



UNIVERSITY *of the*
WESTERN CAPE

FACULTY OF LAW

LLM MINI-THESIS

**IMPLEMENTING THE BASIC INTERNATIONAL LAW PRINCIPLES RELATING
TO INDIGENOUS PEOPLES' RIGHTS: A CASE STUDY OF CAMEROON**



*Submitted in partial fulfilment of the requirements for the LLM degree in the Faculty of
Law of the University of the Western Cape*

WESTERN CAPE

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TABLE OF CONTENTS

Plagiarism Declaration.....	1
Dedication.....	2
Key words.....	2
Abstract.....	3
Abbreviations and Acronyms.....	4
CHAPTER ONE: GENERAL INTRODUCTION.....	7
1. Background to the study.....	7
1.2 Rationale.....	7
1.3 Research Questions.....	9
1.4 The Concept of Indigenous Peoples.....	9
1.4.1 The Forest Peoples (Hunters/Gatherers).....	15
1.4.2 The Mbororo (Nomadic Pastoralists).....	17
1.5 Research Methodology.....	18
1.6 Preliminary Literature Review.....	19
1.7 Limitation of Study.....	21
1.8 Overview of Chapters.....	21
CHAPTER TWO: BASIC INTERNATIONAL LAW PRINCIPLES RELATING TO INDIGENOUS PEOPLES' RIGHTS AND CAMEROON'S OBLIGATIONS.....	23
2.1 Introduction.....	23
2.2 Cameroon's Attachment to the African Charter and Other Core International Human Rights Instruments.....	25
2.2.1 The Principle of Non-Discrimination in the Charter and Other Instruments.....	26
2.2.2 The Interrelated Principles of Consultation and Participation.....	28

2.2.3 The Right to Decide Priorities for Development	33
2.2.4 Respect for Culture and other Specificities of Indigenous Peoples	36
2.3 Human Rights Instruments of Relevance to Indigenous Peoples but not “per se legally binding” on Cameroon.....	38
2.3.1 The Universal Declaration on the Rights of Indigenous Peoples (UNDRIP).....	39
2.3.2 The ILO Convention No.169	42
2.4 Conclusion	44
 CHAPTER THREE: THE SITUATION OF INDIGENOUS PEOPLES IN CAMEROON AND MEASURES TAKEN TO PROTECT THEIR RIGHTS.....	
3.1 Introduction.....	45
3.2 The Situation of Indigenous Peoples in Cameroon.....	45
3.2.1 Marginalization and Poverty	45
3.2.2 Non-Recognition of or Respect for Cultural Specificity	47
3.2.3 No Consultation or Participation in Decision-making Processes	48
3.3 Constitutional and Legislative Measures Protecting the Rights of Indigenous Peoples in Cameroon.....	50
3.3.1 The Constitution of the Republic of Cameroon: A Historical Background.....	50
3.3.1.1 Fundamental Rights Protection.....	51
3.3.1.2 The Constitution and Indigenous Peoples.....	52
3.3.2 Legislative Measures of Relevance to Indigenous Peoples	55
3.3.2.1 Non-Discrimination in the Domain of Education.....	55
3.3.2.2 Non- Discrimination in Politics (Government).....	56
3.3.2.3 Consultation and Participation in Resource Management (Development issues)	57
3.3.2.4 Consultation and Participation in Politics (Local Government)	58
3.4 Policies, Programs, Projects and Indigenous Peoples’ Rights in Cameroon	59

3.4.1 The Domain of Education	62
3.4.2 Local Government	63
3.4.3 Development Issues	64
3.5 Conclusion	67
CHAPTER FOUR: ANALYSIS AND EVALUATION OF CAMEROON’S EFFORTS TO PROTECT THE RIGHTS OF ITS INDIGENOUS PEOPLES	
4.1 Introduction.....	68
4.2 Analysis/Evaluation of Government’s Efforts to Eliminate Discrimination	69
4.2.1 Failure to Eliminate Vertical Discrimination.....	69
4.2.2 Failure to Eliminate Horizontal Discrimination	72
4.3 Analysis and Evaluation of Efforts Aimed at Consultation and Participation.....	75
4.3.1 An Analysis /Evaluation of Government’s Efforts to involve Indigenous Peoples in the Management of Public Affairs of the State.....	75
4.3.2 An Analysis/Evaluation of Government’s Efforts to involve Indigenous Peoples in Development Processes which Affects Them.....	76
4.4 Conclusion	84
CHAPTER FIVE: GENERAL CONCLUSION AND RECOMMENDATIONS.....	
5.1 General Conclusion.....	85
5.2 Recommendations.....	86
BIBLIOGRAPHY	89

DECLARATION

‘I declare that **IMPLEMENTING THE BASIC INTERNATIONAL LAW PRINCIPLES RELATING TO INDIGENOUS PEOPLES’ RIGHTS: A CASE STUDY OF CAMEROON** is my work that has not been submitted before any degree or examination in any other university and all the sources I have used or quoted have been indicated and acknowledged as complete references.’

Name & Surname: Augustin Nguh

Date: 9 October 2013

Signature....



DEDICATION

I dedicate this mini-thesis to my mother, NGUH Florence NCHANG and my elder brother, Kenneth ANYE who have been a source of hope and inspiration. Without their unconditional love, care and guidance, I would never have made it this far.

I also dedicate this work to all my friends for being there for me all this time.



Cameroon

Consultation

Development

Forest Peoples

Indigenous peoples

ILO Convention 169

Non-Discrimination

Mbororos

Participation

United Nations Declaration on the Rights of Indigenous Peoples

ABSTRACT

Indigenous peoples constitute at least 5000 distinct peoples with a population of more than 370 million, living in 70 different countries. These peoples are typically subjected to a number of human rights violations (being excluded from decision-making processes and forced to assimilate into dominant groups, among others). The plight of these peoples has recently received worldwide attention. In 1989, the international community adopted the Convention on Indigenous and Tribal Peoples (Convention 169) to protect the rights of these peoples. In 2007 the UN adopted a Declaration on Indigenous peoples' Rights. Attention is now focused on implementing indigenous peoples' rights at the domestic level.

Cameroon is not yet a party to Convention No.169 and so cannot be bound under the Convention to protect the rights of its indigenous peoples. Cameroon often denies any duty in this regard. However, Cameroon is party to core human rights instruments like the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of all forms of Racial Discrimination and the African Charter on Human and Peoples Rights and Freedom. Cameroon also voted in favour of the adoption of the UN Declaration on Indigenous Peoples Rights. These international human rights instruments, with the exclusion of the Declaration, are not specifically dedicated to indigenous peoples' rights. Given this situation, two questions arise: is Cameroon bound by any international legal obligation to protect the rights of its indigenous peoples; and if so, is Cameroon implementing the basic international law principles relating to indigenous peoples' rights.

Using an in-depth study and analysis of various international human rights treaties to which Cameroon is a party, this research will explore the grounds on which Cameroon, though not a party to Convention 169, can be held bound to protect the rights of its indigenous peoples (chapter 2). This research present the situation of the indigenous peoples in Cameroon and provide a brief overview of the legislative and policy measures taken by the government which in some way provide entry points for the protection of the rights of the indigenous people in Cameroon (chapter 3). A critical analysis of these measures highlights some areas of success but also work that remains to be done to ensure that the rights of Cameroon's indigenous peoples are fully protected (chapter 4). The study concludes with a number of recommendations for further study and legal reform (chapter 5).

ABBREVIATIONS AND ACRONYMS

Throughout the dissertation below, the following standard abbreviations and acronyms are used:

ACHPR: African Commission on Human and Peoples Rights

ACRC: African Charter on the Rights and Welfare of the Child

CCA: Cultural Charter for Africa

CED: Centre for Environment and Development

CEDAW: Convention on the Elimination of all forms of Discrimination against Women

CERD: Committee on the Elimination of all Forms of Racial Discrimination

CRC: Convention on the Rights of the Child

FESP: Forest and Environment Sector Program

FPP: Forest Peoples Programme

GTZ: German Technical Cooperation

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICERD: International Convention on the Elimination of all forms of Racial Discrimination

ILO: International Labour Organisation

IPDP: Indigenous Peoples Development Plan

MoU: Memorandum of Understanding

MINAS: Ministry of Social Affairs

MINAT: Ministry of Territorial Administration

MINFOF: Ministry of Forest and Fauna

MINEP: Ministry of Environment and Nature Protection

MINEPAT: Ministry of Economy, Planning and Regional Development

MINREX: Ministry of External Relations

NPPD: National Program on Participatory Development



PRSP: Poverty Reduction Strategy Paper

RACOPY: Réseau Recherches Actions Concertées Pygmées.

REDD: Reducing Emissions from Deforestation and Forest Degradation

UICN: International Union for Conservation of Nature

UN: United Nations

UNESCO: United Nations Educational, Scientific and Cultural Organisation

UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples

WCS: World Conservation Society

WWF: World Wide Fund for Nature



CHAPTER ONE

GENERAL INTRODUCTION

1. Background to the study

Indigenous peoples constitute at least 5,000 distinct peoples with a population of more than 370 million, living in 70 different countries.¹ This diversity means that the nature of an indigenous people cannot be captured in a universal and unambiguous definition. There is a wide-spread consensus that a formal definition of the term ‘indigenous peoples’ is neither necessary nor desirable.² In other words, there is no universal and unambiguous working definition of the concept of indigenous people. This is due to the fact that no single definition can capture the diversity of indigenous cultures, histories and current circumstances.³ The African Commission has noted that the relationship between indigenous peoples and mainstream group in society vary from country to country. The absence of a universally accepted definition of the term “indigenous peoples” begs the question of: how then do we proceed to designate a particular group of people as “indigenous”, different from mainstream group in society and thus in need of special protection? In other words, who are indigenous peoples? What is the nature of their rights? Before providing answers to these questions, it will be imperative to state the rationale for undertaking this study.

1.2 Rationale

Indigenous peoples all over the world have been and are still exposed to marginalisation, discrimination, exclusion and stigmatisation. However, indigenous peoples in Africa have been reported to face bigger challenges as a result of the fact that some African States have been reluctant to acknowledge the existence of indigenous groups within their territories.⁴

¹ International Labour Organisation *Indigenous and tribal peoples rights in practice: A guide to ILO Convention No.169* International Labour Organisation Geneva (2009) 9.

² See African Commission on Human and Peoples’ Rights *Report of the ACHPR Working Group of Expert on Indigenous Populations/Communities adopted by the ACHPR at its 28th Session*, ACHPR (Banjul) & IWGIA (Copenhagen) (2005).

³ Stavenhagen R *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples* United Nations Paper E/CN.4/2002/97 (2001).

⁴ International Labour Organisation/African Commission on Human and Peoples’ Rights *Overview Report of the research project by the International Labour Organisation and the African Commission on Human and*

Cameroon provides a good example. The position of the government of Cameroon on indigenous peoples is ambiguous and complex. This ambiguity involves an outright rejection by public authorities of the existence of indigenous peoples in Cameroon or the assertion that all Cameroonians are indigenous.⁵ However, on the other hand, over the past four years, Cameroon has implicitly acknowledged the existence of some indigenous groups in the country, but it has preferred the term “marginal populations” to “indigenous peoples”.⁶ I submit that this attempt to avoid the definition of “indigenous people” is too broad, as it includes other members of the dominant population which are in one way or another marginalised, such as the physically and mentally disabled people. Cameroon explicitly make reference to the term “indigenous peoples” only within the framework of projects financed by the World Bank in which its policy on indigenous peoples has to be implemented or other projects financed by some development partners such as the kingdom of Belgium. A consequence of this ambiguous position of the government has been a denial of the protection offered by international human rights law to the indigenous peoples found in Cameroon. This makes it imperative and urgent to clarify Cameroon’s international law obligation towards its indigenous people, for failure to do so and the uncertainty about the rights of indigenous peoples result in ongoing exploitation.

This research aims to show case the human rights situation of the indigenous peoples of Cameroon. Using human rights treaties to which she is a party and ILO Convention 169 on the Rights of Indigenous Peoples in Independent Countries (of which she has not yet signed and ratified), this study will analyse Cameroon’s constitutional and legislative texts, national

Peoples’ Rights on the Constitutional and Legislative protection of the rights of indigenous peoples in 24 African Countries International Labour Office Geneva (2009)1 (hereafter *ILO/ACHPR Overview Report*).

⁵ Nguiffo S & Mballa N *Les dispositions constitutionnelle, législatives et administrative relatives aux populations autochtones au Cameroun*, Centre for Environment and Development, Yaoundé (2009)5. See also Barume AK *Cadre juridique et coutumier pour la protection des droits des peuples indigènes et tribaux au Cameroun : Point d’entrée* International Labour Organisation Geneva (2005)6.

⁶ See Speech by Mrs. Catherine Bakang Mbock, Minister of Social Affairs at the ceremony marking the celebration of the second edition of the International Day of Indigenous peoples, known in Cameroon as Marginal populations (9th August 2009), ‘*Second periodic report on Cameroon within the framework of the African Charter on Human and People’s Rights*’ (2003-2005)119, Ministry of Justice *Report by the Ministry of Justice on Human rights in Cameroon* Yaoundé (2009)271, Nguiffo S & Mballa N *Les disposition constitutionnelle, législatives et administrative relatives aux populations autochtones au Cameroun* Centre for Environment and Development Yaoundé (2009)6. See also UN Committee for the Elimination of Racial Discrimination (CERD) *Reports submitted by States parties under Article 9 of the Convention: International Convention on the Elimination of All Forms of Racial Discrimination: 18th periodic reports of state parties due in 2006: Cameroon* (hereafter CERD/C/CMR15-18) (March 2009)20.

policies and programmes which have a bearing on the rights of indigenous peoples in a bid to find out whether their rights are protected in line with international standards for protection set in human rights instruments to which Cameroon is a party. Additionally, this study will come up with recommendations to ensure a better protection of the rights of the indigenous peoples of Cameroon.

1.3 Research Questions

This study aims to answer two closely related questions.

Question 1: Is Cameroon bound to any international law principles relating to indigenous peoples' rights, in spite of its failure to sign and ratify ILO Convention 169? The answer to this question includes a clear statement of the principles to which Cameroon might be bound and the legal ground for Cameroon's international law obligations.

Question 2: Is Cameroon implementing the basic principles of international law relating to indigenous peoples' rights? To what extent? In other words, are the basic international law principles encapsulated in Convention 169 implemented by Cameroon?

The above inter-related research questions cannot be answered without first of all providing a clarification to the concept of indigenous peoples and the nature of their rights.

1.4 The concept of indigenous peoples and the nature of their rights

In spite of a lack of a formal legal definition, the questions about the status of indigenous peoples and the nature of their rights were answered within the African context by the African Commission in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya* (also known as the *Endorois Case*) wherein the respondent State (Kenya) argued that the Endorois were not indigenous and therefore did not need special protection.⁷ Before giving a decision on the violations alleged in the Communication, the African Commission had to first of all clarify the concept of "people" and decide whether the Endorois are indigenous or not. The concept of "people" was noted by the Commission, to be a highly controversial concept. This

⁷ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya* ACHPR, Communication no.276/2003 (hereafter referred to as the *Endorois Case*). This case dealt with the violation of freedom of conscience and religion (Article 8, ACHPR), the rights to property (art. 14, ACHPR), to culture (art. 17, ACHPR), to natural resources (Article 21, ACHPR) and to development (Article.22, ACHPR).

is due to the political connotation that the concept carries. The controversy surrounding the concept of “people(s)” had led the drafters of African Charter to refrain from proposing any definitions for this notion.⁸ The difficulty in defining the concept of “people(s)” was described by the African Commission in these terms:

‘Despite its mandate to interpret all provisions of the African Charter as per Article 45(3), the African Commission initially shied away from interpreting the concept of ‘people’. The African Charter itself does not define the concept. Initially the African Commission did not feel at ease in developing rights where there was little concrete international jurisprudence. The ICCPR and the ICESCR do not define ‘peoples’. It is evident that the drafters of the African Charter intended to distinguish between traditional individual rights where the sections preceding Article 17 make reference to “every individual”. Article 18 serves as a break by referring to the family. Articles 19 to 24 make specific reference to “all peoples”’.⁹

The concept of ‘people’ (in the context of the African Charter) is closely related to collective rights. This has been noted by the African Commission’s Working Group of Experts on Indigenous Populations/Communities.¹⁰ The African Charter, in its Articles 20 through 24 provides for peoples to retain rights as peoples or as a collective.¹¹

The concept of “indigenous peoples” (just like the concept of “people(s)”) has equally been at the centre of a debate within the African Commission. It has often been argued that all Africans are indigenous to Africa. The logic behind this argument lies in European colonisation. This means, all Africans are indigenous as compared to European colonialists. This debate caused the African Commission to set up the African Commission Working Group of Experts on Indigenous Populations/Communities. Through the African Commission

⁸ See Report of the Rapporteur of the OAU ministerial meeting on the draft African Charter on Human and Peoples’ Rights held in Banjul, The Gambia, from 9 to 15 June 1980 (CAB/LEG/67/3/Draft Rpt. Rpt (II)), 4.

⁹ African Commission on Human and Peoples’ Rights ‘*Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities*’ ACHPR (Banjul) /IWGIA (Copenhagen) (2005).

¹⁰ Stavenhagen R *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People on “Implementation of General Assembly Resolution 60/251 of 15 March 2006* Human Rights Committee (A/HRC/4/32/Add.3).

¹¹ *The Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria* (2001) African Commission on Human and Peoples’ Rights Decision 155/96, *The Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria* (27 May 2002), Fifteenth Activity Report of the African Commission on Human and Peoples’ Rights 2001-2002.

Working Group of Experts on Indigenous Populations/Communities, the African Commission has set out four criteria for identifying indigenous peoples. These are: ¹²

- The occupation and use of a specific territory;
- The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions,
- Self-identification, as well as recognition by other groups, as distinct collectivity;
- An experience of subjugation, marginalisation, dispossession, exclusion or discrimination.

These criteria were taken into account by the African Commission in deciding whether the Endorois people are indigenous under international law.¹³ These criteria for identification set by the African Commission constitutes the modern analytical understanding of the term “indigenous people” and were advocated by Erica Irene Daes, the Chairperson of the United Nations Working Group on Indigenous Populations. In setting out its criteria for identification of indigenous peoples, the African Commission took note of the working definition proposed by the UN Working Group on Indigenous Populations. This definition reads as follows:

‘Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their

¹² Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities (adopted at the Twenty-eighth Session, 2003)93, available at http://www.iwgia.org/iwgia_files_publications_files/African_Commission_book.pdf (accessed on 29 August 2013).

¹³ See *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* (also known as the *Endorois Case*) ACHPR Comm. no.276/2003(para 150).

continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.’¹⁴

In the *Endorois* case the African Commission was of the view that this definition should be read in conjunction with the Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, which is the basis of its ‘definition’ of indigenous populations.¹⁵

The International Labour Organisation (ILO) through its 1989 Convention on Indigenous and Tribal Peoples in Independent Countries does not strictly define who indigenous peoples are. Rather, it sets out criteria for their identification in countries where they exist. Article 1 of Convention holds that the Convention applies to:

‘Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquests or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.’¹⁶

The Convention equally emphasizes the importance of self-identification in identifying who can be considered indigenous when it states that:

‘Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of the Convention apply.’¹⁷

¹⁴ Cobo JM *Study of the Problem of Discrimination Against Indigenous Populations* Sub-Commission on the Prevention and Protection of Minorities, UN Doc.E/CN.4/Sub.2/1986/7/Add.4. It will be interesting to note that this definition of the term “indigenous peoples” was criticized on the grounds that aboriginality is not the sole determining factor and not enough importance was placed on self-identification and other contemporary issues. See Report of the African Commission Working Group of Experts on Indigenous Populations/Communities (adopted at the twenty-eighth Session, 2003)91.

¹⁵ *Endorois Case* ACHRP Comm. no.276/2003. para 153.

¹⁶ Article 1(1) (b) Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No.169), 72, ILO Official Bull.59, entered into force September 5, 1991.

¹⁷ Article 1(2) Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No.169), 72, ILO Official Bull. 59, entered into force September 5, 1991.

It will be worthy to note that the UN Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous People also supports the fact that self-identification is a fundamental criterion for identifying who is indigenous or not.¹⁸

The World Bank, relying on the objective criteria contained in the Convention, has developed its own operational definition of indigenous peoples. The World Bank, in its Operational Manual of March 2001 stated that:

‘The term “indigenous peoples”, “indigenous ethnic minorities”, “tribal groups”, and “scheduled tribes” describe social groups with a social and cultural identity that is distinct from dominant groups in society and that makes them vulnerable to being disadvantage in the development process. Many such groups have social and economic status that limits their capacity to defend their interests in and rights to land and other productive resources, or that restricts their ability to participate in and benefit from development.’¹⁹

In its Operational Policy on Indigenous Peoples, the World Bank uses the term “indigenous peoples” in a generic sense to refer to distinct groups with the following characteristics in varying degrees:

- self-identification as member of a distinct indigenous cultural group and recognition of this identity by others;
- collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
- customary cultural, economic, social or political institutions that are separate from those of the dominant society and culture;

¹⁸ See Stavenhagen R *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People* UN Commission on Human Rights, UN. Doc. E/CN.4/2002/97 (2002)53 para 100.

¹⁹ The World Bank Operational Manual “*Indigenous Peoples*”, Draft BP 4.10, (March 2001), available at <http://Inweb90.worldbank.org/ESSD/sdvext.nsf/63ByDocName/PoliciesDraftOP410March232001>. (Accessed on 29 August 2013). For an extensive discussion of this draft, see Mackay F ‘Universal Rights or a Universal Unto Itself? Indigenous Peoples’ Human Rights and the World Bank’s Draft Operational Policy 4.10 on Indigenous Peoples’ (2002) 17 *AM.U. INT’L. REV.*52. See also MacKay F ‘The Draft World Bank Operational Policy 4.10 on Indigenous Peoples: Progress or More of the same?’ (2005) 22 *Arizona Journal of International & Comparative Law* 1.

- Indigenous language, often different from the official language of the country or region.²⁰

The above criteria for identifying or definition the term “indigenous peoples” has been duly noted by the African Commission in its efforts to clarify who are indigenous in Africa. For the purpose of this study, we shall rely on the criteria for identification recognised and accepted by the African Commission. This is because it constitutes the modern analytical understanding of the term “indigenous people”. The African Commission, in its own observation in the *Endorois Case*, is of the view that term “indigenous” is not intended to create a special class of citizens, but rather to address historical and present-day injustices and inequalities.²¹

From the above attempts at defining the concept of “indigenous peoples”, one recognises a linkage between peoples, their lands and culture, and that such a group expresses its desire to be identified as people or have the consciousness that they are a people. This implies that if a group is recognised as an indigenous people, then that group is entitled to benefit from the provisions of the African Charter that protect collective rights. Relying on the criteria laid down by the African Commission, two main indigenous groups can be identified in Africa: different groups of hunter-gatherers and pastoralists.²² These groups are scattered all across Africa. These two main groups are equally found in Cameroon.

Cameroon is a country found in the Gulf of Guinea and is located between longitudes 8° and 16° east of Greenwich and between latitude 2° and 13° north of the Equator.²³ Cameroon is home to over 250 ethnic groups, all claiming to be indigenous.²⁴ Given this situation, the

²⁰ World Bank *Operational Policy 4.10 on Indigenous Peoples* World Bank Washington D.C (2005), available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0..contentMDK:20553653~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html> (accessed on 29 August 2013). See also Henriksen J ‘Key Principles in Implementing ILO Convention No.169’ in *Research on Best Practices for the Implementation of ILO Convention No.169* International Labour Organisation Geneva (2008)18.

²¹ See *Endorois Case* Comm. No. 276/2003, para 149.

²² Report of the African Commission Working Group of Experts on Indigenous Populations/Communities (adopted at the twenty-eighth Session, 2003)15.

²³ Ndjjobdi I & Amadou H ‘Building on Indigenous Peoples’ Role in REED+ Implementation in Cameroon’ in *State of Forest Lelewal Yaoundé* (2010)460.

²⁴ Nguiffo S & Mballa N *Les dispositions constitutionnelles, législatives et administratives relatives aux populations autochtones au Cameroun* Centre for Environment and Development Yaoundé (2009)1.

need to identify the indigenous peoples of Cameroon becomes pertinent. Identification of these peoples is the starting point for them to enjoy the rights conferred on them by international human rights law. Among these 250 ethnic groups are the 'forest people' and the Mbororo people.²⁵

For the purpose of this study, the term 'forest people' is used to describe all the distinct hunter-gatherer indigenous peoples living in, or originating from the forests of Central Africa. This term is preferable over the term 'pygmy' which is considered a derogatory term by the members of the group it seeks to identify.

1.4.1 The Forest Peoples (Hunters/Gatherers)

The forest people are men and women of the forest whose existence is organised around the forest and its resources. They occupy the forest ecology and exploit the gifts of nature or the ecosystem.²⁶ The well-being of this people is fundamentally dependent on life in the forest. Not only does it provide the means of livelihood, but it is also a source of peace and security for them.²⁷ According to Bigombe Logo, there are probably four major categories of forest peoples' occupations today: traditional hunter-gatherers which make up 6% of the population, hunter-gatherers-farmers (38%) farmers-hunters-gatherers (35%) and farmers-hunters (21%).²⁸ This confirms that the economy of this population is still centred around the forest and its resources through hunting, gathering and fishing. The forest remains the major provider of resources needed for subsistence.²⁹ It is imperative to note that the 'forest

²⁵ Barume AK *Etude sur le Cadre Légal et Coutumière pour la protection des Droits des Peuples Indigènes et Tribaux au Cameroun* International Labour Organisation Geneva (2005)8&9. See also International Working Group on Indigenous Affairs *The Indigenous World* IWGIA Copenhagen (2010)534.

²⁶ Jamie S 'The Baka Pygmies of Cameroon' *Ezine Articles* 29 October 2006. Available online at <http://ezinearticles.com/?The-Baka-Pygmyes-of-Cameroon&id=341972> (Accessed on 27th July 2012).

²⁷ Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon*, International Labour Organisation Geneva (2005)14, Tetchiada S 'For Cameroon's pygmies, no forest is impenetrable enough' *InterPress News Agency* (2005), available online at http://www.newsfromafrica.org/newsfromafrica/articles/art_10269.html (accessed on 27 July 2012).

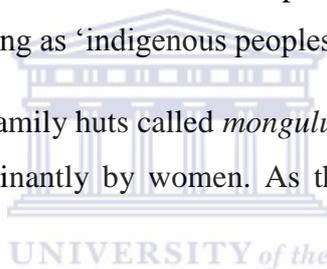
²⁸ Bigombe Logo P 'Les Pygmées et les programmes de développement au Cameroun, repenser les approches et responsabiliser les pygmées' *Mutations* (17 August 2004).

²⁹ See Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon*, International Labour Organisation, Geneva (2005)14 & 15. See also Centre for Environment and Development 'The Indigenous Forest Peoples and Protected Areas in Cameroon: A review of Cameroon's Implementation of the CBD Programme of Work on Protected Areas' in *FPP series on Forest Peoples and Protect Areas* Forest Peoples Programme Moreton-in-Marsh (2008)1.

peoples' are however gradually adopting agriculture. This is part of a strategy to fight for survival. Homes that practice agriculture are almost self-sufficient in terms of food and they acquire a certain degree of autonomy vis-a-vis their Bantu neighbours as opposed to those homes that may be considered as purely forest dependent.³⁰ However, those practicing agriculture will often abandon them while the crops are growing to hunter and gather, since that is what they know best.³¹

The “forest people” of Cameroon are divided into three major ethnic groups. The first and largest is the Baka. This group numbers close to 40 000 people³², occupies about 75 000km² of land and is situated to the south east of the country.³³ The second group, the Bakola/Baygeli counts about 37 000 people and covers an area of about 12,000km² in the southern part of the coastal region, more precisely in the Subdivisions of Akom II, Campo Bipindi, Kribi and Lolodorf. The third group, the Bedzang, lives in the north west of Mbam in the region of Ngambe-Tikar and counts about 300 people.³⁴ It will be interesting to note that the qualification of the Bedzang as ‘indigenous peoples’ was sometimes challenged.³⁵

The forest people lives in single family huts called *mongulu*. These huts are made of branches and leaves and are built predominantly by women. As the country modernises, more and



³⁰ “*To be or not to be Baygeli?*” A documentary film by Nikos Thomopoulos (2008). Except of this documentary can be found at <http://www.youtube.com/watch?v=F1jeUebjeOs> (access on 30 July 2012).

³¹ See ‘*Pygmy, Baka, Eastern Region of Cameroon*’ Joshua Project, available at <http://www.joshuaproject.net/people-profile.php?peo3=10587&rog3=CM> (accessed on 30 July 2012)

³² See Hewlett BS & Francher JM ‘Central African Hunter-Gatherer Research Traditions’ in Commings V, Jordan P & Zvelebil M (eds) *Oxford Handbook of the Archaeology and Anthropology of hunter-Gatherers* Oxford (2011)44. It should be stated that there is an absence of reliable data on the ‘forest population’ in Cameroon. The data used here are very approximate figures. It is urgent that this demographic data be updated.

³³ In this part of the country, the Baka can be specifically found in Dja and Lobo Sub-Division, Djoum, Mintom and Oveng districts, Boumba and Ngoko, Upper Nyong and Kadey Divisions. The Baka have their own language, Baka, which is a dialect cluster of the Ubangian language. See Pauline P ‘The Baka of Gabon: the Study of an Endangered Language and Culture’ in David M, Ostler N & Dealwis C (eds) *Proceedings of FEL XI, Working Together for Endangered Languages: Research Challenges and Social Impacts* University of Malaya Kuala Lumpur, Malaysia (26-28 October 2007)163-171. See also Nguiffo & Mballa N *Les dispositions constitutionnelles législatives et administratives relative aux populations autochtones au Cameroun* Centre for Environment and Development Yaoundé (2009)1.

³⁴ Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005)13-14.

³⁵ See Ministry of Economy, Planning and Regional Development *Indigenous People (Pygmy) Development Plan for the Participatory Community Development Programme* (Final report prepared by Schmidt-Soltau Kai) Yaoundé (2003).

more rectangular homes are being built. These homes are similar to those of their Bantu neighbours.³⁶ Unlike the dominant social world characterized by polygamy and the objectification of women, a central role is accorded to women in 'forest peoples' society. It will be interesting to note that the forest peoples are not warlike people and they resolve their differences through avoidance.³⁷

The forest people' base their claim of 'indigenesness' on "aboriginality" or better, the conviction of being the first inhabitants of African tropical forests.³⁸ Their reliance on the forest and its resources makes them different from other ethnic groups in Cameroon. It can be said that the aboriginality of the forest people, combined with their self-identification as indigenous and their mode of life which is different from the rest of the other ethnic groups forms the basis of a general consensus that they constitute an indigenous group in Cameroon.

1.4.2 The Mbororo (nomadic pastoralist)

The Mbororo of Cameroon constitutes another ethnic group which self-identify as indigenous. They are part of a large group of what the British called Fulani or what the French called Peul.³⁹ Their population is estimated at 1.85 million souls inhabiting almost all the 10 regions of the country.⁴⁰ The Mbororo people can be divided into three major ethnic

³⁶ The Bantu peoples are the dominant ethnic groups along the forested areas, the southern coast and the north-western highlands. They count about 27 per cent of the overall population of Cameroon. See *Cameroon-Land, Culture, Customs and Etiquette* available online at <http://www.kwintessential.co.uk/resources/global-etiquette/cameroon.html> (accessed on 30 July 2012). See also 'Land and People of Cameroon' *Somali Press* November 2009, available online at <http://www.somalipress.com/cameroon-overview/land-and-people-cameroon-1072.html> (accessed on 30 July 2012).

³⁷ Lewis J *Using avoidance to maintain autonomy: The Mbendjele Yaka in Northern Congo-Brazzaville* (2004) *World Rainforest Movement Bulletin No.87*, available online at <http://www.wrm.org.uy/bulletin/87/Congo.html> (accessed on 5 August 2012).

³⁸ Barume AK *Cadre Juridique et Coutumier pour la protection des droits des peuples indigènes et tribaux au Cameroun*, International Labour Organisation Geneva (2004)8. There exist too many literatures confirming the indigenous status of the forest people based on aboriginality or the conviction of being the first inhabitants in African tropical forests. See among others: Mercader J *Forest People: The Role of African Rainforests in Human Evolution and Dispersal* (2002)117 *Evolutionary Anthropology*, available online at http://ucalgary.academia.edu/juliomercader/Papers/365119/Forest_People_the_Role_of_African_Rainforests_In_Human_Evolution_and_Dispersal (accessed on 5 August 2012), Jordan CF & Montagnini F *Tropical Forest Ecology: The Basis for Conservation and Management* Springer Berlin (2005), Turnbull CM *The Forest People* Simon and Schuster New York (1962).

³⁹ Report of the African Commission Working Group of Experts on Indigenous Populations/Communities (adopted at the twenty-eighth Session, 2003)18.

⁴⁰ See International Labour Organisation 'Indigenous and Tribal Peoples: Cameroon' available online at <http://www.ilo.org/indigenous/Activitiesbyregion/Africa/Cameroon/lang--en/index.htm> (accessed on 5 August 2012).

groups identified by the colour of their cattle, style of decoration of their bowls, and migratory movements. These are the ‘Aku-en’, Bodaabe and the Jafun-en’.⁴¹ The mbororo are nomadic herdsman whose life depends on cattle rearing and grazing. The Mbororo based their claim of “indigenusness” on their pastoral lifestyle which is different from the ways of life of the dominant society.

In 1989, the International Labour Organisation in order to protect indigenous peoples all over the world adopted Convention 169 (Convention on the Rights of Indigenous Peoples in Independent Countries). Cameroon has not ratified ILO Convention no.169 and so cannot be held bound by it. Cameroon has however, ratified most of the core international and regional human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Social, Economic and Cultural Rights (ICESCR), International Convention on the Elimination of all forms of racial discrimination (ICERD) and the African Charter. These instruments although not completely dedicated to protecting the rights of indigenous peoples, carry some of the basic international law principles which are relevant to indigenous peoples’ rights as encapsulated in Convention 169. Following the adoption of Convention 169 and the UNDRIP, there is now a general consensus that there must be a focus on the implementation of indigenous peoples’ rights at the domestic level to ensure that international instruments bring the necessary changes for the millions of indigenous peoples around the world. In line with the international concerns on the recognition and implementation of indigenous peoples’ rights, this proposed research project seeks to explore whether Cameroon is implementing the basic international law principles relating to indigenous peoples’ rights, hence protecting the rights of indigenous peoples.

1.5 Research Methodology

This study was conducted in the form of a review of existing legal material and literature pertaining to indigenous peoples’ rights. This literature includes international human rights law and regional human rights treaties relating to the rights of indigenous peoples (treaties

2012). It is important to point out that a majority of the population of the mbororo people is found mostly in the Northwest region (where they number about 120,000 to 130,000 souls), Adamawa region and the Far North region of Cameroon. See Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005)20.

⁴¹ See ‘Mbororo-Fulani: History of the Mbororo-Fulani’ available online at http://www.mboscuda.org/index.php?option=com_content&view=article&id=53:mbororo-fulani&catid=36:mbororofulani&Itemid=74 (accessed on 5 August 2012).

and soft law produced by treaty bodies). This study also explores the Cameroonian constitutional and legislative provisions that impacts indigenous peoples found within the national territory. Some policy documents were also consulted. Because of the nature of the subject and the involvement of a number of NGO in the field, the research relied heavily on internet sources and Reports and other findings of interest groups and organisations. Academic literature in the form of published journal articles, chapters in edited collections and books were consulted. Some of the primary sources are also available in French. It is hoped that this dissertation will help to unlock this material to English speaking readers and researchers.

1.6 This dissertation in the context of existing literature

The literature on indigenous peoples' rights is rich and diverse. There are several studies on indigenous peoples' rights in Cameroon, but none is specific on the basic international law principles relating to indigenous peoples' rights. The available related literature generally deals with issues such as land, indigenous knowledge, and the livelihood of the indigenous groups. The International Working Group on Indigenous Affairs (IWGIA) has made a number of publications on indigenous peoples rights in Cameroon for example a more recent publication entitled '*What future for the Baka? Indigenous peoples' rights and livelihood in South-East Cameroon*'.⁴² This report specifically analyses the livelihood and human rights situation of the indigenous Baka people. This report is specifically limited to one indigenous group: the Baka "forest people". This research on the other hand will focus on clarifying Cameroon's obligation under international law to respect the rights of indigenous peoples, and analysing and evaluating the measures taken by Cameroon which impacts the rights of indigenous peoples found in its territory. This research will cover the two indigenous groups in Cameroon.

The Forest Peoples Programme has equally made a number of publications on indigenous peoples' rights in Cameroon. For example, a report entitled "*Historical and Contemporary land laws and their impacts on indigenous peoples' land rights in Cameroon*."⁴³ This report

⁴² Pyhala A *What future for the Baka? Indigenous Peoples' rights and livelihood opportunities in South-East Cameroon* IWGIA/PLAN Eks-Skolens Trykkeri Copenhagen (June 2012).

⁴³ Nguiffo S, Kenfack E & Mballa N 'Historical and contemporary land laws and their impacts on indigenous peoples' rights in Cameroon' in Nguiffo et als., (ed) *Land rights and the forest peoples of Africa: Historical, Legal and Anthropological perspectives* Forest Peoples Programme Moreton-in-Marsh (2009)1-23.

assessed the influence of land legislation process on the land rights of the indigenous communities in Cameroon with specific focus on the pygmy communities. The report equally exposed the discrimination perpetrated against the indigenous communities by the government through land legislation and recommended urgent land reforms which will bring about a synthesis between traditional land rights and written law, in order to give indigenous populations control over their development. My research however will not be limited to an analysis of a specific legislation or the impact of legislations on a specific indigenous community. It will analyse all the national laws, constitution, projects, programs and policies which impact indigenous peoples' rights and it will involve both indigenous groups in Cameroon.

The International Labour Organisation has equally been instrumental in publishing some literature on the human rights of indigenous peoples in Cameroon. A good example is the book "*Indigenous peoples and poverty reduction strategies in Cameroon*".⁴⁴ This book analyses the socio-economic situation of the two indigenous groups in Cameroon and describes national poverty reduction efforts and mechanisms for consultation and participation of indigenous peoples in the national poverty reduction strategy. The author of this book equally documents indigenous peoples' perceptions and indicators of poverty and describes their strategies to fight against poverty, as well as identifying the impact of poverty reduction programmes on them. My research, unlike the author's will not be limited to only two of the basic international law principles related to indigenous peoples' rights, and it will not analyse the level of implementation of these principles only within the socio-economic situation of the two indigenous groups in Cameroon.

Further important literature is published by the International Labour Organisation as a report entitled '*Cadre juridique et coutumier pour la protection des droits des peuples indigènes et tribaux (autochtones) au Cameroun: Points d'entrée*'.⁴⁵ This report compiled by Barume examines (within the framework of international conventions ratified by Cameroon) the laws and customs in force, entry points or ports for advocacy, promotion and protection of the rights of indigenous peoples as listed in Convention no.169.⁴⁶ The author, in his study,

⁴⁴ Tchoumba B *Indigenous and tribal peoples and poverty reduction strategies in Cameroon* International Labour Organisation Geneva (2005)1-79.

⁴⁵ Barume AK *Cadre juridique et coutumier pour la protection des droits des peuples indigènes et tribaux (autochtones) au Cameroun: Point d'entrée* International Labour Organisation Geneva (2005)1-72.

however focused attention on one indigenous group: “the forest people”. My approach, though similar to Barume’s, will involve both indigenous groups and much attention will be focused on an analysis of the measures taken by Cameroon which impact indigenous peoples’ rights in order to see whether the basic international law principles relating to indigenous peoples’ rights are respected and implemented by Cameroon. In the process, I will make some of Barume’s insights available for English speaking researchers

1.7 Limitation of the study

The scope of this research will essentially focus on the study and analysis of the level of implementation of the basic international law principles relating to the rights of indigenous peoples in Cameroon over the past two decades (1990-2013). In addition, my study will be limited to the “forest people” and the Mbororo peoples- the only two indigenous groups in Cameroon.

The word limitation for the dissertation (30 000) meant that none of the international, constitutional, legislative and policy documents mentioned in the course of the dissertation would be discussed in any depth. The aim has consequently been to provide a broad overview of the position of indigenous peoples in Cameroon, and to leave it to subsequent research to investigate specific issues of concern.

1.8 Overview of chapters

The dissertation is divided into five chapters. The first chapter, which is the general introduction, gives a clarification of the concept of indigenous peoples, identifies the indigenous peoples in Cameroon and poses the basic issues to be discussed. Chapter two identifies the basic international law principles relating to indigenous peoples’ rights. This chapter also explores whether Cameroon has an international legal obligation to protect the rights of its indigenous people despite its non-ratification of the Convention on indigenous peoples’ rights. In other words, this chapter raises and answers the first research question identified above. Chapter three presents the situation of the indigenous peoples in Cameroon and will also describe the measures taken by the government of Cameroon to promote and protect indigenous peoples’ rights in Cameroon. This chapter presents the socio-economic and human rights situation of Cameroon’s indigenous people as well as explores the constitutional and legislative provisions which impact indigenous peoples, as well as some national policies, projects and programmes. Chapter four analyses and evaluates these

measures taken by the government of Cameroon in a bid to see whether they fall in line with the international standards set by human rights bodies. In other words, chapter three and four raise and answer the second research question identified above. Chapter five provides the conclusion and recommendations.



CHAPTER TWO

BASIC INTERNATIONAL LAW PRINCIPLES RELATING TO INDIGENOUS PEOPLES RIGHTS AND CAMEROON'S OBLIGATIONS

2.1 Introduction

World-wide, indigenous peoples are faced with injustices such as dispossession of historical land and resources and forced assimilation into the way of life of dominant groups.⁴⁷ Indigenous peoples all over the world face systemic discrimination and exclusion from political and economic power. They are over-represented among the poorest, the illiterate, the destitute, displaced by wars and environmental disasters. In more modern versions of market exploitation, indigenous peoples have seen and continue to see their traditional knowledge and cultural expressions marketed and patented without their consent or participation.⁴⁸ The plight of these peoples has not gone unnoticed by the international community.

Indigenous issues became a real international concern in the 1950s, when the ILO realised in a study on the conditions of workers around the world that indigenous workers were especially exposed to severe forms of labour exploitation.⁴⁹ To protect the indigenous peoples, the ILO (with the participation of other UN agencies) adopted Convention No.107 on Indigenous and Tribal Populations in 1957.⁵⁰ In 1972, the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities launched a study on the problem of discrimination against indigenous peoples, later known as the 'Martinez Cobo

⁴⁷ See African Commission on Human and Peoples Rights *Report of the ACHPR Working Group of Experts on Indigenous Populations/Communities adopted by the ACHPR, at its 28th Session* ACHPR (Banjul) & IWGIA (Copenhagen) (2005)20.

⁴⁸ United Nations *State of the World's Indigenous Peoples* Department of Economic and Social Affairs, United Nations New York (2009).

⁴⁹ International Labour Organisation *Indigenous and tribal peoples rights in practice: A guide to ILO Convention No.169* International Labour Organisation Geneva (2009)173.

⁵⁰ Convention No.107 was the first international treaty dealing with the rights of 'indigenous and tribal populations. This Convention covers a wide range of issues, including employment and occupation, rights to land and education in indigenous language. The Convention is now closed for ratification but remains binding in the 18 countries that have ratified it and which have not yet denounced it or ratified Convention No.169. These countries are Angola, Bangladesh, Belgium, Cuba, Dominican Republic, Egypt, El Salvador, Ghana, Guinea Bissau, Haiti, India, Iraq, Malawi, Pakistan, Panama, Portugal, Syria and Tunisia. It will be interesting to note that Convention No.107 was closed because of it adopted an integrationist approach towards indigenous peoples.

Study', named after the Special Rapporteur appointed to prepare the report.⁵¹ The study began at a time when international indigenous movements were growing rapidly throughout the Americas, the Caribbean, the Arctic, Australia, New Zealand and elsewhere.⁵² The study created a momentum that together with the advocacy work of the indigenous movements, led in 1982 to the establishment of the first UN mechanism on indigenous peoples, namely the Working Group on Indigenous Populations of the Sub-Commission.

In 1989 indigenous issues witnessed an increased momentum when the ILO adopted Convention 169. This Convention is the only international legal human rights instrument completely dedicated to the rights of indigenous peoples the world over and has been ratified by 22 countries.⁵³ Convention 169 contains some basic international law principles which are relevant for the protection of the rights of the peoples it aims to protect. These principles are: the principle of non-discrimination;⁵⁴ the interrelated principles of consultation and participation;⁵⁵ the principle of recognition and respect of the cultural and other specificities of indigenous peoples;⁵⁶ and the principle of the right of indigenous peoples to decide their own development priorities.⁵⁷ It should be reiterated that Cameroon has not yet ratified the Convention, but has ratified the African Charter and other core international human rights instruments. This therefore begs the question whether Cameroon is bound to implement the basic principles relating to indigenous peoples' rights? With Cameroon not being a party to the Convention, it will sound very logical and legitimate for the government of Cameroon to bring up the fact that it is not bound by the Convention and therefore has no obligation to implement the international law principles relating to indigenous peoples' rights. This will result to a denial of the rights of these groups of peoples in Cameroon. It therefore becomes imperative to clarify Cameroon's international legal obligations towards the indigenous

⁵¹ See Cobo JM *Study of the problem of discrimination against indigenous populations* United Nations Publication (UN Doc E/CN.4/Sub.2/1986/7) (1986).

⁵² See United Nations *State of the World's Indigenous Peoples* Department of Economic and Social Affairs United Nations New York (2009)2.

⁵³ These countries are: Argentina, Bolivia, Brazil, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Peru, Spain and Venezuela.

⁵⁴ See articles 3, 4 and 20 of the Convention.

⁵⁵ See article 6 of the Convention.

⁵⁶ See article 4 of the Convention.

⁵⁷ See article 7 of the Convention.

peoples in its national territory. The following paragraphs will attempt to establish the grounds on which Cameroon can be held bound to implement the basic international law principles relating to indigenous peoples' rights. The core argument of this chapter is that ILO Convention 169 confirms existing international human rights and gives the plight of indigenous peoples new prominence, but it does not create any new rights and duties which are not already contained in core international human rights instruments which are binding on Cameroon.

2.2 Cameroon's attachment to the African Charter and other core international human rights instruments

The Cameroonian Constitution of 1996, in the 5th and 7th paragraphs of its preamble, states:

'We the People of Cameroon... affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights and all duly ratified international conventions relating thereto,...

The "duly ratified international human rights Conventions" referred to in the above quoted paragraph of the preamble of the Constitution includes among others, the International Covenant on Civil and Political Rights (ICCPR)⁵⁸, International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵⁹ (all ratified on 27 of June 1984) and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) (ratified on 24 June 1974) and the African Charter on Human and Peoples' Rights (hereafter the African Charter). Cameroon signed and ratified the African Charter on 29 June 1989. This means she has the legal obligation to respect the rights listed in the various instruments. It will be of

⁵⁸Adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966. It entered into force on 23 March 1976, in accordance with article 49, for all provisions except those of article 41; 28 March 1979 for the provisions of article 41 (Human Rights Committee), in accordance with paragraph 2 of the said article 41. See UN General Assembly *International Covenant on Civil and Political Rights* United Nations, Treaty Series, Vol. 999, (16 December 1966)171, available online at <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html> (accessed 13 August 2012).

⁵⁹Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966. It entered into force on 3 January 1976, in accordance with article 27. See UN General Assembly *International Covenant on Economic, Social and Cultural Rights* United Nations, Treaty Series, Vol. 999 (16 December 1966)3, available online at: <http://www.unhcr.org/refworld/docid/3ae6b36c0.html> (accessed 13 August 2012).

import to reiterate the fact that these instruments are in no way completely dedicated to indigenous peoples, but they do carry provisions of relevance to indigenous peoples' rights which can be and has been expanded to create a legal platform for protecting indigenous peoples in Africa in general and Cameroon in particular. The following sub-paragraphs will explore in details the provisions of relevance to indigenous peoples' rights that can be found in the above mentioned instruments to which Cameroon is legally attached to.

2.2.1 The principle of non-discrimination in the Charter and the other instruments

Article 2 of the African Charter states:

‘Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, political or any other opinion, national or social origin, fortune, birth or other status.’

One of the core claims of indigenous peoples, just like other ethnic minority groups, is their right not be discriminated against. The principle of non-discrimination is a principle which requires the equal treatment of an individual or group irrespective of their particular characteristics and is used to assess apparently neutral criteria that may produce effects which systematically disadvantage persons possessing those characteristics.⁶⁰ The principle of non-discrimination provides a framework on the basis of which indigenous people can seek protection against prejudice, neglect and marginalisation. Non-discrimination, together with equality before the law and equal protection of the law without discrimination, constitute a basic and general principle relating to the protection of human rights.⁶¹ It is worthy of note that in the above quoted article of the African Charter, reference to the term ‘without distinction’ logically suggests that these rights are available to everyone including members of communities who identify themselves as indigenous.⁶² It should be mentioned that the

⁶⁰ See ‘Non-Discrimination Principle’ available online at <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/nondiscriminationprinciple.htm> (accessed on 6 August 2012).

⁶¹See Human Rights Committee CCPR General Comment No.18: Non-Discrimination (10 /November 1989), available online at <http://www.unhchr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e> (accessed on 6 August 2012).

⁶² See ILO/ACHPR *Overview Report* (2009)30.

principle of non-discrimination has acquired the status of customary international law⁶³ and *jus cogens*.⁶⁴

The non-discrimination provision in the African Charter merely echoes the non-discrimination clause contained in the ICCPR and the ICESCR. This general non-discrimination clause is found in Article 2 of both instruments. Article 2 of both instruments enjoins a State party to:

‘... Undertake to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind...’⁶⁵

Various provisions prohibiting discrimination on specific grounds complements the general non-discrimination contain in the two Covenants. For example Article 7(a) (i) of the ICESCR guarantees equal conditions of work between men and women and requires equal remuneration for work of equal value, Article 7 (c) of the ICESCR guarantees equal opportunity for everyone to be promoted in his/her employment; Article 10(3) prohibits any discrimination in the protection and assistance for all children and young persons and Article 13(2) (c) guarantees equal accessibility in higher education. In the same vein, Article 23(4) of the ICCPR requires states to take adequate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution; and Article 24 of the ICCPR prohibits any discrimination against children based on race, colour, sex, language, religion, national or social origin, property or birth.

The principal clause on the principle of non-discrimination is found in Article 26 of the ICCPR. Article 26 states that:

‘All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any

⁶³ Defined by its universal acceptance and consistent practice by States.

⁶⁴ According to Article 53 of the Vienna Convention on the Law of Treaties, 1969, *jus cogens* or peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and this norm can only be modified by a subsequent norm of general international law having the same character.

⁶⁵ See Article 2 of ICCPR and ICESCR.

ground such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status.’⁶⁶

The application of Article 26 is not confined to the rights contained in the Covenant. The Human Rights Committee established in the case of *Nahlik et al. v. Austria* that under Articles 2 and 26 of the ICCPR, ‘state parties are under an obligation to ensure that all individuals within its territory and subject to its jurisdiction are free from discrimination, and consequently the courts of State parties are under an obligation to protect individuals against discrimination, whether this occurs within the public or among private parties in the quasi-public sector’.⁶⁷ Cameroon therefore has an international legal obligation to protect all individuals whether indigenous or not, from discrimination.

2.2.2 The interrelated principles of consultation and participation

Article 13(1) of the African Charter states:

‘Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.’

Consultation and participation are among the most fundamental rights of indigenous peoples. International human rights norms require that indigenous peoples are able to effectively participate in decision-making process which may affect their rights or interest, including by being consulted.⁶⁸ Article 20(1) of the African Charter guarantees to all peoples the right to self-determination or autonomy when it states:

‘All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination... .’

This article confers on all peoples the right to freely determine their political status or pursue any economic or social development of their choice. Within the African context, the African

⁶⁶ See also Human Rights Committee *CCPR General Comment 18: Non-Discrimination* (8 November 1989) available at <http://www.unhcr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e> (accessed 13 August 2012).

⁶⁷ See *Franz Nahlik v. Austria* HRC Communication no. 608/1995, U.N. Doc. CCPR/C/57/D/608/1995 (1996).

⁶⁸ Henriksen J ‘Key Principles in Implementing Convention No.169’ in *Research on Best Practice for the Implementation of the Principles of ILO Convention No.169: Case Study 7* International Labour Organisation Geneva (2008)19.

Commission on Human and Peoples Rights (hereafter the African Commission) has had the opportunity to extend the right of consultation and participation to indigenous people. This was in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya (Endorois case)* wherein the respondent- Kenya was found guilty of violating among others the right to development of the Endorois people because it engaged in coercive and intimidating activities which abrogated the community's right to meaningful participation and freely given consent in the creation of the Borgia Game Reserve in 1978, as well as participation in the benefits of the game Reserve.⁶⁹ The African Commission by so doing upheld indigenous peoples' right to be consulted and to participate in any development process which will directly or indirectly affect them. The right to consultation and participation can be considered as components of the right to self-determination.⁷⁰ In its legal opinion on the United Nations Declaration on the Rights of Indigenous Peoples, the African Commission places the right of indigenous peoples to self-determination within the context of territorial integrity of States. It stated:

‘... the ACHRP is of the view that the right to self-determination in its application to indigenous populations and communities, both at the UN and regional levels, should be understood as encompassing a series of rights relative to the full participation in national affairs, the right to local self-government, the right to recognition as to be consulted in the drafting of laws and programs concerning them, to a recognition of their structures and traditional ways of living as well as the freedom to preserve and promote their culture. It is therefore a collection of variations in the exercise of the right to self-determination, which are entirely compatible with the unity, and territorial integrity of State Parties.’⁷¹

Crucial elements of indigenous peoples' rights to consultation and participation include the right to vote, and associated political rights, the right to be consulted in a broad range of

⁶⁹ See *Endorois case* ACHRP Comm. no.276/2003, para. 134.

⁷⁰ See United Nations Development Group *Guidelines on Indigenous Peoples' Issues* United Nations New York (2008)13, Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) *Summary of UN Expert Mechanism on the Rights of Indigenous Peoples' Studies on the right to participate in decision-making* United Nations (2011)1.

⁷¹ See African Commission on Human and Peoples' Rights *Advisory Opinion of the African Commission on Human and Peoples' Right on the United Nations Declaration on the Rights of Indigenous Peoples* Banjul (2007) para.27.

legislative and administrative measures that affect them, including legal reform, and the drafting and implementation of development policies, programmes and projects.⁷² Indigenous peoples must be consulted through *appropriate procedures* and *through their representative institutions*.⁷³ Procedures are appropriate if they create favourable conditions for achieving agreement or consent to the proposed measures, independent of the results obtained”.⁷⁴ It should be stated that *representativity* is an important component of the concept of consultation. If an appropriate consultation process is not developed with the indigenous institutions or organisation that are truly representative of the peoples in question, then the resulting consultation would not comply with the requirement of Convention on Indigenous and Tribal peoples’ rights.⁷⁵ Consultation should be undertaken in good faith, in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.⁷⁶ The parties involved should seek to establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect and full participation.⁷⁷ Effective consultation, it should be said, is consultation in which those concerned have an opportunity to influence the decision taken. This means real and timely consultation. It has been stated that a simple information meeting does not constitute real consultation, nor does a meeting that is conducted in a language that the indigenous peoples present does not understand.⁷⁸ These requirements seemed to have guided the African Commission in deciding whether Kenya violated the rights to development of the Endorois people. The right to

⁷² See ILO Overview Report (2009)40.

⁷³ Article 6(1) of ILO Convention No.169: ‘*In applying the provisions of this Convention, governments shall consult the peoples concerned through appropriate procedures and in particular through their representative institutions... .*’

⁷⁴ See Governing Body, 289th Session, March 2004, Representation under Article 24 of the ILO Constitution, Mexico, GB.289/17/3 para 89.

⁷⁵ See Governing Body, 282nd Session, November 2001, Representation under article 24 of the ILO Constitution, Ecuador, GB.282/14/2, par.44.

⁷⁶ See Article 6(2) of ILO Convention No.169.

⁷⁷ See *Report of the Committee Set Up to Examine the Representation Alleging Non-Observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No.169), Made under Article 24 of ILO Constitution by the Confederacion Ecuatoriana de Organizaciones Sindicales Libres (CEOSL), ILO Doc. GB. 282/14/2 (Nov. 14, 2001)*. “The concept of consulting the indigenous communities that could be affected by the exploration or exploitation of natural resources includes establishing a genuine dialogue between both parties characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord.”

⁷⁸ Gernigon B, Odero A & Guido H ‘ILO Principles concerning Collective Bargaining’ (2000) 139 *International Labour Review* 1.

consultation and participation in development issues will be given more attention when explaining the right of indigenous people to decide priorities for development.

The right of indigenous peoples to consultation and participation can be said to be a norm, with objective to ensure the effective participation of indigenous peoples in mainstream political and legislative processes which may affect them directly. The rights of consultation and participation relate not only to specific development projects, but also to broader questions of governance, and the participation of indigenous peoples in public life.⁷⁹ The right to consultation and participation as contained in the African Charter can be said to be an echo of what is enshrined in the ICCPR. The ICCPR provide for the right to political participation. Article 25(a) of ICCPR states:

‘every citizen has the right and opportunity, without discrimination, to take part in the conduct of public affairs, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held and to have access, on general terms of equality, to public service in his country.’

It should be noted that the state holds the guarantee to the enjoyment of the right to elections and it can restrict this right on certain grounds. The Human Rights Committee has stated that:

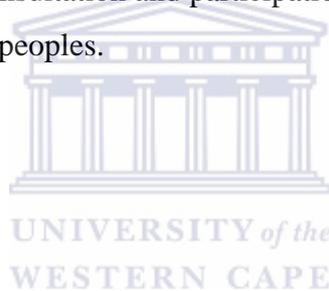
‘the right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, education or poverty requirements. Party membership should not be a condition of eligibility to vote or a ground of disqualification. If a conviction for an offence is a basis for suspending the right to vote, the period of such suspension must be proportion to the offence and the sentence.’⁸⁰

The Committee also specify that states should act against all circumstance that can prevent their citizens from exercising their effective participation in the management of public affairs.

⁷⁹ See International Labour Organisation *Convention No.169 and ILO Programmes specifically addressing indigenous and tribal peoples*. (Leaflet No.2) International Labour Organisation, Geneva, available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_100662.pdf (accessed on 7 August 2012).

⁸⁰ See Human Rights Committee *CCPR General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art.25)* 07/12/1996, available at <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb> (accessed 13 August 2012).

Consultations must be held when a variety of indigenous interests are involved, including legislative measures regulating the consultation process itself;⁸¹ constitutional provisions concerning indigenous peoples;⁸² development of lands adjacent to, or in indigenous territories, to the complete destruction of those lands.⁸³ Through the interrelatedness of the rights of consultation and participation, consultation is not merely the right to react but indeed also a right to propose; indigenous peoples have the right to decide their own priorities for the process of development and thus exercise control over their own economic, social and cultural development. The principles of consultation and participation of indigenous peoples in issues that affect them has become generally accepted principles in international law and the wide spread acceptance of the norm of consultation demonstrates that it has become part of customary international law.⁸⁴ Its presence in the African Charter and the ICCPR to which Cameroon is a party, and the fact that it is now part of customary international law, imposes on Cameroon a legal obligation with respect to indigenous peoples. The core area of the application of the principles of consultation and participation is in the context of relationships between the state and indigenous peoples.



⁸¹ *Report of the Committee Set Up to Examine the Representation Alleging Non-Observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No.169), Made Under Article 24 of the ILO Constitution by the Central Unitary Workers' Union (CUT), ILO Doc. GB.282/14/2 (Nov. 21, 2001)* (impugning lack of consultation in three situations: the passage of a law governing consultation with indigenous peoples; the construction of a highway through indigenous lands; and granting permission for oil exploration in indigenous lands).

⁸² *Report of the Committee Set up to Examine the Representation Alleging Non-Observance by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No.169), Made under Article 24 of the ILO Constitution by the Union of Workers of the Autonomous University of Mexico (STUNAM) and the Independent Union of Workers of La Jornada (SITRAJOR) ILO Doc. GB.289/17/3 (March 19, 2004).*

⁸³ See *Report of the Committee Set up to Examine the Representation Alleging Non-Observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No.169), Made Under Article 24 of the ILO Constitution by the Central Unitary Workers' Union (CUT) and the Colombian Medical Trade Union Association, ILO Doc. GB. 282/14/3 (Nov. 14, 2001).*

⁸⁴ See Anaya J 'Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction: The more Fundamental Issue of what Rights Indigenous Peoples have in Lands and Resources' (2005)22 *Ariz. J. Int'l & Comp. L.* 1

2.2.3 Right to decide priorities for development

Article 22 of the African Charter states that:

‘All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.’

The right to development is in itself an inalienable human right.⁸⁵ Poverty reduction is the overarching aim of most national and international development strategies including those supported by bi- and multilateral donors and lenders.⁸⁶ Poverty reduction is also a crucial concern for indigenous peoples as they are disproportionately represented among the poor.⁸⁷

However, indigenous peoples have often ended up being the victims of development instead of its beneficiaries. While the construction of infrastructure such as dams, oil exploitation, logging and mining has contributed to economic growth for certain sectors of society, the consequences for indigenous peoples have been devastating. Their land has been taken away, their forests have disappeared and their rivers are left contaminated. They have thus been deprived of their means of livelihood, often with no compensation or access to alternative livelihoods.⁸⁸ Indigenous peoples' poverty is a reflection of their generally marginal position

⁸⁵ See Article 1 of the UN Declaration on the Right to Development. (A/RES/41/128), Sengupta A *On the Theory and Practice of the Right to Development* (2002) 24 *Human Rights Quarterly* 4. See also Sengupta A ‘On the Theory and Practice of the Right to Development’ in Sengupta A, Negi A & Basu M *Reflections on the Right to Development* SAGE Publications Pvt. Ltd (2006).

⁸⁶ Goal 1 of the Millennium Development Goals (MDGs) focuses on eradicating extreme poverty and hunger by 2015. See Lennox C ‘Minority and Indigenous Women and the Millennium Development Goals’ in Hoare J & Minority Rights Group International (ed) *State of World’s Minority and Indigenous Peoples: Focus on Women’s Rights* Minority Rights Group International UK (2011)21.

⁸⁷ It is generally accepted that indigenous peoples are among the poorest and most vulnerable. See ILO/ACHRP *Overview Report* (2009)1. A new study by the World Bank confirmed that indigenous peoples, making up 5 % of the world’s population, are still among the poorest of the poor. See ‘*World Bank Study Affirms Indigenous People Are World’s Poorest*’ United Nations Department of Public Information (2010), available online at <http://www.unpo.org/article/11044> (accessed on 8 august 2012), *World Bank Implementation of Operational Directive 4.20 on Indigenous Peoples* Washington DC (2003). See also Carino J ‘Poverty and Well-being’ in United Nations *State of the World’s Indigenous Peoples* Department of Economic and Social Affairs United Nations Publication New York (2009)21.

⁸⁸ A good example will be the effect of oil exploration by Shell Company on the land of the Ogoni people of Nigeria. Agricultural production and fishing catches of the Ogoni people of Nigeria declined after oil exploration in this area by Shell Company in 1958 (*The Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria* ACHPR Comm. no.155/96, (2001), African Commission on Human and Peoples Rights *Report of the African Commission Working Group of Experts on Indigenous*

within national societies. This implies that indigenous peoples are also marginalised with regards to participation in the shaping of the development strategies and with regards to access to resources aimed at alleviating poverty.

The fundamental starting point is the understanding that indigenous peoples are distinct peoples who have their own histories, territories, livelihood strategies, values and beliefs and thus hold distinct notions of poverty and well-being.⁸⁹ If indigenous people's own perceptions and aspirations are not addressed in development strategies and programmes, there is a risk that these will either fail or even aggravate the situation. Without indigenous peoples, inclusive poverty-oriented and sustainable development is not possible.⁹⁰

Within the African milieu, the right of indigenous peoples to decide their priorities for development as earlier mentioned was recognised and upheld by the African Commission in the *Endorois Case*. One of the allegations made by the complainant in this case was the inadequate involvement of the Endorois people in the development process undertaken by the respondent (Kenya) on their land, as well as failure to ensure the continued improvement of the Endorois community's well-being, hence a violation of the rights to development as enshrined in Article 22 of the African Charter. The right to development, as argued by the complainant, is dependent on choice; whose absence directly contradicts the guarantee of the right to development. The importance of choice to the well-being of a people was duly noted by African Commission in the case of *The Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria (Ogoni Case)* where it held that states must respect right holders and the "liberty of their action."⁹¹ Recognition of this liberty by the African Commission is equivalent to the choice embodied in the right to development. Hence, the African Commission embraces the right to development as a choice.

Populations/Communities Banjul (2005)29. See also World Commission on Dams (WCD) *Dams and Development, A New Framework for Decision-making: Report of the World Commission on Dams* Earthscan Publications UK (2000), Lewis C 'Corporate responsibility to respect the rights of minorities and indigenous peoples' in Walker B & Minority Rights Group International (ed) *State of World's Minorities and Indigenous Peoples: focus on land rights and natural resources* Minority Rights Group International (MRG) UK (2012)37.

⁸⁹ International Labour Organisation *Indigenous and Tribal Peoples Rights in Practice: A Guide to ILO Convention No.169* International Labour Organisation Geneva (2009)117.

⁹⁰ International Labour Organisation *Indigenous and Tribal Peoples' Rights in Practice: A Guide to ILO Convention No.169* International Labour Organisation Geneva (2009)117.

⁹¹ *The Social and Economic Rights Action Centre for Economic and Social rights v. Nigeria (The Ogoni Case)*, ACHPR Comm. no.155/96, (2001) para. 46.

According to the African Commission, the right to development is two-pronged test; constitutive and instrumental, or useful as both a means and an end. Thus, a violation of either the substantive or procedural element constitute a violation of the right to development, neither does the fulfilment of one of the two prongs satisfy the right to development.⁹² The right to development requires the fulfilment of five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, over-arching themes in the right to development.⁹³

As a human rights body, the African Commission is versed with the provisions of other human rights instruments or the decisions of other human rights bodies. In deciding on the alleged violation of Article 22 of the African Charter by the respondent in the Endorois case, the African Commission adopted a rights-based approach to development, inspired by Article 6 (1) and 7(1) of the ILO Convention no.169. Article 7 of the Convention states that:

‘Indigenous and tribal peoples have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control over their economic, social and cultural development.’

The right to decide priorities for their own development requires that governments should, before any developmental projects and programmes, consult the indigenous peoples to be affected,⁹⁴ carry out studies to assess their potential social, cultural, spiritual and environmental impacts of such activities, assist the indigenous peoples in developing their own institutions and initiatives by providing necessary resources and recognise and protect

⁹² *Endorois Case* ACHPR Comm. no.276/2003, (2003) para 277.

⁹³ Sengupta A *Development Cooperation and the Right to Development* Francois-Xavier Bagnoud Centre Working Paper No.12, (2003), available at www.hsph.harvard.edu/xfbcenter/working_papers.htm (accessed on 12 April 2013). See also UN Declaration on the Right to Development, U.N. GAOR, 41st Session, Doc A/RES/41/128 (1986), Article 2 (3) which refers to “active, free and meaningful participation in development.”

⁹⁴ Indigenous peoples should be consulted at all steps of relevant plans and programs for development at the local, national and regional level. The traditions, cultural values and needs of indigenous peoples should be taken into account in the formulation of policies, programs and projects, not only when it comes to local projects at the village level, but also when formulating the overall development policies of a country. See James A *Indigenous Peoples in International Law* (2ed) Oxford University Press (2004)153-154. The principle of the right to decide priorities for development (article 7 of ILO Convention No.169) must be implemented in conjunction with the principles of consultation and participations (Article 6 of ILO Convention No.169).

the rights of indigenous people to ownership, possession and use of their lands, territories and resources.⁹⁵

The principle of the right of indigenous peoples to decide their own development priorities, has over the past 15-20 years, attracted a great deal of attention from governments and international development agencies such as the World Bank⁹⁶, the Asian Development Bank, United Nations Development Programme, the European Commission and a number of bilateral donors (for example Denmark⁹⁷, Norway and Spain). These agencies and donors have adopted policies for the inclusion of indigenous peoples in development programmes. These policies and strategies reflect good intentions and increasing understanding of indigenous peoples' rights, and they have helped placing indigenous peoples on the international development agenda.

2.2.4 Respect for the culture and other specificities of indigenous peoples

Article 17 (2) and (3) of the African Charter states that:

(2) Every individual may freely take part in the cultural life of his community.

(3) The promotion and protection of morals and traditional values recognised by the community shall be the duty of the State.

This Article of the Charter is of a dual dimension: it is both individual and collective, protecting on the one hand, individuals' participation in the cultural life of their community and, on the other hand, obliging the state to promote and protect traditional values recognised by a community. This duality was noted by African Commission in the *Endorois case*.

⁹⁵ Indigenous peoples have the right to recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied as well as to the use of those to which they have historically had access for their traditional activities and livelihood. See Proposed American Declaration on the Rights of Indigenous Peoples, approved Feb. 26, 1997, Inter-Am. C.H.R., OEA/Ser/L/V/II.95, Doc. 6 at 9 (1997).

⁹⁶ See World Bank *Operational Directive 4.10* World Bank Washington D.C (2005).

⁹⁷ See Danish Ministry of Foreign Affairs *Strategy for Danish Support to Indigenous Peoples* Ministry of Foreign Affairs (Danida), 2004, available at <http://amg.um.dk/en/~media/amg/Documents/Policies%20and%20Strategies/Freedom%20Democracy%20and%20Human%20Rights/Indigenous%20people/StrategyForDanishSupportToIndigenousPeople.ashx> (accessed on 12 August 2012).

Indigenous peoples' cultures and identities form an integral part of their lives. Their ways of life, customs and traditions, institutions,⁹⁸ customary laws, forms of land use and forms of social organisation are usually different from those of the dominant population.⁹⁹ The protection of their distinct culture is a central element of their survival. For indigenous peoples, language and culture are interdependent and indivisible. Recognition and respect for indigenous cultures will often depend on respect for their physical worlds, including the land on which they live and the natural resources on which their livelihood may depend.¹⁰⁰ Recognition and respect of the cultural and other specificities of indigenous peoples is a basic international law principle relating to indigenous peoples' rights. It should be mentioned that the term culture is very broad. It refers to a way of life of a given social group which includes the type of work and survival strategies which distinguish that group from other similar groups.

According to the African Commission, protecting human rights goes far beyond the duty not to destroy or deliberately weaken minority groups, but it requires the respect for, and protection of, their religious and cultural heritage essential to their group identity, including buildings and sites such as libraries, churches, mosques and synagogues.¹⁰¹ Common beliefs and religions are often a significant attribute of culture, which can fully be expressed and explained in indigenous language of that community. Therefore to deny one of these aspects to a community will inevitably threaten the identity of that community.¹⁰² In giving effect to Article 17 (2) and (3) of the African Charter in the *Endorois case*, the African Commission took note of the provisions of ILO Convention 169.

ILO Convention 169 recognises the differences between indigenous peoples' cultures and the culture of the members of the dominant population and aims to ensure that they are protected and taken into account when measures are undertaken that are likely to have an impact in

⁹⁸ The term "institutions" may refer to physical institutions or organization or, it may have a broader meaning that includes indigenous peoples' practices, customs, and cultural patterns. See International Labour Organisation *Indigenous and Tribal Peoples' Rights in Practice: A Guide to ILO Convention No.169* International Labour Organisation Geneva (2009)50.

⁹⁹ The existence of distinct social, economic, cultural and political institutions is an integral part of what it means to be an indigenous people and is largely what distinguishes indigenous peoples from other sections of the national population. See Article 1 of ILO Convention No.169.

¹⁰⁰ ILO/ACHPR Overview Report (2009)69.

¹⁰¹ *Endorois Case* ACHPR Comm. no.276/2003 (2003) para 241.

¹⁰² ILO/ACHPR Overview Report (2009)62.

their lives. The Convention imposes on Governments the obligation to adopt measures for promoting the full realisation of the social, economic and cultural rights of indigenous peoples, with respect for their social and cultural identity, their customs and traditions and their institutions¹⁰³ and adopt special measures which are appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of indigenous peoples.¹⁰⁴ The Convention equally calls for the recognition and protection of the social, cultural, religious and spiritual values and practices of indigenous peoples and the respect of the integrity of their values, practices and institutions.¹⁰⁵

The African Commission also noted the view of the Human Rights Committee with regard to the exercise of the cultural rights protected under Article 27 of the U.N Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in which the Committee observes that:

‘Culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous people. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affects them.’¹⁰⁶

2.3 Human rights instruments of relevance to indigenous people but “not per se legally binding” on Cameroon

There are equally some human rights instruments of relevance to indigenous peoples in Cameroon, but these instruments are not per se legally binding on Cameroon. Though not binding, they provide entry points for protecting indigenous peoples in Cameroon. These instruments will include principally the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention 169. The following sub-paragraphs

¹⁰³ See Article 2(1) (b) of ILO Convention No.169.

¹⁰⁴ See Article 4(1) of ILO Convention No.169.

¹⁰⁵ See Article 5 of ILO Convention No.169.

¹⁰⁶ UN Human Rights Committee CCPR General Comment No. 23: Article 27 (Rights of Minorities) (Fiftieth Session, 8 April 1994), U.N. Doc. CCPR/C/21Rev.1/Add5, (1994), Para 7.

will explore in details these instruments and how relevant they are to indigenous peoples in Cameroon.

2.3.1 The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The UNDRIP was approved in June 2006 by the Human Rights Council after a lengthy drafting process within the UN. Of thirteen African Members of this Council, only four (Cameroon, Mauritius, South Africa and Zambia) voted in favour of the UNDRIP. African States expressed their concerns about the UNDRIP and contributed to the deferral of its adoption by the UN General Assembly.¹⁰⁷ A unified position expressing concerns with respect to the UNDRIP was later adopted by the African Union (AU). The AU also welcomed the deferral of the UNDRIP's discussion by the UN.¹⁰⁸ The African group at the UN was later mandated by the AU to guard Africa's interests and concerns about the 'political, economic, social and constitutional implications' of the UNDRIP.¹⁰⁹ This group released a memorandum which sets out their concerns¹¹⁰ and proposed some amendments to UNDRIP.¹¹¹ In March 2007, a group of African academics issued a reply countering the African group's Aide Memoire.¹¹² In May 2007, the African Commission at its 31st Session responded with the adoption of an Advisory Opinion on the UN Declaration on the Rights of Indigenous People, in which it attempted to "allay some of the concerns raised surrounding the human rights of indigenous populations 'and reiterated 'its availability for any

¹⁰⁷ See for example the "*Draft Aide Memoire*" of the African Group on the Declaration, dated 9 November 2006, New York, in which the Group expressed concern about for example, the absence of a definition; the inclusion of the right to self-determination; and called for a 'deferment on the adoption of this Declaration' (para 9.1)

¹⁰⁸ See African Union Decision on the United Nations Declaration on the Rights of Indigenous Peoples. Doc. Assembly/AU/Dec.141 (VIII) (30 January 2007), available at www2.ohchr.org/english/issues/indigenous/docs/wgdd2006/dec-141.doc

¹⁰⁹ AU Doc Assembly/AU/Dec.141 (VIII).para 3.

¹¹⁰ Africa Group Draft Aide Memoire: United Nations Declaration on the Rights of Indigenous Peoples (9 November 2006), available at <http://www.ipacc.org.za/uploads/docs/Africanaidememoire.pdf> (accessed on 7 September 2013).

¹¹¹ Africa Group Proposed Draft Text of the United Nations Declaration on the Rights of Indigenous Peoples (8 May 2007).

¹¹² African Group of Experts Response Note to 'The Draft Aide Memoire of the African Group on the UN Declaration on the Rights of Indigenous Peoples' (21 March 2007), available at <http://www.ipacc.org.za/uploads/docs/AideMemoireResponse.pdf> (accessed on 7 September 2013).

collaborative endeavour with African States in this regard with a view to the speedy adoption of the Declaration.’¹¹³

After some amendments to the initial text, the UN General Assembly, on 7 September 2007, finally adopted the UNDRIP. Thirty-five African states were among the 143 states that voted in favour of UNRIP, three abstained (Burundi, Kenya and Nigeria); and fifteen (Chad, Cote d’Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea Bissau, Mauritius, Morocco, Rwanda, Sao Tome e Principe, Seychelles, Somalia, Togo and Uganda) registered an absent vote. Cameroon was among the African states that voted in favour of adoption.

This Declaration sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. It emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations’.¹¹⁴ The Declaration also “prohibits discrimination against indigenous peoples”, and it “promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development”.¹¹⁵

It should be pointed out that UNDRIP is not a binding legal instrument under international law. Anaya and Weissner holds that the name “Declaration” appears to give it a more solemn right, takes it closer to the most important policy statements of the organized world community-into the vicinity of instruments such as the 1948 Universal Declaration of Human Rights.¹¹⁶ In UN practice, a declaration is “a formal and solemn instrument”, resorted to “only in very rare cases related to matters of major and lasting importance where maximum

¹¹³ See ACHPR/ILO Overview Report (2009)8.

¹¹⁴United Nations Permanent Forum for Indigenous Issues *Frequently Asked Questions: Declaration on the Rights of Indigenous Peoples* United Nations Permanent Forum on Indigenous Issues New York (2007), available at <http://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf> (accessed on 7 September 2013).

¹¹⁵ *United Nations adopts Declaration on Rights of indigenous Peoples* United Nations New Centre (13 September 2007), available at <http://www.un.org/apps/news/story.asp?realfile/html/story.asp?NewsID=23794&Cr=indigenous&Cr1=> (accessed on 7 September 2013).

¹¹⁶ Anaya J & Wiessner S ‘The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment’ (2007) para 13 *JURIST* 3, available at <http://jurist.law.pitt.edu/forumy/2007/10/un-declaration-on-rights-of-indigenous.php> (accessed 7 September 2013).

compliance is expected.”¹¹⁷ Using that particular instrument creates a “strong expectation that members of the international community will abide by it” and “consequently, in so far as the expectation is gradually justified by state practice, a declaration may by custom become recognised as laying down rules binding upon States.”¹¹⁸ UNDRIP is a solemn, comprehensive and authoritative response of the international community of States to the claims of indigenous peoples, with which maximum compliance is expected.

However, some of the rights therein (the UNDRIP) may already form part of customary international law and as such these rights are binding on Cameroon. Others may become the source and origin of later emerging international customary law. According to Weissner, scholarly analyses of state practice and *opinion juris* have concluded that indigenous peoples are entitled to maintain and develop their distinct cultural identity, their spirituality, their language, and their traditional ways of life; that they hold the right to political, economic and social self-determination, including a wide range autonomy.¹¹⁹ Therefore, the Declaration, though not a binding legal instrument *per se* do carry with it some customary norms which creates binding legal obligation for its state parties (Cameroon inclusive) and non-state parties.

The Declaration, in its preamble calls itself a “standard of achievement to be pursued in a spirit of partnership and mutual respect”. Article 42 requires the “United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialised agencies as well as States to promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of it.” UNDRIP constitutes an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law. The principles and rights affirmed in the Declaration constitute or add to the normative frameworks for the activities of United Nations human rights institutions, mechanisms and

¹¹⁷ *General Introduction to the standard-setting instruments of UNESCO*, available at http://portal.unesco.org/en/ev.php-URL_ID=23772&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed 7 September 2013).

¹¹⁸ Report of the Commission on Human Rights, E/3616/Rev.1, para.105).

¹¹⁹ See Wiessner S ‘Rights and Status of Indigenous Peoples: A Global Comparative International Legal Analysis’ (1999)12 *Harvard Human Rights Journal* 57 available at <http://www.law.harvard.edu/students/orgs/hrj/iss12/index.shtml> (accessed on 20 May 2013).

specialized agencies as they relate to indigenous peoples.¹²⁰ According to a UN press release, UNDRIP “represents the dynamic development of international legal norms and it reflects the commitment of the UN’s member states to move in certain directions.”

2.3.2 ILO Convention 169

As mentioned above, this is a legally binding international instrument open to ratification, which deals specifically with the rights of indigenous peoples. Convention 169 revises Convention 107 (Convention on the Rights of Indigenous Populations) and aims at protecting the rights of indigenous peoples while respecting their cultures, distinct ways of life and traditions and customs. The primary purpose of Convention 169, as stated during the revision process, is to ‘recognise the principle of respect for identities and wishes of the (indigenous peoples) concerned and to provide for the increased consultation with, and participation by, these populations in decisions affecting them.’ Emphasis is placed on the participation of, and consultation with, indigenous peoples, especially concerning development activities.¹²¹

Convention 169 is one of the ILO’s procedural conventions. This means the Convention primarily recognises procedural rights rather than substantive rights. In other words, Convention No.169 sets out procedures that the State is required to follow and comply with in relation to indigenous peoples. Convention 169 includes rights to participate in the formulation of legislation, certain rights to internal autonomy, including economic, social and cultural development, respect for certain aspects of indigenous customs or customary laws, rights to lands and territories, including use rights, traditional economic activities and the use of natural resources; protection from relocation and; broad based cultural rights- religious, linguistic and educational. As earlier mentioned, only 22 states have ratified the Convention and Cameroon is not one of them. By ratifying an ILO Convention, States agree to be bound by the rules laid in its provisions. This means that governments promise to make the articles of the Convention part of their national law.

¹²⁰ Wiessner S ‘The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges’ (2011)22 *European Journal of International Law* 1.

¹²¹ Mackay F *A Guide to Indigenous Peoples’ Right in the International Labour Organisation* Forest Peoples’ Programme Moreton-in-Marsh (2010)12, available at <http://www.forestpeoples.org/sites/fpp/files/publication/2010/09/iloguideiprightsjul02eng.pdf> (accessed on 13 September 2013).

Since its adoption, Convention 169 has gained recognition well beyond the number of actual ratifications. Its provisions have influenced numerous policy documents, debates and legal decisions at the regional and international levels, as well as national legislation and policies.¹²² It has equally influence the decisions of some regional human rights bodies, notably the African Commission. In the *Endorois Case* the African Commission seemed to have drawn a lot of inspiration from the Convention in identifying whether the Endorois were indigenous, in deciding whether their right to practice their religion, right to property, culture, free disposition of natural resources and right to development as guaranteed under Articles 8, 14, 17(2) and (3), 21 and 22 were violated by Kenya. The African Commission not only drew inspiration from the Convention, but equally from the decisions of the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, and even the General Comments of the Human Rights Committee. The provisions of Convention 169 are compatible with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, and the adoption of the Declaration illustrates the broader acceptance of the principles of the Convention 169 well beyond the number of ratifications. An evolution of juridical thoughts and practices has led to the conclusion that some of the rights contained in the Convention, specifically the rights to consultation and participation, and the right to be free from discrimination, have attained the status of customary international law and are therefore binding on States, irrespective of ratification of the Convention.¹²³ This therefore implies that though Cameroon has not ratified the Convention, she is nevertheless legally bound to implement some of its provisions by reason of the fact that these provisions have attained the status of customary international law.

¹²² See International Labour Organisation 'Convention no.169' available at <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm> (accessed on 14 September 2013).

¹²³ See among others Anaya J *Indigenous Peoples in International Law* Oxford University Press Oxford and New York (1996)49-58, 107, Weissner S 'The Rights and Status of Indigenous Peoples: A Global Catiomparve and International Legal Analysis' (1999) 12 *Harvard Human Rights Journal* 57 and Anaya J & Williams R 'The Protection of Indigenous Peoples' Rights over Land and Natural Resources under the Inter-American Human Rights System' (2001) 14 *Harvard Human Rights Journal* 33.

2.4 Conclusion

The basic international law principles relating to indigenous peoples rights as encapsulated in ILO Convention offers a framework for the protection of the rights of these peoples in countries where they are found. Cameroon is not a party to the ILO Convention and so its international legal obligation with respect to indigenous peoples' rights cannot be directly invoked under the Convention. Cameroon is however, at the international level, a party to the core UN human rights instruments and at the regional level, a signatory to the African Charter on Human and Peoples' Rights. Its attachment to these conventions is affirmed in the preamble of its Constitution, which per Article 62 forms part and parcel of the Constitution. These instruments, though not dedicated to the rights of indigenous peoples, carry with them the basic international law principles relating to indigenous peoples rights and thus offer a legal framework for the protection of the rights of the indigenous peoples in Cameroon. The African Commission has had the chance in the Endorois Case, to pronounce on indigenous peoples' rights in Africa. The decision of the African Commission in this case goes far beyond the respondent it was passed against. The African Charter, ICCPR, ICESCR and the ICERD imposes on Cameroon an international legal obligation to respect and promote the rights of the indigenous peoples found within its national territory, even though these peoples were not the original object of these instruments. Cameroon is obliged to respect some of the basic international law principles relating to indigenous peoples rights not only because she is a party to the treaties carrying these principles, but because some of these principles have acquired the status of customary international law and *jus cogens* and are therefore binding on States irrespective of ratification or non-ratification of Convention 169. This is especially true with the principle of non-discrimination and consultation and participation.

CHAPTER THREE

THE SITUATION OF INDIGENOUS PEOPLES IN CAMEROON AND MEASURES TAKEN BY THE GOVERNMENT TO PROTECT THEIR RIGHTS

3.1 Introduction

In the previous chapter it was established that Cameroon has an international law obligation to comply with the fore core principles of Convention 169, as these principles find expression though related international human rights instruments. In this chapter, focus shifts to the status of indigenous peoples in Cameroon and measures taken to give effect to the international law obligations mentioned above. It is a well known and documented fact that indigenous peoples over the world are faced with injustices such as dispossession of historical land and resources and forced assimilation into the ways of life dominant groups. The degree of injustice, it is interesting to note, varies in proportion to the extent of recognition of the existence of indigenous people by the government of a country. Indigenous peoples in Cameroon have not been spared the scourge of injustices suffered by other indigenous peoples across Africa and the world in general. The following paragraphs will focus on a presentation of the situation of indigenous peoples in Cameroon and the measures taken by the government of Cameroon which serves as entry points for the protection of the rights of these peoples.

3.2 The situation of indigenous people in Cameroon

The situation of indigenous people in Cameroon has been documented to be one of marginalisation and poverty since colonial times, lack of consultation or participation in public affairs or development issues which affects them, disregard for their cultural specificity and non-recognition. The following paragraphs will present in details the situation of indigenous peoples in Cameroon.

3.2.1 Marginalisation and poverty

Indigenous peoples in Cameroon live in a state of extreme marginalisation and poverty. This marginalisation has its roots in the colonial era since, prior to colonisation, the indigenous peoples of Cameroon maintained friendly relations with their Bantu neighbours, bartering

products gained by hunting and gathering for agricultural produce cultivated by the Bantu.¹²⁴ Colonisation brought substantial changes to these relationships insofar as the Bantu, who were the first to come into contact with European settlers, quickly acquired manufactured goods like guns, sugar, salt and tobacco, thereby causing an imbalance in commercial relations and turning the terms of trade in favour of the Bantu.¹²⁵ The indigenous communities became heavily dependent and in many cases, subservient to their Bantu neighbours.¹²⁶ According to Belmont Tchoumba, the poverty situation of the indigenous people of Cameroon can be understood within the global context of poverty in Cameroon. The “forest people” are understood to be the poorest of the poor in Cameroon. Their income is derived from marketing of agricultural and/or forest products and their harvest hardly suffice to guarantee self-sufficiency. Some “forest people” work in plantations of their Bantu neighbours or even on forest exploitation sites. However, their contracts remain precarious and their earnings are always insufficient in relation to the scale of their needs.¹²⁷ The Bantu have apparently had difficulties in fully accepting the “forest people” as equals and this has led to low self-esteem among the forest people when it comes to political power.¹²⁸ This has resulted to the existence of a vicious circle in which opportunities for their manipulation are maintained and many forest communities continue to be exploited for labour and sexually.¹²⁹ They have very limited access to basic social services such as schools and hospitals. Usually, such services do not exist in the locations in which they live, given the fact that they live in

¹²⁴ Nguiffo S, Kenfack PE & Mballa N ‘The influence of historical and contemporary land laws and their impact on indigenous peoples’ land rights in Cameroon’ in Forest Peoples Programme *Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives* Forest Peoples Programme Moreton-in-Marsh (2009)2.

¹²⁵ Abega SC *Pygmée Baka: Le droit a la différence* Inades Formation Cameroon (1998).

¹²⁶ Forest Peoples Programme, Centre for Environment and Development & Réseau Recherches Action Concertées Pygmées *The situation of Indigenous peoples in Cameroon: A supplementary report submitted in connection with Cameroon’s 15th-19th periodic reports* (CERD/C/CMR/19) Centre for Environment and Development, Yaoundé (27 January 2010). See also Ministry of Economy, Planning and Regional Development *Indigenous People (“pygmy”) Development Plan for the Participatory Community Development Programme* (Final Report prepared by Schmidt-Soltau Kai) (2003)22.

¹²⁷ Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005)15.

¹²⁸ Pyhala A *What future for the Baka? Indigenous peoples’ Rights and Livelihood Opportunities in South-East Cameroon* IWGIA/PLAN Copenhagen (2012)20.

¹²⁹ Pyhala A *What future for the Baka? Indigenous peoples’ Rights and Livelihood Opportunities in South-East Cameroon* IWGIA/PLAN Copenhagen (2012)20.

most inaccessible areas.¹³⁰ Even if such services exist, they are not always adapted to the specific needs of the people.

The Mbororo people equally suffer the same fate as the “forest people.” They suffer from marginalisation due to official policies, and have limited access to social infrastructures especially health and education.¹³¹ The Mbororo have very little access to higher education, thereby making them vulnerable to exploitation by the dominant Bantu population and the administration. Due to their skills in cattle rearing, most Mbororo has found employment with some of their Bantu neighbours, but their salaries are pitiable, they are intimidated, harassed, subjected to abusive corporal punishment by government officials and unfair trials in agro-pastoral conflicts.¹³² Tchoumba also maintains that the Mbororo are a victim of social exclusion on the part of sedentary farmers and policy makers and they are always regarded as ‘foreigners’ on the very lands they have occupied for decades.¹³³

3.2.2 Non-recognition of or respect for cultural specificity

During the colonial era, a sedentarisation policy was introduced in Cameroon. Cameroon had become a major export country of cocoa and coffee, and the government saw the “forest people” at “a primitive stage of evolution, and intervention was needed to bring them into the modern economy.”¹³⁴ It was therefore seen that these peoples had to be integrated into mainstream national culture and economy. Interestingly, and unfortunately, this sedentarisation process which began half a century ago still persists and it is the main argument used by the government to deny the existence of indigenous peoples in the country. At the cultural level, the issue of socio-economic development of indigenous people arises with particular reference to non-recognition and/or non-respect of their cultural identity. Many hunter/gatherers communities have been dispossessed of their traditional lands in the

¹³⁰ Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005)16.

¹³¹ Sale A *Les Mbororo du Noun* Editions AP Yaoundé (1991).

¹³² Mouiche I ‘Democratisation and Political Participation of Mbororo in Western Cameroon’ (2011)17 46 *Africa Spectrum* 2.

¹³³ Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005)21.

¹³⁴ Bailey et als. ‘Development in the Central African rainforest: Concern for forest peoples’ in Cleaver KM Munasinghe M, Dyson M, Egli N, Peuker A & Wencelius F (ed) *Conservation of West and Central African Rainforests* The World Bank Washington DC (1992)264.

Equatorial rainforest caused by the expansion of protected areas, mining, agro industries and logging.¹³⁵ National parks such as the Dja Reserve and the Bomba Ngoko Reserve are located on the traditional lands of these peoples.¹³⁶ These development processes were carried out in total disregard of the peoples' culture. Just because these peoples they are different from other members of the society, they have been branded with expressions such as “under developed”, “backward”, “primitive” and even worse.¹³⁷

3.2.3 No consultation or participation in decision-making processes

For the past decades, very few indigenous people have had birth certificates and/or national identity cards, which are essential for them to obtain citizenship and enjoy the range of rights associated with it. No “forest community” had legal status despite all efforts made in this area by some local NGOs such as Réseau Recherches Actions Concertées Pygmées (RACOPY) and the Centre for Environment and Development (CED), which lodged numerous applications to the Ministry of Territorial Administration requesting the recognition of some forest communities as villages, independent from other Bantu villages. Forest communities found along major road have since the 1960s, been encouraged to sedentarised. The non-official recognition of a forest community has political, economic and social implications. Politically, they are not represented by themselves but by the villages to which they are associated.¹³⁸ At the economic level, forest people almost never benefit from forest taxes and scarcely enjoy the fruits of forest resource exploitation due to non-recognition of their rights as inhabitants of their forest being exploited.¹³⁹ Forestry law in Cameroon (Law No.94/01 of

¹³⁵ It is unfortunate that most national parks are located on the lands of these peoples. The creation of national parks usually entails the displacement of these peoples and often without compensation of land of equal value to the one expropriated.

¹³⁶ See Nguiffo S *One forest and two dreams: the constraints imposed on the Baka in Miatta by the Dja Wildlife Reserve* Forest Peoples Programme, Moreton-in-Marsh (2001).

¹³⁷ Personal observation. For some of the derogatory expressions used against indigenous peoples, see also Ngima G *The Relationship between the Bakola and the Bantu peoples of the coastal regions of Cameroon and their perception of commercial forest exploitation* African Study Monographs, Suppl.26 (March 2001)217.

¹³⁸ See Mouiche I ‘Democratisation and Political Participation of Mbororo in Western Cameroon’ (2011)77 *Africa Spectrum* 46, 2, See also Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005)19.

¹³⁹ Pemunta NV ‘The governance of nature as development and the erasure of the Pygmies of Cameroon’ in Martisziw T & Grubestic T *Spatially Integrated Social Sciences and Humanities* (2013)78 *GeoJournal* 2 available at http://www.academia.edu/1146591/The_governance_of_nature_as_development_and_the_erasure_of_the_Pyg_mies_of_Cameroon (accessed 9 September 2013).

20 January 1994 to Lay down Forestry, Wildlife and Fisheries Regulations) provide for a mechanism of sharing the fruits of large scale forest exploitation between the state, decentralised local authorities and local communities.¹⁴⁰ It happens most often that most local communities scarcely have access to these benefits, and when they do, the forest people are systematically denied their share.¹⁴¹ They almost never participated in the committees in charge of managing these resources and scarcely receive any benefits. They equally have no say in development processes that will greatly affect them.¹⁴² They are most often informed of development activities that will happen on their land after the decision for executing such projects has been arrived at. At the social level they have lived in a permanent situation of insecurity under threats of expulsion.¹⁴³

Cameroon has not been blind to the plight of its indigenous peoples. Cameroon, as earlier demonstrated, has signed and ratified some international and regional human rights instruments which though not completely dedicated to indigenous peoples' rights, provide a legal framework relevant for these peoples in Cameroon. Besides this, the government of Cameroon has over the past two decades taken some measures which are of relevance to indigenous peoples' rights. These measures include the recognition of the existence of indigenous peoples, prohibition of discrimination and the inclusion of indigenous peoples in the management of public affairs of the country as well as in development programs and projects which affects them. The government has equally established a legal framework which serves as entry points for the respect of indigenous peoples' rights in Cameroon. Government's efforts to protect the rights of indigenous peoples will be presented in the subsequent paragraphs.

¹⁴⁰ See Section 67-68 of Law No.94/01 of 20 January 1994 to lay down Forestry, Wildlife and Fisheries Regulations.

¹⁴¹ See Pemunta NV 'The governance of nature as development and the erasure of the Pygmies of Cameroon' in Martisziw T & Grubescic T *Spatially Integrated Social Sciences and Humanities* (2013)78 *GeoJournal* 2 available at http://www.academia.edu/1146591/The_governance_of_nature_as_development_and_the_erasure_of_the_Pyg_mies_of_Cameroon (accessed 9 September 2013).

¹⁴² See also Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005).

¹⁴³ Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005)

3.3 Constitutional and legislative measures protecting the rights of indigenous peoples in Cameroon

The Constitution of Cameroon carries with it some of the basic international law principles relating to indigenous peoples rights and may serve as entry points for the protection of indigenous peoples' rights in Cameroon. Equally, the Cameroonian legislator has over the past two decades put in place laws some of which carries with them some of the basic international law principles on indigenous peoples' rights and may equally provide limited entry points for the protection of the rights of these peoples. It is thus imperative to delve into these constitutional and legislative measures.

3.3.1 The Constitution of the Republic of Cameroon: A historical background

Cameroon's Constitutional history has gone through three major phase of administration and at least through five profound and constitutional changes.¹⁴⁴ The first runs from the period of the protectorate from 1884 to 1914 when German troops in Cameroon were defeated during the First World War, the second phase lasted from 1914 to 1960 when Cameroon was under French and British rule until its independence in 1961.¹⁴⁵ The third phase covers the period from independence to present.

Under German rule, Cameroon was administered on the bases of a Reichstag law. This law empowered the Kaiser to legislate, by decree for a better administration of the protectorates.¹⁴⁶ Under the British and French, the indigenous populations were introduced (gradually) into their legal systems (French and British) and while the “British retained traditional institutions and laws which were not repugnant to natural justice, equity and good conscience or incompatible with any existing laws, the French implemented the principle of Assimilation”.¹⁴⁷ There was no economic, social or judicial independence and indigenous population were not given the power to decide in these matters.¹⁴⁸

¹⁴⁴ Fombad CM ‘The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?’ (1998) 42 *Journal of African Law* 2.

¹⁴⁵ Fombad CM ‘Cameroon: Constitutional law’ *International Encyclopaedia of Law* (2000)19.

¹⁴⁶ Fombad CM ‘Cameroon: Constitutional law’ *International Encyclopaedia of Laws* (2000)20.

¹⁴⁷ Fombad CM ‘Cameroon: Constitutional law’ *International Encyclopaedia of Laws* (2000) 20.

¹⁴⁸ Anna M *Constitutional Protection in Cameroon: A Critique of the Amendment Mechanism* (LL.M. Short Thesis, Central European University, Budapest 2009)9.

From 1914 to 1960, Cameroon was under French and British rule. The French territory was called East Cameroon and the British territory West Cameroon. East Cameroon had its independence and first constitution in 1960. In 1961, West Cameroon gained its independence from Nigeria where it was under the British rule. It decided during a plebiscite that same year to join East Cameroon to form the Federal Republic of Cameroon.¹⁴⁹ This brought the second constitution of Cameroon of 1 September 1961. In 1972, the two Cameroons (Southern and West) united on the 20th of May to form a United Republic of Cameroon and adopted the 20th May 1972 Constitution. This constitution was adopted on 2 June 1972 and has been amended several times. This forms the base of the current Constitution. In other words, what is currently the Constitution of Cameroon is only an amendment to the Constitution of 2 June 1972 and it is officially referred to as “Law no. 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972.”¹⁵⁰

3.3.1.1 Fundamental rights protection

Unlike the South African constitution which carries with it a Bill of Rights, listing and protecting a range of fundamental rights, the Cameroonian constitution of 1996 is, according to Prof. Fombad, at its weakest when it comes to rights protection. There is no Bill of Rights incorporated in the Cameroonian constitution. The approach to the issue of rights protection in Cameroon has changed with the different constitutions.¹⁵¹ The Federal Constitution of 1961 in its Article 1(2) stated that the:

‘Federal Republic of Cameroon... affirms its adherence to the fundamental freedoms set out in the Universal Declaration of Human Rights ...’

This had the effect of making the Universal Declaration an integral part of the Constitution. In the original 1972 Constitution on the other hand, the fundamental freedoms embodied in

¹⁴⁹ Wilson T *Constitutional Law and Political Systems* Y.N. (2006)72-74.

¹⁵⁰ Fombad CM ‘*The Republic of Cameroon*’ University of Pretoria (2011)7, available at <http://web.up.ac.za/sitefiles/file/47/15338/CAMEROON%20CONSTITUTION%20-%20FINAL.pdf> (accessed on 13 September 2013).

¹⁵¹ Fombad CM ‘The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?’ (1998) 42 *Journal of African Law* 2. See also Fombad CM ‘*The Republic of Cameroon*’ University of Pretoria (2011)9, available at <http://web.up.ac.za/sitefiles/file/47/15338/CAMEROON%20CONSTITUTION%20-%20FINAL.pdf> (accessed on 13 September 2013).

the Universal Declaration of Human Rights and the United Nations Charter and a number of fundamental rights were relegated to the preamble of this Constitution.¹⁵²

On the other hand, the Preamble of the amended Constitution states:

‘We the people of Cameroon.... affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples’ Rights, and all duly ratified international conventions relating thereto...’

Article 65 of the Constitution goes ahead and declares that ‘the preamble shall be part and parcel of this Constitution’. A strict interpretation of this article leads to the conclusion that the rights and obligation stipulated in the preamble of the constitution and the various international conventions incorporated in the Constitution are legally enforceable substantive rights and obligations. It will be of interest to note that in principle, the Cameroonian Constitution is enforceable because it is law. However, there are some specific provisions of the Constitution which needs legislations for further details on the ways to implement the provisions of the Constitution.

3.3.1.2 The Constitution and indigenous peoples

The Constitution of 18 January 1996 carries with it some of the basic international law principles relating to indigenous peoples’ rights as embedded in Convention no.169. In Africa there is very little formal constitutional or legislative recognition of indigenous peoples. In some cases, these groups are referred to by their ethonyms in many countries, and often there may be an implicit acceptance of indigenous communities in accordance with the international understanding of the term. The Constitution of Cameroon of 18 January 1996 is the only Constitution in Africa that specifically recognises the term “indigenous peoples”. Its preamble states:

‘We the people... affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples’ Rights, and all duly ratified international

¹⁵² Fombad CM ‘*The Republic of Cameroon*’ University of Pretoria (2011)7, available at <http://web.up.ac.za/sitefiles/file/47/15338/CAMEROON%20CONSTITUTION%20-%20FINAL.pdf> (accessed on 13 September 2013).

conventions relating thereto, in particular, to the following principles:...the State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law’.

Recognition of indigenous peoples by the Constitution of Cameroon provides a platform for these peoples to benefit from the protection of their rights.

The January 18, 1996 Constitution of Cameroon carries with it the principle of non-discrimination. The paragraph 3 of the preamble of the Constitution states: ‘We the people... Declare that every human being, without distinction of race, religion, belief, possesses inalienable and sacred rights.’ The preamble goes further to declare that ‘Everyone has a right to life, to physical and moral integrity and to human treatment in all circumstance. Under no circumstance shall any person be subjected to torture, to cruel, inhumane or degrading treatment.’ The same preamble consecrates the equality of all citizens in rights and duties. This equality is further ensured by Article 1 (2) of the Constitution which states:

‘The Republic of Cameroon shall be a decentralized unitary State.... It shall ensure the equality of all citizens before the law.’

The presence of the words “everyone”, “all citizens” and “every human being” in the Constitution clearly demonstrates the intention to eliminate discrimination and establish equality among Cameroonians, whether indigenous or not. In other words, these words are all-inclusive.

One can equally find the inter-related principles of consultation and participation in the Cameroonian Constitution. The Constitution, in its preamble provides that “everyone shall share in the burden of the public expenditure according to his financial resources.” Emancipation and political recognition, it should be said, are important to ensure that indigenous peoples participate in political life and are represented in all political processes. Article 1 and 57 recognises and transfers authorities to traditional authorities. Article 1(2) states:

‘The Republic of Cameroon shall be a decentralized state... . It shall recognise and protect traditional values that conform to democratic principles, human rights and the law.’

Decentralisation and recognition of traditional authorities reinforces the rights of local communities, who for the most part continue to cling to their traditional institutions, to be consulted and to participate in the management of public affairs. To facilitate participation in the conduct of public affairs, the Constitution in Article 55 through 57 provides for the transfer of authority to regional and local authorities. What is worthy of note is Article 57 (2). It states:

‘Regional councils shall be the deliberative organs of the regions. Regional Councillors whose terms of office shall be five years shall comprise:

- divisional delegates elected by indirect universal suffrage;
- representatives of traditional rulers elected by their peers [....]’

The Regional Council shall reflect the sociological component of the Region....’

The inclusion of representatives of traditional rulers as Regional Councillors and the fact that regional council must reflect the sociological component of the Region provides a platform for indigenous people to be consulted and to participate in the conduct of public affairs.

As mentioned earlier, the Constitution is by principle enforceable because it is a law. According to Prof. Fombad, a Constitution is only as good as the mechanism provided for ensuring that it is properly implemented and its violations are promptly sanctioned.¹⁵³ Unlike in South Africa where there is a Constitutional Court which can be seized by individuals with cases concerning violations of their rights consecrated by the Bill of Rights, there is no such court in Cameroon. The Constitution in its Article 46 provides for a Constitutional Council. Article 46 reads:

‘The Constitutional Council shall have jurisdiction in matters pertaining to the Constitution. It shall rule on the constitutionality of laws. It shall be the organ regulating the functioning of institutions.’

Access to the Constitutional Council is however reserved for the President of the Republic, the President of the National Assembly, the President of the Senate, one-third of the members

¹⁵³ Fombad CM ‘The New Cameroonian Constitutional Council in Comparative Perspective: Progress or Retrogression?’ (1998)42 *Journal of African Law* 2.

of the National Assembly or one-third of the senators.¹⁵⁴ Individuals therefore cannot seize the Constitutional Court in case of violations of rights listed in the Preamble which has been affirmed by Article 65 as part of the Constitution. Prof. Fombad holds that “the Constitutional Council model of control of constitutionality of laws effectively deprives ordinary citizens, who are usually the main victims as well as primary beneficiaries of human rights provisions, of any right to challenge a law that violates their rights.”¹⁵⁵

There is some legislation to supplement and give effect to some constitutional provisions. These legislations though not completely dedicated to indigenous peoples, are of relevance to them and can be used as a platform for the protection of their rights.

3.3.2 Legislative measures of relevance to indigenous peoples

There is no specific legislation in Cameroon completely dedicated to indigenous peoples’ rights. As mentioned earlier, the Government of Cameroon has passed some legislation in a variety of areas of importance to indigenous peoples’ rights. However for the purpose of this study, we shall limit ourselves to three issues: education, governance (politics) and development issues.

3.3.2.1 Non-discrimination in the domain of education

As far as the principle of non-discrimination is concern, there exists no specific legislation in Cameroon completely dedicated to prohibiting discrimination. The principle of non-discrimination can therefore be found in diverse legislations regulating diverse domains of interest to the government. In the domain of education, worth evoking is Law No. 98 of 14 April 1998 on Education Guidelines in Cameroon. This law guarantees to every person equality of opportunity in regard to access to education, without distinction of any kind. Article 7 of the law states:

¹⁵⁴ See Article 47(2) of the Constitution.

¹⁵⁵ Fombad CM ‘The New Cameroonian Constitutional Council in Comparative Perspective: Progress or Regression?’(1998)42 *Journal of African Law* 2.

‘The state shall guarantee to every person equality of opportunity in regard to access to education, without distinction as to gender, political, philosophical and religious opinion, social, cultural, linguistic or geographical origin.’¹⁵⁶

No mention of indigenous peoples is made in this article, but we can however say the use of the words “*every person*” and “*without distinction*” gives us the ground to extend equality of access to education to indigenous peoples wherever they are found within the national territory. Higher education has been recognised as a means of fostering a culture of respect for justice, human rights and freedoms and contributing to the eradication of all forms of discrimination and encourages the promotion of dialogue and peace.¹⁵⁷

3.3.2.2 Non-discrimination in politics (Government)

Prohibition of discrimination is not only found in legislation dealing with educational issues. The Cameroonian legislator has equally tried to prohibit discrimination in the domain of politics. A good starting point is the Law No.91/020 of 16 December 1991 laying down the conditions for the election of members of parliament. Article 11 of this legislation entitles ‘every person of Cameroonian nationality or any naturalized Cameroonian, of either sex, who has reached the age of 20 and is not under any disqualifications laid down by law, to be an elector.’ The legislation goes further in its Article 12(1) to entitle ‘every Cameroonian citizen enjoying the right to vote... who has a place of abode either in an administrative unit or has actually been resident therein for at least six months, to have his/her name entered on the register of electors in each administrative unit.’ As earlier mentioned, the use of the words “*every person*” and “*every Cameroonian*” can be stretched to cover indigenous peoples. The use of these words indicates the intention of the Cameroonian legislature to eliminate discrimination in politics against any Cameroonian, indigenous or not. Indigenous peoples therefore hold the right subject to any disqualification laid down by law, to choose their parliamentary representative through an electoral process.

Another interesting legislation on political participation is Law No.92/002 of 24 August 1992 on the Election of Municipal Councillors. Article 6 of this piece of legislation entitles ‘every

¹⁵⁶ UN Committee on the Elimination of Racial Discrimination (CERD) *Reports submitted by State parties under article 9 of the Convention: International Convention on the Elimination of All Forms of Racial Discrimination: 18th periodic reports of State parties due in 2006: Cameroon*, 11 March 2009, CERD/C/CMR/15-18, available at: <http://www.refworld.org/docid/4a80bc0d8.html> (accessed 22 May 2013).

¹⁵⁷ Law No.2001/005 of 16 April 2001 on Guidelines in Higher Education.

Cameroonian citizen enjoying the right to vote, and who has a place of abode within a council or has been resident therein for at least six months, to have his name entered on the register of electors for such council.’¹⁵⁸ The use of the words “*every Cameroonian citizen*” in the above legislations clearly reveals the legislator’s intentions- prohibition of discrimination in the domain of politics and encouraging the involvement of all Cameroonians without distinction of any kind, in the management of the public affairs of the state.

3.3.2.3 Consultation and participation in resource management (development issues)

Some legislation provide for consultation and participation. This is particularly true of Law No. 94/01 of 20 January 1994 establishing the Forestry; Wildlife and Fisheries regime. This law was promulgated in order to involve local communities in forest resources management and conservation. According to this law that laid down forests, fauna and fishing regulation, the forest area is made up of permanent and non-permanent forests.¹⁵⁹ The 1994 law requires in its Chapter III, an inventory and planning for the exploitation of forests in Cameroon’s territory. This law provides entry points for the participation of indigenous peoples in the management of the forest and its resources. According to Article 8 (2) of this law, “the Minister of Forest, Wild Life and Fisheries may, in the public interest and in consultation with the affected populations, suspend the exercise of rights of usage for a limited or fixed period, when necessity requires.” The law is silent as to who the affected populations are. Given the fact that the forest people constitutes an indigenous group in Cameroon and lives in the forest, it is but logical to conclude that they are the affected populations referred to in this Article.

Still within the domain of the management of the environment and natural resources, there are some legislative provisions that could provide indigenous peoples of Cameroon, especially the forest people with limited entry points for their self-management, as well as their consultation in decision-making concerning their lands and resources. In 1996, the National Assembly promulgated Law No.96/12 of 5 August 1996 laying down the framework on the management of the environment. This law emphasises on the sustainable management of forests for economic growth and for poverty alleviation. The law also calls for

¹⁵⁸ Article 6 of Law No.92/002, 14 August 1992.

¹⁵⁹ The permanent forest domain is made up of areas that are under total protection such as national parks. The non-permanent forest domain is made up of State forests such as reserves and sanctuaries and communal forests.

participative management and conservation of biodiversity through a national network of protected areas. Article 74 states:

‘The participation of the population in the management of the forest must be encouraged notably through: consultation mechanisms... representation of the people within consultative organ in matters concerning the environment, the production of environmental information, sensitization, training and environmental research.’

Established within this framework law, participation requires that citizens be informed in advance about the implications that all activities have on the environment, including those related to hazardous materials and activities. This principle also implies that the right of every citizen is safeguarded and decisions regarding the environment are taken after consultation with the groups concerned. Since the “forest people” live in the forest, this provision provides an important entry point for them to participate in any process relating to the management of their environment (the forest). As mentioned earlier, participation implies that the people concerned are first of all informed of the impact of the activities likely to be carried out on their environment and they must take part at every stage of the process. Information must be done in a manner which is compatible with their culture.

3.3.2.4 Consultation and participation in local government (Politics)

It will be of interest to reiterate that an important channel for indigenous peoples to take part in the management of the public affairs of the country is through local administration. The law governing the election of regional councillors as earlier mentioned provides that regional councillors shall be representatives of traditional rulers elected by their peers.¹⁶⁰ Recognition of traditional chiefdoms by the state offers a platform for consultation, participation and self-management. The government of Cameroon recognises traditional chiefdoms when it passed Decree No. 77/245 of 15 July 1977.¹⁶¹ The modalities for the organisation and management of these chiefdoms are regulated by the customary law of the concerned communities and local authorities have demonstrated a favourable attitude towards their creation.¹⁶² Traditional chiefdoms are understood to be administrative entities without legal personality, placed under

¹⁶⁰ See Article 3(1) of Law No.2006/004 of 14 July 2006.

¹⁶¹ Amended and completed by Decree No. 82/241 of 24 June 1982. Reference is made to this piece of legislation because it has not been replaced by a new legislation.

¹⁶² See ILO/ACHPR *Overview Report* (2009)48.

the authority of traditional chiefs whose mission consists in playing the role of a channel for communication and dialogue between the central power and the local communities.¹⁶³

In 2008, the government of Cameroon drafted a “Bill on Marginalised Populations”. This demonstrates the commitment of the state to promote and protect the rights of the “marginalised populations”. The following are classified by the state as marginalised populations for these purposes: The “forest peoples”; the Mbororo; highland peoples such as the Mafa, Mada, Mandara, Zouglou, Ouldeme, Molko, Mbodko, Dalla and Guemdjek; and island and creek populations as well as cross-border populations.¹⁶⁴ Work for the drafting of the Bill was commissioned by the Minister of Social Affairs.¹⁶⁵ Ever since the Bill was drafted and tabled to the National Assembly, nothing has been done to transform it into a piece of legislation.

The absence of a legislation specifically designed for indigenous peoples in Cameroon does not mean they are left without any means of legislative protection. From the preceding paragraphs, it is evident that some legislation provides limited entry points for protection of indigenous peoples’ rights in Cameroon. Indigenous peoples can therefore seize the courts for a violation of any of the legislative provisions of relevance to them. Unfortunately, they have not been able to do so, partly because of ignorance and/or the long distances of the courts from their communities, given that they (indigenous peoples) often live in inaccessible areas. This accounts for the reason why case law on indigenous peoples in Cameroon is absent.

3.4 Policies, programs, projects and indigenous peoples’ rights in Cameroon

The government of Cameroon has equally taken some actions to promote and protect the rights of the indigenous peoples found in its territory. The starting point of this lies in the recognition and identification of indigenous peoples in Cameroon. The concept of indigenous peoples has, for several years, been at the centre of a debate and controversy between the

¹⁶³ See Cheka C ‘Traditional Authority at the Cross Road of Governance in Republican Cameroon’ in *Africa Development* Vol.XXXIII (No.2) Council for the Development of Social Research in Africa (2008)67-89. See also Chap. III, Article 9 of Decree No. 77/245 of 15 July 1977 and Law No.2004/17 of 22 July 2004 on the Orientation of Decentralisation.

¹⁶⁴ Speech by Mrs. Catherine Bakang Mbock, Minister of Social Affairs, at the opening of the regional workshop on the rights of indigenous peoples in Central Africa, 15 April 2009, in Hotel Mont Febe, Yaoundé.

¹⁶⁵ Ministry of Social Affairs *Etude en vue de l’Elaboration d’un Projet de Loi sur la Promotion des Droits des Populations Marginales* Cabinet d’Experts Multidisciplinaires Associes- SARL (CEMA-SARL) Yaoundé, (November 2008).

government of Cameroon, UN agencies, indigenous organisations and civil society. In 2009, this controversy prompted the Ministry of External Relations to initiate a study on the question in order to identify and characterise indigenous peoples and their problems in a Cameroonian context and to arrive at an acceptable appellation and definition. The study was completed in 2011 and validated in the coastal town of Kribi in the southern region of Cameroon at a workshop in which indigenous peoples' representative also participated. The study proposed that the groups to be considered as indigenous should include groups such as the Mbororo pastoralists and the hunter/gatherers ("forest people"); however, it was also suggested that the study should be expanded to allow for consultations with the groups recognised as indigenous and with public administrations, the international community and civil society.¹⁶⁶ It should be reiterated that recognition and identification of indigenous peoples is a fundamental international law principle relating to indigenous people's rights and a starting point for them to enjoy the protection offered to them by international human rights law.

In addition to this, the government of Cameroon has for the past five years, celebrated the International Day of the World's Indigenous Peoples every August 9. Cameroon celebrated the first edition of the International Day of the World's Indigenous Peoples on August 8, 2008 under the theme "Information et Formation" (Information and Training). These celebrations were sponsored by the Ministry of Social Affairs (MINAS) in collaboration with other key development actors such as the World Bank and some UN agencies, notably the UN Sub-regional Centre for Human Rights and Democracy in Central Africa.

Besides the recognition and identification indigenous peoples in Cameroon, the Cameroonian government has equally taken some practical steps aimed at eliminating discrimination. In order to eliminate discrimination against historically marginalised groups, including indigenous peoples, the government of Cameroon created and assigned to the Ministry of Social Affairs the prime responsibility of combating exclusion and, more particularly, implementing, monitoring and evaluating programmes and policies pertaining to the social rights and socio-economic integration of marginal population and indigenous populations.¹⁶⁷ Various national solidarity measures have been put into effect for the benefit of indigenous

¹⁶⁶ International Working Group on Indigenous Affairs *The Indigenous World* IWGIA Copenhagen (2011).

¹⁶⁷ See Decree No.2004/320 of 8 December 2004, to reorganize the government and Decree No.2005/160 of 25 May 2005 to reorganize the Ministry of Social Affairs.

populations, in collaboration with civil society and international partners, with the aim of eliminating all forms of discrimination. In the context of bilateral and multilateral cooperation, it should be stated that the government has supported some programmes incorporating the needs and aspirations of the indigenous people. A good example is the project supporting the socio-economic development of the Baka in the Djoum, Oveng and Mintom district.¹⁶⁸ This project, financed by the “Cooperation Technique Belge” (Belgian Technical Cooperation), aimed at identifying, securing and guaranteeing that the rights of the Baka are not violated in any way, and helping these citizens to become aware of their responsibilities as citizens of Cameroon. Thanks to this project, the rights and responsibilities of the Baka in Djoum Oveng and Mintom has been consolidated, recognised and guaranteed; access by the Baka and Bantu to different basic social services has been ameliorated and the participation of the population in the management of forest resources has equally been ameliorated.¹⁶⁹

In addition, the government of Cameroon has in partnership with the World Bank, carried out a project to enhance the environmental and social capabilities in regard to major energy sector that impacts on indigenous populations and has equally established a development plan for the “forest peoples” under the 2003 Forest and Environment Sector Program (FESP).¹⁷⁰ This is the Indigenous peoples Development Plan (IPDP). The main objective of this development plan is to assure that the FESP respects the dignity, rights and culture of the “forest people” and assures that they receive equal or higher benefits from the FESP.

¹⁶⁸ This project, known by its French acronym PADES-BAKA was launched in May 2005 by the Government of Cameroon and the Kingdom of Belgium within the framework of direct bilateral cooperation. See Belgian Technical Cooperation Activities by Country: Cameroon (2010)70, available online at <http://www.btctb.org/files/web/publication/BTC%20Annual%20Report%202005%20Part%202.pdf> (accessed on 30 August 2012).

¹⁶⁹ See UN Committee on the Elimination of Racial Discrimination (CERD) *Report submitted by States parties under Article 9 of the Convention: International Convention on the Elimination of All Forms of Racial Discrimination: 18th Periodic reports of States parties due in 2006, Cameroon*, 11 March 2009(CERD/C/CMR/15-18), available at: <http://www.refworld.org/docid/4a8bc80.html> (accessed 24 May 2013).

¹⁷⁰ The FESP seeks to address issues related to environmental protection, sustainable forest management, participatory forest management, biodiversity conservation and the organizational strengthening of the various services and stakeholders involved in the sector. The program also supports capacity-building and strengthen forest and environment institutions, by expanding their work programs in the fields of environmental monitoring, policy oversight, law enforcement, forest management, biodiversity conservation and community based forest activities.

Programs with the aim of securing the socio-economic integration of indigenous peoples have, for the past decade, been introduced. An example of these programs is the 2003 National Program for Participatory Development (NPPD). The NPPD is an important component of the poverty reduction strategy of the Government of Cameroon which aims at reducing poverty substantially by the year 2015 by ensuring that the development of the milieu is handled by local communities or actors; facilitating access to basic social services, guaranteeing food security and income of the population; and improving local governance.¹⁷¹ The aim of this program is to provide basic welfare services to the target social groups, in an effort to eliminate all forms of discrimination against them.¹⁷²

3.4.1 The domain of education

In the domain of education, the government of Cameroon has since 1998 made primary education free of charge and compulsory. This is in line with its international law obligation under Article 13(2) of the ICESCR and pursuant to the Constitution¹⁷³ and Law No.98/004 of 4 April 1998.¹⁷⁴ This action, with the support of some international NGOs like Plan International, has led to an increased number of enrolments of Baka children at school.¹⁷⁵ Similarly, Baka children in the East region have been admitted into grammar and secondary schools without competition.¹⁷⁶ This action aims at putting indigenous children on an equal

¹⁷¹ See Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategy in Cameroon*, International Labour Organisation Geneva (2005)24. See also Ministry of Economy, Planning and Regional Development *Indigenous People ("pygmy") Development Plan for the Participatory Community Development Programme*, (Final Report prepared by Schmidt-Soltau Kai) Yaoundé (June 2003)7.

¹⁷² CERD/C/CMR/15-18 (March 2009)20.

¹⁷³ The Preamble of the Constitution "...The state shall guarantee the child's right to education. Primary education shall be compulsory. The organization and supervision of education at all levels shall be the duty of the State..."

¹⁷⁴ Law on Education Guidelines and Orientation in Cameroon.

¹⁷⁵ Plan International-Cameroon, initiated in 2003 its "Baka Rights and Dignity Project". This projects aims at protecting the rights and dignity of the Mbororos and the forest peoples. Central to the project is the "Universal Birth Registration Campaign" that seeks to establish birth certificates for all Cameroonian children. Working together with the Ministry of Social Affairs, heads of civil status centers, mayors and other non-governmental organizations, Plan International helped 12000 Cameroonian children receive their birth certificates in 2010 and 2011. By 21 May 2010, Plan Cameroon has helped almost 300 Baka children received birth certificates and got them enrolled in primary schools. More information can be found at the website of plan international at www.plan-international.org. See also Chintom NK 'Cameroon's Baka pygmies seek an identity and education' available at <http://www.ipsnews.net/2012/03/cameroonrsquos-baka-pygmies-see-an-identity-and-education> (accessed on 13 August 2012).

¹⁷⁶ CERD/C/CMR/15-18 (March 2009).

scale with Bantu children as far as education is concerned; hence eliminate discrimination in the domain of education. The government of Cameroon, with support from development partners like Japan and China have build schools in areas inhabited by indigenous peoples (forest peoples and the Mbororo), all with the aim of bringing formal education closer to these peoples.

3.4.2 Local government

The government of Cameroon has over the last decade made some efforts to ensure that indigenous peoples participate in the management of public affairs of the country. A starting point is the distribution of birth certificates and national identity cards to indigenous peoples, notably the “forest people”. For indigenous peoples to participate in the management of the public affairs of the country, they have to have the necessary identification documents- birth certificates and national identity cards. Having taken note of the fact that the lack of these documents by the indigenous peoples is an impediment to the enjoyment of their right to participate in public affairs, the government of Cameroon has, through the decentralised services of MINAS, MINATD and with the support of development partners like the World Bank, Plan International and UNESCO, over the past years carried out campaigns on civic education and education on citizenship with the purpose of encouraging indigenous peoples to develop a sense of belonging.¹⁷⁷ This led to the distribution of birth certificates and national identity cards to the “forest peoples”.¹⁷⁸ For example, during the October 11, 2003 presidential election campaign, the Government subsidised an operation to issue national identity cards and birth certificates, especially to the indigenous peoples. This move saw the election of a Mbororo mayor to head the Ngaoui council in Mbere Department in Adamawa Region, and the election of a Baka as municipal councillor in Yokadouma in the East region

¹⁷⁷ During the celebration of the 2011 International Day of the World’s Indigenous Peoples in Cameroon, the Minister of Social Affairs, Catherine Bakang Mbock, presiding over the ceremony that was organized at the seaside town of Kribi in the South Region, called on the indigenous peoples (mbororo and “forest people”) to have their say in the nations’ life by registering to vote in the 2011 presidential elections. This instilled in them a sense of belonging. See Atam CC ‘Cameroon Commemorates International Day for Indigenous Populations’ (2011), available at http://www.crtv.cm/cont/nouvelles/nouvelles_sola_fr.php?idField=9857&table=nouvelles&sub=societe (accessed on 31 August 2012).

¹⁷⁸ See United States Department of State 2011 Country Reports on Human Rights Practices- Cameroon (24 May 2012) available at: <http://www.unhcr.org/refworld/docid/4fc75ab1c.html> (accessed 30 August 2012).

in 2005.¹⁷⁹ Equally, for purposes of the October 9, 2011 presidential election, the government ordered that national identity cards be obtained by all Cameroonians at zero cost, with particular attention being given to the indigenous peoples.¹⁸⁰ This led large number of “forest peoples” to obtain national identity cards and thus participated in the 2011 presidential election. Birth certificates were equally distributed to the Bakas of Bifot village, in Oveng district, although the birth certificates do not reflect the exact ages of their holders.

The government has equally legally recognised some forest communities.¹⁸¹ It should be emphasised that according to the government, one need to have a legally recognised village chief in order to have any political power or representation. Recently the government has granted legal status to some Baka communities, like Nomedjoh and Le Bosquet and have equally appointed legally recognised chefferies (chiefdoms). This legal recognition and the granting of the legal status of *chefferies* to these indigenous communities provide a platform for these peoples to participate in public affairs. The fact that some “forest” communities have already received legal recognition is a very promising sign, for it goes to show that it is possible and many more can follow.

3.4.3 Development issues

With regards to development issues, the government of Cameroon has over the years, made efforts to consult with indigenous peoples, and get them participate in development programmes and projects which will affect them. This is notably true within the framework of the government’s poverty reduction strategy. Cameroon, along with the wider international community, has placed poverty reduction at the centre of its concerns. In this respect, it has, along with 190 other countries, subscribed to the Millennium Development Goals (MDGs), the first of which aims to eradicate extreme poverty and hunger by 2015. In the context of the achievement of the MDGs, and within the framework of the reinforced initiative for debt relief of Heavily Indebted Poor Countries (HIPC Initiative), the Cameroonian government developed a Poverty Reduction Strategy Paper (PRSP) that was approved by the Board of

¹⁷⁹ Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategy in Cameroon*, International Labour Organisation Geneva (2005)18.

¹⁸⁰ See Ekpeni A.O.H ‘Charging Fees for Civil Registration: Example’, available at <http://aceproject.org/electoral-advice/archive/questions/replies/149764666> (accessed on 30 August 2012).

¹⁸¹ Pyhala A *What future for the Baka? Indigenous peoples’ rights and livelihood opportunities in South-East Cameroon* IWGIA/PLAN, Eks-Skolens Trykkeri, Copenhagen (2012)17.

Directors of the World Bank and International Monetary Fund (IMF) in August 2003. During the elaboration of the PRSP, the government of Cameroon consulted and had indigenous peoples participate in the process. Consultation meetings were held with associations bringing together youths, women, street children and handicapped persons, and “specific groups” including the Mbororo, forest and fishing communities. These participatory consultations helped in making an inventory of the poverty alleviation strategies drawn up.¹⁸²

One important element for the government of Cameroon’s strategy for poverty reduction, as outlined in the PRSP is the National Program on Participatory Development (NPPD). This program aims to support community driven development by allowing communities and their local government to implement priority action plans through the strengthening of the fiscal, institutional, and administrative environment for adequate budget allocation, effective service delivery and transparent management of financial services. The NPPD is part of the local development component of the PRSP rural development strategy, with beneficiaries being rural communities dispersed in all ten regions of the country, as well as other organisations including local (councils, villages) and NGOs and associations and the period for implementation of the program is 8 years.¹⁸³ As earlier mentioned, within the NPPD, the government included an Indigenous Peoples Development Plan (IPDP).¹⁸⁴ The drafting of the NPPD was done in a participatory manner and in close collaboration with governmental agencies, donor organisation, NGOs and indigenous populations. To be specific, the Baka settlements of Moangue le Bosquet and Abakoum (in the East Region) were consulted and

¹⁸² See Ministry of Economy, Planning and Regional Development *Document de Stratégie de Réduction de la Pauvreté* Yaoundé (2003). It would be interesting to state that the Poverty Reduction Strategy Papers (PRSP) are prepared by countries and updated every three years with annual progress reports. PRSPs describe the country’s macroeconomic, structural and social policies and programs over a three year or longer horizon to promote broad-based growth and reduce poverty, as well as associated external financing needs and major sources of financing.

¹⁸³ For more information on the NPPD, visit the website www.pndp.org .

¹⁸⁴ The development of the IPDP was in line with the World Bank’s Operational Directive 4.10 given the fact that the World Bank played a determined role in the process of formulating these documents and contributed substantially to the funding of their implementation. Operational Directive 4.10 states: “Specific action is required, where Bank Investment affects indigenous peoples, tribes, ethnic minorities, or other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources.”

the possible impacts and mitigation measures were discussed with the entire population and in separate meetings with the youth, old, men and women.¹⁸⁵

Equally within the framework of the government's poverty reduction strategy, Cameroon developed a Forest and Environment Sector Program (FESP). This program focuses on forests and other areas, which have not been transformed by human habitations.¹⁸⁶ The global objective of this program is "to guarantee sustainable exploitation, management and preservation of the forestry and wildlife resources that meet local, national, regional and global needs of the present and succeeding generations."¹⁸⁷ The FESP is part of the PRSP component on natural resource management of the Rural Development Integrated Strategy.¹⁸⁸ This program equally included an IPDP whose main objective is to assure that the FESP respects the dignity, rights and culture of the "forest population" and assures that they receive equal or higher benefits from the FESP. During the drafting of the FESP, the government is said to have consulted the indigenous peoples to be affected by the programme. This is specifically the Baka in the settlements of Abinga, Meban 1, Akonetye,¹⁸⁹ Zuebefam, Zoulameyong¹⁹⁰ and Abong-Mbang¹⁹¹ where the possible impacts and mitigation measures were discussed with the entire population in separate meetings with different focus groups (forest management committees, traditional rulers and members of Indigenous peoples associations and the different strata of the indigenous society (old, young, men and

¹⁸⁵ Ministry of Economy, Planning and Regional Development *Indigenous People ("pygmy") Development Plan for the Participatory Community Development Programme (final report prepared by Schmidt-Soltau Kai) Yaoundé* (2003). For more details, see the final document of the NPPD on the website www.pndp.org.

¹⁸⁶ See World Bank *Cameroon-Forest and Environment Development Program Project* World Bank Washington D.C (2012), available at <http://documents.worldbank.org/curated/en/2012/01/16388332/cameroon-forest-environment-development-program-project-cameroon-forest-environment-development-program-project> (accessed 31 August 2012).

¹⁸⁷ See World Bank *Cameroon-Forest and Environment Sector Program Project (FESP)* World Bank Washington D.C (2004), available at <http://documents.worldbank.org/curated/en/2004/09/5153567/cameroon-forest-environment-sector-program-project> (accessed 31 August 2012). See also Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategy in Cameroon*, International Labour Organisation Geneva (2005)25.

¹⁸⁸ See World Bank *Cameroon-Forest and Environment Sector Program Project (FESP)* World Bank, Washington D.C (2003). See also International Monetary Fund 'Cameroon: Poverty Reduction Strategy Paper' IMF Country Report No.10/257. (August 2010).

¹⁸⁹ All in the Djoum Subdivision; South Region.

¹⁹⁰ In Mintom 2 Subdivision, South Region.

¹⁹¹ In Haut-Nyong (Upper Nyong) Division, East Region.

women).¹⁹²It would be interesting to state that the IPDP within the framework of both NPPD and FESP, besides the fact that it was drawn up in a participatory manner, also called for the respect of the culture of the indigenous peoples.

3.5 Conclusion

Indigenous peoples in Cameroon have over the past decades been victims of human rights. The Government of Cameroon has been conscious of these violations. Over the last two decades the government has taken measures, both legal and practical efforts to respect, promote and protect the rights of indigenous peoples living within its territory. A study of the Constitution and legislation reveal that the Cameroonian legislator has provided entry points for the protection of indigenous peoples' rights in Cameroon. The government has also adopted some policies, put in place programs and executed projects all with the aim to protect the rights of these peoples. This range from an implicit recognition and identification of the indigenous peoples in the country, participation in the celebration of the International Day of World's Indigenous peoples, distribution of identification documents to indigenous peoples in order to enable participation in the management of the public affairs of the country, and establishment of free education and the involvement of indigenous peoples in development programs. In conclusion: the government of Cameroon, though not a party to the ILO Convention 169, has made efforts to implement the basic international law principles relating to indigenous peoples rights. However, as is explored in the next chapter, some of the efforts have had a limited effect on the lives of indigenous peoples.

¹⁹² Ministry of Economy, Planning and Regional Development *Indigenous People ("pygmy") Development Plan for the Participatory Community Development Program*, (Final Report prepared by Schmidt-Soltau Kai) Yaoundé (June 2003)13.

CHAPTER FOUR

ANALYSIS AND EVALUATION OF CAMEROON'S EFFORTS TO PROTECT THE RIGHTS OF ITS INDIGENOUS PEOPLES

4.1 Introduction

As seen in the previous chapter, over the past two decades, the government of Cameroon has taken measures which are of relevance to the rights of the indigenous peoples found in its national territory. These measures range from constitutional recognition of the existence of indigenous peoples in the country to legislation which though not specifically dedicated to indigenous peoples, serves as entry points for the implementation of the basic international law principles relating to indigenous peoples' rights. The government has equally taken some practical steps targeting the indigenous population in Cameroon in a bid to eliminate discrimination, get them involved in the management of the public affairs of the country as well as within the framework of national development issues which impacts them, and steps to better up the socio-economic situation of these peoples.

The efforts made by the government to protect the rights of indigenous peoples have not always been successful. While the previous chapter was dedicated to the positive developments in the protection of indigenous peoples, as was pointed out in the introduction, the position is more nuanced and ambivalent than might appear on face value. This chapter must unfortunately focus on the negative side. In spite of growing legislative efforts to address the position of indigenous peoples, the reality remains often unaffected. The impact of these laws has been unequal and the failure to change the way the indigenous peoples are treated by society raises important questions about the limit of the law as a transformative agent.

The picture that appears from a closer study of the law in action reveals a mixture of poor and selective implementation of legislation, on the one hand, and societal prejudice and embedded cultural behaviour patterns that persist in spite of the legislative reforms highlighted above, on the other. The persistence of rights violations suggest that the issue should be given greater prominence and wider societal attention. It is no longer, if it were, sufficient to address the issue through generic legislative and constitutional provisions. One way of raising consciousness about the plight of indigenous peoples would be to ratify Convention 169 as is recommended in chapter 5.

4.2 An analysis/evaluation of the government's efforts to eliminate discrimination

It should be recalled that the government of Cameroon has passed some legislation with provisions prohibiting discrimination. Despite the prohibition of discrimination in the Constitution and some legislative texts, the government has failed to completely protect indigenous peoples from discrimination both at the vertical and horizontal level. Vertical discrimination is discrimination by the state against individuals and takes the form of discriminatory laws, policies or programs and practices. Horizontal discrimination occurs between non-State actors and takes the form of discriminatory attitudes, perceptions or behaviour against an individual or groups by other individuals or groups.¹⁹³

4.2.1 Failure to eliminate vertical discrimination

Vertical discrimination against indigenous peoples is evident in the Order No.74/01 of 6 July 1974 laying down the land tenure system.¹⁹⁴ Pursuant to Articles 15 and 17 of this legislation, the land law invites customary communities that were occupying or using land at the time of the legislation to obtain property titles in accordance with the law in order to carry on occupying or using them.¹⁹⁵ This law, together with related legislation, discriminates against indigenous peoples because of the conditions that they are obliged to meet in order to have their customary rights recognised. The law, in line with the requirement for land to be developed, requires it to have been “exploited” and/or “occupied” and makes requests for the

¹⁹³ ILO/ACHPR *Overview Report* (2009)30.

¹⁹⁴ It should be pointed out that since 1974; registration is the only means of gaining recognition of land ownership in Cameroon. Though this piece of legislation was passed at a time which is outside the framework of this study, reference is however made to it because since 1974, this law has not been amended or a new law passed regarding land tenure system in Cameroon.

¹⁹⁵ Article 15 of Order No.74/01 of 6 July 1974 states that: “Appurtenances of the national domain are classified in two categories: 1) Housing land, farmland, planting land, pasture and grazing land on which occupation is shown by man’s clear control of the land and evident development.

2) Land that is free from any effective occupation (unofficial translation).

Article 17 states that: “Appurtenances of the national domain shall be allocated by means of concession, lease or allocation under the terms determined by decree. However, customary communities, their members and any other person of Cameroonian nationality who, at the date this order enters into force, occupies or exploits appurtenances listed in the first category laid down in article 15, shall continue to occupy or exploit them. They may, at their request, obtain property titles for them in accordance with the provisions of the decree envisaged in article 7. With regard to the regulation currently in force, their right to hunt and gather appurtenances listed in the second category laid down in article 15 is also recognized as long as the State has not allocated those lands for a specific purpose.

registration of land that is free from any form of occupation or exploitation inadmissible.¹⁹⁶ Development is achieved by means of either occupation or exploitation. Buildings, dwellings and outbuildings, sheds and other structures meet the requirement of occupation, while plantations and farming or grazing areas meet the requirement of exploitation. But the requirement concerning “man’s clear control of the land and evident development”¹⁹⁷ is incompatible with the way of life of indigenous peoples whose dwellings are temporary and who live from activities which by contrast with permanent agriculture leave no marks on the land, such as hunting, collecting and gathering. It is therefore, impossible for the indigenous peoples to register their property by meeting the requirements laid down in the law with regard to land tenure.¹⁹⁸

Another piece of Cameroonian legislation affecting indigenous peoples rights and which can be said to be discriminatory is the legislation on access to forest resources. This is specifically the 1994 law to lay down forestry, wildlife and fisheries regulations¹⁹⁹ and the related 1995 regulations.²⁰⁰ The 1994 law recognises certain logging rights in some areas of the forest for communities who have customary land rights but limits the exercise of such logging rights by restricting them to personal use.²⁰¹ In addition, the 1995 related regulations limit the use of forest products such as bamboo, raffia, palms, rattan and food stuffs as well as restricting firewood to personal use and forbidding its sales.²⁰² This is a serious problem for indigenous peoples whose way of life relies predominantly on forest products and whose survival depends on the sale or exchange of those products: - the “forest people”. Since it is illegal for forest products to be sold, the “forest people” have no choice but to risk selling them illegally

¹⁹⁶ See Article 11, paragraph 3, of Decree No.2005/481 of December 2005 amending and supplementing certain provisions of Decree No.76/165 of 27 April 1976 laying down the conditions for obtaining property titles.

¹⁹⁷ Order No.74/01 of 6 July 1974.

¹⁹⁸ See Centre for Environment and Development, Réseau Recherche d’Actions Concertées Pygmées & Forest Peoples Programme *The situation of Indigenous Peoples in Cameroon: A supplementary report submitted in connection with Cameroon’s 15th-19th periodic reports* (CERD/C/CMR/19), Forest Peoples Programme, Moreton-in-Marsh (2010) available at <http://www.forestpeoples.org/sites/fpp/files/publication/2010/02/cerdcameroonsubmissionjan10eng.pdf> (accessed 9 August 2012).

¹⁹⁹ Law No.94/01 of 20 January 1994 to lay down forestry, wildlife and fisheries regulation. This law is also known as the Forest Code.

²⁰⁰ Decree No.95/531/PM of 23 August 1995 laying down regulations for implementing the forest system.

²⁰¹ See articles 8 and 154 of the Forest Code.

²⁰² Article 26 of the 1995 Decree laying down regulations for implementing the forest system.

or remain in poverty. The limited access that “forest peoples” have to vital natural resources found on their ancestral lands is particularly discriminatory and takes no account of the specific needs of the groups in question.

Besides the land legislation and the forest code which are discriminatory as presented in the above paragraphs, one can add the legislations on community forests and community hunting grounds. A community forest is a stretch of state forest that is free from logging rights and which covers a maximum area of 5000 hectares, management of which is granted to a village community by the state. The state retains ownership of the land but hands over management of forest resources for a 25 year period that is renewable. The agreement between the state and the benefiting community is accompanied by a simple management plan which all activities undertaken in the area must comply.²⁰³ The legislation on community forests and community hunting grounds²⁰⁴ were set in place under the Forest Code in order to combat poverty in rural areas. These legislations have also proved to be unsuited to the way of life of the “forest people”. First, the maximum permitted area of 5000 hectares for both community forests and community hunting grounds is smaller than the area they traditionally cover when out collecting in the forest.²⁰⁵ The procedure for obtaining a community forest or community hunting ground is unsuited to the reality of the lives of the ‘forest’ people. In order to obtain title, the applicants are required to establish themselves as a legal entity and to draw up a map of the desired area, as well as a forest management plan setting out activities for a five year period, all of which carry significant procedural costs that are beyond the means of

²⁰³ Decree No.95/531/PM of 23 August 1995, Laying down the Procedure for Implementing the Forestry Law. See Articles 37, 38 and 95 of the 1994 Forest Code. In other words, a community forest is “a forest in the non-permanent forest domain, which is part of an agreement between a village community and the forest administration, who oversee the management, within the framework of a simple management plan prepared by the community beneficiary. The community beneficiary has ownership of the products of the community forest and has the right to farm the land for commercial purposes, even if the land is part of the national domain.” See Nguiffo S, Kenfack E & Mballa N ‘Historical and contemporary land laws and their impact on indigenous peoples’ land rights in Cameroon’ in Nguiffo et als., (ed) *Land Rights and the Forest Peoples of Africa: Historical, legal and Anthropological Perspectives* Forest Peoples Programme, Moreton-in-Marsh (2009). For more on Community Forest, see Egbe SE ‘The Concept of Community Forestry under Cameroonian Law’ (2001)45 *Journal of African Law* 1.

²⁰⁴ Hunting grounds locating in the non-permanent forest domain which are subject to management agreement between the State and local village communities. Article 2(19) of the 1995 Decree on the Wildlife system.

²⁰⁵ Article 27(4) of Decree No.95/531/PM of 23 August 1995 laying down regulations for implementing the forest system.

indigenous peoples.²⁰⁶ These two legislations are therefore discriminatory with respect to the “forest people”.

Discrimination against indigenous peoples in Cameroon, specifically the “forest people” is also seen in the light of access to the annual forest tax. According to the current legislation on the management and use of income from logging, ten per cent (10%) of the forest taxes paid by loggers goes to State coffers to benefit local village communities, in order to fund development projects in the areas where wood production takes place.²⁰⁷ The “annual forest tax” however, is not made available to indigenous communities. This is due to the fact that the 1994 law (Forest Code) does not define the term “communautés villageoises riveraines” (local village communities) and “encampements” of indigenous peoples are considered by Bantu chiefs to be an integral part of Bantu, not indigenous villages.²⁰⁸ In addition, the collection of the annual forest tax is usually centralised at local council level in the areas being logged. This impedes access to these funds.

Besides failure to protect indigenous peoples from discrimination at the vertical level, Cameroon has equally failed to protect indigenous peoples from horizontal discrimination. This is justified in the following paragraphs.

4.2.2 Failure to eliminate horizontal discrimination

As mentioned earlier, horizontal discrimination takes the form of discriminatory attitudes, perceptions or behaviour against an individual or groups by other individuals or groups. The “forest peoples” and “Mbororo” in Cameroon, has not been spared from the scourge of extreme exploitation and discrimination by their neighbours. When it comes to exploitation, there is no doubt that the main issue is the relationship that these peoples have with their Bantu-speaking neighbours. Originally based on collaboration, the relationship between the “forest peoples” and their neighbours have gradually diverted to subordination and domination. The degree to which the various forest communities are discriminated

²⁰⁶ Articles 27 to 32 of the Decree laying down regulations for implementing the forest system.

²⁰⁷ Finance laws relating to tax years 1994-1995 to 2001-2002, joint MINEFI/MINAS order of 29 April 1998 establishing procedures for using income received from logging and intended for local village communities.

²⁰⁸ Barume AK *Etude du cadre légal et coutumière pour la protection des peuples indigènes et tribaux au Cameroun* International Labour Organisation Geneva (2005)66.

against/and or exploited varies.²⁰⁹ Discrimination towards the Mbororo and “forest people” starts at a very young age. Indigenous children have been and are still being regularly teased (with words such as ‘stupid’, ‘illiterate’ among others) and marginalised at school by their fellow Bantu students.’ That is, if school is even an option.²¹⁰ The discrimination which started in the colonial times, unfortunately still exists today.

It will be interesting to note that some Mbororo (due to their skills in cattle rearing) and some “forest people” have found employment with private individuals or companies. Some “forest people” have found employment with logging companies (which uses them to help identify tree species and organise their work in the forest), Safari companies (which uses indigenous forest peoples as hunting guides due to their knowledge of the forest and their ability to mimic all animals and even for their highly developed senses) and conservation organisations such as the WWF, GTZ and WCS (which uses forest peoples to help them with their biological and botanical studies).²¹¹ However, employment is often short-term and remuneration is generally low. According to a 2003 report, the Baka and Bagyeli make up between thirty per cent (30%) and fifty per cent (50%) of work force in logging camps, but are discriminated against in relation to other ethnic groups working in the camps, being given fewer amenities than their Bantu counterparts and their salary is often “disappearing” in the hands of the Bantu village chiefs, who are used to distribute the salary..²¹²

Moreover, thanks to their reputation as expert hunters, some “forest people” over the years, has been employed by their Bantu neighbours to provide them with game (meat), but they (the Bantus) have often failed to pay for such games or have paid less. Most often, payments have been made in alcohol. Failure to pay for games provided by the “forest people” has often led to clashes between the “forest people” and the Bantus, which has in turn led the

²⁰⁹ See Ngima MG ‘The relationship between the Bakola and the Bantu peoples of the coastal regions of Cameroon and their perception of commercial forest exploitation’ African Study Monographs, Suppl.26 (2001) 209-235. See also Pyhala A *What future for the Baka? Indigenous peoples’ rights and livelihood opportunities in South-East Cameroon*, IGWIA/PLAN, Eks-Skolens Trykkeri, Copenhagen (2012)20.

²¹⁰ Pyhala A *What future for the Baka? Indigenous peoples’ rights and livelihood opportunities in South-East Cameroon* IWGIA/PLAN Eks-Skolens Trykkeri, Copenhagen (2012)20.

²¹¹ Venant M *Securing Indigenous Rights in Conservation: Reviewing and promoting progress in Cameroon* OKANI/Forest Peoples Programme, Moreton-in-Marsh (2009)2.

²¹² Ministry of Economy, Planning and Regional Development *Indigenous People (“pygmy”) Development Plan for the Forest and Environment Sector Program*, (Final Report Prepared by Schmidt-Soltau Kai) Yaoundé (2003)25.

Bantus to attribute all sorts of derogatory names to these peoples.²¹³ Equally, the Mbororo people, thanks to their skill in cattle rearing have found employment with individual Bantus residing in urban areas, but receive less pay for work done than their Bantu counterparts and in certain situations, no pay at all.²¹⁴

It should be pointed out that this extreme exploitation of both indigenous groups by the Bantus has led, in some cases to practices akin to slavery, where the Bantus consider the indigenous peoples, especially the “forest people” as their property and treat them as such. An example was observed in 2003 during the preparation of the final report on the Indigenous Peoples (“pygmy”) Development Plan for the National Program for Participatory Development where one divisional officer refused the consultant permission to talk to his “pygmies”.²¹⁵ Another instance where a Bantu claimed ownership of a forest community was recorded in 2001 where a Bantu said: “... my herd of Bagyeli lives in my forest behind my house. They were given to me by my father...”²¹⁶ This demonstrates in general that the “forest people” are simply seen to be dependent, virtual non-members of the village with whom they interact and are the property of the Bantus who occupy the village; property which can be passed from one generation to another. The Mbororos have not been spared from such practices. The Mbororos have for the past twenty years, endure gross human rights violations from the hands of a powerful land owner and commercial rancher and a member of the central committee of the ruling Cameroon’s Peoples Democratic Movement (CPDM). This individual human rights violation against the Mbororo pastoralist range from displacement of hundreds of Mbororo families without compensation, extortion, imprisonment, destabilisation of Mbororo traditional institutions, seizure of property and forceful marriage to Mbororo minors against their wishes.²¹⁷

²¹³ Personal observation.

²¹⁴ Tchoumba B *Indigenous and Tribal Peoples’ Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005)40.

²¹⁵ Ministry of Economy, Planning and Regional Development *Indigenous People (“Pygmy”) Development Plan for the Participatory Community Development Program* (Final Report Prepared by Schmidt-Soltau K) Yaoundé (2003)4.

²¹⁶ Nelson J *Securing Indigenous Land Rights in the Cameroon Oil Pipeline Zone* Forest Peoples Programme, Moreton-in-Marsh (2007)3.

²¹⁷ ‘Mbororo of Cameroon address United Nations on human rights’, available at http://www.ipacc.org.za/eng/news_details.asp?NID=308 (accessed on 13 August 2012).

4.3 An analysis and evaluation of efforts aimed at consultation and participation

The inter-related principles of consultation and participation, it should be recalled, serve as the corner stone of Convention No.169 and provide the basis for applying all the other international law principles relating to indigenous peoples rights. These principles, it should be reiterated has to be studied in conjunction with the principle of the right of indigenous peoples to decide their own priorities for development as consecrated by Article 7 of the Convention. Consultation and participation requires that indigenous peoples are able to effectively participate in decision-making processes which may affect their rights or interests, be it at the level of the politics (management of public affairs) or at the level of national development issues which affects their interests.

4.3.1 An analysis and evaluation of the government's efforts to involve indigenous peoples in the management of the public affairs of the state

The right to political participation is recognised in the human rights instrument to which Cameroon has signed and ratified and is also made mentioned in the Constitution. The government has equally taken some steps to ensure indigenous peoples participation in the management of the public affairs of the country. However, the government's efforts have been found wanting. While it is true that during last year's presidential election, national identity cards were made available to all free of charge and birth certificates were distributed free of charge to the "forest people" even if the certificates do not carry the exact age of the bearer, it is however sad to say that a huge number of indigenous peoples, specifically the "forest people" still do not have the necessary identification documents required for participation in the management of public affairs.²¹⁸ These documents, as mentioned earlier, are birth certificates and national identity cards.

Representation of indigenous peoples in regional and national institutions is minimal. There are currently no member of a 'forest community' holding office in local, regional or national government and very few Mbororo holding office at the local, regional or national level.²¹⁹ There are no forms of consultation, involvement or consent process with the "forest people"

²¹⁸ Pyhala A *What future for the Baka? Indigenous peoples' rights and livelihood opportunities in South-East Cameroon* IWGIA/PLAN Eks-Skolens Trykkeri Copenhagen (2012)17.

²¹⁹ Pyhala A *What future for the Baka? Indigenous peoples' rights and livelihood opportunities in South-East Cameroon* IWGIA/PLAN Eks-Skolens Trykkeri Copenhagen (2012)17.

when it comes to making high level decisions with direct or indirect consequences on them. As a result, the “forest people” are in no way involved in the decision-making processes around matters that concern them or that affect their rights, and have no political or decision-making power, even in regions where they are the majority of the population.²²⁰ The reason for the lack of representation and participation in decision-making processes is that the chiefs of the forest communities are not recognised by the wider society. Even where the chiefs of forest communities have tried to get into higher levels of decision-making, they have not been accepted. Baka chiefs, for instance, to date have been completely dismissed from any legal recognition processes.²²¹

4.3.2 An analysis and evaluation of government’s efforts to involve indigenous peoples in development issues which affects them.

The government, with regard to development issues, has continually failed to consult indigenous peoples in development issues likely to affect them or get them participate in such issues. Even where consultations has been attempted, such processes fell short of the standard set in the Convention on Indigenous Peoples Rights (Convention no.169) and the Declaration on Indigenous Peoples’ Rights. This assertion can be justified by an evaluation of some of the programs and projects adopted (as earlier mentioned) within the framework of the poverty reduction strategy of the government. While it is true that the elaboration process of the 2003 PRSP was “participatory”, as it involved two types of consultation mechanisms which are complementary (quantitative and qualitative analysis of poverty), it was noted that these consultation mechanisms fell short of the standard set by the ILO Convention no.169 and the UNDRIP.²²² The methodology that was used in these consultations was not specified. It is only known that “some one hundred facilitators and rapporteurs from both civil society and public administration, divided into 16 teams, were drilled on the methodology of

²²⁰ In the sub-division of Yokadouma, for instance, the vast majority of the rural population are Baka, but they hold no representation whatsoever at any decision-making level.

²²¹ Pyhala A *What future for the Baka? Indigenous peoples’ rights and livelihood opportunities in South-East Cameroon* IWGIA/PLAN Eks-Skolens Trykkeri Copenhagen (2012)17.

²²² See Tchoumba B *Indigenous and tribal peoples and poverty reduction strategies in Cameroon* International Labour Organisation Geneva (2005)

consultations during the seminar to launch the second wave of participatory consultations...”²²³

The participatory process for the preparation of the PRSP has been subject to criticism from both Cameroonian civil society, and from international observers. One observer; Lagarde, held that the process was “not based on collaboration, but it was a dictated exercise undertaken in a bid to reach the decision point under conditions which mistook speed for haste.”²²⁴ Field investigations conducted within the framework of the study on indigenous and tribal peoples and poverty reduction strategies in Cameroon revealed that no organisation representing or working with the mbororo and the “forest people” participated in the consultation process.²²⁵ This goes to confirm Lagarde’s observations.

In addition, the government has equally failed to consult with indigenous peoples or have them participate in development projects which affect their interests. This is specifically true with the execution of the Chad-Cameroon Pipeline Project. In 2001, the Chad-Cameroon pipeline project was initiated. This project entailed drilling oil wells in Chad and transport of oil through a pipeline, built under the project, to the coastal port of Kribi in Cameroon.²²⁶ This project was financed by the World Bank and in accordance with its Operational Policy 4.10, a Plan pour les Peuples Autochtones Vulnérables (PPAV) (Plan for Vulnerable Indigenous Peoples), was drawn up. This plan required that the rights of the Bagyeli, including their right to informed participation, should be respected. However, a study conducted by the NGO CED (Centre for Environment and Development) revealed that throughout the course of the project, indigenous peoples’ right to free, prior and informed consent were flouted. In a report to the Committee on the Elimination on Racial Discrimination, it was revealed that

²²³ See Ministry of Economy, Planning and Regional Development *Cameroon: Poverty Reduction Strategy Paper (Appendix 2)* Yaoundé (2003)

²²⁴ Lagarde M *Politique Sectorielle et Document Stratégique de réduction de la pauvreté (DSRP) : le cas de la sante au Cameroun* ASPROCOP (2003).

²²⁵ Tchoumba B *Indigenous and Tribal Peoples and Poverty Reduction Strategies in Cameroon* International Labour Organisation Geneva (2005)43.

²²⁶ More information on the Chad-Cameroon pipeline project is available on the website of the World Bank (www.worldbank.org) and the website of the International Finance Corporation (www.ifc.org), specifically at http://www1.ifc.org/wps/wcm/connect/region_ext_content/regions/sub-saharan+afrika/investments/chadcameroon (accessed 30 August 2012).

consultation meetings were indeed organised by the consortium headed by Exxon Mobil²²⁷, but they were mainly held in French and complex documents were distributed without regard for the indigenous peoples' lack of schooling or for their oral traditions. Furthermore, the risks posed to the project were not clearly presented to the indigenous communities and it was thus impossible for them to participate in decision making, their characteristics and need were not adequately taken into account in the pipeline and associated projects, including project components that purported to be only for the benefit of the affected indigenous peoples.²²⁸

In addition, the absence of participation of indigenous peoples has been registered in projects relating to the creation of protected areas. Protected areas are those which have been established by the government under the banner of protecting the environment, wildlife, natural resources, or biodiversity. In Cameroon, the incentive for creating protected areas was the goal of covering 30 per cent of national territory by protected areas in 2010.²²⁹ Most of Cameroon's protected areas (reserves, parks, etc) are situated in the forested south and south east of the country, home to the "forest people". Protected areas are created and their limits determined without the free, prior and informed consent of indigenous peoples. It has been reported that members of indigenous communities were only informed of the creation of such areas after the event. For example, the Baka in Miatta maintained that during the creation of

²²⁷ The Chad-Cameroon Pipeline project was executed by a consortium of companies with financial support in the form of loans from the World Bank. This consortium is composed of Exxon, an American company that was the manor player (45%), Shell, a Dutch company (40%) and Elf, a French company (20%). See *Report on the Study carried out amongst the Bagyeli Communities living along the pipeline route- Southern Cameroon. Bipindi- Kribi* Planet Survey-Environnement et Développement Durable, Centre for Environment and Development, with the participation of Jeanne Nouah and Joachim Gwodog from the Bagyeli Community of Bipindi-Kribi (2003)3, available at: http://www.forestpeoples.org/documents/prv_sector/eir/eir_internat_wshop_cameroon_case_eng.pdf. (Accessed on 5th September 2012).

²²⁸ Centre for Environment and Development, Réseau Recherche Actions Concertées Pygmées & Forest Peoples Programme *The Situation of the Indigenous Peoples in Cameroon: A supplementary report submitted in connection with Cameroon's 15th-19th periodic reports (CERD/C/CMR/19)* Forest Peoples Programme, Moreton-in-Marsh (2010)17; Nouah J et al., 'Chad-Cameroon: Pushed by the Pipeline' in *Extractive Industries and the World Bank* Tebtebba Foundations (Baguio City, Philippines) and Forest Peoples Programme, Moreton-in-Marsh (2003). See also Nelson J et als., *Report on a Consultation with Bagyeli Pygmy community impacted by the Chad-Cameroon oil-pipeline project* Forest Peoples Programme, Moreton-in-Marsh (2001).

²²⁹ This is in line with the goals of the Convention on Biological Diversity to which Cameroon is a party. See articles 1, 6 and 8, and is part of the international initiatives concerning the management of biodiversity.

the Dja Reserve²³⁰, they were neither informed nor invited to participate. They were informed only later (without being able to give a precise date) of the existence of such conservation initiatives. They were not involved in drawing up the reserve's boundaries and did not have the opportunity to participate in preparing the management objectives.²³¹

Equally, the Bagyeli were not consulted neither did they participate in the creation of the Campo Ma'an national park.²³² A study on the extent of Bagyeli involvement in the management and development plan of Campo Ma'an showed that prior to the creation of the park, the Bagyeli could go wherever they wanted. But their right of access was later severely controlled under Decree No.95/466 of 1995 which regulates access and the gathering of natural resources in protected areas. The Bagyeli in Campo were never consulted when the park was established. They had no idea of what was happening; they were simply told that hunting was now forbidden and that the animals must be protected, without any of their participation in the development of the plans or explanation of the reasons and motivations for this sudden withdrawal of their freedoms.²³³ It should be stated that the creation of protected areas does not take into account the cultural characteristics of the indigenous peoples. Besides being a violation of the principles of consultation and participation, this is equally a grave violation of the principle of the right of indigenous peoples to decide their own priorities for development and the principle of respect of culture and other specificities of indigenous people.

²³⁰ The Dja Reserve covers an area of about 526000 hectares, dividing six divisions. For more information on the Dja reserve, visit the web address <http://whc.unesco.org/en/list/407> (accessed on 5 September 2012).

²³¹ Nguiffo S *One Forest and Two Dreams: The constraints imposed on the Baka in Miatta by the Dja Reserve*, Centre for Environment and Development Yaoundé (2001)

²³² The Campo Ma'an national park was first a Reserve, created in 1932. It developed over time, first through the creation of the Ma'an production forest in 1980, by Decree No.80/417, which extended the reserve by 990 km². In 1999, the Ministry of Environment and Forestry passed Resolution No.372/D/MINEF/DAJ of 12 March 1999, bringing protected status to the zone and turning the Campo Reserve into a national park. This park is situated in the southern region of Cameroon. It borders the Atlantic Ocean to the west and covers part of the frontier zone between Cameroon and the south-west Equatorial Guinea.

²³³ See Owono JC 'The extent of involvement of Bagyeli Pygmies in the management and development plan of the UTO Campo Ma'an, Cameroon' in Nelson J & Hossack L (ed) *Summary of case study presented at the CAURWA/FPP Conference: Indigenous Peoples and Protected Areas in Africa: From Principles to Practices*, Kigali, Rwanda (September 2001)254, available at http://www.forestpeoples.org/documents/africa/fpproj_cameroon_campo_maan_summ_eng.shtml (Accessed 12 September 2012).

It should be recalled that the government of Cameroon has developed a FESP that provides space for local participation in forest processes. One of the expected results of the FESP is related to the participation of local actors and benefit sharing mechanisms. In order to fulfil the World Bank Operational policy (4.10), the Government of Cameroon developed an Indigenous Peoples Development Plan (IPDP) to assure that FESP respects the rights, dignity and culture of the indigenous people, offers them equal or better opportunities to participate in the benefit and achieves the development objective of the FESP and ‘assures that the living conditions of the rural population are sustainably improved through the sustainable management of forest ecosystems’²³⁴. It is rather sad to say that since the IPDP was adopted by the World Bank, it has never been implemented and indigenous people take a very marginal part in decision making processes regarding forest management and biodiversity conservation.²³⁵

In 2011, the government of Cameroon signed a MoU (Memorandum of Understanding) for the creation of 200,000 hectares palm oil plantation by BioPalm Energy Ltd²³⁶ in Ocean Region, Cameroon, despite indigenous Bagyeli people opposing the decision to allocate their customary lands to the BioPalm plantation. Recent fieldwork by the international NGO Forest Peoples Programme revealed that neither the project, nor the State secured the free, prior and informed consent of the Bagyeli.²³⁷ To establish the plantation, native trees will be cut down and replaced with a monoculture of oil palms, making hunting in these areas impossible. Besides making their traditional livelihoods impossible, the plantation will also lead to the erosion and loss of the culture of the Bagyeli by preventing a transmission of forest knowledge. Simply, this project violates the principles of consultation and

²³⁴ Ministry of Economy, Planning and Regional Development *Indigenous People (“Pygmy”) Development Plan for the Forest and Environment Sectoral Programme* (Final Report Prepared by Schimdt-Soltau Kai) Yaoundé (May 2003).

²³⁵ Centre for Environment and Development ‘The Indigenous Forest Peoples and Protected Areas in Cameroon: A review of Cameroon’s implementation of the CBD Programme of Work on Protected Areas’ in Forest Peoples Programme *Series on Forest Peoples and Protect Areas* Forest Peoples Programme, Moreton-in-Marsh (2008)7.

²³⁶ A subsidiary of the Singapore-based SIVA Group. The SIVA Group is a conglomerate with operations in realty and hospitality, telecom (S Tel); project engineering (SPEEL); shipping and logistics (Siva Shipping & Crossbridge); commodities trading (Rudhra), wind energy (WinwinD), water (Isklar); biopalm/palm oil (Biopalm Energy) and e-education (eth). For more about SIVA Group, visit the website www.sivagroup.in.

²³⁷ Forest Peoples Programme ‘BioPalm Plantation will lead to destruction of Bagyeli communities in Cameroon’ *FFP E-Newsletter* Forest Peoples Programme Moreton-in-Marsh (October 2011).

participation, the right to decide priorities for development and the respect for the culture and other specificities of indigenous peoples.

A more recent case of insufficient consultation of indigenous peoples in the process of creating a protected area was witnessed in the consultation process held from 26 January to 02 February 2012, by the government of Cameroon, UNESCO, UICN and the WWF in the framework of a project to register the Lobeke National Park as a UNESCO heritage site. A report prepared by CEFAID²³⁸ reveals that 75 per cent of indigenous communities were excluded from the consultation process; the time set for consultation in a community was too short to bring members of the community together to decide or give their opinion on the concept knowingly.²³⁹ The conclusion drawn from this study was that the consultation process did not allow the indigenous communities to have the necessary information which will permit them to give their opinion on the nomination of their forest to world heritage.

It is important to state that the creation of protected areas by Cameroon absent the free, prior and informed consent of the “forest people” and without taking into consideration their specific characteristics contravenes two inter-related rules articulated by the Committee on the Elimination of Racial Discrimination. The first of these rules was articulated in 2002, when the Committee held that *‘no decisions directly relating to the rights and interest of members of indigenous peoples be taken without their informed consent’*. This was in connection with a nature Reserve in Botswana.²⁴⁰ The second rule *“calls on states to recognise and protect the rights of indigenous peoples to own, develop, control and use communal lands, territories and resources.”* This rule was established with regard to a national park in Sri Lanka.²⁴¹

Indigenous peoples have equally been excluded from participating in climate change policies, projects and programs in Cameroon. In recent years, plans to establish mechanisms for REDD (Reducing Emissions from Deforestation and forest Degradation) have become prominent in national forest policy-making, and sub-national REDD projects are greatly

²³⁸ Centre pour l’Education, la Formation et l’Appui aux Initiatives de Développement au Cameroun.

²³⁹ See CEFAID *Projet d’inscription du Tri National de la Sangha en Patrimoine Mondial de l’UNESCO par les Services de conservation : Expérience du processus de consultation des communautés locales et autochtones vivant autour du Parc National de Lobeke*, CEFAID Yokadouma (2012).

²⁴⁰ Concluding Observation of CERD: Botswana: 23/08/2002. UN Doc. A/57/18, paras.292-313, at 304.

²⁴¹ Concluding Observation of CERD: Sri Lanka: 14/09/2001. UN Doc. A/56/18, paras. 321-342, at 335.

increasing. REDD projects, it should be noted, are planned around nearly all of the large forest National Parks in Cameroon, which represents over 7% of the forested land in the country.²⁴² There are two ministries in Cameroon with direct responsibility for REDD policy-making and related issues: The Ministry of Environment and Nature Protection (MINEP) (which is charged with overseeing climate change issues), and the Ministry of Forests and Wildlife (MINFOF) (charged with protected areas and forests). In 2008, Cameroon submitted its concept note for the national REDD readiness planning, known as Readiness-Plan Idea Note (R-PIN) to the World Bank's Forest and Carbon Partnership Facility. In 2010, an investigation conducted by the Forest Peoples Programme revealed that there was minimal consultation and participation of indigenous peoples in REDD policy and projects. The R-PIN, it was revealed, does not contain any specific plans for consultation with indigenous peoples and that in late 2010, effective participation in REDD planning had not taken place.²⁴³ There was limited involvement of indigenous people in informative workshops with all stakeholders, and not all indigenous peoples were represented, for example, the Mbororo people were excluded from all REDD planning and projects.²⁴⁴

An important issue worth evaluating is the draft law on “Marginalised Population”, drafted by the Ministry of Social Affairs in 2008 and sent to parliament for adoption. This is definitely a great step towards the protection of indigenous peoples in Cameroon. However, the bill was drafted without the participation of indigenous peoples and till date it has not been adopted by Parliament.²⁴⁵ It should be reiterated that this category of “marginalised” people” mentioned in the draft law includes all those groups and individuals in Cameroon that have difficulty integrating into Cameroonian society, including the mentally and

²⁴² Food and Agricultural Organisation *Evaluation des ressources forestières nationales du Cameroun : 2003-2004 : Résumé des résultats de l'Inventaire Forestier National* MINFOF/FAO (2005), available at <http://data.cameroun-foret.com/bibliotheque/9062> (Accessed on 15 September 2012).

²⁴³ See Freudenthal E, Nnah S & Kenrick J *REDD and Rights in Cameroon: A review of the treatment of Indigenous Peoples and Local Communities in Policies and Projects*, Forest Peoples Programme, Moreton-in-Marsh (2011). See also International Working Group on Indigenous Affairs *The indigenous World* IWGIA Copenhagen (2010)538.

²⁴⁴ See Philippe K et al., *REDD+ and the promotion of the rights of indigenous peoples in Cameroon* CIRAD

²⁴⁵ See Centre for Environment and Development, Réseau Recherche d'Actions Concertées Pygmées & Forest Peoples Programme *The Situation of Indigenous Peoples in Cameroon: A supplementary Report submitted in connection to Cameroon's 15th-19th periodic report (CERD/C/CMR/19)2010(13)*, available online at <http://www.forestpeoples.org/sites/fpp/files/publication/2010/02/cerdcameroonsubmissionjan10eng.pdf> (accessed 18 September 2012). See also International Working Group on Indigenous Affairs *The Indigenous World* IWGIA Copenhagen (2010)535.

physically challenged, the “forest people” and the Mbororo. The inclusion of “indigenous peoples” into the same category as well as other “marginalised people” makes it difficult to address the particular and exceptional situation of the “pygmies” and the Mbororo. Till date, little information has been made public about this Bill.

Government’s policy towards indigenous peoples has, over the past decades been a policy of forced sedentarisation, not a policy which respects the culture and other specificities of indigenous peoples in Cameroon. This is particularly true with its educational policy. While the government of Cameroon has made primary education free and compulsory, it is however sad to say that the Cameroonian public school system, is simply unsuited to the culture of indigenous peoples: school text books are not available in their languages and the school calendar is incompatible with hunting and grazing seasons of the “forest people” and Mbororo, and the transmission of traditional knowledge through practice. To make matters worse, the state does not recognise the “ORA”²⁴⁶ teaching method, which is used by the Baka community in Mbang and the Bagyeli community in Bipindi area. ORA is a teaching method designed for indigenous children which preserves the traditional cultural values and aims to enable them express themselves in French while taking account of their culture and specific characteristics.²⁴⁷ However, the state’s educational system does not recognise this method and indigenous children are taught in French. This is contrary to the Committee on the Rights of the Child’s General Comment No.11²⁴⁸ which calls on states to take measures to eliminate discrimination in the field of education and ensure that indigenous children have access to education on an equal footing with non-indigenous children. Besides being discriminatory, the non-recognition of this teaching method by the state is a clear demonstration of the state’s forced sedentarisation strategy and a violation of the principle of the respect for the culture and other specificities of indigenous peoples, found in Convention no.169 and other human rights instrument to which Cameroon is a party.

²⁴⁶ ORA means “observer, Reflechir et agir” (« Observe, reflect and act »).

²⁴⁷ See Venant M *Recherche sur les bonnes pratiques pour la mise en œuvre des principes de la Convention no.169 de l’OIT- le cas de l’éducation des enfants Baka de la commune rurale de Mbang au Cameroun: Etude de cas no.2* International Labour Organisation Geneva (2009).

²⁴⁸ Committee on the Rights of the Child, General Recommendation No.11, CRC/C/GC/11, 12 February 2009. It should be noted that Article 14 of the UNDRIP also affirms the rights of indigenous peoples to “*establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning*”. The CERD and the Committee on Economic, Social and Cultural Rights have also adopted recommendations containing similar languages.

4.4 Conclusion

As highlighted in chapter 3, the government of Cameroon has over the past two decades taken cognisance of the plights of the indigenous peoples in Cameroon and though not bound by the Convention No.169, has taken measures to better the plight of these peoples. However, as seen from the preceding chapter, many of the measures have turned out to be too generic to effectively address the plight of indigenous peoples or have not been properly interpreted and implemented. Societal and cultural perceptions might have played a role in failure to interpret the existing laws in an indigenous friendly manner. The conclusion is that the government measures fall short of the expected international standards. The outcome of this is that regrettably the situation of indigenous peoples in Cameroon has not changed from what obtained during the colonial days. These peoples are still being over marginalised and subjected to extreme poverty; they are still not represented in the local government and in development issues which affects them, and these development issues still disregard their cultures and ways of life. A new strategy is needed. In the next and final chapter of this study, a few recommendations are made towards such a new legislative strategy. The starting point must be to address the issue openly and to sign and ratify ILO Convention 169.



CHAPTER FIVE

GENERAL CONCLUSION AND RECOMMENDATIONS

5.1 General conclusion.

Over the years, the plight of indigenous peoples have attracted the attention of the international community and a standard setting norm for protecting the rights of these peoples was adopted and established by Convention 169. This only legally binding instrument on the rights of Indigenous peoples has been ratified by 22 countries with the exception of Cameroon. The non-ratification of this legal text does not give Cameroon a ground to violate or not protect the rights of the indigenous peoples found in its territory; reason being Cameroon is party to other core international human rights instruments, notably the ICCPR, ICESCR and ICERD. Cameroon is equally a party to the African Charter. These instruments, though not completely dedicated to indigenous peoples, carries with them some of the basic international law principles related to the protection of their rights, as encapsulated in Convention no.169. Cameroon is therefore bound to implement these basic principles by reason of her ratification of these instruments. In addition, some of the principles relating to indigenous peoples rights have attained the status of customary international law and *jus cogens*, and so imposes on Cameroon a legal obligation irrespective of her non-ratification of Convention 169.

Indigenous peoples in Cameroon, just like indigenous peoples elsewhere have since colonial era, been the object of extreme marginalisation and poverty, they have not been represented in decision-making processes on issues which affects them and they have often been the victims of development processes, instead of being beneficiaries. The government of Cameroon took cognisance of their plights and passed some legislation which could serve as entry points for the protection and promotion of their rights. The government equally adopted policies and programs as well as projects in a bid to better the socio-economic situation of these peoples. However, an analysis of these measures as demonstrated in the preceding chapter clearly shows these measures do not meet up to expectation. The status of these peoples has basically stayed the same. They are still the object of severe forms of marginalisation; they are excluded from participating in local government, in development issues likely to affect them or even the sharing the fruits of development projects carried on their lands. Development projects often disregard their cultural specificity. One can therefore

say that the government of Cameroon has over the past two decades systematically failed to implement the basic international law principles related to indigenous peoples' rights, despite a legal obligation to do so. Why the law has failed to transform society is difficult to answer within the limited scope of this dissertation. It seems that the unfortunate state of affair might have something to do with the limits of the law. However, it might also have to do with the ambivalent attitude of the Cameroonian government to the issue of indigenous peoples. It was pointed out in the introduction that the response of the government has been to deny the specific demands of indigenous peoples and to accommodate their concerns within more generic constitutional and legislative framework. The refusal of the government to sign and ratify Convention 169 has forced us to adopt the same strategy in chapter 2. However, the time has arrived for the government to address the issue by name and to design specific laws to target specific rights violations of indigenous peoples.

5.2 Recommendations

In order to ensure a better implementation of the basic international law principles relating to indigenous peoples' rights, by Cameroon, it will be imperative to make some recommendations. These some key recommendations, if taken into consideration by the government of Cameroon, will lead to a better protection of the rights of its indigenous peoples.

- The government of Cameroon should strongly consider ratifying ILO Convention no.169. Ratification of the Convention will impose on Cameroon a direct and clear legal obligation towards its indigenous peoples, thus Cameroon can be held accountable for violating the rights of the indigenous peoples found within its territory.
- The government of Cameroon should clarify its position on indigenous peoples. The terms used by the government to refer to the group of peoples covered by Convention no.169 and the UNDRIP is contradictory. The Ministry of External Relations uses the term “indigenous peoples” while MINAS, uses the term “marginal population” to refer to the category of people covered by Convention no.169 and UNDRIP. This term, as earlier mentioned, is too broad and includes members of the dominant Bantu population who are in one way or the other marginalised. Clarification, by the

government of its position on indigenous peoples may be a starting point for these people to enjoy the rights conferred on them by international law.

- The government should consider revising some of its laws and policies affecting indigenous peoples. Most of the laws that affect indigenous peoples in Cameroon, especially the land tenure ordinance were passed prior to 1990. The application of these laws today has resulted to serious violations of the rights of indigenous people, especially the “forest people” in Cameroon. These laws and policies should be revised with the participation of indigenous peoples through their representatives or representative institution.
- The government should put in place strong policies and programs to eliminate the marginalisation, discrimination and extreme exploitation of indigenous peoples. This could be done through widespread awareness raising, through new materials and approaches integrated into the educational system nationwide, and through a revised judicial system that works to support the rights of indigenous peoples.
- The government should enact, with the participation of the indigenous peoples, a specific law protecting and promoting their rights. It is true that in 2008 a bill on “marginalised population” was drafted by MINAS and tabled to Parliament, but till date, this bill has not been voted into law, and it was drafted without the participation of the peoples concerned. Equally, the concept of “marginalised population” contained in the bill is contrary to the spirit of the Convention and stigmatizes the minorities to which it refers and impedes the recognition of the specificities of the indigenous peoples. It is therefore recommended that a new law on indigenous people be drafted by MINAS, in collaboration/participation with indigenous people through their representative institutions and other NGOs, with the assistance and technical support of the ILO and the High Commission for Human Rights. Cameroon should copy the example of the Republic of Congo. Congo is the first African and develop a specific law on indigenous people (“Law on the Promotion and Protection of Congo’s Pygmies”) though not a party to Convention no.169. This law guards against rampant discrimination, exploitation and violence endured by the forest peoples, and it was developed with the participation of the forest communities of major regions of the Republic of Congo.

- The government should extend legal recognition of chiefdoms to “forest settlements” and Mbororo communities. By extending legal recognition of chiefdoms to these indigenous groups, a solid platform for their participation in the national life of the country will be created. Till date, only two “forest communities” have received legal recognition.

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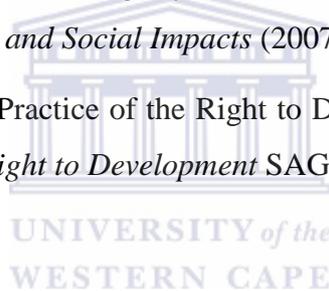
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