



# The Legal and Institutional Framework on Access to Information in the Granting and Management of Land Concessions in Cameroon

## A Diagnostic Study



April, 2015



CAMEROON – EUROPEAN UNION COOPERATION  
COOPERATION CAMEROUN – UNION EUROPEENNE







This document was produced with the financial support of the Support Programme for Civil Society Organizations (PASC) of the European Union- Cameroon Cooperation. The opinions expressed in this document represent the views of the authors and are not necessarily the official position of the European Union or the authorities of the countries concerned.

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## ACRONYMS AND ABBREVIATIONS

<b>ACDIC</b>	Association for the Defense of Collective Interests
<b>CDC</b>	Cameroon Development Cooperation
<b>CED</b>	Centre for Environment and Development
<b>UNCCD</b>	United Nations Conference for Commerce and Development
<b>EPA</b>	Elevage production d'Afrique
<b>FAO</b>	Food and Agriculture Organization
<b>HEVECAM</b>	Hévéa du Cameroun
<b>IFAD</b>	International Fund for Agricultural Development
<b>PHP</b>	Plantation de Haut PENJA
<b>SAFACAM</b>	Société Africaine Forestière et Agricole du Cameroun
<b>SGSOC</b>	SG Sustainable Oils Cameroon
<b>SOCAPALM</b>	Société Camerounaise des palmeraies
<b>UNALOR</b>	Union Allumetière Equatoriale
<b>OECD</b>	Organization For Economic Cooperation in Development
<b>OAU</b>	Organisation of African Unity
<b>CSOs</b>	Civil Society Organizations





## PREFACE

Large scale land acquisition by multinational companies has been on the rise in many parts of the world. Increasingly, multinational companies are seeking vast expanse of land for agro-industries not necessarily to address food security concerns in the countries where they are starting their activities. Besides the aggressive rush for land by multinational companies, governments in most countries in Africa are promoting land based investments on the premise that this will bring employment, improvement in infrastructure and national economic growth.

However, despite the official arguments to support large scale land deals, the alarming land rush is posing serious challenges to local and indigenous communities who for time immemorial have been depending on their land for family agriculture and other activities to support their livelihood. The fear of the threat to local food security that large scale land acquisition can generate has led to many dissenting voices notably civil society organizations about such large scale land deals. However, Multilateral Development Institutions such as the World Bank and the Food and Agriculture organization for instance have adopted the approach of encouraging principles, codes of conduct and directives to correct the negative effects of these types of investments.

Cameroon has not been spared from the land rush. In Cameroon, the phenomenon of large scale land acquisition has increased since 2000. According to some studies between 1 and 2 million hectares of land were requested in 2012 for agro-industry projects and many contending issues associated with large scale land acquisition have emerged. One fundamental issue is the limited or no information about such land deals available to the public and the local and indigenous communities. Also, these local communities are not involved in the negotiations conducted by government to cede their land. Access to information is therefore a fundamental problem.

Consequently, RELUFA in continuation of its work on land governance engaged several years ago with the Joining Hands network of the Presbyterian Hunger





Program (PCUSA) initiated the conduct of a diagnostic study on the “The legal and institutional framework on access to information in the granting process and management of land concessions.” This study assesses the legal and institutional framework on access to information in the granting and management of large scale land concessions in Cameroon. It equally examines the various practical methods local communities and civil society organizations use to access to existing information on land deals.

It is our sincere hope that after this diagnostic study, local communities affected by large scale land deals and civil society organizations monitoring land transactions will obtain themes for advocacy to influence administrative authorities to regulate and promote transparency in the granting and management of land concessions in Cameroon

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## ACKNOWLEDGEMENT

The completion of this report would not have been possible without the contribution and full participation of several actors. The Network for the Fight against Hunger (RELUFA) wishes to thank Professor Pierre Etienne KENFACK, the selected consultant for this assignment, for his willingness and commitment to support in this process.

This is also the opportunity to reiterate our sincere thanks to all the civil society organizations, representatives of government ministries and traditional leaders whose contributions during the validation workshop were important in enriching the study.

Special recognition goes to Patrice BIGOMBE LOGO, Mathurin ESSAMA and Samuel NGUIFFO whose expertise and advice were crucial for the consolidation of this reflection in to such an important document.

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## EXECUTIVE SUMMARY

Marginal a few years ago, land based investment multiplied in the World from the year 2000 and increased in 2008 as a result of the three crises: financial crisis, oil crisis and the food crisis. This phenomenon that affects many places in the world, however, is more pronounced in developing countries including Cameroon, where many companies have obtained or are seeking land for agro-industrial purposes.

This net increase in the demand for agro-industrial land concessions has raised a lot of debate. On the one hand it is appreciated for its contribution to job creation, wealth and infrastructure. But on the other hand, it is disliked because it threatens food security, increases poverty of small farmers and workers and despises values such as transparency.

The seriousness of these threats justifies the condemnations. But this is not necessarily the path chosen by most multilateral organizations (World Bank, FAO, IFAD, UNCTAD, and OECD) and those interested in the phenomenon and favor the enactment of the principles, codes of conduct and guidelines to correct the negative effects of these investments. Among the corrective measures is the requirement for transparency so as to ensure that these investments are not made in an opaque manner, but through an open and participatory process in which the various stakeholders and interested parties have access to information.

Has Cameroon, a country where several agro-land investors have deployed considered these constraints? More technically, does the Cameroonian legal framework provide for access to information in the process of awarding agro-industrial land concessions?

To look for answers to this question, a three-step approach has been followed. The first is strictly theoretical and consisted in the collection and analysis of Cameroonian and international texts dealing directly or indirectly with transparency in general and land transparency in particular to obtain information on positive law and good practices. The second more concrete consisted of a first survey conducted with officials and some members of Civil Society Organizations and traditional leaders of the localities where land concessions for agribusiness purposes were granted





or requested by direct interview and semi direct interviews to see if they have easy access to information in relation to large-scale land transactions. The last one was taking the remarks and suggestions made by the readers of the first draft and especially enriching the text with contributions made by civil society actors and administrative officials who participated at a RELUFA organized workshop in Yaoundé in December 2014. The pooling together of the data collected has helped in producing the findings and recommendations.

## I. Findings

The analysis of the Cameroonian internal legal framework for access to information on the allocation and management of land concessions reveals an unfavorable situation on access to information through the direct means but has elements for indirect access to information.

The analysis of the legal rules reveals that there is no provision in the current legal framework or rules requiring provision of information on land transactions, nor an obligation to publish land contracts. In particular, no land policy document, no land use plan.

But reading the texts puts into perspective two indirect ways to access information in the allocation process and management of land concessions: a general way arising from the recognition and protection of the investigative powers of the press, parliament and associations and a specific way for land issues consisting of the institution of a land advisory board from each district or sub division.

International rules applicable in Cameroon in essentially the OECD principles enable more comprehensive access to information but are limited by two main factors: first, they only apply to companies of the member countries of the OECD or those that have acceded to the principles, limiting their impact on the territory. Then they do not provide information on the concession negotiation process prior to the award, meanwhile, access to information in this phase is very important. Based on these findings, recommendations were made.





## II. Recommendations

The study makes general recommendations and specific recommendations for action by Civil Society Organizations.

### General recommendations

The general recommendations are intended to correct the legal system in force for easy public access to information on large-scale land transactions.

The first general recommendation is the adoption of a general law organizing the process of access to public information for all legal acts of the State as public power or as a co-contractor.

Other general recommendations are specific to the domain of land and may be implemented in connection with the ongoing land reform. To achieve this, the law could:

- Replicate the model of the forestry law by imposing on the administration the annual publication of land open for agro-industrial concessions and publication of auction notice for land available for concessions;
- Apply general rules of public information, including;
- Introduce the systematic publication of concession contracts;
- Require agro industry companies to publish their activities and their results;

### Specific recommendations for action by Civil Society Organizations (CSOs)

They are of two types: The use of existing opportunities and advocacy for improving the current system.

#### Use of existing opportunities

Use of existing opportunities is to maximize the access paths to information in the granting process and management of land concessions offered by the Cameroonian legal system. Civil society organizations should contribute to the operation by using the rules of access to information provided by the domestic laws and the OECD Guidelines.





## ■ Use of domestic law mechanisms

Domestic law does not allow direct access to information, but indirect access is possible. Civil Society Organizations can use it to better disseminate information on land concessions. To this end, the results of the study allow to recommend that:

- Collaborate with the press for them to use the provisions of the law on Social Communication
- Train citizens seeking information on the companies;
- Document the parliamentarians to ask good oral questions
- Provide information to parliament to ask oral questions relating to land deals
- Regularly consult the Official Gazette and other newspapers receiving legal notices to inform of the concessions granted by the President of the Republic or the Minister of lands and disseminate the information;
- Develop a network of relationships with traditional leaders and other notables to collect and publish information on the planned land deals
- Inform citizens of the areas where there is proposed land transfer for them to defend their rights before the granting of the concessions.

## ■ Using the OECD mechanisms

Although they are valid for companies subscribed to the OECD principles, the mechanisms of access to the information they contain can be mobilized. In view of this mobilization, the study recommended Civil Society Organizations to:

- Verify if multinational companies from OECD member countries comply with the guiding principles for the publication of information and if it is the contrary, activate compliance mechanisms.
- Train trade unions and other Civil Society Organizations on procedures and remedies provided by the OECD Principles.

## Contribution to the improvement of the system

To improve the system in general, the study recommends Civil Society Organizations to advocate to political and administrative authorities:





- For the adoption of a general law on access to information in all fields
- For the adoption and rapid publication of a land policy
- For the rapid development and wide distribution of a land use plan
- For insertion into the laws of the obligation of the State to publish the land requests before any allocation
- For legislative reform that informs the public about land available for concessions
- That the bid is the only means of to choose any investor for a land deal
- That be included in consultative land commissions other members besides chiefs and their notables particularly elected officials.





# Introduction

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## I. Background

This report aims at evaluating the ability of the Cameroon legal system to ensure access to information by the public in the process of granting and management of land concessions.

To properly analyse the system, one needs to understand the evolution of the phenomenon of large scale land acquisition. Although marginal some years ago, land-based investments increased tremendously from the year 2000 through the acquisition of large surface areas of land for long periods of time by different investors ranging from foreign private companies, governments, financial institutions (investment and pension funds), and, in some cases, foreigners, who had discovered the potential benefits of land investments<sup>1</sup>.

These investments increased since 2008 thanks to three crises: financial, oil and food crises. Concerning the financial crisis, the explosion of the real estate and world crises that followed prompted investment funds and banks to choose land to conduct their hedge. As for the oil crisis, considering the high and volatile prices and the uncertainties in oil markets, many governments and companies are promoting bio-fuels whose cultivation takes large surfaces of land. As far as the food crisis is concerned, in order to stop depending on world trade, food importing countries have begun looking for land out of their territories and are cultivating this land or getting them cultivated by others for their food security concerns<sup>2</sup>.

However, this phenomenon which spares no part of the world is more common in developing countries, especially Cameroon. According to a report published in 2011, experts of the Committee on Food Security revealed that during the last five years, 50 to 80 million hectares of lands in developing countries were being

<sup>1</sup> Ch. Gironde et ch. Golay, « pauvreté et droits humains », CERISCOPE, *Pauvreté*, 2012 (en ligne), consulté le 17/10/2014, URL : [http://ceriscope.sciences-po.fr/pauvreté/content/part5/pauvreté et droits humains](http://ceriscope.sciences-po.fr/pauvreté/content/part5/pauvreté%20et%20droits%20humains).

<sup>2</sup> F. CollartDutilleul, « Investissements internationaux et accaparement des terres : la recherche d'un équilibre », in, *Penser une démocratie alimentaire*, sous la direction de François CollartDutilleul et Thomas Bréger, éd. Inida, Costa Rica, Vol. I. 2013.



negotiated by international investors seeking to buy or rent the lands.

Presently, the following companies have agro-industrial land concessions in Cameroon: SOCAPALM, SAFACAM, CDC, HEVECAM, SGSOC, CCM (Green Coast), SOSUCAM, JUSTIN SUGGAR MILLS, SUD CAMEROUN HEVEA, EPA (Elevage production d'Afrique), PHP, IKO, BIOPALM, SOCIETE AGROCOLE DE L'OCEAN, FOV. Some concessions are still under negotiations. These are: FARMING ENERGING CAMEROON, SMART HOLDING, DEFOE ESTATES, UNALOR and AZUR<sup>3</sup>. According to available data in 2014, no official statistic or mapped source gives clear information on the total surface area of land concessions granted in Cameroon. Similarly, local populations living close to concession areas do not have useful information on the surface area of the concession, the duration and the content of the contract.

The clear increase in the demand for agro-industrial land concession in Cameroon in particular and in developing countries in general, and also the problems associated with it in terms of conflicts, limited participation, conflicts between the different administrations whose activities are focussed on land calls for the intervention of the state and civil society organizations.

On the one hand, the phenomenon is well appreciated because it provides land to investors:

- Promotes the development of agriculture and the exploitation of unused lands,
- Creates jobs,
- Enables infrastructural development
- Creates wealth for the benefit of the host country.

On the other hand, it is criticised for many reasons:

- It endangers food security, employment and the environment of the host country. This is because it is the basis of land and resource grabbing:
- It aggravates poverty levels as it can lead to the expulsion of local populations from their land, depriving them from the possibility of living in it and making a living out of it.
- It is also characterised by the absence of transparency in the conditions in which the investments are made.

<sup>3</sup> Sources : MINDCAF, Concession Departments.







- It can also transform small scale entrepreneurs into exploited labourers;
- It can be subject to an industrial and intensive mono-culture cultivation meant for export and which is not beneficial to the host country.

The extent of these dangers has justified the concerns raised towards large scale land acquisition. However, this approach is not the only one existing because most interested multilateral organisations and persons instead try to develop ways and means to properly manage the phenomenon. Also, the World Bank, FAO, IFAD, UNCTAD and OECD enacted principles, codes of conduct and guidelines to correct the harmful effects of these investments.

Amidst the protection and corrective measures adopted, two of them particularly retain our close attention: The requirement for the consent of land right holders and the requirement for transparency.

The requirement for the consent of land holders helps to avoid the phenomenon of land grabbing so that investments are conducted in a consensual framework and not being forced by investors or the state, but through an agreement between the investor and land holders, including unregistered lands. In principle, the Voluntary Directives prescribes that even unregistered rights be recognised by the State.

The transparency requirement helps to avert many risks: exploiting the poor, protecting the environment, protecting competitiveness and the rights of the vulnerable population.

Has Cameroon, a country where many land investors are rushing taken into consideration these different constraints?

There are two different categories concerning the consent of land holders: (1) On the one hand, when the consent of the State or of another holder of formal rights is necessary and on the other hand, when the consent of communities having unregistered rights is required.

When land investments are planned on the private domain of the State, or under the domain of other physical or moral persons, one can distinguish two specific scenarios:

- When the State is the landowner, its consent is required;





- When another physical or moral person is the owner, their consent is equally required.

But in the case of refusal, the State can proceed to an expropriation for public use in order to make lands available for investors. In such a case, the owner receives a compensation which covers the value of the land and the investments on this land.

When the investment is conducted in unregistered lands or the national domain supervised by the state, the 1974 ordinances and the 1976 application decree which stipulates modalities for the management of the national domain and the right to negotiate contracts with those requesting the land are the legal instruments used. This is done through the concession procedure which consists in the signing of a contract between the State and the investor. The consent of the host State is thus a prerequisite to the transaction. This is undoubtedly done without respect to the legitimate owners of customary lands rights but, legally, the consent of formally recognised land owners are considered during land transactions in Cameroon. Do holders of customary rights have the latitude to express themselves? What is the weight of their opinion? Is their consent indispensable to the transaction?

The issue of transparency remains. It describes the character of what is transparent, that is, that enables clarity and through which one clearly sees everything. Applied to land investors, transparency is measured by several criteria that Global Witness has merged into six key points: the availability of information, tenure rights, legal framework, participation in the decision-making process, and redistribution of revenue, environmental and strategic evaluation.

At the heart of transparency is the problem of access to information.

## II. Clarification of key concepts and problem

Some key concepts need to be clarified for the underlying problem of this study to be better understood.

The term “study” has different meanings. Firstly, it describes the exercise of learning or broadening knowledge. Secondly, it refers to the analysis of an issue.





It is the second meaning that justifies the use of the word diagnosis which means recognition of an ill according to its symptoms. A diagnostic study is one which reveals the symptoms of an ill, an issue or a situation. It can be relative to a human body, a question, a domain or a situation. The question or situation raised in this diagnostic study has to do with access to information in the granting and management process for large -scale land concessions.

Access means getting in, knowing or obtaining. One can have access to a place, data or information. Information describes the action to inform or to be informed, have access to information means being aware or obtaining information. Information can be obtained through consultation when it is available or through research or requesting when it is not available. This consultation or research can be applied to different domains among which are agro-industrial investments.

The diagnostic study concerns the legal and institutional framework. In other words, it aims at presenting and evaluating all the texts, organizations and actors governing access to information in the granting and management process of land concessions for agro-industrial purposes.

Access to lands which enable such investments in Cameroon is done through the concession technique. Usually, the term concession describes the action to concede. But, when the term is referred to land concessions, it takes a legal meaning and describes the bilateral or unilateral legal act in which the owner gives to another person, the concessionaire, the possession of a right or an advantage<sup>4</sup>. According to decree No. 76/166 of 27 April 1976, a concession is the legal technique that helps to make available a portion of land in the national domain to potential investors in order to carry out their activities. To better understand this technique, one should bear in mind that the national domain is the portion of the Cameroon territory which is situated between the public domain and the private domain of the State or individuals which are both not liable to transactions. The national domain is the portion which is liable to accommodate agro-industrial investors.

To obtain a portion in the national domain, the investor should in accordance with decree no. 76/166 of 27 April 1976, draft a request to the Land Tenure Office of the area where the land is situated which will issue a receipt to the applicant.

<sup>4</sup> *Vocabulaire Juridique de l'Association Capitant, par G. Cornu, Quadriège, PUF, Paris.*





After getting all valuable opinions, especially those of local public services where the project is located, the head of the competent service forwards the document for a purely-consultative notice to the Land Consultative Board appointed by the Divisional Officer of each division and which is based in the smallest administrative unit (article 6). The chief and two (02) notables of the village of the local community<sup>5</sup> hosting the project represent the community. The instruction of the Minister of Land Tenure of 29 December 2005 relating to the functioning of this Board provides that land award notices should be posted in the divisional and sub divisional offices of the place concerned to inform the public<sup>6</sup>. Concessions of less than fifty (50) hectares are awarded by the Minister of State Property and Land Tenure while those of more than fifty (50) hectares are awarded by a presidential decree.

The peculiarity of the land granting process raises concerns with the issue of transparency and especially, access to information which is an international requirement.

Consequently, many people are interested in transparency through access to information in agro-industrial land concession operations: investors who wish to have a clear idea of the existing opportunities and the legal and social framework of the host country, populations wishing to know what is happening on their lands and to have the possibility to act, civil society organizations wishing to appraise the respect by investors and their contracting partners the guiding principles governing responsible investment and the State the guarantor of general interest.

Generally, the other parties have access to information apart from local communities and civil society organizations accompanying them. Information relating to the land transaction is no way available to the communities and transparency must essentially be understood as relating to the improvement of the possibilities of the population to have access to information which most of the time is confidential and detained only by the transacting parties.

What is Cameroon's attitude vis-à-vis this requirement? More technically, does the Cameroon legal system help to ensure access to information in the process of granting agro-industrial land concessions?

<sup>5</sup> *Articles 12 à 14 du décret n° 76/166 du 27 avril 1976 fixant les modalités de gestion du domaine national.*

<sup>6</sup> *Recueil des textes du Ministère des Domaines et des Affaires Foncières, janvier 2008, pp. 215-216.*





### III. Aim of the Study, Methodology and Plan.

The study evaluates Cameroon's ability to respect third party rights and good land governance practices. To provide answers to the questions raised, data was collected in three (03) stages.

The first stage consisted in analysing national texts dealing directly or indirectly with transparency in general and land transparency in particular to obtain information on positive law. After this exercise, analysis of agreements and international principles applicable or not in Cameroon on transparency in general and land transparency in particular was done to collect data on good practices.

The second consisted in first carrying out an investigation with authorities and Civil Society Organizations (CSO) working on land issues in general and on the protection of the land rights of local communities. This investigation was carried out through a direct and semi direct interview to find out if these communities have easy access to information relating to large-scale land transactions. The investigation targeted traditional chiefs from the South West zone where important land concessions have been granted. This was during a workshop organised in Yaounde on the participation of traditional chiefs on the ongoing land reform process in Cameroon. The main goal was to collect data on their participation in the Land Consultative Boards prior to the award of concessions.

The last stage was the use of remarks and suggestions made by the readers of the first draft of the report and especially the comments of local actors and the administrative representatives during the restitution workshop of the draft study organized by RELUFA in Yaounde in December 2014.

- The collection of data helped in designing the study on the following three areas:
- The critical analysis of the Cameroon legal and institutional system relating to access to information (Chapter 1) ;
- The presentation of good practices on transparency relating to the granting process and management of land concessions. (Chapter 2);
- The Conclusions and recommendations for Civil Society Organization action (Chapter 3).





# Chapter I

## ANALYSIS OF THE CAMEROON LEGAL AND INSTITUTIONAL SYSTEM OF ACCESS OF INFORMATION

The Cameroon legal system is made up of two blocks of rules: internal rules (section 1) and international rules (section 2).

### Section 1. Internal Rules

Internal rules are those emanating from institutions or from Cameroonian authorities. Rules and institutions relating to transparency in the granting process and management of land concessions in Cameroon are found in the Constitution, Law No. 90/053 of 19 December 1990 governing associations, ordinance No. 74-1 of 6 July 1974 on the land tenure system, decree 76-166 of 27 April 1976 laying down conditions for obtaining a land title. This legal system is completed by Instruction No. 000006/Y. 18MINDAF/D300 of 29 December 2005 relating to the functioning of the Land Consultative Board notably on aspects relating to prior formalities for granting land for a proposed project.

The analysis of these texts reveals that the Cameroon legal and institutional system relating to access to information in the granting process and management of land concessions has two main characteristics: it is unfavourable to obtaining information through direct means or direct access (I) but marks its preference for indirect access (II).

## I. An unfavourable mechanism of access to information through direct means

Direct means of access to information is the consultation by those interested in information put at their disposal. Is there in the Cameroon legal system a provision making information available to citizens on the granting process and management of land concessions? When a land concession is granted in Cameroon, apart from the state, people and communities are informed through the publication of the decree of the Ministry of State Property and Land Tenure granting concessions of less than fifty (50) hectares or the Presidential decree, granting concessions of more than fifty (50) hectares. This approach conveys the impression of direct access to information. But, this is an illusion. Apart from the publication of land award notices at the divisional and sub divisional offices of the area concerned, the publication of an order or a decree is an operation which communities and civil society organisations do not consistently follow and it is only incidental that some consult the official gazettes that publishes legal texts. Finally, this approach only informs about the final result of the allocation operation.

The affirmation according to which the Cameroon legal system is unfavourable to direct access to information results from the absence of a law organising access to information by the public on land concession granting process, but also and especially the non existence in the system of a provision allowing the availability of information on land transactions (1) and the absence of an obligation to publish contracts by contracting parties (2).

### 1. Absence in the legal provisions of systematic access to information by the public on activities relating to land concessions.

In most countries, there are three instruments which enable the public to directly get information on land operations. This concerns: land policy document, land use plan and instrument for land publicity.

A Land policy is a document through which the State indicates the key guidelines on land allocation on its territory. It is the first transparency instrument as it enables citizens, investors and every interested person to know the different intentions of the lawmaker and to find out if in the order of



choices concessions are a priority or not.

A land use plan is a document through which the authorities of a country proceed to allocating portions of land and indicate the use for which each portion or blocks is subjected. It allows potential investors and the public to know the lands available for concessions. It allows people claiming rights over the lands to manifest their claims.

The Cameroon Government has initiated studies to produce these two documents. They are still being written and are therefore not yet of help to any person wishing to have information on present or future land transactions in Cameroon.

The third document that provides information on land transactions is the land registry document which registers land operations. In Cameroon, this document only registers operations on titled lands in conformity with ordinance No. 74-1 of 6 July 1974 and decree 76/165 of 27 April 1976, stipulating the modalities to obtain a land title modified by decree No. 2005/481 of 16 December 2005 which is not the case with concessions. However, it registers final concessions, but, simply to transform them into property ownership. This means that it gives no information on the land concession granting process and the management of land concessions in Cameroon.

## **2. No obligation to publish information imposed on contracting parties.**

The granting of land concession is an agreement signed between the State and the concessionaire on land in the national domain. At this moment, the State does not come in only to protect general interest, but as a contracting party. This means that the operation is not submitted to the public law rules, but to private law of contract.

There is no provision in the Cameroonian law laying down any obligation on contracting parties to a land concession to provide information to third parties on the content of their agreement. Cameroon respects the principle of 'relative effect of contracts' which means that the contract is







the law for the two parties. It is laid down by article 1165 of the Civil Code which states that: «agreements have effect only between the contracting parties; they do not harm third parties and they are beneficial to them only in the cases provided for in article 1121<sup>1</sup>». Not hurting or benefiting third parties, contracts must not necessarily be made known to them. The parties can even through a clause in the contract set the obligation not to disseminate information relating to their agreement. The parties then have the right to conduct their negotiations behind closed doors and not reveal the content of their agreement to third parties. However, land concession contracts, though signed by the State, could be beneficial or indirectly hurt third parties, especially the local populations who are affected socially and environmentally. It is certainly to put this principle into perspectives that the guidelines and international principles recommend States to consider the third parties in such transactions.

It should be argued that the publication of a presidential decree or the ministerial order announcing the granting of concessions are not concession publication acts, rather they are simply acts aimed at making available to the public regulations enacted in Cameroon.

In submitting land concessions to regulations governing contracts, the Cameroon lawmaker chooses to limit or prevent access to information through direct means in this domain. This option is thus in contradiction with Cameroon's commitment vis-à-vis internationally binding legal instruments. It equally involves a negation of the consideration of the situation of the so-called vulnerable groups. For example, the FAO Voluntary Directives, notably in the "Principle of Consultation and Participation," requires that rightful land owners, who could be affected by a decision affecting their rights, participate actively, freely, effectively, meaningfully and with full knowledge of the facts. Principle 5.7 on "Political, judicial and organisational frameworks relating to land systems" also encourages States to define and make known to civil society, private sector and academics, the possibilities offered to them to contribute in the elaboration and implementation of political, judicial and organisational frameworks as required. Ideally, land owners should even be

<sup>1</sup> Article 1121 treats the stipulation of others, hypothesis where the contract signed is meant to produce effects in favour of a person who was not a party.





associated in the negotiations in conformity with Principle 12 on investments.

The disfavour of the Cameroonian lawmaker towards direct access to information is confirmed by the preference of indirect access systems.

## II. A system favouring indirect access to information

The interpretation of Cameroon texts reveals two indirect systems of access to information relating to the granting process and management of land concessions. General access means (1) and access means specific to land issues (2).

### 1. The General Access means

This consists in carrying out research to obtain information. It is not specific to land issues, but it can be used to get any information. The Cameroon legal instruments adopts this means and recognises in the press, right to have access to information and by giving to Parliament and associations investigative powers to research and obtain information.

#### a. Right of the press to information

Law No. 90/052 of 19 December 1990 on social communication in its article 49 defines the modalities of access to information and administrative documents “Except contrary legislative and regulatory provisions, access to administrative documents is free”. All documents, reports, studies, feedbacks, minutes, statistics, directives, instructions, circulars, notes, that is, all documents relating to positive law acts are targeted”. Journalists could then solicit from the administration, all documents including those relating to land transactions and make them public.

Though the principle of freedom of access to information has been laid down, in practice, difficulties persists due to tradition of secrecy which still characterises the Cameroon administration.





## b. Investigative Powers of Parliament

Senators and Parliamentarians of the lower house of parliament can be an indirect means of access to information. Besides proposing and voting laws, parliament in conformity with article 35 of the Constitution has the power to supervise the action of the Government through oral questions and parliamentary commissions of inquiry. According to this text, Parliament controls government on specific issues subject to the imperatives of national defence, State security or the secrecy of judicial information. During each ordinary session, one session per week is reserved for oral questions by members of Parliament to members of government who provide the responses”<sup>2</sup>.

In enforcing this text, members of parliament can question the Minister of State Property and Land Tenure who is the representative of the State in land transactions on the national domain and specifically on land concessions, future land concessions, ongoing award processes and/or allocated lands. The Minister is supposed to react by providing information on concessionaires, the rights and responsibilities of the State and the concessionaires, etc. Generally, the questions posed reflect the preoccupation of public opinion and especially the concerns of the local populations represented by their parliamentarians. This is what gives weight to this system, though in many respects, it is limited by the logic of party discipline by political parties and the weak influence of the political opposition in Cameroon. This modality was particularly used during the last legislature and produced encouraging results. It is indirect access to information which needs to be exploited, especially the fact that it effectively complements the other means which is investigative powers of associations.

## c. The Investigative Powers of Associations

According to article 2 of Law No. 90/053 of 19 December 1990 governing associations, an association is the agreement through which people combine their efforts and knowledge with the aim of working

<sup>2</sup> *Cameroon Constitution, 18 January Law 1996.*





for the general interest. Regularly constituted associations enjoy moral personality and can exercise on the Cameroon territory, all the activities indicated in their statutes so long as they are not contrary to the rules and regulations.

With their moral personality, associations can carry out investigations to obtain information on the activities related to their missions. On this basis, associations protecting the rights of communities and vulnerable populations can carry out investigations on land concessions operations to make sure that they respect the laws of the Republic and the rights of people they protect. By conducting such investigations, they can obtain the expected information.

NGOs, registered associations or authorized foreign associations in conformity with the law in force participate in the execution of missions of general interest and have received to this effect from the law extremely important prerogatives of investigative powers. Authorised according to article 17 of law No. 99/014 of 22 December 1999, non-governmental organisations have the right to recruit personnel to fulfil their missions.

They can then recruit experts to search for information, even the most hidden information on allocation operations and management of land concessions.

It is through this means that the land allocation to SGSOC Company in Nguti-Subdivision of the, South West was revealed to the public and even to local communities concerned. Before the meetings held by NGOs, the local population was not informed by the authorities or their representatives on the negotiation process. It is the exercise of investigative powers of associations and NGOs that enabled the collection of data and dissemination to the population concerned<sup>3</sup>. On this basis, one can affirm that the indirect means of access to information is important in Cameroon as it can be used to gather information on land issues, coupled with the specific indirect access.

<sup>3</sup> Sur ce point, lire, CED/RELUFA, « Dépossédés à tout prix ? Propos sur le processus d'attribution des terres à SGSOC dans l'arrondissement de Nguti.





## 2. Access means specific to land concessions

Indirect access to information relating to the granting process and management of land concessions is governed by Decree No.76-166 of 27 April 1976 which lays down the conditions for the management of the national domain and provides for a Land Consultative Board.

Appointed by the Senior Divisional Officer and based at district or sub-divisional levels, the Land Consultative Board is comprised of:

- The Divisional Officer of the sub-division where the land is located, President;
- A representative from the Department of State Property, Secretary;
- A representative from the Department of Survey;
- A representative from the Department of Town Planning;
- A representative from a ministry that is related to the project;
- The chief and two notables of the village or the community where the land is located.

The Land Consultative Board shall meet at least once per trimester upon the convocation of its president as stipulated in article 13. The members of the Board must receive a notice of the meeting and an agenda at least ten days prior to the meeting date. This provision does not in any way provide clarity on the issue of access to information. However, read alongside a point in article 14, it has a wider scope. According to this point, the Board shall deliver an opinion on applications for land concessions. With the agenda accompanying the notice of the meeting served at least ten days in advance, the chiefs and notables representing the peoples are by this means, automatically informed of the allocation process of the planned land concession. By this same means, they shall be informed of the environmental risks of the project and the measures taken to address the impacts within the framework of the environmental impact assessment undertaken by a consultancy firm hired by the promoter of the project. According to article 17, section 1 of law No. 96/12 of 5 August 1996 establishing the framework





for environmental management,” The promoter of any project, equipment or facility that poses a risk to the environment because of its size, nature or the impact of its activities on the natural environment, shall undertake an environmental impact assessment to assess the direct and indirect impact of the project on the ecological balance of the area, the environment and quality of life of people and the impact on the environment in general “. Section 2 of the text adds that the impact assessment shall be inserted in the file submitted for public inquiry if provided for”.

The public assessment of the land is undertaken by the Land Consultative Board, which enables it to provide an opinion considering not only land but environmental issues as well.

The Land Consultative Board shall have the following responsibilities:

- It proposes to the divisional authority, a distribution scheme of the agricultural and pastoral lands in the rural area according to the needs of the people. This competence gives the Board members the right to oppose the allocation of land in an area that will not cater for the fundamental needs of the people;
- Delivers an opinion on applications for land concessions;
- Chooses lands that shall be indispensable to the village communities.

The concern about the transparency of a transaction is also addressed in article 13 of the Decree which stipulates that “the notice of the meeting and agenda of the Consultative Board shall be served to the members at least ten days prior to the meeting date. The agenda shall be posted on the door panels of the office of Senior Divisional Officer or the District, or the office of the Sub-Divisional Officer or the District where the land is located, the estimated size as well as the project to be carried out on the land”.

Because of its activities and prerogatives, the Board and by extension its members may have access to information about the company, the parcels of land requested and whether the company complies or not with internal and international requirements. It is a very useful indirect access to information.

It enables the Board to inform associations, NGO and the authorities on the





violations of legal texts that may be encountered during the allocation or management of land concessions.

The importance of this channel was seen in the allocation procedure of lands to SGSOC in Nguti Sub-Division. Apprehensive of the consequences of the availability of information on the granting procedures, the administration remained as discrete as possible. Authorities responsible for the allocation of the land failed to respect the procedure set out in article 13 of the Decree. Consequently, the local communities became aware of the project thanks to the investigations of NGOs and meetings they held in the sub-division<sup>4</sup>.

However, the Land Consultative Board has two essential weaknesses:

- The Board is consultative. Its opinions are not binding on the administration which may, quite legally, take contrary decisions to the Board's proposals;
- It is secondary to the decision and does not have access to information concerning the nature and conditions of the land transaction.

This arrangement which makes access to information difficult is complemented by rules of international origin.

## Section 2. Rules of International Origin

Rules of international origin are provisions that govern access to information, introduced by international bodies and enforced as mandatory rule in Cameroon.

These type of provisions are neither found in the Universal Declaration of Human Rights of 10 December 1948, nor in the International Covenant on Economic, Social and Cultural Rights. This is understandable for these texts do not govern the exercise of rights but their proclamation and protection. Even the African Charter on Human and Peoples' Rights whose article 9 stipulates that "everyone has the right to information" does not go further to state how to have access information.

International rules regulating the modalities of access to information applicable

<sup>4</sup> Cf. CED/RELUFA, « *Dépossédés à tout prix* » (*Dispossessed at all costs*), *op. cit.*





to Cameroon are essentially found in the OECD Guidelines for Multinational Enterprises. It was adopted in 1976 and amended in 2011. The OECD Guidelines for Multinational Enterprises are a number of recommendations governments of OECD member countries and adhering countries (Brazil, Egypt, Latvia, Lithuania, Morocco, Peru, Romania) adopted considering that international cooperation may improve the business climate. Their aim is to ensure that the activities of multinational enterprises respect certain values and principles and contribute to socio-economic progress and sustainable development. They are part of the OECD declaration on International Investment and Multinational Enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. These principles are mandatory in that all ratifying countries have undertaken to implement them. The Principles have an internal mechanism supported by the governments to deal with complaints filed against multinational enterprises.

Given that they should be respected in Cameroon by all multinational enterprises from the ratifying countries, the recommendations in the Principles cover a wide range of domains: employment, professional relations, human rights, transparency, environment and the fight against corruption.

In relation to transparency and access to information, the Guidelines recommend that enterprises render them available through publication, in the following words:

1. Enterprises shall ensure that the correct information on all important aspects of their activities, structure, financial situation, results, beneficial ownership and company governance system is published within the required deadline. This information shall be provided for the entire company and, where applicable, by domain of activity or geographic area. The company policies for publication of information shall be adapted to their nature of activity, size and implementation while considering the cost of confidentiality and other factors.
2. In their policies for publication of information, companies (without the list being necessarily exhaustive) shall make provision for the publication of detailed information concerning their: financial and operational accounts, objectives, transactions with related parties, structures, company governance policies.







3. Companies are encouraged to provide supplementary information which may include: policy statements or codes of conduct including, if it is within the scope of their activities, information concerning their policies vis-a-vis the topics in the guideline...
4. Companies shall respect high standards in the publication of financial accounting including environmental and social information, as the case maybe.

These rules only apply to ratifying countries. This considerably limits the range of their application given that Cameroon has opted for a diversification of its partners and is increasingly receiving companies from non-OECD member states.





# Chapter II

## GOOD PRACTICES IN RELATION TO TRANSPARENCY IN LAND TRANSACTIONS

There is no enforceable instrument governing access to information. However, there are good practices at the international level (Section 1) and at the internal level (Section 2).

### Section 1. Good Practices at the International Level

At the international level, good practices are found in many non-constraining instruments adopted at the level of Africa, Europe and the world. Good practices are especially found in non-constraining documents: Declaration of African Union Heads of States on large-scale land acquisition, Voluntary Guidelines on Responsible Governance of land Tenure, fisheries and forests in the Context of World Food Security adopted and published by FAO on 11 may 2012, The OECD Guidelines for Multinational Enterprises, and The Round table on Sustainable Palm Oil. It is the same thing with regional Guidelines on participation.

The Voluntary Guidelines on Responsible Governance of land Tenure, fisheries and forests in the context of World Food Security is the focus of this orientation. Among the objectives of these Guidelines which aim at “improving land tenure, fisheries and forests governance for the benefit of all by paying special attention to vulnerable and marginalised populations”, the strengthening of the transparency of land tenure systems and the improvement of how they function occupy an important place.

According to these Guidelines, transparency consists in clearly defining and widely publicizing policies, laws and procedures in appropriate language, and



widely publicizing decisions in appropriate languages and in formats accessible to all. An important aspect of transparency therefore, is access to information. A closer examination of the provisions of the Guidelines on this point reveal that access to information is an obligation imposed on the state (I) and on the state and other concessionaires (II).

## I. Obligations of the State

To ensure access to information in land transactions, number 11 and 12 of part 4 of the Guidelines which deal with transfers and other changes to tenure rights impose a series of obligations on the State.

Number 11 aim to preserve competition in land transactions. They are contained in number 11.1 and others in part 4.

According to number 11.1 “Where appropriate, States should recognize and facilitate fair and transparent land deals and leases as a means of transfer of rights of use and ownership of land... and ease their operation”. This entails clearly defining a mechanism for the transfer of the rights on land. According to number 11.2, “States should facilitate the operations of efficient and transparent deals to promote participation under equal conditions and opportunities for mutually beneficial transfers of tenure rights which lessen conflict and instability”.

The implementation of this measure allows access to information on procedures for land available for concessions. 11.3. “States should establish policies, laws and regulatory systems and agencies to ensure transparent and efficient sales operations, to provide non- discriminatory access and to prevent uncompetitive practices. States should simplify administrative procedures in order to avoid discouraging the participation of the poor and most vulnerable”. This measure is implemented when the State publishes spaces available for concessions or has a clear land policy stating guidelines and use of land.

Number 12 aims to protect third parties’ rights. According to number 12.10, “When investments involving large-scale transactions in tenure rights including acquisitions and partnership agreements, are being considered, States should strive to make provisions for different parties to conduct prior independent





assessments on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment. States should ensure that existing legitimate tenure rights and claims, including those of customary and informal tenure, are systematically and impartially identified, as well as the rights and livelihoods of other people also affected by the investment, such as small-scale producers. This process should be conducted through consultation with all affected parties consistent with the principles of consultation and participation in these Guidelines”.

This text compels States to inform the public before any land transaction so that the land owners can exercise their rights before the transaction. This information must be released during the consultations and participation operations with the parties concerned.

Number 11.5 compels States to establish appropriate and reliable registration systems, such as land registers that provide accessible information on tenure rights in order to increase tenure security and to reduce the costs and risks of transactions. Number 12.5 compels States to provide appropriate consultation and participation, transparent rules on the scale, scope and nature of allowable transactions in tenure rights and to define what constitutes large-scale transactions within their national context. These two provisions are meant to provide information concerning land available for concessions.

Apart from these obligations of the state, the Guidelines also propose obligations that are common to the States and concessionaires to have access to information.

## II. Obligations common to States and concessionaires

The first is laid down by number 11.4 of the Voluntary Guidelines which stipulates that: States and other parties should ensure that information on transactions and information on market values are transparent and widely publicized, subject to the necessary level of confidentiality to respect privacy”.

The second is contained in number 12.11 of the Guidelines which compels the





States to provide comprehensive information to ensure that all relevant persons are engaged and informed in the negotiations and should seek that the agreements are documented and understood by all who are affected. The negotiation process should be non-discriminatory and gender sensitive. This provision grants access to information thereby rendering possible prior-planning of negotiations. The text does not impose any modality and leaves it open to protagonists to do so. It is on them therefore that depend the burden of proof of information on rights holders.

The third, protecting the indigenous population, is contained in number 12.7 and stipulates that: “States and other parties should conduct consultations in good faith with indigenous people before initiating any investment project affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with members of indigenous peoples”. The consultation and the means of implementation of information access should be well adapted to the indigenous peoples.


## Section 2. Internal Good Practices

At the internal level, the good practices that can be highlighted are contained in Law No. 94/01 of 20 January 1994 relating to the forest, wild life and fishery regime and Decree No. 95/531/PM of 23 August 1995 laying down modalities for application of the forest regime.

While the forestry law requires that the main stages of the procedure for the attribution of rights for commercial purposes be made public, the Implementing decree clearly states what the public notice should include. Thus, the following should be made public:

- The annual estimate of trees to be felled from all forests domains open for exploitation, that is, the volume of wood that may be exploited in this forests (article 44);
- The list of forest zones open for logging with specific localization, boundaries, exploitable surface areas and social works that will be carried out after discussion with the community (article 51-2);



- 
- Auction sale notices of forest products from forests domains exploited under State control, tender bids for Forest Management Units (FMU) and log sales (article 55-1).

These measures which grant access to useful information concerning the attribution of forest permits could be replicated by the land law to ensure transparency in the attribution of large-scale land concessions.

The analysis of the Cameroonian model on access to information including good international practices leads to the conclusion of this study and recommendations.

# Chapter III

## CONCLUSIONS AND RECOMMENDATIONS

A critical analysis of the Cameroonian legal and institutional framework on access to information in the procedure of attributing land concessions and the examination of good international and internal practices lead us to make general recommendations (section 1) and specific recommendations for Civil Society Organisations for action (section 2).

### Section 1. General recommendations

The general recommendations aim at correcting the legal disposition in force to facilitate access to information concerning large-scale land transactions. This is very helpful because Cameroon is engaged in the process of reforming its land law which provides an opportunity to integrate these suggestions.

These recommendations are arrived at because an examination of Cameroon's internal legal framework reveals that access to information is mostly through indirect means. This method poses serious constraints because to persons and authorities seeking information. Also, the legal framework does not oblige the publication of information during the negotiation phase which is an obstacle to competition. This choice makes it possible to have information about the company but not about the land transactions the company is engaged in for its activities. International rules in the OECD Guidelines provide a more comprehensive access to information framework however; they are limited by two factors. They are applicable only to enterprises of OECD member countries or adhering countries. This limits the impact of the Guidelines in Cameroon. It does not provide for access to information in the process of negotiation of the land concession before it is granted. And yet, access to information at this stage is very important.



Based on the results of the study, we recommend a reform of the existing regulation to allow for direct access to information.

- 1.** The general recommendation is that a general law be adopted organising the process of public access to information for all legal acts made by the State as a public power or contracting authority in the attribution of land concessions.
- 2.** The other recommendations are specific to the domain of land and may be implemented during the land law reform. To arrive at this solution, the law may:
  - a.** Reproduce the model of the forest law and of the framework law on the environment by imposing the following on the administration :
    - Yearly publication of land that could be attributed for agro-industrial purposes;
    - Publication of auction sale notices of land to be conceded;
    - Free access to information on environment by the population.
  - b.** establish general rules on information to the public such as;
    - Imposing the regular publication of concession contracts;
    - Imposing to concessionaires, the publication of their activities and results.

## Section 2. Specific Recommendations for Civil Society

They are recommendations that will provoke a Civil Society Organisations to action. These recommendations are of two categories: using existing opportunities (I) on the one hand and advocating for the improvement of the system (II) on the other hand.







## I. Using existing opportunities

Using existing opportunities is to exploit to the maximum, ways to access information on the procedure for attributing and managing land concessions offered by the Cameroon legal framework. Civil Society Organisations should contribute in using these laws of accessing information laid down by internal rules and the OECD Guidelines.

### 1. The use of internal legal instruments

The internal legal framework does not allow direct access to information but only indirect methods can be used. CSOs can exploit this avenue to better to convey information on land concessions. Based on the results of this study, we recommend that Civil Society Organizations:

- Contribute in the capacity building of members of the Land Consultative Board in the areas that may be affected by the attribution of land concessions, especially the representatives of village communities in the Consultative Board and then undertake follow-up activities on the field ;
- Collaborate with the press so that they use the provisions of the law on social communication;
- Train citizens on how to carry out research on companies seeking land concessions;
- Document and collaborate with parliamentarians so that they ask pertinent questions about land concessions and land reforms to members of the government.
- Regularly look through State and other newspapers which usually have legal announcements so as to learn about land concessions granted by the Head of State or the Minister of Land Tenure and contribute to spreading this information;
- Create a network with traditional rulers and other notables to receive, publish and spread information on attributed and on prospective land concessions in their respective localities;





- Inform citizens of areas where there is/are prospective land concession(s) in order for them to defend their rights before the land is granted.

## 2. The use of OECD instruments

Although they apply only to enterprises adhering to OECD Guidelines, their mechanisms on access to information could be used. In view of these guidelines, the study recommends that Civil Society Organizations:


- Verify if multinational enterprises of OECD member countries respect the Guidelines on the publication of information and if they do not, activate the mechanism to ensure they do so.
- Train syndicates and other Civil Society Organizations on the procedures and means of action outlined by the OECD Guidelines.

## II. Contribution to the improvement of the system

To improve the system in general, the study recommends that Civil Society Organisations advocate to political and administrative authorities:

- For the adoption of a general law on access to information in the management of natural resources;
- For the adoption and immediate publication of a land policy;
- For the finalization, adoption and promulgation of a land law in Cameroon, with specific and clear provisions on the involvement of the population in all the stages of land concessions, public access to information on the attribution of land concessions and the publication of annual reports detailing the activities of concessionaires;
- For the immediate establishment and communication of a land use plan;
- For the inclusion of the State's obligation in the law to publish land bids before attribution;
- For insertion in the law of the obligation of the state to publish





information about land available for concessions before they are granted;

- For legislative reform which provides for information of the public on land available for concessions
- For competitive bidding to be the only means for selecting land concessionaires;
- For the integration of persons other than chiefs and notables in to the Land Consultative Board especially elected citizens;
- For the publication and posting of notices of attribution of land concessions in chief's palaces and villages where there are prospective land concession;
- For the recognition in the land legislation of the right to free, prior and informed consent by the local population and indigenous communities on the attribution of land concessions in the national domain;
- For the effective establishment of a national geodesic network that will ensure a better understanding and management of land;
- For the adoption of an implementation decree of the 2011 law on the guidelines and territorial planning and the implementation of the national and regional road-map territorial planning.



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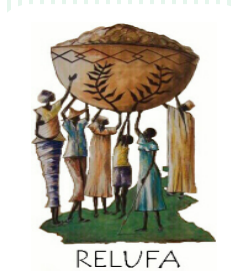


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