATING OWNERSHIP OVER OIL AND GAS RESOURCES IN CAMEROON

As observed by Sone Patience,⁵⁸ “At independence, and before the harmonization of land law in Cameroon, English Speaking Cameroon applied a policy of certificate of occupancy instituted by the British while the French land law focused on the registration of land... Despite colonial connotation of land policies, the paramount concern of the newly independent State was to have total control over the population and their natural resources...”

The averments of the learned scholar make it fair to state that contemporary approaches to ownership and management of natural resources especially oil and gas resources in Cameroon are not only a mimic of Cameroon's colonial history but also have a similitude to Western countries methodologies. This is based on the fact that oil and gas legislations enacted after independence provides for state ownership over these resources. Specific provisions of these laws which regulate ownership over oil and gas resources are analyzed.

⁵⁵ 49 N.E. 399 (Ohio 1897).

⁵⁶ This justifies Professor Kuntz description of the “rule as the rule of convenience”.

⁵⁷ As Common Law actions on Damage to Lease Value (*Humble Oil Refining Co. v. Kishi* 276 S.W.190 1925), Assumpsit (See *Phillips Petroleum Co v. Cowden* 241 F. 2d 586 5th Cir. Tex.1957), Slander of Title (See, *Whildin v. Kovacs*, 403 N.E 2d 694 1980) Ejectment and Conversion (See *Alaska Placer Co. v. Lee* 553 P. 2d 57 Alaska 1974), could be taken against trespassers.

⁵⁸ Sone P, *The Concept of Equality and Access to Land: The Case of the Anglophone Regions of Cameroon*. (PhD Thesis, University of Buea), 2011, P. 110.

The Cameroonian Petroleum Code⁵⁹ is that primary law regulating oil and gas operations in Cameroon. It promotes petroleum operations throughout the national territory in the upstream gas sector and lays down several conditions for hydrocarbons prospection⁶⁰, exploration⁶¹, and transport. It also governs the legal, fiscal, customs, and exchange schedule of Petroleum operations and determines the rights and obligations relating to Petroleum operations.⁶²

As regards ownership over oil and gas *resources*, the Petroleum Code provides in sections 3 that: “All deposits of natural accumulations of Hydrocarbons located within the soil or subsoil of the territory of Cameroon, whether or not discovered are and shall remain the exclusive property of the State.”⁶³ Sections 4 further provides that, “Natural persons or legal entities, including the owners of the surface area, may only undertake Petroleum operations if previously authorized so to do by the State.”

The Cameroonian Gas code⁶⁴ on the other hand regulates activities in the downstream oil and gas sector comprising transportation, distribution, processing, storage, importation, exportation, and marketing of natural gas within the territory of Cameroon.⁶⁵ It promotes the development of the downstream gas sector in Cameroon.⁶⁶ Pursuant to section 3 of the Gas Code, “any natural Cameroonian or foreign person residing in the Republic of Cameroon or any corporate body governed by the Cameroonian private or public law without discrimination may undertake on Cameroonian territory, any activity in the downstream gas sector, provided that such person or corporate body has been granted prior authorization following the laws and regulations in force.”

⁵⁹ 2019/008 of 25 April 2019 to institute the Petroleum Code. It replaced the 1999 Petroleum Code.

⁶⁰ Prospection connotes preliminary activities aimed at detecting the possibilities of the existence of hydrocarbons especially through the use of geological, geophysical or geochemical methods. See section 2(n) of the Cameroonian Petroleum Code.

⁶¹ Exploration entails detailed prospection activities including drilling of exploration wells intended to discover the commercial Hydrocarbon deposits. See Article 26 – 35 of the Petroleum Code.

⁶² Section 1 of the Petroleum Code.

⁶³ Section 3(1) *Ibid.*

⁶⁴ Instituted by Law No 2002/013 of the 30th of December 2002.

⁶⁵ Section 1 *Ibid.*

⁶⁶ Section 2 *Ibid.*

The Gas Code further provides in section 21 that, “The following activities shall be subject to authorization: sale of gas, importation, and installation of material and equipment for setting up gas transportation and distribution networks, gas storage centers, as well as measuring and safety appliances used by operations and customers.” Such authorizations shall be issued by the minister in charge of Hydrocarbons or any duly mandated public authority⁶⁷ renewable for three years.⁶⁸

Obtaining authorization is therefore a condition *sine qua non* for natural persons to carry out operations in the oil and gas sector. Failure to obtain such authorization or license is considered an offense sanctioned in Article 229 of the Cameroonian Penal code⁶⁹ which makes it mandatory for anyone who wishes to carry out oil and gas operations to adhere to the laws regulating this aspect.

As Gabriel⁷⁰ opines, “the legal situation in any given country cannot be solely determined by legislation (Law books). Instead, it is a joint product of the initiatives of the legislator, the interpretation and application by courts, and the practice of administrative authorities or other relevant actors (law in action).” This gives credence to the fact that institutional mechanisms play a significant role in the enforcement of laws governing ownership over oil and gas resources. In Cameroon, the Ministry of Industry, Mines and Technological Development,⁷¹ and the Ministry of Energy and Water (MINEE), acts as institutional mechanisms for the protection of States sovereignty over oil and gas resources.⁷² The Cameroonian courts also play the role of

⁶⁷ Section 22 (1) *Ibid.*

⁶⁸ Section 22 (2) *Ibid.*

⁶⁹ It provides that, “Whoever infringes any regulation governing the manufacture, storage, transport, import or export of, or trade in explosive substances shall be punished with imprisonment for from one month to one year, or with a fine of from two thousand to one hundred thousand francs, or with both such imprisonment and fine.”

⁷⁰ Michanek Gabriel, “The Role of Courts in International Law”, *Nordic Environmental Law Journal*, 2009, Pp. 1-33; 9.

⁷¹ Ministry in charge of hydrocarbons.

⁷² Gauthier B, & Zaufack A, *Ibid*

a legal enforcement institution.⁷³The legal and institutional mechanisms mentioned hitherto mirrors Cameroon's commitment to protecting ownership rights over oil and gas resources.

JUSTIFICATIONS FOR THE EXERCISE OF STATE'S OWNERSHIP OVER OIL AND GAS RESOURCES IN CAMEROON

In July 1913, when Europe was sliding towards war, the First Lord of the British Admiralty, Winston Churchill set out the significance of oil to a nation. He averred that, "If we cannot get oil, we cannot get corn, we cannot get cotton and we cannot get a thousand and one commodities necessary for the preservation of economic energies of Great Britain."⁷⁴ Churchill therefore, considered the diversity and security of oil and gas to be of utmost importance to a nation. To achieve the duo, "the Admiralty should become the independent owner and producer of its supplies of liquid fuels."⁷⁵ The justifications for the exercise of state's ownership over oil and gas resources abound. State's exercise of ownership over oil and gas resources is justified by the need to ensure equitable distribution of proceeds from oil and gas. As enshrined in the Preamble of the Cameroonian Constitution⁷⁶, "We the people of Cameroon resolve to harness our natural resources to ensure the well-being of every citizen without discrimination, by raising living standards, proclaim our right to development as well as our determination to devote all our efforts to that end..." Going by the provisions of the Cameroonian Constitution, oil and gas proceeds are to be used for the well-being of every citizen without discrimination. For the state to attain this objective, it must exercise ownership over such resources.

Furthermore, the exercise of States ownership over oil and gas resources is justified by the need to preserve oil and gas resources. As non-renewable natural resources, the importance of oil and

⁷³ See the case of *Egbe Maureen v. Ruth Eyong, Elf Oil Cameroun and Others* (Suit No. HCK/1994)

⁷⁴ Yergin D, *The Prize: The Epic Quest for Oil, Money, and Power*, Simon & Schuster, London (1991), P. 160.

⁷⁵ *Ibid.*

⁷⁶ Law No 96/06 of the 18th of January 1996 to institute the Cameroonian Constitution. As enshrined in Sections 65 of the Cameroonian Constitution, the Preamble is part and parcel of the Cameroonian Constitution.

gas preservation rules⁷⁷ cannot be over emphasized.⁷⁸ In *Wronski v. Sun Oil Co*,⁷⁹ Sun was held liable for conversion where it produced oil and gas above the rate of production authorized by the state conservation agency. Moreover, in the case of *Elliff v. Texon Drilling Co*,⁸⁰ the Texas Supreme court stated that; an owner who exercises the right to capture oil and gas resources is subject to the concomitant duty to exercise the right without negligence or waste. In this light, section 25 (1) of the 2002 Cameroonian Gas Code provides that, “an operator in the downstream gas sector shall carry out his activities in compliance with the principles of continuity and quality of service”. It is therefore important for the state of Cameroon to exercise ownership over oil and gas to ensure the futurity of oil and gas resources and avoid its overproduction.

Finally, the oil and gas industry is one of the most hazardous and risky industry in the world⁸¹ with its activities having severe environmental repercussions.⁸² To better monitor the sector, the state should exercise sovereignty over oil and gas resources.

MEASURES FOR THE PROTECTION OF STATES OWNERSHIP OVER OIL AND GAS RESOURCES IN CAMEROON

The Cameroonian Government has hitherto taken positive steps aimed at protecting its ownership rights over oil and gas resources in the country. The Resolution of the Bakassi Peninsula quagmire is one of the hallmark achievements aimed at securing state’s ownership over oil and gas resources in Cameroon. The quest to exercise control over oil and gas resources

⁷⁷ Oil and gas preservation rules are those rules which provides that a given quantity of oil and gas remains during the drilling process. See Conservation Law Dictionary.com, Retrieved from, <https://www.dictionary.com/browse/conservation-law> (Accessed on the 12/08/2021).

⁷⁸ as it not only ensures futurity of oil and gas but also prevents wastage of oil and gas resources.

⁷⁹ 279 N.W. 2d 564, (Mich.App.1979).

⁸⁰ 210 S.W.2nd 558. (Tex.1948).

⁸¹ In the Cameroonian case of *Egbe Maureen v. Ruth Eyong, Elf Oil Cameroun & 3 others* (Suit No. HCK/11/94, Kumba, 1994, Unreported) the defendant was liable to the plaintiff who suffered severe burns due to the defendants negligently mixing petrol with kerosene that led to an explosion.

⁸² As enshrined in Principle 21 of the 1972 Stockholm Declaration, “States have, in accordance with the Charter of the United Nations and the Principles of International Law, the sovereign right to exploit their resources pursuant to their own environmental and development policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.

has been identified as one of the major sources of disputes in the world, Africa, Cameroon, and the South West Region in particular. Such was the case with the dispute over the Bakassi Peninsula by Cameroon and Nigeria which was fueled inter alia by the discovery of oil in the area. The main issue that propelled both nations to clamor for the Peninsula is that of Sovereignty over the mineral-rich Peninsula.⁸³ In an attempt to state their claims, both nations resorted to the use of military force to claim the territory. Tensions between the two countries escalated in military confrontations at the end of 1993 with the deployment of the Nigerian military to approximately 1000 square kilometers Bakassi Peninsular.⁸⁴ This act antagonized Cameroon when on March 24 1994 she submitted the entire set of border-related disputes with Nigeria to the International Court of Justice (hereafter referred to as the ICJ) at the Hague for adjudication.

For close to a decade after a thorough examination of the suit by the ICJ,⁸⁵ the court finally ruled that Cameroon is the rightful owner of the resource-rich Bakassi Peninsula, basing its argument on the 1913 Anglo-German Treaty which demarcated the border between the two colonial powers.⁸⁶ Following intense diplomatic offensives and the good office of the UN Secretary-General, Cameroon was able to secure a Green-Tree Agreement with Nigeria on June 12, 2006, brokered by the UN Secretary-General. Under the agreement, the Nigerian troops were to withdraw within a maximum of 90 days and a transition period of two years was given for the Nigerian administration to be replaced by the Cameroonian administration.⁸⁷ Today, Cameroon is considered the rightful owner of the Bakassi Peninsula. The resolution of the Bakassi boundary

⁸³ J.U Nsongurua., "The Ghost of Berlin still Haunts Africa; The ICJ Judgement on the Land and Maritime Boundary Dispute between Cameroon and Nigeria" (2002) *African Year Book of International Law*, P.20-43: 20.

⁸⁴ Ntankeu Yoba Martin, "The Bakassi Peninsula Boundary Dispute: Implications on Peace and Human Rights" (LL.M Thesis, University of Buea, Department of English Law, 2016), P. 3.

⁸⁵ *Case Concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)* ICJ Report 2002.

⁸⁶ *Ibid.*

⁸⁷ Francis Baye, *Implications of the Bakasssi conflict resolution for Cameroon*, 2010, Available at: <https://www.accord.org.za/ajcr-issues/implications-of-the-bakasssi-conflict-resolution-for-cameroon/&ved> (visited on the 15/08/2021).

dispute could therefore be said to be one of the key achievements of the Cameroonian Government in safeguarding ownership over oil and gas resources in the territory.

Moreover, increased confiscation of contraband fuel is another measure instituted by the state to protect its sovereignty over oil and gas resources. The Cameroonian Government has successfully clamped down on illicit trade of oil and gas resources. On the 18th of March 2018, some 5000 liters of contraband petrol reportedly smuggled in from Nigeria through the Ndian Division were confiscated by forces of law and order.⁸⁸ On December 26th, 2018, the Cameroon Ministry of water resources and energy's special task force intercepted over 1000 petrol drums in the coastal town of Limbe in the South West Region of the country. According to Colonel Emmanuel Sone,⁸⁹ "since the first of December, the Navy has put aside specific means dedicated to this fight within the framework of the task force. And we have been able to intercept about 280 thousand liters of fuel amounting to more than 3 billion CFA francs (about 5.2 million U.S Dollars) and this is happening just around Limbe zone". The task force which was created in October 2018 by the Ministry of Energy and Water Resources has as aim to combat the illegal importation of petroleum products in the Cameroonian waters.⁹⁰ These efforts and more constitute some of the commendable measures taken by the Cameroonian Government to combat illegal acts in the oil and gas sector of the country.

⁸⁸ Gendamerie Officers hijack illegal fuel business in Southern Cameroons, Available at; <https://www.caameron-concord.com/local/gendamerie-officers-hijack-illegal-fuel-business-in-southern-cameroons> (visited on the 12/08/2021).

⁸⁹ Commander of the Limbe Naval Base.

⁹⁰ Cameroon intercepts over 1,000 illegal imported petrol drums at sea; Available at, <https://www.cameroonintelligencereport.com/cameroon-intercepts-over-1000-illegal-imported-petrol-drums-at-sea/&ved> (visited on the 13/08/2021).

CHALLENGES AFFECTING STATES OWNERSHIP OVER OIL AND GAS RESOURCES IN CAMEROON

Persistent Illegal sale of oil and gas resources is one of the main challenge affecting the exercise of states' ownership rights over oil and gas resources in Cameroon. This contravenes the provision of Sections 21 (1) of the Sale of Goods Act which provides that;

Where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

The above provision is in tandem with the dictums of the courts in the ground breaking case of *Bishopsgate Motor Finance Corporation v. Transport Brakes Ltd*⁹¹ where Lord Denning instituted the sale of goods law principle of *nemo dat quod non habet*.⁹² As the owner of oil and gas resources, the state has that sole authority to sell oil and gas resources. Any natural person who wishes to sell oil and gas resources must be authorized to do so by the state.⁹³ An authorization shall be the instrument by which the Minister in charge of hydrocarbons or any other public establishment with a mandate to that effect empowers an operator to carry out under transparent and non-discriminatory conditions the sale of oil and gas resources.⁹⁴

Despite the risk of prosecution, Cameroonians still engage in the illegal sales of oil and gas resources. On the road out of Ideneu to Buea via Limbe, the extent of illicit fuel trade is apparent. Fuel traders ply their trade-in makeshift roadside structures as soldiers' mill about outside.⁹⁵ The soldiers and police officers are as much a part of the trade-in the stolen fuel as the

⁹¹ (1949) 1 KB 322.

⁹² You cannot give that which you do not have.

⁹³ Pursuant to section 21 of the Cameroonian Gas code, "The following activities shall be subject to authorization: sale of gas, importation and installation of material and equipment for setting up gas transportation and distribution networks, gas storage centers, as well as measuring and safety appliances used by operations and customs."

⁹⁴ Section 22 of the Gas Code.

⁹⁵ Muunyi F., *Tracing the flow of Nigeria's stolen oil to Cameroon*, 2018, Available at; <https://amp.dw.com/en/tracing-the-flow-of-nigerias-stolen-oil-to-cameroon/a-45918707&ved> (visited on the 14/08/2021).

dealers. It is therefore not surprising to note that governments' efforts to curb the illegal sale of oil and gas have repeatedly hit a dead-end.⁹⁶

More so, territorial claims and claims over natural resources have typically been the main sources of conflict throughout the world. The influence of some of these warning struggles for the control of valuable natural resources have remained a persistent feature in international affairs for decades. Such conflicts typically take the form of territorial disputes over possession of oil-laden border areas, factional struggles among the leaders of oil-rich countries, and major inter-state and intra-state wars over the control of vital oil and mineral zones.⁹⁷ Such disputes often occur in border zones and offshore areas that were thought to possess no particular value, but suddenly became valuable with the discovery of oil. The conflict over Bakassi by Cameroon and Nigeria fits this scenario. For several decades, neither the Nigerian nor Cameroonian ruling elite showed any concern nor initiated any program that was capable of ameliorating the deplorable conditions of the mass poverty, squalor, and destitution in which most Bakassi residents live. But struggles over the ownership of Bakassi by Nigeria and Cameroon began immediately in the eighties when it was discovered that the peninsula was floating on reserves of crude oil.⁹⁸ It was only then that the elite of both countries started making serious claims and counter-claims over the territory.⁹⁹

There is no gainsaying that the conflict over Bakassi is deemed to have been resolved.¹⁰⁰ This notwithstanding, an article published by the Guardian Post newspaper on the 21st of August

⁹⁶ *Ibid.*

⁹⁷ Klare, Mitchael T., *Blood and oil: The dangers and consequences of America's growing petroleum dependency*, New York, Metropolitan Books, 2004. P.15.

⁹⁸ Sango S., *No to war over oil: for a Democratic Referendum among the Bakassi People*, Available at: www.worldsocialist-cwi.org/contents.html (visited on the 15/08/2021).

⁹⁹ In essence, the struggle by the Nigerian and Cameroonian ruling classes for ownership of the Peninsula is not dictated by concern for the well-being of the residents of Bakassi, but rather for the rich oil reserves and fishing grounds found in the area and its strategic location in the Gulf of Guinea. Indeed, Nigeria started undertaking some social infrastructural developments in Bakassi only in 1997, four years after it occupied the Peninsula.

¹⁰⁰ That is with the signing of the Green Tree Accord by Cameroon and Nigeria.

2020¹⁰¹, revealed that “fresh trouble looms over oil-rich Bakassi.” In a video that surfaced on Social media on the 20th of August 2020, a Nigerian politician and former Minister Femi Fani-Kayode were heard indicting the Cameroonian Government for not respecting certain provisions of the Green Tree Accord which ceded the hitherto disputed territory to Cameroon. Fani Kayode who served as special assistant to former President of Nigeria Olusegun Obasanjo from July 2003 to June 2006, said Cameroon has failed to make a monthly compensation of 500 million naira to the Cross River State as was stipulated in the agreement. He went further to urge the current president of Nigeria, President Muhammadu Buhari to sue for a repeal of the Accord, deploy troops and retake the Peninsula.¹⁰² The fresh tensions over Bakassi will, if not resolved amicably threaten the futurity of Cameroons’ sovereignty over oil and gas found therein.

Moreover, the present Anglophone quagmire is caused inter alia by the fact that some Anglophone secessionists think they have been relegated to the sidelines and have thus been deprived of their rights to manage and control oil and gas resources which are found in what they term “their territory”. The crisis has today resulted in an armed conflict because of the quest by these secessionists to regain ownership inter alia over oil and gas resources.¹⁰³

REASONS FOR UNAUTHORIZED DEALINGS IN OIL AND GAS RESOURCES IN CAMEROON

The high rate of corruption in Cameroon accounts for the challenges affecting the country’s oil and gas industry. Even though sanctioned under section 134 of the Cameroonian penal code, bribery and corruption is still rife in almost all sectors of the Cameroonian Government. The judiciary, public service, and customs departments have been trimmed to take the frontline in

¹⁰¹ The Guardian Post Daily News paper, No 1953 Yaounde, August 21, 2020, P.3.

¹⁰² *Ibid.*

¹⁰³ “Cameroon’s Anglophone Crisis at the Crossroads”, International Crisis Group Report. Available at, <https://www.crisisgroup.org> (visited on the 01/03/2021).

corruption.¹⁰⁴ The Government has in attempt to fight the cankerworm created several regulatory institutions with the most visible being, the National Anti-Corruption Commission.¹⁰⁵ Its uniqueness stems from the mandate to prepare and present annual reports on the state of the fight against corruption in Cameroon by identifying the causes of corruption and proposing to the relevant authorities measures leading to its eradication of the gangrene.¹⁰⁶ Despite Governments efforts, corruption still persists in the Cameroonian society. There is a high level of complicity involving government officials such as the police force, customs officers, and border guards who solicit and/or accept bribes during illegal transportation and sale of oil and gas. Likewise, when caught, offenders may be allowed to escape.¹⁰⁷ These corrupt tendencies go further to worsen and aggravate the growing trends of illegal dealings with oil and gas resources in the country.

Furthermore, there is the absence of political will and commitment to enforce existing legislation and hold perpetrators and accomplices accountable. The importation, transportation, and commercialization of contraband oil and gas have become the new normal in contemporary Cameroon to the detriment of the Government and Companies operating in this sector. This situation is quite appalling as dealers in contraband fuel do not pay tax to the government and have greatly reduced the clientele of registered companies operating in this domain. When caught, offenders are released after a short time. Thus, perpetrators consider the act¹⁰⁸ as a low-risk/high-profit venture: one with minimal consequences¹⁰⁹ but very lucrative and profitable.

¹⁰⁴ Cameroon Corruption Report – GAN Integrity., Available at; <https://www.gainintegrity.com/portal/country-profiles/cameroon/&ved> (visited on the 14/08/2021).

¹⁰⁵ Emmanuel “Fight Against Corruption: Collective Responsibility”, 2018., Available at; <https://www.cameroon-tribune.cm/article.html/21985/fr.html/fight-against-corruption-collective-responsibility&ved> (visited on the 5/09/2021).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Especially that of illegal sale of oil and gas.

¹⁰⁹ The legal sanction being accorded to individuals engaged in illegal acts in the oil and gas sector is very minimal. In fact, as enshrined in Article 229 of the Cameroonian Penal Code, “Whoever infringes any regulation governing the manufacture, storage, transport, import or export of, or trade in explosive substances shall be punished with imprisonment for from one month to one year, or with a fine of from two thousand to one hundred thousand francs, or with both such imprisonment and fine.” It is the view of the researcher that the imprisonment term and fine is so minimal and as such lacks the requisite cohesive power to ensure respectability of the laws.

Again, the high rate of youth unemployment and underemployment accounts for the increasing violation of laws regulating ownership over oil and gas resources. Though many youths in the country are willing and able to work, there is a lack of job opportunities for them. According to the International Labor Organization's 2013 report, the unemployment rate in Cameroon is 30% while underemployment stands at 75%.¹¹⁰ Even though the Cameroonian Government does its best to provide all utilities for schools to go operational and train as many youths as possible, ironically, there are no jobs to receive these youths after their school training. The challenge of unemployment has made lots of Cameroonian youths' litter all over the streets with some of them resorting to illegal sale of contraband fuel. Even though forces of law and order attempt to clamp down on perpetrators of contraband fuel, what mechanisms have been put in place to ensure that unemployed youths do not find themselves in this "last resort" to survive? Faced with these problems, youths tend to engage in illegal dealings with oil and gas resources.

Furthermore, illegal dealings in Cameroon's oil and gas sector continue to thrive because of the existence of a ready market and a general willingness by consumers to pay for illegally imported fuel. Despite the risk of prosecution, locals say they have no choice but to use black market fuel to fill up their cars. The fuel which enters the country from neighboring Nigeria costs FCFA 500 on Cameroon's black market, whereas a petrol station charges about FCFA 700 for fuel from the country's lone refinery SONARA.¹¹¹ It is worth noting that even though Cameroon's lone oil refinery is in Limbe, the town remains one of Cameroons booming port city for illicit fuel as people come from all the nooks and cranny of the country to purchase fuel.¹¹² These are some of the dynamics that expedite illegal acts in the oil and gas sector of Cameroon.

¹¹⁰ Fuh Sharon, *Youth Unemployment in Cameroon*, Available at <https://fuhsharon.wordpress.com/2015/08/18/youth-unemployment-in-cameroon/amp/&ved> (visited on the 14/08/2021).

¹¹¹ Atia T. Azohnwi., *Cameroon-Limbe: Three cars burst into flames after collision, four people burnt to death*, 2020; Available at: <http://www.cameroon-info.net/article/cameroon-limbe-three-cars-burst-into-flames-after-collision-four-people-burnt-to-death-373638.html&ved>; (visited on the 17/08/2021).

¹¹² *Ibid.*

CONCLUSION AND RECOMMENDATIONS

It is settled law that the ownership rights over oil and gas resources is vested in the State. Individuals and communities on or under whose land minerals are found have no legal right to claim ownership of these minerals. The State of Cameroon as sole guarantor and owner of oil and gas resources has expressed and demonstrated efforts to safeguard its sovereignty over natural resources and oil and gas resources in particular. Despite these measures, unauthorized dealings with oil and gas resources continue to thrive.

In addition to the high rate of corruption in the country, the eradication of problems threatening states ownership over oil and gas resources has been deterred by the inadequate implementation of laws, high rate of youth underemployment and unemployment, high demand for contraband fuel, and the recurrent conflicts for ownership over oil and gas resources in the country. Dealers exploit these weaknesses and carry out acts that threaten the futurity of state ownership over oil and gas resources. Fighting unauthorized dealings with oil and gas resources is therefore the ultimate responsibility of the Cameroonian Government and she must play a leadership role in it. Such dealings also affect the safety and security of all Cameroonians. As such, cracking down on such dealings requires a collective action. There is no doubt that these illegal practices can be halted in Cameroon. There is however, a need for greater proactive measures.

It is therefore recommended for the Government to swiftly implement the terms of the Green Tree Accord; Step up the enforcement of already existing legislations on oil and gas; Subsidize the price of fuel; Wage a war against bribery and corruption; Grant royalties to various localities endowed with oil and gas resources; as well as synergize with key players at the national and international frontiers in the fight against importation and exportation of illicit fuel.¹¹³ Furthermore, there is the need for various stakeholders to be periodically and regularly

¹¹³These actors should include law enforcement, immigration and judiciary agencies, civil societies, regional and inter-governmental organizations as well as other governments.

schooled through seminars and workshops on the importance of oil and gas and the need to respect the laws regulating the resources. Stakeholders should also be drilled on the dangers of illegal dealings in contraband fuel and on the need to report such cases to competent authorities. This must then be followed by repression from the competent powers when violations occur. Such would be the “carrot and stick” way of protecting states ownership over oil and gas resources.

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