

# Forests Communities' "Bundles of Rights" in Cameroon: A Forgone Aspiration towards Sustainable Management of Industrial Forestry

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## Abstract

Forests ecosystem englobes abundant natural resources in which the world population highly depends on for their existence. Internationally, the 1992 Rio Declaration and the 1992 Convention on Biological Diversity amongst others, has categorically prescribed universal legal standards for the protection of the rights of forests communities. In Cameroon, forests with its natural resource endowments (timbers and non-timbers) has been considered by many as the cultural heritage of most local communities and a source of government revenue. Without mincing words, the forestry law and other related laws have given local communities bundles of rights to sustainably use and manage forest resources. However, these rights remain wanting due to ineffective implementation. As a result, local communities are prone to abject poverty, misery and paradox of plenty or rather put it "Tragedy of the Commons". In this vein, the paper therefore, seeks to address the following worries: What type of rights do these forests communities exercise? Are the provisions of the law with regard to local communities' rights and interests in the sustainable management of industrial forestry respected and if so, to what extent? What difficulties do local communities encounter in exercising these bundles of rights? Legally, the methodology employed in this article is purely doctrinal which is based on both primary and secondary data. The paper therefore, concludes with some robust recommendations which if effectively implemented and enforced will go a long way to guaranteed the rights of forest communities and thus, enhance sustainable industrial forestry management.

**Keywords:** Forests, Bundles of Rights, Communities, Sustainable Management, Aspiration, Industrial Forestry, Cameroon.

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## INTRODUCTION

The term forest is defined as "vegetation dominated by trees, without a grassy or weedy understorey, and which has not recently been farmed" [1]. This definition is most appropriate because formal "forestry" in Cameroon is largely concerned with the closed forest zones. Section 2 of the 1994 forestry law of Cameroon defined forests as any land covered by vegetation with a predominance of trees, shrubs and other species capable of providing products other than agricultural produce.

Industrial forestry within the context of this paper refers to the granting of forest tenure (right) to commercial forest industry (company) for management

with the primary goal of exploitation of timber for commercial purpose [ 2 ]. This form of forest exploitation is exercise through exploitation contract (concession) [3] between the state through MINFOP and a commercial logging company [4].

<sup>2</sup> See Section 41 of the Forestry Law. See also Karsenty, A., (2007), *Overview of industrial forest concessions and concession-based industry in Central and West Africa and considerations of alternatives*. Washington DC: Rights and Resources Initiative Group; See also Alemagi, D., & Kozak, R. A., (2010), *Illegal logging in Cameroon: Causes and the path forward*. *Forest Policy and Economics*, 12(8), p.554-561.

<sup>3</sup> See Section 46(1) of the Forestry Law and Article 61(1) of the Forestry Decree.

<sup>4</sup> Kamto, M., (1996), *Droit de L'environnement en Afrique*, Universités Francophones, EDICEF/AUPELF-

<sup>1</sup> Hall, J. B., (1987), "Conservation of forest in Ghana", *Universitas* 8. P. 33.

The concept of sustainability or sustainable development articulates different levels implied in the relevant processes, from the global down to the local level of action [5]. In line with the spatial dimension, local and/or indigenous communities and their customary rules or regimes are also addressed therein. The UN action plan Agenda 21, which has been reasserted by the UN Sustainable Development Summit in 2015, places special emphasis on the local level with the prominent role of local and/or indigenous communities in the sustainable management of forests and its resources. This is equally reflected in the Rio Declaration which clearly states that:

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development [6].

From the above dispositions, it is not an exaggeration to opine that the traditional rights of local communities should be recognized and they should be given a decisive voice in formulating policies with regards to forests resource development. This is because, local communities, for instance, the so-called forest peoples in the Centre, Southern and Eastern Region of Cameroon, are most dependent on and exposed to their natural environment [7]. It has to be born in mind that forest management usually involves the reconciliation of multiple and sometimes conflicting rights and the allocation and sharing of benefits derived from the same. That said, there is a nexus between forests and forest rights of local communities. The law makes it obligatory to consider these rights especially in light of the social interests of local populations [8]. In this respect, rights of forest and its resources are claimed by adjacent local communities as direct custodians, who for generations utilized and managed them judiciously. Consequently, the consideration of local values attached to the forests and their rights,

ought to form an integral part of any sustainable forest management initiative by the government. It is therefore, argued that customary rights need to be better protected since sustainable governance must not depend on ownership established through the exploitation of forest natural resources alone.

To be succinct in our analysis, the obligation to recognize, respect and promote the rights of local communities rest squarely on the shoulders of the state and not on logging companies. This is logical because as aforesaid, forests management usually involves the reconciliation of multiple and sometimes conflicting rights and the allocation and sharing of benefits derived there from. It should be noted that forests management strongly depends on the nature of forests rights, which can act as an incentive or disincentive to sustainable forest management (SFM) and forest conservation. In the same spirit, the legal guarantee of adequate forest rights for all relevant stakeholders especially local communities' adjacent to forests concession are incentives for forest protection that can greatly enhance sustainability. Forests rights can be expressed as a bundle of rights that may include various combinations of ownership, access and use, management and alienation rights [9]. The 1994 Forestry Law, for instance, classifies national forests into permanent forest estates (PFE) and non-permanent forest estates (NPFE) [10], and a corresponding bundle of practical rights are attached thereto, though only those in the state permanent forests estate (forests concessions) are within the scope of this work.

It is worth noting that any meaningful discussion on (local communities) rights in any field of study in general and in industrial forestry in particular as articulated in this chapter, cannot proceed without invoking Hohfeld's theoretical considerations and analysis of 'legal rights' [11] which has often been celebrated as an example of conceptual clarity of legal rights. In the same line of reasoning, Hohfeld's theory of legal rights, in a nutshell, seeks to clarify juridical relationships between the relevant parties in the forest especially, affected local communities adjacent to industrial forestry [12].

In this direction, the first part of this paper examines the bundles of rights of local communities attached to industrial forestry in Cameroon and the

UREF, 58, rue Jean-Bleuzen 92178 VANVES Cedex, Hachette, Canada, P. 209.

<sup>5</sup> See Agenda 21.

<sup>6</sup> See Principle 22 of the 1992 UN Rio Declaration.

<sup>7</sup> Andreas, K., (2018), "The significance of customary law for environmental conservation in Cameroon" In: Oliver C. Ruppel | Emmanuel D. Kam Yogo [eds./dir.], *Environmental Law and policy in Cameroon-towards making Africa the tree of Life*, Law and Constitution in Africa, Vol. 37, Nomos, Germany, pp. 924.

<sup>8</sup> Tamasang, C.F., (2019), "Forests, forest rights, benefit-sharing and climate change implications under Cameroonian law", In *Law, Environmental and Africa*, Law and Constitution in Africa, Vol. 38, 1<sup>st</sup> Edition, Nomos, Verlagsgesellschaft, Baden-Baden, Germany, p. 137-164.

<sup>9</sup> Ibid, P.142.

<sup>10</sup> see Ayuk, M.N., (2020), the sustainability of industrial forestry under Cameroonian Law. PhD Thesis, FSJP, University of Dschang.

<sup>11</sup> Hohfeld, W.N., (1917), "Fundamental legal Conceptions as Applied in Judicial Reasoning," Vol. 26, No. 8, *The Yale Law Journal*, pp.710-770. <https://www.jstor.org/stable/786270> Last Accessed: 07-10-2022.

<sup>12</sup> Ibid.

second part ex-rays and critically evaluates the extent to which these rights have been recognized and secured under the Cameroonian legal and institutionalized standards. The last part succinctly rounds off the paper with a brief salient conclusion and possible recommendations. The purpose of this analysis is to provide clarity and make proposals towards a legal framework designed to promote more responsive and sustainable management of industrial forestry that, inter alia, respect, protect and fulfill the rights and interests of local communities and affected stakeholders.

To generally achieve the aim of this paper, the following striking questions are addressed, What procedural legal mechanisms exist in Cameroon that could be used to ensure respect for and adequate protection of local communities' rights and interests in the sustainable management of industrial forestry? What type of rights do these forests communities exercise? Are the provisions of the law with regard to those rights respected and if so, to what extent? What difficulties do local communities encounter in exercising these rights?

## **INDUSTRIAL FORESTRY AND LOCAL COMMUNITIES BUNDLES OF RIGHTS UNDER FORESTRY RELATED LAWS**

Local communities' rights as used in this paper, depict the procedural and property rights tied to concession forests (industrial forestry) in Cameroon. In this respect, in the first part we examined procedural rights while property rights constitute the thrust of the second part. These bundles of rights constitute the following:

### **Procedural Rights attached to Industrial Forestry**

Prominent among these bundles of rights in Cameroon are the rights of access to information, public participation and the right of access to justice. These rights are contained in constitutional and legislative provisions as discussed below.

#### ***The Right of Access to Information on Industrial Forestry***

Access to environmental information in general and forestry issues in particular enables the public to be well informed and capable of questioning government actions. This can lead to more responsible industrial forestry decision-making and greater potential for sustainability. Public and private bodies, including NGOs, are also expected to educate and raise public awareness on activities that may negatively impact on public rights and interests most especially the affected communities. However, laws on access to information in environmental matters including forestry in Cameroon have their basis in multiple international instruments. The applicability of these instruments is relevant in the context of industrial forestry in Cameroon. That said, under Principle 10 of the 1992 Rio Declaration, access to environmental information is

vital to environmental and natural resource management such as forests [ 13 ]. At the national level, local communities' right of access to information is enshrined in the 1996 Constitution and environmental legislation empowering the public to have access to state-held information especially in the industrial forestry sector. The Cameroonian Constitution does not explicitly provide for people's right to access information, but people's fundamental rights and freedoms are provided in the Preamble, which by Article 65 of the Constitution has binding force. The Preamble affirms the country's attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights, and all ratified international conventions relating thereto [ 14 ]. The signing and ratification of all these international instruments is evidence that the state has the intention to respect, protect and fulfill people's human rights, including the right of access to information.

Given that freedom of expression complements the right of access to information, and since the 1996 Constitution guarantees the right of freedom of expression in its preamble, it can be argued that the right of access to information in Cameroon is guaranteed as part of the right to freedom of expression. Thus, because the right of freedom of expression embodies the right to look and communicate information, this could imply for example that, in the context of industrial forestry projects, local communities within and around forest concession must be provided with an opportunity to be informed about industrial forestry exploitation activities in order to empower them to freely express their opinions about the potential impact of the activity on their rights and interests thereto. The 1996 environmental framework law reinforces the constitutional provisions on the right of access to environmental (forestry) information. This is evident in Section 6 which obliges public and private bodies, including NGOs, to educate and sensitize the public on environment problems, including the impacts of environment-related activities, which could by definition, include industrial forestry exploitation activities.

Moreover, Articles 7 and 9 (e) of the same law provides that "all persons shall have the right to be informed on the negative effects of harmful activities on man's health and the environment as well as on the measures taken to prevent or compensate for these effects." In the same vein, the 1995 Forestry Decree implementing the 1994 forestry law provides that in regions possessing a land use plan, the classification of a state forests where industrial exploitation operates,

<sup>13</sup>As aforementioned, ratified international instruments are made applicable in Cameroon by Article 45 of the *Constitution*.

<sup>14</sup> See the Preamble of the Constitution in Para. 5.

shall be preceded by a period of thirty (30) days, during which the Minister of Forests shall inform the local people concerned about the planned classification by means of a notice [15]. In regions not possessing a land use plan, the period of notice shall be ninety (90) days in order to allow the local people in question, time to enter reservations or claims with the competent administrative officials. At the end of such period, any further objections shall be inadmissible [16]. The notice is made public through the press and by posting it in the divisional and sub-divisional office, town halls and forests administration offices, and by notification to the traditional chiefs and leaders of the communities concerned [17]. However, we argue that the dissemination<sup>18</sup> of information by forests administration and other stakeholders is a means to enable adjacent local communities and affected stakeholders to seek the protection of their rights to a healthy environment and other related rights that are susceptible to violation during industrial logging operations; hence, such rights enhance the sustainability of industrial forestry.

### ***The Right to Public Participation in Industrial Forestry***

Generally, the involvement of local communities in forests resources management in Cameroon and other developing countries is a vital means to reduce poverty and ensure a feeling of belonging. For example, Mayers *et al.*, [19] attest to positive outcomes of decentralized forest governance and social justice in Malawi, Mozambique, Uganda and Ghana. This was also reiterated by Arnold and Townson [20], Anderson [21], Cavendish [22] and Ribot [23]

<sup>15</sup> See Article 18 of the 1995 Forestry Decree.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> In this context, it simply means to sensitize and educate the public most especially the local communities adjacent to forest concessions on the risks and benefits that industrial forestry exploitation entail. The publication of such information appears to be useful and appropriate tool to enable the public especially local communities to assert their constitutional and legislative right to a healthy environment, regarding the impact caused by industrial forestry operations on the environment.

<sup>19</sup> Mayers, J. *et al.*, 2006, Forest governance and social justice: practical tactics from a learning group approach in Africa. *International Forestry Review*, 8(1), 101-109.

<sup>20</sup> Arnold, J.E.M. and Towson, I., (1998), Assessing the potential of forest product activities to contribute to rural incomes in Africa (Natural Resource Perspectives No 37). Overseas Development Institute, London. See also Ashukem, J.C., (2019), Op. Cit. P. 259. See also Du Plessis, A., (2008), Public participation, good environmental governance and fulfillments of environmental rights. PER Vol.2 pp. 1-34

<sup>21</sup> Anderson, J., (2002), Nature, Wealth and Power: Emerging Best Practice for Revitalizing Rural Africa

who have all argued that the involvement of people in governance and forests natural resources management at grassroots level, is the most vital component in poverty reduction and a means of achieving forests sustainability [24]. Generally, public participation [25] takes various forms. These include broad-based participation through representative bodies such as NGOs which speak on behalf of individuals and affected communities; and stakeholder participation through which formulated proposals are circulated for comment to parties interested in and affected by a development project. It can also take the form of deliberative participation that entails agreeing the rules of decision-making [26].

Notwithstanding the above arguments, we hold the view that public participation and legitimacy in decision-makings [27] of local communities is vital as it would forge a pathway towards the sustainable management of industrial forestry. This is because, it is the only means through which affected stakeholders especially the local communities have a say in the process. Also, it provides a platform where voices meet and are heard. Legislation giving effect to public participation in decision making in Cameroon *inter alia*

(Washington, DC: United States Agency for International Development).

<sup>22</sup> Cavendish, W., (200), how do forests support, insure and improve the livelihoods of the rural poor? A research note. Center for International Forestry Research, Bogor, Indonesia.

<sup>23</sup> Ribot, J.C., (2004), *Waiting for Democracy: The Politics of Choice in Natural Resource Decentralization* (Washington, DC: World Resources Institute).

<sup>24</sup> World Bank, (1997), *World Development Report* (New York: Oxford University Press). See also World Bank, (2000), *World Development Report 1999/2000: Entering the 21st Century* (New York: Oxford University Press).

<sup>25</sup> The participation process deals with transparent and consultative processes that provide an opportunity for concerned and affected individuals to express their views linked with some assurance that their views will be taken into account in the final decision-making process prior to the implementation of development projects impacting on the environment. This enables and promotes both state and non-state actors (including local communities and other interested and affected parties) to engage, deliberate and take meaningful decisions relating to the protection of the environment, ultimately seeking to improve the environment for the benefit of both present and future generations.

<sup>26</sup> Ibid, P. 361.

<sup>27</sup> The theory of decentralization and participation in environmental and natural resource governance requires the state to achieve sustainability objectives through collective action by ensuring broader and inclusive stakeholder participation with particular focus on forests-dependent local communities.



includes the 1996 framework law on environmental management and the 1994 forestry law. Section 72 of Law No. 96/12 obliges the state to encourage and allow for public participation insofar as environmental governance and protection is concerned. This provision was reaffirmed by Section 9 as it provides that decisions concerning the environment including forestry, should be taken after consultation with other actors concerned or through public debate.

This implies that to properly safeguard and ensure the sustainable management of industrial forestry, local communities and affected parties have to be actively involved and participate in decision-making, plans and programmed of environment-related activities, including EIA processes and procedures in order to properly assert protection of their social and environmental and other related rights. Participation is essentially valuable at the early stage of deciding whether industrial forest exploitation project should proceed or not in that; first, with participation information on local knowledge about the environment and social issues that are often missed by environmental (forest) experts are uncovered. Secondly, local community participation helps legitimize the project and thus, reduces in advance social tensions and conflicts between communities, timber exploitation companies and the state.

However, it should be noted that in so far as industrial exploitation of forests are inclined to negative impacts on the rights of local communities and the environment in general, there is the need to involve the affected communities in decision-making processes, as their participation could provide a necessary platform for the public authorities to enhance environmental protection including forests and other related rights-based interests.

Nevertheless, ensuring these rights requires the state to provide and to encourage the involvement and public participation of local communities through mechanisms that allow for and promote free access to information; to create grassroots consultative mechanisms to allow the public to form an opinion; and to be popularly represented at the consultative organs on matters relating to the environment such as industrial forestry.

To increase participation, the forestry law requires that logging companies when establishing their Forest Management Plan (FMPs) should take into account the interests of the local population and to carry out socio-economic studies to accommodate and negotiate with them regarding their use rights within the forests [28]. Equally, Section 23 of the Law provides for the elaboration of forest management plan, compels logging companies to ensure the participation of local

communities during the preparation of such plans so as to ensure the sustainability, that is, the plan should take into consideration socio-economic and environmental aspects. This is because; FMPs for industrial forestry provide a platform for agreements between logging companies and adjacent local communities. This could mean that the involvement and participation of local communities in the preparation of FMP of industrial forestry has the potential to enhance and ensure the sustainable use and exploitation of forests resources such as timber. We also argue that involvement of local communities in industrial forestry projects will strive to conserve permanent forests estate which according to the forestry law must constitute 30% of the national territory [29]. In this regard, such responsibility rest on the Minister of forestry to actually ensure that industrial logging companies follow and adhere to a participatory approach, thereby providing local communities with the right to be actively and fully involved in FMPs during industrial forestry activities.

### *The Right of Access to Justice*

Because Article 65 makes the Preamble of the Constitution an integral part of the Constitution with enforceable and justiciable rights, the Constitution provides for the right to justice through the incorporation of the right to a fair hearing. This is so because a right to a fair hearing before the courts can be conveniently exercised only if there is a right to access to court. In this regard, paragraph 5 of the Preamble ensures the right of every person to a fair hearing before the courts. This means that local communities have a right to a fair hearing before a court on activities and actions by logging companies that may infringe on their fundamental rights and interests [30]. In addition, the Constitution incorporates the concept of shared responsibility between the government and its citizens in an effort to foster and enhance environmental and natural resources protection through public interest litigation [31]. In addition, guidelines on the field operations of MINFOP officers state that forests officials must, upon request, assist the holder of a logging title to reach an equitable settlement of its differences with neighboring populations'[32].

This implies that the right to environmental and natural resource sustainability such as forests could properly be exercised by citizens inter alia through public interest litigation, as is also the case in other

<sup>28</sup> See Section 16 of the 1994 Forestry Law.

<sup>29</sup> See Sections 20-22 of the 1994 forestry law.

<sup>30</sup> Ashukem, J.C., (2016), Op. Cit., P.243.

<sup>31</sup> The preamble of the Constitution provides that: "Every person shall have the right to a healthy environment. The protection of the environment shall be the duty of every citizen. The state shall ensure the protection and improvement of the environment."

<sup>32</sup> MINEF, (1998), *Normes d'intervention en milieu forestier*, p.6.

African countries [33]. The above provisions were reasserted in section 8 (2) of the 1996 environmental law as it provides that:

*“Authorized grassroots communities and associations contributing to all actions of public and semi-public institutions working for environmental protection may exercise the right of the plaintiff with regards to facts constituting a breach to the provision of the law and causing direct and indirect harm to the common good they are intended to defend”.*

For the purpose of this study, it is evident from the above provision that local communities have the right to institute action against industrial logging companies whose activities cause direct or indirect harm to the environment and their rights to access to forests resources. Through this mechanism, they can seek redress for the violation of their fundamental rights as espoused in the Preamble of the Constitution during industrial forestry activities. In the same vein, local communities' right of access to justice is also facilitated by a broad *locus standi* provision which enables interested and affected parties, including NGOs, to seek redress on their behalf in a court of law. In this light, a practical example although not related to industrial forestry projects is in *FEDEV v. China Road and Bridge Corporation* (FEDEV case), where the Court of First Instance in Widikum, Cameroon, granted FEDEV *locus standi* to institute legal proceedings in the public interest, with a view to compelling the respondents to engage local communities in the ESIA process [34].

### ***The right to Free, prior and informed consent in Industrial Forestry***

Free, prior informed consent (FPIC) of local and/or indigenous peoples is required for any activities including industrial forestry affecting their rights to land, territories and resources. The term free prior and informed consent (FPIC) was first developed in the 1980s in research on the environment and development from the field of medicine and it was adopted to indigenous peoples right in regard to the right to self-determination. The International Labour Organization (ILO) first used the terms free, prior and informed consent regarding indigenous and tribal people rights in 1989. These have developed in the course of the years in other areas of human rights and development work on the search to protect local people and communities whose use and access to land is often affected by conservation and development projects such as industrial exploitation of forests resources.

With the growing importance of the forests for timber in Cameroon in particular and globally, the international community in its efforts to mitigate climate change have initiated conservation and afforestation projects such as the (REDD+) initiative across the world. In the same line of reasoning, the concept of free prior and informed consent within the scope of Reducing Emission from Degradation, Deforestation and Conservation (REDD+) initiative for example, considers that there should not be any form of coercion, intimidation or manipulation of local and/or indigenous community and that if they say no to any request on the use or exploitation of their land or resource, there should be no consequences or punishment [35]. The operationalization of this in REDD+ projects in most developing countries, now do not only help in building local peoples capacity, but also empowers them to effectively engage in natural resource governance while protecting their livelihood, heritage and culture as a people and hence, ensures sustainability.

For the purpose of this study, informed means that there should be disclosure of all information in language and format better understood by the local people before any project can be carried on their land. Prior on its part means that the consent must be sorted before any Programmed or project approval by the administration and this has to be done in such a way that any information requested by the local and/or indigenous people must be genuinely provided. This has been applauded as a “rights based approach” to sustainable forest management and conservation with particular focus on participatory natural resources management [36].

Yet still, the right to free, prior and informed consent obliges states to consult and cooperate in good faith with the indigenous people concerned either directly or through their representatives/institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. The Declaration [37] of the Rights of Indigenous People makes it explicitly clear that, before the government takes any administrative or legislative reform, allocate projects for mining, industrial logging (timber) or any other exploitation projects that will affect the rights of the indigenous people to access, use or exploit the forest, their consent should be obtain. In the same vein,

<sup>33</sup> See for example Uganda and South Africa constitutions respectively.

<sup>34</sup> Ashukem, J.C., (2016), *A rights-based approach to foreign agro-investment governance in Cameroon, Uganda and South Africa*, Ph.D Thesis, North-West University, Potchefstroom, P. 364-365.

<sup>35</sup> Karen E., (2015), *The center for people and forest, A training manual, Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives*. See also Lewis, J., (2012), *How to implement free, prior informed consent. Participatory Learning and Action*, 65, 175-178.

<sup>36</sup> Ngila, (2018), *Op. Cit.* p. 21.

<sup>37</sup> See Articles 19 and 32 of the Declaration of the Rights of Indigenous People.

Article 10 of the Declaration obliges states to ensure that indigenous people are relocated back to their origins in case of forced eviction or where they are caused to leave their homeland without consent. This condition is based on the fact that most indigenous people are economically poor and politically weak such that decisions that affect them are usually taken without their consent. Article 28 goes further to ensure that local and indigenous people who have lost their land and forests completely without their consent needs to be compensated fully for the loss. Also, under Law No.2003/006 of 21 April 2003, which establishes safety regulations for modern biotechnology in Cameroon, prior informed concern (PIC) is a prerequisite for carrying out any forests ecosystem project. Industrial forestry is one of such projects and as such is subjected to PIC requirements.

### Property Rights attached to Industrial Forestry

Property rights within the context of this study represent ownership, access, use and management rights associated with industrial exploitation of forests. In other word, they include inter alia; usufructs rights, customary rights to land ownership and rights to benefits of local communities attached to industrial forestry in Cameroon.

### *Usufruct Rights of Local Communities in Industrial Forestry*

Logging, use or usufruct rights of local communities' adjacent to forest concessions constitute another form of right regulated under the 1994 Forestry Law and its Decree of implementation. To this effect, Section 26 (1) of the forestry law makes it clear that "the instrument classifying a State forest shall take into account the social environment of the local population, who shall maintain their logging rights" [38]. The local populations are to be informed and sensitized in order to identify the resources that need preservation before any logging activities take place [39]. To proceed, Section 30 (2) of the same law states that "The classification instrument shall determine the boundaries and the management objectives of such forests which may be the same as for a State forest, as well as the exercise of logging rights of the local population...". The boundary

of these forests must be well defined, and the local population in the forests being classified will be allowed to continue accessing the natural resources for their livelihood. A superficial reading of the above provisions implies that, it is obligatory to consider the social and environmental interests, and logging rights of forests communities in the classification and exploitation of any State forests where industrial timber exploitation operates.

Furthermore, usufructs rights of local communities attached to industrial forestry is also evident in Section 8 (1) of the forestry law which states that "within the context of this law, logging or use, usufructs or customary rights means the right which is recognized as being that of the local population to harvest or exploit all forests, wildlife and fisheries products freely for their personal use, except the protected species." In the same line with this provision, Article 26 (1) of the 1995 Decree implementing the 1994 Forestry Law provides that the population living around state forests (forests concession) is entitled to maintain their *usufruct* rights [40] (rights to harvest and use forest products) consisting in carrying out within these forests their traditional activities, such as collecting secondary forest products, notably raffia, palms, bamboo, cane or foodstuff and firewood. It should be stated clearly that the same Decree also provides in Article 26 (2) that in order to meet the domestic needs inter alia for timber and firewood, the neighboring populations concerned can cut down a number of trees proportionate to such needs. They are, however, strictly forbidden to sell or exchange wood from such trees. Also, Article 3 (6) (7) of the same Decree sets out the modalities to carry out users rights in production forests and surface area for reforestation. For the purpose of this study, it should be noted that these state production forests within the permanent forests estate are reserve for industrial exploitation of timber. Within the spirit of the law, the UN-REDD Programmed standards under Criterion 7 requires national REDD+ programmed to respect and promote the recognition and exercise of the rights of indigenous peoples (IPs), local communities and other vulnerable and marginalized groups to land, territories and resources [41].

With regard to traditional hunting in these forests, the law recognizes two categories of hunting, to wit, subsistence hunting which deals with (hunting with traditional method of traps and not homemade guns and steel wire cable) to the exclusive user right of the local

<sup>38</sup> These are rights recognized by law that local communities harvest all forests, wildlife and fisheries products freely for their personal use, except the protected species. See also Article 4(1) of the forestry decree which states that the exploitation of forestry, wildlife and fishery produce by the local population for personal and domestic use is free. However, except for game reserves, sanctuaries and buffer zone where they may be authorized, such rights shall apply neither to integral ecological reserves, national parks, zoological gardens nor to game-ranches.

<sup>39</sup> See chapter II, Article 4,5 and 6 of Decision No. 0108/D/MINFI/CAB on the norms of intervention in forest milieu.

<sup>40</sup> *Usufruct* is "the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantage which it may produce, without altering the substance of the thing".

<sup>41</sup> Tamasang, C.F., (2019), Op. Cit. P.147.

people as a source of animal protein [42]. However, it precludes any sale of those products. In fact, this provision is in line with Cameroon's commitment to implement article 10 (c) of the CBD which requires member states to "protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements." In this respect, the right does not relate to ownership, as the state is the owner of all lands and genetic natural resources.<sup>42</sup> Clearing up uncertainty and providing better protection for customary rights to land ownership could create more incentives for the participation of local communities to promote industrial forest sustainability. Conversely, if uncertainty remains or they are excluded, communities may have little incentive to protect forests.

This is reasserted under Section 14 (2) of the land and Native Rights Ordinance [44] which grant

rights of compensation to occupiers in the following words:

*Should the right of occupiers be revoked owing to the requirement of the land by government for public purposes for any purpose connected therewith, the occupier shall be entitled to compensation for the value at the date of revocation for his unexhausted improvement and inconveniences caused by this disturbance.*

Indeed, the respect and effective implementation of these rights of the local population could constitute an incentive for the sustainability of industrial forestry. In the same line of reasoning, this can motivate local populations to adopt more sustainable exploitation methods that do not contribute to deforestation and forest degradation, thereby maintaining the carbon stocks of such forests for the purpose of sustainability.

However, resources governance cannot be completely separated from land on which they have their life support. According to Tamasang, land is a melting pot, that is, besides natural resources, mankind lives and has all its activities perpetuated and supported on land [45]. In fact, Ngwasiri cited in Tamasang, even opines that the importance of land need not be overemphasized as it is obvious that every human being does not only live on land but also off its diverse and indispensable products [46]. Therefore, it is inevitable that a study be made of forest management without contemplation on the legal status of land ownership by local communities in Cameroon.

### ***Customary Rights to Land Ownership by Local Communities***

A consideration of natural resources management necessarily starts with a contemplation of the land ownership arrangements, because this underpins community rights to own, access and use forest lands and resources [47]. This is because equitable status in modern-day relations between the government and local population depends upon recognition of customary tenure rights as real property rights over land and forests resources, which are accordingly upheld by courts when wrongfully treated [48].

<sup>42</sup> According to Oyono. (2007); Bigombe et al, 2005. Op. Cit. Some NGOs and conservation projects within the forest region have experimented the community managed hunting zones known as ZICGCs (in French. Another type of hunting zone known as zones d'intérêt cynétique (ZIC in French) is also allocated to professional hunting guides. The ZICGC and ZICs are the two legal instruments relating to the allocation of wildlife resources to local communities (MINEF, 2004, op. Cit.). These two instruments enable village communities within the forest to carry out traditional hunting activities and also gain access to a portion of wildlife taxes. The principal tax paid by hunting guides to ZICs is redistributed according to the same pattern of annual forestry fees, 50% for the central state, 40% for the councils concerned and 10% for the village communities around the hunting zones- the local communities also receive 10% for annual lease tax when the ZICGCs are leased to hunting guides. The management of ZICGCs is the responsibility of the Wildlife Resource Enhancement Committees (COVEREFs in French). The COVEREFs are responsible for identifying local development problems, seeking appropriate solutions and ensuring the implementation of all projects of community interest in the villages. The revenue managed by COVEREFs is derived mainly from the leasing of the concessionaires who pay rental or access rights for the period of lease.

<sup>43</sup> Under section 12 of the 1994 *Forestry Law*, all genetic resources of national heritage belong to the State. This implies that the State is the owner of all genetic resources as part of the general ecosystem. All fresh waters within the national territory are owned by the State according to the 1998 *Water Law*. Furthermore, section 2 of the 2001 *Mining Code* nationalizes all mining resources and gives ownership of same to the State except where individuals have land certificates.

<sup>44</sup> See Cap 105 of the laws of the Federation of Nigeria 1948.

<sup>45</sup> Tamasang, C.F., (2007), OP. Cit. p. 9.

<sup>46</sup> Ibid.

<sup>47</sup> Forest tenure involves a bundle of rights that includes the rights to access, withdraw, and manage land and resources, and exclude others from these activities. Full ownership of forest land typically bestows this entire bundle of rights upon the owner. Rights can be individually or communally held, and may derive from customary systems of resource management.

<sup>48</sup> Liz Alden Wily (2011), whose land is this? See also Iliffe, J., (1995), *Africans. The History of a Continent* Cambridge: Cambridge University Press. See also Van



Prior to the introduction of formal land legislation [49] in Cameroon, property relations were governed mainly by customary law [50]. Forest-based communities in Cameroon owned forest land and resources under customary tenure systems. The law of 17 June 1959 governing the organization of state property and land ownership created the notion of customary ownership of land. This law just like the 1927 Land and Native Rights Ordinance strengthened the rights of local communities over their land.

This system of customary ownership of land was reiterated by the constitution. The preamble of the 1996 Constitution<sup>51</sup> reiterated the conventional generalities as to 'the freedom of settlement', 'guarantee the right to ownership (ownership means the right guaranteed to every person by law to access, use, enjoy and dispose of property)' and protection against deprivation of property, save for public purposes and subject to payment of compensation. The constitution does pledge to protect the rights of indigenous populations and proclaim attachment to the fundamental freedoms enshrined in international conventions. The application of the Customary law in natural resources management in general and forestlands in particular protect society's common property and heritage, and

ensured that those resources would continue and sustain [52].

In the dominant forest regions of Cameroon, royal ethics under 'clanship' was the base of the customary law [53]. The head of the clan had the overall say in many aspects of the life of his subjects [54]. But, 'lineage' was the operational level for land and natural resources management [55]. Management and extraction of natural resources was done collectively by members of the clan, controlled by lineage heads under the strict directives of the clan head. With a sense of territoriality, the *droit de hache* (axe right) [56] under the Customary tenure became an instrument of identity. Clans or lineage groups exploiting the same stock of resources in their lands and observing the same royal ethics used the 'axe right' to create what Melucci [57] calls ethnic territorial groups. To maintain autonomy and territorial identity, titular ownership of land and forests were vested in the various heads of clans in the territory. While to promote the ethos of egalitarianism in the community, basic ownership of land and forests were vested in the entire community.

In most areas, customary land right systems are based on kinship relationships. However, kinship members' use rights on specific land parcels are often very secure: in some instances, rights to particular parcels of land are even. To prevent social fragmentation and to encourage productivity and community survival, trustee rights of beneficial use of land and forests were given to families and lineages. To guard against commoditization of land and to ensure continuous growth of the lineage, land use rights were transferable on non-sales and non-alienable basis. To prevent land use and territorial conflicts between clans

den Berg and Biesbrouck K., (2000), The social dimension of rainforest management in Cameroon issue for Co-management. Tropenbos- Cameroon Series 4. Tropenbos-Cameroon programmed, Kribi, Cameroon. 99p.

<sup>49</sup> Ordinance No. 74/1 of 6 July 1974 determining the land tenure system. It was accompanied by two decrees which include: Decree No. 76/165 of 27 April 1976 setting the conditions of acquisition of a land title, modified by Decree No. 2005/481 of 16 December 2005 and Decree No. 76/167 of 27 April 1976 setting the condition of management of the state's private property.

<sup>50</sup> Nguiffo, S., Kenfack, P.E., Mballa, N., (2009), Historical and contemporary land laws and their impact on indigenous peoples' land rights in Cameroon. In: *Land Rights and the Forest Peoples of Africa: Historical Legal and Anthropological Perspective. Forest Peoples Programme*. See also Oyono, P.R., (2005), The foundations of the conflict de langage over land and forests in southern Cameroon. *African Study Monographs*, 26(3), 115-144.

<sup>51</sup> Since independence, the country has three Constitutions and a number of amendments. The first Constitution marked the independence of French Cameroun on 1st January 1960. The unification of British and French administered Cameroun provided a Federal Republic with a new Constitution on 2nd June 1972 and which became simply the Republic of Cameroon in 1984. Significant amendment to the 1972 Constitution and 30 new articles marked what is referred to as the third Constitution in 1996, but which came into force only in 2001.

<sup>52</sup> Mamdani, M., (1996), *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (London: James Currey).

<sup>53</sup> Diaw, M. C., (1997), Si, nda bot, ayong: shifting cultivation, land use and property rights in Southern Cameroon, Rural Development Forestry Network paper No 21e, Overseas Development Institute, London.

<sup>54</sup> Mengang, J.M., (1998), Evolution of natural resource policy in Cameroon. *Yale Forest and Environmental Studies Bulletin*, 102, 239-248.

<sup>55</sup> Diaw, M. C., (1997), Si, nda bot, ayong: shifting cultivation, land use and property rights in Southern Cameroon, Rural Development Forestry Network paper No 21e, Overseas Development Institute, London.

<sup>56</sup> The right to acquire land by putting it into productive use, by cutting down of trees.

<sup>57</sup> Melucci, A., (1996), *Challenging Codes: Collective Action in the Information Age*, Cambridge: University Press.

and lineages, the 'axe right' was the basic symbol of confirmation of the acquisition of the land [58].

The recognition of these rights, outside the African continent is clearly seen in Bolivia. Since the recognition of their land rights in 1953, the local people have been active in local and national politics [59]. Also, in Australia native title is regulated by statute, the native title Amendment Act of 1998 and the Australian High Court in *Mabo v. Queensland (no2)* [60] recognized and enforced indigenous title to landed property. The New Zealand Supreme Court in *R v. Symonds* [61] since 1847 recognized aboriginal titles. In Canada, indigenous land rights are recognized and protected under Section 35 of Canada's 1982 Constitution. Before this Constitutional protection, the Supreme Court of Canada in *Calder v. AG (British Columbia)* in 1973 recognized and enforced the existence of aboriginal title [62].

The recognition of customary land holding seems to be the most appropriate means of property rights that will encourages the participation of local communities in the conservation and management of the environment and forest natural resources. This recognition encourages local communities to consider the forest as belonging to them thus, increases their zeal to manage these resources sustainably.

During the pre-colonial period and following native law and custom, a village community could either acquire land by settling on land where no previous claim of ownership by another community existed, by conquest when a community was ousted from its land by another during war and finally by gift which was a generous transfer of land from its owner to others [63]. Each community claimed customary ownership rights on the acquired land and its inhabitants lived, carried out farming, artisanal logging, gathering and hunting on the village land [64].

<sup>58</sup> Richard, S.M., (2009), Forest exploitation in Cameroon (1884–1994): an oxymoron of top-down and bottom-up forest management policy approaches, *International Journal of Environmental Studies*, 66:6, p.750. See also Daan, V.S., (1998), *Tropical Deforestation: An Economic Perspective*. Labyrinth Publication. Netherlands. P.89.

<sup>59</sup> Mbetiji, M.M., (2012), Op. Cit. p.180.

<sup>60</sup> (1992) 66 ALJR 408, at 146.

<sup>61</sup> (1847) NZPCC 387 (SC (NZ)), at 390.

<sup>62</sup> Mbetiji, M.M., (2012), Op. Cit. p.181: In Colchester, M. et al., (2001), *A Survey of Indigenous Land Tenure*, FAO, FPP, UK, p. 15.

<sup>63</sup> Egute, M.A., (1995), the control of land rights in Nigeria and Cameroon, Unpublished masters Dissertation, Ahmadu Bello University Zaria, Nigeria, p.58.

<sup>64</sup> Vabi, M., (1999), Socio-economic surveys of human use inside and within 3 kilometres of Korup National

Individuals had land rights and their rights were passed on to their successors in case of death. The parcels of lands not occupied by individuals remained under the control of the community. This implies that these unoccupied lands were collectively owned. Some examples of communal land include forest used for farming and lumbering; hills, valleys and plains for farming and grazing; streams and creeks; and sacred lands that harbour village shrines [65]. The community had sovereign rights over all lands and the chief was a trustee of communal lands. Management of communal lands was vested on the chief and his traditional council. The traditional administration controlled and managed the land on behalf of his community and could allocate it for use in accordance with the established customary practice. The aim was to ensure, protect and preserves existing customary rights of the natives to land ownership [66].

However, it is perhaps vital to resurface the point that the system of land ownership, use and allocation in Cameroon is complex, with legal texts from different sectors often presenting contradictory or competing approaches [67]. The customary tenure arrangement is not devoid of negative impact on land ownership and forest resources but the fact that traditional authority managed the resources shows that with the customary tenure system, the lands and forestry resources were to an extent protected and sustainable from wanton exploitation.

### ***The Right to Benefits Sharing from Industrial Forestry***

The forestry law acknowledged that forest communities should receive a share of the revenues derived from the utilization of the forests [68]. Concrete specifications exist which allow the local population additional benefits from revenues derived from industrial forestry exploitation adjacent or within their traditional living area. In this light, the forestry law for instance, stipulates that in order to sustain the development of village communities adjacent to certain

Park. WWF-CPO Activity Report. See also Lawry, St.W. and D.M. Stienbarger, (1991), "Tenure and Alley Farming in the Humid Zone of West Africa: Final Report of Research in Cameroon, Nigeria, and Togo", LTC Paper no. 105, Land Tenure Center, University of Wisconsin-Madison, Wisconsin-Madison. P. 11-15.

<sup>65</sup> Egute, M.A., (1995), the control of land rights in Nigeria and Cameroon (Unpublished master thesis). Ahmadu Bello University Zaria, Nigeria.

<sup>66</sup> Tamasang, C.F., (2019), Op. Cit.

<sup>67</sup> Nguiifo, S., et al., (2009), *Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives*, No. 2, "Historical and contemporary land laws and their impact on indigenous peoples' land rights in Cameroon", *Forest Peoples Programmed*, pp 8-9.

<sup>68</sup> See Section 66-68 of the 1994 Forestry Law.

state forests under exploitation, a share of the revenues derived from the sale of forests products is to be utilized for the benefit of these communities. In effect, these royalties or revenues from the exploitation of forest resources are paid directly to the state coffers [69]. In turn, the state distributes these royalties. Whilst this is an obligation in favour of communities which may lose out their ancestral forest to the logging companies and coupled with the negative impacts of industrial logging, although in such case, the local population shall be entitled to compensation [70].

To expatiate further, article 68 of the 1994 forestry law provides that the population living on the borders of forest concessions are to obtain a percentage of the area-based Annual Forestry Royalty (*Redevance forestière annuelle*, (RFA) payable by concessionaires (exploitation companies) [71]. The objective of RFA is four-fold: to make a consistent contribution to the state budget; contribute to poverty alleviation; enhance equity in the redistribution of forest-related benefits; and contribute to sustainable management of the forests [72]. This royalty collected is shared in the following proportions: 50% to the state, 20% to municipalities adjacent to the forest concessions, 20% to FEICOM (Special Equipment and Inter-municipality Intervention Fund) and 10% to affected local communities [73]. The sharing of these royalties also followed suit in 2009 in the same manner. However, the intention of the law is

that the local population benefits directly from industrial forestry exploitation activities in forest concessions by receiving a share of the tax and indirectly from the social services provided by the logging companies [74].

According to the provision of the forestry law, the annual forestry fee “comprises of two elements, to wit, an access right calculated from a minimum rate of 300 CFA Francs per hectare per year and an exploitation right calculated by logging area for the duration of the latter [75]. This provision of the law is positive for forest resource protection and sustainability in the sense that it encourages local communities to develop a sense of custodianship of the forest and cooperation with the forestry authority in ensuring that logging companies are practicing sustainable forest exploitation.

This Annual Forestry Royalty (RFA) earmarked for adjacent local community development is aimed at alleviating extreme poverty and hunger as part of the government target in compliance with the United Nations Sustainable Development goal and the Rio declaration goal of sustainable development as it strives towards emergence by 2035 [76]. Consequently, these benefits could serve as an incentive for the local communities to participate in sustainable forest management. Conversely, without equitable sharing of benefits, local communities will not be motivated to participate in the sustainable management of forests. This is certainly the reason why the 1992 CBD provides for “equitable sharing of benefits arising out of the utilization of genetic resources” [77].

The disbursement of the 50% of annual forestry fees intended for the rural councils and the village communities living beside the concessions is done by the General Department of Taxation. Each recipient rural council has a management committee chaired by the mayor and composed of representatives from the Ministry of Territorial Administration and

<sup>69</sup> See Sections 66, 67 and 68 of the 1994 Forestry Law. These provisions are supplemented by those of Section 14(2) of Law No. 98/9 of 1 July 1998 Finance Law of the Republic of Cameroon, which fixed the annual forestry fee at CFAF 1,500/ha for forest concessions and CFAF 2,500/ha for the exploitation of sales of standing volume. The same provisions provide for the distribution of the said annual forestry fee as follows: 50% for the state, 40% for local councils and 10% for bordering villages. See also Decree No. 96/642/PM of 17 September 1996, fixing the amount and the modalities of tax recovery and the rights of royalties relating to forestry activities.

<sup>70</sup> See Section 26 (2) of the Forestry Law.

<sup>71</sup> See Section 66 (1) of the Forestry Law.

<sup>72</sup> Ayuk, M.N., (2018), «Fiscal Decentralization System and Sustainable Forest Management in Cameroon: A Myth or Reality towards Sustainable Local Development», *Journal of Taxation and Regulatory Framework*, 1 (1), p.1-14.

<sup>73</sup> See Section 11 of law no. 2000/08 of 30 June 2000 of Finance Law of the republic of Cameroon. see also Article 3 of Joint Order No.76/MINADT/MINFI/MINFOF of 26 June 2012 revising Order No. 0520/MINATP/MINFI/MINFOF of 2010 and Joint Order No. 122/MINADT/MINFI/MINFOF of 29 April 1998 fixing the terms and conditions for employment of income through tax payment from forest exploitation and for riverians village Communities.

<sup>74</sup> Paolo, O.C. and Luca T., (2006), *Forests, Illegality, and Livelihoods in Cameroon*, Working Paper No. 35, p. 15.

<sup>75</sup> Government of Cameroon, (1996), Law No. 96/8 of 1 July 1996 establishing the Finance Law of Cameroon for 1996/1 MINEFI/MINAT (Ministère des Finances/Ministère de l'Administration Territoriale). 1998 Joint Order No 00122/MINEFI/MINAT of April 28, laying down the procedure for the use of the revenue from logging intended for neighboring village communities. Yaoundé, Cameroon.

<sup>76</sup> See UNGA Res 70/1 ‘Transforming our World: The 2030 Agenda for Sustainable Development’ (21 October 2015 UN Doc A/RES/70/1), specifically Goal 1.

<sup>77</sup> See Article 1 of the 1992 CBD.

Decentralization MINATD [78], MINFOF and village committee's representatives [79]. However, this form of decentralized taxation system could be a vital "wind-fall" for the councils as their regular annual grants never meet up with the local needs. For the forest communities, it is more than just a "wind-fall" as they were virtually left out of the picture under the old forestry law. Therefore, their active participation in priority setting for distribution and spray of investments of revenue from industrial forestry exploitation may contribute substantially to avoiding oppositions and conflicts among themselves, the state and logging companies thereby, building peace and development.

### **A CRITICAL ASSESSMENT OF LOCAL COMMUNITIES BUNDLES OF RIGHTS ATTACHED TO INDUSTRIAL FORESTRY**

It may be helpful at this Section to evaluate the extent to which the legal framework recognizes and protects the rights of local communities adjacent to forests concessions. The purpose of this appraisal is to determine whether the Cameroonian legal instruments recognized and accords adequate protection of local community's rights and interests attached to Industrial Forestry sector in the country.

#### **Procedural Rights of Local Communities**

The procedural rights of local communities adjacent to forests concessions are, among others, the following:

##### ***The Right of Access to Information***

Generally in Cameroon, information on government activities is considered confidential and therefore, release to the public is the exception rather than the norm [80]. In 2010 for instance, where a first ever systemic survey of the right to information in Cameroon, the Citizen's Governance Initiative (CGI) a domestic non-governmental organization described the greatest socio-political obstacle as being the "culture of secrecy and disservice" [81]. Government officials tend

to consider the release of such "sensitive information not in the public interest and do not perceive part of their duty as making information available to the public [82]. Again, officials are apprehensive of reprisal from the executive if "sensitive" materials are released to the public [83]. This latter point makes obtaining information sometimes dependent on personal relationships.

Within environmental (forestry) context, it is evident in Cameroon that, the various environmental laws [84] clearly provides for the right to information but like the Constitution, these laws does not provide conditions and procedures under which the right of access to information may be exercised in Cameroon. The Constitution, however, indirectly guarantees that right through some international conventions that have been ratified by Cameroon [85].

Additionally, section 7 (2) of 1996 Environmental Framework Law posits that the conditions and procedures relating to the exercise of the right of access to information shall be subjected to a decree, which till date has not been promulgated. In the same strand of reasoning, under substantive laws such as the Law on Freedom of Social Communication [86], this right is implicit. This is evident under Article 49 (1) of that law which clearly provides that individuals shall be free to have access to official documents except otherwise provided by law. Nevertheless, the absence of a specific law on the subject makes it difficult for an individual to assert that right by demanding access to information [87]. It is therefore, doubtful whether local communities right to forestry information could effectively be exercised in Cameroon as well. To this end, the burning questions is that, does it suffice to simply inform the public of industrial exploitation project and reveal the possible impacts? What is the applicable sanction for failure to divulge information to

[governance.org/IMG/pdf/Right\\_Access\\_Info\\_Admin\\_Transparency\\_CMR.pdf](https://governance.org/IMG/pdf/Right_Access_Info_Admin_Transparency_CMR.pdf). Last accessed 19 November 2022.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> See the 1996 Environmental Framework Law, the 1994 Forestry Law among others.

<sup>85</sup> For example, the African Charter on Human and Peoples' Rights, art 9 (1) which expressly articulates that «Every individual shall have the right to receive information».

<sup>86</sup> Law No. 90/052 on the Freedom of Social Communication (FSC).

<sup>87</sup> During field work, I had previously visited MINFOF and approached the secretariat of forestry department for assistance in accessing its repository for copies of industrial exploitation contracts. To my dismay, i was fiercely turned down explaining that, they are confidential documents between MINFOF officials and the exploitation company only.

<sup>78</sup> This defunct Ministry have been separated into two namely, the Ministry of Territorial Administration and Ministry of Decentralization and Local Development.

<sup>79</sup> Fomété, T., (2001), The Forestry Taxation System and the Involvement of Local Communities in Forest Management in Cameroon. Rural Development Forestry Network, Network Paper 25b (ii), ODI, London. See also Bigombe L. P. and Dabire A., B., (2003), *Gérer Autrement les Conflits Forestiers au Cameroun*. UCAC, Yaoundé, Cameroon, p. 32.

<sup>80</sup> Sustainable Development Networking Programmed (SDNP), 'Cameroon: Bridging the IT Gaps' (UNDP) <[www.undpegov.org/sdn/stories/cameroon.html](http://www.undpegov.org/sdn/stories/cameroon.html)> Last accessed 8 October 2022.

<sup>81</sup> Citizen's Governance Initiative (CGI), 'The Right to Information and Administrative Transparency in Cameroon' (Yaoundé, Imprimerie Saint Paul 2010) <[www.citizens](http://www.citizens)



local communities? These leading questions are addressed in this Section of the work.

That said, it is significant to note that the lack of adequate conditions and procedures relating to the exercise of the right of access to information has prompted the government to resort to intimidation and incessant non-disclosure practices relating to information requested by the public and civil society organizations when executing major projects such as those involving multinational corporations [ 88 ] involved in large scale industrial forestry exploitation. During the Chad-Cameroon Oil and Pipeline project for example, it is reported that the government used these tactics both in the preparatory and execution phases of the project against the local communities [89].

Also, it must be recalled that in the case of an award of forest concessions contracts, the information meeting between Exploitation Company and adjacent communities is supposed to take place during the three-year start-up period under the temporary operating agreement (*convention provisoire d'exploitation*). in this light, there is a wide range of opportunities for participation and representation, as meetings 'take place directly between the parties or under the mediation of the administrative authorities (SDO, DO or head of district) and forestry (departmental delegates, forestry posts chiefs)' [90]. Paradoxically, information meetings are regarded by many logging companies as a formality, and there is little evidence of serious engagement in that direction. As a result, local officials and the company are generally cursory in their discussions, for example telling communities that the company has already paid all the necessary taxes to the state living out pertinent issues directly affecting them. There is also little information on how frequently these meetings will or should take place, given that in the course of a 30-year concession, it is appropriate to renew the social clauses on a regular basis [91].

However, neither the forestry nor environmental law provide for sanctions and remedies if local community's right to gain access to information is refused, and does not provide clear procedures and conditions to enable them gain access to information [ 92 ]. Consequently, this practice eventually have perverse effects on communities' enjoyment of those rights they are given under national law, and also their ability to monitor and report about infringements of laws governing industrial forestry exploitations to forests officials. To ensure the sustainability of industrial forestry, we therefore, suggest that the right of access to environmental information should be expressly stated in the Cameroon constitutional and forestry law provisions respectively, as it is in African countries like South Africa, Zimbabwe and Uganda, where the right is explicitly provided for in their constitution respectively [93], as well as the enactment of information laws in reinforcing the constitutional provisions. In Zimbabwe for instance, their Environmental Management Act clearly articulate in Section 4 that "*every person has the right of access to environmental information.*" In this light, every good conscience individual or local communities should be given the right of access to environmental (forestry) information. As a consequence, it is not an overstatement to submit that a specific legislation on environmental information with forestry inclusive, to be put in place in Cameroon to enhance accountability for good governance in the forestry sector.

### ***The Right to Public Participation***

It has been clearly demonstrated above that local communities' participation is crucial in ensuring good governance and sustainability in the forestry sector in general and industrial forestry exploitation in particular. Despite the desire to promote, ensure and increase the participation of local communities in sustainable management of industrial forestry, Alemagi *et al.*, argue that in practical terms local communities rarely exercise this right. Local communities appear to be mere observers to the decision-making processes as opposed to meaningful and active participants [ 94 ]. This supports the argument that public participation in Cameroon is just a formality that exists only on paper. In this light, it is apposite to say that the right to public participation in decision-making processes in Cameroon is more of a myth than a reality. As aforesaid, Section 23 of the forestry law provides that forest management plans (FMP) must be submitted to the Minister of Forestry for approval. This compels logging companies to ensure the participation of local communities during the preparation of such plans so as to ensure the sustainability of forest resources. FMPs seem to provide a platform for agreements between logging companies

<sup>88</sup> Ashukem, J.C., (2016), Op. Cit., P.235-236.

<sup>89</sup> Ibid.

<sup>90</sup> Agreco and CEW, (2011), (hereafter labelled Agreco and CEW), *Rapport Etude sur les petits titres d'exploitation forestière au Cameroun à la lumière de la lettre circulaire 924/C/MINFOF/SG/DF du 23 septembre 2009*, p.33.

<sup>91</sup> Yung, D., (2017), How much do communities get from logging? Social obligations in the logging sector in Cameroon, Ghana, Liberia and Republic of Congo, Fern, Brussels, Belgium, [www.fern.org](http://www.fern.org). p. 20. See also Perram, A., (2016), *Behind the Veil: Transparency, Access to Information and Community Rights in Cameroon's Forestry Sector*, FPP, <http://www.forestpeoples.org/sites/fpp/files/publication/2016/06/behind-veil-artwork-english-web-1.pdf>. Last Access 02/01/2023

<sup>92</sup> Ashukem, J.C., (2016), Op. Cit., P.247.

<sup>93</sup> See Section 32 and Art 41 of the South African and Ugandan constitutions respectively.

<sup>94</sup> Ashukem, J.C., (2019), Op. Cit. P.370.

and local communities where the latter could be involved and participate in decision-making insofar as the exploitation of forestry resources is concerned, as without such participation, the FMPs may not be approved by the Minister. But this is not the case because, FMPs are often approved by the minister without due regard to legal prescriptions such as those providing for the participation of local communities to that effect.

The law also provides that the forestry companies are obliged to organize a meeting with the local population before exploitation can start. In most cases the meeting is usually to inform the local people about the presence of the logging concessions around their community. Whatever the local people say is not very important, since the forest has already been allocated to the logging company through the concession. The local people no longer have the power to negotiate access to resources. Most meetings are perceived by the local people as set up merely to reach an agreement on how the gifts provided by the logging company will be shared. This process seems obvious that there is a sort of informal agreement between the logging company and the administrative authorities which prevents the local people from expressing their views in the meetings. This approach has been detrimental to the success of sustainable forests management because, local communities have perceived it as interfering with their traditional rights of communal ownership of land and forests resources. Flowing from this standpoint, we might be tempted to ask if the right of public participation in Cameroon is a mere symbolic right of intent rather than a meaningful and powerful right designed to oblige both the government and logging companies to ensure the effective participation of local communities in the decision-making processes of industrial forestry activities?

In most cases, public participation processes are often characterized by intimidation, bribery and corruption. In this regard, it is doubtful whether local communities participate in decision-making at all or whether their views and aspirations are ever taken into consideration prior to the implementation of industrial forestry activities. This lack of effective public participation by local communities in decision-making of industrial forestry activities is in direct contrast with the 1994 forestry law prime objective which is "the involvement of local communities in the management and protection of forests" [95]. To this end, it has been argued that the government's intention to enhance sustainable and inclusive forestry governance has turned out to be nothing but a mirage [96].

A striking example of lack of public participation in decision making though not directly on industrial forestry, is the case of the local population against the Kilum-Ijim Mountain Biodiversity Conservation project whereby, the government of Cameroon, in its effort to maintain the natural biodiversity of the Kilum-Ijim mountain forest, entered into a contract with the NGO Birdlife International to conserve the mountain forests. This decision was taken without involving the inhabitants who were all asked to quit the forests. As a result, the decision was never implemented due to resistance from the local population [97]. It is important that their views and opinions are considered before a decision is taken to commence the project, because of the anticipated environmental impact on the environment and their related rights and interests.

### ***The Right of Access to Justice***

In practice, although there is right of access to justice in Cameroon, local communities do not have right of access to justice. This is because the law does not regard communities as legal entity to sue per se rather, in order to exercise this right, the community concerned needs to be constituted as a legal entity or have the traditional leader act on their behalf. Article 20 of the 1995 Forestry Decree uphold this fact by providing that traditional or local authorities such as chiefs should constitute members of the committee [98]. This assertion holds true for community forests management where, for example, the law provides that in cases of breach of the management rules for a community forest, any public action against the perpetrators of such breach shall be at the instigation of the Forests Administration [99].

In addition, in Cameroon as in other African countries, poverty is a huge constraint to allowing local communities to effectively have access to courts to seek relief for violations of the procedural and substantive rights entitlement when large-scale developments projects occur [100]. However, law No 2009/004 was enacted to support and assist by enhancing the financial abilities of poor Cameroonians to gain access to courts through full or partial payment of related legal fees especially in the context of industrial forestry operations. To this end, legal aid in Cameroon has considerably eased the drawbacks associated with people's right of access to justice caused by want of financial means. It is believed that for people to effectively gain access to courts, legal aid must be timeously provided without delay. However, the reverse is true in Cameroon, where the legal aid commission is

<sup>95</sup> See Section 23 of the 1994 Forestry Law.

<sup>96</sup> Ashukem, J.C., (2016), Op. Cit., P.248.

<sup>97</sup> Tamasang, C.F., (2019), Op. Cit. P.149.

<sup>98</sup> Decision 1354/D/MINEF/CAB of November 26, 1999 fixing procedures of forests classification in the permanent State property.

<sup>99</sup> See Article 32(3) of the 1995 Forestry Decree.

<sup>100</sup> Ashukem, J.C., (2016), Op. Cit., P.245.

fraught with delays to the extent that it does not assist local communities to have access to justice [101].

Notwithstanding the above, it is argued that the clear absence of an express provision in the constitution on local community's right of access to justice could be a significant obstacle to the effective realization of the right and the protection of local communities' rights-based interests, especially in the context of industrial forestry activities.

### ***The Right to Free, Prior and Informed Consent***

In most cases the government allocates logging concessions without adequately consulting the local people and without proper monitoring on how the logging activity is actually carried out. Thus, local and/or indigenous people consider that their use rights to forest resources are not respected, and, as a result, perceive the logging companies as agents of destruction of their forests, their source of livelihood which they have had for ages [102]. In the same line of reasoning, forest-dependent communities consider forest resource management under state control as unfair and merely beneficial to industrial forestry companies. The local people believe that their rights and access to forest resources have been greatly reduced or altered by the logging companies, and they have difficulties negotiating and claiming their rights since they believe the state heavily favours logging companies.

### **Property Rights of Local Communities attached to Industrial Forestry**

The property rights of local communities' adjacent to forests concessions (industrial forestry) among others include: Usufructs Rights of Local Communities, Customary Rights to Land Ownership of Local Communities and the Right to Benefits and Compensation, as shall be discussed below.

### ***Usufructs Rights of Local Communities***

Despite the promising legal provisions guaranteeing the enjoyment of forests rights by local communities attached to industrial forestry, these rights are considered inadequate as their implementation has neither been appropriate nor effective. In most cases, these logging rights are either ignored, insufficiently recognized, or subject to abuse by logging companies since their implementation has not been effective. This reality is stifling incentives in the enhancement of sustainability of industrial forestry. However, one of the greatest challenges faced by forest people is that of uncertainty of their rights over access, use, and disposed of natural resources. This is evident from a reading of Section 8 (2) of the 1994 forestry law which clearly states that the ministers in charge of forestry, wildlife and fisheries may, by reason of public interest, and in consultation with the populations concerned, temporarily or permanently suspend the exercise of logging rights, when necessary after consulting the affected communities [103]. Thus, these rights seem precarious because MINFOF may temporarily or permanently suspend the exercise of such rights by the local communities as may be deduced from the above provisions.

In the same manner, Article 26 (2) of the Decree implementing the 1994 Forestry Law strictly forbids forests concessions neighboring populations from selling or exchanging wood from trees harvested in order to meet their domestic needs for timber and firewood. From the above provision, it is clear that although user rights is free of any financial charges to acquire permits, it should however be understood that access by local communities exercising these user rights is free only in the sense that they do not need permits to harvest forest products [104]. This arguably demonstrates the deliberate will of the government not to relinquish local communities' rights to use their forests as claimed from generation to generations.

Furthermore, under Section 26 (2) of the 1994 Forestry Law, logging rights of the local population guaranteed under Section 26 (1) may be limited if they are contrary to the purpose of the forests. Such legal restrictions are harsh on communities living in close proximity to such forest resources as their subsistence entirely depends on them. Apparently, this does not create incentive for industrial forestry sustainability. Furthermore, that the implementing decree of the forestry law already places numerous categorical restrictions on local communities' user rights

<sup>101</sup> Ibid.

<sup>102</sup> Willy, L.A., (2011), *whose land is it? The status of customary land tenure in Cameroon*. A report produced for Rainforest Foundation UK, FERN and Centre for Environment and Development, Yaoundé, Cameroon. See also Oyono, P.R., Ribot, J.C. And Larson, A.M., (2006), *Green and black gold in rural Cameroon: natural resources for local governance, justice and sustainability*. Policy Research Paper 22. World Resources Institute, Washington DC. See also, JUM, C., DIAW, C., NGUIBOURI, J. and ZOA, M., (2007), Enhancing sustainable forest management in Cameroon through a model forest based approach. *International Forestry Review* 9(4): 890-900. See also DIAW, M.C., (2005), Modern economic theory and the challenge of embedded tenure institutions: African attempts to reform local forest policies. In: KANT, S. and BERRY, A. (eds.) *Sustainability, institutions and natural resources: institutions for sustainable forest management*. Springer, the Netherlands. pp. 43-81.

<sup>103</sup> See also, Article 26 (1); Article 36; Article 57 respectively. Article 57 includes the right to fell timber for personal use.

<sup>104</sup> Ngwasiri, C.N. et al., (2002), "Legislative and Institutional Instrument for the Sustainable Management of Non timber Forest Products in Cameroon, Past, Present and Unresolved Issues", CFDP, P. 32.

(prohibiting use rights in certain types of classified forests, and “regulating” them in other permanent forests, including production forests) is evident [105]. Also, the exploitation of forest, animal or fish products by local populations is only limited for personal use as per Article 4 of the 1995 forestry Decree.

To advance further, the fact that Section 26 (2) of the 1994 Forestry Law restricts local communities rights to use forests products only for domestic purpose and also prohibits any sale or exchange of wood from cut trees, is a form of injustice and inequality in the sustainable management of forests resources attached to industrial forestry. We uphold this argument because, the principal forest resources such as timber and wildlife in Cameroon belong to the state and can only be harvested with permission or permits, and because of poverty in particular, it is extremely difficult for rural people to fulfill this cumbersome conditions required to obtain permit to exploit forest resources for commercial purposes. With this negative impression, local communities have to engage in agriculture, hunting and gathering in areas which were designed for logging activities for livelihood, thereby generating conflicts between forest-dwellers and industrial logging companies [106]. This is a complete violation of international conventions duly ratified by Cameroon. For instance, Articles 1 and 2 of the International Covenant of Civil and Political Rights of 1966 state that *“In no case may a people be deprived of its own means of subsistence.”* Also, the African Charter on Human and Peoples Right of 1981 clearly states that:

All peoples shall freely dispose of their wealth and natural resources, forest resources inclusive. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation [107].

Otherwise, limiting their rights over forest resources and to some extent excluding forest people from resources use will be detrimental to sustainability objectives, given that local or indigenous peoples in Cameroon have always perceived logging concessions

as interfering with their ownership rights of their lands and natural resources. This creates insecurity which is a potential driver for unsustainable activities which do not favour sustainability. With these, one can not hesitate to admit that the Cameroonian legislator’s intention was not actually to give legal protection and recognition to local communities’ customary rights to use forest resources.

In sum, a critical assessment of relevant forestry laws revealed that the bundle of rights available for forests local communities tend to be more limited to use and management rights and often for a limited period of time (temporal rights), despite the long term investment needed in many forest areas for sustainable management [108]. In line with this opportunity to sustainably manage forests, a complete bundle of rights could also promote better protection of standing forest and restoration of degraded forest [109], as well as providing a foundation for sustainable livelihoods and contributing to the fulfillment of human rights and cultural survival of local communities. Therefore, this study argues that only when local communities are given practical recognition and access rights to forests resources will sustainable management of industrial forestry be achieved in Cameroon.

#### ***Customary Rights relating to Land Ownership by Local Communities***

Officially, with the advent of the Ordinance of 6<sup>th</sup> July 1974 on Land Tenure Ordinance in Cameroon, formal land rights prevail over customary land rights while all ‘unoccupied’ land (that is, land that is not formally adjudicated) is officially government-owned [110]. Till date, the legal status of land ownership in Cameroon is mostly conditioned by the concepts introduced in the territory by successive colonial administrators from the 1880s to the 1990s [111].

<sup>105</sup> Article 3 du Décret No. 95/531/PM du 23 août 1995 fixant les modalités d’application du régime des forêts (1995 Forest Decree) indicates outright prohibitions of hunting and gathering in the following classified forests: integrated ecological reserves; protection forests; recreation forests; teaching and research forests; botanic gardens.

<sup>106</sup> Cleuren, H., (2001), Paving the Road for Forest Destruction. Key actors and driving forces of tropical deforestation in Brazil, Ecuador and Cameroon. University of Leiden, Centre of Environmental Science.

<sup>107</sup> See Article 21 of the African Charter on Human and Peoples Right of 1981.

<sup>108</sup> A good example is in Community Forestry with 25 years lifespan under Section 37, 38 and 39 of the 1994 Forestry Law.

<sup>109</sup> Tamasang, C.F., (2019), Op. Cit. P.150.

<sup>110</sup> Tchoungui, R., S. et al., (1995), “Structural Adjustment and Sustainable Development in Cameroon”, ODI Working Paper no. 83, Overseas Development Institute/World Wide Fund for Nature, London. P.29.

<sup>111</sup> Nach, M.C., (2000), “La chefferie traditionnelle au Cameroun: ambiguïtés juridiques et dérives politiques” in *Africa Development*, vol. 25 (3-4). See also Seignobos, Christian, “Sortir de l’oralité : un moyen de reconnaissance des droits fonciers au Nord-Cameroun.” in Jamin J.Y., Seiny Boukar L. and C. Floret, *Savanes africaines : des espaces en mutation, des acteurs face à de nouveaux défis. Actes du colloque, mai 2002, Garoua, Cameroun. Prasac, N’Djamena, Tchad - Cirad, Montpellier, France. 2003.*



To be illustrative, Article 17 of the 1974 Land Tenure Ordinance [112] gives customary communities occupying or using land since 6<sup>th</sup> August 1974, the right to occupy or use the said land, and to apply for a land certificate. However, these rights do not amount to ownership, nor do they guarantee perpetual use of the land. Thus, these rights remain vulnerable to extinguishment when land is allocated by the State to third parties. While Article 8 of the 1974 Land Tenure Ordinance provides that ownership of land can only be claimed by possession of a land certificate, article 1 of Decree No. 76-165 [113] states that “The land certificate shall be the official certification of real property rights”. This presupposes that without a land certificate one cannot claim ownership of real property (land) no matter how long one has been living on the land [114].

A circular letter issued on July 1, 1976 by the Minister in charge of lands at the time to all land consultative boards in the country confirmed this abolition as it clearly stated that the 1974 Ordinance “*a mis fin a tous les droits fonciers coutumier au Cameroun*,” meaning that the Ordinance had put an end to all customary land rights in Cameroon. The upshot of these legal provisions is that customary ownership of land is not recognized under the 1974 Land Tenure Ordinance. This created a certain degree of uncertainty regarding land ownership and tenure rights of local communities. The present situation, therefore, is that the vast majority of land which was occupied and exploited by the local people is considered as national land. These lands remain formally owned by the State, and customary rights and land use remain vulnerable to allocation for other uses, usually with limited or no compensation to affected communities.

A superficial reading of article 1 of Decree No. 76-165 reveals that registration guarantees the official recognition of the applicant’s title; it serves as security for title to land and also facilitates conveyance based on what is known as mirror and insurance principles. The importance of recognition of title to land is even reinforced with the coming into force of the Treaty for the Harmonization of Business law in Africa (OHBLA) commonly known by its French acronym as OHADA

[115]. Today through this treaty a good number of Uniform Acts (UA) have been enacted among which is the Uniform Act on securities which emphasizes on security or collateral such as land and landed properties as guarantee for loans [116]. Unfortunately, though the local people own large hectares of land, they cannot use these lands as security for loans due to the simple fact that they do not have titles over the said lands. Access to bank loans will enable people to establish alternative income generating activities that will divert their attention from illegal and wanton exploitation of forest resources. This is problematic because most of these communities depend on customary rights over land for their livelihood and survival. It is believed that when traditional land rights are taken away from the people, they are forced to use resources illegally, treating them as “common property,” with no long term sustainable plan in mind [117]. Consequently, any sustainable management attempt cannot be met because the local population has no incentive to protect a property whose rights have been taken away from them.

In fact, from the above analysis, Customary ownership of forest lands and its valuable resources are not recognized and at times “hijacked” from local populations, making them tenants of the state and subject to state regulations, as all land without a registered land title is treated as state land implying that customary landholdings are also treated as state-owned land including their forests. This presented a perverse incentive for communities in ensuring sustainability of industrial forestry exploitation. It is within this context that we are tempted to say that communities are universally disenfranchised from full property rights to their customary lands. To this effect, formalized and secured land ownership rights of local communities in the land legislation are primordial if sustainability is to be achieved in the industrial forestry sector.

Indeed, there is a general idea that land tenure rights of local communities were established even before the state came into existence. It is, therefore, crucial that forest dependent communities be given more forest ownership and management rights. We also argued that customary rights to land ownership should be recognized and respected, because of the ecological, economic, social and cultural values of the forest to the communities concerned. Unless such rights are recognized and protected, local communities will not be motivated to participate in the sustainable management of forests particularly, industrial forestry in the country. In addition, a well-defined property right is conducive for sustainable management of resources. But by

<sup>112</sup> The 1974 Land Tenure Ordinance which was enacted to regulate land rights serves as a uniform law on land issues in the whole country until date.

<sup>113</sup> Decree No. 6-165 of 27 April 1976 to establish the conditions for obtaining land certificates as amended and supplemented by Decree No. 2005/481 of 16 December 2005.

<sup>114</sup> Holders of livrets fonciers and of certificates of occupancy had to convert them into land titles, which required expensive land surveys and, as a result, were difficult to obtain by poor people.

<sup>115</sup> Organisation pour L’Harmonisation du droit des Affaires en Afrique.

<sup>116</sup> See Article 119 of the U.A on Securities.

<sup>117</sup> Hardin, G., (2000), “Tragedy of the Commons.” In Economics of the Environment, Ed., R. Stavins. Addison Wesley Longman, p. 323.

establishing registration as the only means of obtaining land ownership and by imposing a registration procedure that rural people find it difficult to fulfill, the legislators' intention to unjustifiably expunge customary ownership rights over land and its associated forest resources is revealed.

This process has failed to comply with international treaties duly ratified by Cameroon. For example the Universal Declaration of Human Rights of 1948 declared that "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property" [118]. The Convention on the Elimination of Racial Discrimination of 1965 goes further to confirm the right to own property (land) alone as well as in association with others" [119]. The African Charter on Human and Peoples Rights of 1981 proceed by stating that "The right to ownership of property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws" [120].

Since the majority of rural people are not aware of the statutory land laws and given the fact that the legal steps to be followed to obtain a land title are cumbersome and expensive, the customary land tenure system prevails despite the existence of statutory laws [121]. From the foregoing, we are convinced that customary land ownership simply does not exist in the eyes of land law in Cameroon. At the very least, it is of vital importance that forest peoples be allowed continued access to natural resources, and to exercise their rights of ownership based on their customs. This is because uncertainty of land tenure poses a potential threat to those whose rights have not been clearly defined. However, the lack of recognition of local

community rights in the forest greatly contributes to social inequity and undermines local people's incentives to invest in sustainable management.

In sum, weak property rights simply reduce the incentive to manage forests in a sustainable manner [122]. Moreover, land markets will not develop efficiently, nor will efficient levels of forest investment be achieved, if property rights are not recognized [123]. We also hold that the non-recognition of customary tenure does not give security to land, which by implication negatively influences the proper management of the forest.

Consequently, this weakens the ability of local communities to defend their interest against logging companies that seek to exploit their resources. This was evident in the case of *Kimbi Moses Ndoh v. Groupement D'Entreprise Trapp-Strabag Belfinger+ Berger* [124]. In this case, the Wum High Court held that the Mejang village community had no basis on which to claim damages for trespass and destruction of forest resources on their customary land against a German construction company, because the land and resources were considered State private property. It should be noted that even though this litigation never emanated from concession areas for industrial forestry under the 1994 forestry law, the legal implications remain the same to serve as precedents.

Therefore, we submit that land-tenure laws should to be redefined to provide incentives for local peoples to engage in forest conservation and sustainable management practices. It is thus recommended that the legislator should extend the rights of possession of forest resources of local communities to a right of ownership.

### ***The Right of Local Communities to Benefits Sharing of industrial forestry proceed***

At first sight, a reading of Section 66 of the Forestry Law in line with article 243 of the 1998 Finance Law, one may be tempted to conclude that all is perfect and transparent with regard to benefits sharing of revenues derived from industrial forestry exploitation in Cameroon. But as the saying goes, "*there are always two sides to a story.*" The annual forestry revenues have sometimes been a cause of great concern, controversy

<sup>118</sup> See Article 17 of the Universal Declaration of Human Rights of 1948.

<sup>119</sup> See Article 5 of the Convention on the Elimination of Racial Discrimination of 1965.

<sup>120</sup> See Article 14 of the African Charter on Human and Peoples Rights of 1981.

<sup>121</sup> Vabi, M.B. and Sikod, F., (2000), Challenges of Reconciling Informal and Formal Land and Resource Access Tenure: Evidence from WWF-supported Conservation Sites in Cameroon. Paper presented at the 2<sup>nd</sup> Pan African Symposium on the Sustainable Use of Natural Resources in Africa, Ouagadougou, Burkina Faso, coordinated by IUCN. See also Nguiffo, S., Kenfack, P.E., Mballa, N., (2009), Historical and contemporary land laws and their impact on indigenous peoples' land rights in Cameroon. In: *Land Rights and the Forest Peoples of Africa: Historical Legal and Anthropological Perspective. Forest Peoples Programme.* <http://www.rightsandresources.org/documents/files/doc1202.pdf>. Last accessed, 12.11.2022.

<sup>122</sup> Contreras-Hermosilla, A., (2000), The Underlying Causes of Forest Decline. CIFOR, Occasional Paper No. 30, Bogor, Jakarta. See also CED, Fern, FPP, IIED, Okani, (2017), *Community forestry in Cameroon: a diagnostic analysis of laws, institutions, actors and opportunities.* IIED, London. P. 14.

<sup>123</sup> Gillis, M.; Vincent, J.R., (1998), Deforestation and Forest Use: A Comment. In: The World Bank Research Observer. Vol. 13, No. 1, The World Bank, Washington DC, pp. 133-140.

<sup>124</sup> WHC/2/98 (unreported).

and division. Over the years, a corpus of overwhelming evidence has surfaced over this revenue earmarked to adjacent local communities. This is because, it is far-fetched in Cameroon to imagine that local communities have a role to play in setting priority for the distribution and investment of industrial forestry exploitation revenue.

A widespread lack of implementation of these tax allocations to bordering villages has been reported [125]. The Ministries of Forestry and Finance negotiate the terms of benefit-sharing with no consultation process with the local community before fixing the amount to be paid. This is contrary to the requirement to hold a briefing meeting during which the communities through the traditional authorities are notified of the envisaged amount [126]. This meager 10 percent though insignificant compared to what exploitation or timber exploitation companies (investors) extract from the forest and the revenue they pay into the Public Treasury, is the subject of corruption, embezzlement and mismanagement. To this effect, benefits scarcely ever reach the concerned local communities. This excludes many local communities from the benefit-sharing process as they have little or no say on how this fund is spent, and therefore benefit little from them as local development [127]. Consequently, it leaves communities in a worse situation than before, because in addition to the irreversible environmental damage caused by the exploitation, they do not receive benefits to mitigate the damage. This dwindles the motivation of local communities to acquire and manage the forest sustainably. They consider forest resource management under state control as unfair and merely beneficial to industrial forestry companies [128].

Worse still, while the 10 percent share of revenues was originally meant to be paid directly to the

village, a joint administrative decision effectively recentralizing this forest revenue allocation [129]. Due to lack of information on the amounts received at the municipality [130], this money is usually syphoned by the mayor. Efoa lamented this nonchalance in the following terms [131]:

*The mayor is everything: manager, president, treasurer.... We think that, if the local populations are to benefit from the development of the forests, they must truly assume all of the responsibilities that are attached to it. The mayor already manages the 40 percent of fees that is allotted to the Council, according to the forestry law; now he takes our place in managing the 10 percent given to the local communities.*

Without smidgeon of contradiction, this scenario has resulted to several conflicts amongst forest communities as well as with timber exploiters. For instance, Yamo opines that, a community was informed in 2009 that it had benefited from more than 125 million CFA Francs for the construction of social projects, but this money was subsequently diverted by municipal authorities. Again, local citizens have filed a complaint but, four years later, the case is still pending [132]. Also, a municipality that annually received

<sup>125</sup> Egbe, S.E., (2001), "The concept of community forestry under Cameroonian Law". *Journal of African Law* 45: 25-50.

<sup>126</sup> Decree No. 96/237/PM of 10 April 1996, fixing the modalities of the functioning of the special fund for Forestry, Wildlife and Fisheries.

<sup>127</sup> Mbile, P. and Okan, D., (2009), *achieving customary-statutory rights compromise in Cameroon's Forest & Wildlife Policies: Extending forest benefits sharing to communities living in wildlife protection zones and to indigenous groups in Cameroon*. World Agroforestry Centre.

<sup>128</sup> Chia, EL, OA Somorin, DJ Sonwa & AM Tiani, (2013), "Local vulnerability, forest communities and forest-carbon conservation: case of southern Cameroon" 5(8) *International Journal of Biodiversity and Conservation*, p. 498-507. See also Awung, NS & R Marchant, (2016), "Investigating the role of the local community as co-managers of the Mount Cameroon National Park Conservation Project" 36(3) *Environments*, p. 1-22.

<sup>129</sup> Cotula, L. and Mayers, J., (2009), *Tenure in REDD: Start-point or afterthought?* Natural Resource Issues No. 15. London, UK: International Institute for Environment and Development (IIED). See also Oyono, P.R., (2004), "One step forward, two steps back? Paradoxes of natural resources management decentralization in Cameroon". *Journal of Modern African Studies* 42(1): 91-111. See also Bigombé, P., (2003), *The decentralized forestry taxation system in Cameroon. Local management and State logic*. Working Paper 10, Environmental Governance in Africa Series. Washington, D.C., the World Resource Institute. P. 33-40. See also Oyono, P.R., (2004), *Assessing Accountability in Cameroon's Local Forest Management. Are Representatives Responsive?* African Journal of Political Science 9(1), pp. 4.

<sup>130</sup> Milol & Pierre, (2000), *Impact de la Fiscalité Décentralisée sur le Développement Local et les Pratiques d'Utilisation des ressources forestières au Cameroun*, Volet Additionnel de l'Audit Economique et Financier du Secteur Forestière; cited in Poissonnet, (2005), *Mise en Œuvre de la Gestion Forestière Décentralisée au Cameroun : Impacts Politiques, Socio-Economiques et Environnementaux d'un Processus en Apprentissage*; p.32; [https://agritrop.cirad.fr/525856/1/document\\_525856.pdf](https://agritrop.cirad.fr/525856/1/document_525856.pdf) . 61 Cameroon VPA, Legality Indicator 4.2.

<sup>131</sup> Efoa, S., (2001), "Fonctionnement des comités de gestion de la redevance forestière dans l'arrondissement d'Ebolowa (Sud-Cameroun)." Field report. Yaoundé, Cameroon. P. 3-6.

<sup>132</sup> Yamo, (2015), *Représentation locale compromise dans la gestion de la rente forestière communautaire au*

between 700 million and 1.3 billion CFA Francs under the RFA over many years still has no proper road, electricity is rationed to daytime hours, and the town hall site has been abandoned for years. It has also been reported that some mayors have been detained for reasons relating to the mismanagement of the RFA earmarked for adjacent local communities harboring forest concessions [133].

Although initially local communities are usually dissatisfied with the uneven distribution and the actual amount awarded to them, the situation worsened when the government suppressed the 10% royalties under the 2015 Finance Law [134]. In this light, 50% profits goes to the state, 50% profits to local council harboring industrial exploitation activities and 10% profits to the state treasury for the concerned administration [135], to be payable in three equal installments [136]. Despite a civil society campaign for the restoration of the 10% [137], it has been reduced to one quarter (6.75%) in the 2017-2019 Finance Law. This is compounded by the unfair procedures for the transmission of the revenue to the local communities, which must pass through unaccountable local councils

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*sud-est du Cameroun, Working Paper 12, Initiative pour la gouvernance démocratique des forêts (RFGI), Soutien aux moyens d'existence tirés des forêts par la représentation locale, p.20; <https://portals.iucn.org/library/sites/library/files/documents/RFGI-WP-012.pdf>.*

<sup>133</sup> Investir au Cameroun, 12 November 2015, *Les riverains des forêts réclament la restauration de leur 10% sur la redevance forestière*; [www.investiraucameroun.com/gestion-publique/1211-6880-cameroun-les-riverains-des-forets-reclament-la-restauration-de-leur-10-sur-la-redevance-forestiere](http://www.investiraucameroun.com/gestion-publique/1211-6880-cameroun-les-riverains-des-forets-reclament-la-restauration-de-leur-10-sur-la-redevance-forestiere), Last accessed May 2022.

<sup>134</sup> Ministerial order No.0076/MINADT/MINFI/MINFOF (26/06/2012) that allocated 10% of the forest incentives to communities in forest exploitation areas has been substituted by circular No 004/MINFI/DGI/L of June 2015 by the general directorate of taxation. This spells out procedural requirements for tax provisions of law No 2014/026 of 23 December 2014 relating to the 2015 finance law of Cameroon. In particular, it established to allocate 10% of the proceeds of annual forestry royalties to tax recovery agents of the Ministry of Finance and local councils.

<sup>135</sup> See Article 162 of circular no. 00000683/C/MINFI of 31 December 2014 for the execution of the finance law for the 2015 financial year.

<sup>136</sup> See Section 243 of the Finance Law. The three installments datelines for payment are 15 March, 15 June and 15 September.

<sup>137</sup> CED, Fern, FPP, IIED, Okani, (2017), *Community forestry in Cameroon: a diagnostic analysis of laws, institutions, actors and opportunities*. IIED, London. P. 14.

and under the management of corrupt elites. By extension, this constitutes a serious disincentive for cooperation and collaboration from the forest adjacent communities, thereby jeopardizing any sustainable management endeavors out of frustration. On this note, one key actor in charge for the management of this *Annual Forestry Royalties (RFA)* in the Littoral Region clearly opines in the following words:

*“Depuis Janvier 2015, la suppression des 10% des communautés a créé au sein des communautés un découragement à dénoncer les infractions commises par les exploitants forestiers illégaux, car nous n'avons plus rien à gagner. Vous verrez même certaines communautés se rendre davantage complice de cette exploitation illégale.”* [138]

From the above expression, we are tempted to say without iota of doubt that, the resulting effect is poverty and misery which remains endemic in most forest communities that accommodate logging concessions with the two main beneficiaries of revenues being the government and the forests exploitation companies.

It is our contention that in revising the provision of forestry legislation on benefit sharing mechanism, forest communities should be given the opportunity to outline their needs in terms of development and social amenities which will enhance and foster sustainable local development. Such a mechanism should not only look at rules and modalities for distribution, but also it should consider how conflicts arising in the process can be resolved so that incentives do not generate countervailing reactions [139]. It is also imperative to consider paying the revenues directly into the account of forest communities without going through the local council coffer before transmitting to adjacent local communities. This is because, the legal guarantee of forest rights of local communities in forest management tends to lower deforestation and forest carbon emissions as stakeholders with secured forest rights will be motivated to maintain or enhance sustainable practices.

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<sup>138</sup> Ce sont des propos tenus en 2016 par Luc Ndebe, président du Comité riverain de gestion et de suivi de la redevance forestière destinés aux communautés riveraines de Mana'a-Ndokok, dans l'arrondissement de Ngwei, région du Littoral. Ils sont rapportés par TCHANGO, W., une loi des finances sur la RFA adoptée pour exclure les communautés, in *Ressources* (Bulletin d'information destiné à la promotion de la gestion durable des ressources naturelles), no. 001, Février 2016, p.16.

<sup>139</sup> Tamasang, C.F., (2019), *“Forests, forest rights, benefit-sharing and climate change implications under Cameroonian law”*, In *Law, Environmental and Africa*, Law and Constitution in Africa, Vol. 38, 1<sup>st</sup> Edition, Nomos, Verlagsgesellschaft, Baden-Baden, Germany, P.154.



To surmount our argument, the benefit sharing mechanism should be based on equity in the broad sense which is understood, as what is good, just, honest and transparent in human transactions. In other words, the benefit sharing mechanism should be based on the principle of *pacta sunt servanda* which stipulates that “every treaty in force is binding upon the parties to it and must be performed by them in good faith” [140].

From the foregoing, it is apparent that fair and equitable revenue-sharing with local communities increases their stakes in sustainable management practices [141]. Conversely, unfair distribution of benefits can spur intentional and retaliatory degradation of forest resources as well as other undesirable conflicts. In fact, a fair and equitable benefit-sharing mechanism that is well implemented can incentivize sustainability and forest conservation by forest rights holders and can lead to decreased pressure on forest ecosystems while, unfair and inequitable benefit-sharing mechanism is a disincentive to sustainability and forest conservation and can lead to increased pressure on forest ecosystems.

We argue that if the proposed benefit sharing framework is not considered by policy-makers, forest revenue will continue to be distributed based on the existing flawed benefit sharing mechanism, as this revenue will continue to accrue to the state, local councils and elites at the detriment of local communities, undermining sustainable forest management which is not healthy for the sustainability of industrial forestry.

## CONCLUSION AND POSSIBLE SOLUTIONS

In this paper, we have canvassed the right of local communities in Cameroon, and appraised their level of implementation on the ground. We have examined the legal framework for the protection of local communities procedural and property rights and interests in Cameroon. It emerged from the discussion that the procedural rights of local communities in Cameroon consist of the rights of access to information, public participation and access to justice, while property rights include rights to land ownership, usufructs rights and rights to benefit and compensation. The law to an extent makes provisions for these procedural and property rights attached to industrial forestry, but in most instances do not recognize and properly guarantee the protection of local community rights and interests during the implementation of industrial forestry activities. We have also examined a set of sui generis rights, which are yet to be given rightful attention in policy-making processes. We have argue

therefore that although Cameroon’s forestry legislation puts in place a bundle of rights attached to the forests from timber exploitation, the forests rights are not adequate and are plagued with inherent flaws. So, although Cameroon forestry legislation establishes certain rights relating to industrial forestry and a mechanism for benefit-sharing of profits, these rights are not adequate for local communities involved in forest management. By extension, they do not promote forest sustainability.

In terms of public participation, for instance, it was noted that although the state is committed to promote a culture of inclusive and participatory governance in the governance of public affairs, rules, procedures and processes relating to public participation are flawed, making it difficult to ensure effective participatory governance. In addition, lack of public access to information impedes people the ability of participate and make informed decision during participatory processes on project activities such as industrial forestry projects. While the right of access to justice is necessary to protect and provide remedies to local people’s rights and interests, it was noted that poverty continues to be a major obstacle for local people to gain access to courts.

Without mincing words, we are therefore, tempted to say that the sustainability of industrial forestry is hindered by inadequate and inappropriate recognition of forest rights reserved for local communities by law. In order to increase a greater awareness and arouse a stronger and more positive response among the local people, they should not just be invited to workshops, symposiums and conference [142], but their customary and other related rights as highlighted above, should be taken into consideration in determining the ownership and management of forests. This is because of the incompatibility [143] that exists between the forest law and land legislation. The relation between forestry regulation and land use is very pronounced in Cameroon. Even though landowners are free to exercise property rights over their land, this must be done in consonance with the provisions of both the forestry and land regulations [144].

<sup>142</sup> Ewang, S.A., (1997), “Role of Local Communities in the Management of Forests and Sustainable Development: The Experience of CERUT in Forest Zones of Cameroon”, *Annales de la Faculté des Sciences Juridiques et Politiques*, Université de Dschang, Tome 1, Volume 1, p.190.

<sup>143</sup> For instance section 8 of the forestry law defines community rights to forests products. The problem is which indigenous rights are the law referring too, since community or indigenous land tenure had been abolished by the 1974 lands ordinance.

<sup>144</sup> See Section 2 of the Forestry Law.

<sup>140</sup> See Article 26 of the 1969 Vienna Convention on the Law of Treaties.

<sup>141</sup> As per Article 15 (3) and (7) of the CBD, benefits should be shared in a fair and equitable way and that such sharing shall be upon mutually agreed terms.

In the same vein, the ownership of forest in Cameroon is governed by both the provisions of the land tenure and forestry law as can be seen from the 1994 Forest law, which states “the ownership of forest shall be determined by the regulations governing land tenure and state lands and by the provisions of this law” [145]. Thus, if the community’s rights to resources are assured for a long term, it is evident that such community will manage the resources sustainably, irrespective of the fact that the land belongs to someone else (the entire nation).

Notwithstanding these difficulties, the application of the forestry law, which seems to accord greater rights over forest resources to the local people, is inextricably tied to the land legislation. The problem at stake is to know how effective will the local people be involved in forest management, given that the abolition of indigenous and local community land rights is difficult to reconcile with some of the rights of access to forest resources? By depriving communities of recognition that they are the lawful owners of forested and rangeland resources, the law removes their greatest incentive to use these assets in a sustainable way, let alone adopt more active and police systems for monitoring industrial logging activities.

We therefore conclude in clear terms that the role of the Cameroonian government in enhancing sustainability of industrial forestry is greatly hindered due to inadequate and inappropriate recognition and protection of forests rights reserved for local communities involved in forests management. Also, the sustainability of industrial forestry can only be enhanced by the establishment of adequate forests rights for relevant local communities involved in forests management, and the effective implementation of a fair and equitable benefit sharing mechanism aimed at incentivizing sustainable forest management. This trunk from the fact that, an important challenge to Cameroon’s industrial forestry sector seems to be lack of recognition and proper guarantee of the protection of local communities’ rights. Consequently, to enhance the sustainability of industrial forestry sector, the need remains to strengthen, inter alia, recognized, formalized and secured customary tenure right of local communities as well as sufficient and adequate protection of other rights of these local communities attached to industrial forestry in Cameroon.

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<sup>145</sup>See Section 6 of the Forestry Law.