

Customary Land Rights of Local Communities and the Implementation of REDD+ in Cameroon



Jean-Claude N. Ashukem and Beng Simon Keluh

Abbreviations

FCPF	Forest Carbon Partnership Facility
LCB	Land Consultative Board
MINEF	Ministry of Environment and Forests
MINEP	Ministry of Environment and Nature Protection
MINFOF	Ministry of Forestry and Wildlife
MINFOF	Ministry of Forests and Fauna
R-PIN	Readiness Plan Idea Note
R-PP	Readiness Preparation Proposal
TFAP	Tropical Forest Action Plan
UNFCCC	United Nations Framework Convention on Climate Change
WWF	World Wide Fund

1 Introduction

The need to reduce global emissions from deforestation and forest degradation has in recent years brought to the fore the thorny issue of land tenure in developing countries, including Cameroon. The interwoven relationship between land tenure and REDD+ demonstrates that tenure rights could positively prevent or reduce, as the case may be, deforestation and forest degradation to increase forest carbon

J.-C. N. Ashukem (✉)

Global Environmental Law Centre (GELC), University of the Western Cape, Bellville, South Africa

B. S. Keluh

North West University, Potchefstroom Campus, Potchefstroom, South Africa

stock.¹ The proliferation of the global green economy agenda characterising the twenty-first century, portrays overlapping competing interests and claims over rights and ownership in forested land as one of the contemporary challenges facing the government of Cameroon. This challenge makes it difficult for the government to align its economy with the global REDD+ agenda.²

In Cameroon, as it will be discussed in this chapter, while customary law recognises forested land as constituting a *prima facie* common property resource for local communities, under statutory law, all forested land is deemed to be the property of the state. This overlap in tenure rights and property protection portrays a highly controversial and conflicting legal anomaly whose status quo is posing enormous constraints on Indigenous Peoples and local communities' land rights.³ At the same time, the anomaly hinders their potential to develop socially, economically and culturally. Given this legislative overlap, key questions are worth asking: how can this conflicting view be addressed without impacting local communities' human rights? How are forested land rights managed, used and conserved to promote and ensure sustainability? How is democratic transition in land rights realised? How can inclusive development transformation be achieved? How can social stability and cohesion be maintained?⁴ Local Communities and Indigenous Peoples are used interchangeably without undermining the juristic deference, including that Indigenous Peoples are recognised under international law, having secured prominence spaces here in a holistic sense to mean the same thing since Indigenous Peoples also live in a community.⁵

Despite the constitutional and statutory guarantee of property rights, the commitment to respect and protect the rights and interests of minority groups, including local communities, and to adhere to all ratified international and African regional human rights instruments, there is still a substantive gap in the recognition of customary institutions and customary rights to property, resources, and forest rights in Cameroon.⁶ This substantive gap, we argue, supports the dispossession and eviction of local communities from their traditional ancestral land. National land law provides only limited security of occupancy for unregistered house plots and farmlands, to the extent that there is compensation when the government either acquires land for a public purpose, including granting unregistered land in absolute or to itself in the form of state or national forests. Law N° 94/01 of 20 January 1994 governing Forests, Wildlife and Fisheries of 1994 (Forestry Law) and its Decree of Implementation,⁷ grant local communities merely the right to usufruct of forest products.

¹ Assembe-Mvondo et al. (2014), p. 148.

² Assembe-Mvondo et al. (2014), p. 148.

³ Alden-Wily (2010), p. 5.

⁴ Alden-Wily (2010), p. 5.

⁵ For details, see Ashukem (2016), pp. 1–5.

⁶ Alden-Wily (2010), p. 5.

⁷ Decree No. 95-531-PM of 23 August 1995 (hereafter Decree of Application).

On the other hand, Ordinance N^o 74/01 of July 6, 1974, to Establish Rules Governing Land Tenure, including amendments of 1977 (Ordinance No. 74/01), poses serious challenges to both local communities and Indigenous Peoples' right to land as it does not recognise customary right over statutory right, lacking official recognition of property rights to land. Land titling procedures are tough and costly for traditional users in Cameroon, and consequently, local communities do not have legal title to the lands on which they live and on which they depend for their livelihood. Without recourse to (controversial) civil redress to protect traditional rights, local communities remain subject to (frequent) eviction and relocation,⁸ a fact that raises significant concern about their fundamental human rights to property and means of subsistence. In addition to these challenges, policy and decision-making processes on land matters ignore the effective participation of local communities, nor are their inputs considered.⁹ Based on the foregoing, and a critical review of Cameroon's land and forestry law regime to determine the accommodation of customary land rights, we contend that there is neither the protection of the socio-economic rights of local communities nor sustainability of the REDD+.

Section 2 offers an overview of the forest, forest policy and forest governance in Cameroon to clarify the legal nuance embedded with the plight of local communities' human rights generally and in the context of REDD+ projects with particular reference to the categorisation of forest in Cameroon. In Sect. 3, the extent to which the legal framework in Cameroon protects local communities' land and forest rights is examined. Section 4 examines the implementation of REDD+ and the plight of local communities' rights in Cameroon, and Sect. 5 is the conclusion.

2 Forest, Forest Policy and Forest Governance

The implementation of REDD+ in Cameroon is predicated on the status quo of land and natural resource governance, which harbours the highest rate of deforestation rate in the Congo Basin region.¹⁰ The desire to reduce the rate of deforestation and to optimise economic and social benefits through fostering sustainable forest management is the centre of many forest-related reforms in Cameroon,¹¹ with key drivers of deforestation and forest degradation being associated with agriculture, notably shifting cultivation of slash and burn, and timber harvesting.¹²

The management plan, which serves as a development plan, is an essential element of the community forest management agreement between the forest administration and the village community concerned. Under Section 30(3) of the Decree of

⁸Costenbader (2009), p. 17.

⁹Ashukem (2019), pp. 365–370.

¹⁰Food and Agricultural Organization (2011), p. 7.

¹¹Somorin et al. (2014), p. 88.

¹²Bele et al. (2011), pp. 369–385; Dkamela (2011), p. 8.

Application, a management agreement for a community forest must be valid for the same amount of time as the forest's general management plan. Re-evaluated every five (5) years, the government is required to entrust the management of forestry resources for a renewable term of 25 years to the village community concerned.¹³ The agreement between the state and the recipient community follows a management plan, which includes all activities carried out in the community forest.¹⁴ Section 31(1) of the Decree of Application empowers the Administration to regulate community forest management and to sanction communities, including terminating their management agreement. This provision does not confer property rights, nor does it confer any title on the forest. Consequently, it makes it easier for the state to expropriate the land. As will be evident below, property rights over forested land remain the exclusive right of the state, and the community's rights are limited to exploiting, using and developing forest resources. Therefore, community forests are not the property of village communities, but national domain dependencies managed under state control. The state transfers only the usufruct rights and continues to retain the powers of control over the forest.¹⁵

Cameroon's participation in the Tropical Forest Action Plan (TFAP) in the early 1990s facilitated the need for an effective, equitable, institutional and legal reform for sustainable forest management.¹⁶ Cameroon is also a signatory to the United Nations Framework Convention on Climate Change (UNFCCC).¹⁷ The UNFCCC aims to reduce greenhouse gas emissions, on which premise, Cameroon undertook legal reforms to address environmental issues. Consequently, the foregoing culminated in the creation of the Ministry of Environment and Forests (MINEF) in 1992 now the Ministry of Forests and Fauna (MINFOF); a zoning plan adopted in 1993 to define specific boundaries between development and environmental conservation. The Forestry Law was enacted in 1994 and the Decree of 23 August 1995 on the Terms of Application of the Forest Regime, stressed the management of forests and the conservation of biodiversity, taking into consideration global trends.¹⁸ The enactment of the Forestry Law in tandem with the introduction of a decentralised forest management scheme led to a fundamental shift in the previously state centralised system of forest management. The Forestry Law recognised the rights of riparian and decentralised indigenous communities to enter and use the forestland and the rights of the indigenous communities to share forest revenues.¹⁹ Consistent

¹³Logo (2007) <http://www.fao.org/forestry/12717-09bdf38d000abba2b9e4d9c56e946b22e.pdf> (last accessed on 15 April 2021).

¹⁴Section 37(2)(3)(4) of the Forestry Law.

¹⁵All this explanation is in conformity with Section 37 of the Forestry Law and Article 3(11) and (16), Article 27(4) and (5) of the Decree of Application.

¹⁶Essama-Nssah and Gockowski (2000), <https://agris.fao.org/agris-search/search.do?recordID=XF2015011359> (last accessed on 15 April 2021).

¹⁷UN Framework Convention on Climate Change (UNFCCC), ILM 851, 1992.

¹⁸Decree No. 95-531-PM of 23 August 1995. It specifies the rules for the application of the Forest Code, particularly the procedure and criteria for the allocation of forest concessions.

¹⁹Logo (2007).

with the concept of national heritage embedded in the Forestry Law that the forest and its resources belong to the state, Section 11 requires the state to protect the forest and its natural resources for the benefit of all Cameroonians. Under the Forestry Law, customary right implies the right of local communities to harvest for their personal use trees, wildlife and fishery products, except protected species.²⁰ However, Section 8(2) obliges the Minister to either temporarily or permanently suspend logging rights on grounds of public interest after consultation with the local communities. The Forest Law specifies that the Cameroonian forest, recognised as a national forest, be categorised as permanent and non-permanent forests,²¹ for which permanent forests consist of land used primarily for forestry and/or as a sanctuary for wildlife habitat, and the non-permanent forest is forestland used for any other purpose.²²

2.1 Categorisation of Cameroon Forest by the Forest Law

2.1.1 Permanent Forests

Forest tenure functions around the founding construct embedded in the Forestry Law, according to which Section 20(1) categorises national forest into permanent and non-permanent forests. As earlier mentioned, permanent forest comprises only land used for forestry and wildlife habitat, and non-permanent forest comprises forested land used for other purposes other than forestry.²³ Through this categorisation and by Section 37, the law allocates to community and private individuals, community forests to enable them to benefit from forest royalties in the exploitation of natural resources. However, according to the classification of forests, permanent forests belong to the state while communal forests are the private domain of councils. The management of permanent forests stems from the desire to have a vegetation cover reflecting national biodiversity. Section 24(2) requires a decree to provide for the definitions, rules and conditions of use of the various types of state forests. This provision does not only empower the state to have a land title in its name, but it also fixes the geographical limits and objectives of the land, including the production, recreation, protection or conservation of biodiversity.²⁴ State forests are expected to consider the land use plan of the ecological area in question. This plan sets the objectives, management rules, and modalities for local populations to exercise their rights of use. However, this right may be limited in certain

²⁰Section 8(1) of the Forestry Law.

²¹Section 20(1) of the Forestry Law.

²²Section 20(2) and (3) of the Forestry Law.

²³Section 20(2) and (3) of the Forestry Law.

²⁴For details, see Sections 24 and 25 of the Forestry Law; see also Article 17 of the Decree of Application.

circumstances and the local populations shall be entitled to compensation as stipulated in the decree of implementation.²⁵ Section 26(3) of the Forestry Law requires the state forest to maintain the local populations' logging rights and to prohibit public access to the state forest.²⁶ On the other hand, council forests are either classified on behalf of municipalities (Local Councils) or planted by them, for which the limits and objectives of management of council forests could be analogous to those of state forests. Local councils have a right to a land title in their name under the private domain of the municipalities. Council forests have a management plan approved by the Forestry Administration.²⁷

2.1.2 Non-Permanent Forests

Non-permanent forests are equivalent to 'protected areas', consisting of (any parcel of) forested land assigned to uses other than forestry. Non-permanent forests comprise communal forests, community forests and forests belonging to private individuals.²⁸

Communal forests do not include orchards, agricultural plantations, fallow lands, incidental afforestation of farmland, and pastoral developments. However, after reconstitution of the forest cover, the old fallows and agricultural or pastoral lands not subjected to a title deed may be reconsidered as communal forests. The Forestry and Wildlife Administration manages all forest products on a conservatory basis and the village population only have recognised user rights.²⁹ Considered by the state as 'vacant and ownerless forests', communal forest generally constitutes national customary property for which local communities living next to these forests are granted recognisable user rights to use forestry products³⁰ although they are expected to explain the use of such trees during inspections of the forest.³¹ Section 26 prohibits the trading of timber and extraction of sand, gravel or laterite extraction within the communal forest.³²

One of the main innovations of the Forestry Law is the creation of community forests. This community forest is designed as the state's commitment to a participatory approach in forest resources management.³³ However, the vigorous implementation of this participatory approach remains wanting since neither the Forestry Law nor its Implementation Decree provide a concrete description of a community forest.

²⁵ Sections 26–29 of the Forestry Law.

²⁶ Section 26(3) of the Forestry Law.

²⁷ Section 30 of the Forestry Law; for details, see Title III Chapter I of the Decree of Application.

²⁸ Sections 20 and 34 of the Forestry Law; see also Logo (2007).

²⁹ Sections 35 and 36 of the Forestry Law; see also Article 25 of the Decree of Application.

³⁰ See Sections 26(2) of the Decree of Application.

³¹ Logo (2007).

³² Section 26(2) and (4) of the Decree of Application.

³³ Section 37 of the Forestry Law.

Cameroon's contemporary concept of the community forest is vague and can only be understood concerning where they are found and the use restrictions imposed. Thus, community forests are those that are situated on the outskirts or near the communities in which their activities are conducted. These forests are allocated in priority to the nearest communities with a maximum area not exceeding 5000 hectares and their creation may intervene only in an area free from any forest exploitation licence.³⁴ A community willing to manage a community forest must apply to the competent administrative authority which might be approved as favourable or rejected as unfavourable and the application returned to the community by the authority.³⁵

Lastly, private forests are planted by individuals, whether natural or legal and established in their domain, acquired in compliance with the laws and regulations in force. The owners of these forests, with the assistance of the administration in charge of the forests, are required to draw up management plans. Any new allocation of land must comply with the regional planning master plan. Forest products found in natural forest lands belonging to private land shall be owned by the state, except in the case of legal acquisition of these products by individuals.³⁶ In the next section, we examine Cameroon's legal framework to determine its level of protection of local communities' human rights during the implementation of REDD+ projects.

3 Legal Framework on Land and Forest Rights

3.1 *The Constitution*

Although not explicitly stated, Cameroon's Constitution is the supreme law. Enforceable and justifiable fundamental human rights are contained in the Preamble of the Constitution, which under Section 65, is part of the Constitution.³⁷ The Constitution affirms attachment to respecting and protecting fundamental rights and freedoms enshrined in all ratified international conventions and regional instruments, including the Charter of the United Nations, and the African Charter on Human and Peoples' Rights. The Constitution does not explicitly guarantee the right to land or property. The Constitution of Cameroon reiterates conventional generalities such as the freedom of settlement, guarantee of the right to use, enjoy and dispose of property and protection against deprivation of property, unless for a public purpose and subject to the payment of compensation to be determined by law.³⁸ However, the Constitution embodies certain elements that are intrinsic to the

³⁴Section 27 of the Decree of Application.

³⁵Section 29 of the Decree of Application.

³⁶Section 39 of the Forestry Law. For details on the legal procedure of acquisition of private forest, see Article 33 of the Decree of Application.

³⁷Ashukem (2021), p. 124.

³⁸Alden-Wily (2010), p. 50.

right, including the notion of ownership, recognition and protection of traditional values and customs and the protection of the rights of minorities and indigenous populations. The Preamble provides that:

Ownership shall mean the right guaranteed to every person by law to use, enjoy and dispose of the property. No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law; the right of ownership may not be exercised in violation of the public interest or in such a way as to be prejudicial to the security, freedom, existence or property of other persons.

According to the Constitution, deprivation of the property rights, particularly the right to own, use, enjoy and dispose of the property, is prohibited. Despite this guarantee, the Constitution fails to formally acknowledge the right of customary land-holding as amounting to real property interests. This failure suggests that no protection is afforded to customary land tenure, including the payment of compensation where the government appropriates the land for public purposes. Problematically, the legal definition of the concept of public purpose embedded in the property right is loosely defined, although Section 12(2) of Ordinance No. 74/01 outlines the reasons for expropriating private property. These include the public, economic or social utility or indirectly at the request of local councils, public establishments, and public service concessionaires when no joint settlement between the bodies in question and the owners has been achieved. Also, the context of the protection of customary (land) rights remains largely ambiguous—it imposes a narrower responsibility on the state to protect the right of minority and Indigenous Peoples. This raises questions as to who is included in the panoply of protection.

Nonetheless, the preamble recognises the protection of minority rights including local communities, particularly concerning their right to ownership of (customary) property, and obliges the state to ensure the protection of minorities, in addition to preserving the rights of the indigenous population. Section 1(2) of the Constitution enjoins the government of Cameroon to recognise and protect the traditional values if they conform to democratic values, human rights and the law. Although the foregoing guarantee gives hope to customary land rights holders in the sense that the government recognises their traditional values and customs within the boundaries of the law affecting land interest, translating this constitutional mandate into practice remains a dream deferred.

3.2 The Forestry Law

Cameroon's Forestry Law dates back to the Forestry Order No. 73/18 of 25 May 1973. This law was amended by the Forestry Law No. 81/13 of 27 December 1981, which focused on the regulation of logging activities, although devoid of transparency.³⁹ Consistent with the World Bank-led structural adjustment programming in

³⁹Alden-Wily (2010), p. 76, citing Oyono (2004).

the 1980s, the pivotal forest sector needed urgent reform and the law was reviewed in 1989 with the adoption of a new Forest Policy in 1993 that later became the new Forestry Law in 1994 to promote and enhance sustainable forest management. Although the Forestry Law and its Decree of Implementation provide an integrated framework for sustainable and inclusive forestry governance,⁴⁰ its underlying aim is to facilitate commercial logging of timber and forest produce.⁴¹ Under Section 2, this constitutes any 'land covered by vegetation with a predominance of trees, shrubs and other species capable of providing products other than agricultural produce'. Like the Constitution, the Forestry Law has no stand-alone provision on land or property rights, despite the recognition in its Section 62 that the holding of any extractive licence by companies does not *prima facie* confer the right of ownership on land.

Nevertheless, since its enactment in 1994, the law has ushered in tremendous changes. The change concerns the alteration of the way Indigenous Peoples and local communities such as the Baka pygmies in the South East Region, interact with their traditional land when the government allocates concession rights to foreign companies in Djoum and Upper Nyong.⁴² The law has conceptually changed the ownership and rights in forested lands as Section 21 has concentrated all unoccupied forested land under state control, making all other lands, including customary land susceptible to disposition for economic development by the state. This dispossession has dire socio-economic and legal ramifications on local communities' customary land rights and ownership over natural resources. The fact that the state still retains ownership and control over land and its resources, including local communities' land, poses significant and epistemological challenges to their right to land. While Section 6 requires ownership of forest to be determined by the regulations governing land tenure and state lands, which subjects any parcel of forested land that is neither the private nor public property of the state to the domain of national land. In contrast, Section 7 guarantees landowners, such as the state, local councils, village communities and private individuals, use rights to their property, which are subjected to restriction in the land tenure and state lands regulations. Under Section 25(1), all State Forests are declared the private property of the state and under Section 25(4) all existing classified forests become the private property of the state on the commencement of the Forestry Law. Collectively, these provisions place all forested lands in Cameroon as the private or public property of the state, with the mandate to ensure its protection and rational management.

⁴⁰See Section 1 of the Forestry Law.

⁴¹Alden-Wily (2010), p. 75.

⁴²Njieassam (2017), p. 83.

3.3 Ordinance No. 74/01

Section 1(2) of Ordinance No. 74/01 embodies the concept of public trust and recognises the state as the guardian of all lands in Cameroon with the concomitant power to ensure the rational use of land or in the imperative interest of the defence of the economic policies of the nation. While this guarantee may be akin to the concept of public trust doctrine in other jurisdictions such as Uganda and South Africa, it nevertheless, is different in Cameroon. The difference lies in its potential in enabling either easy expropriation of private land or appropriation of any unregistered land in the public interest under Section 2(1) of the Ordinance. This provision does not provide for compensation for expropriated land as in the case of the Bagyeli and Bakola communities during the implementation of the Chad-Cameroon oil pipeline project.⁴³

Part III of the law considers national land as public land that is under the control, guardianship and administration of the state having and exercising absolute allocatory powers in land matters. By this, it means that all lands in Cameroon are the de facto public property of the state which confirms our view that customary landowners are mere occupants of public law, including their private lands where they are unable to prove a certificate of registration. The implication is that customary landowners may at any time be removed from their land in the absence of conclusive proof of a certificate of registration. This hinges on the violation of their right to the land which they have held under customary land tenure as indicated by the African Commission on Human and People's Rights in *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*.⁴⁴ To adopt a national land heritage that replaced the old concept of *terres vacants et sans maitre*, or vacant land without a master, Ordinance No. 74/1 adopted the concept of national land, and placed its management under the control of the state as the legal administrator by Section 16 which provides that:

National lands shall be administered by the State in such a way as to ensure rational use and development thereof. Consultative boards presided over by the administrative authorities and necessarily comprising representatives of the traditional authorities shall be established for this purpose.

Notwithstanding the above, the Ordinance fails to define national land, beyond mere components of what it considers to constitute national land while assigning a role to each of these components. The classification of land as private and national lands is seemingly restrictive. It prevents customary land from being considered private land, which is deliberately defined to exclude unregistered property.

⁴³Nelson and Tchoumba (2004) <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/pipelines-parks-and-people-bagyeli-document-land-usenear> (last accessed on 17 April 2021).

⁴⁴276/03: *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*.

Additionally, private land includes either the public or private property of the state⁴⁵—a situation that excludes what exists in national land as stipulated in Section 14:

(1) National lands shall as of right comprise lands which, at the date on which the present Ordinance enters into force, are not classed into the public or private property of the State and other public bodies. (2) National lands shall not include lands covered by private property rights as defined in Section (1).

As the legal administrator of national land, it is apposite that the state has a stronghold on land to dispose for purpose of fostering national economic development. This legal possibility implicitly substitutes the state for ethnic groups and communities hitherto considered the rightful owners of the land.⁴⁶ Section 17 of the law only refers to ‘customary communities and members thereof’ and guarantees them only peaceful occupation and use of land, which is limited to those parts of customary land where human presence and development is evident. Section 15 provides two exclusive categories of national lands: the first category involves land that is occupied either with houses, farms and plantations and grazing land manifesting inherent human presence and development, and the second category involves any land that is free from effective occupation. It is evident from the foregoing that customary interests in land which harbours the common property assets of rural communities do not relate to the second category.

3.4 Ordinance No. 74/02 of 6 July 1974

Section 2(2) of Ordinance No. 74/02 of 6 July 1974 defines public property as inalienable, imprescriptible, reserved for a public purpose, and unable to be subjected to private tenure. The putative reference to ‘public and private land of the State’ implicitly makes it the de facto property of the state instead of being national property.⁴⁷ Section 7 declares that ‘*bona fide* owners and occupants of public property may not be dispossessed thereof unless the public interest so requires, and subject to compensation’. The ordinance reflects the curtailed enjoyment of the rights to land which local populations are entitled that may undermine their interests in the implementation of REDD+.

⁴⁵See Section 14(1) of the Ordinance.

⁴⁶Assembe-Mvondo et al. (2014), p. 149.

⁴⁷Alden-Wily (2010), p. 53.

3.5 *Decree No. 76/166 of 27 April 1976*

Decree No. 76/166 of 27 April 1976 requires the creation of a Land Consultative Board (LCB) by the Senior Divisional Officer seated in the subdivisions. The Decree specifies that the LCB in any region must consist of a government delegate, the Divisional Officer, the chief, and two village notables of the community where the land is situated.⁴⁸ Land investment decisions must be with the consent of a simple majority of members present considering the presence of the chief and the notables of that community.⁴⁹ Also, by Sections 19 and 22 of this law, local communities may apply for grants of land on a temporary or absolute basis as the case may be for public interests where the land would be subjected to part of the private property of the community.

4 REDD+ and the Lesson of Local Realities

4.1 *Contextual Realities*

Colloquially referred to as Africa's in miniature because of its geographical and cultural diversity, Cameroon is endowed with abundant natural resources, including forested land constituting more than half of the country's landscape when considering all categories, mainly confined in the South and South West regions and comprising of between 17.5 and 23.8 million hectare.⁵⁰ Forested land, therefore, plays a catalytic role in the implementation of REDD+ projects in Cameroon, and therein lies the problem of overlapping land rights. Cameroon's forest resource helps to shape the country's forest policy and laws for the eventual implementation of these projects for development partners to benefit from carbon credits in the global climate change agenda. Climate change is a danger particularly in Africa and Cameroon, not just for economic growth, but also for sustainable development and various aspects of human security. As elsewhere, climate change is of great significance, and this is why Cameroon has signed a variety of agreements aimed at mitigating the effects of climate change, as well as including it in its emerging 2035 agenda towards sustainable development.⁵¹ Cameroon is a party to and has endorsed the United Nations Universal Declaration of Human Rights of 1948, and the UN Declaration on the Rights of Indigenous Peoples.⁵² It has signed and ratified the

⁴⁸Section 12 of Decree No. 76/166.

⁴⁹Section 15 of Decree No. 76/166.

⁵⁰Alden-Wily (2010), p. 75.

⁵¹Amougou (2018), pp. 5–16.

⁵²UN Declaration on the rights of Indigenous People 2007. It sets out a universal framework of minimum standards for the protection, integrity and well-being of the world's Indigenous Peoples

Convention on Biological Diversity.⁵³ With the fight against climate change which is a global phenomenon, Cameroon is a party to the Paris Agreement of the UNFCCC of 2015 with the zeal of reducing greenhouse gas (GHG) emissions.

REDD+ also brings to the fore the need for states to take urgent action to tackle climate change consistent with Sustainable Development Goals 13 and 15 as important highlights in the global push towards development.⁵⁴ It creates a financial value for forest-stored carbon by expanding rewards for forest-stored carbon. REDD+ is more of a climate system environmental initiative; it is a project of human rights significance to landowners, Indigenous Peoples, and local populations, as well as impacted individuals who might hold rights that may be affected at the domestic level by its policies and legal structure. Paragraph 70 of Decision 1/CP.16 emphasised that REDD+'s activities must consider international and national commitments, the rights of Indigenous Peoples, and local communities. Additionally, the document insists that REDD+ should engage and allow for the active participation of key parties, especially indigenous populations and local communities in decision-making processes.⁵⁵ This means that the procedures and conditions for public participation under Ordinance No. 74/02 must be followed when attempting to implement the REDD+ project.⁵⁶

Successful REDD+ results can be obtained on the guarantee of the government of Cameroon that forests will remain intact and secured permanently. This could be achieved through equal and effective treatment of rights of ownership and use of land; sharing of benefits; documenting and authenticating land rights; monitoring; accessing information; and ensuring public participation in all REDD+ legal frameworks.⁵⁷ REDD+ requires that where differences are detected, changes to current legal instruments can be required. In specific terms, pre-existing regulations allowing for perverse benefits or obligatory institutions detrimental to the spirit of the current REDD+ (i.e. encouraging deforestation and degradation of forests) should, to a practicable degree, be revised or repealed.⁵⁸

In Cameroon, the Ministry of Forestry and Wildlife (MINFOF) is responsible for developing, implementing and assessing the forest and wildlife policies of the government. MINFOF ensures that the development and implementation of regeneration, reforestation, inventory and forest management programmes are developed and controlled. It ensures compliance by the actors involved in the process with the

and elaborates on existing standards of human rights and fundamental freedoms in the light of the special situation of indigenous populations.

⁵³Convention on Biological Diversity 1992.

⁵⁴REDD+ is a promising component of the climate change and development agenda for developing countries to reduce emissions from forested lands and invest in low-carbon pathways to sustainable development, that would earn result-based payments for result-based actions in the context of climate change and development agenda.

⁵⁵Para 70 of Decision 1/CP.16 of Cancun 16 CoP 2010.

⁵⁶UN Human Rights Council (2009) at para. 94.

⁵⁷Costenbader (2009), p. 5.

⁵⁸Costenbader (2009), p. 12.

regulations in the logging sector. Through REDD+, MINFOF is actively fighting climate change, with a particular focus on the role that forests could play in decreasing emissions from deforestation and forest degradation.⁵⁹ REDD+ has indeed been introduced as a way for the forest sector to decrease carbon emissions, while simultaneously protecting and enhancing the living standards and well-being of local communities.

Although MINFOF is the manager of the forest in Cameroon, the organisation of the REDD+ project in Cameroon has been led by the Ministry of Environment and Nature Protection (MINEP). This stems from the fact that a Climate Change Unit that coordinates the operations of the activities and processes involved in the creation of a National REDD+ strategy is under the Ecological Monitoring and Control Unit of MINEP. In August 2008, MINEP submitted Cameroon's R-PIN (Readiness plan idea note) to the World Bank's FCPF (Forest Carbon Partnership Facility) and coordinated the Readiness Preparation Proposal (R-PP).⁶⁰

4.2 *Implication Realities*

Before establishing the context of the implication of REDD+ on the local community's land right, it is important to first understand what customary land means in Cameroon. Customary land law refers to the unwritten rules and procedures through which a rural community regulates its land relation among its members, and with neighbouring or associated communities.⁶¹ So defined, customary land tenure has since the advent of Ordinance No. 74/01 suffered from inadequate protection based on a lack of registration of title to constitute ownership of the land. The core problem is embedded in Sections 1(b) and 14 of the Ordinance which require that the state shall be the only custodian of lands and that only two categories of land exist to wit: public and private land, although customary land tenure could fit into any of these categories and supposedly private land. This classification opens the possibility for allocating customary land by the state for public purposes loosely considered by Section 18(1) of Ordinance No. 74/01 as any use which can be justified as having either public, economic or social utility, thereby depriving local communities of their right to land.

Also, despite the Constitutional guarantee on property rights, neither Cameroonian law nor practice has made it easier for customary landowners to register their holdings to secure their rights in the property. The reason is that the registration process is remote, cumbersome and expensive and converts customary lands into

⁵⁹ Amougou and Forgab (2018), pp. 17–22, <http://library.kas.de/GetObject.ashx?GUID=c547659a-f172-e811-b68a005056b96343&IDUSER=NotAllowed> (last accessed on 17 April 2021).

⁶⁰ See details in Somorin et al. (2014), p. 91.

⁶¹ Alden-Wily (2010), p. 41.

individual parcels of land without the protection of any social conditions.⁶² Even where there is conclusive proof of a certificate of title, one can still be deprived of his or her right to property. Evidence of such reality can be found in Buea, where there have been complaints relating to deprivation of property despite a proof of certificate of land ownership.⁶³ Another development is that only cultivated or used land is registered. This means that collectively owned non-permanent cultivated lands which are the subject of customary land tenure are *prima facie* susceptible to apportionment by the government to grantees.⁶⁴ The fact that all or any unregistered land is ruled as the property of the state, has proven to be a serious concern. The Forestry Law follows a similar approach in that it is believed that forest resources are released by the state to logging companies, an approach which prioritises profit above the need of forest dependent for subsistence. Such an approach often reduces the forest dependants who are customary landowners from being permissive occupants and users of national land to tenants of government. Declarations of forests as the private property of the state have led to the dispossession and displacement of over 25,000 rural communities from their customary land rights.⁶⁵

Fundamentally, the plight of forest communities relating to land also raises issue relating to equality before the law. It is the *de jure* reality that while government freely allows corporate activities in some parts of forests, forest dependent populations are treated as more or less squatters on the land which they have held in common under diverse customary laws and practices before the enactment of statutory laws.⁶⁶ This is despite the constitutional requirement of equality for all Cameroonians and the commitment to protect the right of minorities.⁶⁷ This means that local communities holding customary land rights do not have recognition and protection of their customary land rights as real property interests. We posit that in allowing for this approach, the government has breached the constitutional requirement to guarantee all Cameroonians with the necessary conditions for their socio-economic and cultural development. Further, it is in violation of the rights and interests of minorities and Indigenous Peoples to use, enjoy and dispose of the property.

The deteriorating nature of the rights of local communities is exacerbated by the fact that Section 8(1) of the Forestry Law only considers customary rights, and by extension, the right in customary land tenure, to be the rights granted by the state to local communities to harvest only forest, wildlife and fisheries products for their personal use. Article 12 and 15 of Decree No. 76/166 of 1976 means that an investment project cannot begin without a complete and meaningful engagement

⁶² Alden-Wily (2010), p. 11.

⁶³ Mimi Mefo Info (2021) <https://mimimefoinfos.com/desperate-widow-cries-out-over-land-expropriation-attempts/> (last accessed on 21 April 2021).

⁶⁴ Alden-Wily (2010), p. 11.

⁶⁵ Alden-Wily (2010), p. 19. Also see, Awono et al (2014) 76–86

⁶⁶ Alden-Wily (2010), p. 5.

⁶⁷ See the preamble of the Constitution of Cameroon.

with local stakeholders, as well as their involvement in appropriate decision-making processes, during which they freely agree to activity taking place. This requirement allows traditional leaders to ensure that local needs are met. However, in practice it is not always the case.

For instance, the Cameroon's R-PIN was approved by the FCPF despite the fact that there was very little or no involvement of civil society, Indigenous Peoples or local communities. It is reported that the Ministry of the Environment and Nature Protection (MINEP), the World Wide Fund (WWF) and ONF-International wrote the Readiness Plan Idea Note (R-PIN) without proper involvement of the national civil society, Indigenous People or the local communities.⁶⁸ It is unclear whether logging companies and/or timber exporters were contacted since there were not enough local NGOs and civil society organisations involved.⁶⁹ There are no clear proposals for consultation with Indigenous Peoples or forest-dependent communities in the R-PIN. Local consultation is relegated to sporadic NGO programs, rather than being incorporated into the Forest Carbon Partnership Facility (FCPF)-related REDD+ preparation planning in Cameroon.⁷⁰ A vivid example is the situation of the forest dependent Baka and the Bagyeli indigenous populations who continue to suffer from socio-economic marginalisation based on the restriction placed on the hunting and gathering lifestyle by the Forestry Law. Ndagala asserts that for traditional livelihoods to be economically and ecologically sustainable, forest-dependent communities need to be protected from forced dispossession.⁷¹ Therefore, this excludes the indigenous populations, especially the pigmies who are supposed to be at the forefront of the negotiation process coupled with the fact that their livelihood is dependent on the forest. As a result, the FCPF-related REDD+ procedure is failing to live up to its expectations, which state that the Facility shall Follow the World Bank's standard operating procedures, recognise the significance of full participation of forest-dependent Indigenous Peoples and forest dwellers in decisions that can affect them while upholding their rights under national law and international obligations.⁷² Failure to consult local/pygmy communities earlier in REDD+ negotiations and plans is in breach of their human rights, including the right to food, water, environment and life, during REDD+ implementation.

Based on the foregoing, it is apposite that Cameroon's land law is unjust with regard to customary land rights protection. The development has a correlated implication in that it has positioned the state and corporations to aid and abet injustices in the forest sector by undermining the tenure of local communities. We

⁶⁸FCPF R-PIN Cameroon (2008) 2 https://www.forestcarbonpartnership.org/system/files/documents/Cameroon_R-PIN_07-31-08.pdf (last accessed on 14 September 2022).

⁶⁹See detailed review of R-PIN Responses to Templates Questions on FCPF R-PIN – External review form at <https://www.forestcarbonpartnership.org/country/cameroon> (last accessed on 14 September 2022).

⁷⁰FCPF R-PIN (2008).

⁷¹Preamble of the Constitution of Cameroon.

⁷²See Section 3(1)(d) of the amended Charter Establishing the Forest Carbon Partnership Facility 2020.

argue that either intentionally or by design, the Forestry Law wrongfully added to the significant demise of the customary land tenure and particularly so, in the context of forestry rights. This implies that the most valuable forest resources of local communities are being designated in an unnecessary and rent-seeking way as the private property of the state to the extent that sustainable management and conservation of forest is also affected. Services rendered by communities in that space are rarely compensated when their land is expropriated. For example, during the Chad-Cameroon oil pipeline project, the Baka pygmies were not compensated for the expropriation of and displacement from their land.⁷³ the situation of these communities remains what Egbe termed a decade ago as a mirage.⁷⁴

5 Conclusion

In this chapter, we have critically reviewed Cameroon's legal framework on REDD+ and noted that it is both wanting in social and development respect and is constitutionally unsound since it deviates from the protection of constitutionally entrenched rights. From the above analysis, it was shown that the Cameroon's legal framework on REDD+ defeats the interests and protection of customary landowners through non-explicit recognition of their right to land, as it merely guarantees ownership of property and concentrating all land under the state, creating a conflict of interest. If the state were to relinquish forest ownership, it would help resolve the inherent conflict of interests that characterised the current legal framework. Otherwise, local communities would forever have the problem of lack of capacity to own, manage, regulate and conserve forests and enjoy the rewards of doing so in the context of REDD+ in Cameroon.

References

- Alden-Wily L (2010) Whose land is this? The status of customary land tenure in Cameroon. Centre for Environment and Development/FERN/The Rainforest Foundation UK
- Amougou JA (2018) Changements climatiques au Cameroun – Manifestations, vulnérabilités, impacts et réponses' La Science, L'économie et la Politique du changement climatique un guide pour les décideurs politiques au Cameroun, Konrad-Adenauer-Stiftun
- Amougou JA, Forgab PM (2018) Actors and institutions for tackling climate change in Cameroon. In: Science, economics and politics of climate change, a guide for policymakers in Cameroon. Konrad-Adenauer-Stiftung. <http://library.kas.de/GetObject.ashx?GUID=c547659a-f172-e811-b68a005056b96343&IDUSER=NotAllowed>. Accessed 17 Apr 2022

⁷³Nelson and Tchoumba (2004).

⁷⁴Egbe (2001).

- Ashukem JCN (2016) Included or excluded? An analysis of the application of the free, prior and informed consent principle in land grabbing cases in Cameroon. *Potchefstroom Electron Law J* 29:1–19. <https://doi.org/10.17159/1727-3781/2016/v19n0a1222>
- Ashukem JCN (2019) Public participation in environmental decision-making in Cameroon - myth or reality? In: Kameri-Mbote P, Paterson AR, Ruppel OC, Bello OBB, Kam-Yogo ED (eds) *Law/environment/Africa. NOMOS, Baden-Baden*, pp 365–370
- Ashukem JCN (2021) To give a dog a bad name to kill it – Cameroon’s anti-terrorism law as a strategic framework for human rights violations. *J Contemp Afr Stud* 39:119–134. <https://doi.org/10.1080/02589001.2020.1839633>
- Assembe-Mvondo S, Colfer CJP, Brockhaus M, Tsanga R (2014) Review of the legal ownership status of national lands in Cameroon: a nuanced view. *Dev Stud Res Open Access J* 1:148–160. <https://doi.org/10.1080/21665095.2014.927739>
- Awono A, Somorin OA, Eba’a Atyi R, Levang P (2014) Tenure and participation in local REDD+ projects: insights from Southern Cameroon. *Environ Sci Policy* 35:76–86. <https://doi.org/10.1016/j.envsci.2013.01.017>
- Bele MY, Olufunso S, Sonwa DJ, Nkem JN, Locatelli B (2011) Forests and climate change adaptation policies in Cameroon. *Mitig Adapt Strateg Glob Change* 16:369–385. <https://doi.org/10.1007/s11027-010-9264-8>
- Costenbader J (ed) (2009) *Legal frameworks for REDD. Design and implementation at the national level*. IUCN, Gland, Switzerland
- Dkamela GP (2011) The context of REDD+ in Cameroon: drivers, actors and institutions. In: Occasional paper 57, CIFOR, Bogor, Indonesia. https://www.cifor.org/publications/pdf_files/OccPapers/OP-57.pdf. Accessed 17 Apr 2022
- Egbe SE (2001) The concept of community forestry under Cameroonian law. *J Afr Law* 1:25–50. <https://doi.org/10.1017/S0221855301001596>
- Essama-Nssah, Gockowski (2000) Forest sector development in a difficult political economy: an evaluation of Cameroon’s forest development and the World Bank assistance. <https://agris.fao.org/agris-search/search.do?recordID=XF2015011359>. Accessed 15 Apr 2022
- FCPF R-PIN Cameroon (2008) file:///F:/CLIMATE%20CHANGE/Cameroon/Cameroon_R-PIN_07-31-08.pdf. Accessed 13 Apr 2022
- Food and Agricultural Organization (2011) *The state of the world’s forest*. Rome
- Logo BP (2007) Les régimes de la tenure forestière et leurs incidences sur la gestion des forêts et la lutte contre la pauvreté au Cameroun. <http://www.fao.org/forestry/12717-09bdf38d000abba2b9e4d9c56e946b22e.pdf>. Accessed 15 Apr 2021
- Mimi Mefo Info (2021) Desperate widow cries out over land expropriation attempts. <https://mimimefoinfos.com/desperate-widow-cries-out-over-land-expropriation-attempts/>. Accessed 21 Apr 2022
- Nelson J, Tchoumba B (2004) Pipelines, parks, and people: Bagyeli document land use near Campo Ma’an National Park. <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/pipelines-parks-and-people-bagyeli-document-land-usenear>. Accessed 17 Apr 2022
- Njieassam EE (2017) An analysis of legislative and institutional framework governing the rights of indigenous peoples in Cameroon. LLD thesis, North-West University
- Oyono PR (2004) The social and organizational roots of ecological uncertainties in Cameroon’s forest management decentralization model. In: Ribot JC, Larson A (eds) *Democratic decentralization through a natural resource lens*. Routledge, pp 1–25
- Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights
- Review of R-PIN Responses to Templates Questions on FCPF R-PIN – External review form at <https://www.forestcarbonpartnership.org/country/cameroon>. Accessed 13 Apr 2022

Somorin OA, Visseren-Hamakers IJ, Arts B, Sonwa DJ, Tiani AM (2014) REDD+ policy in Cameroon: actors, institutions and governance. *Environ Sci Policy* 35:87–97. <https://doi.org/10.1016/j.envsci.2013.02.004>

USAID Country Profile Property Rights and Resource Governance Cameroon. https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Cameroon_Profile.pdf. Accessed 17 Apr 2022

Jean-Claude N. Ashukem (PhD) is a researcher at the Global Environmental Law Centre of the University of Western Cape, South Africa. He holds an LLD in Law and Development, LLB and Maitrise from the University of Yaoundé II, Soa, and an LLM and LLD in environmental law and governance from the North-West University of the Potchefstroom Campus. Jean-Claude has interests in environmental rights, land grabbing and investment. He has published extensively on these issues in international and national journals as well as book chapters.

Beng Simon Keluh is currently an LLD candidate at the North West University of the Potchefstroom Campus, South Africa, researching on environmental law and governance with special interests in climate change governance and energy, and their impacts on local communities' rights. He holds an LLB from the University of Buea, a Maîtrise en Droit from the University of Yaoundé, Cameroon.