20 January 2013

Gabriella Habtom
Secretary
UN Committee on the Elimination of Racial Discrimination
Human Rights Treaties Division (HRTD)
UNOG-OHCHR
1211 Geneva 10, Switzerland
cerd@ohchr.org

Request for Consideration of the implications for the Indigenous Forest Peoples of Cameroon from the imminent adoption of a racially discriminatory new Forest Law under the Urgent Action/Early Warning and Follow Up Procedures

Dear Ms. Habtom:

1. Okani, a Cameroonian indigenous organization, the Centre for Environment and Development ("CED"), a Cameroonian civil society organization, and the Forest Peoples Programme, an international NGO ("the submitting organisations"), respectfully submit this request to the United Nations Committee on the Elimination of Racial Discrimination ("the Committee").[1] In particular, the submitting organisations are writing to request that at its 82nd session the Committee considers the implications of the imminent adoption of racially discriminatory new Forest Law ("the draft Forest Law") on the situation of indigenous forest peoples under its early warning and urgent action procedures, and in follow up to the Committee's latest Concluding Observations.

Introduction

2. The submitting organisations respectfully wish to highlight the following key concerns which present an imminent risk of irreparable harm to the physical and cultural integrity of indigenous forest peoples. (A-D) are submitted as requests under the Committee's urgent action and early warning procedure. (E) is submitted under the follow up procedure, having been the subject of previous recommendations made by the Committee.

A. Cameroon has failed to guarantee the effective participation of indigenous and forest peoples in the drafting of the new Forest Law.

[1] The submitting organisations are: **Okani** an indigenous organisation based in Eastern Cameroon that works to promote the rights of forest peoples. Address: BP 14 Bertoua, Cameroon. Tel: (+237) 22 07 92 23, email: associationokani@gmail.com. **CED** is an NGO based in Cameroon working on forest and environment issues by providing support on the ground and monitoring national policies. Among other things, it works to promote and protect the rights of indigenous peoples in Cameroon and the Central African sub-region more generally. Address: BP 3430 Yaoundé Cameroon. Tel: (+237) 22 21 15 51, Fax: (+237) 22 22 38 59, email: ced@cedcameroun.org. **Forest Peoples Programme** is an international NGO, founded in 1990, which supports the rights of indigenous peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. Address: 1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: info@forespeoples.org

B. The draft Forest Law fails to guarantee adequate protection for the right of indigenous peoples to own, use and control their lands, territories and resources.

C. The draft Forest Law fails to guarantee indigenous peoples' rights to participate in, and consent to, decision making concerning their forest lands, territories and resources.

D. The draft Forest Law fails to guarantee access to justice for indigenous peoples impacted by violations of their rights to their forest lands, territories and resources.

E. Cameroon has failed otherwise to implement the Committee's 2010 recommendations relating to addressing discriminatory land laws and the enactment of an indigenous peoples bill.

3. The Committee has for some time concerned itself with structural discrimination against indigenous and other rural peoples in Cameroon. Specific concerns have been raised in relation to the forestry sector and indigenous forest peoples. For the purposes of promoting and protecting the rights of minorities and indigenous peoples, the Committee has previously recommended that the state party "take all appropriate measures, particularly as regards deforestation that may harm such population groups".[2] The threats from other resource or land-use sectors has also been the subject of the Committee's Concluding Observations, including the impacts on indigenous peoples of national parks,[3] and from infrastructure development[4]. Related concerns over such impacts on indigenous peoples' cultural rights were expressed in the 2012 Concluding Observations of the Committee on Economic, Social and Cultural Rights, who observed that indigenous groups such as the Baka had been displaced from ancestral lands which had been opened up to third parties for logging.[5]

4. A number of the previous recommendations communicated by the Committee to Cameroon are concerned with legislation – both in terms of (a) the special legislative measures needed to protect indigenous peoples' rights and (b) addressing existing discriminatory laws – and the need for urgent reform in both respects.

5. In relation to special legislative measures, the Committee's Concluding Observations have expressed broad-ranging concern at the "discrimination and marginalisation [indigenous peoples] face in the exercise of their civil, political, economic and cultural rights".[6] The Committee therefore urged Cameroon to enact a bill to protect and promote the rights of indigenous peoples and "ensure the participation of indigenous people and their representatives in the process of drafting the bill".[7] The Committee also recommended

---

2 *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Cameroon*, UN Doc. CERD/C/304/Add.53, 20 March 1998, at para. 17.

3 *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Cameroon*, UN Doc. CERD/C/CMR/CO/15-18, 30 March 2010, at para. 18. (Hereinafter "*CERD, 2010*")

4 *Id.*

5 *Concluding Observations of the Committee on Economic Social and Cultural Rights: Cameroon*, UN Doc. E/C.12/CMR/CO/2-3 2012, para. 33. (Hereinafter "*CESCR, 2012*"). The Committee on Economic, Social and Cultural Rights went on to recommend that Cameroon "take effective measures to protect the right of each group of indigenous people to its ancestral lands and the natural resources found there, and to ensure that national development programmes comply with the principle of participation and the protection of the distinctive cultural identity of each of these groups".

6 *Id.* at para. 15. Concerns of discrimination against indigenous peoples in the exercise of economic, social and cultural rights were also recently expressed in *CESCR, 2012*, *at* para. 10.

7 CERD, 2010, para. 15. The need for special legislative measures to protect indigenous peoples rights has also been recommended in the *Concluding Observations of the African Commission on Human & Peoples' Rights: Cameroon*, 12-26 May 2010, para. 35. (Hereinafter "*ACHPR, 2010*"); *Concluding Observations of the Committee on the Rights of the Child: Cameroon*, UN Doc. CRC/C/CMR/CO/2 2010, para. 83 at (a).

that Cameroon refrain from using the term 'marginal population groups' to avoid further stigma and to ensure that the special characteristics of indigenous peoples are taken into consideration.[8] The Committee also requested that the State party provide information within one year on its follow-up to this recommendation. The submitting organisations are to date unaware of any such follow-up response from the State party.

6. In the absence of an indigenous peoples law (and potentially even with such a law in place) indigenous peoples in Cameroon remain vulnerable to the discriminatory effects of other laws and regulations in force. It is respectfully suggested that where such laws are in the process of reform – as is the case with Cameroon's Forest Law – the above recommendation to ensure participation of indigenous peoples in the reform processes would apply equally to those other reform processes whose subject matter impacts on indigenous peoples' rights. This would also be consistent with the right to political participation contained in Article 5(c) of the International Convention on the Elimination of All Forms of Racial Discrimination ("the Convention").

7. The Committee has recognised the racial discrimination inherent in Cameroon's land laws. Citing examples such as the abuse and assault suffered by indigenous peoples from civil servants and employees of protected areas and the impacts of the Chad-Cameroon pipeline on increasing the vulnerability of the Bagyéli, the Committee stated that it was:

> …concerned by the attacks on indigenous people's land rights. It regrets that the land ownership legislation in force does not take into account the traditions, customs and land tenure systems of indigenous peoples, or their way of life.[9]

8. The Committee therefore recommended that the State party "take urgent and adequate measures to protect and strengthen the rights of indigenous peoples to land", including that the State party:

> (a) Establish in domestic legislation the right of indigenous peoples to own, use, develop and control their lands, territories and resources;
>
> (b) Consult the indigenous people concerned and cooperate with them through their own representative institutions, in order to obtain their free and informed consent, before approving any project that affects their lands, territories or other resources, in particular with regard to the development, use or exploitation of mineral, water or other resources;
>
> (c) Guarantee indigenous people just and fair compensation for lands, territories and resources that they traditionally own or otherwise occupy and use, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent;
>
> (d) Ensure that the legal land registry procedure in force duly respects the customs, traditions and land tenure systems of the indigenous peoples concerned, without discrimination;

Similarly, in its 2012 Concluding Observations (*supra*, at note 5), the Committee on Economic Social and Cultural Rights urged Cameroon "adopt a consistent and comprehensive policy to promote the right of indigenous peoples to an adequate standards of living" (para. 10).

8 *CERD 2010*, at para. 15. This recommendation was expressly endorsed by the African Commission on Human & Peoples' Rights at *ACHPR*, *2010* at para. 36.

9 *CERD 2010*, at para. 18.

(e) Protect indigenous people against any attacks on their physical and mental integrity and prosecute the perpetrators of acts of violence and assaults against them.[10]

9. The indigenous forest peoples living in Cameroon – namely the Baka, the Bakola or Bagyéli, and the Bedzang – number some 30–50,000 people.[11] The physical and cultural integrity of these groups depends on these forest lands and natural resources. Cameroon's forests make up nearly 60% of the countries entire surface area.[12] Since the legislative purpose of Cameroon's draft Forest Law – as for its predecessor – is to provide the legal framework applicable to all aspects of Cameroon's forest land management and use, it occupies a prominent place in the body of law relating to land. In addition, the Forest Law directly impacts on land ownership by ascribing private property rights over certain categories of forest lands e.g. state ownership of State, Municipal or Regional Forests. It is therefore respectfully submitted that the Committee's recommendations summarised above at paragraph 8 apply equally to the proposed new Forest Code, as well as Cameroon's other laws relating to land and natural resources.

Purpose and context of request

10. The purpose of this request is to bring to the Committee's attention the imminent enactment of a new Forest Law. The submitting organisations highlight that both the *process* of reform and the *contents* of the proposed new law are racially discriminatory towards indigenous peoples. At the same time and by way of follow up, this request brings the Committee's attention to the evident failure of Cameroon to address its discriminatory land laws and to enact a bill for the protection of indigenous peoples rights. The urgency in this request for consideration stems from the fact that the Government of Cameroon ("the Government"), principally the Ministry of Forests and Wildlife ("MINFOF"), has signalled its intention to bring the draft Forest Law into law in March 2013. The adoption of discriminatory legislation is of course expressly referred to in the indicators of the Committee's 2007 Guidelines for the Early Warning and Urgent Action Procedures ("the Guidelines").[13]

11. The Guidelines also refer to "encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources".[14] Encroachment continues to take place in relation to the forest lands, territories and resources of indigenous peoples. This is a consequence in part of Cameroon's discriminatory land and natural resource laws, and the lack of an indigenous

---

10 *Id.* Likewise the African Commission on Human & Peoples' Rights has recommended that Cameroon "Harmonise the land laws and adopt special measures allowing indigenous populations to fully enjoy all of their rights, in particular their right tot land, and to work towards the consideration of their cultural peculiarities including nomadism so as to prevent this factor from restricting the enjoyment of their rights", *ACHPR, 2010* (*supra*) at para. 37. Similarly, the Committee on Economic, Social & Cultural Rights has observed that Cameroon's land tenure system "makes indigenous populations groups and small-scale farmers vulnerable to land grabs" and urged Cameroon "to speed up the process of land reform, to guarantee the right of indigenous populations groups and small-scale producers to ancestral and community lands and to ensure that obstacles to land ownership, in particular those faced by women, are removed", *CESCR, 2012 (supra* at note 5) para. 24.

11 See for example, *Special Rapporteur on the Right to Food end of mission state statement: Cameroon*, 23 July 2012, at page 4.

12 Les Forets du Bassin du Congo – Etat des Forêts 2008. Eds: de Wasseige C., Devers D., de Marcken P., Eba'a Atyi R., et Mayaux Ph., (Publications Office of the European Union, Luxembourg: 2009). Cameroon has 273,514 km^2 of forest of which 168,761 km^2 is classed as dense forest, out of a total land area of 466,326 km^2.

13 At para 12(c).

14 *Id.* At para 12(h).

peoples law. In this context the submitting organisations wish to underline the fact that the imminent adoption of a discriminatory new Forest Law will cause continued encroachment and further irreparable harm to indigenous forest peoples living in Cameroon.

12. Cameroon is at a critical juncture in relation to its land and natural resource laws. The Government has commenced reform of Cameroon's Land Tenure Law, as well as the legal framework relating to the environment. In addition, the implementation of the Voluntary Partnership Agreement ("VPA") between the European Union ("EU") and Cameroon under the EU's Forest Law Enforcement Governance and Trade ("FLEGT") Action Plan entails a programme of legal and institutional reform associated with improving forest governance. Cameroon's VPA contains specific clauses committing Cameroon to integrate international law into its domestic legal framework.[15] These reform processes present real opportunities to address the discriminatory effects of Cameroon's domestic law towards indigenous peoples.

13. However, the manner of reform of the Forest Code and the substance of the proposed new law set a grave precedent. If the draft Forest Law is enacted without addressing these deficiencies, it has the potential to fundamentally undermine the other reform processes highlighted above, and therefore prevent real progress being made on eliminating the structural causes of discrimination faced by indigenous peoples living in Cameroon.

14. To illustrate this fact, it has become evident from high-profile statements that Government intent behind the Land Tenure Law reform includes facilitating "second-generation" (i.e. large-and medium-scale industrial) agriculture.[16] Similarly, it is understood that one of the current intentions behind the reform of Cameroon's environment laws is to facilitate the Government's much vaunted programme of *'grands réalisations'* – large infrastructure and extractive industry development projects such dams, mines, ports and railways. [17] These intentions neglect the need to address the above-mentioned discrimination in Cameroon's legal framework. Furthermore they indicate that Government priorities are the development of projects whose effects are often most gravely prejudicial to indigenous peoples rights.

A. Cameroon has failed to guarantee the effective participation of indigenous and forest peoples in the drafting of the new draft Forest Law

15. Cameroon's current forest law – *Law No.94-1 of 20 January 1994 to lay down forestry, wildlife and fisheries regulations* (hereinafter the "*1994 Forest Law*") – has been the subject of planned revision for several years. It was the hope of many, including civil society groups working with indigenous forest peoples, that the new law would remedy the problems experienced in nearly two decades of the 1994 Forest Law's implementation,

[15] See Voluntary Partnership Agreement between the EU and the Republic of Cameroon, du Cameroun 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), in particular Annex IX of the agreement relating to the schedule of implementation (page 14) and Annex X of the agreement on supporting measures and financial mechanisms (page 124). The annexes are an integral part of the agreement by virtue of Article 26 of the VPA.

[16] See paragraph 49 below.

[17] See the following links for a sample of the associated media reports: 'Prévisions: Ce que Mijote 2013 au Cameroun', Camnews24, 16 January 2013: http://www.camnews24.com/fr/societe/cameroun/31824-previsions-ce-que-mijote-2013-au-cameroun; "Le Cameroun à l'heure des Grands Projets"- in Les Afriques. No.103, 14 – 20 January 2010. www.lesafriques.com/fichiers/pdf/les-afriques-n103/download.html

particularly in regard to the rights of indigenous peoples.

16. The reform process itself can be broken down into (a) the period before drafting commenced, and (b) the period during which first, subsequent and final drafts were being developed. The pre-drafting period took place over many years, over the course of which the Ministry made a number of public statements that the Forest Law would shortly be completed, e.g. within the following six months. Public participation was mainly limited to development of submissions by civil society and other stakeholder groups between 2010 and 2012. At no stage was there a publicly available structured timetable detailing what form the reform process would take and according to what timeline. Nor was there any government-led process for ensuring the meaningful participation and consultation of indigenous communities, including how and when this would take place. The process therefore lacked clarity and certainty for all parties, but particularly for communities located far from the administrative centres. During this pre-drafting period, the government made no attempt at informing communities of the existence of the planned reform process. Nor did it ensure that consultations with communities took place in order to learn lessons from their experiences of Forest Law implementation.

17. The reform process subsequently accelerated rapidly in the course of 2012 with a consultant being instructed by the Ministry in or around July 2012 to compile a first draft of the new Forest Law within four months. The terms of reference for the consultant made no reference to consultations with communities. Civil society groups became aware of the existence of a first draft of the draft Forest Law (dated 5 October) during the course of October 2012. This followed a 'Forest Law Review Workshop' convened by MINFOF on 26–29 September 2012 with the principal aim of finalising a review and amended draft Forest Law.[18] According to the participants list for the workshop, neither indigenous forest peoples nor their representatives were included in these discussions.[19]

18. The ad hoc nature of the reform process continued throughout November and December 2012, when further drafts were produced (at least three, possibly four or five). At no stage was there any official publication and dissemination of any of these drafts to the public. Drafts became available only informally. As a result, even civil society groups in Yaoundé were unclear of what stage had been reached by the Government in this process. In some cases civil society groups had started analysis work on the first draft, only to discover that the Ministry had already produced a second and even a third draft which they had not been aware of.

19. The Government has therefore made no steps to inform communities of the content of the draft Forest Law, or seek their input into revising these drafts. The process of revising drafts therefore appears to have been exclusively internal to Government. Even if communities had been consulted prior to the development of a draft new law, they would have had no way of knowing if their concerns had been taken into account and given due weight in the proposed draft. It is unlikely that most communities are even aware of the existence of a draft new Forest Law. Even if they were to have copies, most indigenous forest communities would not be able to read or understand it due to low literacy and education levels, and the fact that it is in French and not in indigenous languages. Despite this context it is now understood that the Government plans to submit the draft Forest Law to parliament for finalisation and enactment in March 2013. Communication on the draft is

[18] Final report of the *'Forest Law Review Workshop'* (Ebolowa, 26-29 September 2012), MINFOF, Cameroon. Moderation and report by Isaac Njifakue.

[19] *Id.* at page 10-12.

in the meantime being limited to higher levels of Government including the Office of the Prime Minister and President, without public participation.

20. A non-discriminatory process of consultation with indigenous peoples would need to be designed and implemented with their meaningful participation, via their own representative institutions, and in a language and form that is readily accessible to those communities. This would require the provision of Government resources and a structured and carefully planned approach taken by relevant Government Ministries and agencies with the full participation of indigenous forest peoples and their representatives throughout. It would also take time, but the reform process has taken many years as it is, so there has clearly been adequate time available. In summary, the Government has failed to consult indigenous forest peoples throughout the process of reform, despite having had many years in which to have done so. This has both served to further entrench their political marginalisation and discrimination in comparison to other more dominant ethnic groups. It has also compromised the legitimacy of the new law and its capacity to address the systemic factors discriminating against indigenous forest peoples living in Cameroon.

B. The draft Forest Law fails to guarantee adequate protection for the right of indigenous peoples to own, use and control their lands, territories and resources

21. An underlying and significant source of discrimination against indigenous forest peoples in Cameroon is the *de jure* dispossession of indigenous peoples from their lands and resources implied by Cameroonian law, of which the 1994 Forest Law is a key ingredient. The only rights of local forest populations provided for in the 1994 Forest Law are rights to *use* forest products for their personal use, and even these rights can be restricted or suspended on vaguely defined 'public interest' grounds.[20] The 1994 law allows communities to establish *'Community Forests'*, but these only allow communities to derive community forest management rights, not ownership of the land. They are also limited to a fixed number of hectares and to the part of the forest classified by the state as 'non-permanent forests'. They also require the community to have the technical capacity to agree and implement a management plan.[21] Such provisions clearly fail to satisfy the rights of indigenous peoples to own and control their traditional lands, territories and resources in accordance with their own customs and practices; regardless of the size, location and State classification of their forests; and without the need for a bureaucratic procedure that is beyond the capacity of most indigenous communities.

22. In essence, the draft Forest Law does little to improve on this situation, and continues to fail to recognise the right of indigenous peoples in Cameroon to own, use and control their forests. Article 6 of the draft Forest Law confirms that communities and indigenous peoples exercise all the rights resulting from ownership.[22] However this is in the

---

[20] See *1994 Forest Law*, Article 8.

[21] See *1994 Forest Law*, Articles 37 and 38. Art. 3(11) of Decree *n° 95/531/PM* defines a community forest as *'a forest in the non-permanent forest domain, which is part of an agreement between a village community and the forestry administration'*. Also relevant to community forests are *Decree n° 466/1995*, *Decree n° 0518/MINEF/CAB* and the *'Manual of Procedures for the Attribution and Norms for the management of Community Forests*' (pursuant to Order 0252/A/CAB/MINEF of 20 April 1998 and Decision N° 253/D/MINEF/DF of the 20 April 1998 regarding adoption of the manual of procedures).

[22] See *draft Forest Law*, Article 6. - *'The State, decentralised territorial collectivities, local and indigenous populations and individuals exercise all rights resulting from property over their forests and agro-forest areas, subject to the restrictions stipulated in regulations in force'*. NB. Articles from the draft Forest Law quoted in footnotes are unofficial translations. The articles from the draft Forest Law referred to in these submissions are

context where neither the draft Forest Code nor other provisions of domestic law provide recognition and protection for indigenous peoples' rights to own their land and resources. Such a provision would be essential for the Forest Code to comply with international law.

23. A key obstacle for indigenous forest peoples is that their interests in land are derived from custom and are not private registered rights. Only the latter are protected and enforceable under Cameroon's existing domestic laws. Articles 9 and 10 of the draft Forest Law address usage rights and customary law respectively – the latter being attributed to 'indigenous and local populations', the former being attributed to local, bordering (*'riveraine'*) communities. In both cases, the provisions give MINFOF the right (following consultations with 'their representative institutions') to temporarily or permanently suspend such rights for reasons of public utility, for as long as the necessity allows.[23] The very fact that the Government reserves the right to suspend these rights in itself indicates that the grant of these rights is discretionary rather than mandatory. This is at odds with international law which derives such rights from fundamental human rights including the right to self-determination. Furthermore, as explored below, consultation is an insufficient procedural safeguard, since it is established in international law that indigenous peoples have the right to free, prior and informed consent and other more stringent procedural safeguards commensurate to the vital importance of lands and resources to those peoples.

24. The draft Forest Law states that the procedures for *how* the Government will exercise its discretion to suspend usage rights and customary law as well as the procedures for payment of compensation in response,[24] will be determined by further regulations. However it is the experience of the submitting organisations and evident from nearly two decades of implementation of the 1994 Forest Law, that the Government tends to prioritise those regulations that facilitate the forest industry, at the expense of regulations protecting community rights. In the absence of further regulations protecting communities (for example giving the detail of procedural safeguards such as information provision and grievance procedures), the more generalised provisions of the law are even more susceptible to discriminatory implementation. Furthermore, as exemplified in Section (A) above, the Government is already failing to adequately consult indigenous peoples on laws that concern them. There is therefore little likelihood at present that such further regulations would be developed with the full participation of indigenous peoples' communities, unless such a condition were also stipulated in the parent law.

25. Article 10 defines what the draft Forest Code means by *'customary law'*. The current definition lacks sufficient legal certainty as it could be interpreted as including reference to

---

included in the Annexe to this submission unless indicated otherwise. A full copy of the draft Forest Law can been located on the Forest Peoples Programme website using the following link: http://tinyurl.com/aau9lm5

[23] Similar restrictions on the exercise of user and access and customary law are included in draft Forest Law at the following articles, some of which being dealt with in detail in this article of the submission: Article 6 providing for the restriction of the property rights of local populations and indigenous peoples in accordance with the regulations in force; Article 10(2) which provides for the temporary or permanent suspension of the exercise of customary law for reasons of public interest, subject only to consultation of the populations concerned; Article 35(1) which provides for the restriction of the rights of local communities if they are contrary to the objectives of the permanent forest subject to classification; Articles 37(3) & (5) which provides for the regulation of access to the permanent forests as well as the establishment of conditions for the exercise of rights of use and customary law by local communities; Article 59, which provides for the establishment of restrictions to the customary law of the riparian communities for purposes of conservation by the adoption of an order to this effect; and Articles 129 and 130 which limits subsistence hunting and makes its exercise subject to further regulation, and gives the Government the discretion to prohibit hunting of certain animals.

[24] The requirement that communities benefit from compensation where their usage rights and/or customary law are limited by the Government is contained in Article 35(1), which further states that the modalities for compensation be fixed by decree.

some degree of legal recognition to rights over lands, but limiting ownership rights to natural resources.[25] Under international law, indigenous peoples clearly have the right to ownership over both. In addition, this recognition is expressed as being subject to other rules of Cameroonian law – which include laws that have already contributed to the dispossession of indigenous peoples from their lands and resources. Crucially however, despite providing what is in effect a *definition* of the term 'customary law', the law does not go on to expressly state that customary rights to land and resources will now have the full respect, protection and recognition of Cameroonian law equivalent to the protection guaranteed by the State for private registered rights. The Article 10 definition therefore sounds good, but as currently drafted it still leaves indigenous peoples customary rights unprotected and unrecognised by Cameroonian law and therefore at risk of being overridden by the private registered rights of the State or third parties.

26. Conversely, a number of provisions in the draft Forest Law have the practical effect of determining ownership of forest lands in a way that favours the State or local authorities to the detriment of indigenous peoples. The draft Forest Law (as per the 1994 Forest Law) divides the forest estate into 'permanent' and 'non-permanent' forest areas.[26] These areas are indicated on a 'national land use plan'.[27] The draft Forest Law states that a minimum 30% of Cameroon's surface area must contain permanent forest cover.[28] Permanent forest is comprised of the following categories of forest: 'State forests' (including protected areas and logging concessions); 'Municipal forests', 'Regional forests' and 'Community Protected Areas'.[29] The provisions relating to State, Municipal and Regional forests all confirm that forest lands classed in this way automatically become the private property of these public bodies.[30]

27. The situation is more complicated for indigenous peoples' communities who may wish to use the 'Community Protected Area' provisions to secure their traditional lands and resources.[31] To do so, the community would need to know about the procedure in the first place, and have the technical, educational and organisational capacity and resources to take the required administrative steps. These include development of a management plan approved by MINFOF. This is already prohibitive for many communities. These procedural hurdles notwithstanding, the whole process would be useless if the national land use plan had already classified the land as 'State forest', which the community may not know about, or not even know how to find out.

28. To consolidate the Community Protected Area into a formal land title, the community would have to take further administrative steps. Classification as part of the permanent forest estate entitles the owner – be it the state or community – to obtain title

---

25 *Id.* Article 10. –
   (1) Customary law, as conceived under the current law, consists of all recognised customary norms of indigenous and local populations. Customary law integrates, subject to other legal rules, the right to legal recognition and protection of lands, to ownership of natural resources, and to exercise all manner of activities related to custom under the authority of traditional chiefs, notably the cults or rituals practised in forests or in natural and aquatic ecosystems.
   (2) The administration responsible for forests and fauna may, for cause of public utility, and following consultation with the concerned populations through their own representative institutions, suspend temporarily or permanently the exercise of customary law where the need arises.
   (3) *The modalities for the exercise and suspension of customary law are fixed by regulation.*

26 *Id.* Article 31.

27 *Id.* Known in French as a 'plan national d'affectation des terres'.

28 *Id.* Article 33.

29 *Id.* Article 32(2).

30 *Id.* See Articles 38(1), 40(2) and 44(2) respectively.

31 *Id.* Article 49.

to the land.[32] Having achieved Community Protected Area status for their land, the community would therefore then need the capacity to access its right to obtain a land title. Although exempt from taxes and fees, this would almost certainly entail an administrative process and associated technical and other costs such as surveyors fees etc.[33] In summary, the procedure clearly discriminates against indigenous peoples who typically have much lower levels of education, cash resources and organisational capacity, and to whom the process is therefore inaccessible.

29. The only other options available for communities seeking formal protection of their forest lands, territories and resources is to satisfy the legal provisions relating to 'Community Forests';[34] 'Community hunting areas';[35] or 'Hunting areas of interest to community-based management'[36]. However, as per the Community Forests of the 1994 Forest Law, none of these legal provisions provide communities with right of ownership over the land. In addition, they also require administrative hurdles beyond the resources and educational, technical and organisational capacity of most indigenous communities.

30. Further provisions that are discriminatory to indigenous peoples are present in the proposed new law in relation to the 'National forest estate'. This category of forest is defined as all forest areas that *not* otherwise classed as State, Regional, Municipal, Community or Private forests, or Community Protected Areas, orchards or agricultural plantations etc.[37] The provisions on this residual category state that all forest products found in the National forest estate are the property of the State. They also state that usage rights and customary law will be recognised to local communities in accordance with conditions fixed by regulations which will also contain provisions for restricting such rights on conservation grounds.[38] This provision is clearly discriminatory as it fails to exclude from the category of National forest estate all those lands and resources forming part of the territories, lands and resources of indigenous peoples, and therefore fails to respect the rights of indigenous peoples over those lands and resources. In addition, there are no procedural safeguards to protect indigenous peoples in the situation where the Government decides to use its powers to limit communities' usage rights or customary law in the National forest estate.

31. Indigenous forest peoples tend to rely more heavily on hunting to meet their subsistence and livelihood needs, than their non-indigenous neighbours. The draft Forest Law permits subsistence hunting in Community hunting areas and in the National forest estate, but *not* in State forests used for wildlife conservation or on the property of third parties.[39] The law also provides for hunting rights *anywhere* to be prohibited or regulated if that hunting is of a nature that is compromising the conservation of particular wildlife.[40] Clearly the above limitations on hunting rights do not take into account the resource and land rights of indigenous peoples, as such limitations have a greater impact on indigenous

---

[32] *Id.* Article 34(2). Although this appears rather circular, the legislative intent seems to be that the applicant for classification need only be someone who has a legitimate claim to the land, though this lacks legal certainty and would certainly need clarifying before the procedure can be workable and accessible.
[33] *Id.*
[34] *Id.* Articles 52 – 55.
[35] *Id.* Articles 60 – 63.
[36] *Id.* Articles 64 – 68.
[37] *Id.* Article 58 (in French, 'Forets du domaine national')
[38] *Id.* Articles 58(2) & 59 respectively.
[39] *Id.* Article 128. NB. Part of the wording of this article actually refers to 'forets domaniales pour la concession de la faune' but it is assumed that this is a typographical error, and should read 'forets domaniales pour la conservation de la faune'.
[40] *Id.* Articles 129 and 130.

peoples than on other ethnic groups. In addition, indigenous peoples' lands are least likely to be classed as the 'property of third parties' and therefore do not get the same protections as other third party property rights. Such provisions would need to include special measures, including procedural safeguards, to avoid disproportionate and therefore discriminatory impacts on indigenous peoples from such provisions.

32. In summary, the submitting organisations assert that the draft Forest Law fails to guarantee adequate protection for the right of indigenous peoples to own, use and control their lands, territories and resources. The draft Forest Law further fails to make adequate provision for compensation in the situation where such rights are lost, infringed or otherwise damaged. In addition, the draft Law fails to require the return of forest lands to indigenous peoples' that have already become the legal property the State (and/or granted to third parties) without indigenous peoples' free, prior and informed consent. In all these respects the draft Forest Law is contrary to international law and the express recommendation of the Committee underlined above at paragraph 8, particularly recommendations (a) and (c).

C. The draft Forest Law fails to guarantee indigenous peoples' rights to participate in, and consent to, decision making concerning their forest lands, territories and resources

33. Closely related to the rights of indigenous peoples to own, use and control territories, land and resources is the right to participate in and consent to decisions about how those lands and resources are used and impacted. In turn this right is closely connected to other key procedural safeguards to protect indigenous peoples' unique relationship to land, including the need for prior and independent social, cultural and environmental impacts assessments, and the right to draw an equitable share in the benefit of developments agreed to on indigenous peoples' forest lands.

34. Reflecting generally on forest governance, use and ownership – which the draft Forest Law is tasked with regulating – the right to participation and consent operates at many levels: *the macro level* in terms of forest policy, law and national land use planning etc.; and at the *local/regional level* in terms of specific instance of land management, use and ownership such as the granting of commercial logging concessions and the creation of national parks. This includes participation and consent during both the operational phases as well as initial stages such as boundary demarcation, and the decision to allocate the land in the first place. The submitting organisations assert that the draft Forest Law fails to protect, respect and promote the right to participation and consent at all these levels.

35. A key provision in the draft Forest Law is Article 7, which refers specifically to participation. However it provides only for the participation of the actors concerned and interested parties and does therefore not therefore meet the more stringent requirements of the right to free, prior and informed consent. These requirements are also not met by the subsequent provisions stating that indigenous peoples (included in the category of 'vulnerable social groups' alongside women and children) be "taken into account" during the allocation and exploitation of logging concessions and the redistribution of forest revenues,[41] and "consulted" in relation to all aspects of forest access and management.[42]

[41] *Id.* at Article 7(3).
[42] *Id.* at Article 7(4).

36. In relation to the proces of classifying permanent forest areas (which as outlined above confers a right to obtain land title), the draft Forest Law Law similarly provides that this classification "takes into account…the social and economic environment of local communities".[43] However such classification – impacting as it does on forest ownership – should require the right to free, prior and informed consent of indigenous peoples. Furthermore, given the importance of this administrative step, the classification of a permanent forest should also be subject to the requirement to produce a prior and independent environmental, social and cultural impact assessment.

37. The draft Forest Law sets out the provisions for holding 'several' consultation meetings (including between the forest operator, forest administration and local communities including indigenous peoples) prior to commencement of forest exploitation operations in all forest areas.[44] This is with a view to (i) informing stakeholders of the exact location of logging, routes of access and exit for logs, and the duration of the logging operation; (ii) fix, through agreements between parties, the conditions on the practice of usage rights and customary law; and (iii) to agree on the amounts and/or contributions payable by the operator to local communities and on the terms of their payment or delivery. However, this fails to comply with the right to free, prior and informed consent as it only refers to information and agreements on *how* logging operations will proceed, and does not provide indigenous peoples with the right to decide *whether* the logging operations happen at all on their lands. In addition, there are insufficient safeguards to ensure, inter alia, that such meetings take place in a language and form appropriate to the indigenous people through their self-chosen representatives or institutions, and to avoid coercion or force (whether deliberate or implied by the inevitable differences in educational and technical know-how between the parties).

38. Free, prior and informed consent should also be a right that is engaged whenever the Government seeks to limit or restrict indigenous peoples' rights, as mentioned above at paragraph 22. Before giving their consent, indigenous peoples have the right to obtain sufficient information on the nature, duration, magnitude, and reversibility of the restriction, the reasons for the restriction, and the risks and possible consequences as well as the measures offered to compensate for the restriction of their rights. However, the provisions of the draft Forest Law providing for restrictions or limitations on the exercise of rights of usage and access and customary law are not subject to the free, prior and informed consent of indigenous peoples, and are therefore discriminatory.[45]

39. The right to free, prior and informed consent also implies the right to meaningfully participate in decision-making on issues which may affect indigenous peoples' rights, through representatives that they themselves have chosen and in accordance with their own decision making processes and customs. Despite this right, a number of the provisions in the draft Forest Law do not comply with these requirements, and thereby discriminate against indigenous peoples. Article 7(5) (on participation) provides for the establishment of a representative structure in every village, with the procedures for their implementation and operation to be finalised in further regulations. This provision fails to accept that indigenous peoples already have their own decision making processes and customs, and that it is according to these that their participation must be ensured. Article 10(1) states that customary law is subject to the "the authority of traditional chiefs". This provision is similarly

---

43 *Id.* Article 35(1)
44 *Id.* Article 83.
45 See for example *draft Forest Law*, Articles 6, 9, 10(2), 35(1), 37(3) & (5), 59, 129, and 130 (*supra*, provisions summarised at note 23).

insensitive to indigenous peoples in Cameroon such as the Baka. Their decision making processes are rooted in egalitarian rather then hierarchical systems, and as a result they may not have what is recognised as a traditional chief. The model of traditional chiefs is more appropriate to the dominant ethnic Bantu culture, and legislating for this model only would fail to recognise and therefore serve to further exclude and marignalise indigenous peoples.

40. The Community Protected Areas provisions are also discriminatory in this respect. Although the provisions initially place great emphasis on these areas being managed by the community's *own representative institutions*, they then stipulate that such institutions be those that are 'legally recognised as chiefdoms by the territorial administration'.[46] Again, this requirement clearly discriminates against indigenous peoples whose decision making processes and customs are less likely to have been formally recognised by the territorial administration. Historically, indigenous peoples in Cameroon such as the Baka and Bagyéli have been subsumed by more dominant Bantu neighbours. This has created conditions where indigenous peoples have been subjected to near serfdom relations with ethnically distinct Bantu neighbours. The above provisions in the draft Forest Law further entrench Government recognition of chiefdoms – a predominantly Bantu structure – therefore neglecting to give equal recognition and authority to indigenous decision making processes and customs. This serves to perpetuate existing inequalities and discriminatory practices, to the detriment of indigenous peoples. These articles should clearly be amended to recognize the right of indigenous peoples to be represented through their own representatives and in accordance with their own decision making processes and customs.

41. Finally, the right to free, prior and informed consent should also be respected in processes concerned with the development and implementation of forest development plans, cahiers de charge, and benefit-sharing agreements. These activities have the capacity to greatly influence the degree of protection for the rights of indigenous peoples to forest lands and resources, and in turn the continuity and quality of their livelihoods, subsistence and culture. However the draft Forest Law fails to provide this protection, leaving indigenous peoples vulnerable to continued discrimination in these respects. For example, Article 37 of the draft Forest Law provides that all activities taking place in a permanent forest must conform with management plans developed by the 'competent authority', however public participation is limited to 'consultation of other stake-holders' but not consent. Similarly, in the context of Community Protected Areas, the management plans are executed 'under the *control* of the forests administration'.[47] The law also states that the exploitation of forest wildlife will be subject to a management plan elaborated by the forest administration, without reference even to consultation.[48]

42. With regard to the issue of benefit sharing, the forest management plan is one part of what is known as the 'cahiers de charge', which also contains the technical, financial and social specifications governing the implementation of a logging concession. The social specifications include social projects such as roads, bridges health centres and schools intended to benefit local communities.[49] As is the case for provisions relating to management plans, the provisions of the draft Forest Law in relation to *cahiers de charge* fail to involve let alone seek the consent of indigenous communities in the process of deciding the content and in the implementation of these key documents.[50] Finally, although

---

46 *Id.* Article 49(2).
47 *Id.* Article 49(3). Our emphasis.
48 *Id.* Article 139.
49 *Id.* Article 95.
50 The provisions of the draft Forest Law relating to cahiers de charge include Articles 70, 78, 82, 95, 117, 136, and 151. Apart from Article 95, these other articles are not included in the annexes for the sake of brevity.

there is general reference to benefit-sharing from forest developments in the draft Forest Law,[51] the Law contains no obligations on the State or third party operators to come to benefit sharing agreements with indigenous peoples, let alone in conformity with their right to free, prior and informed consent.

43. In summary the submitting organisations highlight that the draft Forest Law fails to guarantee indigenous peoples' rights to participate in, and consent to, decision making concerning their forest lands, territories and resource. As such the draft Forest Law discriminates against indigenous peoples by failing to satisfy key procedural protections afforded to indigenous peoples under international human rights law, as well as the express recommendations of the Committee underlined above at paragraph 8, particularly recommendation (b).

D. The draft Forest Law fails to guarantee access to justice for indigenous peoples impacted by violations of their rights to their forest lands, territories and resources

44. Indigenous peoples' access to justice in relation to forest management remains an issue of great concern in the development of the forest law and policy. In its 2010 Concluding Observations the Committee communicated to Cameroon the following concerns and associated recommendations:

> "The Committee also brings attention to inequality in the access to justice of indigenous peoples. In particular, the obstacles to access to justice in traditional courts are that representation of indigenous customs and interpreting services are lacking, requiring indigenous peoples to refer to Bantu customs during proceedings that are in a language they may not understand or be able to speak. (Art. 5(a))
>
> "The Committee recommends that the State party ensure equal access to justice for indigenous people, in particular by:
>
> (a) Reducing the distances between national courts and the areas where indigenous people live;
>
> (b) Establishing official services for interpretation into the languages of indigenous people in national courts, including customary courts;
>
> (c) Ensuring that judges versed in indigenous customs preside effectively in the customary courts."[52]

45. These recommendations remain unimplemented in Cameroon to date, and as such indigenous peoples are discriminated against in the structures and provisions of the formal court justice system. The draft Forest Law contains no special complaints or grievance procedure that could be used by indigenous peoples aggrieved by previous, ongoing or future actions or omissions of the State or third parties impacting on their forest lands and resources. If such a procedure were in place, it could serve as a more accessible surrogate for the national court system, with the option of appeal to national courts if required. For instance, there is no provision in the draft Forest Law providing that complaints raised by

---

However the full draft Forest Law can be viewed on the Forest Peoples Programme website using the following link: http://tinyurl.com/aau9lm5

51 *Id.* Article 7.

52 *CERD 2010*, at para. 17.

indigenous peoples should lead to the suspension of business or other operations having a negative impact on lands and resources vital to indigenous peoples' lives and cultures. As such, the draft Forest Law therefore does not give due weight to the irreversibility of certain violations of indigenous peoples' rights in relation to their forest lands and resources.

46. With regards to forest management specifically, the new law, like the former 1994 Forest Law, recognizes some limited rights for indigenous peoples. However as set out above, even these limited rights are ill-defined and their implementation is unclear and subject to further limitation or suspension. Fundamentally, the draft Forest Law fails to respect the land and resource rights of indigenous peoples, and associated procedural rights such as the right to free prior and informed consent. The failure of the law to delimit these rights and provide proper procedures for implementing indigenous peoples' rights creates immediate challenges for indigenous peoples who are therefore denied appropriate procedural opportunities through which they can seek enforcement of their rights. This both renders indigenous peoples more vulnerable to having their rights to forest lands and resources abused by the State and third parties, e.g. in the creation and implementation of logging concessions, protected areas, forest-based infrastructure and agricultural concessions, and further limits their avenues for accessing justice.

47. In summary the submitting organisations aver that the draft Forest Law discriminates against indigenous peoples by denying them access to justice in situations where their rights in respect of forest lands, territories and resources are prejudiced by the acts or omissions of the State or third parties. As such the draft Forest Law is inconsistent with international human rights law, including the express recommendations of the Committee underlined above at paragraph 34 in relation to access to justice.

E. Cameroon has failed otherwise to implement the Committee's 2010 recommendations relating to addressing discriminatory land laws and the enactment of an indigenous peoples bill

48. The Committee's 2010 concerns and recommendations with respect to land and the enactment of an indigenous peoples bill are highlighted above at paragraphs 5, 7 and 8. The submitting organizations wish to bring to the attention of the Committee the failure of Cameroon to comply with these recommendations.

49. With regard to Cameroon's Land Law, legal reform was announced by the President of the Republic of Cameroon on the occasion of his opening speech of the *'Agro-Pastoral Comice'* held in Ebolowa, Cameroon, in January 2011.[53] As indicated by the President of the Republic in his speech, the reform would be directed towards increasing agricultural output including by facilitating second-generation agricultural development, i.e. agro-industrial firms and large-scale plantations requiring mechanization, as opposed to small-holder rural development.[54] To the knowledge of the submitting organisations, nothing in the legislative intent expressed to date indicates that this reform will also be directed at the elimination of discrimination faced by indigenous communities in relation to the recognition of their land rights. To the contrary, fears are that a land reform on this basis will exacerbate the

[53] *Cérémonie d'ouverture de comice agro-pastoral d'Ebolowa, Discours du Président de la République*, S.E. Paul Biya, 17 January 2011

[54] Id. In the words of the President, *'...to favour the emergence of "second generation" production units, that is to say, units of medium and large-scale that respect the environment.'* (Unofficial translation)

discrimination and marginalisation already being experienced by indigenous peoples.[55] A rise in demand for arable land by emerging agro-industrial companies and the expansion of existing plantations has also been observed in Cameroon during the last three to four years. It is estimated that over a million and a half hectares of land have been requested and/or granted in the past four years, including in areas which form part of the terrotories of indigenous peoples.[56]

50. There are currently no mechanisms in place for the identification of tenure rights of indigenous peoples that are adapted to their way of life and cultural particularities. A key source of discrimination in Cameroon's land laws is that a community or individual in possession of land can only claim ownership by registering a private right, the procedure for which requires the prospective owner to show that the land has been developed.[57] This land tenure arrangement clearly discriminates against indigenous peoples since the use and impacts of hunter-gatherer and other non-agriculturalist cultures on land will not qualify as land development for the purposes of the land tenure law.

51. The adoption by Cameroon of a law on indigenous populations is now recognized as an essential (but not in itself sufficient) step towards the elimination of the various forms of discrimination which indigenous communities face. This law would need to be preceded by a national policy on indigenous communities, the absence of which was noted with concern by the Committee on Economic, Social and Cultural Rights in their 2012 Concluding Observations.[58] In 2012, the Special Rapporteur on the Right to Food also encouraged Cameroon to intensify efforts on to further national policy on indigenous peoples in accordance with international law.[59] The adoption of a discriminatory new Forest Law is further likely to freeze discriminatory practices in this sector for a decade or more.

52. The adoption of a law on indigenous populations in Cameroon is vital to ensuring the recognition and protection of the rights of indigenous communities in all processes of policy and legal reform, and in all other sectors of public life. This law would provide a clear indication of the nature and extent of the rights to be protected, the lack of which appears today to be the main obstacle to adequately taking into account the rights of indigenous communities in Cameroon. Critical issues that the new policy and law specific to indigenous peoples should address include confirming the protection of the many rights of indigenous populations in Cameroon guaranteed by international conventions ratified by Cameroon, including the African Charter on Human and Peoples Rights which is an integral part of Cameroon's 1996 Constitution under Article 30. In addition, the policy and law should provide mechanisms to ensure that these rights are recognised and protected in practice. This should include defining where the responsibilities lie in ensuring that rights are respected in practice in the formulation of all relevant policies and in the creation, allocation and implementation of development projects impacting on indigenous peoples' land and

---

55 See for example *Special Rapporteur on the Right to Food end of mission state statement: Cameroon, supra* at note 12, at page 4, which states that "Without appropriate measures to protect their rights, development projects, such as logging and large-scale plantations, far from improving the indigenous peoples' situation, will further increase their marginalization. Thus, above all, when devising the system for protecting land users, it is advisable to take into account the fact that the Pygmies have a mobile existence and do not practise agriculture, which makes it impossible for them to provide proof that they 'farm' a specified area". (Unofficial translation)

56 'Le développement du palmier à huile au Cameroun' David Hoyle (WWF) et Patrice Levang (IRD/CIFOR), April 2012, page 6 (at http://awsassets.panda.org/downloads/developpmentpalmierhuilecameroun.pdf)

57 Communities and individuals can only register private land ownership of lands that are *'occupied with houses, farms and plantations and grazing lands manifesting human presence and development'* (Articles. 15(1) and 17(2) of *Order n^{o} 74/1 of 6 July 1974.Art. 15(1)*.

58 *CESCR, 2012*, at para 10.

59 *Special Rapporteur on the Right to Food end of mission state statement: Cameroon*, *supra* at note 12.

resources. The law and policy should also define what culturally accessible and appropriate remedies will be provided to ensure indigenous peoples' access to judicial remedies.

Conclusions and requests

53. At the global level and as exemplified in Cameroon, natural resource extraction, including forestry and major development projects, are recognised by many authorities as one of the leading causes of rights violations for indigenous peoples.[60] The Special Rapporteur on Indigenous Peoples, Professor James Anaya has stated that "[i]n its prevailing form, the model for advancing with natural resource extraction within the territories of indigenous peoples appears to run counter to the self-determination of indigenous peoples in the political, social and economic spheres".[61] Despite the well documented challenges associated with such developments, Cameroon has embarked on an ambitious programme of economic development of this very type – prioritising *grand realisations* including mines, forest and agriculture concessions, dams, rail-ways and deep sea ports – which present a serious and ongoing risk to the physical and cultural integrity of indigenous peoples.

54. Although forests continue to play a major part in Cameroon's economic development ambitions, this submission details grave and urgent concerns about the discriminatory nature of both the *contents* of the draft Forest Code and the *manner* of its development as regards indigenous peoples. This is despite the general concerns and recommendations of the Committee and other Treaty Bodies in respect of the discrimination and marginalisation faced by indigenous peoples in Cameroon in the exercise of their civil, political, economic and cultural rights; and the specific concerns relating to involuntary displacement and other harmful impacts from logging and deforestation, protected areas and large infrastructure projects.[62]

55. The proposed enactment of the draft Forest Law coupled with Cameroon's failures to reform domestic laws concerning land and to enact a bill specific to indigenous peoples' rights, urgently risks compromising a valuable opportunity to address the discrimination inherent in Cameroonian law. The draft Forest Law, drafted without due consultation of indigenous communities, fails to guarantee rights of indigenous peoples to own their forest lands and resources, and lacks essential procedural guarantees notably the right to consent and avenues for accessing justice required for the protection of indigenous peoples' rights. The draft Forest Law therefore clearly discriminates against indigenous peoples in violation of Cameroon's obligations under the Convention and other ratified human rights instruments, as well as the recommendations of the Committee communicated to Cameroon in March 2010.

56. In light of the preceding, the submitting organisations respectfully request that the Committee considers the situation of indigenous peoples in Cameroon highlighted above under its early warning and urgent action procedure. In particular, the submitting organisations request that the Committee recommends inter alia that Cameroon:

a. recognises and implements the right of indigenous peoples to effective participation and free, prior and informed consent in the process of reforming Cameroon's 1994

---

60 Report of the Special Rapporteur on the rights of indigenous peoples on extractive industries operating within or near indigenous territories, submitted pursuant to Human Rights Council resolution 15/14. Un Doc. A/HRC/18/35, 11 July 2011, at para. 82.

61 *Id.*

62 *Supra*, at notes 3 – 9.

Forest Law and all other legislative and policy reforms impacting on indigenous peoples, including through self-chosen representatives in accordance with their decision making processes and customs and in forms and languages accessible to those indigenous peoples;

b. amends the draft Forest Law to ensure that the new Forest Law, when enacted, guarantees adequate protection for the right of indigenous peoples to own, use and control their forest lands, territories and resources; and to participate in, and give or withhold their free, prior and informed consent to decision making concerning their forest lands, territories and resources;

c. amends the draft Forest Law to ensure that the new Forest Law, when enacted, guarantees access to justice for indigenous peoples impacted by violations of their rights to their forest lands, territories and resources, including accessible grievance procedures with appeal to the national court system so as to obtain fair and equitable compensation;

d. amends the legal framework relating to land and land ownership, to eliminate all forms of racial discrimination against indigenous peoples, in particular by ensuring that indigenous peoples' ownership rights over their lands, territories and resources have equivalent strength and protection under domestic law to registered private rights, in addition to guaranteeing the same procedural protections specified above in requests (b) and (c), including the right to free, prior and informed consent;

e. ensures that an indigenous peoples bill is developed and enacted with the effective participation of indigenous peoples, with the purpose of eliminating discrimination and ensuring protection and promotion of indigenous peoples' rights in Cameroon, in accordance with international standards.

Annex: Excerpts from Cameroon's draft Forest Law

Avant-Projet de Loi
portant Régime des forêts et de la faune

TITRE I – DES DISPOSITIONS GENERALES

(…)

Article 6. – L'Etat, les collectivités territoriales décentralisées, les populations locales et autochtones et les particuliers exercent sur leurs forêts et dans les zones agroforestières tous les droits résultant de la propriété, sous réserve des restrictions prévues par la réglementation en vigueur.

Article 7. – (1) La participation des acteurs et des différents groupes socioculturels est garantie par l'Etat et les collectivités territoriales décentralisées qui l'organisent avec le concours de toutes les parties prenantes pour une gestion responsable et durable des ressources forestières et fauniques.

(2) Cette participation procède autant de contributions directes à la gestion des forêts et des ressources (consultations permanentes, prestations techniques, etc.) que du partage de bénéfices générés par la gestion de ces patrimoines.

(3) Les groupes sociaux vulnérables sont pris en compte lors de l'attribution des titres forestiers et fauniques, de leur exploitation et de la redistribution des revenus issus de ces activités, afin de favoriser leur participation au processus de développement et pour qu'ils en tirent des bénéfices.

Sont considérés comme groupes sociaux vulnérables les femmes, les jeunes et les peuples autochtones**...**

(4) Les populations riveraines d'un titre forestier ou faunique sont consultées avant d'entreprendre toute activité liée à l'accès ou à la gestion des ressources.

(5) Il est créé au sein de chaque village ou groupe de villages une structure représentative des populations dans la gestion des ressources forestières ou fauniques communales et communautaires ainsi que dans la répartition des revenus. Les modalités de mise en place et de fonctionnement de ces structures sont fixées par voie réglementaire.

Article 8. – (1) Les populations locales sont, au sens de la présente loi, les populations villageoises résidant en permanence dans le terroir, organisées sur la base de la coutume et des traditions, et unies par des liens de solidarité et de parenté qui fondent leur cohésion et assurent leur reproduction dans l'espace et dans le temps.

(2) Les peuples autochtones sont, au sens de la présente loi, les groupes de populations qui possèdent une identité culturelle distincte de celles des groupes dominants dans la société et qui ont un attachement spécial aux territoires de leurs ancêtres et aux ressources naturelles de ces lieux. Ils se caractérisent par la présence d'institutions sociales et politiques coutumières, des systèmes économiques essentiellement orientés vers une production de subsistance, une langue autochtone souvent différente de la langue prédominante et une auto-identification et une reconnaissance par les pairs comme appartenant à un groupe culturel distinct.

(3) Les communautés riveraines sont, au sens de la présente loi, les populations qui vivent ou résident à l'intérieur ou à proximité de tout écosystème faisant l'objet d'un titre forestier ou faunique.

Elles ont des droits d'usage et/ou coutumier tels que défini aux articles 9 & 10 ci-dessous à l'intérieur de cette forêt, conformément à la réglementation en vigueur et au plan d'aménagement ou au plan simple de gestion de ladite forêt tels que définis à l'article 37 ci-dessous, lesdits plans étant approuvés par l'administration en charge des forêts et de la faune.

Article 9. – (1) Le droit d'usage est, au sens de la présente loi, celui reconnu aux communautés riveraines d'exploiter durablement tous les produits forestiers et fauniques, à l'exception des espèces protégées, en vue d'une utilisation personnelle.

(2) Toutefois, sur autorisation préalable des représentants locaux de l'administration en

charge des forêts et de la faune, les bénéficiaires du droit d'usage peuvent, sans intermédiaire, les commercialiser ou les échanger contre d'autres biens ou services, dans le respect de quotas périodiquement fixés par espèce par l'administration en charge des forêts et de la faune, dans les conditions fixées par voie réglementaire et dans le respect des dispositions fiscales en vigueur.

(3) L'administration en charge des forêts et de la faune peut, pour cause d'utilité publique et, après consultation des populations concernées à travers leurs institutions représentatives, suspendre à titre temporaire ou définitif l'exercice du droit d'usage lorsque la nécessité s'impose.

(4) Les modalités d'exercice et de suspension du droit d'usage sont fixées par voie réglementaire.

Article 10. – (1) Le droit coutumier est, au sens de la présente loi, l'ensemble des normes coutumières reconnues aux populations locales et autochtones. Il intègre, sous réserve des autres règles de droit, le droit à la reconnaissance et à la protection juridique des terres, à la propriété sur les ressources naturelles, ainsi que celui d'exercer toute activité en relation avec la coutume sous l'autorité des chefs traditionnels, notamment les cultes ou les rites pratiqués dans des forêts et des écosystèmes naturels ou aquatiques.

(2) L'administration en charge des forêts et de la faune peut, pour cause d'utilité publique et, après consultation des populations concernées à travers leurs institutions représentatives, suspendre à titre temporaire ou définitif l'exercice du droit coutumier lorsque la nécessité s'impose.

(3) Les modalités d'exercice et de suspension du droit coutumier sont fixées par voie réglementaire.

(…)

TITRE III – DES FORETS

Article 31. – (1) Le domaine forestier est constitué des domaines forestiers permanent et non permanent.

(2) Le domaine forestier permanent est constitué de terres définitivement affectées par leur propriétaire à la forêt et/ou à l'habitat de la faune.

(3) Le domaine forestier non permanent est constitué de terres forestières susceptibles d'être affectées à des utilisations autres que forestières.

(4) Les aires couvertes par le domaine forestier et ses sous-composantes sont indiquées dans un plan national d'affectation des terres élaboré de manière participative sous la coordination conjointe des administrations compétentes, de manière à sécuriser, dans le respect des droits coutumiers des populations locales et peuples autochtones et des principes d'équité, les besoins actuels et futurs de l'Etat et de ses populations.

CHAPITRE I – DES FORETS PERMANENTES

Article 32. – (1) Les forêts permanentes, ou forêts classées, sont les espaces dédiés à la forêt et/ou à l'habitat de la faune pour les générations présentes et futures.

(2) Sont considérées comme des forêts permanentes :

- les forêts domaniales ;
- les forêts régionales ;
- les forêts communales ;
- les aires protégées communautaires ; (…)

Article 33. – Les forêts permanentes doivent couvrir au moins 30% de la superficie totale du territoire national et représenter, autant que possible, la diversité écologique du pays.

SECTION I – DISPOSITIONS COMMUNES

Article 34. – (1) Les forêts permanentes sont classées par un acte réglementaire qui fixe

entre autre leurs limites géographiques et leurs objectifs (…)

(2) Cet acte ouvre droit à l'établissement d'un titre foncier au nom du propriétaire, qui peut être l'Etat, la collectivité territoriale décentralisée ou la communauté concernée. L'établissement de ce titre est exonéré de tous frais et taxes autres que techniques et incompressibles. Ce titre ne peut faire l'objet de transaction foncière à titre onéreux.

(3) Le classement des forêts permanentes est réalisé à la demande du propriétaire. (…)

Article 35. – (1) L'acte de classement d'une forêt permanente tient compte de l'environnement social et économique des communautés riveraines qui conservent leurs droits d'usage et/ou coutumiers. Toutefois ces droits peuvent être limités s'ils sont contraires aux objectifs assignés à ladite forêt. Dans ce dernier cas, ces communautés bénéficient d'une compensation selon des modalités fixées par décret. (…)

(…)

Article 37. – (1) Chaque forêt permanente doit faire l'objet d'un aménagement arrêté par l'autorité compétente.

(2) Au sens de la présente loi, l'aménagement d'une forêt permanente se définit comme étant la mise en œuvre, sur la base d'objectifs et d'un plan arrêtés au préalable et après consultation des autres parties prenantes (…)

(3) Le plan d'aménagement – ou le plan simple de gestion dans le cas d'une aire protégée communautaire – définit, dans des conditions fixées par décret, les objectifs et règles de gestion de la forêt, les moyens à mettre en œuvre pour atteindre les objectifs, ainsi que les conditions d'exercice des droits d'usage et/ou coutumiers par les communautés riveraines, conformément aux indications de son acte de classement. (…)

(5) L'accès dans les forêts permanentes est réglementé.

(6) Toute activité dans une forêt permanente doit, dans tous les cas, se conformer à son plan d'aménagement – ou plan simple de gestion. (…)

SECTION II – DES FORETS DOMANIALES

Article 38. – (1) Les forêts domaniales relèvent du domaine privé de l'Etat. (…)

(…)

SECTION III – DES FORETS REGIONALES

Article 40. – (…)

(2) Les forêts régionales relèvent du domaine privé de la région concernée.

(…)

Article 44. – (…)

(2) Les forêts communales relèvent du domaine privé de la commune concernée.

(…)

SECTION V – DES AIRES PROTEGEES COMMUNAUTAIRES

Article 49. – (1) Est considérée, au sens de la présente loi, comme aire protégée communautaire un espace du domaine de communautés des populations locales et des peuples autochtones, qui est volontairement dédié à la forêt et géré par leurs institutions représentatives, en application des coutumes locales et d'un plan simple de gestion élaboré par les communautés concernées à travers lesdites institutions et approuvé par l'administration en charge des forêts, afin d'assurer à long terme la conservation de la nature, les services écosystèmiques et les valeurs culturelles qui lui sont associés.

(2) Lesdites institutions coutumières sont celles réglementairement reconnues comme chefferies par l'administration territoriale.

(3) Les populations locales et/ou les peuples autochtones propriétaires de l'aire protégée exécutent le plan simple de gestion sous le contrôle de l'administration en charge des forêts et de la faune. (…)

CHAPITRE II – DES FORETS NON PERMANENTES

(…)

SECTION I – DES FORETS COMMUNAUTAIRES

Article 52. – (1) Une forêt communautaire est une forêt naturelle et/ou artificielle du domaine forestier non permanent faisant l'objet d'une convention de gestion entre une communauté riveraine qui en manifeste l'intérêt et l'administration en charge des forêts.

(2) Les produits forestiers de toute nature résultant de l'exploitation des forêts communautaires appartiennent entièrement aux communautés riveraines concernées, qui en disposent conformément à la réglementation en vigueur.

(3) Les communautés riveraines jouissent d'un droit de préemption en cas d'aliénation de produits naturels compris dans les forêts sur lesquelles sont exercés leurs droits d'usage et/ou coutumiers. Les modalités d'exercice du droit de préemption sont fixées par voie réglementaire.

Article 53. – (1) Les conventions de gestion prévues à l'article 52 ci-dessus prévoient notamment la désignation des bénéficiaires, les limites de la forêt qui leur est affectée et les prescriptions particulières d'aménagement des peuplements forestiers et/ou de la faune élaborées à la diligence desdites communautés.

(2) La communauté bénéficiaire est tenue de conclure avec l'administration en charge des forêts une convention provisoire de gestion préalablement à la signature de la convention définitive.

(3) La convention provisoire a une durée maximale de deux (2) ans au cours de laquelle la communauté villageoise est tenue d'élaborer le plan simple de gestion de sa forêt.

(4) Ce plan est établi à la diligence des intéressés. Toute activité dans une forêt communautaire doit, dans tous les cas, se conformer à son plan simple de gestion.

(5) La validation du plan simple de gestion par l'administration en charge des forêts conduit à la signature d'une convention définitive de gestion pour une durée de vingt-cinq (25) ans renouvelable.

Article 54. – (1) La mise en application des conventions de gestion des forêts communautaires relève des communautés concernées, sous le contrôle technique de l'administration en charge des forêts et de la faune.

(2) En cas de violation de la présente loi ou des clauses particulières de ces conventions, l'administration précitée peut exécuter d'office, aux frais de la communauté concernée, les travaux nécessaires ou résilier la convention sans que ceci ne touche au droit d'usage des populations.

(3) L'administration en charge des forêts doit, aux fins de cette prise en charge de la gestion des ressources forestières par les communautés, leur accorder une assistance technique à la charge de l'Etat.

Article 55. – Les modalités d'attribution des forêts communautaires, d'élaboration des plans simples de gestion et de leur mise en œuvre sont fixées par voie réglementaire.

(…)

SECTION III – DES FORETS DU DOMAINE NATIONAL

Article 58. – (1) Les forêts du domaine national sont celles qui n'entrent dans aucune des catégories prévues par les articles 38 (2), 40 (1), 44 (1), 49 (1), 52 (1), 56 (1) et (2) de la présente loi. Elles ne comprennent ni les vergers et plantations agricoles, ni les jachères, ni les boisements accessoires d'une exploitation agricole, ni les aménagements pastoraux ou agro-sylvicoles. Toutefois, après reconstitution du couvert forestier, les anciennes jachères et les terres agricoles ou pastorales ne faisant pas l'objet d'un titre de propriété peuvent être considérées à nouveau comme forêts du domaine national et gérées comme telles.

(2) Les produits forestiers de toute nature se trouvant dans les forêts du domaine national appartiennent à l'Etat et sont gérés de façon conservatoire, selon le cas, par l'administration en charge des forêts et de la faune.

Article 59. – Dans les forêts du domaine national, les droits d'usage et/ou droits coutumiers sont reconnus aux communautés riveraines dans des conditions fixées par voie réglementaire. Toutefois, pour des besoins de protection ou de conservation, des restrictions relatives à l'exercice de ces droits, notamment les pâturages, les pacages, les abattages, les ébranchages et la mutilation des essences protégées, ainsi que la liste de ces essences, peuvent être fixées par la même voie.

SECTION IV – DES TERRITOIRES COMMUNAUTAIRES DE CHASSE

Article 60. – (1) Un territoire communautaire de chasse est un espace du domaine national faisant l'objet d'une convention de gestion entre une communauté villageoise qui en manifeste l'intérêt et l'administration en charge de la faune. Ces espaces, qui peuvent être naturels et/ou anthropisés, sont dédiés par la communauté à la chasse de subsistance et/ou commerciale.

(2) Les produits fauniques de toute nature résultant de l'exploitation des territoires communautaires de chasse appartiennent entièrement aux communautés villageoises concernées.

(3) Les communautés villageoises jouissent d'un droit de préemption en cas d'aliénation de produits naturels compris dans leurs forêts.

Article 61. – (1) Les conventions de gestion prévues à l'article 60 ci-dessus prévoient notamment la désignation des bénéficiaires, les limites du territoire de chasse qui leur est affecté et les prescriptions particulières de gestion de la faune élaborées à la diligence desdites communautés, notamment la liste des espèces animales chassables.

(2) La communauté bénéficiaire est tenue de conclure avec l'administration en charge de la faune une convention provisoire de gestion préalablement à la signature de la convention définitive.

(3) La convention provisoire a une durée maximale de deux (2) ans au cours de laquelle la communauté villageoise est tenue d'élaborer le plan simple de gestion de son territoire de chasse.

(4) Ce plan est établi à la diligence des intéressés. Toute activité dans un territoire communautaire de chasse doit, dans tous les cas, se conformer à son plan simple de gestion.

(5) La validation du plan simple de gestion par l'administration en charge de la faune conduit à la signature d'une convention définitive de gestion pour une durée de vingt-cinq (25) ans renouvelable.

Article 62. – (1) La mise en application des conventions de gestion des territoires communautaires de chasse relève des communautés concernées, sous le contrôle technique de l'administration en charge de la faune.

(2) En cas de violation de la présente loi ou des clauses particulières de ces conventions, l'administration précitée peuvent résilier la convention sans que ceci ne touche au droit d'usage des populations.

(3) L'administration chargée de la faune doit, aux fins de cette prise en charge de la gestion des ressources fauniques par les communautés, leur accorder une assistance technique à la charge de l'Etat.

Article 63. – Les modalités d'attribution des territoires communautaires de chasse, d'élaboration des plans simples de gestion et de leur mise en œuvre sont fixées par voie réglementaire.

CHAPITRE III – DES FORETS MIXTES

Article 64. – (1) Les forêts mixtes sont celles qui peuvent être assises, simultanément ou non, sur des forêts déjà classées du domaine forestier permanent (UFA, forêts régionales ou communales), sur le domaine non permanent et sur les zones agroforestières du domaine national.

Il s'agit là d'espaces qui peuvent être naturels et/ou anthropisés, et sont dédiés par la (les) communauté(s) qui les sollicitent à la promotion des activités cynégétiques et à la

conservation de la faune, en liaison avec les besoins d'espace pour assurer cette gestion durable de la faune

Seules peuvent être considérées comme forêts mixtes les zones d'intérêt cynégétique à gestion communautaire (ZIC-GC) et qui sont, de fait, des titres d'exploitation faunique.

Article 65. – (1) Une zone d'intérêt cynégétique à gestion communautaire fait l'objet d'une convention de gestion entre la (les) communauté(s) riveraine(s) qui en manifeste(nt) l'intérêt et l'administration en charge de la faune.

(2) La signature de la convention de gestion entre la (les) communauté(s) riveraine(s) attributaire(s) de la zone d'intérêt cynégétique à gestion communautaire et l'administration en charge de la faune se fait après l'attribution de la zone et l'élaboration du plan simple de gestion.

(3) La signature d'une telle convention suppose que le développement des activités cynégétiques est compatible sur l'espace de chevauchement avec une (des) forêt(s) de production du domaine forestier permanent (DFP), et qu'il ne se présente pas de conflit de cogestion sur le même espace.

(4) L'élaboration du plan simple de gestion pour la faune doit faire ressortir de manière claire les modalités spécifiques de gestion dans la partie du domaine permanent qui chevauche la zone et se faire de manière participative et concertée entre les différentes parties prenantes impliquées.

Article 66. – (1) Les revenus tirés de la promotion des activités cynégétiques dans les zones d'intérêt cynégétiques à gestion communautaire appartiennent entièrement à la (aux) communauté(s) riveraine(s) concernée(s).

(2) Les communautés riveraines jouissent d'un droit de préemption en cas d'aliénation de produits naturels compris dans leurs forêts.

Article 67. – (1) La mise en application des conventions de gestion des zones d'intérêt cynégétiques à gestion communautaire relève des communautés concernées, sous le contrôle technique de l'administration en charge de la faune.

(2) En cas de violation de la présente loi ou des clauses particulières de ces conventions, l'administration précitée peut résilier la convention sans que ceci ne touche au droit d'usage des populations.

(3) L'administration en charge de la faune doit, aux fins de cette prise en charge de la gestion des ressources fauniques par les communautés, leur accorder une assistance technique à la charge de l'Etat.

Article 68. – Les modalités d'attribution des zones d'intérêt cynégétique à gestion communautaire, d'élaboration des plans simples de gestion et de leur mise en œuvre sont fixées par voie réglementaire.

(…)

CHAPITRE IV – DE L'AMENAGEMENT DES FORETS

(…)

SECTION II – DE L'EXPLOITATION FORESTIERE

(…)

Article 83. – (1) Le démarrage des activités d'exploitation de toute forêt est précédé de plusieurs réunions de consultation en vue (i) d'informer les parties prenantes de la localisation exacte de l'assiette de coupe, des voies d'accès et de sortie des bois, et de la durée des travaux d'exploitation, (ii) d'arrêter d'accord parties les modalités de pratique des droits d'usage et coutumiers ainsi que (iii) de s'entendre sur les sommes et/ou contributions à charge de l'exploitant et destinées aux communautés riveraines, et sur les modalités de leur paiement ou mise en œuvre.

Ces réunions se tiennent entre :

- l'exploitant forestier, les populations locales et autochtones de chaque village riverain qu'assiste le représentant de l'administration en charge des forêts ;
- l'exploitant forestier et l'instance faîtière représentative de toutes les communautés, présidée par l'autorité administrative locale. (…)

(…)

Article 95. – (1) Toute exploitation à but lucratif de produits forestiers ligneux ou non ligneux est assortie d'un cahier des charges comportant des clauses générales et particulières. (…)

(3) Les clauses particulières concernent les charges financières, ainsi que celles en matière d'installations industrielles et de réalisations sociales telles que les routes, les ponts, les centres de santé, les écoles, au profit des populations riveraines. (…)

(…)

TITRE IV – DE LA FAUNE

(…)

CHAPITRE IV – DE LA VALORISATION DES RESSOURCES FAUNIQUES

SECTION I – DE L'EXERCICE DE LA CHASSE

(…)

Article 128. – (1) Sous réserve des dispositions de l'alinéa (2) ci-après, la chasse de subsistance est autorisée dans les territoires communautaires de chasse et le domaine national, sauf dans les forêts domaniales pour la concession de la faune et dans les propriétés des tiers. (…)

Article 129. – La chasse de certains animaux peut être fermée temporairement sur tout ou partie du territoire national par l'administration en charge de la faune.

Article 130. – Tout procédé de chasse de nature à compromettre la conservation de certains animaux peut être interdit ou réglementé par l'administration en charge de la faune.

(…)

Article 139. – L'exploitation de la faune dans les forêts domaniales, celles des collectivités territoriales décentralisées, les forêts communautaires et des particuliers et dans les zones cynégétiques est soumise à un plan d'aménagement élaboré par l'administration en charge des forêts et de la faune.