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# Specific contractual agreements: Establishment convention and its legal incidents in Cameroon

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**Abstract**
Cameroon has in recent times resorted to long term investment contracts in order to improve the level of exploitation of her resources due to lack of expertise and capital so as to achieve economic growth. Most investment contracts are either bilateral or multilateral treaty, besides such treaty arrangements, a conventional method of concluding a foreign investment deal is by way of Specific Contractual Agreements of which Establishment Conventions are the most important. This paper critically examines establishment conventions by bringing out its and analysing the legal incidents arising therefrom. It also highlights the various types of establishment convention and probing into a key component of establishment conventions, to wit; stabilization clauses and their legal underpinnings. The importance of this paper lies in the contribution it makes in raising awareness and improving knowledge of investment rules, especially among investors, legislature, governments, students and legal practitioners. It is recommended inter alia that members of the public, especially individuals and groups likely to be affected by the any investment project be consulted, before any establishment convention is signed and that such signed establishment conventions be registered in the Official Gazette.

**Keywords:** specific contractual agreements, establishment convention stabilization clauses

## Introduction

At international level there is no comprehensive legal mechanism governing international investment, which nevertheless constitute a major part of the international capital flow. (Anne Van Aaken, 2009) [2]. This is unlike the case with international trade in goods and services which are mainly governed by the World Trade Organisation (WTO) agreement and its annexes. Equally, there are no encompassing multilateral legal rules concerning foreign direct investment. Nevertheless, there are bilateral and multilateral mechanisms have been developed through treaties to govern investments at the international level (Richard K. Gardiner, 2003) [3]. Since the conclusion of the first modern bilateral investment treaty (BIT) between Germany and Pakistan in 1959, foreign investments are governed ever-more by BITs as well as by bilateral or regional Free Trade Agreement (FTAs which include chapters on investment protection, such as the North American Free Trade Agreement (NAFTA).

Foreign direct investment (FDI) began as a worldwide phenomenon in the 19 and early 20th centuries. Even then, it formed only a small portion of foreign investment for decades, as a greater percentage took the form of portfolio investment (Hooshang A. & Weeping W, 1994). This was the case for example in 1914 when 90% of all foreign investment flows took the form of portfolio investment. Over times, however, there was a steady shift in the composition of foreign investment. In fact, about a quarter of foreign investment flow took the form of FDI in the 1920s. FDI again improved with the end of the Second World War and become more prominent in the 1960s in developing countries describes portfolio investment as being characterized by the movement of money for the purpose of buying shares in the company formed or functioning in another country). (Sornarajah M, 2004).

Foreign investment is largely seen as a catalyst for economic growth in the future. Foreign investments can be made by individuals, but are most often persuaded by companies or corporations with substantial assets looking to expand their reach. As globalization increases, more and more companies have branches around the world. For some companies, opening new manufacturing and production plants in different countries is attractive because of the opportunities, cheap labour and lower or few taxes. Some pull factors for foreign investments includes *inter alia*; political stability, security, attractive fiscal policy (taxation) of the host country, low level of corruption, good infrastructural developments in the host state, less administrative bureaucracy, just to name a few.

Despite the numerous advantages of foreign investments, and notwithstanding the various pull factors which in a way pulls investors to invest in a state, Investments can only be realized after the making of an investment contract.

Besides, such treaty arrangements, a conventional method of concluding a foreign investment deal is by way of Specific Contractual Agreement, between the government of the host state and the investor. In a Specific Contractual Agreement, details pertaining to the investment are defined and more guarantees not contained in the national investment code may be mutually accorded to the investor. The importance of specific contractual agreement, lies in that, they constitute an adjunct to the national law on investment, and also form the basis of the contract of investment between the host government and the prospective foreign investor.

There are basically four types of specific contractual agreements, to wit: establishment convention, also called foreign investment contracts; protocol agreements; turn-key contracts; and management contracts. Or the four establishment conventions are the most prominent and common. This is justified by the fact that establishment conventions are the only specific contractual agreements between the government and a foreign investor in which protective state guarantees are offered in accordance with the provisions of the national investment code.

This paper which treats establishment conventions is organized as follows: first, an explanation of the meaning of establishment convention with an analysis of the legal incidents arising therefrom. The second part examines the types of establishment convention. Part three focuses on a key component of establishment conventions, to wit; stabilization clauses and their legal underpinnings. The last section concludes the work.

## 1. Establishment Conventions: An Overview

### 1.1. Definition

An investment contract could be seen as an agreement between a company or some other kind of business and a state, for the purposes of an investment project in that state. These agreements set out terms and conditions applicable to the investment project. An investment contract is foreign when it is associated with foreign business (which may or may not itself be a direct party to that to the contract) with capacity to control important management decisions or associated impacts. In other words, foreign investment contracts are agreements between the foreign investor (or a local subsidiary of a foreign investor) and a state (or a state-owned entity). They set the terms and conditions for an investment in a state (Wallace, Duncan (1984).

Establishment conventions are agreements between a foreign investor (or local subsidiary of a foreign investor) and a state (or a state-owned entity). They set the terms and conditions for an investment project in the territory of that state. Basically, an establishment convention refers to the legal regime under which a foreign party engages to undertake an investment in exchange for certain guarantees and privileges afforded by the host government. It should be noted that a legal regime does not refers to a single document, but to a set of rules, policies and norms that cover a particular legal issue and facilitate substantive or procedural arrangements for deciding the issue. This means that the terms of an establishment convention may be codified in more than one text. Furthermore, to establishment convention, other specific contractual agreements may be entered into depending on the type of investment.

Establishment conventions are significant in that, they are the only contractual agreement between the government and a foreign investor in which protective guarantees are offered to the investor, by the host state in accordance with the provisions of the latter's investment code. In Cameroon for instance, the Investment Charter particularly in its Section 2 enunciates guarantees and facilities which avail to investors who chose Cameroon for their investment. Each individual establishment convention incorporates these provisions and any others to which the parties thereto agree. It is for this latter reason that establishment conventions are said to complement the national laws on investment.

Furthermore, establishment conventions in particular and international investment agreements generally are important in that, such conventions as has been observed, serve as a mechanism for overcoming commitment problems between investor and host state in order to generate mutual benefits.

Establishment conventions are to be distinguished from investment treaties, which are concluded between two or more states to regulate establishment and treatment of investment by nationals of one state in the territory of the other state.

Conceptually, the term 'convention' in international law is synonymous to a 'treaty' (Richard K. Gardiner, 2003) [3], Elizabeth A. Martin *et al*, Oxford Dictionary of Law, 5th ed. (Oxford, 2002) [5] and refers to an agreement in writing between states or between international organisation for their own regulation. A treaty can involve two states in which case it is termed a bilateral treaty or several states whereby it is multilateral treaty. Though not the direct equivalent neither of legislation nor contract, treaties are used in international law to perform some of the functions of both. There is a difference between law within a state and law between states. Whereas private persons (natural or juristic persons) are subject to the applicable national law of their state, states are subject to international law, properly called, public international law. States are subject of international law, while private individuals are objects of international law. The position of states as subjects of international law vests in them the power to contract treaties inter se. this principle is protected at the international law by treaty provisions including Section 34 of the Statute of the International Court of Justice (ICJ) which stipulates that, 'only states may be parties in cases before the court'.

### 1.2. Legal Underpinnings of Establishment Convention

This position of establishment convention is peculiar in that it does not involve states. On the one hand, there is state, that is, the host state and on the other hand, an investor usually a company which is a juristic or artificial person. This makes the establishment convention fundamentally different from ordinary conventions in international law which involves two or more states. Two intrinsically linked interrogations arise from this dispensation. This first relates to the contractual phenomenon of equality of the parties and the second to the sovereign autonomy of the host state.

Sovereignty relates to the supreme political authority of an independent state. from this, it follows that sovereignty has a national acceptation, to wit, state authority and an international meaning, that is, independence. In municipal law – the constitution. In this sense, sovereign power is said to be institutionalized (Martin Paul Ze, 2006) [6]. It is originating in that it is not derived from any external source. It is inherent in the state and inalienable. Also, it is supreme given that it has no equal within the state.

One of the essential manifestations of sovereignty, as Jean Bodin, a French scholar pointed out as early as 1576, in his treatise *De Republica* is the power of a state to make laws (Kriangsak Kitttichairee, 2001) [7]. These are either national laws voted by the competent legislative body or treaty law which the state negotiates with its sovereign equals and which are applicable after a due process of ratification.

On this premise, international law was long regarded as having a direct application only to relations between states and a bar to the direct regulation of companies and private individuals. The consideration here was that corporate legal persons owe their existence to one national legal system or another and that their transactions are governed by the domestic laws of the states in which they carry on their business. States, pursuant to the doctrine of state sovereignty, are equal. This basis for the doctrine of state sovereignty can be seen to lie in the thought expressed in the Latin maxim, *par in parem non habet imperium (jrisdictionem)* that is, 'one equal entity does not have sovereign authority over another such entity.

However, transnational activities of big companies have increasingly brought them into direct relations with governments. This has necessitated changes in the law to adapt to new situations. The initial presumption which was judicially upheld in *Serbian Loans (France v. Kingdom of Serbs, Croats and Slovenes) and Brazilian Loans (France v. Brazil) (1929) PCIJ, Series A, Nos 20 and 21: see also Petroleum Development Cor. v. Sheikh of Abu Dhabi (1952) 1 ICLQ 247; (1951) 18 ILR 144)* is that in the absence of an agreement or some other arrangement, transactions entered into by a government are subject to the law of its own state. The problem which arises from this presumption is that it does not provide equality in legal outcome.

Furthermore, there is the possibility for the state, in exercise of its sovereign power to change its law, leaving the foreign investor at risk that his investment will be jeopardized by the act of the sovereign authority. A difficulty which might be further compounded by limited prospects of a local legal remedy.

However, it may not be very easy for the host state to modify its legislation because the state in engaging itself vis-à-vis an enterprise for a given period alienates within this period its power to unilaterally modify the convention. Most authors believe that an establishment convention can be modified or changed only with the accord of both parties following the principle of sanctity of contract. However, the only exception where the state can act unilaterally is where there is a state interest at stake.

In Cameroon this situation seems confusing because a majority of the establishment conventions do not stipulate the conditions under which the provisions may be amended. Only a few clearly state this position for example the establishment conventions between the government of the Republic of Cameroon and the CDC (Cameroon Development Corporation) clearly states that: "this convention may be amended by mutual agreement…"

This confusion is compounded by the provisions of section 45 of the Cameroon 1996 Constitution which ranks duly ratified treaties above national laws. The question which follows is whether this means that, establishment conventions which are agreements between the state and a foreign company (not a foreign state) have primacy over national laws.

In Cameroon establishment conventions after their negotiation by the government are submitted to parliament for approval and authorization to sign. In the case of COTCO-Cameroon establishment convention (Establishment Convention concluded between the Cameroon Oil Transportation Company (COTCO) and the Republic of Cameroon, signed on 20th March 1998) for example after negotiating the contract with the foreign investor, the government forwarded the draft establishment convention to the National Assembly for its approval and fiat. This came in Law No. 97/016 of 7 August 1997 approving the establishment convention between COTCO and the Republic of Cameroon and authorizing the government to sign the said convention.

## 2. Types of Establishment Conventions

The nature and content of establishment conventions vary considerably from sector to sector, country to country, to wit: Concession Agreements, Production Sharing Agreements (PSA) and Build-Operate and Transfer (BOT) Agreements (Bernardini P., 1996) [8].

### 2.1. Concession Agreements

These are investors-state contracts enabling the investor to exploit natural resources or run utilities or other public services in exchange of payment of royalties. A concession agreement is a negotiated contract between a company and a government that gives the company the right to operate a specific business within the government's jurisdiction, subject to certain condition. They include investor-state contracts enabling the investor to exploit natural resources or run utilities or other public services in exchange of payments of royalties.

### 2.2. Production Sharing Agreements (PSA)

These are contracts commonly used in petroleum sector and concluded between the investor and the host sector or a state-owned oil corporation (in which oil ownership is vested). While there are many different variants of PSAs, the investor participates in activities through providing financial and technical services to the state-owned corporation, for example, by funding exploration, development and production. In return, it receives a share of oil/gas to recover cost and make a profit.

### 2.3. Build-Operate and Transfer (BOT) Agreements

These agreements concern the construction of infrastructures like airports, ports, dams, power plants and water supply systems. The investor undertakes the construction and financing of the infrastructure, and operates and maintains it for an agreed period of time, usually a long period, like 50 years and above. During such period, the investor can charge tolls, fees, and other charges for the use of the infrastructure. At the end of the agreed period, the facility is handed over to the government.

### 2.4. Turnkey Contracts

This is an agreement under which a contractor completes a project, test it in a bid to ensure that everything is intact and then hands it over in full operational form to the client, which needs to do nothing but "turn a key", as it were to set in motion. This contract accords the investment company full responsibility to plan and build something that a client must be able to use as soon as it is furnished without needing to do any further work on it themselves. (Duncan Wallace 1984).

### 2.5. Management Contracts

This is a formal agreement between a registered investment adviser and a manager stipulating the terms under which the manager is authorized to act on behalf of the investor to manage the assets listed in the agreement. The agreement establishes the extent to which the manager may act in a discretionary capacity to make investment decisions based on prescribed strategy. When management contracts are formed, the Investor pays some commission to the manager for managing resources.

## 3. The Content of Establishment Convention: Stabilization Clauses

A characteristic component of establishment conventions is, a 'stabilization clause'. This is intended to stabilise the terms and conditions of an investment project, thereby contributing to management of non-commercial, that is, fiscal, regulatory framework or political risk. They work by committing the host state not to alter the regulatory

framework governing the project, by legislation or any other means, without the consent of the other contracting party: or, if it does so. To restore the economic equilibrium of the project or pay compensation.

In some instance, the State or investors undertakes a so-called "stabilization" commitment, which is intended to insulate the investor or the state (as the case may be) from future changes in the legal framework (legislations) that is applicable to the investment. This clause secures the contract for life of the investment. It ensures that a contract signed should be respected and not revisited until the investment matures or expectations accrues. *Aminoil v Government of Kuwait YCA 1982., Texaco v Libya (104J Droit Int'l 350 (1977).*

Long term and capital-intensive investments open investors to a lot of risk. However, these investors have various means of tackling risks inherent in such contracts; for instance, distributing the risk, risk management, insuring the risk, and shielding the risk etc. stabilization or stability or adaptation clauses are the major ways of sharing risk between parties to a long-term contract, in order to ensure contractual stability. These clauses imply that the contract shall not be annulled, amended or modified in any respect except by mutual consent in writing of the parties. Therefore, when making a long-term investment, investors need to ensure a certain degree of legal and financial predictability (Mbifi Richard, 2019) [12].

Recent use of stabilization clauses is largely confined to investment projects in developing countries. This can be attributed to factors such as investors' lack of confidence in the legal system of these countries, to the desire of these countries to attract foreign investment and to their typically weaker negotiating power (Waede T., and Ndi, 1996) [9], Lorenzo Cotula, 2022) [4].

Stabilization clauses are particularly common in large natural resources, energy and infrastructure projects, where high fixed costs require large capital injections in the early stages of the project, and where long-time frames are needed before the project becomes profitable. Stabilization clauses are also associated with the use of financing techniques whereby creditworthiness and debt security are based, not on the investor's overall assets but, on the revenue expected to be generated by the investment project.

Debt repayment depends on the materialization of projected cash flow, and as Hoffman has noted, project finance operations typically involve contractual arrangements such as stabilization clauses, to minimize risk and distribute it among the entities involves in the project. (Hoffman S., 2001) [10].

Stabilization clauses conclude a range of different arrangement, such as:

- Intangibility clauses, which state that the contract can only be modified with the consent of the parties, and or which explicitly commit the government not to nationalize the investment;
- Freezing clauses, whereby the applicable domestic law for the contract is frozen in time as the law in force at date of the conclusion of the contract, and the contract is not affected by subsequent legislation inconsistent with that initial body of law; these are clause which are designed to make new laws inapplicable to the investment in question. As the name implies, they are meant to freeze the law of the host state with respect to the investment project at hand. They often freeze especially fiscal and no-fiscal issues for the whole duration of the project. For example, "No legislative, regulatory or administrative measure contrary to the provisions of the Convention shall apply to GEOVIC without GEOVIC Cameroon's prior written consent (GEOVIC Cameroon S.A., Exploration Permit No. 67, Concession, 2002, Article 29 of PSA between the Republic of Cameroon and KOSMOS ENERGY CAMEROON).
- Consistency clauses, whereby the domestic legislation of the host state only applies to the project if consistent with the investment contract;
- Clauses containing stabilizing commitments on specific issues, such as clauses stabilizing the fiscal regime, or clauses stabilizing regulation of the tariff structure in public utility projects;
- Economic equilibrium clauses, which link alterations of the terms of the contract to renegotiation of the contract in order to restore its original economic balance, or to payment of compensation (Mbifi Richard, 2019) [12]. Such clauses are not intended to freeze the law, but to maintain the economic equilibrium of the investment. Examples of such clauses can be found in the 1998 COTCO-Cameroon Establishment Convention for the construction and operation of the Chad-Cameroon oil pipeline (Convention of Establishment concluded between COTCO and the Republic of Cameroon, and signed on March 20th, 1998 (rights and obligations of the Republic of Cameroon and COTCO regarding the construction, operation, and maintenance of the CTS), hereinafter referred to as the COTCO -Cameroon Establishment Convention). This Establishment Convention contains a 'freezing' and 'consistency' clause. These clauses commit Cameroon: "Not [to] modify the legal, tax, customs and exchange control regime in such a way as to adversely affect the rights and obligations of COTCO" (see Article 24 of the COTCO-Cameroon Establishment Convention).
- Hybrid Clauses, which require the state to restore the investor to the position in which he was prior to the change in law. This contract in such circumstances expressly and explicit state that exemptions from laws are one way of maintaining the *status quo*. This category of stabilization clauses has characteristics of booth freezing and economic equilibrium clauses. Like equilibrium clauses, they do not make investors automatically exempt from new laws, and like freezing clauses, they expressly include the granting of exemptions from laws as one method to ensure that the investor is not financially impacted by new laws.

Other types of such clauses include; Clauses on Access to Water and other Natural Resources, Clauses on Responding to Emergencies and Accidents, Clauses on Liability, Indemnity, and Insurance, Clauses on Decommissioning and Remediation.

### 3.1. The legal effect of stabilization clauses

It has been held in international arbitration that arbitration clauses are lawful, valid and binding under international law. Although there was controversy over the legality and binding nature of these clauses in the 1970s and 80s, it is now widely accepted that stabilization clauses are lawful and binding in international law.

The legal value of stabilization clauses may be further reinforced by provisions in bilateral investment treaties, whereby state parties insert an 'umbrella clause' in the treaty whereby they commit themselves to honour contractual undertakings vis-ά-vis nationals of the other state.

Under international law, if the host state interferes with the regulatory framework in violation of stabilization clause, it must compensate the investor. This was the position in arbitral awards in the *Aminoil*, and *AGIP* arbitrations. The amount of compensation is linked to the costs incurred by the investor because of the new regulation and the expectation that the regulatory framework applicable to the investment project would not change. This expectation it should be noted is itself generated by the presence of a stabilization clause.

To sum up, stabilization clauses are deemed as lawful and binding under international law, and their violation requires host states to compensate investors negatively affected by regulatory measures.

**Implications of Stabilization Clauses on the municipal legal framework**

Rules on the legality and effect of stabilization clauses can have important implications on the ability of governments to adopt regulatory measures pursuing sustainable development goals. This issue was first brought to public attention by two reports by Amnesty International UK (2003 and 2005), concerning the Baku-Tbilisi-Ceyhan (BTC) pipeline and the Chad-Cameroon pipeline, respectively, and their implications for the protection of human rights.

Where regulation in pursuit of sustainable development goals has the effect of raising the cost of an ongoing investment project (for instance, due to tighter requirements on environmental pollution), it has the potential to fall within the scope of stabilization clauses found in individual investment contracts. As a result, a host state that adopts regulation which raises environmental or human rights standards and that seek to apply such standards to ongoing investment projects would have to compensate investors for the economic impact of that regulation.

This as Amnesty International notes in its 2003 and 2005 reports may make it more difficult for host states – particularly poorer ones – to raise the regulatory standards applicable to investment projects. alternatively, host states may seek to exclude ongoing investment projects from the application of new regulation. However, this raises problems in light of two factors. Firstly, the often-considerable size of investment project where wide-ranging stabilization clauses are used, both in economic terms relative to the state's national economy, particularly in poorer countries and in terms of possible human rights and environmental impacts.

Secondly, the duration of some investment contracts which may span several decades.

As a result of these two factors, applying new regulations only to future investment projects has the potential to delay the application of that regulation to a major share of national economic activity for perhaps several decades.

This in the words of Cotula, is particularly problematic in poorer countries where the national legal frame-work regulating environmental protection and human rights at the inception of the investment project may not be well developed.

In this context, the operation of stabilization clauses may in the worst cases lead to continued application of low standards for decades to come. In the human rights field, applying new standards only to future investment projects would also violate the non-discrimination principle enshrined in huma rights treaties, as citizens more directly affected by the investment project would be granted a lower level of protection than others.

Stabilization clauses may also create distortion in legal policy, with host states favouring ways to pursue sustainable development goals that are less costly for ongoing investment projects – even if they are less effective in pursuing those goals. This might mean, for instance, that a state favour pursuit of compensation for environmental damage over injunctions to prevent damage from occurring in the first place. This is because injunctions may negatively affect the speed of implementation of investment projects, for instance through requiring that construction works are halted until compliance with new legislation is assured.

### 3.1.2. Challenging Stabilization Clauses under Domestic Law

Although the legality and binding nature of stabilization clause under international law is well established, there is some degree of controversy as to the legality of stabilization clauses under the domestic law of the host state, particularly its constitution. For instance, stabilization clauses may conflict with constitutional norms on the separation of powers, whereby the government cannot enter contractual arrangements that undermine the operation of legislation adopted by parliament – unless the contract itself is incorporated by parliament into domestic legislation.

In Cameroon section 43 of the Constitution authorizes the President of the Republic to negotiate and ratify treaties and international agreements. However, 'treaties and international agreements falling within the area of competence of the legislative power' as defined in Article 26 of the Constitution 'shall be submitted to parliament for authorization to ratify. It is evidently pursuant to this provision, that after its negotiation, the COTCO-Cameroon establishment convention was submitted to parliament for approval. Parliament's approval came in Law No. 97/016 of August 7, 1997, approving the establishment convention between COTCO and the Republic of Cameroon, and authorizing the government to sign the said convention. It should be noted that under section 27 of the Constitution, all matters not listed in section 26 (domain of parliament) fall under the jurisdiction of the authority empowered to issue rules and regulations. Consequently, the government would not need approval from parliament to sign an establishment convention.

However, hurdles may arise in the challenge of a stabilization clause based on the national constitution. Firstly, it has been pointed out that courts have not been very sympathetic to this type of challenge. In Venezuela, for instance, the Supreme Court of Justice in 2007 dismissed a petition challenging the constitutionality of stabilization provisions. Secondly, even if domestic courts were to declare stabilization clauses unconstitutional, the implications of this may be complicated by the longstanding principle of international law whereby states cannot plead the provisions of their domestic legal system to justify non-compliance with, or legal challenges to, their international obligations. This principle was explicitly referred to in the

*Revere Copper v. OPIC*, (*Revere Copper & Brass, Inc. v. Overseas Private Investment Corporation (OPIC), Arbitral Tribunal, 24 August 1978, 56 ILR 257*), which found that 'under international law, the commitments made in favour of foreign nationals are binding notwithstanding the power of parliament and other governmental organs under the domestic Constitution to override or nullify such commitment'.

Thirdly, as is the case of Cameroon, access to the constitutional court may be limited. In Cameroon the Constitutional Council which has exclusive jurisdiction in matter pertaining to the constitution, (Article 46 of the Cameroon Constitution, 1996.) can only be seized by the President of the Republic, the President of Senate, the President of the National Assembly and Presidents of regional Councils. (See Article 47 (3), and 67 of the Cameroon Constitution, 1996). It is also doubtful if any of these categories will seize the Constitutional Council to challenge an establishment convention.

**Conclusion and Recommendation**

This paper has explored the meaning, types and content of an establishment convention. Establishment conventions raise important legal issues, in terms of both process and content. In terms of process, the lack of transparency that often characterizes contract negotiation is a concern. As for content, commitments found in foreign investment contracts especially stabilization clauses typically extend investment protection beyond the requirements of general international law. Most foreign investment contracts especially in developing countries are negotiated behind closed doors, and are not accessible to members of the public even after they are signed. This opacity undermines the ability of individuals and groups affected by the investment project to have a say on whether and under what conditions the project should be undertaken. When public consultations do take place, it is usually after key decisions have already been taken. It is there recommended that members of the public especially, individuals and groups to be affected by the investment project be consulted before an establishment convention is signed.

Greater transparency may be achieved through parliamentary scrutiny of proposed contracts (for instances, as provided for by the Constitution of Ghana) and through the publication of the contract in the Official Gazette (as was done for the COTCO-Cameroon establishment Convention on the construction and operation of the Chad-Cameroon Pipeline). However, parliamentary scrutiny is not always effective; for example, when parliament is controlled by the ruling party. Similarly, publication of investment contracts in the Official gazette is unlikely to make a significant difference in places where illiteracy rates are high, or where the majority of the population does not speak the official languages [17].

Moreover, transparency and civil society scrutiny of these negotiations are equally important to ensure that sustainable development concerns are fully taken into account.

**Reference**


1. Garner BA, Jackson T, Newman J, Cheng KH, Hammond HJ, Melendez B, *et al*. Black's Law Dictionary, 9th ed., St Paul, West Publishing Co, 2004.
2. Anne Van Aaken. International Law and Rationalist Contract Theory, paper presented at the International Legal Theory Colloquium Spring, 2009.
3. Richard K. Gardiner, International Law (London, Pearson-Longman), 2003.
4. Lorenzo Cotula. Strengthening Citizens' Oversights of Foreign Investment: Investment Law and Sustainable Development, Sustainable Markets Investment Briefings of the International Institute for Environment and Development, Briefing Nao, 4.
5. Elizabeth A Martin, *et al*. Oxford Dictionary of Law, 5th ed. (Oxford, University Press), 2002.
6. Martin Paul. Ze Elements de Droit Public – 1, (Douala, Presses Universitaire Libres), 2006.
7. Kriangsak Kitttichairee. international Criminal Law, (New York, Oxford Press), 2001.
8. Bernardini P. Development Agreements with Host Governments, in Pritchard R. (ed), Economic Development, Foreign Investment and the Law, (London/the Hague/Boston: Kluwer), 1996.
9. Waede T, Ndi. Stabilising International Investment Commitments: International Law versus Contract Interpretation 31 Texas Int'l. LJ, 1996, 215.
10. Hoffman S. The Law and Business of International Project Finance, (The Hague/London/Boston: Kluwer. International), 2001.
11. Comeaux Paul E, Kinsella N Stephen. "Reducing Political Risk in Developing Countries: Bilateral Investment Treaties, Stabilization Clauses and MIGA & OPIC investment Insurance", 15 New York Law School Journal of International & Comparative law), 1994.
12. Mbifi Richard, Stabilization Clauses. Balancing the Sanctity of Contracts, African Journal of Social Sciences, 2019, 10(4).
13. De Schutter, Olivier, *et al*. Foreign Direct Investment and Human Development – the Law and Economics of International Investment Agreements, (Routledge, New York), 2013.
14. Delaume. Transnational Contracts – Applicable Law and Settlement of Investment law and Practice, Booklet, 1983, 8(JULY).
15. See, for instance Kenneth J. Vandevelde, U.S International Investment Agreements (Oxford: Oxford University Press), 2009.
16. http://www.spacelaw.olemiss.ed/library/international_Agreements/Multilateral/1945-ICJ.pdf.
17. Cutola. op.cit., at page 3.