



# Transparency of land-based investments: Cameroon country snapshot

March 2021



**Columbia Center  
on Sustainable Investment**

A JOINT CENTER OF COLUMBIA LAW SCHOOL  
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

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## Executive Summary

This report provides a “snapshot” of the state of transparency with regard to agribusiness and other land-based investment in Cameroon. For the purposes of this report, we define “land investment transparency” as being based on the human rights to information and to participate in public decision-making; it therefore includes public disclosure of relevant land investment-related information, as well as access to, comprehension of, and use of that information by project-affected communities and the government, among other actors, to influence decisions concerning investment and to hold powerful actors to their obligations, among other legitimate objectives.

Despite some governmental participation in initiatives that publish investment-related information,<sup>1</sup> land investment governance in Cameroon cannot be said to operate in a meaningfully transparent manner. Cameroon’s legal and policy framework concerning land governance and investment is out of date and not fit for purpose.<sup>2</sup> Cameroon’s government (hereinafter, “the Government”) may think it can use its role as guardian of National Land to strengthen its control over lands and resources; but a top-down approach to concession allocation and a reluctance to recognize all legitimate tenure rights will threaten the Government’s legitimacy as the grievances of citizens and investors alike continue to grow and lead to the barring of roads by communities and investor withdrawals. Community members interviewed were frustrated with being excluded from decisions concerning their lands and resources and unable to easily access, understand, and use relevant information to influence such decisions.<sup>3</sup> These sentiments were echoed by many within the Government, with one representative decrying, for instance, that investment project approvals “are decided on in Yaoundé before even speaking to community members.”<sup>4</sup> The private sector also regards Cameroon’s laws as needing reform. The operator of one of the three sites we visited told us that its development “will not continue” due to “difficulties encountered in the land allocation process.”<sup>5</sup> Another company told us that “the current legal framework related to land tenure needs to be adapted to better correspond to today’s life and the aspirations of communities, private companies and the State.”<sup>6</sup> Cameroon is accordingly perceived internationally as a location that is “growing more difficult” for private sector investment.<sup>7</sup> Land investment transparency in Cameroon appears to have inadequately advanced since 2013 when a report on a similar topic made similar findings.<sup>8</sup>

<sup>1</sup> See “Snapshot of Cameroon’s Transparency and Governance Landscape,” below.

<sup>2</sup> See “Cameroon’s Legal Framework,” below.

<sup>3</sup> See “Community Experiences,” below.

<sup>4</sup> Interview with Government representative, Nov, 2019. This was echoed by other Government representatives, see note 80, below.

<sup>5</sup> Email to CCSI, Sep. 15, 2020.

<sup>6</sup> Letter to CCSI, Oct. 16, 2020.

<sup>7</sup> See “Snapshot of Cameroon’s Transparency and Governance Landscape,” and below note 35.

<sup>8</sup> Centre pour l’environnement et le développement (CED), La transparence dans le secteur foncier au Cameroun: Etude de cas préliminaire de la cohabitation entre agro-industries et communautés locales et autochtones. (2013), <https://bit.ly/3jQRhOH>.



## Recommendations for Inclusion in a New Land Law

Our findings reveal worrying dynamics concerning both the substance of Cameroon’s legal standards and the Government’s implementation of those standards. The apparent impasse regarding land governance reform risks further damaging Cameroon’s investment environment, limiting the Government’s ability to facilitate appropriate and responsible investment.<sup>9</sup> We recommend that a new law concerning the governance of land and land-based investment be developed in close consultation and collaboration with citizens, Indigenous groups, civil society, other stakeholders, and experts. A reformed, human rights-compliant law that recognizes legitimate tenure rights should be paired with a renewed governmental commitment—and concrete strategies—to monitor and regulate investment, and implement and enforce applicable legal frameworks. These recommended elements can help enable Cameroon’s people to pursue sustainable development, create increased certainty for investors, and encourage more informed and coordinated governmental decision-making that can provide for present and future prosperity and responsible environmental stewardship.

Given the grave transparency challenges—for communities, citizens, the Government, and investors, among others—highlighted in this report, it would introduce an unacceptable amount of risk of social conflict if the Government were to approve any additional large-scale land-based investment projects under the current legal framework. We therefore recommend that the Government temporarily cease making any new approvals for large-scale agribusiness and other land-based investment projects until the legal and policy landscape in Cameroon has been reformed in line with the following recommendations.

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<sup>9</sup> See text accompanying notes 31 and 35, below.

In order for a new law to adequately address transparency and meaningful community participation in decision-making regarding the governance of land and land-based investment, we recommend it include the following features.

1. Information needs of affected communities. The Government and investor companies should provide all communities, and all community members—including women, youth, Indigenous people, and people with disabilities, among others—whose lands, resources, or human rights were, are, or stand to be affected by a land or resource investment project with information about the project that is:
  - o **Pertinent**, including how the project and its operations will affect them, both positively and negatively;
  - o **Empowering**, including information about community members’ rights, the actual or likely rights and obligations of the company and the Government, and the avenues through which communities may participate in and influence decision-making about the project;
  - o In a form that is **understandable** and provides an appropriate level of detail, enabling communities to make informed decisions without being overwhelmed by too much detail or overly complex or technical language;
  - o Delivered via **accessible processes and formats** including meetings, images and video, document summaries, and site visits, among others;
  - o Delivered in a **timely** manner, including before any authorizations are granted and before decisions are made throughout the life of the investment;

- Shared **continuously**;
  - Delivered and shared in the **language(s) most commonly** spoken by each community group; and
  - Provided to community members **as a right** with the objective of fostering community members' understanding and empowerment.
2. Information needs of the Government and the public. To improve the performance of, and coordination between, all relevant Government entities and offices,<sup>10</sup> the Government should publicly disclose, and, where relevant, require other information holders to publicly disclose:
- All information concerning the **rights and obligations** of companies, the Government, and other actors relating to all past, current, and future land or resource investment projects, and information about the actual people who directly or indirectly own, control, or benefit from the companies (often called the “beneficial owners”);
  - **Documents** including, among others, investor-state contracts and all letters and instruments amending such contracts (in line with the 2018 Transparency Code), community-investor contracts, decrees, permits, authorizations, and maps;
  - Such information in a **consolidated form** at a centralized location, and/or through forms of communication like online databases (such as the Cameroon Forest Atlas), that are **publicly available** and reasonably accessible;
  - Such information in a **timely manner**, and as soon as practicable after such instruments and information are executed or otherwise created or updated; and
  - Such information in a manner that, consistent with the constitutional freedom to receive and impart information,<sup>11</sup> is reasonably **accessible by citizens**, civil society organizations, and the media, among others.
3. Community needs, in order to understand and use information. To fulfill the human rights of all community members—and not only their formal leaders—to be informed and to meaningfully participate in decision-making concerning their rights, lands, and resources, the Government should facilitate and establish, and/or cause others to facilitate and establish:
- Programs and processes to **empower** all community members to know and uphold their, and other actors', rights and responsibilities;
  - Processes that allow for all community members to use all relevant information to further their understandings, deliberate internally, and **influence decision-making**, such as timely consultations, impact assessment, pre-authorization and iterative consent processes; and community-led or participatory monitoring efforts. Such processes should also provide for “a transparent and participatory debate on the opportunity costs of granting land to investors that plan to develop agro-industrial plantations, when strengthening small local farmers' access to land, by means of adequate State support, could do more to improve local food security and reduce rural poverty;”<sup>12</sup>
  - Multi-stakeholder **dialogue processes** that: include representatives from communities other than chiefs, such as representatives of Indigenous communities, women, youth, and other less dominant groups; follow robust governance practices to minimize the ability of powerful actors to dominate and coopt the process; have clear objectives; are sustainably financed; and are facilitated by trusted and independent actors who are familiar with the local context, experienced in facilitating multi-stakeholder dialogue, and sensitized on the human rights of community members to informedly participate in and influence decision-making; and
  - **Grievance redress**, dispute resolution, and formal justice processes that, consistent with the UN Guiding Principles on Business and Human

<sup>10</sup> This includes all public entities who facilitate, adapt legal frameworks for, monitor, regulate, and develop development plans in the context of, land and resource investments, including at the national, regional (*régional*), departmental (*départemental et préfectoral*), and district (*arrondissement et sous-préfecture*) levels.

<sup>11</sup> Constitution of Cameroon, Law No. 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972, Art. 19.

<sup>12</sup> *Report of the Special Rapporteur on the right to food*, Olivier De Schutter, Addendum: Mission to Cameroon. (Dec. 18, 2012), UN Doc. A/HRC/22/50/Add.2, paras. 48, 73(i). See also Food and Agriculture Organization of the United Nations, “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT),” *Report of the 38th (Special) Session of the Committee on World Food Security*. (May 11, 2012), Art. 12.6, <https://bit.ly/2ZqvdCD>, which states that “States should consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors, and should encourage partnerships with local tenure right holders.”

Rights, are legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and designed in close consultation with the community members for whose use they are intended.<sup>13</sup>

4. Funding for technical support to communities. Enabling all community members to access, understand, generate, and use relevant information to meaningfully participate in decision-making and pursue other legitimate objectives will often require legal empowerment, independent technical support, and other resources, all of which may increase demands for funding. The Government should make, and require companies to make, adequate financial contributions to trusted, independent initiatives that **finance such community support** without introducing the risk of such payments creating a lever of undue influence over communities.<sup>14</sup>
5. Indigenous communities. In line with its obligations under international law, the Government should respect, protect, and fulfill Indigenous people’s international human rights. The Government and companies should:
  - Take **Indigenous people’s rights under international law**, and their often precarious and marginalized position within Cameroonian society, into account when designing and implementing investment-related decision-making processes; make sure that such processes are inclusive and proactively allow for Indigenous people to meaningfully participate; and respect their decisions to give or withhold their free, prior and informed consent;
  - Make sure that Indigenous communities can meaningfully access the independent **financing initiatives** described in recommendation 4, above; and
  - Arrange for all processes in which communities participate to take place in, or be simultaneously translated into, relevant local **Indigenous languages**.
6. Women and girls. In order to understand and adequately plan for women’s uses of land and natural resources and mitigate any negative impacts of investment on women, the Government and companies should take gender-sensitive approaches when implementing investment-related decision-making processes.<sup>15</sup> Such approaches should seek to:
  - Understand and navigate the **gender dimensions of communication with communities**, including gender discrepancies relating to literacy and control of radio and mobile phones;
  - Take steps to make sure all groups within the community, including women, can access information and influence relevant decisions. Such steps may include **adjusting meeting times, locations, and attendees**, reserving opportunities for women to speak and respond to other participants, addressing cultural barriers to obtaining information from women and existing gender biases in land governance frameworks, more generally; and
  - Facilitating **technical support** for women community members specifically.
7. Benefit sharing. In order to enable affected communities to secure promised benefits from investments and achieve mutually beneficial outcomes for companies, the Government and/or companies should:
  - Proactively **include communities** in the design of benefit-sharing arrangements, which should be recorded in legally enforceable contracts to which the community is a party;
  - Regularly **report to communities on all payments** made to central and local government agencies in a form that that is understandable by communities; and
  - Facilitate **ongoing opportunities** for information exchange and for communities to influence decisions regarding benefit-sharing arrangements.
8. Recognition of customary land rights. The Government should **recognize and protect all legitimate tenure rights**—including undocumented communally-held customary land rights—in line with the Vol-

<sup>13</sup> *United Nations Guiding Principles on Business and Human Rights*, UN Doc. HR/PUB/11/04 (2011), Principle 31.

<sup>14</sup> Such initiatives may include independently operated basket funds or other financing initiatives highlighted in Szoke-Burke, S and Cordes, K, *Innovative Financing Solutions for Community Support in the Context of Land Investments* (2019), Columbia Center on Sustainable Investment, <https://bit.ly/3eLiKxXf>.

<sup>15</sup> Such an approach is also consistent with the Government’s obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to take measures to eliminate discrimination, including to address social and cultural patterns of discriminatory customs and “eliminate discrimination against women in rural areas [so that they] participate in and benefit from rural development” (Arts. 5, 14.2).

untary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (**VGGT**), which were endorsed by Cameroon through its membership of the Committee on World Food Security.<sup>16</sup> Communities as a whole, and not only collectivities of expressly named individuals, should be able to legally hold such rights, as should women, even when their occupation and uses of land are less visible than those of men. Any legal reforms should be accompanied by plans and resources to raise awareness about the laws, and to develop the Government's skills and strategies for implementation, monitoring, and enforcement of the reforms.

9. Recognition of community-generated data. Acknowledging the Government's previous participation in the development of methodologies for community-led land use mapping, the Government should continue to recognize and support such efforts and be required to factor community-generated data into its investment approval processes and land use planning more generally.

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16 VGGT, above note 12, Art. 3.1.



## Snapshot of Cameroon's Transparency and Governance Landscape

In the decades following independence in 1960, land and resource investments in Cameroon were mostly State-owned. Economic crisis in the mid-1980s eventually led to the gradual privatization of projects in line with structural adjustment programs imposed by the Bretton Woods institutions.<sup>17</sup> Members of the Government used its monopolistic control over such investments to engage in patronage politics, through which it also sought to build stability and unity among elite groups and Cameroon's ethnically diverse populace.<sup>18</sup> The shift to privatization was "often marked by a lack of transparency and accountability,"<sup>19</sup> which reportedly enabled elite actors to secure kickbacks in exchange for selling public enterprises at a discount.<sup>20</sup>

The Government continued to use such projects to control domestic political factions and maintain stability during the era of privatization; for instance, it preferred to sell enterprises to foreign investors, rather than domestic ones that could accumulate more power domestically, posing a threat to the regime's political control.<sup>21</sup> Past reports have alleged that some senior members of the Government and the Cameroon Armed Forces, and along with some of their family members and close associates, hold commercial interests in natural resource companies the Government is charged with regulating.<sup>22</sup> While some of these allegations have been denied, others have been met with silence. In both cases, many people within Cameroon believe this phenomenon to be real.<sup>23</sup> Either scenario is damaging for Cameroon: if true, such arrangements introduce conflicts of interest and threats to the rule of law that are as unpalatable for the private sector and donors as they are for Cameroon's citizens and human rights activists; if inaccurate and not credibly refuted, such allegations damage the Government's legitimacy and Cameroon's investment environment.

<sup>17</sup> Konings, P., *The Politics of Neoliberal Reforms in Africa: State and Civil Society in Cameroon*. (2011), 74, 84; Assembe-Mvondo, S. et al., "What happens when corporate ownership shifts to China? A case study on rubber production in Cameroon," *European Journal of Development Research* 28(3), (2016): 465-478, 470; International Bank for Reconstruction and Development (IBRD), *Memorandum and Recommendation of the President of the IBRD to the Executive Directors on a Proposed Loan of US\$150 Million equivalent to the Republic of Cameroon for a Structural Adjustment Program*. (World Bank, May 16, 1989), <https://bit.ly/304iTXL>.

<sup>18</sup> Konings, P., above note 17, 74-75, 77; Bach, D., "Patrimonialism and neopatrimonialism: Comparative trajectories and readings," *Commonwealth & Comparative Politics* 49(3), (July 2011): 275-294, 276, citing Médard, J.-F., "L'État sous-développé au Cameroun," in CEAN, *Année africaine* (1977), pp. 35-84 (Paris: Pédone); Bayart, J-F, *The State in Africa: the Politics of the Belly* (1993: London: Longman), p. 63.

<sup>19</sup> Konings, P., above note 17, 75.

<sup>20</sup> Konings, P., above note 17, 85.

<sup>21</sup> Konings, P., above note 17, 75, 78, 87.

<sup>22</sup> See, e.g., Dkamela, G.P., *Le contexte de la REDD+ au Cameroun Causes, agents et institutions*. Center for International Forestry Research (CIFOR), 2011, 18; Pigeaud, F., "Cameroun : Le pillage organisé de l'or vert," *Alternatives Economiques* (Oct. 1, 2004), <https://bit.ly/2X13jLx>; Biaga, M., "Cameroun - Politique. Franck Biya, les mille facettes d'un fils de president," *Cameroun24* (Nov. 26, 2012), <https://bit.ly/2CX6D3x>; Fominyen, G., "Corruption is a calamity for Cameroon's agriculture - leading activist," *Thomson Reuters Foundation News* (Aug. 9, 2010), <https://tmsnrts.rs/3jKfXse>.

<sup>23</sup> Interview with civil society representative, Apr, 2020.

The Government's approach to land-based investment is still influenced by its desire for control.<sup>24</sup> Despite many of the country's laws no longer being fit for purpose,<sup>25</sup> there appears little appetite among the most powerful ranks of the Government to strengthen community rights and participation in land governance. Customary land rights are not legally recognized unless supported by legal documentation, which is virtually unattainable for the majority of Cameroonians,<sup>26</sup> and it remains to be seen whether a national land law reform process will produce a new legal framework. Population pressure and land speculation in emerging hubs like Kribi are also at boiling point,<sup>27</sup> while security challenges and crises have exploded in the country's Anglophone territories and violence plagues the Extreme North region. The Government's slowness in reforming Cameroon's land laws is likely a balk at the risk of changing the status quo.<sup>28</sup> The lack of protections for undocumented customary land rights puts Cameroon far behind many countries whose laws recognize and protect customary land rights, including Kenya, Niger and Sierra Leone, which legally protect undocumented customary communal land ownership,<sup>29</sup> and Burkina Faso, Mali, and Cote d'Ivoire, which provide different avenues for the registration of communal ownership or possession of lands.<sup>30</sup>

Investors appear to agree that Cameroon's laws are not fit for purpose. Investors aspiring to certification and responsible practices have reportedly left Cameroon because of profitability and operational challenges, and have been replaced by less desirable candidates.<sup>31</sup> Indeed, the operator of one of the three sites visited told us that despite following Cameroon's laws its development "will not continue" due to "difficulties encountered in the land allocation process."<sup>32</sup> That investor further expressed agreement with "many of the insights and conclusions" in this report.<sup>33</sup> Another company told us that "the current legal framework related to land tenure needs to be adapted to better correspond to today's life and the aspirations of communities, private companies and the State."<sup>34</sup> This downward trend is echoed by U.S. State Department assessments of Cameroon's business climate as "growing more difficult" because, among other factors, there are "significant obstacles" to "securing land rights."<sup>35</sup>

Yet, glimmers of hope for land reform and innovation remain. Civil society-led initiatives like LandCam and the Cameroon National Engagement Strategy (NES) use multi-stakeholder dialogue to drive discussions and develop ideas for policy reform and improving implementation in the land sector. Civil society organizations are also paving the way for innovative solutions to land-related challenges, including regional land observatories, which respond to incoming risks to communities, and community protocols, which aim to make community decision-making processes more equitable and inclusive of different groups.

The Government has engaged with transparency efforts and made relevant commitments in other sectors, but has not comprehensively implemented these commitments. It led the way towards transparency of forestry project documentation with its forest atlas, which publishes information and documents online about forestry concessions, protected areas, community forests, and other activities affecting forests.<sup>36</sup> Similarly, Cameroon's Voluntary

24 Interviews with Government representative, Nov, 2019; Interviews and with civil society representatives, Nov, 2019, and Dec, 2019.

25 Nguiffo, S., and Watio, M., *Agro-industrial investments in Cameroon: Large-scale land acquisitions since 2005*. (2015), 56.

26 See "Cameroon's Legal Framework," below.

27 Tchawa, P., *Amélioration de la gouvernance du secteur foncier au Cameroun: Mise en œuvre du Cadre d'Analyse de la Gouvernance Foncière*. (World Bank, Feb., 2014), 9, 10; Statement from civil society representative, Nov, 2019.

28 Interview with Government representatives, Nov, 2019; Interview with civil society representative, Nov, 2019.

29 Kenya: Constitution (2010), Art. 61; Kenya: Land Act 2012, Arts. 2, 5(2); Kenya: Community Land Act 2016, Arts. 2, 5(3); Niger: Loi organique n° 2004-50 du 22 juillet 2004 fixant l'organisation et la compétence des juridictions en République du Niger, Art. 5; Niger: Ordonnance n° 93-015 du 2 mars 1993, Arts. 5, 9; Sierra Leone: Constitution 1991 (2001), Arts. 170-71; Sierra Leone: National Land Policy of Sierra Leone (2015), Chapter 5, 46-47.

30 Burkina Faso (*possession foncière rurale*): Loi n° 034-2009/AN portant régime foncier rural, Arts. 6, 34, 44; Mali (*possession foncière et droits fonciers coutumiers*): Loi n° 2017-001 du 11 avril 2017 portant sur le foncier agricole, Arts. 11, 12, 29; Côte d'Ivoire (*certificat foncier collectif*): Loi n°98-750 du 23 décembre 1998 relative au domaine foncier rural - Modifiée par la loi n°2004-412 du 14 août 2004, Arts. 8-10.

31 Arounsavath, F., "Undercutting Rights: Human rights and environmental due diligence in the tropical forestry sector: A case study from Cameroon," *Swedwatch*, (2019): 14.

32 Email to CCSI, Sep. 15, 2020.

33 Email to CCSI, Sep. 15, 2020.

34 Letter to CCSI, Oct. 16, 2020.

35 U.S. Department of State, *2019 Investment Climate Statements: Cameroon*. (2019), <https://bit.ly/3906Bnd>.

36 Ministère des Forêts et de la Faune, World Resources Institute, *Atlas forestier de la République du Cameroun*, <https://cmr.forest-atlas.org/map?l=fr>. The map includes polygons for agribusiness concessions although only two actual decrees for those concessions were found on

Partnership Agreement with the European Union includes Annex VII,<sup>37</sup> which focuses on forest sector transparency measures and has been incorporated into a draft forestry law. Regrettably, the implementation of Annex VII has been mixed. Monitors noted previous outages of the Government's website and documented irregular Government updates of new information and challenges verifying the extent to which published information is complete and exhaustive.<sup>38</sup> Others reported that Government information publication measures were actually accompanied by a *decrease* in community and multi-stakeholder participation.<sup>39</sup> The Government has also engaged with transparency efforts concerning the mining, oil, and gas sectors. In 2017, the Extractive Industries Transparency Initiative (EITI), a global standard promoting the open and accountable management of oil, gas, and mineral resources, classified Cameroon as having made "meaningful progress" in implementing the EITI standard. A timeline was therefore set for Cameroon to meet the EITI's outstanding requirements. But currently, Cameroon is undergoing its second validation and risks suspension if all requirements are not now met.<sup>40</sup> Finally, while the Government contributed to and validated operational guidelines for obtaining free, prior and informed consent (FPIC) in REDD+ Initiatives,<sup>41</sup> implementation of the guidelines is regarded as "an important challenge."<sup>42</sup>

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the site.

<sup>37</sup> Voluntary Partnership Agreement between the European Union and the Republic of Cameroon on forest law enforcement, governance and trade in timber and derived products to the European Union (FLEGT), Oct. 6, 2010, EU Doc. I. 92/4, Annex VII: Published Information, <https://bit.ly/2CykRHw>.

<sup>38</sup> Forêts et Développement Rural (FODER), Document de travail N°003 Juillet 2018: Rapport d'évaluation 2018 de la mise en œuvre de l'annexe vii de L'APV-FLEGT au Cameroun, 5; FERN, *Forest Watch Special FLEGT VPA Update*. (Dec. 2018), 2-3.

<sup>39</sup> Tegegne, Y. T. et al., "Synergies among social safeguards in FLEGT and REDD + in Cameroon," *Forest Policy and Economics* 75, (Feb. 2017), 6.

<sup>40</sup> EITI Board, *Board decision on the validation of Cameroon*, Jun. 29, 2018, Decision reference: 2018-32/BM-40, <https://bit.ly/38V2OIQ>; "Cameroon EITI Cameroon," EITI, 2020, <https://eiti.org/cameroon>; "Upholding the Standard internationally: Validation," EITI, 2020, <https://bit.ly/32bizcp>.

<sup>41</sup> Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED), *Operational Guidelines for Obtaining Free, Prior and Informed Consent in REDD+ Initiatives in Cameroon* (2014), <https://bit.ly/305he41>.

<sup>42</sup> Tegegne, Y. T. et al., above note 39, 6.



## Cameroon's Legal Framework

A relatively complicated collection of laws, ordinances, decrees, conventions, and other associated documents govern the management of land and natural resources in Cameroon. This section briefly summarizes aspects of key legislative instruments in order to help inform any insights and findings concerning land investment transparency.

Legal ownership of land: Individual community members that do not have a certificate of ownership have no legal entitlement to their customary lands. Unregistered community-held lands are deemed to be “National Land” (*domaine national*) and subject to the state’s guardianship.<sup>43</sup> Individuals who have continuously resided on National Land or used it for agriculture or animal grazing since July 6, 1974, can apply for land certificates in their names.<sup>44</sup> Those demonstrating those same uses after that date can only apply for a provisional concession (*concession temporaire*), which is a weaker right over the land that lacks the permanence of land ownership.<sup>45</sup> Yet registering either type of right is prohibitively expensive and hard to navigate for poor people.<sup>46</sup> And customarily held land that is

fallow or otherwise not developed cannot be registered.<sup>47</sup> Of further concern, a community as a single entity lacks legal personhood and thus cannot currently apply for title.<sup>48</sup> Customary ownership, therefore, risks being extinguished if those individuals holding land since 1974 pass away before it has been formally documented. Moreover, the State can allocate commercial rights over National Land (including unregistered community lands) to itself or investors, according to a “loosely defined” public purpose requirement.<sup>49</sup>

Use rights: Groups of community members can claim customary use rights to hunt and gather on National Land that is otherwise free of any occupation.<sup>50</sup> They can also claim rights to harvest and exploit certain forest, wildlife, and fisheries products for personal uses.<sup>51</sup> These rights do not expressly entitle community members to protect forests, wildlife, and fisheries from external threats, or to plant and harvest crops; only those who have continuously occupied, or conducted agriculture or animal grazing on, National Land since July 6, 1974, as described in the previous paragraph, will be legally entitled to register their use rights over that land.

<sup>43</sup> Ordonnance n° 74-1 du 6 juillet 1974 fixant le régime foncier, Arts. 14, 16. Without adequate legal education for citizens, the Government can exploit its role as *guardian* over National Land to claim that it is the *owner* of the land. Such claims, while technically false, can appear to citizens to be confirmed when the Government allocates concessions to companies with little regard for the communities holding legitimate tenure rights over such lands.

<sup>44</sup> Ordonnance n° 74-1 du 6 juillet 1974 fixant le régime foncier, Arts. 17(2), 15(1).

<sup>45</sup> Ordonnance n° 74-1 du 6 juillet 1974 fixant le régime foncier, Arts. 17(1), 15(1) ; Focus on Land in Africa, *Brief: Land Registration in Cameroon*, <https://bit.ly/3jP8rwk>.

<sup>46</sup> RELUFA and CANADEL, *Etude de base sur la transparence et la participation des communes et communautés dans les processus d’attribution et de gestion des concessions foncières et minières : Cas des régions du centre, de l’est, du nord et du sud du Cameroun*. (May, 2016), 37; Tchawa, P., above note 27, 44-45; Interview with Government representative, Nov, 2019.

<sup>47</sup> Wily, L. A., *Whose land is it? The status of customary land tenure in Cameroon*, CED, FERN, and The Rainforest Foundation UK (Feb. 2011), 55, <https://bit.ly/3jMWirl>.

<sup>48</sup> Wily, L. A., above note 47, 52, and 54.

<sup>49</sup> Wily, L. A., above note 47, 56, 60, interpreting Ordonnance n° 74-1 du 6 juillet 1974, Art. 18, with Ordonnance n° 74-2 du 6 juillet 1974, Arts. 10 (5) and 12; RELUFA and CANADEL, above note 46, 38.

<sup>50</sup> Ordonnance n° 74-1 du 6 juillet 1974 fixant le régime foncier, Arts. 17(3), 15(2).

<sup>51</sup> Loi n° 94-01 de Jan 20, 1994, Art. 8(1).

Commercial concessions: Investors seeking concessions on National Land first obtain a provisional concession (up to five years); long-term concessions are then granted if the investor demonstrates compliance with the provisional concession.<sup>52</sup> The President allocates concessions larger than 50 hectares by decree.<sup>53</sup> While there is no legal framework for the signing of investor-state contracts, these are nonetheless also used to confer rights and obligations on investors and the Government regarding the conduct of a land-based investment—often before the granting of Presidential decree.<sup>54</sup> Experts have noted that Cameroon’s concession allocation regime “was not designed to regulate the kind of vast projects that are emerging.”<sup>55</sup> Government representatives also told us that the current approach for awarding concessions was problematic, set processes in the wrong order, side-lined local government, and caused communities to resort to direct action.<sup>56</sup>

Consultation: Consultations for provisional concessions include a Consultative Board, which includes five Government representatives and three representatives from each community affected—namely, a chief and two *notables* (a traditional position formalized within each community).<sup>57</sup> The Consultative Board provides recommendations to higher-level administrative bodies about how any implicated unregistered land should be managed, taking into account local needs.<sup>58</sup> Investors are not required to consult with local communities at this stage, though some do.

Impact assessments: Investors are required to carry out environmental impact assessments (EIAs),<sup>59</sup> and inform “the populations concerned” 30 days before public consultations and hearings relating to an EIA.<sup>60</sup> The EIA must be realized “with the participation of concerned populations through consultants and a public audience, in order to collect the populations’ opinions on the project.”<sup>61</sup> Any opposition and opinions on the EIA should be heard and recorded.<sup>62</sup> Once completed, EIAs must be made public and posted in reading centers in the project area.<sup>63</sup>

Contract transparency: Cameroon’s Transparency Code requires contracts that the Government signs with investors exploiting natural resources to be made public.<sup>64</sup> Read literally, the law requires the publication of investor-state contracts for agribusiness projects, yet few of Cameroon’s estimated 60 large-scale agribusiness concessions have been published.<sup>65</sup> Given the country’s demonstrated ability to extensively publish forestry contracts and associated documents, its failure to systematically publish all past agribusiness contracts and decrees is in breach of the Transparency Code.

<sup>52</sup> Décret n° 76/166 du 27 avril 1976, fixant les modalités de gestion du domaine national, Arts. 1, 2, 3, 9, 10.

<sup>53</sup> Décret n° 76/166 du 27 avril 1976, above note 52, Art. 7. However, see Nguiffo, S., and Watio, M., above note 25, 42 for a discussion of a conflict between this decree and Circular No 000009/Y.18/MINDAF/D300 of Dec. 29, 2005.

<sup>54</sup> For example, an Establishment Convention for an agribusiness project was signed between the Government and SG Sustainable Oils Cameroon PLC in 2009, yet the Presidential decrees authorizing the project were not granted until 2013. SG Sustainable Oils Cameroon PLC, Establishment Convention, 2009; Decret n° 2013/416 du 25 novembre 2013; Decret n° 2013/417 du 25 novembre 2013; Decret n° 2013/418 du 25 novembre 2013. All documents located at: <https://bit.ly/2Belzs8>.

<sup>55</sup> Nguiffo, S., and Watio, M., above note 25, 56.

<sup>56</sup> Interview with Government representative, Nov, 2019; Statement from Government representative, Nov, 2019.

<sup>57</sup> Décret n° 76-166 du 27 avril 1976 fixant les modalités de gestion du Domaine National, Art. 12.

<sup>58</sup> Nguiffo, S., and Watio, M., above note 25, 41

<sup>59</sup> Law No. 96/12 Relating to Environmental Management, (Aug. 5, 1996), Art. 17.

<sup>60</sup> Décret n° 2005/0577/PM du 23 février 2005 sur les modalités de réalisation des études d’impact environnemental, Art. 12(1).

<sup>61</sup> Décret n° 2005/0577/PM du 23 février 2005 sur les modalités de réalisation des études d’impact environnemental, Art. 11(1).

<sup>62</sup> Décret n° 2005/0577/PM du 23 février 2005 sur les modalités de réalisation des études d’impact environnemental, Art. 11(2).

<sup>63</sup> Nguiffo, S., and Watio, M., above note 25, 21.

<sup>64</sup> Law No 2019/11 of July 11, 2018: Code of Transparency and Good Governance in Public Finance Management, Art. 6.

<sup>65</sup> Nkuintchua, T. et al., “Here’s how Cameroon can achieve land transparency,” *Thompson Reuters Foundation News*, (Aug. 20, 2018): <https://tmsnr.rs/3fzWsjt>.



## Community Experiences

Our visits to communities in or near agribusiness<sup>66</sup> concessions consistently revealed community frustration with being kept in the dark. Community members often stressed that they were not opposed to investment. But they were frustrated about not being adequately informed or included in decision-making concerning their lands and resources. Community members were generally under-informed about nearby investors' rights and responsibilities. They therefore struggled to secure investment-related benefits and protections that may have been promised. A lack of information and meaningful dialogue often led to conflict, as lands community members had occupied and managed for years were converted into industrial plantations on which they were no longer welcome. Community members reported being chased off lands that had provided them with mangos and nuts for generations.<sup>67</sup> Others desperate for meaningful dialogue with the company resorted to blocking roads. And powerful actors, seeking to protect what have been described as militarized plantations,<sup>68</sup> used litigation and imprisonment against community members and sought to intimidate civil society actors.

### Accessing information:

*"We want the Memorandum of Understanding and other documents to be made public."<sup>69</sup>*

Just as other researchers have found,<sup>70</sup> the community members we spoke to struggled to access information they were entitled to. Of the six communities visited, only one had obtained agreements and other documents relating to a nearby concession—and these were acquired through informal channels after the repeated refusal of authorities and the investor. These barriers to accessing information aligned with our own experiences. For instance, one company asserted a commitment to a "transparent approach," saying that it "remain[ed] at [our] disposal for any documentation," but then never responded to our requests for copies of its leases and accompanying documents.<sup>71</sup>

While one Government representative insisted that community members could access concession documents through the country's government gazette (*journal officiel*),<sup>72</sup> this seemed naïve or ignorant of the real challenges in accessing such documents. Specifically: several years of the government gazette were reportedly never published; not all contracts and concessions are believed to be included in it; and community members generally lack funds, tools, and know-how needed to access it and find

<sup>66</sup> We use the term "agribusiness concessions" to refer to both agro-industrial plantations, such as those of La Société Camerounaise des Palmeraies (SOCAPALM) and Hévéa Cameroun SA (HEVECAM), and smaller projects, such as that of la Société Agricole de l'Océan, whose size is somewhere between 550 and 627 hectares.

<sup>67</sup> Interview with community members, Nov, 2019. "They chase us when we go over there to gather wild mangos and nuts. We are scared."

<sup>68</sup> "Note De Position des Femmes Riveraines des Agro-Industries sur le Respect de leurs Droits Fonciers," *LandCam*, (Mar 4, 2020), 2.

<sup>69</sup> Interview with community representatives, Nov, 2019.

<sup>70</sup> CED, above note 8; Kenfack, P., *The Legal and Institutional Framework on Access to Information in the Granting and Management of Land Concessions in Cameroon: A Diagnostic Study*. (RELUFA, Apr. 2015), 11.

<sup>71</sup> Letter to CCSI, Oct. 16, 2020; CCSI letters of Oct 19 and Oct. 26. 2020.

<sup>72</sup> Interview with Government representative, Nov, 2019.

what documents are included.<sup>73</sup> Other documents amending the terms of such contracts, such as letters and formal amendments, are even harder to track down and currently even less likely to be included in the *journal officiel*.<sup>74</sup>

Community members also experience generational barriers to information access. In many cases, agreements negotiated between a chief and an investor were long lost, and thus difficult for community members to locate years or decades later. For the SOCAPALM (La Société Camerounaise des Palmeraies) and HEVECAM (Hevea Cameroun SA) plantations, community members reported that their ancestors, who may have witnessed the beginning of the plantations (as State-owned enterprises in 1968 and 1975, respectively,<sup>75</sup> when Cameroon was still a single party State), had since passed away. Many documents are long lost, and community members present at that time were likely reluctant to request information or to seek to influence the incoming plantations because, as one current community member explains, “they were intimidated and didn’t know how to do it.”<sup>76</sup>

### Transparency after the fact:

*“The white man said that he had already spoken with the President about the project, and therefore all that was needed was a 60-minute meeting with the community.” — Community member<sup>77</sup>*

*“We do not take the existence of communities into account . . . Projects are decided on in Yaoundé before even speaking to community members.” — Government representative<sup>78</sup>*

Both Bantu and Bagyeli community members at various plantation sites reported that concessions were allocated by the central Government before any meaningful com-

munity engagement took place.<sup>79</sup> Multiple Government representatives confirmed this was the case.<sup>80</sup> Having Government approval processes take place before community consultation clearly falls foul of Cameroon’s obligations and imperatives according to international and regional human rights law jurisprudence and interpretations and guidelines.<sup>81</sup> It also led to Government representatives sharing the frustration of community members. A representative from the Ministry of Agriculture and Rural Development (MINADER) recounted that for one project, “[t]he contract was established in Yaoundé; we didn’t know that beforehand” before declaring that “we need a process that is more participatory, to avoid local populations resorting to marching [protesting], so that we can hear the population. We are not implicated in the project.”<sup>82</sup>

<sup>79</sup> Interviews with community representatives, Nov, 2019. “There was no EIA done before SAO [La Société Agricole de l’Océan] installed itself. There were no consultations, no one took into account the Bagyeli community”; “HEVECAM was created in 1975. There was no *cahier des charges*. This absence led to all the other problems we have”; “There are times where the company does not sign a *cahier des charges* or share an EIA. They do whatever they want. Where are the EIAs? Where are the cahiers des charges?”; “I am surprised to hear that the EIAs are conducted before the project begins.”

<sup>80</sup> Interview with Government representative, Nov, 2019; Statements from Government representative, Nov, 2019. “After the contract is signed, local people are accounted for”; “When the company met the *sous-préfet*, with their contract already established, they explained what the contract says about where they can work. A schedule for meeting each village was then set.”

<sup>81</sup> See, e.g., *Endorois/ Center for Minority Rights and Development & Others v Kenya*, 276/03, (African Commission on Human Rights, Feb. 4, 2010), para. 291. “[For] any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions;” UN Committee on the Elimination of Discrimination against Women, General recommendation No. 34 on the rights of rural women, UN DOC. CEDAW/C/GC/34, paras. 54(e) and 62(d). “To ensure the active, free, effective, meaningful, and informed participation of rural women in political and public life, and at all levels of decision-making, States parties should [. . .] ensure that rural development projects are implemented only after participatory gender and environmental impact assessments have been conducted with the full participation of rural women, and after obtaining their free, prior and informed consent.” “States parties should [. . .] obtain the free and informed consent of rural women before the approval of any acquisitions or project affecting rural lands or territories and resources, including those relating to the lease and sale of land, land expropriation and resettlement;” *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT), para. 9.9. “States and other parties should hold good faith consultation with indigenous peoples before initiating any project;” African Commission on Human and Peoples’ Rights, *224 Resolution on a Human Rights-Based Approach to Natural Resources Governance*, ACHPR/Res.224(LI) (2012). Calling on States Parties to “[c]onfirm that all necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources governance.”

<sup>82</sup> Statement from Government representative, Nov, 2019.

<sup>73</sup> Interview with civil society representative, Apr, 2020.

<sup>74</sup> Interview with civil society representative, Apr, 2020.

<sup>75</sup> Assembe-Mvondo, S. et al., “Assessment of the Effectiveness, Efficiency and Equity of Benefit-Sharing Schemes under Large-Scale Agriculture: Lessons from Land Fees in Cameroon,” *European Journal of Development Research* 25, no. 4 (2013): 645. SOCAPALM was privatized in 2000 and HEVECAM was privatized in 1996.

<sup>76</sup> Interviews with community representatives, Nov, 2019. “SOCAPALM installed itself in 1979. We don’t remember that time, and there is no Bagyeli here who was around in 1979.” “No one knows when HEVECAM’s plantation was created. Our parents who are now dead were the witness of the plantation’s installation. No one ever sought to understand why there was this exploitation because they were intimidated and didn’t know how to do it.”

<sup>77</sup> Interview with community representatives, Nov, 2019.

<sup>78</sup> Interview with Government representative, Nov, 2019.

## Understanding information:

*“A rather passive form of education was done, aimed mainly at the transmission of information...”<sup>83</sup>*

Community members recounted meetings with company and Government representatives where information was provided. But it was conveyed in ways that did not empower them to influence decisions about a project. And such information was hard to retain. Some community members wondered whether chiefs who had since passed away might have once received documentation, even if it was now nowhere to be found.<sup>84</sup> Community meetings tended to encourage the passive education of community members, rather than helping them to defend their rights, obtain meaningful benefits, and hold powerful actors to their responsibilities.<sup>85</sup> Language was also a barrier. One member of a Bagyeli community expressed a desire for her children to speak French so that they could raise their voices.<sup>86</sup> In another case, a contract for an extractive industries project in a Francophone area was reportedly only made available in English.<sup>87</sup>

## Using information:

*“When problems arise, where do we go? The investor is very strong and powerful.”<sup>88</sup>*

Even where communities had access to information or dialogue processes,<sup>89</sup> they faced barriers to using information to further their objectives. A lack of transparency, combined with immense power imbalances, neutralized

the participatory potential of existing multi-stakeholder **dialogue platforms**. One community participant in such a platform noted that “the problems of nearby communities are not reflected in the platforms. We have some information, but not the *cahier des charges* [an annex to a convention that set out additional conditions, many of which concern protections and social programs for affected communities] and not the information about the money that the company earns.”<sup>90</sup> Another noted that “we can speak [at the platform] but not everything is up for discussion.”<sup>91</sup> The platforms also exhibited structural and governance weaknesses. Local authorities controlled which community representatives were appointed, which limited the potential for authentic community concerns to be aired and resolved if such concerns were at odds with the interests of the Government.<sup>92</sup> Meeting agendas were also tightly controlled, with community members having to visit far away municipal offices to access, or request additions to, the agenda before the meeting.<sup>93</sup> One Government representative also stressed that discussions during platforms are not adequately being transmitted to decision-makers.<sup>94</sup> One of the companies confirmed it had established such dialogues which “seek to address possible grievances and complaints, to exchange information between the company and the local residents and to present corporate social responsibility projects.” While explaining that the dialogues are held “in a language that is understood by all” and that “meeting minutes are available at the administration and general management offices of the plantation companies,”<sup>95</sup> the company did not address the challenges described in this paragraph.

Avenues for **legal redress** were also difficult to access and are widely regarded as lacking independence. Cameroon’s judiciary is widely regarded as “subordinate to the executive” and subject to widespread corruption.<sup>96</sup> A lack of

<sup>83</sup> Endeley, J., and Sikud, F., *The social impact of the Chad-Cameroon oil pipeline: How industrial development affects gender relations, land tenure, and local culture*. (2007), 76. Referring to consultations attached to the Chad-Cameroon Pipeline, which terminates at Kribi.

<sup>84</sup> Interview with community representatives, Nov, 2019.

<sup>85</sup> A similar dynamic was noted by Endeley, J. and Sikud, F., above note 83: “A rather passive form of education was done, aimed mainly at the transmission of information, instead of an active one that enables communities to ensure and demand the protection of their rights, whereby they get most of the benefits and minimise the effects of project activities.”

<sup>86</sup> Interview with community representatives, Nov, 2019. “[We want] our children to also know how to read and speak French to be able to defend the interests of the Bagyeli against the Bantus.”

<sup>87</sup> Interview with civil society representative, Apr, 2020.

<sup>88</sup> Interview with community representatives, Nov, 2019.

<sup>89</sup> Periodic bilateral or multilateral dialogues were reported at two company sites. SOCAPALM told us that it has “established quarterly trilateral dialogue platforms communities-State-Socapalm since 2016. Furthermore two-party platforms Socapalm-communities are also organized at less regular intervals”: Letter to CCSI, Oct. 16, 2020.

<sup>90</sup> Interview with community representatives, Nov, 2019.

<sup>91</sup> Interview with community representatives, Nov, 2019.

<sup>92</sup> Interview with community representatives, Nov, 2019. “The mode of selecting village representatives causes problems . . . the representatives are influenced by the local authorities. The administration adds all of its weight and the discussions do not always reflect the realities of those who live in the villages.”

<sup>93</sup> Interview with community representatives, Nov, 2019. “The authorities want the discussions to stay in the order of what was set beforehand, and if we try to raise another issue, they stop us from doing so. They demand that we respect the procedure. Before each meeting, if a representative wants to introduce a topic of discussion, they have to visit the *préfet* to inform them beforehand.”

<sup>94</sup> Interview with Government representative, Nov, 2019.

<sup>95</sup> Letter to CCSI, Oct. 16, 2020.

<sup>96</sup> Bertelsmann Stiftung Transformation Index (BTI), *BTI 2020 Country Report: Cameroon* (2020), p. 12; US Department of State, *Cameroon*

public information about the nature and status of ongoing cases and outcomes also isolated wronged communities and limited citizens' ability to join and strengthen cases or adopt similar legal strategies, further undermining access to justice.<sup>97</sup> Community and civil society representatives saw administrative and judicial authorities as only protecting company interests and not supportive of community efforts to pursue legal redress.<sup>98</sup> Such perceptions were seemingly validated when a judge of the High Court N'dian Division, who ordered an injunction against Herakles Farms,<sup>99</sup> was then reportedly transferred to a different division (the company reportedly then violated the injunction).<sup>100</sup> A United Nations expert has also called for human rights defenders in Cameroon to be protected after noting allegations that individuals seeking to apply to courts to protect the land and human rights of local communities are often pressured not to do so.<sup>101</sup>

A representative from HEVECAM took pains to note that the company had a non-judicial grievance mechanism. Yet, when we asked to see copies of the company's documentation concerning this procedure, we were told they were confidential.<sup>102</sup> One Government interviewee even recounted a personal experience, relating to the loss of *their* community's land, where a MINDCAF representative seemed uninterested in responding to community complaints.<sup>103</sup>

2019 Human Rights Report, p. 10; GAN Business Anti-Corruption Portal, *Cameroon Corruption Report*, <https://bit.ly/2BYBcpl>; Kamga, G. E. K., "The Political (In)Dependence of the Judiciary in Cameroon: Fact or Fiction?" *Africa Review* 11, no. 1 (2019): 46-62.

97 Interview with civil society representative, Apr, 2020.

98 Interview with community representatives, Nov, 2019. "No Bagyeli has ever brought a claim or complaint about this situation because the Bagyeli is intimidated, he is afraid of the police and the *gendarmierie*"; Interview with civil society representative, Apr, 2020.

99 SEFE vs SGSOC. Suit No. HCN/003/2011/1M/2011, (Mundemba High Court, Aug. 31, 2011); CED and RELUFA, *Above All Laws: How an American Company Operates Illegally in Cameroon*. (Feb. 2013), 9-10, <https://bit.ly/308bSVD>.

100 Etahoben, B., "Fighting the Devils' Land Grab Pact: Chronicle #9," *Zam Magazine*, (Sep 9, 2014), <https://bit.ly/2Cyq8Pk>; Edimo, A. M., *Letter from Andrew M. Edimo to then-Herakles Farms CEO Bruce Wrobel*. Letter. From Scission, *Cameroon: One Front in the Struggle Against Global Capital's War on the Earth*, Jun. 19, 2014. <https://bit.ly/2CzYUb3>.

101 Report of the Special Rapporteur on the right to food, Olivier De Schutter, Mission to Cameroon. (Dec. 18, 2012), UN Doc. A/HRC/22/50/Add.2, paras. 23, 73(m).

102 Verbal communication with HEVECAM representative, Nov, 2019. SOCAPALM provided us with its procedures for managing internal and external complaints: Letter to CCSI, Oct. 16, 2020.

103 Interview with Government representative, Nov, 2019.

## Communities as data producers:

*"We have asked BACUDA for help delimiting our lands."*<sup>104</sup>

Communities want to generate land rights and land use data themselves. For instance, rural women living alongside agro-industrial plantations in Cameroon have called for participatory and community mapping of village boundaries and sensitive or especially important areas for communities.<sup>105</sup> Community-led data generation can address many transparency challenges, by empowering community members to flag unauthorized activities and adverse impacts and fact check inaccurate narratives. It can lead to more informed decision-making and monitoring of company actions by governments and financiers.

Existing data sovereignty efforts led by communities and civil society organizations in Cameroon include mapping customary lands as a strategy to increase tenure security,<sup>106</sup> and mapping cut logs to track illegal logging.<sup>107</sup> Community complaints about environmental pollution could also be bolstered by community-led monitoring, although civil society organizations that previously attempted such work found it prohibitively expensive.<sup>108</sup>

Encouragingly, public actors have acknowledged the usefulness for Government and, by implication, some degree of reliability, in community-generated information. Representatives from various Government agencies participated alongside other stakeholders in the development of a standard methodology for community land-use mapping.<sup>109</sup> And in 2017, Cameroon's National Institute of Cartography (INC) agreed to digitally store, archive, and distribute participatory maps of land holdings prepared by community members.<sup>110</sup> In addition, one Government

104 Interview with community representatives, Nov, 2019.

105 "Note de position des femmes riveraines des agro-industries sur le respect de leurs droits fonciers," above note 68, 4.

106 See, e.g., Nelson, J., An Overview of Community Mapping with FPP in Cameroon. (Forest Peoples Program, Jul. 2007); The Tenure Facility, Community mapping for effective land-use planning: development of a common methodology for community mapping in Cameroon. (2017), <https://bit.ly/2Ons9Rb>.

107 CED, Plateforme de Signalement d'une Observation en Direct, <http://signalement.bd-obster.org>.

108 Statement from civil society representative, Nov, 2019.

109 The Tenure Facility, above note 106.

110 CED, "Cameroon: L'Institut National de Cartographie va reconnaître les cartes participatives," *CED News*, (Mar. 20, 2017): <https://bit.ly/3gUiUnS>; Rainbow Environment Consult, *Guide synthétique et pratique de la méthodologie unifiée de cartographie participative au*

representative also confirmed that community-generated information can be useful for the Government and a valid data source for decision-making.<sup>111</sup>

### Reactions, rather than rights:

*“Everything happens in response to grievances, not because of [communities’] rights.”<sup>112</sup>*

The lack of functional processes for ongoing information sharing and collaborative decision-making is linked to a larger problem. Community members are treated more as subjects than as rights holders. While international law guarantees the rights to information and public participation for all people, and the right to give or withhold free, prior and informed consent for Indigenous peoples and other minorities,<sup>113</sup> these rights were often not respected in practice. (SOCAPALM referred us to its parent company’s responsible management policy, which commits all subsidiaries to respect the right of all communities to give or withhold their free, prior and informed consent.<sup>114</sup>) Government representatives themselves depicted a passive or reactive governance culture: one representative noted a lack of Government monitoring, which enabled companies to shirk benefit-sharing obligations;<sup>115</sup> another conceded that “after we grant a concession and time passes, we receive no news about what is happening;”<sup>116</sup> and a third told aggrieved community representatives that “if you have proof ... you will be listened to” and “it’s up to you to present us with your grievances and needs.”<sup>117</sup>

This culture of reactive governance is exacerbated by the lack of legal recognition of undocumented customary land rights, which leaves community landholders in a legally precarious position.<sup>118</sup> Processes to obtain formal land titles in Cameroon have also been described by Transparency International Cameroon as “the most devastating hotbed of corruption” and “a veritable obstacle course.”<sup>119</sup>

*Cameroun.* (2018), 17, <https://bit.ly/3eq66UK>.

<sup>111</sup> Interview with Government representative, Nov, 2019.

<sup>112</sup> Statement from community representative, Nov, 2019.

<sup>113</sup> See, e.g., Szoke-Burke, S and Cordes, K. Y, “Mechanisms for Consultation and Free, Prior and Informed Consent in the Negotiation of Investment Contracts,” *Northwestern Journal of International Law & Business* Vol. 41 (forthcoming, 2020-21), 11-18, <https://bit.ly/3fwhlfK>.

<sup>114</sup> SOCFIN, *Politique de gestion responsable du Groupe Socfin* (Mar. 2017), Arts. 2 (para 1), 3.2 (para 5), and 4 (para 2).

<sup>115</sup> Interview with Government representative, Nov, 2019.

<sup>116</sup> Interview with Government representative, Nov, 2019.

<sup>117</sup> Statement from Government representative, Nov, 2019.

<sup>118</sup> RELUFA and CANADEL, above note 46, 38.

<sup>119</sup> Le Messenger, “Selon Transparency International, le titre

The Government has long resisted the formal recognition of collective land rights,<sup>120</sup> perhaps on the assumption that communities without legal land tenure documentation are easier to ignore when allocating lands to investors. But this approach often leads to conflict.<sup>121</sup> Thus, instead of making it easier to allocate land to incoming investors, the Government’s approach to land rights is self-sabotaging, essentially increasing operational risks and costs for agribusiness companies and damaging Cameroon’s perceived investment climate.<sup>122</sup> (As mentioned above, the U.S. State Department’s 2019 assessment of Cameroon’s agricultural investment climate directly identified difficulties securing tenure rights in Cameroon as a “significant obstacle.”<sup>123</sup>)

The failure to frame information and participation as the human rights they are, and the inadequacy of current transparency practices, is to every stakeholder’s detriment. When decisions are made without important community insights and participation, the risk of grievances and conflict increases; this has been shown to increase costs by up to 29 times a normal scenario, and even to lead to project failure.<sup>124</sup> Indeed, such risks have reportedly borne out at the sites visited for this research. Communities recounted the barring of roads at two of the three projects we visited—barred by community members frustrated by a lack of available information, at feeling excluded from decision-making, and at company representatives’ apparent unwillingness to hear and respond to their grievances.<sup>125</sup> In addition to bearing the negative impacts of projects designed without their knowledge, community members then had to do the risky and time-consuming work of obtaining information through informal channels and following up with authorities and investors for meaningful dialogue.<sup>126</sup>

foncier est un foyer de corruption le plus dévastateur au Cameroun,” *farmlandgrab.org*, (Sep. 17, 2018): <https://bit.ly/2MZJ0sK>

<sup>120</sup> Tchawa, P., above note 27, 44.

<sup>121</sup> Assembe-Mvondo, S., et al., above note 75, 651, referring to Gerber, J.-F., “Conflicts over industrial tree plantations in the South: Who, how and why?” *Global Environmental Change* 21, (2011), 165–176. See also CED’s Atlas of anger and resistance (ACORECA), which maps conflicts emerging between agro-industry and local communities: <http://www.cedcameroun.org/cartotheque/>.

<sup>122</sup> Arounsavath, F., above note 31, 14.

<sup>123</sup> US Department of State, above note 35.

<sup>124</sup> See, e.g., The Munden Project, *The Financial Risks of Insecure Land Tenure: An Investment View*. (Dec. 2012), 2-3, <https://bit.ly/3gVCNuD>.

<sup>125</sup> Interviews with community representatives, Nov, 2019. “There was no information, no consultation. SOCAPALM did not involve the nearby communities, so the communities blocked the road, demanding a negotiation”; “We blocked the road to stop the journey of HEVECAM’S managers. We made the director of HEVECAM stop to listen to our demands.”

<sup>126</sup> Interview with community representative, Nov, 2019.

Finally, a lack of recognition for legitimate customary tenure rights means that legally required land rents over National Land are paid by companies to Government. This can introduce transparency and accountability challenges over revenue received and undermine communities' ability to hold public authorities to their obligation to distribute 20% of rents received to relevant village communities or collectivities.<sup>127</sup>

### Indigenous communities kept in the dark:

*"We were not taken into account as members of the community during the benefit sharing negotiations."<sup>128</sup>*

African and international institutions have helped to clarify that the phrase "all Africans are Indigenous" is a misconception.<sup>129</sup> While almost all African societies were subjected to colonial rule, "Indigeneity" as used in international law refers to peoples whose culture and way of life differ from those of mainstream society, are dependent on access to traditional lands and resources, and would be threatened in the event of dispossession of those lands and resources.<sup>130</sup> Such peoples may have their own language<sup>131</sup> and can claim protection under international law even if the government refuses to recognize their Indigeneity, provided they, themselves, identify as Indigenous.<sup>132</sup> In Cameroon, Indigenous groups include non-Bantu ethnic groups, such as the Bagyeli, Baka and Bedzan hunter-gatherers, the Mbororo pastoralists, and the Kirdi mountain communities. International law recognizes specific rights for Indigenous peoples, which help to combat and delegitimize the particular forms of discrimination. As noted by the African

Commission on Human and Peoples' Rights and the International Work Group for Indigenous Affairs, such communities use the term "Indigenous" not to "deny all other Africans their legitimate claim to belong to Africa" but instead to "analyse the particularities of their sufferings and by which they can seek protection in international human rights law and moral standards."<sup>133</sup> The Government, through at least four different ministries, has repeatedly reaffirmed this concept of Indigeneity in its Indigenous People Development Plans for Baka, Kola/Bakola/Bagyeli, Aka, and Bezdang groups for many World Bank-financed projects.<sup>134</sup>

The Government is bound by international law to protect the rights of its Indigenous peoples to self-determination<sup>135</sup> and to respect their decisions to give or withhold their free, prior and informed consent, among others.<sup>136</sup> These rights have important transparency implications, including that Indigenous peoples have the right to all relevant pertinent information about actual or proposed projects using their lands or resources, to be meaningfully included in decision-making concerning such investments, and to give or withhold their consent to a proposed or actual project. In-

<sup>133</sup> ACHPR and IWGIA, above note 129, 12.

<sup>134</sup> Ministry of Economy, Planning and Regional Development (MINEPAT), *Indigenous People ("pygmy") Development Plan for the Participatory Community Development Programme (PNDP)* (Jun. 2003), 3, <https://bit.ly/2Zr3scW>; MINEFOP, *Indigenous People ("pygmy") Development Plan for the Forest and Environment Sectoral Programme (PSFE) Doc. No. IPP86* (Undated), 2, <https://bit.ly/321TmMa>; Republic of Cameroon, *Indigenous People ("Pygmy") Development Plan for Sustainable Agro-Pastoral and Land Management Promotion Under the Community Development Program Support Project in Support of the First Phase of the Community Development Program* (Aug. 24, 2005), 3, <https://bit.ly/2CyximG>; MINEE, *Projet d'électrification rurale et d'accès à l'énergie dans les zones sous desservies au cameroun (PERACE): Elaboration d'un cadre de planification en faveur des populations autochtones* (Juin 2018), 7, <https://bit.ly/3eyvHuN>; MINEFOP, *Projet d'appui au développement des compétences pour la croissance et l'emploi au cameroun (PADECE): Cadre de planification des peuples autochtones du projet (CPPA)* (Novembre 2018), 4, <https://bit.ly/2ZsWc0L>.

<sup>135</sup> International Covenant on Civil and Political Rights (ICCPR), opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), Arts. 1, 27; International Covenant on Economic, Social and Cultural Rights (ICESCR), opened for signature Dec. 16, 1966, 993 U.N.T.S. 3, Art. 1. The right of Indigenous peoples to self-determination is also set out in the UNDRIP, Art. 3.

<sup>136</sup> Indigenous rights to give or withhold free, prior and informed consent have been derived from or linked to the *African Charter on Human and Peoples' Rights*, Art. 14 (right to property) and ICCPR, Art. 27 (minority right to enjoy culture). See, e.g., *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 276/03, (African Commission on Human and Peoples' Rights, Feb. 4, 2010), paras. 226, 29, and *Poma Poma v. Peru*, Communication No. 1457/2006, U.N. Doc. CCPR/C/95/D/1457/2006, (Human Rights Committee, Mar. 27, 2009), paras. 7.6, 7.7, respectively.

<sup>127</sup> Décret n° 76-166 du 27 avril 1976 fixant les modalités de gestion du Domaine National, Art. 17; Assembe-Mvondo, S, et al., above note 75, 641-643.

<sup>128</sup> Interview with community representatives, Nov, 2019.

<sup>129</sup> African Commission on Human and Peoples' Rights (ACHPR) and International Work Group for Indigenous Affairs (IWGIA), *Indigenous Peoples in Africa: The Forgotten Peoples? The African Commission's work on indigenous peoples in Africa* (2006), 12, <https://bit.ly/305LJHb>.

<sup>130</sup> UNDRIP, Art. 34; Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, African Commission on Human and Peoples' Rights, Communication No. 276/2003 (Feb. 4, 2010), paras. 150, 156, 235, 244, 251.

<sup>131</sup> G.A. Res. 61/295, *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, (Oct. 2, 2007), Arts. 13, 14, 16. While not binding in and of itself, UNDRIP is regarded as synthesizing various (binding) customary international law principles.

<sup>132</sup> International Labour Organization, *Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries*, opened for signature June 27, 1989, 1650 U.N.T.S. 383 (entered into force Sept. 5, 1991), Art. 1(2).

ternational law also requires governments to consult with Indigenous and tribal peoples for the development of laws and administrative measures that affect them.<sup>137</sup>

Members of Bagyeli communities interviewed lacked important information about nearby investments and expressed frustration at not being included in key dialogues between other communities and investors.<sup>138</sup> As a result, they did not feel empowered to raise grievances about issues such as environmental pollution or extensive conversion, and hence loss, of the forests they have historically depended on.<sup>139</sup> Their Bantu neighbors seemed better positioned to obtain investment-related benefits, like employment and money payments.<sup>140</sup> This transparency failure is rooted in deep-seated societal inequalities and racism,<sup>141</sup> traceable back to the colonial marginalization of Indigenous peoples.<sup>142</sup> But it is also evidence of a failure by public authorities and company representatives to adapt community engagement strategies and investment approval processes to the needs of all community members, including Indigenous communities.

**137** Indigenous and Tribal Peoples Convention, C169. International Labour Organization (June 27, 1989), Art. 6(1)(a); UN General Assembly. United Nations Declaration on the Rights of Indigenous Peoples, UN Doc. A/RES/61/295 (Oct. 2, 2007), Art. 19.

**138** Interviews with community representatives, Nov, 2019. “We need to be invited to meetings with the Bantus to have information and so that we are able to speak on the name of our community”; “The Bantus refuse to let Bagyelis participate in discussions [around land ownership].”

**139** Interview with community representatives, Nov, 2019. “No Bagyeli has ever brought a claim or complaint about this situation because the Bagyeli is intimidated, he is afraid of the police and the *gendarmerie* [...] We need your help to have a voice to complain, to defend our spaces”; “Since SOCAPALM arrived, our river has become polluted and we get sick if we drink from it. Our forests are our life... [Now] to go hunting we have to go 5 or 6 kilometres out of the village.” Having reviewed an earlier draft of this report, SOCAPALM disputed the latter statement and said that “Biannual analyses are also conducted to prevent any river pollution, contrary to what was stated.” SOCAPALM also provided information about its parent company’s responsible management policy of 2017 and the various steps it has taken to obtain RSPO certification, conduct High Conservation Value (HCV) studies, and obtain ISO 14001 certification for its environmental management system: Letter to CCSI, Oct. 16, 2020.

**140** Interview with community representatives, Nov, 2019. “Bagyelis never shared in the funds shared as part of the exploitation of the village lands. We were not taken into account as members of the community during the benefit sharing negotiations.”

**141** Ngono, R., “The disappearance of indigenous languages in Cameroon, what if the problem was linked to land?” *LandCam*, (Feb. 21, 2020): <https://bit.ly/2DldeiF>.

**142** CED, Réseau Recherches Actions Concertées Pygmées (RACOPY) and Forest Peoples Programme (FPP), *The situation of indigenous peoples in Cameroon: A supplementary report submitted in connection with Cameroon’s 15th-19th periodic reports*. (Jan. 27, 2010), <https://bit.ly/2OIMKWF>.

## Transparency and benefit sharing:

*“[We want] the application of everything that has been said and promised.”<sup>143</sup>*

Community members repeatedly spoke of broken company promises—regarding improvements to local schools, agricultural inputs for local producers, and payments to the community.<sup>144</sup> Nonetheless, community members expressed a desire to work together with companies.<sup>145</sup> Information sharing and comprehension have an important role to play in this regard. Understanding company obligations to deliver benefits, and information about company earnings and payments made, can empower communities to hold companies to their obligations and receive what they are owed.<sup>146</sup> Yet, information and documentation were so often unavailable to community members that they struggled to learn what job opportunities or other benefits the company was supposed to deliver. Many community members were therefore unable to make the best of terms the company was already bound by, compounding the negative impacts of their dispossession of land and resources. Transparency of company obligations regarding benefit sharing could help clarify roles and expectations. In particular, such transparency would help companies to demonstrate that any failures by the Government to fulfill basic public duties and services should not mean that companies should be seen as the only avenue for obtaining social services or the resolution of grievances.

Other researchers have observed a lack of transparency regarding mandatory company land rent payments to the Government and communities.<sup>147</sup> In the case of SOCAPALM, for example, researchers have found that local elected of-

**143** Statement from community representative, Nov, 2019.

**144** Interview with community representatives, Nov, 2019. “The company told us that it would give us a multimedia room for the local school. Nothing was done”; “SAO promised to give cocoa plants to villagers to encourage the youth to cultivate them, but it did not respect [this promise]”; “SAO started by paying money to the community but it stopped the payments. It has made payments for 3 years.”

**145** Interview with community representatives, Nov, 2019. “We want relations to work out with HEVECAM.”

**146** CED, above note 70, 12; Interview with civil society representative, Nov, 2019; RELUFA, *Rapport Du Dialogue Intersectoriel Sur Les Redevances (Royalties) Liées A L’Exploitation Des Ressources Naturelles* (Dec. 6, 2019), 4.

**147** Décret n° 76-166 du 27 avril 1976 fixant les modalités de gestion du Domaine National, Art. 17. “The income received from the allocation of national lands, whether held by grant or on lease, shall be apportioned 40% to the State, 40% to the council in whose area the land is situated, and 20% per cent for use in the public interest to the village community concerned.”

officials were not even aware of the company's obligation to pay land rents and that local councils never received any rent.<sup>148</sup> According to that research, royalties were paid to the General Directorate of Taxation, potentially alongside other payments, but nothing was transferred to local stakeholders.<sup>149</sup> That lack of transparency disempowered local stakeholders from demanding their due, while reportedly also enabling "collusion between agro-industrial operators and some government officials."<sup>150</sup> SOCAPALM described this research as "incorrect," stating that the company "is regularly questioned about this issue during the trilateral platforms" and that "we reply in full transparency." The company also wrote that it has "already integrated this distribution in the new version of the long-term lease, which will be revised at the completion of the land tenure work" and that "this responsibility lies mainly with the State and the management of its property-related revenues."<sup>151</sup>

## Methodology

This report forms part of a broader portfolio of research conducted by CCSI and partners on a demand-driven approach to the transparency of land investments, focusing on the transparency needs of project-affected communities and host governments. Data was primarily collected in November 2019, through semi-structured group and individual interviews with six community groups located at or near three different agricultural plantation sites in the departement de l'Océan, and semi-structured interviews with representatives of the Government and civil society in Yaoundé. The authors also conducted desktop research and gathered further data at two multi-stakeholder workshops, one in Kribi and the other in Yaoundé, attended by representatives of affected Bagyeli and Bantu communities, Government, civil society organizations, agribusiness, and the media. Additional contextual interviews were conducted virtually with representatives of national and international civil society and academia. Multiple versions of this report were peer reviewed by land and natural resource governance practitioners residing in or familiar with Cameroon. MINDCAF, MINADER, the Ministry of Economy, Planning and Regional Development (MINEPAT), the Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED), the Prime Minister's office, and the operators of the three agribusiness sites visited were provided with an earlier draft of the report and an invitation to respond and share their perspectives. Two companies and one Ministry provided written responses.

148 Assembe-Mvondo, S. et al., above note 75, 646.

149 Assembe-Mvondo, S. et al., above note 75, 649-50.

150 Assembe-Mvondo, S. et al., above note 75, 651.

151 Letter to CCSI, Oct. 16, 2020.



## Acknowledgments

This report was written by Sam Szoke-Burke, Samuel Nguiffo, and Stella Tchoukep.

Lydienne Kala Epee, Armelle Olinga Andela, Inès Rejraji, Hind Al Aissi, Marie-Cécile de Bellis, Solina Kennedy, William Sommer, and Nami Patel contributed to the research. Gabriel Trinity McCormick, Safia Southey, and Michael Morgan also contributed to the report's finalization. The authors deeply thank the representatives from communities, Government, civil society, and the private sector who were willing to share their perspectives. The authors also offer their sincere thanks to the LandCam Project for co-hosting the local and national workshops, and to the peer reviewers for their invaluable reviews.



This research was funded with UK aid from the UK government; however the views expressed do not necessarily reflect the UK government's official policies.

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