

**HARNESSING ENVIRONMENTAL JUSTICE TO PROTECT
AGAINST LAND-GRABBING IN CAMEROON**

**A DISSERTATION
SUBMITTED TO THE FACULTY OF LAW,
UNIVERSITY OF OTTAWA
IN FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY**

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I am submitting this thesis to the Faculty of Law, the University of Ottawa in fulfillment of the requirements for the Degree of Doctor of Philosophy (Ph.D.) in August 2016. The thesis examined the issue of land-grabbing through an environmental justice lens. The thesis first reviewed the concept of environmental justice and the threats that land-grabbing by powerful transnational corporations pose to subsistence communities in Africa. Additionally, this study investigated the adequacy of international guidelines to regulate against land-grabbing, including the Minimum Human Rights Principles, the Voluntary Guidelines on the Responsible Governance of Tenure, and the Principles for Responsible Agricultural Investments. Using Cameroon as my case study, the study also examined the adequacy of Cameroon's land tenure rules and environmental impact assessment (EIA) system to protect vulnerable communities against land-grabbing.

Drawing on examples from Cameroon, Ethiopia, Ivory Coast, Mozambique, Nigeria, Senegal, Tanzania, and Uganda, this thesis argues that subsistence communities who failed to have their customary land rights formalized or failed to adequately participate in environmental decision-making end up dispossessed of their means of surviving and thriving. There were three key findings: first, international guidelines regulating against global land-grabbing lack the binding force to coerce host states to take the necessary action to enforce the guidelines and, hence promote responsible agricultural investments. Next, the land rights of subsistence Cameroonians are not formally recognized under Cameroon's land tenure system, making it difficult for vulnerable populations to contest these allocations or receive compensation in the event of expropriation. Thirdly, EIA follow-up in Cameroon is driven entirely by the investor: the EIA system does not encourage a joint follow-up activity initiated by all groups of stakeholders

involved in EIA. Without an independent environmental oversight body that can provide expert evaluation and monitor the Cameroon government and (agricultural) corporations, there is no guarantee that proposed mitigation measures will be translated into specific actions by Herakles Farms. Based on the evaluation results, the following recommendations are made to the Cameroon Government to promote environmental justice in communities that are vulnerable to land-grabbing: (1) formalize customary land tenure, (2) promote environmental contracting; (3) encourage sustainability assessments.

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DEDICATION

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LIST OF ABBREVIATIONS

CA	Competent Administration
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
ESMP	Environmental and Social Management Plan
FAO	Food and Agriculture Organization
FEDEV	Foundation for Environment and Development
IAP2	International Association for Public Participation
ICE	Inter-ministerial Committee on the Environment
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
IIED	International Institute for Environment and Development
ILC	International Land Coalition
NCCESD	National Consultative Commission on the Environmental and Sustainable Development
NEPA	National Environmental Policy Act
NESDF	National Environmental and Sustainable Development Fund
NGO	Non-governmental organizations
PRAI	Principles for Responsible Agricultural Investments
SIA	Social impact assessment
SRP	Spill Response Plan
TOR	Terms of Reference
WMP	Waste Management Plan

CHAPTER ONE

INTRODUCTION

1 Introduction

Since 2008, foreign direct investments (FDI) in agriculture in Africa and other developing countries have grabbed the headlines in local, regional, and global media reports. There has been a dramatic conveyance of access, use, and control rights over millions of hectares of land, in addition to the resources that are on and beneath land, through a transaction, grant or concession, from subsistence communities (smallholders, pastoralists, and indigenous populations) to foreign investors for profit-oriented purposes.¹ These farmland acquisitions, commonly termed by its critics “land-grabbing,” are being promoted by Western imperialists, global financial institutions and oil-rich but food-insecure nations as a recipe for world food security, energy security, financial security, and protection and enhancement of sinks and reservoirs of greenhouse gases.²

A primary concern behind such investments is that besides having less poverty and hunger reducing effects,³ they can destroy cultural diversity, promote conflicts between subsistence community members and agribusinesses, ruin ecosystems and natural resources that are crucial for societal well-being, and defy globally acknowledged human rights (the rights to food, water, and housing).⁴ In particular, such investments have encouraged the eviction of subsistence

¹ Cotula, L., *The Great African Land Grab? Agricultural Investments and the Global Food System* (New York: Zed Books, 2013) [Lorenzo Cotula]; Cotula, L. et al., *Landgrab or Development Opportunity? Agricultural investment and international land deals in Africa* (London: FAO, IIED and IFAD, 2009) [FAO, IIED and IFAD]; De Schutter, O., “How not to think of land-grabbing: three critiques of large-scale investments in farmland” 2011 38:2 *Journal of Peasant Studies* [De Schutter]; Edelman, M., “Messy hectares: questions about the epistemology of land grabbing data” (2013) 40:3 *The Journal of Peasant Studies* [Edelman].

² De Schutter, *supra* 249.

³ *Ibid.*

⁴ Edelman, *supra*; Lorenzo Cotula, *supra*; FAO, IIED and IFAD, *supra*; Peebles, *supra*, 64; International Land Coalition, *Tirana Declaration: Securing land access for the poor in times of intensified natural resources competition* (Tirana: International Land Coalition, 2011) 3 [International Land Coalition]; Shiva, V., “Land Wars

populations and agricultural laborers from their homes, farms, rivers, forests, burial grounds, cultural sites, and employment opportunities without (adequate) compensation, as well as torture, detentions, killings and procedural injustice.⁵

2 **Significance of the study**

This research is important for many reasons. FDI in agriculture in developing countries is emerging, increasing rapidly following the 2008 world food crisis which vitalized transnational corporations to acquire farmlands abroad. Although not a new phenomenon *per se* is, the “drivers, scale, and pace of the recent wave of [large-scale land-based investments] are distinct from previous eras.”⁶ It is likely that scholars of environmental justice have yet to analyze the problematique of land-grabbing. Global agricultural land deals and their implications remain still little understood,⁷ meaning there is a degree of uncertainty in regard to the types of investments that could be beneficial to subsistence communities. This data deficiency suggests that a limited number of case studies is inflaming the global debate on land-grabbing

This thesis is a general contribution to the examination of who the actors of foreign large-scale land-based investments in Cameroon and other parts of Africa are, the objectives of these investments, and their implications for local communities. This research project will help to close this data and research gap. Additionally, there has been no thorough appraisal of the Cameroon EIA law that was revised in 2013. So, more research is, therefore, needed to help

and the Great Land Grab” in Ross, A. R. (ed.), *Grabbing Back: Essays Against the Global Land Grab* (Oakland: AK Press, 2014) 39 [Shiva].

⁵ *Ibid.*

⁶ Margulis, E. M., *et al.*, “Land Grabbing and Global Governance: Critical Perspectives” (2013) 10:1 Globalizations [Margulis] 2.

⁷ FAO, IIED and IFAD, *supra*, 3.

investigate possible shortcomings, and make recommendations for a successful EIA implementation in the country.

This thesis has produced a body of evidence-based knowledge that could be useful in discerning, through an environmental justice lens, between those large-scale agricultural investments that can promote sustainable development and those that cannot. The outcome and recommendations of this study are designed to inform foreign governments, foreign agricultural investors and global financial institutions, in addition to the governments of Cameroon and other African countries of the implications of large-scale agricultural investments for subsistence communities.

3 Research objectives

The principal objective of this research project is to examine the problem of land-grabbing through an environmental justice lens. The thesis questions how environmental justice can be achieved in subsistence communities in Cameroon, especially those that are vulnerable to land-grabbing. To achieve this goal, several issues will need to be analyzed. Hence, the primary purpose will be accomplished through the aims set out below.

3.1 Assess the concept of environmental justice

An extensive literature review of the concept of environmental justice, an idea that has attracted increased attention within the past four decades, especially the publications of Bullard,⁸ Manaster,⁹ Bryant,¹⁰ Kaswan,¹¹ Kuehn,¹² Agyeman,¹³ Walker,¹⁴ and Schlosberg,¹⁵ among other

⁸ Bullard, R.D., *Dumping in Dixie: Race, Class, and Environmental Quality* (Boulder: Westview Press, 1990) [Bullard].

⁹ Manaster, K. A., *Environmental Protection and Justice: Readings and Commentary on Environmental Law and Practice* (Cincinnati: Anderson Publishing Co., 1995) [Manaster].

¹⁰ Bryant, B., (ed.) *Environmental Justice: Issues, Policies, and Solutions* (Island Press, 1995) [Bryant].

¹¹ Kaswan, A., "Environmental Justice: Bridging the Gap Between Environmental Laws and Justice" (1997) 47 Am U. L. REV. [Kaswan].

¹² Kuehn, R. R., "A Taxonomy of Environmental Justice" (2000) 30 Environmental Law Reporter [Kuehn].

inter-governmental and non-governmental organizations, is of great significance. These researchers have highlighted the different problems underlying environmental justice disputes. To Kuehn, for instance, environmental justice concerns include distributive justice, procedural justice, corrective justice, and social justice. Each one of these interests is vital in the struggle to achieve environmental justice, including both the substantive right to a healthy environment and the procedural right to access justice when this right is violated.

3.2 Understand the phenomenon of land-grabbing in Africa

A literature review of the risks posed by large-scale land-based investments to the property rights and sustenance of local inhabitants, and the actors behind these investments, can give more integrity to the demand for better land governance. By drawing on examples from Cameroon and other African countries, this thesis will provide an understanding of who the land snatchers in Africa are and the objectives of these investments. The information will include the social, cultural, economic, political, and environmental implications of these investments for local farmers, hunters, fishers, among other vulnerable groups in Africa. Achieving this objective involves the collection and examination of a vast array of information on large-scale land-based investments that has been gathered by public and private actors.

3.3 Investigate the adequacy of international guidelines against land-grabbing

It is important to inquire the effectiveness of global guidelines to regulate against the adverse impacts (environmental, cultural, social, political, and economic) of large-scale land-based investments in Africa. This question is crucial because recognizing and safeguarding local land

¹³ Agyeman, J., *Sustainable Communities and the Challenge of Environmental Justice* (New York: New York University Press, 2005) [Agyeman].

¹⁴ Walker, G., *Environmental justice: concepts, evidence and politics* (Abingdon: Routledge, 2012) 10 [Walker].

¹⁵ Schlosberg, D., “Theorising environmental justice: the expanding sphere of a discourse” (2013) 22:1 *Environmental Politics* [Schlosberg].

rights, especially the rights of the most vulnerable members of the public, against land-grabbing requires mandatory and enforceable regulations. Applicable laws should ensure that agricultural commodities do not emanate from lands that the host government forcibly takes from subsistence communities.

3.4 Evaluate the adequacy of Cameroon's land tenure rules to protect local tenure

Cameroon is the case study of this thesis, and it is necessary to understand Cameroon's property rights (or lack thereof) to analyze the extent to which existing property rights are sufficient to safeguard local communities. If land rights are insecure, risks of land-grabbing increase. This aim requires an understanding of the legal framework governing land, forests, and fisheries resources in Cameroon. The Ordinance N°.74-1 of 6th July 1974 to establish rules governing land tenure; Ordinance N°.74-2 of 6th July 1974 to establish rules governing state lands and Ordinance N°.74-3 of 6th July 1974 concerning the procedure governing expropriation for a public purpose and the terms and conditions of compensation will be critically examined. This thesis will also evaluate the numerous supporting laws that implement some provisions of these framework laws.

3.5 Question how the public can participate in environmental decisionmaking

This objective is vital because it involves an examination of strategies through which the affected and interested public can participate in environmental decision-making, and hence, in the management of their natural resources, in order to prevent land-grabbing and promote environmental justice. It also involves an analysis of what some of the challenges that this participation entails are. So, this thesis examines the link between Principle 10 of the *1992 Rio Declaration on the Environment and Development*¹⁶ and environmental justice. It also studies the

¹⁶ *United Nations Conference on Environment and Development, Rio*, UNGAOR, Doc No A/CONF.151/26 (Vol. I) (3-14 June 1992) Principle 10 [UNCED].

environmental impact assessment (EIA) process that aims to assess and reduce adverse environmental impacts of economic developments and facilitate sustainable development.¹⁷

3.6 Examine the adequacy of Cameroon's EIA system to protect local communities

The institutional arrangement of EIA is a fundamental determinant of an effective EIA.¹⁸ A useful institutional framework for EIA depends on legal structures (laws, rules, regulations, and traditions) and administrative arrangements (EIA procedures, administrative structures, the roles and responsibilities of agencies, resources, and capacity).¹⁹ This aim necessitates a critical analysis of the EIA laws and practice, especially with regards to the assessment of the environmental and social impacts of large-scale land-based projects in Cameroon. The thesis will analyze the extent to which Cameroon's EIA institutional framework can protect local communities against land-grabbing by studying the EIA report that was prepared for the Herakles Farms project (in the South West Region of Cameroon) under Cameroonian law.

4 Research boundaries

Considering that land-grabbing is an increasingly important issue, with so many unanswered questions and the actors that are driving the investments, it is vital to, *prima facie*, outline the core of the thesis. To achieve this purpose requires setting boundaries based on themes and geography and ensuring that these limits remain in focus. This thesis emphasizes, uniquely, on subsistence populations (such as small farmers, hunters, fishers, herders, indigenous groups, and other vulnerable populations who, primarily, depend on land and other natural resources for their

¹⁷ Noble, B. F., *Introduction to Environmental Impact Assessment: A Guide to Principles and Practice* (Oxford: Oxford University Press, 2006) 3; Senécal, P. et al, *Principles of Environmental Impact Assessment Best Practice* (Fargo: IAIA and IEA, 1999) 2.

¹⁸ Sadler, B., *International study of the effectiveness of environmental assessment: final report* (Canadian Environmental Assessment Agency, 1996) 78.

¹⁹ Momtaz, S. and S. M. Zobaidul Kabir, *Evaluating Environmental and Social Impact Assessment in Developing Countries* (Elsevier 2013) 15 [Momtaz and Kabir].

survival). Subsistence populations, constituting the heart of this thesis, are the most susceptible to the adverse impacts of large-scale land-based investments. Therefore, the assessment in this thesis will not dwell on those whose customs, lifestyles, and survival are not directly attached to farming, fishing, hunting, gathering of non-forest products because of the existence of other means of survival (even though they may also be affected by the various consequences of land grabbing).

Agribusinesses have also targeted some countries in Eastern Europe and Latin America.²⁰ This research primarily focuses on Cameroon. However, it will also touch on the African countries of Ethiopia, Ivory Coast, Mozambique, Nigeria, Senegal, Tanzania, and Uganda, in order to give prominence to the land-grabbing issue in the continent. Comparatively, African countries are the most food-insecure and are suffering from immense legal deficits and administrative weaknesses. Such deficiencies have undermined environmental democracy (including adequate participation of the public in environmental decision-making and the capacity of the target nations to enforce human rights and environmental safeguards.²¹ Therefore, land-grabbing issues that are happening outside Africa will not be reviewed. Although they are a major factor and a valuable point to look at, the role of local elites and domestic companies in the African land rush will not be considered. However, both of these issues are ripe for future research.

5 Research methods

My research method is case study. Cases aim to represent reality and convey a “situation with all its cross-currents and rough edges, including irrelevancies, sideshows, misconceptions, and little

²⁰ Broughton, A., “Land Grabbing: A New Colonialism” (2013) 61 Green Social Thought, 25-29 [Broughton].

²¹ De Schutter, *supra*, 246.

information or an overwhelming amount of it.”²² All cases have a significant issue(s), enough information on which to base conclusions, and “no stated conclusions.”²³ My case study has an educational value because it has these characteristics: it deals with a significant issue (land grabbing); it has sufficient information on Cameroon for one to construct meanings and base conclusions. Because a case is a “text that refuses to explain itself,”²⁴ the environmental justice theory will guide me in understanding and analyzing vital aspects of the EIA system, the land tenure system, and the Herakles Farms agricultural investment in Cameroon, in addition to what these issues mean in relation to subsistence Cameroonians.

This study is purely qualitative: it will not involve the quantification of data. The study depends on an evaluation of secondary archival data. It aims to provide insights into the setting of the phenomenon of land-grabbing in Cameroon and to gain a broad understanding of what is still to come out in the area of land-grabbing. The study seeks to investigate the issue of land-grabbing through the Western notion of environmental justice by putting it into context so that it can be more fully understood, assessed, and applied in Cameroon in particular, and the continent of Africa as a whole.

5. Structure of the thesis

This thesis comprises five chapters. Chapter Two will start by describing the concept of environmental justice, as elucidated by the US Environmental Protection Agency (EPA) and contextualized by other researchers. It will also explain the phenomenon of land-grabbing, by questioning what the consequences of large-scale farmland investments by foreign corporations

²² Ellet, W., *The case study handbook: How to Read, Discuss, and Write Persuasively About Cases*” (Boston, MA: Harvard Business School, 2007) 13 [Ellet].

²³ Ellet, *supra*, 13.

²⁴ *Ibid*, 19.

are to local livelihoods in Cameroon, Ethiopia, Mozambique, Nigeria, Senegal, Tanzania, and Uganda.

Chapter Three has two objectives. The first target is to examine the international regulation of large-scale agricultural investments by drawing attention to the Minimum Human Rights Principles, the Voluntary Guidelines on the Responsible Governance of Tenure, and the Principles for Responsible Agricultural Investments. The purpose is to find out whether these guidelines can adequately protect subsistence communities, and other vulnerable groups against the harmful effects of FDI in agriculture in Africa. Next, it will study the regulation of land tenure in Cameroon, so as to analyze the extent to which Cameroon's land tenure system can protect the property rights of local communities.

Chapter Four will describe the concept of public participation in environmental decision-making (procedural justice) by focusing on environmental impact assessment as a valuable decision-making tool to enable the affected and concerned public to participate in environmental decisionmaking and help to prevent the establishment of environmentally destructive projects in their communities. It will also evaluate possible benefits and challenges associated with such participation.

Chapter Five will examine the way EIA works in Cameroon. It will critically evaluate the potential of Cameroon's EIA laws, beginning with the Cameroon Constitution, the Environmental Code, and the EIA Law to protect subsistence communities from investments that can lead to land-grabbing. This chapter will also examine the quality of the EIA report for the Herakles Farms project in Cameroon. The objective is to assess the effectiveness of Cameroon's EIA system to prevent adequately the establishment of (agricultural) projects that can promote

land-grabbing and environmental injustice in the country. Recommendations that can help address possible weaknesses and that can serve subsistence community members more fairly will be offered at the end of the chapter.

6 Conclusion

The outcome of this research project indicates that the EIA tool has, in a number of cases (as the analysis will indicate), failed to prevent projects with strongly detrimental environmental and social impacts from going forward such as the Herakles Farms project that has threatened the Congo Basin rainforest and dispossessed local communities of their land and landed resources. Nevertheless, the study also shows that the Cameroonian EIA laws and land tenure system can be adjusted (as the recommendations in chapters three and five indicate) to prevent land-grabbing, promote environmental justice and steer large-scale land-based investments towards a sustainable future.

CHAPTER TWO

LITERATURE REVIEW

1. Introduction

Two research domains make up the broad subject matter that underpins the content of this study: environmental justice and land-grabbing. These are the major areas on which I focus to examine the impact of foreign agricultural investments on the rights of subsistence communities to adequate food, housing, water, and a healthy environment. This chapter will answer three questions: what is environmental justice? What are the chief concerns of environmental justice that researchers allege globally? Can large-scale land investments result in environmental injustice, especially dispossession of local communities in Cameroon, Ethiopia, Mozambique, Nigeria, Senegal, Tanzania, and Uganda of their land and other natural resources?

2. Understanding environmental Justice

The concept of environmental justice has attracted increased global attention during the last two decades. The academic community, predominantly motivated by the work of social scientists such as Bullard, Manaster, Bryant, Kaswan, Kuehn, Agyeman, Walker, Schlosberg, among others,²⁵ became interested in encapsulating the magnitude of the different types of environmental justice concerns alleged at the local, national, and international levels. At the same time, inter-governmental and non-governmental organizations (NGOs) recognized that environmental justice can play a role in the wider agenda for sustainable (agricultural) developments, as shall be seen in the following sections.

²⁵ Agyeman, *supra*; Bryant, *supra*; Bullard, *supra*; Kawsan, *supra*; Kuehn, *supra*; Manaster, *supra*; Schlosberg, *supra*; Walker, *supra*.

2.1 Defining environmental justice

Where you live matters.²⁶ Subsistence communities faced with degraded and degrading environments (land, water, and forests resources) express this distress. Our moral/social responsibility may include addressing this concern even when we are not instantly/directly experiencing the impacts of a degraded environment or landlessness personally. With this in mind, this chapter questions what environmental justice is and the types of environmental justice concerns that researchers are alleging at the international, national, and local levels. I will answer these questions beginning with a literature review of viewpoints from which one can understand environmental justice, before proceeding to concerns of environmental justice issues.

Table 1: Defining environmental justice

Author	Definition
Bunyan Bryant	“Environmental justice refers to those cultural norms and values, rules, regulations, behaviors, policies, and decisions to support sustainable communities, where people can interact with confidence that the environment is safe, nurturing and productive. Environmental justice is served when people can realize their highest potential.” ²⁷
US Environmental Protection Agency (EPA)	“Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies...It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.” ²⁸
Carolyn Stephens, Simon Bullock, and Alistair Scott	“Environmental justice means that everyone should have the right and be able to live in a healthy environment, with access to enough environmental resources for a healthy life; that responsibilities are on this current generation to ensure a healthy environment exists for future generations, and on countries, organizations and individuals in this generation to ensure that development does not create environmental problems or distribute environmental resources in ways which damage other people’s health.” ²⁹

Source: Adapted by the author during the literature review

²⁶ Buzzelli, M., *Environmental Justice in Canada –It Matters Where You Live* (Ottawa: Canadian Policy Research Network, 2008) 1.

²⁷ Bryant, *supra*, 7.

²⁸ United States Environmental Protection Agency, “Environmental Justice: Basic Information.” Online: <http://www3.epa.gov/environmentaljustice/basics/ejbackground.html>.

²⁹ Stephens, C., S. Bullock, A. Scott, *Environmental justice: rights and means to a healthy environment for all* (ESRC Global Environmental Change Programme, 2001) [Stephens *et al*].

As can be seen in Table 1, environmental justice can be defined differently. The majority of these definitions focus on the role of environmental laws and policy in achievement of environmental justice. Bryant's definition, for example, embraces the concept of a healthy and productive environment to live as suitable for human beings. It underscores the difficulty, if not the impossibility, involved in achievement of environmental justice without laws, especially those designed to encourage public authorities to help meet the food, water, and shelter needs of local communities. While this definition seems broad in scope, its focus on subsistence communities, which is the centre of this thesis, adds some limits.

According to the US Environmental Protection Agency (EPA), environmental justice is an outcome which one can describe by fairness in the environmental decision-making process. EPA's definition discloses the chief aim of environmental justice: to prevent unsolicited and disproportionate environmental burdens on local communities. Land-grabbing induced dispossession could constitute an unsolicited burden which should be circumvented. Prevention is necessary because dispossession of local communities of their land, most often, undermine local food security and rural development. It can be seen from this definition that inadequate participation of subsistence communities in the development, implementation and enforcement of laws that affect their land and resources can obstruct the achievement of environmental justice. EPA's definition has been expanded by Stephens *et al.* to embrace the concept of sustainable development. Their definition is comprehensive, both in time and space, because it captures justice to current and future generations, in addition to local and global justice.

A number of African researchers have tendered their conceptions of environmental justice, perhaps because the above definitions were theorized in a western context. Possibly, the definitions in Figure 1 do not adequately express the nature of the disproportionate costs that

resource-dependent Africans bear, due to the establishment of certain economic activities in their neighborhoods. The South African Environmental Justice Networking Forum, an organization that was set up to coordinate environmental groups for environmental justice and sustainable development, is one of those African researchers that have attempted to define environmental justice. Accordingly, environmental justice is “about social transformation directed towards meeting basic human needs and enhancing our quality of life...”³⁰ Obiora defines it in a Nigerian context as “the equitable distribution of environmental amenities, the rectification and retribution of environmental abuse, the restoration of nature, and the fair exchange of resources...”³¹ To Adeola, environmental (in)justice will result following “any undue imposition of environmental burdens on innocent bystanders or communities not parties to the activities generating such burdens.”³²

The author recommends all these definitions—they seem to capture the industrialist propensity for grabbing the land that subsistence communities in Africa and other developing countries rely on for their sustenance. Moreover, these elucidations appear to be a likely effort to describe the affinity of rich and powerful corporations and foreign governments, as well as environmental conservation groups for land, water, timber, and non-timber forest resources in rural areas in developing countries. The environmental justice approach “seeks to challenge the abuse of power which results in poor people having to suffer the effects of environmental damage caused by the greed of others.”³³ Hence, “...environmental justice challenges discrimination and

³⁰ McDonald, D., *What Is Environmental Justice?* (Ohio: Ohio University Press, 2002) 4 [The South African Environmental Justice Networking Forum].

³¹ Obiora, L. A., “Symbolic Episodes in the Quest for Environmental Justice” (1999) 21:2 Human Rights Quarterly 477.

³² Adeola, F. O., “Cross-National Environmental Injustice and Human Rights Issues: A Review of Evidence in the Developing World” (2000) 43:4 American Behavioral Scientist 688.

³³ The South African Environmental Justice Networking Forum, *supra*, 4.

disparities in the allocation of the benefits and burdens of economic development.”³⁴ As such, “seizure of communal lands, displacement of indigenous communities, natural resource exploitation, and toxic waste dumping connote environmental injustice and human rights abuse.”³⁵

2.2 Categorizing environmental justice concerns

The quest to explain the significance of the problems underlying environmental justice disputes has been demonstrated in various phraseologies. Long ago in his *Nichomachean Ethics* Aristotle defined justice to include distributive, political, and rectificatory justice.³⁶ In 1994, Robert Bullard also proposed a three-part classification of environmental justice issues but named its constituents procedural equity, geographic equity, and social equity.³⁷ As for Gordon Walker, the three categories of justice sought in environmental justice movements are distributive justice, procedural justice, and justice as recognition.³⁸ Kaswan compressed her taxonomy into distributive and political justice³⁹ while Agyeman maintained the three-part categorization, with procedural, substantive, and distributive justice being the major concerns.⁴⁰

After questioning these classifications and concerns alleged by researchers, I argue that, but for Robert Kuehn’s four-part categorization of environmental justice issues (distributive, procedural, corrective, and social justice),⁴¹ these researchers have failed to fully apprehend the scope of the different categories of environmental justice concerns raised at the domestic and international

³⁴ Steady, F. C (ed), *Environmental Justice in the New Millennium: Global Perspectives on Race, Ethnicity, and Human Rights* (New York: Palgrave Macmillan, 2009) 1.

³⁵ Adeola, F. O, “Environmental Injustice and Human Rights Abuse: The States, MNCs, and Repression of Minority Groups in the World System” (2001) 8:1 Human Ecology Review 40.

³⁶ Ross, W.D. (Trans.) Aristotle, *Nichomachean Ethics* (Kitchener: Batoche Books, 1999) 72 [Aristotle].

³⁷ Bullard, *supra*.

³⁸ Walker, *supra*.

³⁹ Kaswan, *supra*.

⁴⁰ Agyeman, *supra*.

⁴¹ Kuehn, *supra*, 10681.

levels. Referring to Table 2, we can see that Kuehn’s taxonomic approach to environmental justice concerns moves beyond definitions, and the works of Ross, Bullard, Walker, Kaswan and Agyeman, among other researchers.

Table 2: Types of environmental justice concerns

Concerns	Explanations
Distributive justice	It assesses fairness in the allocation of environmental benefits and burdens resulting from environmentally threatening activities.
Procedural justice	It evaluates fairness in the decision-making process, including laws and policies that distribute resources and resolve disputes.
Corrective justice	It appraises fairness in the way penalty for wrongful conducts are allocated, and how the harms inflicted on vulnerable communities are addressed.
Social justice	It reviews fairness in the distribution of environmental, economic, and social power needed for one to fulfill his or her societal role.

Source: Adapted by the author from Kuehn.

2.2.1 Environmental justice as distributive justice

Aristotle expounded justice⁴² in the distributive sense to involve the “distribution of honor, wealth, and the other divisible assets of the community, which may be allotted” to its members.⁴³

Aristotle assumed that if there are two persons, say an agribusiness and a subsistence farmer, and each is in need of a given farmland, both of them should have an equal share of it. The problem with this definition is that it is restrictive: it fails to address the burdens that may result from the redistribution, especially in cases that the subsistence farmer (before the reallocation) had use rights over the land in question.⁴⁴ Bullard dubbed the distributive aspect of justice “geographic

⁴²Aristotle defined justice broadly as meaning lawfulness, emphasizing that the just is the lawful and fair, while the unjust is the unlawful and unfair, Aristotle, *supra*, 72.

⁴³ Rackham, H, (Trans.), Aristotle: *The Nichomachean Ethics* (Book V) (Cambridge University Press, 1982) 267.

⁴⁴The implication is that, in a situation where local communities have access right over State property or National Land, States should not allocate the right to access such a property uniquely to rich investors, given the unnecessary burdens that this may pose on previous users (local communities) of the land in question.

equity,” to denote the siting and spatial patterning of communities and their nearness to unwanted land uses such as landfills and other noxious operations.⁴⁵

Kuehn sees distributive environmental justice as involving “equitable distribution of the burdens resulting from environmentally dangerous activities or of the environmental benefits of government and private-sector programs.”⁴⁶ He adds the phrase “equal protection for all and the elimination of environmental hazards”⁴⁷ in his definition of distributive justice. As can be seen, Kuehn’s viewpoint of distributive justice is more expansive: he emphasizes fairness in apportioning environmental benefits as well as burdens among different members of society. Likewise, Walker endorses Kuehn’s viewpoint: that one can conceive distributive justice regarding the sharing of goods (land and other natural resources) and risk.⁴⁸ Thus, threats to local communities should be lowered, and where impossible, spread on the defaulters as well.

This perspective is to say that large-scale land investors should be willing/ready, at all times, to shoulder the environmental, socio-economic, and cultural costs associated with large-scale agricultural developments.⁴⁹ Given that some natural resources (land, for example) are limited and non-renewable (in the sense that humans can not easily restore them), the problem of how the impacts (degradation, for example,) of such resources ought to be partitioned often arises. It is thus important that environmental resources be (re)distributed in a rational manner, so that each person receives a fair quota. This argument gives way to the question of what amounts to a “fair quota.” Possible answer: everyone should be treated equally, with the distribution of benefits and burdens of natural resources.

⁴⁵Bullard, R.D., “Overcoming Racism in Environmental Decision Making” (1994) 36:4 Environment 10.

⁴⁶Kuehn, *supra*, 10684.

⁴⁷*Ibid.*

⁴⁸Walker, *supra*, 10.

⁴⁹ Burdens or impacts of an industrial agricultural development, for example, would include deforestation, water and air pollution, landlessness, and loss of employment and access to natural resources.

Human rights groups, environmental and agrarian social movements, and local communities have raised distributive justice questions at different levels. For example, some reports indicate that unequal distribution of oil benefits has kept Nigeria's Niger Delta "perpetually poor and underdeveloped."⁵⁰ The phenomenon of allocating farmland in developing countries to multinational corporations to cultivate food and energy crops for export and establish tree plantations to offset carbon dioxide emissions to the detriment of the local dwellers can also raise distributive justice concerns. A persistent distributive justice concern involves the practice of shipping of pesticides⁵¹ and hazardous wastes banned for use abroad to Africa.⁵²

These examples indicate the presence of distributive injustice that the environmental justice movement stands against, including that globally, low-income, minority, and subsistence communities tend to receive less protection from the law; and are disproportionately exposed to greater amounts of harmful activities. In other words, the sharing of environmental burdens is unjust by earnings, nationality, and race. In effect, environmental justice implores "universal protection from...extraction, production and disposal of toxic...wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food."⁵³ Until policymakers, public agencies, investors, and other law enforcement officers confront these problems, without deviation, cases of distributive injustice are likely to go unsettled.

⁵⁰ Akpabio, E. M., and N. S. Akpan, "Governance and Oil Politics in Nigeria's Niger Delta: The Question of Distributive Equity" (2010) 30:2 J. Hum Ecol, 111.

⁵¹ Farmworker Justice, *Exposed and Ignored: How pesticides are endangering our nation's farmworkers* (Farmworker Justice, 2013) ; Centres for Disease Control and Prevention (CDC), "Pesticide Illness and Injury Surveillance." Online: <<http://www.cdc.gov/niosh/topics/pesticides/>>; Payán-Rentería, R. *et al.*, "Effect of chronic pesticide exposure in farm workers of a Mexico community" (2012) 67:1 Arch Environ Occup Health.

⁵² Onyenekenwa, C. E., "Managing Nigeria's environment: The unresolved issues" (2011) 4:3 Journal of Environmental Science and Technology; Sonak, S., M. Sonak, and A. Giriyan, "Shipping hazardous waste: Implications for economically developing countries" (2008) 8:2 International Environmental Agreements.

⁵³ Principles of Environmental Justice (EJ), Principle 4. Online: <https://www.nrdc.org/sites/default/files/ej-principles.pdf> [Principles of Environmental Justice].

2.2.2 Corrective justice

Corrective justice has “become central to contemporary theories of private law.”⁵⁴ It is believed to have received its model formulation in the way Aristotle treated the concept of justice in his *Nicomachean Ethics*. He referred to this aspect of environmental justice as “rectifactory justice, as “it treats the parties as equals and asks only whether one has done and the other suffered wrong, and whether one has done and the other has suffered damage.”⁵⁵ As reported by Coleman, corrective justice is a principle involving “a duty to repair the losses for which one is responsible.”⁵⁶ Kuehn defines it as involving “fairness in the way punishments for lawbreaking are assigned and damages inflicted on individuals and communities are addressed.”⁵⁷

Corrective justice associates with the concepts of “retributive justice,”⁵⁸ “compensatory justice,”⁵⁹ “restorative justice,”⁶⁰ and “cumulative justice.”⁶¹ These principles aim to reinstate victims to their condition before the occurrence of an unjust activity. Hence, Weinrib argues that corrective justice features the “maintenance and restoration of the notional equality with which the parties enter the transaction.” To be more elaborate, he defines this equality to “consist in persons’ having what lawfully belongs to them.”⁶² In the context of land-grabbing, what

⁵⁴ Weinrib, E. J., “Corrective Justice in a Nutshell” (2002) 52:4 The University of Toronto Law Journal 349 [Weinrib 2002].

⁵⁵ Ross, D. W. (Trans.) Aristotle, *Nicomachean Ethics* (350 B.C.E) Online: <http://classics.mit.edu/Aristotle/nicomachaen.1.i.html>.

⁵⁶ Coleman, L. J., “The Practice of Corrective Justice” (1995) 37 Ariz. L. Rev. 30.

⁵⁷ Kuehn, *supra*, 10693.

⁵⁸ The concept of retributive justice is reflected in the belief that “fairness to citizens who make sacrifices by obeying the law requires that violators be punished rather than reap benefits for disregarding legal standards.” Greenawalt, K., “Punishment” (1983) 74 J. Crim. L. and Criminology, 349.

⁵⁹ Compensatory justice attempts to “bring the victim to the condition he would have been in, or its equivalent, had the injurious even never occurred,” Kuehn, *supra*, 10694.

⁶⁰ Restorative justice refers to the fair restoration of nature, Richard, B., “A New Agenda for Modern Environmental Law” (1991) 6 J. Envtl. L. and Litig.

⁶¹ Commutative justice “is concerned with the way individuals are treated during a social transaction”, Taylor, D. E., “The Rise of the Environmental Justice Paradigm (2000) 43 Am. Behv. Sci. 537.

⁶² Weinrib 2002, *supra*, 349.

legitimately belongs to vulnerable communities may include rights to access land, water, and non-timber forest products that they previously controlled.

Aristotle exemplifies his point on corrective justice with the anecdote that an injustice occurs when one individual violates the right of another. That is, Party A enjoys an advantage/pleasant situation/satisfaction (by causing something unpleasant/painful) that push Party B into an uncomfortable position. The pleasant situation could be monetary or non-monetary (for example benefits of establishing a banana plantation) while the loss could be landlessness, food insecurity, and environmental degradation suffered by host communities hosting. He further argued that the unjust situation can be justified when lawmakers succeed to restore Party B to the position he/she was in before the damage by penalizing Party A. Accordingly, corrective justice eliminates wrongful benefits and their corresponding losses.⁶³

Although restorative justice may be regarded as a regulatory tool to respond to an unjust benefit by a party and to restore equality, punishment may, sometimes, be insufficient to restore victims effectively to the position they were in before the damage. For example, what would be sufficient compensation when economic activities are allowed to take a toll on water, air, and soil quality, in addition to hunting, fishing, and farming communities? It may also be onerous to determine how much is sufficient compensation for depriving subsistence communities of their ethnic identities or deforesting an ecosystem such as a rainforest that plays a vital role in capturing atmospheric carbon dioxide and reducing the adverse effects of global warming.

Regarding allegations of corrective injustice, there are assertions by environmental justice advocates that foreign investors are unjustly displacing and taking over farmland and

⁶³ Weinrib, E. J., “The Gains and Losses of Corrective Justice” (1994) 44 Duke Law Journal 277-297 277.

fishing/hunting grounds that local communities previously used, without sufficient compensation. A series of actions by lawyers acting for a subsistence community in the Niger Delta region of Nigeria have been lodged against the Nigerian government and Royal Dutch Shell PLC. The affected communities had pressed for restitution for loss of livelihood caused when a broken Shell pipeline gushed tens of thousands of barrels of crude oil into the creeks and swampy mangrove forests where residents fish and get water.⁶⁴

The claim was based on the principle that, as indigenous peoples, they have the right to the full enjoyment of their human rights—rights to water and other natural resources—established under applicable international laws.⁶⁵ In January 2015, the Royal Dutch Shell PLC agreed to pay approximately \$80 million—one of the largest environmental payouts in Nigeria—as compensation to a Nigerian subsistence community.⁶⁶ While US \$80 million sounds enormous, it is unclear whether this sum is adequate, given the absence of sufficient information on the number of livelihoods that were affected, including loss of opportunities to produce food, work, and enjoy the customary way of life. Organizations such as IRIN⁶⁷ and BBC⁶⁸ have given conflicting information with regards to the number of people affected by the oil spills.

⁶⁴ The WallStreet Journal, “Shell to Pay \$80 Million Compensation for Oil Spills in Nigeria.”

Online: <http://www.wsj.com/articles/shell-to-pay-80-million-compensation-for-2008-oil-spills-in-nigeria-1420617029>.

⁶⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc. A/RES/61/295 (13 September 2007,

⁶⁶ The affected communities had pressed for restitution for loss of livelihood caused when a broken Shell pipeline gushed tens of thousands of barrels of oil into the creeks and swampy mangrove forests where residents fish and get water, The Wall Street Journal, Shell to Pay \$80 Million Compensation for Oil Spills in Nigeria (Margaret Coker and Benoit Faucon) Online: <http://www.wsj.com/articles/shell-to-pay-80-million-compensation-for-2008-oil-spills-in-nigeria-1420617029>.

⁶⁷ According to a 2012 report by IRIN, the environmental pollution caused by the two spills from Shell’s pipelines affected 69,000 people, in 2008, IRIN, “Slippery justice for Niger Delta’s polluted communities.” Online: <http://www.irinnews.org/report/94340/nigeria-slippery-justice-niger-deltas-polluted-communities>.

⁶⁸ According to BBC newsof 7 January 2015, lawyers for 15,600 Nigerian fishermen say their clients will receive \$3,300 each for losses caused by the spills, BBC News, “Shell agrees \$84m deal over Niger Delta oil spill.” Online: <http://www.bbc.com/news/world-30699787>.

It is possible also to make allegations of corrective injustice because the compensation for displacement and dispossession is clearly inadequate. A case in point is a public interest litigation (PIL) lodged by a Zimbabwean NGO to interdict a mining company for evicting and relocating some 1,000 subsistence farmers in Zimbabwe for purposes of facilitating mining operations. The only compensation received for the eviction was “disturbance allowances” of “US \$1000 and groceries for one month.”⁶⁹ Although this report did not state whether this sum was per family or not, the study shows that there was no compensation for jobs displaced, lost pasture land and opportunities to farm, fish, and hunt.

*FEDEV v. Bamenda Councils*⁷⁰ is another PIL commenced by the Foundation for Environment and Development (FEDEV) (a Cameroonian NGO) against municipal government authorities in Bamenda (Cameroon) for creating and promoting open dumps in the city of Bamenda. The court ordered the respondents to pay the cost of CFA 100.000 FRS (about US\$ 200) to FEDEV for polluting the neighboring communities and their environment. There is no doubt that this compensation is insignificant, given “the severe health risks that are posed by dumpsites to tens of millions of people.”⁷¹ It may, however, be said that the importance of this remuneration lies not in the amount but in the fact that Cameroonian courts are ready to foster PIL, and, thus, available to promote environmental justice in the country.

The Rio Declaration considers the strategy that “the polluter should, in principle, bear the cost of pollution, with due regard to the public interest,” and calls on national authorities to promote the

⁶⁹ Dhliwayo, M., *Public interest litigation as an empowerment tool: The case of the Chiadzwa Community Development Trust and diamond mining in Zimbabwe* (IIED, 2013) 9.

⁷⁰ *Foundation for Environment and Development (FEDEV) & 1 OR. Vs. Bamenda City Council, Bamenda II Council and Bamenda III Council* (HCB/19/08).

⁷¹ International Solid Waste Association (ISWA), *Wasted Health: The Tragic case of Dumpsites* (ISWA, 2015).6.

internalization of environmental costs.⁷² Likewise, the Principles of Environmental Justice, which were adopted to act as a “guide for organizing, networking, and relating to government and non-governmental organizations,” upholds this principle. It proclaims that “victims of environmental injustice” should be provided with “full compensation and reparations for damages as well as quality health care.”⁷³ These documents did not state how much is reasonable punishment/compensation for polluting the environment and promoting environmental injustice. Nevertheless, they indicate the obligation on State and non-state actors in guaranteeing compliance with international environmental and human laws and strengthening environmental justice.

2.2.3 Environmental justice as social justice

The phrase “social justice” can also implicate environmental justice. Labeled “social equity” by Bullard, social justice assesses the manner in which social factors (race, ethnicity, class, culture, lifestyles, and political power) influence environmental decision-making.⁷⁴ It is considered by some justice advocates as a “nebulous goal of the environmental justice movement,”⁷⁵ perhaps because the definition of social justice remains unclear, as it significantly intertwines with other concerns of environmental justice. In the context of a 2008 study *A Twenty-first Century Approach to Teaching Social Justice*, social justice was defined as “issues pertaining to the marginalization of communities based on gender, race, social class, sexual orientation, religion, and disability.”⁷⁶

⁷² *Report of the United Nations Conference on Environment and Development, Rio, UNGAOR, Doc No A/CONF.151/26 (Vol. I) (3-14 June 1992) Principle 16 [UNCED].*

⁷³ Gaia, “Principles of Environmental Justice. Online: <http://www.no-burn.org/article.php?id=284>.

⁷⁴ Bullard, *supra*, 116.

⁷⁵ Kuehn, *supra*, 10698.

⁷⁶ Johnson III, R. G., *A Twenty-first Century Approach to Teaching Social Justice: Educating for Both Advocacy and Action (Counterpoints)* (New York: Peter Lang Publishing, 2008) 4.

This definition establishes that social justice is a multifaceted topic: it involves many different disciplines and goes beyond protecting the environmental resources of local communities. It may be for this reason that researchers like Alston describe environmental justice as a “marriage for the movement of social justice with environmentalism.”⁷⁷ Social justice integrates environmental concerns into a broader agenda that emphasizes social, racial, and economic justice.⁷⁸ Because these other factors implicate social justice, social justice “moves us to use our best efforts to bring about a more just ordering of society—one in which people’s needs are more fully met.”⁷⁹

Social justice demands that the members of every group and class have sufficient resources and power to enable them to achieve their utmost potential and that the privileged classes, whoever they are, should “...be accountable to the wider society for the way they use their advantages.”⁸⁰

So, agribusiness investors should be answerable to the community for the safety of their actions. Likewise, private investors should be attentive to public concerns such as denied access to land, loss of employment, the complete obliteration of local lifestyle, water pollution, and deforestation associated with their investments. By being accountable, the environmental and social costs of land and other natural resources uses, including the costs to remediate the environment and restore vulnerable communities, may be identified and addressed.⁸¹

⁷⁷ Alston, D. A., “Introduction” in Alston, D. A. *et al.*, *We Speak for Ourselves: Social Justice, Race and Environment* (Panos Institute, 1990) 3 [Alston].

⁷⁸ *Ibid*, 3.

⁷⁹ Rhodes, R. E., “Social Justice and Liberation” (1996) 71 *Notre Dame Law Rev.* 620 [Rhodes].

⁸⁰ *Ibid*, 626.

⁸¹ Accountability can help: “protect the public from harm, physical or otherwise; assure that people are getting what they need; protect the public’s right to know; see that citizens are compensated for injury or loss caused by the intentional wrongdoing of some entity; encourage, and prevent retaliation for, whistleblowing; To keep government, businesses, and institutions from acting unethically; and to procure simple justice,” Community Tool Box, Conducting Advocacy Research, Chapter 31. Online: <<http://ctb.ku.edu/en/table-of-contents/advocacy/advocacy-research/request-accountability/main>>.

There is evidence that agribusinesses may have positive impacts on host countries.⁸² But, in Cameroon and other African countries where land rights are insecure,⁸³ the disadvantages may outweigh the limited benefits to host communities. One can raise an allegation of social injustice in the context of social welfare of communities hosting large-scale land investments. Research undertaken by the Food and Agricultural Organization (FAO) on large-scale land acquisitions indicates how little the local communities in developing countries benefit from such developments. FAO underscored the fact that such investments can have adverse impacts, including reduced access to natural resources and “social fragmentation.”⁸⁴ In some projects that FAO studied, “even low-skilled worker jobs were mainly taken up by non-locals.”⁸⁵

Multinational oil companies such as Shell, Exxon Mobil, Chevron, Total, and Eni have been facing accusations of degrading the air, water, soil, and promoting the underdevelopment of local communities in Nigeria, including Ogoni land. Focus on Africa, a regional NGO, reported that oil exploration and exploitation “has undermined the means of survival of the inhabitants of the Niger Delta regions.”⁸⁶ Despite a commitment to “social responsibility,”⁸⁷ Ebegbulem, Ekpe, and Adejumo’s finding indicate that the oil money is not invested in infrastructure from which the

⁸² For example, export revenues, production and productivity, and employment generation. Karlsson, J., *Challenges and opportunities of foreign investment in developing country agriculture for sustainable development* (Rome: FAO, 2014) 10.

⁸³ International Institute for Environment and Development (IIED), *Innovation in Securing Land Rights in Africa: Lessons from experience* Briefing Paper 2006 Introduction Securing, 2006, 1. Online: <http://pubs.iied.org/pdfs/12531IIED.pdf>.

⁸⁴ Social fragmentation may, consequently, result in “the displacement of smallholder farmers, the loss of grazing land for pastoralists, the loss of incomes and livelihoods for rural people, the depletion of productive resources, and in general.” Liu, P., *Impacts of Foreign Agricultural Investment on Developing Countries: Evidence from Case Studies* (Rome: FAO, 2014) 12 [FAO].

⁸⁵ *Ibid*, 13.

⁸⁶ Research by Focus in Africa shows that “many of these development efforts have been top-down and have failed to improve the situation in the region. In fact, the economy and environment along the Niger Delta continue to worsen, and issues of conflict and insecurity continue to escalate,” Africa in Focus, “Community-Driven Development in Nigeria’s Niger Delta Region.” Online: <<http://www.brookings.edu/blogs/africa-in-focus/posts/2013/11/14-niger-delta-development-kimenyi>>.

⁸⁷ Shell has made efforts to work with local organizations and communities hosting its investment, as a way to ensure that the benefits of Shell’s resources feed through to local communities and businesses, Shell, “Shell in the Community.” Online: <<http://www.shell.com.ng/environment-society/shell-in-the-society.html>>.

region can benefit.⁸⁸ The oil companies may be operating in Nigeria mainly to produce crude oil in an economically, but not environmentally or socially, sustainable manner.

The Principles of Environmental Justice are a set of 17 principles, an outcome of the Environmental Leadership Summit held on October 24-27, 1991, in Washington DC, to serve as a significant chronicle of local people and environmental justice networks.⁸⁹ In particular, these principles aim to help secure the cultural, economic, and political freedom of indigenous peoples that are constantly in violation for a sustained period.⁹⁰ Furthermore, they aim to “promote economic alternatives which would contribute to the development of environmentally safe livelihoods.”⁹¹ The Principles tell us that environmental policies should be based on “mutual respect and justice for all peoples, free from any form of discrimination, clean up and rebuild cities and rural areas in balance with nature, honor the cultural integrity of all our communities, and provide fair access for all to the full range of resources.”⁹²

I affirm the Principles of Environmental Justice for two reasons: they are not lopsided;⁹³ and they are rooted in notions of social justice, an important facet of environmental justice. These principles are grounded in the realization that human beings and the environment are bound together and depend on each other. Because of the interdependency of environmental and social concerns, laws and policies on the environment and community must not be stuck in separate silos. Also, greater political involvement by local populations on some social and political issues could help promote social justice.

⁸⁸ Ebegbulem, J. C., D. Ekpe, and T. Oyime Adejumo “Oil Exploration and Poverty in the Niger Delta Region of Nigeria: A Critical Analysis” (2013) 4:3 International Journal of Business and Social Science 281.

⁸⁹ Principles of Environmental Justice, *supra*.

⁹⁰ *Ibid.*

⁹¹ *Ibid*, Principles 2 and 12.

⁹² *Ibid.*

⁹³ *Ibid.*

2.2.4 Environmental justice as procedural justice

The fourth aspect of environmental justice is “procedural justice.” It is also known as “procedural equity,”⁹⁴ “political justice,”⁹⁵ and “genuine participation in planning.”⁹⁶ Procedural justice represents a status in which members of society have an “equal share in ruling and being ruled,”⁹⁷ and involves judgment as “a function of the manner in which a decision is made.”⁹⁸ Thus, a procedural justice complaint questions whether “those to be affected by the decision agree in advance on the process for making the decision.”⁹⁹ This argument calls for an inquiry into the fairness of the laws and regulation on the environment (air, water, land, forest, and other environmental resources), public participation in decision-making, and whether concerns/values of the vulnerable community members can be acknowledge. Hence, Reed argues that environmental justice is concerned with “recognition of those affected by environmental policy, fair processes to involve them, and equitable outcomes of environmental decisions over time, over space, and across different social groups.”¹⁰⁰

Procedural injustice allegations would include the failure to recognize and adequately provide the affected and interested public with the opportunity to participate in decision-making in their territories. Hence, difficulties in accessing administrative and judicial proceedings would constitute a procedural injustice allegation. A typical procedural justice complaint is that local community members have had little or no influence on the governance of their lands and natural

⁹⁴ Bullard defines procedural equity as comprising inclusiveness, parity, representation, and communication Bullard, R. D., *Dumping in Dixie: Race, class, and environmental quality* (Boulder, CO: Westview, 1990) 116.

⁹⁵ Political justice to Kaswan reflects her viewpoint that, to achieve environmental justice will require changing the political dynamic so that groups are treated fairly in decision-making processes, Kaswan, *supra*, 224.

⁹⁶ Agyeman, *supra*, 26.

⁹⁷ J. Heyman, S., “Aristotle on Political Justice” (1992) 77 Iowa Law Rev. 863.

⁹⁸ Kuehn, *supra*, 10688.

⁹⁹ *Ibid.*

¹⁰⁰ Reed, M. G., “Environmental Justice and Community-Based Ecosystem Management” in Agyeman, R. J., P. Cole, R. Haluza-Delay, and P. O’Riley, (eds.) *Speaking for Ourselves: Environmental Justice in Canada* (Vancouver: UBC Press, 2009) 164.

resources.¹⁰¹ Communities have little satisfaction with the criteria employed in existing decision-making models.¹⁰² But even when public participation in the environmental decision was adequate, the resultant adverse impact (say the loss of hunting and fishing grounds) may lead many to believe that procedural injustice still prevails. Hence, Kuehn argues that procedural justice focuses on just processes rather than just results.¹⁰³

Environmental justice advocates have questioned the role of laws and policies such as the G8 Cooperation Framework to support the New Alliance for Food Security and Nutrition in Africa (G8 New Alliance) in the recent surge in farmland grab in Africa.¹⁰⁴ In particular, authors such as Obenland,¹⁰⁵ Matondi, Havnevik, and Beyene,¹⁰⁶ Paul, and Steinbrecher,¹⁰⁷ in addition to NGOs such as Oxfam International,¹⁰⁸ Global Research,¹⁰⁹ La Via Campesina and GRAIN,¹¹⁰ have complained that the G8 New Alliance is prejudicial to public health. Accordingly, the policies of this alliance are encouraging violations of existing rights to land, forest, and fishery resources of local farmers and pastoralists who are responsible for most agricultural production in Africa.

¹⁰¹ De Schutter, *supra*; Fairhead, J. *et al.*, “Green Grabbing: a New Appropriation of Nature?” (2012) 39:2 The Journal of Peasant Studies 239 [Fairhead *et al.*]; GRAIN, *supra*; and Lorenzo Cotula, *supra*.

¹⁰² Kuehn, *supra*, 10693.

¹⁰³ *Ibid*, 10688.

¹⁰⁴ The White House, New Alliance for Food Security and Nutrition (2012). Online: <http://www.whitehouse.gov/blog/2012/05/18/new-alliance-food-security-and-nutrition>.

¹⁰⁵ Obenland, W., *Corporate influence through the G8 New Alliance for Food Security and Nutrition in Africa* (Aachen: Bischöfliches Hilfswerk MISEREOR, GPF, BROT, 2014) 4 [Wolfgang].

¹⁰⁶ Matondi, P. B., K. Havnevik, and A. Beyene, “Introduction: biofuels, food security and land grabbing in Africa” in Matondi, P. B., K. Havnevik, and A. Beyene (eds), *Biofuels, Land Grabbing and Food Security in Africa* (New York: Zed Books, 2011) 185.

¹⁰⁷ Paul, H., and R. Steinbrecher, *African Agricultural Growth Corridors and the New Alliance for Food Security and Nutrition: Who Benefits, who loses?* ECONEXUS Report, 2013, 8.

¹⁰⁸ Oxfam International, *The New Alliance: A new direction needed – Reforming the G8’s public-private partnership on agriculture and food security* (Oxford 2013). Online: www.oxfam.org/sites/www.oxfam.org/files/bn-new-alliance-new-direction-agriculture-250913-en.pdf6.

¹⁰⁹ Global Research, *Africa, Land and Seed Laws Under Attack: Battle for Control of Land, Water, Seeds, Minerals, Forests, Oil*. Online: <http://www.globalresearch.ca/africa-land-and-seed-laws-under-attack-battle-for-control-of-land-water-seeds-minerals-forests-oil/5426203>.

¹¹⁰ La Via Campesina and GRAIN, *Seed Laws that Criminalise Farmers: Resistance and fight back* (Barcelona: GRAIN, 2015) [Via Campesina and GRAIN].

The 2013–2014 Progress Report for the New Alliance (the second annual progress report) outlines the progress that African Governments are making on policy commitments across some areas that are crucial for food security and nutrition in Africa.¹¹¹ The New Alliance acknowledges that private investment in African partner countries has created nearly 37,000 jobs and reached 3 million smallholders, in addition to the argument that development partners have disbursed \$2.1 billion.¹¹² However, McKeon noted in *The New Alliance for Food Security and Nutrition: a coup for corporate capital* that in practice the changes that the G8 New Alliance has introduced “benefit businesses and (further) penalize the peasants who are the basis of the food security, the economies, the environment and the social texture of their countries – are a good part of what’s wrong with the New Alliance.”¹¹³ A letter to the President of the African Union on behalf of African civil society networks and farmers' organizations reads:

“...I address myself to you, the President of the African Union – and through you to all African Heads of State – to ask what leads you to believe that Africa's food security and food sovereignty could be achieved by international cooperation and outside the policy frameworks formulated in inclusive fashion with the peasants and producers of the continent... The G8 and G20 can in no way be considered appropriate places for such decisions...”¹¹⁴

From the above review, environmental justice is a merger between concerns of vulnerable (subsistence, low-income, minority, and indigenous) populations on the one hand and those of land and other natural resources on the contrary. It associates with the concepts of procedural justice, distributive justice, corrective justice, and social justice. It is about recognizing vulnerable communities, incorporating their social and environmental concerns into an environmental decision-making framework (both legal and administrative), and ensuring their

¹¹¹ For example, in areas relating to agricultural inputs, land and resources rights, institutions, trade and markets, and resilience and risk management, New Alliance Progress Report, *supra*, 16.

¹¹² New Alliance Progress Report, *supra*, 4.

¹¹³ McKeon, N., *The New Alliance for Food Security and Nutrition: a coup for corporate capital?* (Amsterdam: Transnational Institute and Terra Nuova, 2014) 12.

¹¹⁴ Pambazuka News, Groups reject foreign investment in African farming. Online: <http://www.pambazuka.net/en/category.php/features/82382>

participation in the development, implementation, and enforcement of such a framework. By linking ecological and social justice issues, the chief aim of environmental justice: to prevent unsolicited environmental encumbrances on different social groups, including the impacts of land-grabbing will be disclosed.

3 Land-grabbing

*“The plight for food sovereignty means the fight for land, water and productive agrarian resources to produce healthy and nutritious food, which is a task conducted by peasants. However, as proofed by history and in the wake of contemporary challenges (e.g. growing conflicts over land, water, and also food prices and climate crises), peasants have been disempowered and discriminated. Hunger, like poverty, is still predominantly a rural problem where those who produce food suffer disproportionately, particularly in developing countries. The key to end this is to give power to peasants by recognizing and further protecting peasants’ basic rights. Thus, food sovereignty is within reach.”—Mohammed Ikhwan, a member of the Indonesian Peasant Union (SPI).*¹¹⁵

This quote comes from Ikhwan’s article which outlines essential developments that are happening at domestic, regional, and global levels on the right to food front. It calls on human rights activists from social movements, non-governmental organizations (NGOs), and academia to join forces and fight together for the realization of three of the most violated human rights in developing countries—the rights to sufficient food, water, and housing. As the United Nations proclaims, “the right to food is not a right to be fed, but primarily the right to feed oneself in dignity.”¹¹⁶ Land-grabbing negatively affects all of these rights: land-grabbing discriminates against rural people and vulnerable groups, especially women (the main actors in terms of agriculture), and by so doing, prevent them from enjoying prosperous and fulfilling lives.

FAO, the International Fund for Agricultural Development (IFAD) and the International Institute for Environment and Development (IIED) make the further point that “international land deals

¹¹⁵ Ikhwan, M., “In the Path to Food Sovereignty: Rights for Peasants are Taking Power” (2013) 8:1 Right to Food Journal 5.

¹¹⁶ United Nations, *The Right to Adequate Food* (Geneva: United Nations High Commissioner for Human Rights, 2010) 3.

and their impacts remain still little understood.”¹¹⁷ Unfortunately, “there is still much uncertainty about what types of investments can benefit local people.”¹¹⁸ Without precise data about the impact of foreign land-based investments labeled “land-grabbing,” efforts to protect subsistence rights at the international level maybe rejected on frivolous grounds. This part of the thesis attempts to advance the discussion of land-grabbing in the African continent by foreign investors. There are many different impacts of foreign land-based investments.¹¹⁹ This section centers, uniquely, on displacement and dispossession as they relate most closely to subsistence communities—the focus of this thesis. It argues that whether by coercion or treachery, smallholders, pastoralists, and indigenous populations who cannot access their land may, in the end, be dispossessed of a safe, productive, and nurturing environment. The dispossession may, in turn, deprive them of the means of guaranteeing food, shelter, among other essential necessities of life to realize their highest potential. This argument draws on examples from Africa, to highlight the need to consider adequately and integrate the displacement and dispossession questions into our frameworks when investigating the issue of land-grabbing.

3.1 Understanding land-grabbing

*“The Land is life. It is the basis of livelihoods for peasants and indigenous people across the Third World, and is also becoming the most vital asset in the global economy. As the resource demands of globalization increase, land has emerged as a key site of conflict.”*¹²⁰

Some rural Africans, a few decades ago, could boast of having land as the unique asset to guarantee a lifetime of security, both environmentally and socio-economically, subject to

¹¹⁷ FAO, IIED and IFAD, *supra*, 3.

¹¹⁸ Lorenzo Cotula, *supra*, 13.

¹¹⁹ According to Shepherd Daniel, implications and potential consequences of land-grabbing would include: displacement of small farmers; conflict between rural land dwellers and commercial interests; and local food insecurity, Daniel, S., “Land Grabbing and Potential Implications for World Food Security” in Behnassi, M., S. A. Shahid, and J. D'Silva (eds), *Sustainable Agricultural Development: Recent Approaches in Resources Management and Environmentally-Balanced Production Enhancement* (New York: Springer, 2011) 31-33; De Schutter, *supra*, 249.

¹²⁰ Shiva, *supra*, 39.

customary land tenure regimes.¹²¹ To some, this presumed life of security seems to have been shattered by foreign agricultural investments. Oxfam International, an international confederation of 17 organizations working together to end the injustices that cause poverty, stated that since 2001 “227 million hectares of land – an area the size of Western Europe – has been sold or leased,” mostly to international investors.¹²² Michael Kugelman, who mentions this Oxfam study, reports it as “nearly 230 million hectares.”¹²³ Thousands of people, as a result of these transfers, are currently being compelled to flee their means of survival, leading to mounting numbers of displaced and dispossessed families living without the security of food, water, housing, and employment.

Even though large-scale land-based investments by foreigners are not solely an African phenomenon,¹²⁴ six of the top 10 countries targeted by investors for agribusiness are in Africa.¹²⁵ By the end of 2013, total large-scale land deals documented in the African continent stood at approximately 40 million hectares, about the land area of Switzerland.¹²⁶ Another report by the World Bank demonstrates that 70% of global land deals have happened in Africa,¹²⁷ a continent where 60-70% of the population depend on land for their livelihoods, including access to food.¹²⁸

¹²¹ In developing countries, generally, most women lack secure property rights and access to adequate resources than men, Munro-Faure, P., *et al.*, Land tenure and rural development (FAO, 2002) para. 3.8.

¹²² Zagema, B., *Land and power: The Growing Scandal Surrounding the New Wave of Investments in Land* (Oxfam International, 2011) 2.

¹²³ Kugelman, M., “Introduction” in Kugelman, M., and S. L. Levenstein (eds) *Global farms race: land grabs, agricultural investment, and the scramble for food security* (Washington D.C.: Island Press, 2012) 1.

¹²⁴ Broughton, A., “Land grabbing: a new Colonialism” (2013) 61 *Synthesis/Regeneration* 27 [Broughton].

¹²⁵ These include: South Sudan, Democratic Republic of Congo, Mozambique, Liberia, Sudan and Sierra Leone, Oram, J., *The Great Land Heist How the world is paving the way for corporate land grabs* (ActionAid International, 2014) 10 [ActionAid International].

¹²⁶ *Ibid.*

¹²⁷ Deininger, K., *et al.*, *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?* (Washington D.C.: World Bank, 2011) XIV.

¹²⁸ Friends of the Earth Europe and Friends of the Earth Africa, *Africa Up for Grabs: The Scale and Impact of Land Grabbing for Agrofuels* (Brussels: Friends of the Earth Europe, 2010) 8; Food and Agriculture Organization (FAO), *The State of Food Insecurity in the World 2006: Eradicating World Hunger – Taking Stock Ten Years After the World Food Summit* (Rome: FAO, 2006) 28; Hall, R., “Land grabbing in Southern Africa: the many faces of the

To be more specific, Graham Peebles highlights that three-quarters of all global land acquisitions have occurred in Sub-Saharan Africa.¹²⁹ Given the significance of land to Africa's subsistence communities in food production and rural development, these allocations are recipe for injustice: they are likely to reduce local access to farmland and forest resources and lead to food insecurity and degradation of the local culture and the environment. So what are the underlying drivers of large-scale land-based investments in Africa?

3.1.1 The root drivers of land-grabbing in Africa

The World Bank reported in 2011 that, in addition to the financial crisis, the 2007–08 commodity price boom resulted in a “rediscovery” of the agricultural sector by many different investors.¹³⁰ A similar report by Mann and Smaller indicates that the recent rush for farmland in developing countries is driven by “food, water, and energy security than a notion of comparative advantage in the large scale production of indigenous crops for global markets.”¹³¹ It can be seen from these reports suggest that the desire of transnational corporations, foreign governments, and investment funds to ensure food, financial, and energy security, as well as water and land rights for foreigners is driving large-scale land-based investments. To place a hedge against food, energy, and financial crisis, agricultural investors and foreign governments have turned to farmland acquisition in Africa.

investor rush” (2011) 38:128 Review of African Political Economy; Hoffmann, U., *Assuring food security in developing countries under the challenges of climate change: key trade and development issues of a fundamental transformation of agriculture* (Geneva: United Nations, 2011) 1.

¹²⁹ Peebles, G., “Destructive Development and Land Sales in Ethiopia” in Ross, A. R. (ed), *Grabbing Back: Essays Against the Global Land Grab* (Oakland: AK Press, 2014) 64 [Graham Peebles].

¹³⁰ It went further that “one of the more effects of the food and financial crisis was that it prompted some food import-dependent countries to reconsider their policies to reduce vulnerability from what is considered to be an “undue dependence” on imports.”, Deininger, K. W., and D. Byerlee, *Rising global interest in farmland : can it yield sustainable and equitable benefits?* (Washington D.C.: World Bank, 2011) 1.

¹³¹ Accordingly, these allocations are chiefly about “shifting land and water uses from local farming to essentially long-distance farming to meet home state food and energy needs. It is, in practice, purchasing food production facilities.” Mann, H. and C. Smaller, “Foreign Land Purchases for Agriculture: What Impact on Sustainable Development?,” 8 Sustainable Dev. Innovation Briefs 3 (2010) 1–2.

The International Food Policy Research Institute (IFPRI), an agricultural research center that receives its principal funding from governments and private foundations, noted that the price of almost every agricultural commodity brusquely increased in 2007 and 2008, generating “a global food price bubble.”¹³² In particular, world prices of wheat and maize, in 2008 “were three times higher than at the beginning of 2003, and the price of rice was five times higher.”¹³³ Regarding dairy products, the prices of butter and milk tripled between 2003 and 2008, and the prices of beef and poultry doubled.¹³⁴ While African countries “have an interest in increasing food production to improve their local food security,”¹³⁵ oil rich Gulf States, for example, primarily seek to produce food to import the production, and thus to gratify the increasing demand of their citizens.

As Shepherd Daniel argues, countries with crop-producing potential have currently become “a valuable investment opportunity for nations who suffered from soaring prices of staple foods from 2006 to mid-2008.”¹³⁶ It is important to highlight that the “food security of the Gulf Cooperation Council (GCC) states rests almost entirely upon international trade, with imports typically accounting for 80–90% of food consumption.”¹³⁷ The expectation is that the population in the GCC will double by 2030,¹³⁸ suggesting a likely increase in the GCC’s reliance on food import. To avoid this from happening, the Saudi monarchs and their counterparts in the Emirates

¹³² Von Braun, J., *Food and Financial crisis: Implications for Agriculture and the Poor* (Food Policy Report No. 20) (Washington D.C.: IFPRI, 2008) 3 [Von Braun].

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ De Schutter, *supra*, 252.

¹³⁶ Shepherd Daniel, *supra*, 26.

¹³⁷ This heavy reliance by GCC on food imports has originated out of the alleged risk of trade sanctions that has continued to shape the politics of food in the GCC since the “threat of a food embargo against the Organization of the Petroleum Exporting Countries following the 1973 oil crisis.” Bailey, R. and R. Willoughby, “Edible Oil: Food Security in the Gulf” *Energy, Environment and Resources* November 2013, 2. Online: <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Energy,%20Environment%20and%20Development/bp1113edibleoil.pdf>.

¹³⁸ It is expected to double from 30 million to 60 million in the period 2000 to 2030, Lorenzon Cotula, *supra*, 57.

“opted for a faster solution: to produce the food they needed elsewhere.”¹³⁹ That impeccable elsewhere seem to be Africa.

As the UN Special Rapporteur on the Right to Food, Olivier De Schutter, notes, “some rich or relatively better-off countries, lacking the farmland and water required to produce enough to cover their own needs, found that their interest was in outsourcing food production.”¹⁴⁰ According to Mr. De Schutter, “inorder not to depend on the international markets, they reasoned, they should acquire land abroad and produce for themselves.”¹⁴¹ Investing in farmland abroad, therefore, is a measure that the Gulf States, among others, have adopted to cap their reliance on international markets and enhance the sustainability of their food security.

While the food price spike is, absolutely, bad news for every consumer, the underprivileged in Africa and other developing countries, in addition to consumers in food-importing and land-scarce economies in general, are likely to be the most affected. The reason is that, as the International Monetary Fund (IMF) argues, “food makes up a much larger share of their total expenditures. They have little room to buy cheaper food items or to spend less on other purchases.”¹⁴² Moreover, the rapid increase in internationally traded food prices demands more farmland: farmland acquisition by foreign investors and countries attempting to boost global food security and financial security has mushroomed.

¹³⁹ Liberti, S., *Land Grabbing: Journeys in the New Colonialism* (London: Verso, 2011) 10.

¹⁴⁰ De Schutter, *supra*, 252.

¹⁴¹ *Ibid.*

¹⁴² The International Monetary Fund. Online:
<http://www.imf.org/external/pubs/ft/survey/so/2011/NEW031711A.htm>.

For example, a US billionaire, George Soros, is convinced that “farmland is going to be one of the best investments of our time.”¹⁴³ Soros opined that “Eventually, of course, food prices will get high enough that the market will be flooded with supply through development of new land or technology or both, and the bull market will end...”¹⁴⁴ Among other investors, Soros assumed that FDI in farmland is not only a measure to address global food security. Accordingly, higher prices suggest better prospects to generate profit from agribusiness and, henceforth, improve agricultural funding, as it seems to be a less dangerous type of investment compared to bonds, cash, or stocks in the aftermath of the global financial crunch.

Organizations such as GRAIN, for example, have argued that investors that have been buying up farmland in Africa and other developing countries are less concerned about food security.¹⁴⁵ In other words, such investors are buying or leasing vast areas of African land to benefit from rising demand for food crops as a consequent of a rapid increase in the world’s population. The Special Rapporteur on the Right to Food also stated that large-scale investments in farmland are driven by “investors attracted by what now appears to be a new and rapidly expanding market of land and water rights, the result of an accelerated commodification of natural resources that are increasingly treated as mere economic assets.”¹⁴⁶

Rune Skarstein said that global drive for biofuel production derived from two alliances, which quite frequently represent differing interests: “states that are concerned about their energy security and environmentalists who are concerned about environmental degradation due to

¹⁴³ GRAIN, *The Great Food Robbery: How Corporations Control Food, Grab Land and Destroy The Climate* (Barcelona: GRAIN, 2011) 121.

¹⁴⁴ *Ibid.*

¹⁴⁵ They figured that farming could be a profitable venture, given “the world population is growing, food prices are bound to stay high over time, and farmland can be had cheaply.” Even with a limited degree of “technology and management skills thrown into these farm acquisitions, they get portfolio diversification, a hedge against inflation and guaranteed returns – both from the harvests and the land itself.” *Ibid.*, 122.

¹⁴⁶ De Schutter, *supra*, 252.

carbon dioxide (CO₂) emissions.”¹⁴⁷ To Campbell and Price, every fundamental issue that is currently confronting the US today, such as “climate change, the rise of China and India, Jihadist financing, an increasingly bellicose Russia, worrisome trends in Latin America...is either inextricably linked to or exacerbated by decisions associated with energy policy.”¹⁴⁸ It can be observed from these studies that energy security and environmental sustainability concerns are additional causes of large-scale land-based investments in Africa.

FAO reported that high energy prices, among other drivers including “... growing consumption rates and market demand for food, biofuels, raw materials and carbon sequestration,” have triggered foreign direct investment (FDI) in feedstock crops for biofuels.¹⁴⁹ Strictly speaking, the fret of energy price hike has boosted the allocation of farmland for the cultivation of feed grain and resulted in a substantial growth in global biofuels production. Thomas Helbling and Shaun Roache are members of the International Monetary Fund’s research department. In the *Rise in Food Price Volatility*, they stated “High oil prices and policy support have boosted demand for biofuels, which are used as supplements in transportation fuels, particularly in the advanced economies and also in some emerging economies, including Brazil.”¹⁵⁰

Biofuels are a category of energy fuel acquired from feedstock (solid biomass) through biological or chemical processing.¹⁵¹ Unlike fossil fuels with high carbon content, biofuels are hailed as clean, renewable, and environmentally sustainable, with reduced carbon content.

¹⁴⁷ Skarstein, R., “Peak oil and climate change: triggers of the drive for biofuel production” in B. Prosper, M., K. Havnevik, and A. Beyene, *Biofuels, Land Grabbing and Food Security in Africa* (Zed Books, 2011) 65.

¹⁴⁸ Campbell, K. M., and J. Price, (eds) *The Global Politics of Energy: An Aspen Strategy Group Workshop Preface* (Washington D.C.: The Aspen Institute, 2008) 11.

¹⁴⁹ Food and Agriculture Organization (FAO), *Trends and impacts of foreign investment in developing country agriculture Evidence from case studies* (Rome: FAO, 2013) 3.

¹⁵⁰ Helbling, T. and S. Roache, “Rising Prices on the Menu” (2011) 48:1 Finance and Development 25.

¹⁵¹ *Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the Promotion of the use of energy from renewable sources and amending and subsequently repealing Directive 2001/77/EC and 2003/30/EC*, Article 2 [Renewable Energy Directive 2009]; Gasparatos, A., et al., *Biofuels in Africa Impacts on Ecosystem Services, Biodiversity and Human Well-being* (Yokohama: United Nations University, 2012);

Because of these characteristics, biofuels are regarded, widely, as an important measure to tackle energy-related greenhouse gas emissions (hence, climate change).¹⁵² The European Union, among many other countries,¹⁵³ has set mandatory domestic targets for the entire portion of energy that a Member State can derive from renewable resources sources for European Union countries. The Member States shall guarantee that the “share of energy from renewable sources, in gross final consumption of energy in 2020 is at least its national overall target for the share of energy from renewable sources in that year.”¹⁵⁴ This call for biofuels, in turn, seems to have lifted the demand for energy crops and resulted in a significant increase in farmland acquisition for biofuel production, especially in the African continent.

Foreign investors have acquired large tracts of farmland and forests to grow energy crops, rather than food crops that are most desired to alleviate food insecurity in the African continent. The Center for International Forestry Research (CIFOR) reported that biofuels-related activities constituted 2/3 of the overall land area obtained for industrial agriculture in Sub-Saharan Africa,¹⁵⁵ and industrial agriculture is known to be predominantly practiced by corporations. Specifically, 43% of the alienated land in sub-Saharan African farmland has been envisioned solely for biofuels, 25% for export food production, 20% for both biofuels and export food, and approximately 9% for tree plantations.¹⁵⁶ As far as one can see from these statistics the proportion of farmland acquired for energy crop, including jatropha, corn, rapeseed, and palm

¹⁵² Renewable Energy Directive 2009, *supra*, Article 2.

¹⁵³ See for example, the Government of Oregon’ Renewable Portfolio Standards (RPS)(Government of Oregon, Oregon’s Electricity Mix at https://www.oregon.gov/energy/pages/oregons_electric_power_mix.aspx); Mandatory Green Power Options (MGPO) (Carley, S. “State Renewable Energy Electricity Policies: An Empirical Evaluation” (2009) 37 Energy Policy 3071; US *Energy Independence and Security Act* (Earley, J., and A. McKeown, “Smart Choices for Biofuels” (Washington D.C.: Worldwatch Institute/Sierra Club, 2009) 3).

¹⁵⁴ Member States shall guarantee that the “share of energy from renewable sources, in gross final consumption of energy in 2020 is at least its national overall target for the share of energy from renewable sources in that year,” Renewable Energy Directive 2009, *supra*, Article 3.

¹⁵⁵ Schoneveld, G., *The anatomy of large-scale farmland acquisitions in sub-Saharan Africa* (Bogor: CIFOR, 2011)

15.

¹⁵⁶ *Ibid*, 9.

kernels production overshadows that for food crops. These statistics point out that concerns about energy security and environmental sustainability are central characters in the current scramble for African land. Can these objectives be achieved without adversely impacting on the livelihoods of local community members?

3.1.2 Implications of foreign agricultural investments for local Africans

Some organizations and researchers contend that large-scale land-based investments can create opportunities for socio-economic development and environmental protection in recipient communities and countries. A study conducted by the OECD and FAO shows that “agricultural investment, including both domestic and foreign direct investment, can have transformative and positive impacts at local, national and regional levels.”¹⁵⁷ Accordingly, “increasing agricultural investment is, in fact, one of the most important and effective medium to long term strategies for increasing agricultural production, promoting economic growth, reducing poverty and strengthening food security.”¹⁵⁸ This argument reveals that FDI in agriculture is a precondition to positively transforming food-insecure African countries, among other developing countries that are suffering from food scarcity and underdevelopment.

While assessing whether the recent rush for farmland in Africa and other parts of the world can result in equitable and sustainable benefits for hosts countries and local populations, the World Bank said small farmers and large investors can form mutually beneficial partnerships.¹⁵⁹ It also argued that “there can be considerable potential for employment generation... is often a key avenue for local people to benefit from outside investment because for bulk commodities, it is at

¹⁵⁷ OECD and Food and Agriculture Organization (FAO), *OECD-FAO Agricultural Outlook 2015-2024*, (Paris: OECD Publishing, 2015) 37 [OECD FAO].

¹⁵⁸ *Ibid*, 37.

¹⁵⁹ Deininger and Byerlee, *supra*, 34-38.

the production, rather than the processing stage that employment is generated.”¹⁶⁰ Despite the fact that FDI in agriculture can threaten local land access and, in turn, prevent smallholders from contributing to food security and rural development, the World Bank study suggests that FDI in agriculture can create opportunities that Africa and other land-abundant countries can use to foster political, social, and economic development.¹⁶¹

A 2008 report by FAO and IIED—*The Biofuels Boom and Poor People’s Access to Land*—shows that biofuels can increase long-term energy security for countries seeking alternative energy sources, create opportunities for rural development, and develop new export markets for land-rich countries.¹⁶² With regards to income generation, this report says the production of biofuels may offer income-generation opportunities in rural areas, and by so doing, “help improve prospects for food security—namely, by enabling farmers to purchase food on the market.”¹⁶³ This proclamation intimates that even though FDI in biofuels can undermine local access to farmland, they should be embraced because, after all, biofuels developments can indemnify evictees in the event of loss of land access by providing alternative means of addressing their food security concerns.

Although foreign governments, transnational corporate investors, and global financial institutions consider large-scale land-based investments as a recipe for world food security, economic opportunity for local populations, energy security, climate change, and sustainable

¹⁶⁰ *Ibid.*

¹⁶¹ The United States Institute for Peace identify three categories of employments: politically, employment opportunities give the population a stake in the peace process by providing young men and women with alternatives to violence. Economically, employment provides income to poor families, revives domestic demand for goods and services, and stimulates overall growth. Socially, employment can also promote social healing, encourage the return of displaced persons, and improve social welfare in the long run, United States Institute for Peace, “Employment Generation.” Online: <http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/9-sustainable-economy/employment>.

¹⁶² Cotula, L., N. Dyer and S. Vermeulen, *Fuelling Exclusion? The Biofuels Boom and Poor People’s access to Land*” (London: IIED and FAO, 2008) 10 [Cotula, Dyer, Vermeulen].

¹⁶³ *Ibid.*, 13.

development, some researchers and institutions are less enthusiastic about such investments. Its critics see large-scale land-based investments in Africa as a threat to local lives and livelihoods: such investments could promote impoverishment by depriving local populations, especially those in an agricultural setting, leading to landlessness, food insecurity, and death.

The majority of large-scale land investments occur on farmland that subsistence communities—the backbone promoters of local food security—depend on to grow subsistence crops and develop their communities. As ActionAid contended, “very little land in Africa is truly idle, given pastoralist activities, traditional land management techniques in semi-arid regions, use of land for ritual/religion, and natural forests providing a source of many essential products.”¹⁶⁴ Because these allocations concern not vacant or idle land, but land on which local livelihoods, food security, and cultures are base, they are likely to reduce local access to farmland and forest resources.

IFAD says that subsistence farmers manage about 500 million small farms and provide over 80% of the food consumed in most parts of the developing world, especially sub-Saharan Africa and Southern Asia, so contributing to food security and poverty reduction.¹⁶⁵ The fact that land “is life [and] the basis of livelihoods for peasants and indigenous people” in developing countries¹⁶⁶ makes these allocations be of grave concern. By allocating subsistence farmland, whether empty or vacant, to powerful corporations for export-oriented cultivation, a breeding ground for a petty rivalry for farmland and natural resources between poor environment-dependent populations and very wealthy governments and investors is created.

¹⁶⁴ Oram, J., *The Great Land Heist: How the world is paving the way for corporate land grabs: How the world is paving the way for corporate land grabs* (ActionAid International, 2014) 10.

¹⁶⁵ IFAD, Smallholder farmers key to lifting over one billion people out of poverty. Online: https://www.ifad.org/newsroom/press_release/past/tags/y2013/1894706.

¹⁶⁶ Shiva, *supra*, 39.

In some African countries, industrial agriculture has resulted in the “erosion of traditional values and morality (including the observation of human rights and environmental responsibility).”¹⁶⁷ It has also promoted the pervasive devastation of environmental resources, with accompanying cultural, economic, and social destruction, including local food insecurity and landlessness.¹⁶⁸ As reported by Brennan and Künnemann, the consequence of violating the right to adequate food and nutrition is “hunger, malnutrition and related diseases, most of them affecting small scale food producers, marginalized urban and rural workers, and discriminated social groups, the unemployed and their families.”¹⁶⁹ As demand for land and other natural resources has become the most vital asset in the global economy, “land has emerged as a key site of conflict.”¹⁷⁰

Some critics are cautiously calling the recent rush for farmland in developing countries “new colonialism”¹⁷¹, “green grabbing”,¹⁷² “new appropriation of nature,”¹⁷³ and “globalization and the foreignization of Space.”¹⁷⁴ But, Margulis, McKeonb, Borras, among many different researchers, have out rightly, baptized it “land-grabbing”¹⁷⁵—a phenomenon that has been defined in a variety of ways. Hence, Borras *et al.* say the phrase ‘global land grab’ ‘has become a catch-all to describe and analyze the current explosion of large-scale (trans)national commercial land transactions.”¹⁷⁶ For example, Mr. Olivier De Schutter in his article *How Not to Think of Land-grabbing* gives more prominence to the huge opportunity costs—“a type of

¹⁶⁷ Graham Peebles, *supra*, 64.

¹⁶⁸ De Schutter, *supra*, 264.

¹⁶⁹ Brennan, B. and R. Künnemann, “Strengthening the Human Rights Movement Globally: The Vienna+20 CSO Conference” (2013) 8:1 Right to Food Journal 34.

¹⁷⁰ Shiva, *supra*, 39.

¹⁷¹ Broughton, *supra*.

¹⁷² Fairhead, *et al*, *supra*, 237-261.

¹⁷³ *Ibid.*

¹⁷⁴ Zoomers, A., “Globalisation and the foreignisation of space: seven processes driving the current global land grab” 2010 37:2 Journal of Peasant Studies.

¹⁷⁵ Margulis *et al.*, *supra*; De Schutter, *supra*, 249.

¹⁷⁶ Borras, S. M. *et al*, “Towards a better understanding of global land grabbing: An Editorial Introduction” 2011 38:2 Journal of Peasant Studies 210 [Borras *et al*].

farming that will have much less powerful poverty reducing impacts”—of the land deals in host countries.¹⁷⁷

In the report *Towards a better understanding of global land grabbing* Borras *et al* attached value to the justifications for large-scale land-based investments: how the land, in addition to water and labor of the Global South are ‘increasingly perceived as sources of alternative energy production, food crops, mineral deposits, and reservoirs of environmental services.’¹⁷⁸ FIAN International upholds the probable social injustice end result of the land deals as a determining characteristic.¹⁷⁹ The approach by FIAN International is my preference because, in addition to being more comprehensive, it is more concerned about the social injustices that are associated with industrial agriculture by transnational corporations. By way of illustration, FIAN International argues that land-grabbing involves “taking possession of and/controlling a scale of land for commercial and industrial agricultural production that is disproportionate in size in comparison to the average land holding in the region.”¹⁸⁰

Perhaps because of concerns about local food security and the ways in which such investments violate acknowledged economic, social, cultural, civil, political, and environmental rights standards of subsistence populations,¹⁸¹ the 2011 Tirana Declaration proclaims a large-scale land-based investment is a land-grab when it is:

¹⁷⁷ De Schutter, *supra*, 249.

¹⁷⁸ Borras *et al.* focus on the purposes or justifications of the land deals, in which a “The land— and water and labor—of the Global South are increasingly perceived as sources of alternative energy production (primarily biofuels), food crops, mineral deposits (new and old), and reservoirs of environmental services” Borras *et al*, *supra*, 209.

¹⁷⁹ Odeny, E., *et al.* (eds), *Land grabbing in Kenya and Mozambique: A report on two research missions—and a human rights analysis of land grabbing* (FIAN International Heidelberg 2010) 8 [Odeny].

¹⁸⁰ Odeny, *supra*, 8.

¹⁸¹ These rights have been acknowledged by both environmental justice and social rights activists, as well as inter-governmental organizations. These rights include, for example, the rights to adequate food, water, and housing that are recognized globally, *United Nations General Assembly, Universal Declaration of Human Rights, Resolution 217 A(III), UN Document A/810 at 71 (1948)* [Universal Declaration].

*“in violation of ... the equal rights of women; (ii) not based on free, prior and informed consent of the affected land-users; (iii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered; (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and; (v) not based on effective democratic planning, independent oversight and meaningful participation.”*¹⁸²

The Tirana Declaration was issued at an international conference organized by the International Land Coalition (ILC).¹⁸³ The conference, which was titled *Securing Land Access in Times of Intensified Natural Resource Competition*, was attended by over 150 public and private sector representatives from about 45 countries in Africa, America, Asia, and Europe. While denouncing the growing practice of “land grabbing” and arguing that land, in addition to other natural resources, is under threat, these actors reiterated the need “to actively promote pro-poor, people-centered and environmentally sustainable governance of land.”¹⁸⁴

The ILC, between 2012 to 2015, organized two more conferences which culminated in two additional declarations—the 2013 Antigua Declaration and the 2015 Dakar Declaration—and commitments. These commitments outline ILC members’ determination to implement the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries in the Context of National Food Security, the Land Policy Framework and Guidelines for Africa, and the Conventions to Eliminate all forms of Discrimination Against Women, among others.¹⁸⁵ These are international agreements that aim to regulate local land access and safeguard the rights of subsistence communities and other vulnerable groups such as women. The conferences that ILC has organized, as well as publications of ILC members and networks, including the Land

¹⁸² International Land Coalition, *Tirana Declaration: Securing land access for the poor in times of intensified natural resources competition* (Tirana: International Land Coalition, 2011) 3.

¹⁸³ The International Land Coalition is the world’s leading alliance of civil society organizations promoting much-needed knowledge-sharing, coalition building, and international dialogue on this foundational topic of land rights. International Land Coalition (ILC), *From Tirana to Dakar Report – Highlights of Achievements from the Strategic Framework 2011-2015* (Rome: ILC, 2015) [International Land Coalition].

¹⁸⁴ International Land Coalition, *supra.*

¹⁸⁵ International Land Coalition, *supra.*, 29.

Matrix, Land Portal, IIED and the IFAD, have, perhaps, played a significant role in enhancing access to information on land governance issues, and in agenda setting on the phenomenon of land-grabbing and people-centred land governance.¹⁸⁶ The ILC is currently outlining its Strategic Framework for the next six years.¹⁸⁷

In *The Great Land Grab*, the Oakland Institute defines land-grabbing as referring “to the purchase or lease of vast tracts of land by wealthier food-insecure nations and private investors from mostly poor, developing countries in order to produce crops for export.”¹⁸⁸ The report of Land Matrix (a global and independent land monitoring initiative, and a member of the ILC) shows that to amount to land-grabbing, the track of land that is grabbed must cover 200 hectares or more.¹⁸⁹ For the purpose of this thesis, I define land-grabbing as the conveyance of access, use, and control rights over thousands of acres of land, through a transaction, grant or concession, from subsistence communities (smallholders, pastoralists, and indigenous populations) to foreign investors for profit-oriented and carbon offsetting purposes. Oftentimes, this occurs within the agricultural sector including food crops and agrofuels sold in overseas markets, with the result that fundamental human rights such as the right to food, housing, potable water, etc. are threatened.

¹⁸⁶ *Ibid*, 59.

¹⁸⁷ *Ibid*.

¹⁸⁸ Daniel, S. and A. Mittal, *The Great Land Grab Rush for World's Farmland Threatens Food Security for the Poor* (Oakland: Oakland Institute, 2009) 1.

¹⁸⁹ According to Land Matrix, this implies “the potential conversion of land from smallholder production, local community use or important ecosystem service provision to commercial use.” Land Matrix. Online: <http://www.landmatrix.org/en/about/#what-is-a-land-deal>.

3.2 Dispossession and displacement in Africa

The World Bank estimates that addressing the global economic and food crisis that sent millions of people into malnutrition since 2008¹⁹⁰ would require an increase in FDI in agriculture, among others, by 50%.¹⁹¹ But does this talk of global food security really mean local food security in Africa (the hungriest region of the world) or displacement and dispossession of local Africans such as rural women that are most involved in local food security? The precise number of people that have been globally displaced from or dispossessed from their resources through foreign land acquisitions is unknown.¹⁹² However, the following anecdotes may provide a number of examples of rural Africans that have been disadvantaged by such acquisitions.¹⁹³

3.2.1 Dispossession and displacement in Cameroon

On September 17, 2009, the Government of Cameroon and SG Sustainable Oils Cameroon Plc. (SGSOC) signed a 99-year contract (Establishment Convention) to establish a palm oil plantation and associated palm oil processing mills. SGSOC is the Cameroonian subsidiary of Herakles Farms, an American multinational, which is the investor and operator of the project. The Project, which covers 80,506 hectares (300 square miles, or about the size of New York City), is located in the South West Region of Cameroon.¹⁹⁴ The Establishment Convention allows Herakles Farms to enjoy a 10-year exemption period from all taxes and duties in Cameroon. At the end of

¹⁹⁰ Sukker, N., N. Vaccarezza, and D. Wilson (eds.), *Securing Land Access for the Poor in Times of Intensified Natural Resources Competition* (Rome: International Land Coalition, 2011) 25.

¹⁹¹ The World Bank emphasizes on an increase from some \$142 billion per year to \$209 billion, The World Bank, The World Bank Group on Land & Food Security” (2012). Online: <http://www.worldbank.org/en/news/feature/2012/10/02/world-bank-land-food-security>.

¹⁹² Twomey, H., *Displacement and dispossession through land grabbing in Mozambique The limits of international and national legal instruments*, (Oxford: Refugee Studies Centre, 2014) 3.

¹⁹³ The Land Matrix, an online public database of large-scale land deals, has reported only 40 cases with information on displacements. Of the 40 cases where displacement is reported to have occurred, 25 are reported to have led to evictions of not less than 1000 people, and ten to the eviction of more than 10,000 people, Anseeuw, W., et al., *The State of Large-Scale Land Acquisitions in the ‘Global South’: Analytical Report Based on the Land Matrix Database* (Bern/Montpellier/Hamburg: CDE/CIRAD/GIGA, 2012) 41.

¹⁹⁴ Herakles Farms, *Environmental and Social Impact Assessment prepared for SG Sustainable Oils Cameroon Ltd.* (Yaoundé: Herakles Farms, 2011) 13 [Herakles Farms EIA Report].

this time, payment of rents to the host government will be at the rate of \$1.00/hectare/year for developed land and \$0.50/hectare/year for the undeveloped land.¹⁹⁵

The company's environmental impact assessment (EIA) report, which I will discuss in Chapter five of this thesis, shows that the project is situated within biodiversity hotspots,¹⁹⁶ an indication that the project will destroy forests that provide habitat for numerous species, including endangered plants and wildlife. The report also says subsistence agriculture, hunting, and gathering of forest resources are the traditional livelihood activities inside the company's concession, and that these activities will be adversely impacted by the project.¹⁹⁷ Therefore, any decision to prevent access to the plantation by local residents may jeopardize livelihoods in the host communities and encourage involuntary relocation of the local populations. However, Herakles Farms has failed to incorporate a compensation plan into its environmental and social management plan as required by Cameroonian law.¹⁹⁸ It contends that the project will not require any involuntary resettlement and thus there is no need for a relocation plan.¹⁹⁹

The EIA report says "no shrine or cultural site will be destroyed by the investor."²⁰⁰ This declaration is perhaps the company's strategy to prevent/mitigate the destruction of indigenous cultural values. The report also notes that there will be "some buffer zones left as patches" to

¹⁹⁵ Establishment Convention dated as of 17 September 2009 by and between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC., Article 13. Online: <http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/SGSOC%20Convention%20with%20the%20Government%20of%20Cameroon.pdf>.

¹⁹⁶ These biodiversity hotspots include: the Korup National Park; Rumpi Hills Forest Reserve; Bakossi National Park, and Banyang Mbo Wildlife Sanctuary, Herakles Farms EIA Report, *supra*, 131 and 140.

¹⁹⁷ It enumerates the potential human impacts to include: loss of land, habitats, and non-timber forest products; destruction of the rural economy; exposure to health risks; food security; and destruction of cultural values, Herakles Farms EIA Report, *supra*, 171-173.

¹⁹⁸ Cameroon's Environmental Code proclaims that the impact assessment shall, among others, outline measures envisaged by the investor to eliminate or compensate for the harmful consequences of the project, *Environmental Code, supra*, Article 19(2).

¹⁹⁹ Herakles Farms EIA Report, *supra*, 171-173.

²⁰⁰ *Ibid*, 238.

compensate for the loss of land and forest products²⁰¹ and that Herakles Farms will “make fire briquettes from the left-over fibers and shells to distribute them to its workers and the population.”²⁰² Unfortunately, the EIA report did not state how long this would last. The company plans to establish “a cow ranch to provide meat to the workers and villagers,” as a way to address the issue of food security.²⁰³ As can be seen, there is an inconsistency between the significance of the predicted effects and measures that the company has designed to prevent, mitigate, or compensate for such impacts.

It is debatable whether building a cow ranch to provide meat to the employees and villagers will address the issue of food security in the concerned communities as the EIA report indicates. Besides, food safety may not be enhanced by food aid alone, for instance, the provision of meat to villages that seem to be largely self-sufficient in food production. The villagers are subsistence farmers. They may be regarded as marginally self-sufficient with maize, cocoyams, plantain, palm oil, cassava, and meat, as well as cash crops (cocoa and coffee) and forest products (bushmeat, fish, and herbal medicine for healthcare). Given suspicions about trustworthiness,²⁰⁴ it is also hard to believe that the investor will fulfill its promise to provide an alternative source of energy (fire briquettes) to the thousands of villagers that are on the verge of losing access to firewood in the concession.

As explained by Professor Carmen Gonzalez, by attracting agribusinesses in the United States and the European Union, the livelihoods and environment of subsistence farmers in the

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ Herakles Farms had not honored its previous promise to pay the monthly villagers 50,000 francs (around US\$ 86) per month, starting in 2010, World Rainforest Movement, Palm oil concessions for logging: the case of Herakles Farms in Cameroon. Online: <http://wrm.org.uy/articles-from-the-wrm-bulletin/section1/palm-oil-concessions-for-logging-the-case-of-herakles-farms-in-cameroon/>.

developing world are being destroyed.²⁰⁵ The Cameroon Government, Oakland Institute, Greenpeace, Oxfam International, Farmlandgrab.org, Forest Peoples Programme, Centre for Environment and Development, among other public and civil society organizations have confirmed this in the context of the Herakles Farms' concession. The land in question previously provided livelihoods to thousands of Cameroonian farmers as well as biodiversity, including fauna and flora that, at the moment, are seriously at risk of extinction.

For example, the Government of Cameroon reported in 2013 that the company's concession involves land that some 56 villages with a population of about 16.000 indigenous peoples had access to, to sustain themselves.²⁰⁶ The report indicates violations of fundamental rights of villagers in the project impact: some of the affected population can no longer access their cocoa farms and areas in the concession that produce forest products.²⁰⁷ A European Union study reveals some environmentally destructive activities performed by Herakles Farms. The company has illegally logged, deforested, and opened roads in the rainforest on 60 hectares of land in Cameroon, in addition to commercializing the timber from its concession,²⁰⁸ despite arguments that it had no intention to deforest the concession.²⁰⁹

²⁰⁵ Gonzalez, C. G, "The Global Food Crisis: Law, Policy, and the Elusive Quest for Justice" (2014) 13:2 Yale Human Rights and Development Journal 470.

²⁰⁶ The report also indicates that Herakles Farms' operation and negotiations are executed with lot of "intimidation and bribery, targeting the chiefs and some few influential decision-making members of the communities, Dupuy, J., and M. Bakia "Report: Fact finding mission on Herakles Farms (SGSOC) oil palm plantation project", 1 and 6. Online: http://cameroonveritas.files.wordpress.com/2013/04/03_01_2013_report-fact-finding-mission-sgsoc.pdf.

²⁰⁷ Oakland Institute Film: The Herakles debacle. Online: <http://www.oaklandinstitute.org/land-deals-africa-cameroon>.

²⁰⁸ It was suggested by a European Union study that a fine of 24,506,000 FCFA be levied against the company for illegally degrading the environment. European Union, *Observateur Indépendant au Contrôle Forestier et au Suivi des Infractions Forestières au Cameroun: Rapport de Mission N°040/OI/AGRECO-CEW, Contrat EuropeAid/128055/D/SER/CM* (European Union, 2012) 3.

²⁰⁹ Cameroon has signed an agreement, Voluntary Partnership Agreement, with the EU to prevent illegal logging in Cameroon, Greenpeace, "Licence to Launder: How Herakles Farms' illegal timber trade threatens Cameroon's forests and VPA" <http://www.greenpeace.org/international/Global/international/publications/forests/2014/Licence-to-Launder.pdf>. Herakles Farms's deforestation activities within Cameroon's portion of the Congo Basin rainforests, therefore, subordinates this partnership agreement.

It is worth noting that on 25 November 2013, four years after the land deal was negotiated, there was an “amendment” to the Establishment Convention: three presidential decrees were signed granting Herakles Farms a temporal concession of 19,843 hectares of land for three years,²¹⁰ reducing the plantation to a third of its previous size. The company, once bragging of its plans to create 9,000 direct/permanent jobs and promote socio-economic development,²¹¹ has laid off workers, many of whom were subsistence farmers who no longer have access to their land because of the Herakles Farms plantation.²¹² A 2015 report by Farmlandgrab.org shows that the concession area is currently a fraction of the former size, and the company is closing down most of its offices and turning to selling “illegally felled timber to raise revenue.”²¹³

Statistically, there has not been an equitable distribution or fair exchange of natural resources in the communities that have been affected by the Herakles Farms project. The information also shows that this project has not been directed by the Cameroon government to meet local needs effectively or enhance the quality of life in the affected villages. If environmental injustice is “any undue imposition of environmental burdens on innocent bystanders or communities not parties to the activities generating such burdens,”²¹⁴ under these circumstances, the Herakles Farms project is not serving environmental justice.²¹⁵

²¹⁰Modern Ghana,”Cameroon President Authorizes Herakles Farms To Destroy Forests”.
Online:<http://www.modernghana.com/news/505760/1/cameroon-president-authorizes-herakles-farms-to-de.html>.

²¹¹ Herakles Farms EIA Report, *supra*, 145.

²¹² Farmlandgrab.org, “Herakles Farms project rears its ugly head again”. Online:
<http://farmlandgrab.org/post/view/25513-herakles-farms-project-rears-its-ugly-head-again> [Farmlandgrab.org].

²¹³ Farmlandgrab.org, *supra*.

²¹⁴ Adeola, *supra*, 688.

²¹⁵ The company’s operations is in stark contrast to international law which prohibits the forceful assimilation, destruction of culture, and involuntary relocation without just and fair compensation of local communities, UNDRIP, *supra*, articles 7, 8, and 10.

3.2.2 Dispossession and displacement in Ethiopia

A tropical climate, in addition to fertile soil, cheap labor, and an abundance of water, is encouraging competition for Ethiopia's arable land. Research in Ethiopia indicates that since 2010, the Indian group—Karuturi Global—has acquired over 300.000 hectares of land (an area the size of Luxembourg) in Addis Ababa and the Gambella regions of Ethiopia to grow roses and palm oil for Europe, Indian, and African markets.²¹⁶ Karuturi Global admits Ethiopia is one of the most attractive places in the world to do business, because of the fertile soil and comparatively attractive economic benefits.²¹⁷ According to Liberti, the agreement with the government of Ethiopia is one-sided: the company is not required to pay any rent for the first six years. After that, it will pay 15 birr (60 euro cents)/hectare for the next 84 years.²¹⁸

Media reports indicate that the Karuturi investment has encouraged massive deforestation of hunting and wood-gathering areas that has, in turn, resulted in violent clashes between Karuturi and residents.²¹⁹ Despite claims that Karuturi Global has invested over the US \$100 million in Ethiopia's farming sector, farmlandgrab.org reported on 18 January 2016 that "Karuturi was accused of breaking its lease agreement in developing only 1,200 acres thus far."²²⁰ There are claims that the Government of Ethiopia has rescinded its contract with Karuturi Global,²²¹ yet there is no information on whether the Government of Ethiopia has plans to return the land to the locals.

²¹⁶ Liberti, *supra*, 33; Graham Peebles, *supra*, 65.

²¹⁷ *Ibid.*

²¹⁸ Karuturi Global estimated the cost for the same quality of land in Malaysia or Indonesia at 300 euros/hectare, *ibid.*, 33.

²¹⁹ The last instance dates back to October 2016, when the clearing of a wooded area provoked a clash with the residents of Ilya. "When we heard the machines, we immediately went to stop them," says an official from the village. "What's happening is not good for us. They are destroying the forests where we look for wood and where each year we hunt antelopes and wild pigs." ECADF Scramble for Ethiopia.

²²⁰ Farmlandgrab.org., Ethiopia. Online: <http://farmlandgrab.org/post/view/25681-one-of-africas-most-promising-economies-is-facing-a-fundamental-problem>.

²²¹ *Ibid.*

In another deal, Saudi Star was allocated 10,000 hectares in Ethiopia to cultivate rice, to help meet its goal to produce 1 million tons of high-quality rice in Ethiopia annually, two-thirds of which will be exported to the Middle East and Saudi Arabia.²²² The Saudi Star project uses the water resources upon which some 20,000 villagers depend on to carry out farming and fishing²²³ and the Ethiopian villagers employed in the rice units are paid 25 Birrs (1.10 Euro)/day.²²⁴ To the Oakland Institute, “Saudi Star’s 10,000-hectares came for free...[this] cost incentive fueled the company’s planned acquisition of 500,000 hectares of land in Gambella,” among other states, to cultivate a million tons of rice, in addition to maize, sugarcane, and oilseed²²⁵ for export.

The impact of the Saudi Star land deal includes water degradation, deforestation, and loss of property. This has, consequently, resulted in the relocation of villagers²²⁶ and extinction of species of wild animals, fish, and birds.²²⁷ The owner of Saudi Star acknowledges its plantation will destroy about 100,000 trees, but submits the company has plans to replant one million.²²⁸ This means that primary forest (with diverse species of fauna and flora and high capacity carbon sinks) will be replaced by forest plantations (low diversity and low capacity carbon sinks). Even in the absence of evidence of a physically displaced population attributable to the activities of Karuturi and Saudi Star in Ethiopia, particularly since the government claims that the lands being

²²² *Liberti, supra*, 38.

²²³ *Ibid.*

²²⁴ *ECADF, supra*.

²²⁵ Oakland Institute, *Understanding Land Investment Deals in Africa: Saudi Star in Ethiopia* (Land Deal Brief 2011) 1 [Oakland Institute Ethiopia].

²²⁶ *Ibid.*

²²⁷ *Liberti, supra*, 38.

²²⁸ *Ibid.*

transferred to these investors are virgin/idle land, peasants may nevertheless lose traditional livelihood activities in the allocations.²²⁹

In yet another deal, Jittu Horticulture P.L.C., a Sheik Mohammed Al Amoudi enterprise, signed an agreement with the government of Ethiopia to produce and export fruits, vegetables, and flowers in the Holeta, Bishoftu, Koka, Tikur, and Wuha areas of Ethiopia.²³⁰ Information from the company's website shows that these locations were selected because of their exceptional altitudes, temperatures, and soil variability.²³¹ Because Jittu International is certified for the market in Europe, the company is determined to use Ethiopia's arable land to supply food to high-class supermarkets and hotels in the Middle East and Europe, rather than in Ethiopia, indicating that the prime objective of some of these investments is not to enhance local food security.

Jittu International also claims that its products will be produced in a sustainable way, and that its workers will be provided with "competitive" salaries.²³² This pledge seems to indicate that the investment will be addressing, among other things, the socio-economic concerns of the affected communities, including food security. Research, however, shows that the investment may have been designed to, uniquely, promote the economic interest of the investor,²³³ in addition to catering for foreign markets. As highlighted by the manager of Jittu International, Gelata Bijiga:

²²⁹ Even assumed "virgin land," "vacant land" or "idle land" usually might be used for farming, grazing herds, hunting, and gathering of firewood, fruits, curative herbs and roots. Giving out such lands to investors, thus, does not only undermine food security. It also promotes insecurity and homelessness. As a local report in Ethiopia (ECADF) shows, in addition to the wide use of land to villagers, the forest is also a place where villagers can take refuge in, when needed. ECADF, *supra*.

²³⁰ Jittu. Online: <http://www.jittuhorticulture.com/?q=sustainability> [Jittu International].

²³¹ *Ibid.*

²³² *Ibid.*

²³³ In 2011, for example, one of these investors a foreign investor in Ethiopia unambiguously noted: "our goal is not to alleviate hunger. I am a businessman. What I am doing is positive, cheaper food, making employment. Can't fathom how that can be negative." The Oakland Institute, *Understanding Land Investment Deals in Africa Country Report: Ethiopia* (Oakland: The Oakland Institute, 2011) 36 [Oakland Institute Ethiopia].

“Whatever we produce here is for exportation. In twenty-four hours we can transport our produce from here to the consumer, in some restaurant in Dubai.”²³⁴

In another example, Diageo, the world’s leading premium drink business, planned to establish a scalable barley farming project in Ethiopia.²³⁵ The developer claims the project will support thousands of smallholders by sourcing malt barley from them.²³⁶ Still, this investment may end up decreasing food production. The fact that local farmers are paid to be involved in this investments is an incentive to switch from cultivating food crops for local consumption and rural development to malt barely production for the growth of the company and for export, given the fact that malt barely is an important crop for beverages and raw materials for the agro-industries. These are just four deals comprising a few hundred thousand hectares of valuable land that has been transferred from local communities to foreigners in Ethiopia.²³⁷

In Ethiopia, the issue of foreign agricultural investment is compatible with the government’s “villagization” program which was designed to move 1.5 million rural families to new settlements, including approximately 45,000 households in Gambella, Ethiopia, by 2013. The Human Rights report, *Waiting Here for Death*, shows that the displacement of rural populations in Ethiopia has occurred in two ways: first by villagization, defined as “the clustering of agro-pastoral and/or shifting cultivator populations into more permanent, sedentary settlements.”²³⁸

This report shows that previous villagization programs were rife with forced displacements of

²³⁴ Liberti, *supra*, 7.

²³⁵ Diageo, Diageo furthers commitment to sustainable agriculture in Africa through investment in Ethiopia and Tanzania. Online: <http://www.diageo.com/en-row/newsmedia/pages/resource.aspx?resourceid=1269>.

²³⁶ Ethiopia Cooperation Framework, *supra*, 12.

²³⁷ The federal state actively promoted land investment in the period 2007-2010 and signed over 17 million hectares of land to foreign investors and expects to lease out a total of 7.4 million acres by 2013, Abbink, J., “Land to the foreigners: economic, legal, and socio-cultural aspects of new land acquisition schemes in Ethiopia” 2011 29:4 *Journal of Contemporary African Studies* 514 [Abbink].

²³⁸ Human Rights Watch, “Waiting Here for Death’: Forced Displacement and ‘Villagization’ in Ethiopia’s Gambella Region” (United States: Human Rights Watch, 2012) 3–411.

rural populations, in addition to grave human rights violations. Next, displacement has taken place by resettlement of residents from the highlands to the lowlands.²³⁹

These programs (resettlement and villagization) were introduced by the government of Ethiopia in late 1984, and by March 1986, some 800,000 people had been relocated to faraway areas in the country. To the Ethiopian government, these displacements are essential: to rescue those “who were affected by drought again and again and could not be rehabilitated in their own area due to its uselessness.”²⁴⁰ Cultural Survival, a group that advocates for Indigenous Peoples rights, said that the villagization program aimed to: establish the essential “preconditions for agrarian socialism, and to facilitate the provision of human social services by concentrating scattered homesteaders into central communities.”²⁴¹ The Government of Ethiopia also claims that the Villagization program will attract foreign capital to Ethiopia, boost technology transfers to native farmers, and increase local food security.²⁴²

But, the three-year program seems to be a debatable plan.²⁴³ For instance, a 2012 report by Human Rights Watch (HRW) shows that about 42% of the regional land area in Gambella has either already been leased or is tagged as available through the land bank.²⁴⁴ The HRW report has highlighted the loss of livelihoods, deteriorating food situation, and ongoing abuses by the

²³⁹ *Ibid*, 11.

²⁴⁰ Resettlement and Villagization, “Tools of Militarization in SW Ethiopia”.
<https://www.culturalsurvival.org/ourpublications/csq/article/resettlement-and-villagization-tools-militarization-sw-ethiopia>.

²⁴¹ Cultural Survival, “Resettlement and Villagization - Tools of Militarization in SW Ethiopia.”
<https://www.culturalsurvival.org/ourpublications/csq/article/resettlement-and-villagization-tools-militarization-sw-ethiopia>.

²⁴² International Human Rights Clinic, *Unheard Voices. The Human Rights Impact of Land Investments on Indigenous Communities in Gambella* (Oakland: The Oakland Institute, 2013) 6–7 [The Oakland Institute].

²⁴³ Popular observation is that the program is being established in areas of Ethiopia that the government is leasing to foreign investors for commercial agricultural operations, The Oakland Institute, *supra*, 6–7; Human Rights Watch *Waiting Here for Death*, *supra*, 3–4; Thomson, F., “Why We Need the Concept of Land-Grab-Induced Displacement” (2014) 4:2 *Journal of Internal Displacement* 50.

²⁴⁴ Human Rights Watch 2012, *supra*, 3–4.

armed forces against the affected people that the program has encouraged.²⁴⁵ Other studies have also shown that the changes for the subsistence community members resulted in land-grabbing, given they were dispossessed and displaced.²⁴⁶ Cattle-breeders were forced to abandon their “cattle-based” lifestyles²⁴⁷ and flee to refugee camps in neighboring countries.²⁴⁸ The study further indicated that the villagization program and foreign land investments in Ethiopia are being implemented on arable lands, which, in turn, deprived peasants of their livelihoods and cultures: subsistence farming, grazing herds, hunting, fishing, and gathering of forest resources.

3.2.3 Displacement and dispossession in Mozambique

Chikweti Forests, a subsidiary of a Sweden-based investment fund (Global Solidarity Forest Fund), is carrying out reforestation projects with commercial tree plantations on a land area estimated at 68,500 hectares. The land in question formerly provided food and shelter to some 230,000 inhabitants of Lago, Lichinga, and Sanga districts, Niassa Province, Mozambique.²⁴⁹

FIAN International, an NGO which has studied this aspect of land-grabbing in Mozambique,

²⁴⁵ It is alleged in the report that the relocation program, “marked by threats and assaults, and arbitrary arrest for those who resist the move, “ has already caused endemic hunger and numerous cases of starvation. People are being moved to areas that often lack viable farmland, sufficient drinking water, adequate health and educational facilities, and even roads, Human Rights Watch 2012, *supra*, 2.

²⁴⁶ Jan Egeland, Europe Director at Human Rights Watch, calls on the Ethiopian Government to suspend the program until it can ensure that the necessary infrastructure is in place and that people have been properly consulted and compensated for the loss of their land, Human Rights Watch, “What Will Happen If Hunger Comes? Abuses against the Indigenous Peoples of Ethiopia’s Lower Omo Valley”. Online: <https://www.hrw.org/report/2012/06/18/what-will-happen-if-hunger-comes/abuses-against-indigenous-peoples-ethiopias-lower>. [Abuses in Omo Valley]; Abbink, *supra*, 513–35.

²⁴⁷ Human Rights Watch added that pastoralists are being obligated to abandon their cattle-based livelihoods in favor of settled cultivation; and shifting cultivators (who are used to moving from one location to another) are being compelled to grow crops in a single location, which risks diminishing their soil of essential nutrients, Abuses in Omo Valley, *supra*.

²⁴⁸ Some local community members were forced to, after being beaten by soldiers, and sent to remote areas lacking all basic services, flee to Kenya to join hundreds of thousands of displaced people living in the world's biggest refugee complex, a sprawling expanse of tents and rudimentary houses set in the sun-hammered scrub and sand outside Dadaab. According to an indigenous community member from Ethiopia's western Gambella region, "We don't have any means of retrieving our land. We decided to find an organisation that could be our lawyer and stand up for us so that those who are funding these organisations to displace us will be stopped," The Guardian, Ethiopia's resettlement scheme leaves lives shattered and UK facing questions. Online: <http://www.theguardian.com/global-development/2013/jan/22/ethiopia-resettlement-scheme-lives-shattered>.

²⁴⁹ Seufert, P., (ed.) *The Human Rights Impacts of Tree Plantations in Niassa Province, Mozambique* (Heidelberg: FIAN International, 2012) 16 [FIAN International].

notes that cattle keeping, hunting, fishing, and small-scale agriculture, with beans, peanuts, maize, cassava, and sweet potatoes, have been the main cultures of families in the Niassa Province.²⁵⁰ The company promised to promote sustainable agriculture²⁵¹ although this has not happened to date.

The community of Maniamba (Lago district) is an example where community members complained that Chikweti's investment has encouraged loss of access to fertile lands which they previously used for food production.²⁵² In other words, the company's plantations have invaded useful farmlands that smallholders relied on to grow crops: this has deprived them of their means of survival. What makes the situation even more unpleasant to residents who were not physically displaced by Chikweti's investment is that the plantations are very close to (not more than ten meters away from) farmers' fields or have surrounded their fields and homes.²⁵³ Furthermore, Chikweti expanded its investment to areas beyond those which were ceded to the company. This led to an uprising in the affected communities, during which the company's equipment and trees were destroyed.²⁵⁴

FIAN International estimated that some 60,000 pine trees on an area of 12 hectares were uprooted by those who demonstrated strong objection to Chikweti's operations in the affected communities.²⁵⁵ Those who tried to oppose the operations by destroying the company's property were faced with arrest and detention. In particular, around 12 persons were detained and accused

²⁵⁰ *Ibid*, 18.

²⁵¹ Chikweti Forests promised to ensure that its "forest management plans are economically viable, socially acceptable and ecologically sound," *ibid*, 17.

²⁵² *Ibid*, 18.

²⁵³ *Ibid*.

²⁵⁴ FIAN International, *supra*, 18.

²⁵⁵ *Ibid*, 19.

of promoting the uprising in the region.²⁵⁶ One of the individuals arrested told a local newspaper that, in addition to losing his field as Chikweti extended its holdings, he was arrested.²⁵⁷ He lamented: “Chikweti has taken our land; where are we going to cultivate now. Our fields used to be close to our homes, now we have to go beyond the mountains where there are no schools or hospitals.”²⁵⁸ These paragraphs indicate that land-grabbing by foreign investors has the potential to place smallholder farmers in a position of marginal influence and importance.

3.2.4 Displacement and dispossession in Nigeria

The decision by some Nigerian governments to set aside thousands of hectares of land for agricultural investments has, perhaps, attracted foreign agricultural investors such as PZ Wilmar, Cargill, and Dominion Farms to Nigeria. For illustration, the Government of Edo State has set aside 300,000 hectares of land for agricultural investment as part of its “effort to becoming one of the world’s developed agricultural states in Nigeria within the next two-three years.”²⁵⁹ According to James Aniyom (Cross River’s Commissioner for Agriculture and Natural Resources), “the vision is to move Cross River State agriculture from government to private sector driven.”²⁶⁰

Between 2011 and 2012, PZ Wilmar purchased 26,000 hectares of plantation sites (with intentions to expand its holdings to 240,000 hectares) in Cross River State, Nigeria to develop palm oil plantations and processing mills.²⁶¹ PZ Wilmar claims “to support the development of a

²⁵⁶*Ibid.*

²⁵⁷*Ibid.*

²⁵⁸*Ibid.*

²⁵⁹ Farmlandgrab-org, ‘Edo State sets aside 300,000 ha of land for investment’

<http://www.farmlandgrab.org/post/view/25301-edo-state-sets-aside-300-000-ha-of-land-for-investment>.

²⁶⁰ AllAfrica, Nigeria: Cross River State - Investment Yet to Yield Dividend. Online:

<http://allafrica.com/stories/201509210384.html>.

²⁶¹ Ecologist (Van Schaik, A., and G. Ojo), “Deforestation, exploitation, hypocrisy: no end to Wilmar's palm oil land grabs”. Online:

sustainable, profitable and self-sufficient palm oil industry in Nigeria.”²⁶² This should be a newsworthy devotion to eradicating all forms of deforestation and violations of human rights resulting from production and distribution of its commodity. However, it is hard to imagine how PZ Wilmar’s aim to prevent environmental degradation will be reconciled with its developments in forest reserves.

Most land in Nigeria’s Cross River State is either forested, in community usage, or already dedicated to commodity agriculture.²⁶³ Industrial agriculture in this part of Nigeria will undoubtedly have unwanted impacts on the biodiversity and forests, and displace peasants from their livelihoods. Researchers have underscored the horrible socioeconomic and environmental implications, including for community water sources, land, and non-timber forest product collection areas that this investment could have on vulnerable communities.²⁶⁴ A local Chief attests: “...We used to plant [food crops]...The community is over 7000 people, and the land was over 300 hectares, and 200 of this have been taken now.”²⁶⁵ A Youth Leader says: “We had to dig an alternative source of water, because the river dried up.”²⁶⁶ In addition to Friends of

http://www.theecologist.org/News/news_analysis/2879965/deforestation_exploitation_hypocrisy_no_end_to_wilmar_palm_oil_land_grabs.html.

²⁶²New Alliance for Food Security and Nutrition, “Cooperation Framework to Support the New Alliance for Food Security and Nutrition in Nigeria”, 18-19. Online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208216/new-alliance-progress-report-coop-framework-nigeria.pdf.

²⁶³A research conducted by Friends of the Earth US and Environmental Rights Action (Nigeria) in 2015 shows that Wilmar’s Obasanjo farms concessions, overlaps both Cross River National Park and the Ekinta Forest Reserve”, Friends of the Earth, *Exploitation and Empty Promises: Wilmar’s Nigerian land grab* (Washington D.C.: Friends of the Earth and Environmental Rights Action) 15-16 [Friends of the Earth].

²⁶⁴A mapping analysis conducted by Friends of the Earth in 2015 shows that areas around Wilmar’s concessions in Cross River State has been deforested, Urness, J., and A. Teaby, *Analysis of Forest Cover Loss in Palm Oil Concessions in Nigeria for Friends of the Earth: Update 2* (Friends of the Earth, 2015) 2; According to Friends of the Earth and Environmental Rights Action, 8% of the total land area within the concessions, has been deforested, Friends of the Earth, *ibid*, 15. This number probably consists of the cutting down of natural forest.

²⁶⁵Chief Niufam Etim Itagbor of Mbarakom Village (Nigeria) continues that forest, with medicinal plants and wildlife, like antelope and monkey was lost to Wilmar, and that they now have to buy meat and fish which is “very expensive.” Friends of the Earth, *supra*, 35.

²⁶⁶He went further that hundreds of people use this source, so people have to get up at 4 AM to be able to be the first person to fetch the water,” *ibid*, 37.

the Earth's report, other researchers have underscored the threats of Wilmar's operations to High Conservation Value areas, containing areas used by peasants for farming and collecting forest resources.²⁶⁷ By threatening biodiversity in the region, the goal to promote all three facets of sustainable development become difficult to achieve. Approximations of the number of persons who have or will likely be physically displaced and dispossessed of farmland, hunting and fishing grounds, and other non-timber forest resources by Wilmar's operations differ. Rainforest Resources Development Centre (RRDC) and Environmental Rights Action estimate that the livelihoods of 20,000 people may be adversely impacted, with about 10,000 people potentially facing eviction from their lands.²⁶⁸ Another study by the Center for International Forestry Research (CIFOR) shows that the company's plantations will impact farmland currently or previously managed by as many as 7800 households.²⁶⁹ Despite divergence between results presented by RRDC and CIFOR, the fact remains that Wilmar's investment will promote the widespread destruction of the environment, with accompanying economic, social and cultural destruction.²⁷⁰

Nigerian land is also a top priority for Dominion Farms and Cargill.²⁷¹ They have each acquired 30,000 hectares of valuable land for the establishment of a cassava starch processing facility²⁷² and a rice plantation²⁷³ respectively. Information gathered by GRAIN, an international NGO that

²⁶⁷ Schoneveld, G. C., "The politics of the forest frontier: Negotiating between conservation, development, and indigenous rights in Cross River State, Nigeria (2013) Land Use Policy 158-160; Friends of the Earth, *supra*, 23.

²⁶⁸ Friends of the Earth, *supra*, 19.

²⁶⁹ *Ibid*, 156.

²⁷⁰ This is because the resources on which Wilmar's concessions are established provided an important livelihood for an essential number of people to support domestic food sovereignty.

²⁷¹ According to the vice chairman of Cargill, Paul Conway, the key to resolving the current global food crisis is "to make better use of the land in Africa ...," Aljazeera, Food for thought. Online: <http://www.aljazeera.com/programmes/countingthecost/2012/09/20129167591879452.html>.

²⁷² Cargill, Cargill in Nigeria. Online: <<http://www.cargill.com.ng/en/index.jsp>>.

²⁷³ GRAIN, *Dominion Farms' Land Grab in Nigeria: Farmers in Taraba State refuse to give up their lands for massive rice plantation project backed by the G8* (Centre for Environment and Educational Development, Environmental rights Action, GRAIN, Global Justice Now, 2015) 3 [Dominion Farms Land-grab].

works to assist subsistence farmers in their struggles for “community-controlled and biodiversity-based food systems,” demonstrates that up to 45,000 people relied on the lands given to Dominion Farms for their livelihoods.²⁷⁴ This number suggests that the land leased to Dominion Farms was previously occupied by smallholders, including farmers, fishermen, hunters, herders, and other disenfranchised groups.

There are allegations that Dominion Farms’ operations are imposing untold hardship on the vulnerable communities, including poverty. As claimed by a local: “We are speaking in one voice against Dominion Farms because we are opposing their activities. We have fish ponds... on that land.” But Dominion Farms has said, he added, that “they will sand fill the fish ponds to give them more farmland.”²⁷⁵ With agriculture being crucial to economic growth and poverty reduction in sub-Saharan African countries,²⁷⁶ grabbing the source of livelihoods of over 45,000 people will only help in increasing poverty and food insecurity in the region: this is social and distributive injustices.

²⁷⁴ Centre for Environmental Education and Development (CEED), Environmental Rights Action, Friends of the Earth, GRAIN, and Global Justice Now, “Dominion Farms’ land grab in Nigeria Farmers in Taraba State refuse to give up their lands for massive rice plantation project backed by the G8” (2015) 4. Online: <<https://www.grain.org/article/entries/5126-dominion-farm-s-land-grab-in-nigeria>> [CEED].

²⁷⁵ He also said that “when they commenced work on the land they came with security personnel whom Dominion Farms mandated to evict all farmers who were working on their lands.” Here are some quotes from local farmers: “We do not subscribe to a foreign agricultural and farming system that we do not have knowledge. They came here to farm. The only story we hear is that our land is taken away and will be given out. We were not involved at any level. For the sake of the future and our children, we are requesting governmental authorities to ask Dominion Farms to stay away from our land” (Rebecca Sule and Mama Tina); “...Our land is very rich and good. We produce a lot of different crops here like rice, beans, Guinea corn, cassava, soya beans, millet, yam as well as fish farming and the rearing of animals like goats, sheep and cattle. But since Dominion Farms people arrived with their machine and some of their working equipment we were asked to stop our farm work and even leave our lands as the land is completely given to the Dominion Farms project. Some of the farmers owned private tractors which they used for their farm work, apart from the Upper River Basic assets, that are still in place” (Mallam Danladi K Jallo); Dominion Farms Land-grab, CEED, *supra*, 6-7.

²⁷⁶ A World Bank study shows that agriculture is very crucial to economic growth, accounting for one-third of gross-domestic product (GDP) and three-quarters of employment in Sub-Saharan Africa, The World Bank. Online: <http://www.worldbank.org/en/topic/agriculture/overview#1>.

The Environmental Justice Atlas (EJA), a teaching, networking, and advocacy resource that documents and catalogs social conflict around environmental issues, shows that in 2007, about 3,500 hectares of the Iguobazuwa Forest Reserve (Nigeria) were assigned to the French company Michelin to establish a rubber plantation. To EJA, this is “illegal” because it was executed without carrying out an adequate environmental impact assessment, says the land in question was home to a population of over 20,000 rural people, “85% of whom depend[ed] on the dense forest for their daily livelihoods.”²⁷⁷

This argument highlights that adverse impacts of the Michelin project on the environment and vulnerable communities were not assessed, and hence not considered in the planning, implementation, and decommissioning phases of the project. In the absence of an adequate environmental impact assessment of the project, it may be difficult for potential negative environmental and social impacts to be adequately mitigated. As Ortolano and Shepherd contend, “the most common positive outcomes of EIA are suggestions for measures needed to mitigate the adverse effects of a proposed plan.”²⁷⁸

The report further states that the Iguobazuwa Forest Reserve is rich in flora and fauna species and was used for the cultivation of food crops like cassava, plantain, yam, pineapple, etc. Strictly speaking, this forest provided a wide array of benefits, environmental, social, economic, and cultural, to the indigenous populations of the affected area. The agrarian people, after the

²⁷⁷ Environmental Justice Atlas, “Michelin Rubber plantations, Nigeria”. Online: <https://ejatlas.org/conflict/michelin-rubber-plantations-nigeria>.

²⁷⁸ They described mitigation as including: renouncing environmentally destructive elements of a proposed development; reducing negative impacts by redesigning or scaling down a project; rectifying, rehabilitating, or reinstating those parts of the environment that are adversely impacted; and creating or acquiring environments similar to those negatively affected by an activity. Ortolano, L., and A. Shepherd, “Environmental Impact Assessment: Challenges and Opportunities” in Fischer, T. B. *Environmental Assessment* (ed) (London: Routledge, 2016), 66.

company bulldozed the 3,500 hectares of land, were left without compensation.²⁷⁹ As can be imagined, this operation destroyed the sources of livelihood of the host communities when their forest and farmlands were grabbed,²⁸⁰ a corrective justice concern.

3.2.5 Dispossession and displacement in Senegal

In July 2010, Senhuile-Senéthanol sought to establish a plantation on a land area estimated at 20,000 hectares within a forest and wetland in the Saint-Louis region of Senegal, in order to grow sweet potatoes for first-generation biofuels production. According to the Oakland Institute, Senhuile-Senéthanol is owned by a multifaceted “maze of companies” and entities with connections to various countries around the world, including Italy, Brazil, the United States, and Panama.²⁸¹ Senhuile-Senéthanol’s concession overlaps the Ndiael Bird Reserve.²⁸² That Senhuile-Senéthanol is operating within a biodiversity hotspot indicates a high probability that endemic plants and animals will be depleted and the environment degraded.

It was reported in 2013 that the chief economic activity of the nearly 9,000 inhabitants living in the project area within the past centuries is “semi-nomadic herding.”²⁸³ The area in question is also said to be “the only zone in the region that is still available for pastureland,” with some

²⁷⁹ *Ibid.*

²⁸⁰ In particular, Friends of the Earth reported that the creation of the rubber plantation “increased hunger, malnutrition, poverty and forced migration, as food became harder to find or produce after the company bulldozed the area,” Friends of the Earth, *For the land that feeds us: struggles and achievements in building food sovereignty and local diversity* (Amsterdam: Friends of the Earth International, 2011) 10.

²⁸¹ Word, J., *Surrendering Our Future: Senhuile-Senéthanol Plantation Destroys Local Communities and Jeopardizes Environment* (Oakland: The Oakland Institute, 2014) 3 [The Oakland Institute Senegal].

²⁸² This reserve, according to the African Development Bank, had been classified as special wildlife reserve and a wetland of international importance for birds, African Development Bank, Senegal - Project to Restore the Ecological and Economic Functions of Lake Guiers - Executive ESIA Summary. Online: <http://www.afdb.org/en/documents/document/senegal-project-to-restore-the-ecological-and-economic-functions-of-lake-guiers-executive-esia-summary-31588/>.

²⁸³ Benegiamo, M., “Reserve naturelle de biocombustibles” AgoraVox, May 18, 2013). Online: <http://www.agoravox.fr/actualites/international/article/reserve-naturelle-de-135960>.

40,000 cows, 20,000 sheep, 21,000 goats, and 4,000 horses and donkeys grazing in the area.²⁸⁴ Water and pasture are getting scarcer.²⁸⁵ In view of the importance of these resources to livestock, and how crucial livestock is to herders on the African continent,²⁸⁶ losing pastureland to cultivate energy crops is socially, culturally, and economically unjust.²⁸⁷

The said land was formally used by villagers in order to meet their food needs. The literature points to a domestic law in Senegal that recognized and guaranteed the rights of the affected communities to farm, hunt, and collect non-timber forest resources, including water, firewood, and medicinal plants.²⁸⁸ The Senhuile-Senéthanol project requires massive amounts of water (a precious resource in the desert areas of Senegal) from a river, also used widely by the local population as a source of freshwater during the dry season.²⁸⁹ By allowing this investment to operate in a semi-arid region, the community's valuable water resources will be burdened all the more. Also, the company's operations, including its water canals, present serious security concerns.²⁹⁰

Coupled with the fact that the project has dispossessed some villagers of their lives by encouraging life-threatening costs in the region, such as physical and cultural deaths (this needs a

²⁸⁴The Oakland Institute Senegal, *supra*, 5.

²⁸⁵ Rougui Sow, villager from Kadoudef, testifies "we have no more herding routes. We only have these wells left and they want to remove those, too. If they take the wells, we will have nowhere to go for water. If the project stays here, we will be obliged to leave our village", The Oakland Institute Senegal, *supra*, 6.

²⁸⁶ According to FAO, livestock play a crucial role in South Sudanese society and represents an important source of food, (in the form of milk and meat) and a symbols of wealth and status, Food and Agriculture Organization of the United Nation, Growing concern for South Sudan's herders as conflict displaces millions of cattle. Online: <http://www.fao.org/news/story/en/item/273819/icode/>.

²⁸⁷ Without pastureland, it may be difficult, if not impossible, for herders to sustain their families and continue their nomadic way of life. This may amount to cultural genocide which the UN Declaration on the Rights of Indigenous Peoples stands against, UNDRIP, *supra*.

²⁸⁸ The Oakland Institute Senegal, *supra*, 5.

²⁸⁹ The Oakland Institute Senegal, *supra*, 8.

²⁹⁰ It has been reported that three children drowned after falling into the company's canals in June 2013, Sidy, A., "Mort par noyade de trois enfants à Gnith : Sen Huile Sen Ethanol au banc des accusés" (Farmlandgrab, 2013) Online: <http://farmlandgrab.org/post/view/22189-mort-par-noyade-de-trois-enfants-a-gnith-sen-huile-sen-ethanol-au-banc-des-accuses>.

little more detail), the project resulted in an uprising. Six local dwellers were detained for ten days when the first clashes occurred in Fanaye between opponents and supporters of Senhuile-Senéthanol operations in the area.²⁹¹ Those challenging the project claimed that to permit the project is to allow the company to occupy 32% of the community's arable land. The result: 56 hamlets and 6 villages will be forced to relocate; farming, grazing, and forest reserves will be eroded; and local people will be transformed into agricultural plantation laborers.²⁹²

As described by Jettie Word, the villagers “are unable to continue to raise their livestock, access water, or travel freely on land they have inhabited for decades, the people of Ndiaël will have no choice but to pack up and leave their homes and villages.”²⁹³ Land clearances, which have taken place to make way for Senhuile-Senéthanol's operations in Senegal, have been complemented by violence and distress and have left many in a state of landlessness and poverty. This is because the former users are prevented from adequately accessing the land to farm, graze, and collect water, firewood, and other non-timber forest resources. If allowed to remain and expand in the absence of alternate pasture and farming land, and/or reasonable compensation, the investment may exacerbate the burdens that the project has already imposed on the villages.

Although Senhuile-Senéthanol claims that it has not violated the land rights of the population in question in Senegal, Global Research, a Montreal-based NGO that is designed to publish news articles, commentary, background research, focusing on social, economic, strategic and environmental issues, says otherwise. This NGO claims that “the company has cultivated only a

²⁹¹ ActionAid and Initiative Prospective Agricole et Rurale (IPAR), “Impact des investissements agricole italiens dans les biocarburants au Sénégal: Études de cas dans les zones de Fanaye (St-Louis), de Nétéboulou et de Ndogo Babacar (Tambacounda)” (Actionaid and IPAR, 2012) 42.

²⁹² The Oakland Insitute Senegal, *supra*, 5.

²⁹³ *Ibid*, 6.

fraction of this; to make the project.”²⁹⁴ The fact that the firm has not justified why it has acquired more farmland that it could develop may only help to confirm what the Special Rapporteur to the Right to Food, Olivier De Schutter, calls the “speculative dimension” of what is driving corporations and foreign governments to invest abroad. He notes that investors are fascinated by what now looks like a “new and rapidly expanding market of land and water rights, the result of an accelerated commodification of natural resources that are increasingly treated as mere economic assets.”²⁹⁵

According to the Special Rapporteur, the current land rush is compelled, partially, by a view to secure natural resources abroad—water, forests, land, among others. The World Bank has also reported that some agricultural investors were acquiring larger land areas than they could farm in an attempt to “lock in very favorable terms of land access and eliminate future competition,”²⁹⁶ indicating that speculation is a prime motive of land-grabbing. Most of the deals grant the investors long-term rights over other critical and valuable natural resources on the land. As Mann and Smaller comment, the current land sales are largely about “shifting land and water uses from local farming to essentially long-distance farming to meet home state food and energy needs. It is, in practice, purchasing food production facilities.”²⁹⁷ But there are decent reasons to believe

²⁹⁴ Global Research, Senegal Land Grab on the Verge of Implosion. Online: <http://www.globalresearch.ca/senegal-land-grab-on-the-verge-of-implosion/5464398>.

²⁹⁵ De Schutter, *supra*, 252.

²⁹⁶ The study further highlights that more than 50% of inspected projects had either not began any activity or lagged considerably behind their development plan. Deininger, K., and D. Byerlee, J. Lindsay, A. Norton, H. Selod and M. Stickler, *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?* (Washington D.C.: World Bank, 2011) 62-63.

²⁹⁷ Mann, H., and C. Smaller, *Foreign land purchase for agriculture: what impact on sustainable development?* (New York: DESA, 2010) 1-2.

that the rights over other valuable resources on acquired land are an important concern in the business model of a lot of land acquirers in Africa.²⁹⁸

3.2.6 Displacement and dispossession in Tanzania

Tanzania's agriculture ministry says subsistence farming plays a significant role in food security and rural development, with local farmers producing over 90% of food in the country.²⁹⁹ High rate of local involvement in agriculture shows the substantial role that Tanzanian farmers play in local food security and socio-economic development in that country. The fact that Tanzania is not very rich in arable land³⁰⁰ (a resource that local community members need to promote their food security) should encourage the government to restrict the size of land that foreign investors can lease for agricultural operations in Tanzania. Although Tanzania seems deficient in farmland, the Tanzanian government, by 2013, had allocated millions of acres of land to large-scale investors.

IIED reported in 2009 that over 4 million hectares of farmland had been requested from the Tanzanian government for jatropha, sugarcane, and palm oil investments.³⁰¹ Evidence suggests that by the end of 2008 640,000 hectares of the 4 million hectares have so far been allocated to private investors.³⁰² IIED cites 23 biofuel investors that are currently operating in Tanzania, including European investors such as Bio-Massive (Sweden) Sun Biofuel (United Kingdom),

²⁹⁸ A land deal that was signed between the Government of Mali and Libyan-owned Malibya Agriculture “for a period of 50 years renewable up to a total of 99) grants to the investor unrestricted access to water, for which a fixed, annually negotiated fee is charged, as well as rights of exploitation to all surface sand, gravel, and ordinary stone for construction purposes” Malibya will pay no land tax, fees, or other payments, and will be under no obligation to hire Malians or to sell any produce in Mali, USAID, Mali: Land Tenure Assessment Report (Burlington: USAID, 2010) 14.

²⁹⁹ Research by the Guardian shows that of Tanzania's 94.5m hectares, only half – 44m hectares – is arable land. The Guardian, “Tanzania takes major step towards curbing land 'grabs.’” Online: <http://www.theguardian.com/global-development/2012/dec/21/tanzania-major-step-curbing-land-grabs>. [Guardian].

³⁰⁰ *Ibid.*

³⁰¹ Sulle, E., and F. Nelson, *Biofuels, land access and rural livelihoods in Tanzania* (London: IIED, 2009), 18 [Sulle and Nelson].

³⁰² *Ibid.*, 18.

BioShape (Netherlands) and SEKAB BT (Sweden).³⁰³ An often cited example is the over 325,000-hectare arable land that the Government of Tanzania, in 2013, leased to US-owned AgriSol Energy (Agrisol) for 99 years.³⁰⁴ Needless to say that, this allocation is hurting the communities who earlier had access and control over the land and its resources, by violating their human rights.

The land in question comprises the former Lugufu refugee camp in Kigoma province (25,000 hectares) and the Katumba (80,317 hectares), and Mishamo (219,800 hectares) abandoned refugee camps in Rukwa province, Tanzania.³⁰⁵ Research by the Oakland Institute shows that in addition to Agrisol Energy, many different actors have a stake in this project, including Tanzania-based Serengeti Advisers Limited, a leading Tanzanian investment and consulting firm, Pharos Global Agricultural Fund (managed by a Dubai-based firm that specializes in emerging markets investment with returns of 13-20% for investors by acquiring agricultural land, among others). Summit Group (headquartered in Alden, Iowa) and Iowa State University, is described as “one of the most respected land-grant universities in the nation.”³⁰⁶ In order to persuade Tanzanian officials to support genetically modified crops (a technology that has been criticized for overlooking the real causes of hunger³⁰⁷), these actors said that Tanzania has 25 million acres of farmland that is generating practically nothing.³⁰⁸ Their stated goal is to convert this African country into a “regional agricultural powerhouse” by combining Tanzania’s abundant agricultural land and other resources with contemporary farming practices.³⁰⁹ They are

³⁰³ *Ibid.*

³⁰⁴ Oakland Institute, *Understanding Land Investment Deals in Africa Agrisol Energy and Pharos Global Agriculture Fund’s Land Deal in Tanzania* (Oakland, Oakland Institute, 2011) 1 [Oakland Institute Agrisol].

³⁰⁵ *Ibid.*

³⁰⁶ *Ibid.*

³⁰⁷ (CBAN, 3)

³⁰⁸ *Ibid.*, 2.

³⁰⁹ *Ibid.*

determined to “unlock the potential” through the use of genetically modified technology, among others, to increase yields and reduce labor-intensive agricultural methods. AgriSol claims that Tanzanian (non-GM) maize yields are 17.5 bushels per acre (bu/acre), while Iowa (GM) maize yields are 195 bu/acre.”³¹⁰

The annual rent for leasing the said land to Agrisol was fixed at 200 shillings/hectare/year, in addition to a 500 shillings (US 50 cents)/hectare/year payment to the district council in the affected area. AgriSol describes the land in question “abandoned refugee land,” despite arguments by Broughton and the Oakland Institute that the land in question was home to over 160,000 refugees from Burundi who have, for 40 years, established homes, churches, farms, fields, and other community facilities.³¹¹ The government of Tanzania started a naturalization process in 2008: to grant citizenship to the over 160,000 refugees in April 2010.³¹²

Citizenship was to be granted on one condition: that the villagers who have lived on, accessed the environmental resources on this land for over thirty years, and established their lives by farming, fishing, hunting, and animal rearing had to be, against their will, evacuated from the said land.

In other words, their citizenship was contingent on them surrendering their land holdings (including their homes, farms, rivers, forest resources, pasture land, as well as their cultures) to Agrisol and relocating to other parts of Tanzania.³¹³ So, granting citizenship to these refugees came with a price tag: the concerned community members would have to forfeit their villages

³¹⁰ Oakland Institute Agrisol, *supra*, 2.

³¹¹ *Ibid*, 3; and Alan Broughton, *supra*, 26.

³¹² Oakland Institute Agrisol, *supra*, 3.

³¹³ Media reports and phone interviews with the former refugees revealed that, although they had apparently received citizenship in 2010, ‘their legal status and actual certificates of citizenship were being withheld until they relocated to other areas of Tanzania,’ Oakland Institute Agrisol, *supra*, 3.

and means of support, not forgetting their identity and security, amounting to cultural degradation—a crime that the United Nations condemns.³¹⁴ The impact of Agrisol’s investment on the local peoples of Tanzania exemplifies how a host government can side with foreign agricultural investors against its citizens to the detriment of local food security.

The report of Farmlandgrab.org, a website containing news stories about the global rush to buy up or lease farmlands abroad, of May 22, 2015, shows that the Tanzanian government is in the process of breaking its agreement with AgriSol “over consistent violation of its terms.”³¹⁵ According to Tanzania’s Deputy Minister for Agriculture, Food Security and Cooperatives, Godfrey Zambi, the contract between the government of Tanzania and Agrisol stipulates that “the investment should begin within three years and the company should be reporting to Tanzania Investment Centre every six months.” The Minister added that the investor failed to implement “the agreed terms.”³¹⁶ It is unclear whether the government resolved to terminate its contract with AgriSol and search for another investor or offer the land to the refugees who previously had access, use, or control over the property.

In 2008, Sun Biofuels, a British-owned agrofuel company, also established a jatropha plantation on a land area estimated at 8,211 hectares in Tanzania.³¹⁷ To begin with, the land allocated to Sun Biofuels, according to the Oakland Institute, was forest and bushland that 11 villages in the Kisarawe district in Dar es Salaam, Tanzania, used in order to graze, produce charcoal, and harvest forest products such as firewood, fodder, medicine, etc.³¹⁸ About 80% of Kisarawe’s

³¹⁴ UNDRIP, *supra*, article 11.

³¹⁵ Farmlandgrab.org, “Tanzania: Govt to freeze multi-billion shilling pact with US firm.” Online: <http://farmlandgrab.org/24935>. [Farmlandgrab.org].

³¹⁶ *Ibid.*

³¹⁷ The Oakland Institute, *Understanding Land Investment Deals in Africa: Tanzanian Villagers Pay for Sun Biofuel Investment Disaster* (Oakland: The Oakland Institute, 2012) 1 [Oakland Institute Tanzania].

³¹⁸ Oakland Institute Tanzania, *supra*, 4.

100,000 inhabitants were farmers and gatherers of non-timber forest resources.³¹⁹ These are additional activities that the villagers depended on, to enhance their food and income security beyond subsistence farming.³²⁰ In return, Sun Biofuels promised financial compensation, water wells, 700 jobs, improved schools, health clinics and roads to the affected households.³²¹

Although studies have shown that biofuels farming could, indeed, provide different forms of benefits to the host communities and countries,³²² the Sun Biofuels project left lots of villagers in anguish, as they became landless and with no hope of their present and future generations. Because the said plantation is on the land that the villages had access to, it was evident that, sooner or later, the establishment of this project would marginalize rural farmers, fishers, pastoralists, and grazers, and lead to landlessness and cultural degradation.

The Guardian Newspaper has reported that Sun Biofuels was unwilling to fulfill its promises, including the promise to compensate for lost wages.³²³ This information raises a corrective justice concern: the fact that even after acquiring about one-quarter of the farmland in the area, the investor was still unwilling to (appropriately) compensate the affected communities. One family received barely 13 million Tanzanian shillings (£4,835) for 670 hectares of his farmland that was lost to Sun Biofuels.³²⁴ The promise to construct roads, schools, water wells, and clinics, etc. to the affected communities was never adequately honored.³²⁵ For those who agreed to

³¹⁹ *Ibid.*

³²⁰ According to statistics, up to 70% of the household income of some of the affected household came from the land in question, *Ibid.*

³²¹ Oakland Institute Tanzania, *supra*, 1.

³²² For instance, the FAO and IIED note that, biofuels can: increase long-term energy security for countries seeking alternative energy sources; create opportunities for rural development; and develop new export markets for land-rich countries, Cotula, L., N. Dyer and S. Vermeulen, *Fuelling Exclusion? The Biofuels Boom and Poor People's access to Land* (London: IIED and FAO, 2008) 10.

³²³ The Guardian, UK firm's failed biofuel dream wrecks lives of Tanzania villagers. Online: <http://www.theguardian.com/environment/2011/oct/30/africa-poor-west-biofuel-betrayal>. [The Guardian].

³²⁴ *Ibid.*

³²⁵ Oakland Institute Tanzania, *supra*, 3.

become agricultural workers, their wages were dishearteningly little to compensate for lost income from subsistence farming³²⁶ and the £42-a-month salary promised by the company to employees seemingly turned out to be a scam.

To question why the guaranteed wage did not materialize, Saidi Abasi received this response from his employer (Sun Biofuels): “if you want to work, work. If you don't, get out.”³²⁷ One of the plantation workers claimed he was not paid the full severance pay due for his 18 months of service after his contract was terminated, and with others, the villagers described the tale of London-based Sun Biofuels' disaster as “the return of colonialism” in the country.³²⁸ As though the degrading situation was not enough, plantation workers were allowed to spray pesticides without protective equipment, an act that affects human health, according to the World Health Organization.³²⁹ Sun Biofuels seems not to be concerned about this allegation, as the company is still to react to the claim.

The establishment of the project led to a profound loss of access to water and other non-timber forest resources such that local community members were obliged to buy charcoal and water,³³⁰ resources which were generously accessible before the plantation was established on their land. It is crucial to mention that two years after the project went operational the business started facing a slow-down, and finally went bankrupt. The company's shares were bought by 30 Degrees East, a company that, in order to mothball the project, laid off about 600 villagers who

³²⁶ *The Guardian*, *supra*.

³²⁷ *Ibid*.

³²⁸ *Ibid*.

³²⁹ According to the World Health Organization, “Pesticide poisoning is a global public health problem. An estimated three million acute poisonings occur worldwide each year” and occupational exposure to agricultural pesticides is a major source of pesticide poisoning,” World Health Organization, “Pesticide regulations and farm worker safety: the need to improve pesticide regulations in Viet Nam.” Online: <http://www.who.int/bulletin/volumes/90/6/11-096578/en/>.

³³⁰ Oakland Institute Tanzania, *supra*, 4.

happened to have been employed by Sun Biofuels.³³¹ To the author's knowledge, Mtanga Foods is currently managing the Sun Biofuel project in Tanzania.³³²

In considering all of the above facts, some of the affected community members might be in a more economically and environmentally perilous situation than they were in before the project was realized. The media has also captured other abandoned biofuel schemes in Tanzania³³³ and Madagascar.³³⁴ Most of these projects appear to have harmed local people (by causing them to lose their farmlands, supply of potable water, access to non-timber forest products, and the promised employment opportunities and social amenities), the very people that these companies promised to assist. Nevertheless, there seems not to be any signs on the part of the host governments to return the lands (plantation areas) to the villagers or to pursue the companies for compensation.

3.2.7 Dispossession and displacement in Uganda

*"I remember my land, three acres of coffee, many trees – mangoes and avocados. I had five acres of banana," Francis Longoli articulates. "I was given awards as a model farmer. I had cows for milk, ten beehives, two beautiful permanent houses. My land gave me everything from my living to my children's education. People used to call me Omataka – someone who owns land. Now that is no more. I am one of the poorest now."*³³⁵

According to Oxfam's case study in September 2011, Francis Longoli is one of the hundreds of poor subsistence community members who were evicted from their farmlands, houses, and other resources in the Kiboga and Mubende districts in Uganda to allow for London-based New

³³¹ At the time the Oakland Institute was conducting its research in 2012, 3D East had just 35 employees, Oakland Institute Tanzania, *supra*, 1.

³³² Mikaelbergius, *Cattle to replace Jatropha in Kisarawe – MtangaFoods* <https://mikaelbergius.wordpress.com/2016/02/23/cattle-to-replace-jatropha-in-kisarawe-mtanga-foods/>.

³³³ See, for example, the Swedish-owned SEKAB BioEnergy Tanzania Limited project, Larsen, R. K., *Biofuel Production and its Impacts on Local Livelihoods in Tanzania* (Stockholm: Stockholm Environment Institute 2013)

³³⁴ See, for example, the UK-owned GEM Biofuels in Madagascar, The Guardian, *Biofuels boom in Africa as British firms lead rush on land for plantations*. Online: <http://www.theguardian.com/environment/2011/may/31/biofuel-plantations-africa-british-firms>.

³³⁵ Grainger, M., and K. Geary, *The New Forests Company and its Uganda plantations* (Oxfam International, Ugandan Land Balance, GROW, 2011) 2 [Oxfam in Uganda].

Forests Company (NFC)'s carbon offset projects. Licenses were granted in 2005 by the Ugandan National Forestry Authority (NFA) over plantation areas to NFC, and NFA embarked on procedures to remove the former residents (between 2006 and 2010) which it claimed were "illegal encroachers." Archival research by Oxfam illustrates that the over 22,000 people that were under threat of eviction to make way for NFC's operations had lived in the company's concession since the early 1970s.³³⁶

Some of the villagers that were affected by the project claimed that they had lived on the land for decades: the land in question was allocated to them during the Idi Amin regime in acknowledgment of their ancestors having fought in the British army during World War II. They also claimed that they were "strong and thriving permanent communities" that had been paying taxes to the government.³³⁷ According to Oxfam, the villages had functioning government structures, including schools, local council systems, health centers, churches, permanent homes, and farms on which they cultivated crops to sustain their families and sell the surpluses on the local market.³³⁸ This case is yet another instance of local communities that are losing out as a result of foreign land-based investments.

Oxfam International's report, which was confirmed in REDD-Monitor,³³⁹ The Guardian,³⁴⁰ The New York Times,³⁴¹ and AlJazeera,³⁴² shows that "the people evicted from the land are

³³⁶ Oxfam Uganda, *supra*, 2.

³³⁷ Oxfam Uganda, *supra*, 2.-3.

³³⁸ *Ibid.*

³³⁹ REDD-Monitor, "Ugandan Farmers kicked off their land for New Forests Company's Carbon Project". Online: <http://www.redd-monitor.org/2011/09/23/ugandan-farmers-kicked-off-their-land-for-new-forests-companys-carbon-project/#t1>

³⁴⁰ The Guardian, "Uganda threatens to expel Oxfam and NGOs over land-grabbing claims". Online: <http://www.theguardian.com/global-development/2012/may/10/uganda-oxfam-land-grabbing-claims> [Guardian].

³⁴¹ The New York Times, "In Scramble for Land, Group Says, Company Pushed Ugandans Out". Online: http://www.nytimes.com/2011/09/22/world/africa/in-scramble-for-land-oxfam-says-ugandans-were-pushed-out.html?_r=0 [New York Times].

desperate,” having been driven into poverty and landlessness.³⁴³ Claims by the company that the displaced people “voluntarily and peacefully” evacuated the area has been challenged: one of the evictees told Oxfam that the company took their land. The evictee added that the firm’s employees and the “Ugandan security forces enforced the evictions, setting fire to homes and crops and in some cases beating and imprisoning people.”³⁴⁴ It must have been a painful time for the villagers, especially the ones that saw “gun-toting soldiers and an 8-year-old child burning to death when [a] home was set ablaze by security officers.”³⁴⁵ Residents who were evacuated say they now live in extreme poverty.³⁴⁶

Another brutal eviction of local Ugandans from their land happened after a community land was allocated to the German coffee company—Neumann Kaffee Gruppe—under its local subsidiary, Kaweri Coffee Plantation Ltd. to establish a coffee plantation in Mubende District, Uganda. To enable the establishment of the investment, some 4,000 inhabitants of the Ugandan villages of Kitemba, Luwunga, Kijunga and Kiryamakobe were expelled from a land area estimated at 2,524 hectares. Reports by FIAN International show that the people evicted have lived on the said land for decades.³⁴⁷ The local peoples that were affected by the investment described the evacuation process as “brutal and inhuman.” FIAN International says:

Evictees were forced at gunpoint to leave their villages and some of them were beaten. Five persons died as a direct consequence of the eviction. Buildings were burnt and demolished, including homes, six churches and a private clinic containing medical equipment. Property was looted and crops were destroyed. Today, the building that previously housed Kitemba’s primary

³⁴² AL JAZEERA (2011) “Oxfam sounds Uganda land-grab warning”, September 22, 2011. Online: <http://www.aljazeera.com/video/africa/2011/09/201192211515150690.html> [AL JAZEERA].

³⁴³ REDD-Monitor, “Ugandan Farmers kicked off their land for New Forests Company’s Carbon Project”. Online: <http://www.redd-monitor.org/2011/09/23/ugandan-farmers-kicked-off-their-land-for-new-forests-companys-carbon-project/#t1> [REDD].

³⁴⁴ Guardian, *supra*.

³⁴⁵ New York times, *supra*.

³⁴⁶ AL JAZEERA, *supra*.

³⁴⁷ FIAN, Human Rights violations in the context of Kaweri Coffee Plantation in Mubende/Uganda Reference: Initial reports submitted by states parties due 1990 - Uganda (UN Doc. E/C.12/UGA/1), 2.

*school is used as the headquarters of the Kaweri Company. A new school building was constructed, but does not have enough class rooms.*³⁴⁸

As a result of the displacement the affected communities “suffered an increase of illnesses and deaths” which FIAN attributed to the loss of homes, access to clean water, and healthcare. “The dislodged populations now have to “walk long distances to fetch drinking water because the only well providing clean water is located on the coffee plantation.”³⁴⁹ Some of the peoples that were evicted found temporary accommodation on nearby land to meet basic needs but “the small plots of land available for farming are insufficient to provide their families with enough food for the whole year.”³⁵⁰

A group of Ugandans filed a criminal complaint against Kaweri Coffee Plantation and the Government of Ugandan, claiming that the company has violated the human rights of the people of Mubende district in central Uganda.³⁵¹ Even though the eviction undermined their rights to water, food, and housing, fundamental rights that have been laid down in international human rights agreements, Kaweri Coffee nevertheless decided to appeal a milestone judgment that was handed down, in this case, ordering the investor to compensate the evictees.³⁵² Appealing this decision only shows the company’s unwillingness to acknowledge the burden that the project has imposed on the community, in addition to the investors’ indisposition to compensate those affected by its activities for their loss. It also shows that national courts can play a role in achieving environmental justice in such cases.

³⁴⁸ FIAN International, “Land grabbing in Uganda Evictions for foreign investment in coffee in Mubende”, FIAN Factsheet (2012) 1. Online: <http://wphna.org/wp-content/uploads/2014/04/2012-07-FIAN-land-grabbing-in-Uganda-Fact-sheet.-Mubende.pdf>.

³⁴⁹ *Ibid.*

³⁵⁰ *Ibid.*

³⁵¹ Business and Human Rights Resource Centre, Kaweri Coffee (part of Neumann Gruppe) lawsuit (re forced eviction in Uganda). Online: <http://business-humanrights.org/en/kaweri-coffee-part-of-neumann-gruppe-lawsuit-re-forced-eviction-in-uganda>.

³⁵² Pieper, A., “Judgement in Favor of Evictees in the case Mubende in Uganda” (2013) 8:1 Right to Food Journal. 11.

4 Chapter Summary

This section questioned what environmental justice is and the different types of environmental justice concerns alleged both regionally and internationally. An in-depth literature review has revealed that environmental justice is a merger between the social and environmental concerns of subsistence populations and other vulnerable groups. It is about recognizing the land rights of vulnerable communities, incorporating their social and environmental concerns into a country's legal and administrative frameworks, and guaranteeing their participation in the development, implementation, and enforcement of such frameworks. The analysis also disclosed four major viewpoints—distributive, procedural, corrective, and social justice—from which environmental justice should be looked at.

Furthermore, the chapter made an inquiry into the consequences of large-scale land-based investments by foreign investors to rural populations in Africa. The analysis shows that FDI in agriculture can place subsistence farmers, among other vulnerable groups, in a position of marginal influence and importance. In order to make way for such investments in the countries under review, community members were forced, at gunpoint in some cases, to abandon their villages, including their lands, rivers, and non-timber forest resources upon which they depended for their livelihood. In some instances, they were incarcerated, beaten, and killed, and their crops were uprooted, movable properties were looted, and houses, churches, schools, and clinics were destroyed in the eviction process. The result: food security was threatened, and the environment upon which they depend on for clean water, fertile soil, and clean air was impacted.

Even in cases where local communities were not evicted from their land, they were, nevertheless, denied access to a primary source of nourishment and left without adequate livelihood alternatives. In some of the cases, the cost price of farmland did not reflect the productive value

for the former users (local community members). The cost of losing access to ecosystem goods (pasture, non-timber forest products or water) and ecosystem services (provisioning services, such as the regulation of the water cycle, sequestration of atmospheric greenhouse gas emissions, and recreational and cultural benefits) were not considered in the valuation process. It is, therefore, necessary and urgent that large-scale land investments be adequately regulated to protect the rights of vulnerable communities, including to land, food, and water.

CHAPTER THREE

REGULATING AGAINST LAND-GRABBING

It would be unjustifiable to seek to better regulate agreements on large-scale land or leases, without addressing also, as a matter of urgency, th[e] circumstances³⁵³ which make such agreements look like a desirable option (Olivier De Schutter, former UN Special Rapporteur on the right to food).³⁵⁴

1 Introduction

The global rush by corporate investors and foreign governments to invest massively in African land to produce food, feed, and biofuels, especially for overseas markets has sparked global discussions on their implications for local food security and poverty eradication, and how such investments ought to be regulated. As the UN Special Rapporteur on the right to food claims, the “goal of these new investments is to ensure a stability of supply for investors, whether public or private: they aim, not to serve the international markets, but rather to circumvent them, by tightening the control of investors from the place of production to the end consumer.”³⁵⁵ To the Special Rapporteur, these land deals is about corporations exercising control over water, land, forests, and fisheries resources use, as well as the local communities hosting the investments.

A noteworthy outcome of these debates has been the setting of international guidelines that can provide policy guidance to State and non-state actors to regulate large-scale agricultural investments to promote food security and sustainable development, and prevent land-grabbing in

³⁵³ The circumstances De Schutter lists are as follows: “The debate on large-scale land acquisitions or leases, which this statement seeks to inform, should not distract us from acknowledging that, to a large extent, the rush towards farmland in developing countries is the result of our own failures. We have failed in the past to adequately invest into agriculture and rural development in developing countries, particularly sub-Saharan Africa. We have failed to promote means of agricultural production which do not deplete the soils and exhaust groundwater reserves. And we are failing today to establish well-functioning and more reliable global markets for agricultural commodities.”, Human Rights Council, *Report of the Special Rapporteur on the right to food, Olivier De Schutter, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, UNGAOR, 13th Sess, Agenda item 3, A/HRC/13/33/Add.2, Add. Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge, 4 [Report of the Special Rapporteur on the right to food].

³⁵⁴ *Ibid.*

³⁵⁵ De Schutter, *supra*, 253.

host communities. This chapter has two objectives. First, to investigate the adequacy of such guidelines in protecting subsistence communities against the negative impacts of FDI in agriculture, while promoting sustainable agricultural investments in their communities. The second objective is to analyze the extent to which Cameroon's land tenure system can safeguard local property rights and prevent land-grabbing in Cameroon. By studying the adequacy of international guidelines regulating industrial agriculture and Cameroon's land tenure system to protect local land rights, relevant recommendations to help ensure that agricultural commodities do not emanate from any land that a host government seizes from subsistence communities would be made.

2 Investigating the adequacy of international guidelines against land-grabbing

There are a plethora of frameworks or guidelines that have been adopted at the international level to regulate against global land-grabbing, and promote food security and sustainable agricultural developments.³⁵⁶ The focus of this part of the thesis is however on the Minimum Human Rights Principles, the Voluntary Guidelines on the Responsible Governance of Tenure, and the Principles for Responsible Agricultural Investments (PRAI). These are three international agreements that most directly relate to property management, especially in Africa, and are the key instruments for any investor interested in farmland. In particular, I will scrutinize the aims and fundamental principles of these guidelines; whether they contain human rights; their binding force; and their potential for providing communities at risk of displacement with remedies.

³⁵⁶ Additional international instruments that are also vital points of reference for different aspects of land governance include: UNPRI Principles for Responsible Investment in Farmland; African Agriculture Fund; IHRB draft guidelines on a rights-based approach to business land acquisition and use; IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement.

2.1 Aims and fundamental principles

Olivier De Schutter, the former UN Special Rapporteur on the Right to Food, proposed the “Minimum Human Rights Principles Applicable to Large-scale Land Acquisitions or Leases” (Minimum Human Rights Principles) in 2009.³⁵⁷ The Minimum Human Rights Principles, as outlined in Table 3, are a set of 11 core principles and measures for investors and host States, which were presented to the Human Rights Council under Human Rights Council Resolution 10/12. The Minimum Human Rights Principles were designed “in order to inform current initiatives, such as the adoption of guidelines on land policies and governance by international and regional organizations.”³⁵⁸ The Minimum Human Rights Principles also seek to ensure suitable benefit-sharing and a condition that “under no circumstances should such transactions be allowed to trump the human rights obligations of States.”³⁵⁹ They are, therefore, relevant to large-scale investments in farmland in Africa.

Table 3: The Eleven Minimum Human Rights Principles

Principles	General features
Principle 1:	Opportunity costs involved in ceding land to an investor must carefully be examined.
Principle 2	Shifts in land use must take place only with the prior and informed consent of concerned communities.
Principle 3	Local land users must be legally protected and enabled to obtain land titles of used lands.
Principle 4	Alternatives to agreements that have an impact on land tenure must be examined.
Principle 5	Investments must reduce rural poverty and create employment.
Principle 6	Agricultural production must not degrade the environment or promote climate change.
Principle 7	Investors’ obligations must be clearly defined and effectively enforced.
Principle 8	Agricultural production must not increase food insecurity for the local populations.
Principle 9	A participatory impact assessment prior to the conclusion of land deals must be conducted.
Principle 10	States must consult and cooperate in good faith with the concerned peoples so as to obtain their free prior and informed consent before approving any project affecting their lands and other resources.
Principle 11	Fundamental human and labor rights of agricultural workers must be adequately protected.

Source: adapted by the author from the Minimum Human Rights Principles

³⁵⁷ Minimum Human Rights Principles, *supra*.

³⁵⁸ *Ibid.*

³⁵⁹ *Ibid.*

Referring to Table 4, we can see that the Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods, and Resources (PRAI) are a set of seven principles for responsible farmland investments which States and businesses are encouraged to support.³⁶⁰ Covering different types of investment in agriculture, including large and small holdings, and between contract farmers and principal investors, these principles offer a framework for domestic regulations, international investment agreements, global corporate social responsibility efforts, and discrete investor contracts.³⁶¹ They were put forth by the International Fund for Agricultural Development (IFAD), the Food and Agriculture Organization (FAO), the United Nations Conference on Trade and Development (UNCTAD), and the World Bank to, perhaps, authenticate the numerous agribusiness projects that they World engage with.

Table 4: The Seven Principles for Responsible Agricultural Investment

Principles	General features
Principle 1	Existing rights to land and associated natural resources are recognized and respected.
Principle 2	Investments do not jeopardize food security but rather strengthen it.
Principle 3	Processes relating to investment in agriculture are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.
Principle 4	All those materially affected are consulted, and agreements from consultations are recorded and enforced.
Principle 5	Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.
Principle 6	Investments generate desirable social and distributional impacts and do not increase vulnerability.
Principle 7	Environmental impacts of a project are quantified and measures taken to encourage sustainable resource use, while minimizing the risk/magnitude of negative impacts and mitigating them.

Source: adapted by the author from the UNCTAD

The Voluntary Guidelines are the outcome of interstate consultations that were encouraged and officially endorsed on 11 May 2012 by the Committee on World Food Security (CFS) at its 38th

³⁶⁰ At its Seoul Summit in November 2010 the G20 called on the UNCTAD, the World Bank, IFAD, FAO, in addition to other suitable international organizations to develop options for stimulating responsible investment in agriculture, The PRAI, *supra*.

³⁶¹ *Ibid*.

Session.³⁶² The Voluntary Guidelines’ overarching goals are to “achieve food security for all and support the progressive realization of the right to adequate food in the context of national food security.”³⁶³ As can be seen in Table 5, the Voluntary Guidelines comprise two sets of guiding principles (6 general principles and ten principles of implementation) to help operationalize the goals to achieve food security for everybody and promote responsible tenure governance in the world.³⁶⁴ In particular, these principles are vital for the promotion of equitable tenure rights and access to land, fisheries, and forests, for all members of society.

Table 5: The Principles of the Voluntary Guidelines

General Principles	Implementing Principles
States should recognize and respect all legitimate tenure right holders and their rights	• Human dignity and the equal and inalienable human rights of all individuals should be recognized
States should Safeguard legitimate tenure rights against threats and infringements	• No one should be subject to discrimination under law and policies as well as in practice.
States should promote and facilitate the enjoyment of legitimate tenure rights	• Equality and justice between individuals should be recognized and promoted
States should provide access to justice to deal with infringements of legitimate tenure rights	• Active, free, effective, meaningful and informed public participation in decision-making should be promoted
States should prevent tenure disputes, violent conflicts, and corruption	• Equality and justice for all individuals should be recognized and promoted
Non-State actors should respect human rights and legitimate tenure rights in host countries	• States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests
	• A holistic and sustainable approach to natural resources management should be promoted • Policies should be clearly defined and widely publicized • Individuals, public agencies, and non-state actors should be held responsible for their decisions • States should continuously improve mechanisms for monitoring and analysis of tenure

Source: adapted by the author from the Voluntary Guidelines

³⁶² Voluntary Guidelines, *supra*, vi.

³⁶³ Food and Agriculture Organization (FAO), *About the Voluntary Guidelines on the Responsible Governance of Tenure*. Online: <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>.

³⁶⁴ Voluntary Guidelines, *supra*, paras. 3A and 3B.

2.2 Recognition of fundamental human rights

The above guidelines outline rights and responsibilities related to tenure, policy, and legal and organizational frameworks. According to the Voluntary Guidelines, land, fisheries, and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth. These rights are generally described as the right to an adequate standard of living, according to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).³⁶⁵ In particular, ICESCR proclaims the “right of everyone to an adequate standard of living for himself and his family”³⁶⁶ and requires States to guarantee the fulfillment of these rights.³⁶⁷ Therefore, the human right to an adequate standard of living would be respected in Africa when African governments start to make the right decision: retreat from the practice of allocating community lands to corporations for crop cultivation for export.³⁶⁸

Besides food, water, and housing security, these guidelines have each mentioned sustainable development, consultation and participation, transparency, and accountability for host communities, etc. For example, the Minimum Human Rights Principles have acknowledged the right of local populations to self-determination,³⁶⁹ the right to free, prior, and informed consent (FPIC) and the right to housing. Principle 2 proclaims that forced evictions should occur in the most exceptional cases. For illustration, only after obtaining the FPIC of local communities and

³⁶⁵ The ICESCR defines the right to an adequate standard of living as including the right to decent (1) food, (2) clothing, (3) housing, and (4) the right to the “continuous improvement of living conditions.” *Ibid*, article 11.

³⁶⁶ *International Covenant on Economic, Social and Cultural Rights, UNGA Resolution 2200A (XXI) of 16 December 1966*, (article 11) [ICESCR].

³⁶⁷ *Ibid*.

³⁶⁸ It is important to note that because the right to food and housing are dependent on the right to access land and water that are vital for continuously improving our living conditions, the right to adequate standard of living should include the right to food, water, housing, and the right of self determination.

³⁶⁹ It proclaims that investments agreements should “be conducted in a fully transparent manner, and with the participation of the local communities whose access to land and other productive resources may be affected as a result of the investment agreement,” Minimum Human Rights Principles, *supra*, Principle 1.

other groups that are susceptible to forced evictions. The rights of affected communities to water, a healthy environment, and food have also been recognized in Principles 7 and 8 of the Minimum Human Rights Principles.³⁷⁰

The Voluntary Guidelines emphasize the need for States to take reasonable measures to discern, document, and acknowledge and honor holders of property rights, whether formal or informal. These guidelines recognize the significant role that land, and the resources on and beneath it, play in the achievement of “human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth.”³⁷¹ The Voluntary Guidelines denounce infringement of such tenure rights, as well as the civil, political, social, cultural and economic rights of vulnerable communities. Also, they call for the protection of such right holders against the unjustified forfeiture of their property rights, including displacements that are not consistent with current obligations under domestic and international law.³⁷² Furthermore, the Voluntary Guidelines recognize susceptible communities’ rights to self-determination and FPIC by calling for an “active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.”³⁷³

2.3 Who it applies to

As can be seen in Tables 3-5, the Minimum Human Rights Principles, PRAI, and the Voluntary Guidelines admit that the right to food is an objective of good governance of land and other natural resources. Tables 3-5 also show that these frameworks can provide support to different

³⁷⁰ Minimum Human Rights Principles, *supra*, Principle 1.

³⁷¹ Voluntary Guidelines, *supra*, paras 3-4.

³⁷² *Ibid.*

³⁷³ *Ibid.*

levels of government, in addition to food and land rights advocates, land users, and all organizations involved in the development of natural resources policies and laws. To be more specific, the Voluntary Guidelines can be used by a wide array of actors, including States; local governments; implementing agencies; organizations of farmers and small-scale producers, of fishers, and of forest users; judicial authorities; pastoralists; civil society; private sector; academia; indigenous peoples and other communities; and all persons concerned to assess tenure governance and identify improvements and apply them.³⁷⁴ The Voluntary Guidelines ascribe responsibility to business enterprises to (1) respect domestic law and legislation,³⁷⁵ (2) act with due diligence to avoid invading the human and legitimate tenure rights of others,³⁷⁶ and (3) detect and evaluate any actual or likely “impacts on human and legitimate tenure rights in which they may be involved.”³⁷⁷

Under the Voluntary Guidelines host States shall (1) defend legitimate tenure rights and ensure that people are not indiscriminately evicted or have their legitimate tenure rights extinguished or infringed,³⁷⁸ (2) increase collaboration on the implementation of the Guidelines by establishing multi-stakeholder platforms, (3) provide adequate access to justice to deal with violations of legitimate tenure rights, and (4) provide prompt and just compensation wherever tenure rights may face expropriation.³⁷⁹ Assigning responsibility to host States and agribusinesses to respect the human rights of communities, susceptible to land-grabbing is quite a step forward in the area of property ownership in Africa where food, water, and housing rights of local communities, most often, are not legally recognized and protected.

³⁷⁴ Voluntary Guidelines, *supra*, Para. 2.3.

³⁷⁵ *Ibid*, para. 12 (12).

³⁷⁶ *Ibid*, para. 3(2).

³⁷⁷ *Ibid*, para. 3(3.3); Knight, R. S., *Statutory recognition of customary land rights in Africa An investigation into best practices for lawmaking and implementation* (Rome: FAO, 2010).

³⁷⁸ Voluntary Guidelines, *supra*, para 4.5.

³⁷⁹ *Ibid*, para 3 (1(4)).

In executing these tasks, States are permitted under the Voluntary Guidelines to “seek technical support from regional and international bodies.”³⁸⁰ It is vital to note that home States also have a mandate under the Voluntary Guidelines to take steps to prevent the violation of local land rights and protect host communities from the unpleasant impacts associated with their companies abroad. The home States shall assist “both those corporations and host states to ensure that businesses are not involved in the abuse of human rights and legitimate tenure rights.”³⁸¹ Perhaps, the corporate duty to respect property rights creates direct human rights responsibility for business enterprises under the Voluntary Guidelines. In other words, the United States, under the Voluntary Guidelines, has extraterritorial responsibilities to regulate the Herakles Farms investment in Cameroon, and provide effective remedies to the communities harmed by the company’s oil palm plantation and refinery.

The Minimum Human Rights Principles also apply to host States and investors. Under these principles host States are expected to take the steps needed to ensure that its corporations are not involved in conducts that discriminate against subsistence community members, including women, children, and the old. Host States are also required to balance benefits of concluding a land agreement against the opportunity costs involved, especially with other usages (which could be more conducive to the needs of vulnerable communities and the realization of their quintessential human rights) that they could make of the land (Principle 1). Host States shall formally outline the conditions according to which shifts in land use or expulsions may occur, and the procedures that agribusinesses need to follow.³⁸² Finally, host States shall support local

³⁸⁰ The Committee on World Food Security is recognized as the global forum to assess the progress toward the implementation of the Guidelines and to assess their relevance, effectiveness and impact, Voluntary Guidelines, *supra*, para. 26.

³⁸¹ *Ibid*, para.3.2.

³⁸² The conditions should be designed in accordance with the basic principles and guidelines on development-based evictions and displacement, *ibid*, para. 3.2.

communities in obtaining individual titles or collective registration of the land they use.³⁸³ In other words, States should spare no effort in formalizing the customary rights of local people so that they may enjoy the benefits that ensue from ownership rights.

Assisting a local community or an individual in acquiring a land title of their holdings is very significant in the sense that it creates an opportunity for the land rights of local communities to enjoy full judicial protection against land-grabbing. It also creates a right to the affected communities to receive compensation in the event of expropriation for a public purpose. Together with investors, States shall cooperate in identifying ways to guarantee that the modes of agricultural production are environmentally sustainable:³⁸⁴ that is agricultural production shall not degrade the environment or promote emissions of greenhouse gasses that have the potential to increase climate change.

In addition to State authorities and local governments, investors constitute key players in good land tenure governance under PRAI. This initiative proclaims in Principle 3 that processes concerning agricultural investment must be transparent and “monitored, and ensure accountability” by States and non-state actors within an appropriate regulatory, legal, and business environment. PRAI expressly call on States to ensure that investments strengthen, rather than threaten food security.³⁸⁵ Investors should make sure that agricultural investments be carried out in compliance with the rule of law, respect industry best practice, and be economically viable.³⁸⁶ One can interpret compliance with the rule of law as respecting all applicable laws, regulations, and policies in the host country, and with all relevant international treaties and

³⁸³ Minimum Human Rights Principles, *supra*, principle 3.

³⁸⁴ *Ibid*, principle 6.

³⁸⁵ UNCTAD, *supra*, Principle 2.

³⁸⁶ *Ibid*, Principle 5.

conventions ratified by the host State, including the UN Declaration on the Rights of Indigenous Peoples, among other environmental human rights instruments.

2.4 Remedies created

“Securing a maximum degree of effective legal protection against the practice of forced evictions for all persons under their jurisdiction [would require States to] take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.”³⁸⁷

According to this provision, displacement and dispossession are some of the undesirable impacts of large-scale agricultural investments that vulnerable populations (such as women, indigenous communities, and other small-scale farmers), lacking the statutory guarantee of tenure, are likely to experience. These groups of persons need safeguards against loss of subsistence as a matter of respect for and defense of their basic human rights, including the right to an adequate standard of living. Therefore, States must ensure that mechanisms to mitigate unfavorable impacts where it is hard to avert (them) are robust and immediate.

As elucidated by the Special Rapporteur on adequate housing, “the Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure.”³⁸⁸ This provision suggests that where evacuation of vulnerable communities is arduous to avoid, host governments and investors should ensure that the affected communities are

³⁸⁷ Implementation of General Assembly Resolution 60/251 of 15 March 2006, entitled “Human Rights Council”, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari: Basic Principles and Guidelines on Development-based evictions and Displacement, 4th sess. Item 2 of the provisional agenda, UNGA, A/HRC/4/18, Annex I., para. 25.

³⁸⁸ Furthermore, “at a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions,” A/HRC/4/18, para. 52.

recompensed: an immediate and adequate indemnity in the form of cash payment, resettlement, among other types of reparation should accompany the ejection process.

A remarkable feature of the Voluntary Guidelines, PRAI, and Minimum Human Rights Principles is the provision of remedies to affected populations. The Minimum Human Rights Principles prohibit the ejection of local peoples from their property. Nevertheless, this initiative proclaims that expulsion may occur on three conditions: it is in agreement with international law and the applicable legislation in the host State; it is justified as necessary for the public welfare; and that an adequate compensation and alternative resettlement or access to productive land follows the eviction process (Principle 2). What this means, in theory, is that in the absence of these three conditions, formal and informal tenure right holders shall not be evicted from their land, forest, and fishery resources.

Moreover, the “local population should benefit from the revenues generated by the investment agreement.”³⁸⁹ Thus, under the Minimum Human Rights Principles, investor’s obligations should not be limited to the payment of rents or a monetary sum, but be defined in precise terms and be enforceable.³⁹⁰ Investors’ commitments under this framework also relate to job creation, effective compliance with international labor rights of agricultural workers³⁹¹ and the inclusion of smallholders in local activities.³⁹² States are, thus, required to provide “effective legal remedies or procedures to those who are affected by eviction orders.”³⁹³

³⁸⁹Minimum Human Rights Principles, *supra*, Principle 4.

³⁹⁰ For example, by the inclusion of predefined sanctions in case of non-compliance, *ibid*, Principle 7.

³⁹¹By safeguarding workers’ labor rights, their potential to increase food security for themselves and the members of their families may be greatly enhanced, *ibid*, Principle 11.

³⁹² Small holder farmers can be involved through “appropriately negotiated joint ventures, out-grower schemes, or other methods of collaborative production models,” *ibid*, Principle 7.

³⁹³*Ibid*, Principle 2.

There is a requirement in PRAI that when there are potential adverse effects on any aspect of food security such as access, availability, stability or utilization, lawmakers in the host State shall ensure that equivalent access to food is assured.³⁹⁴ They shall also guarantee that opportunities for out-grower involvement and off-farm employment are expanded to protect livelihoods and raise incomes; dietary preferences are taken into account if the mix of products grown may change; and strategies to reduce potential instability of supply are adopted.³⁹⁵ PRAI also proclaims that whenever a potential agricultural investment is substantial enough to influence domestic food security, project design and approval should take cognizance of these four kinds of aggregate impacts.³⁹⁶

Like the Minimum Human Rights Principles,³⁹⁷ the Voluntary Guidelines proclaim that States, following their international obligations, “should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises.” This framework also calls for the adoption of suitable techniques to manage hazards and to avert and address negative impacts of agricultural investments on human rights and legitimate tenure rights.³⁹⁸ It require States to put in place appropriate systems “for the fair and timely valuation of tenure rights for specific purposes, such as operation of markets, security for loans, transactions in tenure rights as a result of investments, expropriation and taxation.”

Under the Voluntary Guidelines, domestic policies and laws should strive to ensure that valuation systems consider social, cultural, religious, spiritual and environmental values, among

³⁹⁴ FAO, IFAD, UNCTAD, World Bank, *supra*, 6-7.

³⁹⁵ *Ibid.*

³⁹⁶ *Ibid.*

³⁹⁷ Minimum Human Rights Principle, *supra*, Principles 4 and 7.

³⁹⁸ Voluntary Guidelines, *supra*, para. 3.2.

other non-market values, where applicable.³⁹⁹ Regarding dispute resolution, States shall provide access to justice through impartial and competent, to affordable, timely, and efficient judicial and administrative bodies as means of settling disputes over tenure rights.⁴⁰⁰ Providing access to justice to the aggrieved local communities shall include alternative means of resolving such disputes and offering immediate, enforceable, and effective remedies and a right to appeal.

2.5 Legal status/binding force

According to the *Statute of International Court of Justice*, international agreements come in numerous forms, ranging from treaties, international custom, the general principles of law, and judicial decisions.⁴⁰¹ While some of these agreements are binding, legally (with punishment for failing to comply), others are hortatory without any legally punitive consequences for non-compliance. For example, the Vienna Convention says a treaty (“an international agreement concluded between States in written form and governed by international law”),⁴⁰² is binding upon the parties to it.⁴⁰³ An international treaty encompasses the expressions “convention, agreement, pact, protocol, charter, statute, covenant, engagement, accord, exchange of notes, modus vivendi, and Memorandum of Understanding.”⁴⁰⁴ As long as an international agreement falls under this classification, it should be deemed a treaty and, consequently, mandatory under international law. It must, however, be noted that even though the term “treaty” can be used as a generic term which describes an instrument that is binding under international law, these

³⁹⁹ Voluntary Guidelines, *supra*, para 18.

⁴⁰⁰ *Ibid*, para 21.

⁴⁰¹ Statute of the International Court of Justice, Article 38. Online: <http://www.icj-cij.org/documents/?p1=4&p2=2> [Statute of the ICJ]

⁴⁰² United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, UNTS, vol. 1155, p. 331. Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. [Vienna Convention]*Ibid*, Article 2(1).

⁴⁰³ *Ibid*, Article 26.

⁴⁰⁴ Robinson, N. A., and L. Kurukulasuriya, *Training Manual on International Environmental Law* (Hertfordshire: UNEP, 2006) 2 [Training Manual on Environmental Law].

different names can also be employed as a title for obligations that have no legal impact in international law.⁴⁰⁵

While the term “legally binding” has become a benchmark phrase for binding international agreements, what does it mean to say an international agreement is legally binding? Under the 1969 *Vienna Convention on the Law of Treaties*, legally binding means State parties to an international agreement are bound by the agreement. Accordingly, the consent of a State to be bound by a treaty is expressed by the signature of its officials when: (a) the treaty states that signature shall have that effect; (b) it is otherwise established that the negotiating Parties have agreed that signature should have that effect; or (c) the intention of the State to give that effect to the signature appears from the full powers of its spokesperson or was expressed during the negotiation.⁴⁰⁶ Therefore, the signature of a State representative and approval of the signature by the Head of State, the legislature, parliament or related body are the measures that States undertake to express their consent to be bound by the treaty.

The Vienna Convention draws attention to the principle of “pacta sunt servanda”: every treaty in force is binding upon the State parties to it and must be acted upon by them in good faith.⁴⁰⁷ Acting in good faith implies taking steps to enact domestic legislation implementing the provisions of the agreement and achieving the goals of the agreement. Furthermore, the Vienna Convention obliges States to refrain from acts which would “defeat the object and purpose of a treaty when it has signed an agreed upon treaty or when it has expressed its consent to be bound

⁴⁰⁵ For example, international organizations or representatives of a government department can equally apply any of these terms as a title for an agreement of a less intense nature or an agreement that does not create legally binding obligations at international law.

⁴⁰⁶ Vienna Convention, *supra*, Article 12.

⁴⁰⁷ *Ibid*, Article 26.

by the treaty...”⁴⁰⁸ Legally binding commitments create a “higher level of certainty and trust because states are legally obliged to implement them through the enactment of national laws, regulations, and administrative structures.”⁴⁰⁹ Thus, “legally binding” denotes authoritativeness: parties to an agreement that is drafted in legally binding terms have agreed, through signature and express consent, to ensure that the treaty will be enforceable.

In addition to international treaties (conventions) being legally binding, “a rule of customary international law,” once it is recognized, “it is binding on all states because it is then assumed to be a binding rule of conduct.”⁴¹⁰ The provisions of the 1948 *Universal Declaration of Human Rights* (Universal Declaration) have been recognized as customary international law (CIL), and hence, incumbent on States to comply with, even though they were not specifically intended to be legally binding.⁴¹¹ The Universal Declaration has been translated into human rights standards/obligations. Because the Minimum Human Rights Principles, PRAI, and Voluntary Guidelines are grounded in international human rights law as part of CIL, States are obliged to take positive steps to enable the enjoyment of key human rights such as the right to adequate standard of living, comprising food,⁴¹² land,⁴¹³ etc.

⁴⁰⁸ Vienna Convention, *supra*, Article 18.

⁴⁰⁹ Yamin, F. and J. Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (New York: Cambridge University Press, 2004) 545.

⁴¹⁰ *Ibid*, 7.

⁴¹¹ *Ibid*, 13.

⁴¹² Every State shall ensure for everyone under its jurisdiction, access to the minimum essential food which is sufficient, nutritionally adequate, and safe to ensure their freedom from hunger, Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999), reprinted in Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 62 (2003) article 11, para. 14.

⁴¹³ Access to land for indigenous peoples has been given specific forms of protection under international law: *ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries relate to land rights*, articles 13 to 19; *United Nations Declaration on the Rights of Indigenous Peoples*, Sept. 13, 2007, G.A. Res. 61/295, U.N. Doc.A/RES/61/295 (2007), Articles 8 (2), 10, 25, and 26.

Therefore, African governments, especially those targeted by agribusinesses, are expected to make their support for any large-scale investment in farmland conditional upon compliance with fundamental human rights (the rights to food, land, water, and healthy environment) that have been incorporated into the Minimum Human Rights Principles, PRAI, and the Voluntary Guidelines.⁴¹⁴ African governments will be acting in contravention of these human rights if, by allocating farmland to agribusinesses, the land-dependent populations were stopped from accessing the farmlands that they have continuously depended on for their livelihoods, including access to food, water, and housing without prompt and adequate compensation to help relieve the associated burdens. So, host states and agricultural corporations should respect, recognize, and protect formal and informal tenure rights. Subsistence groups should be protected from eviction (or provided with prompt and just compensation) and allowed to exercise their rights to self-determination (decide how to use their lands and other environmental resources to safeguard their rights to adequate food, housing, water, and healthy environment).

Courts may also rely on acts (decisions, regulations, and directives such as the Voluntary Guidelines and PRAI) of international organizations, in order to assist adjudications.⁴¹⁵ While the promises in these frameworks could have the strength of law and might have contributed to international law development, they are soft-law⁴¹⁶ and aspirational. That is, they were not formulated in legally binding terms. This signifies weaker commitment, both by the States that accept the standards and by the investors. The Voluntary Guidelines are self-explanatory: they are voluntary, meaning they contain no legally binding commitments. Put differently, States are not officially compelled to implement them through the enactment of domestic regulations, laws,

⁴¹⁴ Special Rapporteur on the right to food, *supra*.

⁴¹⁵ Training Manual on Environmental Law, *supra*, 9.

⁴¹⁶ Soft law refers “to any international instrument, other than a treaty, containing principles, norms, standards or other statements of expected behavior.” *Ibid*, 8.

and administrative structures. PRAI, similarly, is voluntary as its provisions are insufficiently precise as to coerce States to comply with them.

The Voluntary Guidelines clarify that its interpretation and application should be consistent with current obligations under domestic, regional, and international law, especially those initiatives that tackle human rights and provide secure tenure rights to land, fisheries and forests, and also initiatives to improve governance. Therefore, these Guidelines draw on the Universal Declaration of Human Rights, the Millennium Development Goals, the UN Declaration on the Rights of Indigenous People, among other initiatives that address human rights and tenure rights. Consequently, States and business enterprises looking to improve land, forest, or fisheries tenure governance should ensure that every laws, programs, and policies relating to the implementation of these Guidelines are consistent with a host States' existing duties under such instruments. States shall frequently have another look at such agreements for their related obligations and commitments, and to acquire extra assistance. It also means that the tenure rights of businesses are not absolute: such rights are limited by the rights of vulnerable communities, for example, internationally recognized human rights—the right to food, housing, self-determination, free, prior and informed consent, etc. Moreover, measures taken by a host State to promote the social and environmental welfare of vulnerable communities should be consistent with its international human rights obligations.

2.6 Critiquing international guidelines against land-grabbing

The Voluntary Guidelines, PRAI, and the Minimum Human Rights Principles have outlined principles, recommendations, and practices for enhancing tenure of land, fisheries, and forests governance. To an extent, these frameworks call on African governments and private investors, as well as their home States to recognize and respect prevailing rights, both formally and

informally, to land and natural resources, to consult all those materially affected by FDI in agriculture, and to ensure that investments generate desirable socio-economic impacts and promote sustainable agricultural developments.

Since the introduction of the Minimum Human Rights Principles in 2009, PRAI in 2010, and the Voluntary Guidelines in 2012, these frameworks have received considerable global attention.⁴¹⁷

It is appealing to say that endorsement of these guidelines and the extent of the processes of their negotiation and participation of States, and non-state actors have rendered them legitimate and prominent.⁴¹⁸ The Committee on World Food Security (CFS) (an interagency body that was designed to supervise the operation of policies to eliminate hunger and malnutrition) articulated that “... because there is this shared perception that a framework like this is sorely needed, we all anticipate that they will set the bar for policymakers.”⁴¹⁹ As Muller and Cloiseau commented in the context of the Voluntary Guidelines, for “the first time in the UN history, at the CFS meetings in Rome, civil society organizations, and private sector entities were sitting with representatives of governments around the negotiating table to make proposals and negotiate about food policy issues.”⁴²⁰

To Civil Society organizations and other researchers seeking to influence national, regional, and global agriculture, food security and nutrition policies and actions, battles were won:

⁴¹⁷ FAO, IFAD, UNCTAD, World Bank, *supra*.

⁴¹⁸ Many researchers have commended the consultation, negotiation, and endorsement processes of the Voluntary Guidelines by the CFS, greatly because McKeon, N., “One Does Not Sell the Land Upon Which the People Walk: Land Grabbing, Transnational Rural Social Movements, and Global Governance” (2013) 10:1 Globalizations 110; Civil Society Mechanism (CSM), “The Guidelines on the Tenure of Land, Fisheries and Forests are a first step, but much more is needed to ensure people’s rights to land and natural resources” 1. Online: [http://www.csm4cfs.org/files/3/final_political_statement_20120504_en\(1\).pdf](http://www.csm4cfs.org/files/3/final_political_statement_20120504_en(1).pdf). [Civil Society Mechanism]

⁴¹⁹ The Guardian, Negotiators reach consensus on global land governance guidelines, Mark Tran (2012). Online: <http://www.theguardian.com/global-development/2012/mar/14/negotiators-consensus-global-land-governance-guidelines>.

⁴²⁰ Muller, B., and G. Cloiseau, “The Real Dirt on Responsible Agricultural Investments at Rio+20: Multilateralism versus Corporate Self-Regulation” (2015) 49:1 Law and Society review 43.

representatives of food producers, in addition to other civil society members, were allowed to draw attention to the real-life issues facing them and make concrete recommendations. What this shows is that gone are the days when civil society organizations, small producers, and agro-business used to be lumped together in the Major Group and reduced to observers at international negotiations while government representatives made proposals and negotiate about food policies. At the CFS meetings that led to the development of the Voluntary Guidelines, these groups of actors acquired the status of participants, as they, together with country representatives, expressed their viewpoints and identified issues and actions that needed to be incorporated into the Guidelines.

There is no doubt that States are required under the Voluntary Guidelines, PRAI, and Minimum Human Rights Principles to implement and ensure compliance with the principles in the guidelines. That said, the implementation of these guidelines is voluntary. That is to say that the hundreds of public officials, civil society and other private actors that got together to draft these guidelines,⁴²¹ after agreeing that the price of inaction is disastrous, did not set up penalties within the agreement to discourage parties from reneging on their promises to protect against land-grabbing. The absence of binding commitments and a compliance mechanism to check defiance by States and non-state actors has rendered them inadequate to give them a real ‘bite’.

To be precise, the name—Voluntary Guidelines—is self-explanatory. These guidelines are an instrument of soft law,⁴²² possibly demonstrating weaker commitment, both by States that host

⁴²¹ These meetings brought together almost 1 000 people from over 130 countries. The participants represented government institutions, civil society, private sector, academia and UN agencies. Each consultation meeting resulted in an assessment identifying issues and actions to be included in the Guidelines in the context of governance of tenure, Food and Agriculture Organization, “About the Voluntary Guidelines on the Responsible Governance of Tenure.” Online: <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

⁴²² Food and Agriculture Organization (FAO), *Voluntary Guidelines on The Governance of Tenure: At a glance* (Rome: FAO, 2012) 8 [Voluntary Guidelines at a Glance].

large-scale agricultural investments and large-scale agricultural investors. A soft law refers “to any international instrument, other than a treaty, containing principles, norms, standards or other statements of expected behavior.”⁴²³ As Senden maintains, soft laws are “rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain (indirect) legal effects, and that are aimed and may produce practical effects.”⁴²⁴ “Not been attributed legally binding force” might imply a State is not obligated to comply with them and there would be no penalty for noncompliance.

So, even though “soft laws can ...provide more details, and they are often better suited for technical matters and best practices, such as governance of tenure,”⁴²⁵ there would be no violation of the principle of “pacta sunt servanda” if a host State refuses to adequately apply it or the a host State decides to act in bad faith. In other words, a State and its executive, judiciary, and legislature are not officially compelled to accept and implement the principles of the Voluntary Guidelines and PRAI through the enactment of domestic regulations, laws, and administrative structures, given the fact that they are, simply, codes of conduct that lack the quality of being enforceable and sanctionable by law.

The Voluntary Guidelines are described as falling short “in some areas that are key to the livelihoods of small-scale producers”⁴²⁶ who happen to be the source of most of the food consumed globally. These Guidelines (1) do not expressly challenge the untruth that large-scale investments in agriculture, fisheries and forests are significant for development.⁴²⁷ Also, the Voluntary Guidelines have not further consolidated the acknowledged rights of indigenous

⁴²³ Soft law refers “to any international instrument, other than a treaty, containing principles, norms, standards or other statements of expected behavior.” Training Manual on Environmental Law, *supra*, 8.

⁴²⁴ Senden, L., *Soft Law in European Community Law* (Oxford: Hart Publishing, 2004) 112.

⁴²⁵ Voluntary Guidelines at a Glance, *supra*, 8.

⁴²⁶ Civil Society Mechanism, *supra*, 1.

⁴²⁷ *Ibid.*

groups and other vulnerable populations, as articulated in international instruments in the context of tenure, and do not include water resources in their scope.⁴²⁸ One often-cited disadvantage has to do with their non-binding character.

PRAI was endorsed by G20 leaders in 2011 during its Seoul Summit, as part of its multi-year action plan on development. During the Seoul meeting, the G20 called on every nation and companies to respect PRAI, and specifically requested its founders—UNCTAD, the World Bank, IFAD, FAO and other appropriate international organizations—“to develop options for promoting responsible investment in agriculture.”⁴²⁹ In an effort to promote and defend PRAI in its 2011 publication titled *Rising Global Interest in Farmland*, the World Bank highlighted key areas for action by governments, investors, and civil society.⁴³⁰ Notwithstanding, there has been a robust and adverse reaction by a large number of transnational advocacy groups. Olivier De Schutter’s report of 2010 indicates that some of the concerned host governments are critical of PRAI because it was adopted by the World Bank, an institution that has a constant record of encouraging developing countries to support inward foreign investment by reducing administrative requirements and public consultations that might slow down or prevent investments.⁴³¹

This proposes PRAI’s lack of adequate assessment of agribusinesses and mechanisms for accountability, transparency, and adequately promote access to land, as well as environmental justice, for subsistence farmers, and other vulnerable groups. Additionally, the Global Campaign

⁴²⁸ Civil Society Mechanism, *supra*, 1.

⁴²⁹ FAO, IFAD, UNCTAD, World Bank, *supra*.

⁴³⁰ In this report, civil society, producers associations, and academia are required to educate communities on their rights and help them exercise these rights effectively, (ii) provide specific assistance in negotiation and subsequent monitoring (iii) perform a watchdog function to spot and publicize deviations from existing policy or globally agreed norms, (iv) host States are called upon to improve administrative structures, provide infrastructure, clarify and secure land rights, and protect critical natural resources. Deininger *et al.*, 137.

⁴³¹ De Schutter, *supra*, 254.

for Agrarian Reform, La Via Campesina, FIAN International, the Land Research and Action Network, Social Network for Justice and Human Rights, Focus on the Global South, and many other NGOs, have firmly rejected PRAI. For example, PRAI is considered by these NGOs as “a move to try to legitimize what is absolutely unacceptable: the long-term corporate (foreign and domestic) takeover of rural people's farmlands.”⁴³²

It is true that PRAI emphasizes the need to promote social sustainability by calling on host States and corporations to ensure that agricultural investments do not generate unpleasant impacts (Principle 6). Nevertheless, its legitimacy has been questioned.⁴³³ Researchers like Muller and Cloiseau contend that “PRAI should be conceived as self-regulatory to reduce adverse effects of large-scale land leases, given its failure to include any reference to domestic laws, international regulations, and other binding legal instruments.”⁴³⁴ PRAI neither makes explicit reference to the human right to housing nor denounces the eviction of subsistence community members from their lands and resources that provide them with a means of livelihood. Principle 5 places much emphasis on the economic viability of agricultural projects in host communities. Perhaps, PRAI's primary goal is to create an enabling environment for agribusinesses and minimize, rather than eradicate, their adverse impacts on vulnerable communities. As a result, PRAI is considered inadequate to regulate policies which are violating human rights and international law.⁴³⁵

⁴³² Accordingly, PRAI is a response to the revived interest of large investors in agricultural production. They are not conceived as public policy on agricultural investment nor as state regulation of private agricultural investment, but as self-regulatory policy advice to mitigate the negative impacts of large-scale land acquisition, Focus on the Global South, *Why We Oppose the Principles for Responsible Agricultural Investment (RAI)*. Online: <http://focusweb.org/content/why-we-oppose-principles-responsible-agricultural-investment-rai> [RAI].

⁴³³ Stephens, P., “The Principles of Responsible Agricultural Investment” (2013) 10:1 *Globalization* 190.

⁴³⁴ Moreover, self-regulation “pervades arbitration procedures, globally, and endangers national sovereignty and democracy,” Muller, B., and G. Cloiseau, “The Real Dirt on Responsible Agricultural Investments at Rio+20: Multilateralism versus Corporate Self-Regulation” (2015) 49:1 *Law and Society Review* 46.

⁴³⁵ *RAI, supra*.

Among others, these critiques illustrate how the Minimum Human Rights Principles are preferable: comparatively, the Minimum Human Rights Principles do include an apparent reference to international human rights law, which constitutes binding legal instruments. With regard to raising awareness about the concerns of local communities and how powerful agricultural corporations use law to promote corporate concerns, international human rights norms seem to offer a suitable framework since:

- it applies to all signatory states;
- it has a high general acceptance;
- it provides the concepts of rights and obligations and mechanisms for increased accountability and the rule of law;
- it gives voice to a plethora of relevant stakeholders and establishes principles that govern decision-making and implementation processes, such as participation, non-discrimination, and empowerment;
- it provides guides to ensure that investment agreements contribute to the realization of human rights; and
- it has, at least to some degree, an established monitoring, and reporting system within the UN system.⁴³⁶

The Human Rights Council, in 2011, clarified responsibilities of corporations regarding human rights (food, water, self-determination, housing, etc.).⁴³⁷ Nevertheless, there remain obstacles

⁴³⁶ Brüntrup, M., *et al.*, “What Can Be Expected from International Frameworks to Regulate Large-Scale Land and Water Acquisitions in Sub-Saharan Africa? ” (2014) 7:2 The Law and Development Review, 393-431, 407.

⁴³⁷ John Ruggie, the UN Special Rapporteur on the Issue of Human Rights and Transnational Corporations and Other Business Enterprise, stated that the corporate duty to respect human rights “has acquired near-universal recognition by all stakeholders.” U.N. Human Rights Council (HRC), Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Protect, Respect and Remedy: A Framework for Business and Human Rights, U.N. Doc. A/HRC/11/13/, 22 April 2009, para46

associated with implementing human rights principles. Lorenzo Cotula argues in the context of these limitations that, under an international human right law, legal protection is undermined by domestic shortcomings in substantive rules and judicial remedies.⁴³⁸ He went further to argue that bringing a complaint to an international human rights court is marred by practical difficulties linked to geographical, financial, and language barriers.⁴³⁹ These obstacles may discourage the legitimate exercise of the right by subsistence communities to access land and associated resources.

Where “effective means of checking compliance and or enforcement mechanisms are lacking, legally binding commitments may not have much more bite’ than a political one.”⁴⁴⁰ The policy efforts mentioned above contain neither legally binding commitments nor a compliance mechanism. Their titles speak for themselves: they are voluntary and minimal. It is, thus, up to the host government to operationalize them on the ground and ensure that agribusinesses respect the guidelines. It may be difficult to believe that in the absence of legally binding commitments and a compliance mechanism, States and agribusinesses will adequately satisfy their obligations under these voluntary frameworks.

Civil society organizations have argued that in the absence of legally binding commitments to make sure that subsistence and poor vulnerable communities are not cut off from access to land without suitable alternatives, the human rights to food, land, water, housing, among others, will continue to be undermined. The Voluntary Guidelines and PRAI, “so far have proved insufficient in preventing the negative environmental, social and governance impacts of large-

⁴³⁸ Cotula, L., “Land Grabbing in the Shadow of the Law: Legal Frameworks Regulating the Global Land Rush” in R. Rayfuse; N. Weisfelt (eds) *The Challenge of Food Security: International Policy and Regulatory Frameworks* (Cheltenham: Edward Elgar, 2012) 255.

⁴³⁹ *Ibid.*

⁴⁴⁰ Yamin, F. and J. Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (New York: Cambridge University Press, 2004) 545.

scale land acquisitions.”⁴⁴¹ Again, without an enforcement mechanism, nothing guarantees that States and non-state actors that created these laws to protect local communities against land-grabbing will not disregard them.

3 Regulating land tenure in Cameroon

The Food and Agriculture Organization described land tenure as “the relationship, whether legally or customarily defined, between people, as individuals or groups and the land.”⁴⁴² To this organization, land tenure is the regime in which people (with or without land title) use or own property (land, forests, and fisheries) that they need for their survival, including farming and urban and rural development. Therefore, land tenure, according to Nguiffo, Kenfack and Mballa, is fundamental to the development strategies and organizational structures of subsistence communities and political societies.⁴⁴³ Given the significance of land, water, forests, and other natural resources to local sustenance and well-being, local communities, and other susceptible groups need secured rights over land. The reasoning is that in the absence of a secured right to land, and the resources found underneath and upon it, protecting local communities against land-grabbing may be difficult.

The fact that property rights affect local livelihoods and survival and defines who gains access to land and land resources, both within and outside the African continent, makes land tenure a high-stakes topic. It also constitutes a vital avenue for grasping questions of who has or who lacks

⁴⁴¹ Regulating against global land grabbing – why the European Union needs to take action 30th September 2014, 1. Online: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/7_handoutgobalwitness_/7_handoutgobalwitness_en.pdf.

⁴⁴² Munro-Faure, P., *Land Tenure and Rural Development* (Rome: FAO, 2002) para. 3.1 [FAO Land Tenure Guide].

⁴⁴³ Nguiffo, S., P. Étienne Kenfack, and N. Mballa, “The influence of historical and contemporary land laws on indigenous peoples’ land rights in Cameroon” in Forest Peoples Programme, *Land rights and the forest peoples of Africa Historical, legal and anthropological perspectives: Historical, Legal, and Anthropological Perspective* (Moreton-in-Marsh: Forest Peoples Programme, 2009) 1 [Nguiffo Kenfack Mballa].

formal rights to land, forests, and fisheries resources in a developing country like Cameroon. This part of the chapter will study the regulation of land tenure in Cameroon, given that Cameroon is among the Sub-Saharan countries that the World Bank has described as suffering from “weak governance, insufficient human and financial resources and limited institutional capacities in the land sector.”⁴⁴⁴ It is necessary to understand Cameroon’s property rights, (or lack thereof) to analyze the extent to which existing land rights are sufficient to safeguard subsistence communities.

3.1 The historical development of the Cameroon land tenure system

Cameroon is a central African country whose 465,400 square kilometers of land comprises desert, savanna, mountain, rainforest and coastal ecosystems.⁴⁴⁵ Cameroon’s land tenure system is best understood if put into the context of history and politics. Before the German, British, and French rule in Cameroon, clan chiefs managed land on a community basis.”⁴⁴⁶ For each community, the land belonged to the “first occupant,” and was considered the “lifeblood of the community.”⁴⁴⁷ Land constituted the source of all means of subsistence and, hence, was considered “inalienable and even sacred, and was handed down from one generation to another.”⁴⁴⁸ In other words land provided the food, water, shelter, employment, and other necessities of life: it integral to produce the means of human survival.

⁴⁴⁴ Durand-Lasserve, A., M. Durand-Lasserve, and H. Selod, *A Systemic Analysis of Land Markets and Land Institutions in West African Cities Rules and Practices The Case of Bamako, Mali* (The World Bank, 2013) 2 [World Bank 2013].

⁴⁴⁵ USAID, Country Profile, Property Rights and Resource Governance: Cameroon, 3. Online: https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Cameroon_Profile.pdf. [USAID Cameroon].

⁴⁴⁶ African Development Bank, *Cameroon Diagnostic Study for Modernization of the Lands and Surveys Sectors* (Orce: African Development Bank, 2009), Para 4.1.2 [African Development Bank 2009].

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid*, Para. 4.1.2.

Because the community approach to managing land, which was commonly known as “customary” or “traditional” land tenure,⁴⁴⁹ allowed individuals to have only “a right of enjoyment” to meet their basic human needs such as food, water, and housing, it was consequently virtually unfeasible to think about the concept of ownership at all. In this context, the United States Agency for International Development (USAID) reported that under customary law, local leaders (chiefs, fons, and lamidos) acted as trustees and land administrators. Individual farmers who received rights to use a plot of land, even though their male children could inherit it, were prohibited from selling it to foreigners.⁴⁵⁰ This, of course, was to discourage private ownership of land, as such ownership would prevent subsistence community members from accessing, using or owning the land they have continuously lived on and cultivated for ages. The consequence: the ability to meet their basic needs would be compromised.

The current property regime in Cameroon has been molded by various concepts and institutions that were introduced during the colonial period. Most unusual is the concept of single/state ownership of land which dates back to 1896 with the *Crown Lands Act*.⁴⁵¹ This Act granted the imperial German government possession over all land, including the right to “reallocate land to augment their holdings and convert indigenous farmers into wage laborers on large plantations.”⁴⁵² The *Crown Lands Act*, thus, introduced two categories of property rights: private rights, and public or State rights. Not only did it permit the State to recognize and protect sole ownership of land, as opposed to community ownership in the pre-colonial period. The Act allowed the State to transfer community land to individuals, including private investors, which

⁴⁴⁹ African Development Bank 2009, *supra*, Para 4.1.2.

⁴⁵⁰ USAID Cameroon, *supra*, 6..

⁴⁵¹ Belaunde, S., *et al.*, *Land, Legitimacy and Governance in Cameroon* (Institute for Research and Debate on Governance and Columbia University School of International and Public Affairs, 2010) 18 [Belaunde].

⁴⁵² *Ibid.*

overlooked the scope of customary rights such as fishing, gathering, and hunting, rights, that were exercised on vacant lands.

In appearance, the colonial system of land governance was recognizably different from customary land tenure that predated the colonial period. Some critics have reported that colonization in Cameroon “completely disrupted the way of life and the way that relationships were regulated between the people and the land and resources.”⁴⁵³ To others, the emergence of the colonial land system was a deliberate attempt by the German protectorate to “abolish customary rights and replace them with various solutions based on imperial law, which applied to the country as a whole.”⁴⁵⁴ Unfortunately, “intense opposition from the Cameroonian populations led to the coexistence of written and customary laws” and continued until the early 1960s.⁴⁵⁵ Therefore, in addition to altering the land tenure system of pre-independence Cameroon which liberalized land markets in Cameroon, it incited private bodies such as foreign investors to own and invest in community property.

After Cameroon gained its independence from France in 1960, from Britain in 1961, and its unification in 1972,⁴⁵⁶ the legal framework governing land, forests, and fisheries resources was established in 1974 by three ordinances as shown in Box 1. In addition to numerous supporting decrees and orders, these ordinances have remained the foundation of Cameroon’s tenure regime. These laws are the legal regime in which land, including community property in the country, is accessed, used or owned by individual(s), who is (are) said to “hold” the land.

⁴⁵³ Belaunde, *supra*, 3.

⁴⁵⁴ Nguiffo, Kenfack and Mballa, *supra*, 1

⁴⁵⁵ *Ibid.*

⁴⁵⁶ USAID Cameroon, *supra*, 3.

Box 1: Cameroon's land tenure system

- Ordinance N°.74-1 of 6th July 1974 to establish rules governing land tenure;
- Ordinance N°.74-2 of 6th July 1974 to establish rules governing state lands;
- Ordinance N°.74-3 of 6th July 1974 concerning the procedure governing expropriation for a public purpose and the terms and conditions of compensation;
- Decree No. 76-165 of 27th April 1976 to establish the conditions for obtaining land certificates;
- Decree No. 76-166 of 27th April 1976 to establish the terms and conditions of management of national lands
- Decree No. 76-167 of 27th April 1976 to establish the terms and conditions of management of the private property of the State;
- Law No. 76/25 of 14 December 1976 to establish regulations governing cadastral surveys and records
- Law No. 80-22 of 4 July 1980 to repress infringements on landed property and State lands
- Law No. 85-09 of 4 July 1985 relating to expropriation for public purposes and conditions of compensation constitute the regulatory framework for cadastral survey and land management in Cameroon.
- Decree No. 2005/178 of 27 May 2005 to organize the Ministry of State Property and Land Tenure (MINDAF)
- Decree No. 2005/481 of 16 December 2005 setting out the conditions for obtaining land title.

Source: Compiled by the author from the literature review.

3.2 Property rights in Cameroon

The Food and Agriculture Organization (FAO) simplifies property rights into three broad categories—use rights, control rights, and transfer rights. It defines use rights to mean “rights to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc.”⁴⁵⁷ In conformity with this definition, use rights include local communities’ right to access farmland and their rights to graze cattle, gather firewood or collect non-timber forest products (NTFP) on State land which are particularly crucial for the livelihoods of local populations. Control rights refer to “rights to make decisions [about] how the land should be used including deciding what crops should be planted and to benefit financially from the sale of crops, etc.”⁴⁵⁸ In proportion to this definition control rights will include the right to participate in decision-making processes about land, including the management of land and resources on it. Finally, a transfer right means a “right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control

⁴⁵⁷ FAO Land Tenure Guide, *supra*, Para.3.8.

⁴⁵⁸ *Ibid.*

rights.”⁴⁵⁹ While the person transferring the land constitutes the grantor, that accepting the land is the grantee. Property rights also can be grouped depending on whether they are “formal”⁴⁶⁰ or “informal”.⁴⁶¹

3.2.1 Critiquing Cameroon’s land tenure system

As far as one can see, Cameroon’s legal framework for land management is well-enunciated. In fact, since 1974, the Cameroonian lawmakers have taken many different measures, both legal and regulatory, to shape land administration in the country. But, the lack of legal recognition of local rights remain a major obstacle for land-users, principally subsistence populations, to enjoy the benefits of ownership rights for their property, and hence be protected from expropriation without (adequate) compensation. This issue has created an unjust situation for subsistence communities in Cameroon.

3.2.2 Lack of formal recognition for local land rights

The *Ordinance N°.74-1 of 6th July 1974 to establish rules governing land tenure* (Land Tenure Ordinance) in Cameroon categorizes land into Private Property, Public Property, and National Lands. Under the Land Tenure Ordinance, a Private Property or private land includes registered lands, freehold lands, lands acquired under the transcription system, and lands covered by a final concession.⁴⁶² A Private Land can be owned by individuals, corporate bodies, or the State. Articles 14 and 15 of the Land Tenure Ordinance define National Lands as comprising “lands which... are not classed into the public or private property of the state and other public bodies.”

Under this law, National Lands comprise developed lands (lands occupied with houses, farms

⁴⁵⁹ FAO Land Tenure Guide, *supra*, Para.3.8.

⁴⁶⁰ While formal property rights may be held as those that are explicitly acknowledged by the government and which may be protected using legal means.

⁴⁶¹ Informal property rights may refer to those that lack official recognition and protection, and in some cases, informal property rights are illegal, i.e., held in direct defilement of the law.

⁴⁶² Land Tenure Ordinance, *supra*, Article 2.

and plantations and grazing lands manifesting human presence and development); and undeveloped lands (lands free of any active occupation). This is to say that occupied and unoccupied lands (such as lands held by rural communities under customary law, are generally classified as national lands.⁴⁶³ Put differently, the lands that subsistence communities live on and cultivate are generally termed National Lands.

Article 17 of the Land Tenure Ordinance recognizes two major types of tenure rights. The first category is transfer rights—the right to sell, mortgage, convey, and transmit or reallocate National Lands to others. In particular, it proclaims that National Lands “shall be allocated by grant, lease or assignment on conditions to be prescribed by decree.”⁴⁶⁴ The next category is use rights: Article 17 says customary communities members have “hunting and fruit picking rights” on National Lands. Put differently, the Land Ordinance authorizes the Government of Cameroon to transfer National Lands which include the lands on which subsistence communities have use rights (rights to use the land to graze, grow subsistence crops, hunt, fish, gather non-timber forestry products), to private investors.

While the Land Tenure Ordinance acknowledges informal rights holders (people with use rights), their rights are, however, subordinate: they are rights to use land and in themselves lack the privileges of “land ownership”.⁴⁶⁵ Unlike Private Lands, National Lands are not private: the State of Cameroon is the guardian of all National Lands. In this capacity, the State may intervene to ensure rational use of land.⁴⁶⁶ The implication of this provision is that all National Lands formally belongs to the State—fundamentally a continuation of colonial practices. Hence, local

⁴⁶³ Land Tenure Ordinance, *supra*, Article 16.

⁴⁶⁴ *Ibid*, article 17(1).

⁴⁶⁵ The Constitution of Cameroon defines ownership rights as meaning “the right guaranteed to every person by law to use, enjoy and dispose of property.” Cameroon Constitution, *supra*, Preamble.

⁴⁶⁶ Land Tenure Ordinance, *supra*, Article 1.

communities are limited to unofficial property rights of “access” and “use” and consequently prevented from enjoying the advantages associated with control and transfer rights, including the right to use land as collateral for loans.⁴⁶⁷

These deficiencies are problematic for farming, fishing, hunting, and indigenous community members who would want to enjoy the benefits connected to ownership rights. This barrier is a justice concern. The fact that customary land tenure holders are not legally allowed to control, transfer, or prevent others from accessing the land (and other landed resources) renders them vulnerable to land-grabbing, and undermine their ability to feed themselves and develop their communities. Hence, Brenda Gunn in *Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples* argue: “economic impoverishment and the resultant social harms have occurred through the loss of control over their resources, and demeaning behaviours by settlers, authorities and companies.”⁴⁶⁸

By Article 1 of *Decree No. 76-165 of 27 April 1976, setting out the conditions for obtaining land title*, amended and supplemented by *Decree No. 2005/481 of 16 December 2005* (Land Title Ordinance), a land title is “the official certification of ownership.”⁴⁶⁹ Article 1 also proclaims that a land title “...is the same acts establishing other rights attached to real property. The registration of an interest in a special register called Book Land wins this registration perfects the

⁴⁶⁷ A World Bank study shows that in “Vietnam, 32% of households in Khanh Hoa and 47% in Tien Giang have used the titles as collateral for bank loans. About 55% of those working in handicraft and businesses, which are primarily women, have used their land titles to access loans.” The World Bank, “Land Titling for Women: Sector Results Profile.” Online: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTEAPREGTOPSOCDEV/0,,contentMDK:22889003~menuPK:502955~pagePK:2865114~piPK:2865167~theSitePK:502940,00.html>.

⁴⁶⁸ Gunn, B., *Understanding and Implementing the Un Declaration on the Rights of Indigenous Peoples: An Introductory Handbook* (Winnipeg: Indigenous Bar Association, 2011) 21.

⁴⁶⁹ *Decree No. 76/165 of 27 April 1976 setting out the conditions for obtaining land title*, article 1 [Land Title Ordinance].

law and to third parties.”⁴⁷⁰ To FAO, land registration is the “the recording of rights to land in some form of public register.”⁴⁷¹ According to this definition, land registration includes data on the rights, “their location, and their holders.

Registration can be parcel-oriented or based on the holders or transfer documents...”⁴⁷² Ownership of land cannot be recorded to provide evidence of title, and unlawful disposal cannot be prevented over any unregistered land. Therefore, a land title is a statutory acknowledgment of one’s legal rights to settle, use, enjoy, and transfer a tract of land to a third party. The land could also be used as collateral for a loan. In Cameroon, a land title (land certificate) is a *prima facie* proof of the ownership of a parcel of land: land registration, which results in a land title, converts a tract of land from a National Land to a Private Property. It can also be said that a land title paves the way for the enjoyment of ownership rights over a parcel of land held (by subsistence communities) under customary tenure.⁴⁷³

Even though land registration is the “official certification of ownership” there remains two major obstacles for subsistence populations in Cameroon to register their holdings and acquire a land title, and hence, enjoy control and ownership rights. These are (1) obstructive registration conditions, and (2) stringent eligibility criteria. These factors (have rendered subsistence Cameroonians vulnerable to land-grabbing.

⁴⁷⁰ Land Title Ordinance, *supra*.

⁴⁷¹ FAO Land Tenure Guide, *supra*, Glossary of terms.

⁴⁷² *Ibid*.

⁴⁷³ Customary tenure is defined as “the tenure usually associated with indigenous communities and administered in accordance with their customs as opposed to statutory tenure usually introduced during the colonial periods. However, some countries in Africa are giving legal status to customary tenure. It often includes communal rights to pastures and exclusive private rights to agricultural and residential parcels.” FAO Land Tenure Guide, *supra*, Glossary of Terms.

3.2.3 Land title procedure in Cameroon

The United States Agency for International Development (USAID), a US Government agency that aims to administer civilian foreign aid, categorizes the process of acquiring land certificates in Cameroon into three broad stages. These include: an administrative phase (involving the assessment of land occupation and development by the Department of State Property and the Ministry of Territorial Administration); a technical phase (relating to the physical description of the land by the Department of Surveys); and a legal phase (during which the Department of Land Tenure analyzes the conditions of access to property right).⁴⁷⁴ It is worth mentioning that since 2005, Land Consultative Boards have been assuming responsibility for demarcating land and adjudicating land rights in Cameroon.⁴⁷⁵

Cameroon's Land Title Decree declares that any individual or community seeking to obtain a land title must satisfy many different conditions, including providing "a description of the property (location, size, nature of the occupation or exploitation, its estimated value, an indication of the encumbrances affecting)."⁴⁷⁶ Besides, the application file must be lodged with the district manager or sub-prefect of the location of the building who then forwards it to the departmental land affairs officials.⁴⁷⁷ USAID's report shows that it takes approximately 93 days for the Department of State Property, the Department of Surveys, and the Ministry of Territorial Administration to evaluate the application file in Cameroon.⁴⁷⁸ Hence, registering land transactions in Cameroon takes over three months.

⁴⁷⁴ USAID Cameroon, *supra*, 7.

⁴⁷⁵ *Ibid*, 8.

⁴⁷⁶ Decree No. 2005/481 of 16 December 2005 to modify and complete certain dispositions of decree No 76/165 of 27 April 1976 to fix conditions to obtain land certificate, Articles 11 and 12.

⁴⁷⁷ *Ibid*.

⁴⁷⁸ USAID Cameroon, *supra*, 7.

The long list of required documents and time required for registering land could render the registration process exhausting, and too costly for subsistence communities, the majority of whom are poor and illiterate.⁴⁷⁹ As outlined in the World Bank's *Doing Business 2016* report, "[i]f formal property transfer is too costly or complicated, formal titles might go informal again."⁴⁸⁰ Put differently, where opportunities for obtaining official title are compromised, there is little chance that the the State will protect subsistence communities against land-grabbing. It is also impossible for such community members to use their customary holdings as collateral for a loan from the bank or allocate (lease or sell) it to a third party.

Research by Focus on Land in Africa, an educational resource for development practitioners and policy makers that explore how land and natural resource rights affect and are impacted by development in Africa, shows that land titles are difficult to obtain by poor Cameroonians because they require costly land surveys.⁴⁸¹ The applicant is responsible for the cost of compiling the file, in addition to the application (land registration) fee which is 18% of property value⁴⁸² (compared to the 10% of property value in other sub-Saharan African countries⁴⁸³). As a result of this high cost of registering land in Cameroon, perhaps, "Cameroon stands at 175 in the ranking of 189 economies [in the world] on the ease of registering property."⁴⁸⁴ Additional costs include

⁴⁷⁹ A 2008 research conducted by UNESCO indicates that the proportion of the population that is illiterate in Cameroon ranges from 44.3% in rural areas to 12.2% in towns. In the Northern provinces and Adamawa, the rates are: 60% in Adamawa, 68% in the North Province and 76% in the Far North Province, UNESCO Institute for Lifelong Learning. Online: <http://www.unesco.org/ui/litbase/?menu=4&programme=14>.

⁴⁸⁰ The World Bank Group, *Doing Business 2016 Cameroon Measuring Regulatory Quality and Efficiency* (Washington D.C.: World Bank, 2016) 42 [World Bank Doing Business].

⁴⁸¹ Focus on Land in Africa (FOLA), Land Registration in Cameroon, 3. Online: <http://www.focusonland.com/property-rights-issues/land-registration-in-cameroon/>. [Focus on Land in Africa]

⁴⁸² World Bank Doing Business, *supra*, 43; USAID Country Profile, *supra*,,

⁴⁸³ USAID Cameroon, *supra*, 7.

⁴⁸⁴ World Bank Doing Business, *supra*, 44.

the cost to notarize the land certificate (which may be excessive) and the costs of field visits (to allow the “development” status to be confirmed) and boundary demarcation.⁴⁸⁵

The African Development Bank (ADB) pointed out in 2009 that “Cameroonian users consider the rules and procedures for obtaining a land certificate to be protracted and costly.”⁴⁸⁶ To the ADB, property registration in Cameroon is tremendously difficult because of the absence of “a single reference regarding landmarks on which the land titles are based.”⁴⁸⁷ Accordingly, “the inadequacy of the land tenure rights constitutes a serious obstacle for the development of the private sector and the living environment.”⁴⁸⁸ This incidence of difficulty in titling lands might have encouraged fraud and corruption in the transaction of land in Cameroon. ADB adds: “...the absence of a reliable landmark identification system has generated many divergences, ranging from the positioning of a simple monument to the demarcation of national borders.”⁴⁸⁹

The analysis indicates that the majority of land used by subsistence communities in Cameroon is without any land title, and subject to customary rules that predated the period of colonization. USAID’s report of 2011 shows that “after more than 30 years [since the 1974 Land Tenure Ordinance was adopted], only an estimated 125,000 land titles are registered.”⁴⁹⁰ Possibly because of the high costs of registering land in Cameroon, the actual percentage of registered land is minimal, according to USAID. The World Bank also says only between 2% and 10% of the land in Africa was held under formal tenure as of the early 2000s, mostly in urban areas.⁴⁹¹

⁴⁸⁵ Nguiffo, Kenfack and Mballa, *supra*, 10.

⁴⁸⁶ African Development Bank, Country Strategy Paper 2010-2014: Cameroon (ORCE: African Development Bank, 2009) para 4.2.8 [African Development Bank Country Strategy Paper].

⁴⁸⁷ *Ibid.*

⁴⁸⁸ *Ibid.*, Para. 2.3.1.5.

⁴⁸⁹ *Ibid.*, Para. 2.3.1.5.

⁴⁹⁰ USAID Cameroon, *supra*, 3.

⁴⁹¹ Deininger, K., *Land policies for growth and poverty reduction* (Oxford University Press and World Bank, 2003) xxi.

By this token, over 90% of African land is owned by African States while most of the rural dwellers live under informal tenure and hold only use rights. The repercussion of these low figures: land tenure for most subsistence Cameroonians is insecure.

In line with a report by the ADB, “land certificates have been issued for barely 2% of the territory” in Cameroon.⁴⁹² With regards to women, with the majority relying on the land for their livelihood, the situation is very disturbing as they are practically missing in land registers.⁴⁹³ A World Bank study shows that women make up over 70% of farmers Africa. Without a land title, therefore, “women will be unable to raise the money needed to improve their small harvests or to raise living standards.”⁴⁹⁴ This issue of many Cameroonian women lacking formal title to farmland sustains poverty and food insecurity and blight the ability of rural women to meet the basic needs of their families.

3.2.4 Stringent eligibility conditions

Furthermore, strict eligibility requirement, including the condition to provide a record of development and a certificate acknowledging customary land holding has been difficult for the local people to satisfy. Article 7. of the Land Title Decree says “request processing Certificate of occupancy in land title should also be supported by a record of development and a certificate of acknowledgment from the administration areas royalties or rents due...”⁴⁹⁵ The land title law of Cameroon did not expressly define the concept of “development.” Nevertheless, it is necessary to begin, at least, with a definition of what land development means, in order to evaluate the implication of this provision for local people in Cameroon.

⁴⁹² African Development Bank, *supra*, para. 4.2.11.

⁴⁹³ *Ibid*, para. 4.2.15.

⁴⁹⁴ World Bank, “Securing Africa’s Land for Shared Prosperity. ” Online: <http://www.worldbank.org/en/news/opinion/2013/07/22/securing-africa-s-land-for-shared-prosperity>.

⁴⁹⁵ Decree No. 76-165 of 27 April 1976 setting out the conditions for obtaining land title in Cameroon.

A study by the Government of Ontario described land development as “altering or developing land through land use activities including, but not limited to, grading, soil removal, construction, shoreline stabilization, alteration to watercourses, extraction of aggregates and clearing woodlots or forested areas.”⁴⁹⁶ Going by this definition, any person seeking to obtain a land title in Cameroon must prove that he/she has been managing or modifying the property in question through the occupation of the plot of land into settlements, arable fields, gathering woods, or pastures. It is important to mention that this development requirement is problematic for the locals, including herders, gatherers, hunters: this prerequisite has the potential to nullify their right to get their lands (lands used for grazing, hunting, and gathering of non-timber forest resources) registered. Failure to prove the development condition compromises the opportunity for subsistence community members to have their land legally recognized, and the chance to enjoy ownership rights.⁴⁹⁷ Cameroon’s expropriation rules allow the State to expropriate private property. Under Section 2 of these rules “expropriation for public purposes shall exclusively affect private property as recognized by the law and regulations.”⁴⁹⁸ Expropriation is the process of taking away property from a land-user against his/her will.⁴⁹⁹ It involves the forced transfer of lands or real rights and is only allowed for a public purpose⁵⁰⁰ and undertaken either at the request of service providers, local communities, or State institutions and enterprises.⁵⁰¹ The *African Charter on Human and Peoples’ Rights* recognizes the potential need to expropriate for a public purpose. It proclaims that “the right to property shall be guaranteed. It may only be

⁴⁹⁶ Ministry of Tourism, Culture, and Sport, Land use planning and development
Online: http://www.mtc.gov.on.ca/en/archaeology/archaeology_planning.shtml.

⁴⁹⁷ The consequence is that the land will continue to be subject to customary law and regarded as National land, given that all unregistered lands in Cameroon are classified as National land and as State property.

⁴⁹⁸ Law No. 80-21 of 14 July 1980 to amend certain provisions of ordinance No. 74-1 of July 1974 to establish rules governing land tenure [Expropriation Rules].

⁴⁹⁹ Cornu, D. G, *Vocabulaire juridique* (Paris: PUF, 2004) 386.

⁵⁰⁰ Nguiffo, Kenfack and Mballa, *supra*, 11.

⁵⁰¹ *Ibid.*

encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”⁵⁰²

According to the Constitution of Cameroon, “no person shall be deprived [of property], save for public purposes and subject to the payment of compensation under conditions determined by law.”⁵⁰³ UNEP proclaims that compensating for impacts should include one or more of (1) monetary payment, (2) non-monetary measures, (3) site remediation bonds, and (4) a resettlement plan.⁵⁰⁴ Although these laws suggest that privately owned property shall not be used by any government for the benefit of the public without compensating its victims, including subsistence communities, expropriation, sometimes, does not comply with all domestic and international standards such as the payment of a fair and prior compensation.

While Section 8 of the expropriation rules of Cameroon declares that compensation shall be monetary,⁵⁰⁵ the amount of compensation granted in some cases is, in fact, much less than the expropriated land is worth.⁵⁰⁶ Most importantly for subsistence communities, the rules about expropriation and compensation do not apply to unregistered lands or a tract of land that is not protected by a land title. In other words, laws about expropriation and adequate compensation do not apply for National Lands such as community lands, even if the government decides to ‘expropriate’ the land for a public purpose. Section 2 of the expropriation rules further proclaims that for a plot of land to be subject to the right of private property, it must have been registered, and hence protected by a land title.⁵⁰⁷ This suggests that any land that is not registered, such as

⁵⁰² African (Banjul) Charter on Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986), Article 14.

⁵⁰³ Cameroon Constitution, *supra*, Preamble.

⁵⁰⁴ EIA Training Resource Manual, *supra*, 309.

⁵⁰⁵ Expropriation Rules, *supra*.

⁵⁰⁶ Nguiffo, Kenfack and Mballa, *supra*, 12.

⁵⁰⁷ Expropriation Rules, *supra*, Section 2.

lands held under customary tenure, cannot be classified as Private Property, and any land that is not a Private Property cannot be affected by expropriation and compensation.

According to Section 2 of the expropriation rules, any land that is not a private property (because it is unregistered) is considered National Land.⁵⁰⁸ The State shall administer National Lands in such a way as to ensure public use and development on it.⁵⁰⁹ Defined as a ‘common heritage’ of the Nation of Cameroon, Mvondo *et al.* argue that National Lands “should be redefined at this time when the REDD+ mechanism is being designed and farmland grabbing in developing countries is becoming a recurring global paradigm in African countries like Cameroon.”⁵¹⁰

Once again, expropriation and compensation will not apply to land that is subject to customary law, including community burial grounds and other sacred sites that subsistence communities had access to, as well as undeveloped areas used by local people for accommodating endangered species and collecting non-timber forests products. This provision of the law raises questions of justice: the fact that expropriation is inapplicable to unregistered and undeveloped lands makes lands held (by subsistence communities) under customary tenure susceptible to allocation to private individuals⁵¹¹ by the government without compensation. This condition could render customary land users more vulnerable to land-grabbing or, at least, land-grabbing without reparation.

⁵⁰⁸ Unregistered lands are classified as National Lands, and . National lands are comprised of developed lands (lands occupied with houses, farms and plantations and grazing lands manifesting human presence and development); and undeveloped lands (lands free of any effective occupation). Thus, National lands include both occupied and unoccupied lands: this will include lands held by rural communities under customary law, *supra*, article 16.

⁵⁰⁹ Rules governing land tenure, *supra*, Section 14-16.

⁵¹⁰ Mvondo, S. A., *et al.*, “Review of the legal ownership status of national lands in Cameroon: A more nuanced view” (2014) 1:1 Development Studies Research, 148-160, 148.

⁵¹¹ Compared to subsistence communities, corporations have financial standing and can live up to the registration and development conditions).

Section 3 of the decree governing expropriation for public purposes outlines the procedure governing expropriation for public purposes and conditions of compensation.⁵¹² This law proclaims that a Verification and Valuation Commission shall be established to conduct an inquiry report: the report shall contain information on the property to be expropriated, including an evaluation of the crops, building, and any other land developments.⁵¹³ Hence, the Verification and Valuation Commission shall not consider vacant land, including vacant plots of land (areas without crops or buildings, and other signs of development for compensation). The fact that the Commission does not review vacant land is unfortunate because land also has an emotive and non-monetary worth that cannot be reflected in cash payments. Land in Africa is “not just for hunting, food cultivation or wood harvesting: it connects the past, present, and future generations... It is not just a forest, it is ...not only economical, it is historical, political, spiritual and very emotional.”⁵¹⁴

In Cameroon, expropriation for a public purpose shall confer the right to monetary compensation relating to the “direct, immediate, and veritable material damage instigated by the dispossession.”⁵¹⁵ The Verification and Valuation Commission, which shall be determined by law, shall consider: (i) the value of the crops destroyed; (ii) the value of the buildings and other installations; and (iii) the value of the undeveloped land calculated accordingly.⁵¹⁶ In addition to

⁵¹² *Decree N°.87-1872 of 16 December 1987 to implement law N°.85-9 of 4 July 1985 to lay down the procedure governing expropriation for public purposes and conditions for compensation* [Expropriation Rules].

⁵¹³ *Ibid.*

⁵¹⁴ Horne, F., *Understanding Land investment Deal in Africa Country Report: Ethiopia* (Oakland: The Oakland Institute, 2011) 42.

⁵¹⁵ *Law No . 80-21 of 14 July 1980 to amend certain provisions of ordinance No. 74-1 of July 1974 to establish rules governing land tenure*, Section 7 [Rules Governing Land Tenure].

⁵¹⁶ It continues thus: a) In the case of urban lands officially allocated subject to payment, compensation may not exceed the official price of public lands in the particular town centre; b) In the case of lands held by virtue of a normal transaction under ordinary law, compensation shall be the purchase price to which shall be added the ancillary costs of the purchase and of obtaining title; c) In the case of lands held by virtue of customary tenure under which a land certificate has been issued, compensation may not exceed the amount of the expenses incurred by the issue of the said certificate, Law governing expropriation in Cameroon, Expropriation Rules, *supra*, Article 9.

the fact that the Verification and Valuation Commission does not consider the emotive value of land, there are real concerns as to whether a one-time cash payment for the loss of visible improvements can, indeed, fully compensate an evictee. Another concern is whether *restitution in integrum*, where subsistence community members are relocated, is possible to achieve.

Another expropriation problem relates to the interpretation of the legislation. Section 10(3) says the Verification and Valuation Commission shall evaluate the details regarding the assessment of the value of crops or buildings or other developments destroyed. This provision also states that there will be no compensation for destroying “old or crumbling building or those erected against town planning laws.”⁵¹⁷ In Cameroon, some subsistence populations, especially forest dwellers like the Baka people might not need well-constructed houses in order to meet their basic needs.⁵¹⁸ What a whole family of forest dwellers may require is a hut made out of mud, leaves or sticks. The forest is their home, and they earn a living by hunting animals and harvesting plants.⁵¹⁹ Likewise, nomads move from place to place in search of pasture, rather than to dwell in stable fixed societies. Because of their nomadic lifestyle, a nomadic tent would constitute a vital source of housing.⁵²⁰ In these cases, the Section 10(3) condition may not be satisfied. The result is that such groups of people will end up displaced from their lands and resources without any compensation should their land be expropriated for a public purpose by the government. That such communities will not receive compensation for any damage suffered is an injustice.

⁵¹⁷ Rules Governing Land Tenure, *supra*.

⁵¹⁸ Traditionally, forest-dwelling Baka (or pygmy) communities were hunter/gatherers and ranged over large areas of forestland, USAID Cameroon, *supra*, 8.

⁵¹⁹ AfricaGuide, Pygmy People.

Online: <http://www.africaguide.com/culture/tribes/pygmies.htm>.

⁵²⁰ New World Encyclopedia, Nomads. Online: <http://www.newworldencyclopedia.org/entry/Nomad>.

4. Recommendation

“...if you accept that human lives are both the end and the means of economic development, securing citizens and their assets in their daily environment would seem critical for any measure of economic development.”⁵²¹

The management of land “is based on the application of land tenure systems relating to the legal character of lands, the rights that may be granted, systematic registration of the deeds establishing such rights and securing them.”⁵²² The analysis indicates that the statutory laws and State institutions that were established after independence have failed to protect customary land rights in Cameroon. The 1896 Crown Lands Act (colonial land law) and the 1972 land ordinances (post-colonial land laws) aggressively abolished and dispossessed subsistence populations of their customary land rights.⁵²³ These laws respectively granted the German imperial government and the government of Cameroon possession over lands held under customary tenure, among others, and the right to allocate such property to private investors.

Today, subsistence communities in Cameroon, including farmers, hunters, gatherers, indigenous communities, etc., suffer from uncertain rights to land. This uncertainty is restraining their ability to enjoy the advantages associated with ownership rights such as the right to prompt and adequate compensation. Because these laws are not fair to subsistence Cameroonians, a radical transformation of the current system to formally recognize and protect local land rights and traditional institutions is highly recommended. Upholding customary land rights through formalization is, therefore, of great essence in Cameroon.

In 2006, the *Protocol on the Property Rights of Returning Persons* (a.k.a. the Great Lakes Pact) was established in order to address an important issue surrounding the property rights of

⁵²¹ Hamid Sharif Assistant General Counsel, Asian Development Bank. Asian Development Bank, *Challenges in Report from the ADB Symposium on Implementing Access to Justice Reforms* (Asian Development Bank, 2005) 10

⁵²² African Development Bank, *supra*, Para 5.1.2.

⁵²³ See for example, Kenfack and Mballa, *supra*; African Development Bank, *supra*; and USAID Cameroon, *supra*.

internally displaced persons and refugees.⁵²⁴ Specifically, the Protocol focuses on property rights of those whose survival depends on land and whose property were lost, confiscated or expropriated through the process of displacement and exile.⁵²⁵ Calling for a special protection of land rights of subsistence populations, the Protocol is the first international instrument to proclaim the good news that property dispute resolution mechanisms should accommodate both administrative and traditional authorities.⁵²⁶ Indeed, this protocol represents a commendable effort to assert the property rights of displaced people.⁵²⁷

Sub-Saharan African countries such as Botswana, Mauritania, Mozambique, Namibia, Tanzania, Uganda, and South Africa have reformed their land laws and land policies to acknowledge customary tenure systems. Table 6 contains the key documents that these seven African countries have adopted to successfully formalized customary land rights and village land institutions. As can be seen, these legal and policy reforms are a deviation from the practice that was introduced and enforced during and after the colonial periods.

Table 6: An overview of legal and policy documents formalizing customary tenure

Country	Key documents
Botswana	The Tribal Land Act (1968)
Mauritania	The Code Pastoral (2000)
Mozambique	The Land Act (1997)
Namibia	The Communal Land Reform Act (2002)
South Africa	The Communal Land Rights Act (2004)
Tanzania	The Village Land Act (1999), The Lands Commission Report (1991-1992), National Land Policy (1995), Strategic Plan for the Implementation of the Land Laws (2005).
Uganda	the 1995 Ugandan Constitution, the 1998 Land Act

Source: compiled by the author

⁵²⁴ Internal Displacement Monitoring Centre and the International Refugee Rights Initiative, *The Great Lakes Pact and the rights of displaced people A guide for Civil Society* (Norwegian Refugee Council, IDMC, IRRI, 2008) 18 [Refugee Council].

⁵²⁵ *Ibid.*, 18.

⁵²⁶ *Ibid.*

⁵²⁷ *Ibid.*

What is unique about the documents in Table 6 is in the express recognition they provide to customary laws and traditional institutions: they have legalized customary property rights at the community/group. This is to say that the reforms have converted the land rights of customary landholders from a right to use the land for grazing, growing subsistence crops, gathering minor forestry products to a right to make decisions related to how their land and resources should be used, controlled, and transferred to third parties. This also extends to decisions to benefit financially from the sale of agricultural produce and expropriation for a public purpose.

For example, the 1995 Ugandan Constitution acknowledges four different types of land tenure systems: customary; mailo; freehold; and leasehold.⁵²⁸ Under the country's 1998 Land Act, customary law shall regulate customary land tenure, and customary land tenure shall be regulated by rules commonly accepted as binding by a given community.⁵²⁹ The Land Act expressly limits government-owned land: it obliges the government to make full payment for any tract of land that the government considers expropriating for a public purpose. An unexpressed supposition of the Act is that "allowing a system of private individual ownership of land to develop in Uganda will boost the country's economic and social development."⁵³⁰ Furthermore, the Land Act has proposed some reforms to rigorously alter the link between the State and the land in Uganda.⁵³¹

While studying the key documents in Table 6, USAID observed three current models to accord formal recognition to the customary law regulating land tenure in these African countries. The first model is one where some countries (e.g. Uganda, Botswana, Tanzania) have sought to codify dominant forms of customary tenure and replace, either wholly or partially, the role of

⁵²⁸ UN-HABITAT, *A Guide to Property Law in Uganda* (Nairobi: UN-HABITAT, 2007) 7 [UN Habitat].

⁵²⁹ UN Habitat, *supra*, 8.

⁵³⁰ *Ibid*, 12.

⁵³¹ *Ibid*, 12.

traditional authorities in land administration with official, “state-sanctioned administrative bodies.”⁵³² This example could constitute an ideal model for the Cameroon Government to emulate and apply: this might go a long way towards addressing the challenges plaguing the land administrative structure in the country. In these three cases, the land is quite often certified or titled in the name of households or individuals, even though Tanzania does provide for the delimitation of village boundaries as well.⁵³³ The second model (e.g. Mozambique and South Africa) is one where community areas are delimited, and administrative bodies (such as a traditional council or a land administration committee elected by the community) are permitted to continue to administer community property according to customary practices.⁵³⁴

The third model (Namibia) represents a hybrid of the first two models whereby customary rights are allowed to vary, and traditional authorities continue in their roles, but their decisions are now subject to the approval of local land boards.⁵³⁵ Mauritania does not represent any of these models. Although it provides for a “loose set of codified rules on which nomadic herder groups have rights to... pastoral resources,” no efforts have been made to certify the rights of this group of actors. USAID describes this process as “highly complex given the temporal, collective, and overlapping nature of rights and the mobility of right holders.”⁵³⁶

With regards to measuring performance, some of the land reforms are “regarded as among the most successful and visionary on the continent. [Botswana’s for instance] land administration

⁵³² Knox, A. *et al.*, “Integrating Customary Land Tenure into Statutory Land Law: A Review of experience from Seven Sub-Saharan African Countries and the Kyrgyz Republic,” (USAID) 10 [Knox *et al.*]. Online: https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_PRRG_Integrating_Customary_Land_Tenure_Into_Statutory_Land_Law.pdf.

⁵³³ *Ibid.*, 10.

⁵³⁴ Knox *et al*, *supra*, 10.

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid.*

system is regularly lauded as a shining example of good governance.”⁵³⁷ Additionally, the 1999 Tanzania’s Village Land Act has been praised for the profundity and democratic nature of its decentralization of land management, which accords authority over to village level councils that are elected.⁵³⁸ This piece of data is another indication of how statutory law has formalized the once unofficial customary laws and traditional institutions.

Of course, these reforms are receiving some criticisms. Lorenzo Cotula, among other researchers, says that “formalization risks resulting in codification and hence in loss of flexibility, which is one of the very strengths of customary systems.”⁵³⁹ Moreover, some group of peoples may be “discriminated against under customary systems (typically women), and formalizing customary land may favour some groups and disadvantage others (e.g. migrants vs autochtones.”⁵⁴⁰ Such may undermine the opportunity to devise mechanisms to recognize the land rights of local peoples without entrenching discriminatory institutions and practices.⁵⁴¹

Besides, the analysis confirms that pressing challenges remain in the implementation of these policy reforms. For example, many government officials and herders are still ignorant of the law, government funding and human resource capacity to implement and ensure compliance with the land laws is lacking.⁵⁴² Moreover, commitment on the part of central governments to implement the reforms has fluctuated due to political alliances with interests that are not sympathetic of the reforms.⁵⁴³

⁵³⁷ *Ibid*, 3.

⁵³⁸ *Ibid*, 6.

⁵³⁹ Cotula, L. (ed), *Changes in Customary Land Tenure Systems in Africa* (Stevenage: IIED and FAO, 2007).

7.

⁵⁴⁰ *Ibid*.

⁵⁴¹ *Ibid*, 7.

⁵⁴² Knox *et al*, *supra*, 5.

⁵⁴³ *Ibid*.

Tanzania's reform was primarily a response to rising number of conflicts over land.⁵⁴⁴ So, the reform seeks to strengthen tenure security and create a land marketing system which is thought to improve agricultural productivity and economic growth. It describes how to build better administrative systems to secure those rights and how to facilitate a market in land.⁵⁴⁵ However, the reform is said to be complex, and resources and competencies happen to be scarce in rural areas.⁵⁴⁶ Other challenges include: laws and procedures have been changed since the passing of the Village Land Act, causing delays and confusion; and difficulty in accessing information by citizens and stakeholders on how to implement correctly.⁵⁴⁷ The absence of key public authorities (e.g. the Ministry of Lands) in the implementation process; lack of resources, financial and technical; and too narrow focus on output rather than capacity building have also been underscored.⁵⁴⁸

It is important to note that implementation deficits (challenging the effective formalization of customary land rights in these African countries) are not limited to the African continent. Research shows that deficiencies in implementation—the difference between laws in theory and how these laws function in practice—is an issue that is experienced globally.⁵⁴⁹ These reforms have no doubt encountered problems, but part of this may reveal their relative innovativeness. Cameroon should follow suit in amending its land laws and policy to recognize customary land rights. Officially recognizing the property rights of local populations will be helpful towards

⁵⁴⁴ Fimbo, G. M., *Land Law Reforms in Tanzania* (Dar es Salaam: Dar es Salaam University Press Ltd, 2004).

⁵⁴⁵ *Ibid.*

⁵⁴⁶ Pedersen, R. B., "Tanzania's Land Law Reform: the Implementation Challenge" (2010) 37 DIIS Working Paper, 17 [Pedersen].

⁵⁴⁷ Pedersen, *supra*, 17.

⁵⁴⁸ *Ibid.*

⁵⁴⁹ Hill, M. and P. Hupe, *Implementing Public Policy: Governance in Theory and Practice* (London: Sage, 2002); Hill, M., *The Public Policy Process* 4th ed) (London: Pearson Longman, 2005); McLaughlin, C. and G. Krantzberg, "An appraisal of policy implementation deficits in the Great Lakes" (2011) 37 *Journal of Great Lakes Research* 390–396.

addressing the challenges that are currently restraining subsistence populations from enjoying ownership rights in the country. Advocates of the reforms in Table 6 are optimistic that these changes will enable concerned African governments, among others, to achieve an adequate formalization of customary land rights, and hence protect indigenous communities and other subsistence groups from social, cultural, economic, and environmental degradation.

5 Chapter summary

This chapter had two objectives: to investigate the adequacy of the Minimum Human Rights Principles, the Voluntary Guidelines, and PRAI to protect local people against land-grabbing. The review shows that these frameworks (1) outline principles for enhancing tenure of land, fisheries, and forests governance, (2) recognize fundamental human rights and call on States and investors to protect them, and (3) provide for remedies to affected populations while condemning forced eviction. Nevertheless, these frameworks are voluntary: they lack legally binding commitments and adequate means to check compliance or enforce them. The chapter argues that the absence of binding commitments and compliance mechanisms allows States and non-state actors to disregard the guidelines when it is economically and politically tempting to do so. Deficits in such guidelines imply limited opportunities to (1) prevent affluent governments and investors from targeting poor farmers in host countries, and (2) ensure that local farmers without formal land titles do not suffer expulsion from their land and essential natural resources.

Next, this chapter examined the regulation of land tenure in Cameroon. It analyzed the extent to which Cameroon's land tenure system could protect the land rights of subsistence communities and safeguard them against land-grabbing. The analysis indicates that the land tenure system that was established since 1974 to regulate land, forests, and fisheries resources is deficient: it does not recognize the customary rights of local peoples. This issue remains for land-users, principally

subsistence populations, to enjoy ownership rights for their lands, and hence, be protected from expropriation for a public purpose without (adequate) compensation, as well as land-grabbing. The major challenge is how local communities' access to environmental resources (farmland and forest resources) can be secured. In order to address this issue, the chapter recommended the Government of Cameroon to reform the land tenure system to formally acknowledge the land rights of subsistence communities in the country.

CHAPTER FOUR

PROCEDURAL ENVIRONMENTAL JUSTICE

A challenge of all governments is to find a way to find innovative ways to put citizens at the centre of the governing process, to engage youth in public enterprise, and to give voice to those who find themselves on the margins. (Jean Chretien, Progressive Governance for the 21st Century Conference, Berlin, 2000).⁵⁵⁰

1 Introduction

Not only does this chapter focus on how to put the public at the center of the environmental governance process. How can subsistence communities participate in environmental decision-making and what are some of the benefits and challenges that this participation entails? More specifically, this chapter questions the ways through which the affected, likely to be affected, and the interested public can participate in making local environmental (land, forest, air, water, fisheries, among other environmental resources) decisions, in order to prevent land-grabbing and promote sustainable (agricultural) developments in their communities.

2 Environmental justice and public participation

The link between environmental justice and the participation of the affected communities in decision-making derives from the acknowledged significance that issues that affect the environment, including the impacts created by large-scale agricultural investments, are best addressed with public participation at the appropriate level.⁵⁵¹ Principle 10 of the 1992 *Rio Declaration on Environment and Development* (Rio Declaration) is an outstanding example of law expressly embracing a participatory framework as the basis of environmental democracy.⁵⁵²

⁵⁵⁰ Government of Canada, “Policy Statement and Guidelines for Public Participation”. Online: <http://www.justice.gc.ca/eng/cons/pol.html>.

⁵⁵¹ UNCED, *supra*, Principle 10.

⁵⁵² Principle 10 is “a key part of a country’s transition towards a system of environmental governance” that will lead towards sustainable development, Stec, S., *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines* (Nairobi: UNEP, 2015) 9 [Putting Rio Principle 10 into Action].

Principle 10 contains three rights (access to information, public participation, and access to justice). These rights were crucial global topics when the 1998 *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention)⁵⁵³ and the *Guidelines for the Development of National Legislation on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Bali Guidelines)⁵⁵⁴ were signed and opened for accession.⁵⁵⁵ I will now proceed to define these three rights.

2.1 The right to environmental information

Access to environmental information is one of the three pillars of Principle 10 of the Rio Declaration. The Bali Guidelines, which aim to provide interested developing countries with general guidance on promoting the efficient operationalization of Principle 10 of the Rio Declaration, have defined environmental information.⁵⁵⁶ Among other things, Guideline 2 of the Bali Guidelines proclaims that environmental information should include information about the quality of land, air, water, forests, and other environmental parameters, as well as information about environmental impacts on human health and legislation and policy.⁵⁵⁷ The Bali Guidelines

⁵⁵³ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, Aarhus, Denmark, 25 June 1998, 2161 UNTS 447; UKTS 24 (2005), Cm 6586, Article 6 [Aarhus Convention].

⁵⁵⁴ United Nations Environment Programme, *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*, Adopted by the Governing Council of the United Nations Environment Programme in decision SS.XI/5, part A of 26 February 2010. Online: http://www.unep.org/civil-society/Portals/24105/documents/Guidelines/GUIDELINES_TO_ACCESS_TO_ENV_INFO_2.pdf. [Bali Guidelines].

⁵⁵⁵ Although the Aarhus Convention is regional, it is opened to accession by non-European States, after approval of the Meeting of the Parties. Besides, it is unique: it is a binding international agreement; it links environmental rights with human rights; and acknowledges that sustainable development cannot be achieved without the involvement of all stakeholders, UNECE. Online: <http://www.unece.org/env/pp/contentofaarhus.html>.

⁵⁵⁶ Putting Rio Principle 10 into action, *supra*, 16.

⁵⁵⁷ Bali Guidelines, *supra*, Guideline 2.

also call on States to periodically prepare and distribute updated environmental information.⁵⁵⁸ Similarly, under the UN Agenda 21, there is an expectation that national authorities concerned with environmental protection shall, upon request, disseminate information relevant to environment and development to all social groups (individuals, groups, and organizations) on environmental protection issues.⁵⁵⁹

These two agreements indicate that everyone (literate or illiterate, white or black, rich or poor, indigenous or non-indigenous) has a right to information (held by public authorities) that impact or may impact their natural resources, including land on which they depend to survive. Environmental information might extend to information about measures to mitigate or prevent environmental risks or land-grabbing. These instruments also recognize the fact that the public, due to technological and financial obstacles, may require help to access environmental information effectively and participate in land or environmental management. In recognition of this need, the Bali Guidelines urge States to promote capacity-building, both among national authorities and the general public.⁵⁶⁰ Therefore, environmental information plays an essential role in awareness of environmental issues, and in public participation and access to justice that this knowledge triggers.

Building capacity, according to the World Health Organization, is the “development and strengthening of human and institutional resources,” and capacity has been defined as “the ability to perform functions, solve problems, and achieve objectives” at three different levels: institutional, individual, and societal levels.⁵⁶¹ Chapter 37 of Agenda 21 clarifies the significance

⁵⁵⁸ Bali Guidelines, *supra*, Guidelines 4-6.

⁵⁵⁹ UNCED, *supra*, Chapter 23.

⁵⁶⁰ Bali Guidelines, *supra*, Guideline 7.

⁵⁶¹ World Health Organization, Capacity building and initiatives. Online: http://www.who.int/tobacco/control/capacity_building/background/en/.

of building a nation's scientific, human, organizational, technological, institutional and resource capabilities. A fundamental objective of building capacity “is to enhance the ability to evaluate and address the crucial questions related to policy choices and modes of implementation among development options, based on an understanding of environmental potentials and limits and of needs as perceived by the people of the country concerned.”⁵⁶²

In countries like the Philippines⁵⁶³ and the United States,⁵⁶⁴ the responsibility to provide environmental information extends to promoting environmental education and awareness among members of the public. In the United States, environmental education and training means “educational and training activities including elementary, secondary, and postsecondary students, as such terms are defined in the State in which they reside, and environmental education personnel.”⁵⁶⁵ The US EPA has a unique mandate to ensure and promote public awareness and knowledge about environmental issues.⁵⁶⁶ Some developed countries have created registries consisting of internet sites and project files to facilitate access to records related to environmental assessments.

The Government of Canada, for example, has established a registry—the Environmental Registry—to help the government accomplish two primary goals. First, the Registry offers Canadians the opportunity to learn more about how the federal government implements the *Canadian Environmental Protection Act, 1999* (CEPA), in addition to CEPA-related tools. Next, the Registry invites individuals, corporations, interest groups and others to be involved in the

⁵⁶² UNCED, *supra*, Chapter 37.

⁵⁶³ *Republic Act No. 9512 on National Environmental Awareness and Education Act, 2008*, Philippines.

⁵⁶⁴ US EPA, The National Environmental Education Act of 1990. Online: <https://www.epa.gov/education/national-environmental-education-act>.

⁵⁶⁵ *Ibid*, Section 3(1).

⁵⁶⁶ US EPA works with local institutions, State education agencies, non-profit educational and environmental organizations, non-commercial educational broadcasting entities, and private sector interests to promote and improve environmental education and awareness, *ibid*, Section 2(8).

public consultations and decision-making processes that are occurring under the CEPA.⁵⁶⁷ Following the provisions of these laws, environmental education informs the affected public (or likely-to-be-affected community members) of their rights and duties, and the skills and tools that they need to actually take part in environmental decision-making in Canadian communities.

Finally, it should be mentioned that, while the above instruments are about environmental accountability and government responsiveness, accessing environmental information is not without technical and socio-economic challenges. In Uganda, for example, limited information on the impact of climate change and the absence of current data on soils have resulted in data gaps, rendering it difficult for the government and other groups to make accurate predictions.⁵⁶⁸ The cost of publishing environmental information can also weaken the right to environmental information. This cost requirement was the basis of a complaint submitted by Markinson to the Information Commissioners Office in the United Kingdom.⁵⁶⁹ In describing “reasonableness,” the Information Tribunal included the cost of photocopying the requested environmental information.⁵⁷⁰ This verdict might constitute an obstacle for subsistence populations in underdeveloped countries to accessing environmental information.

As can be seen, access to environmental information is an important pillar of environmental justice: I will return to this point in section 2 (environmental impact assessment) of this chapter, to establish the link between access to environmental information and environmental justice.

⁵⁶⁷ The Government of Canada. Online: <http://www.ceaa.gc.ca/050/introduction-eng.cfm>.); Government of India established an Environmental Information System (ENVIS) as a plan programme (Online: <http://envis.nic.in/>.)

⁵⁶⁸ Gowa, E. K., *Best Practices in Environmental Information Management in Africa: The Uganda Case Study* (UNEP/GRID-Arendal and NEMA Uganda, 2009) 21.

⁵⁶⁹ *David Markinson v Information Commissioner* (EA/2005/0014, 28 March 2006), para 22. Online: <https://ico.org.uk/media/for-organisations/documents/1627/charging-for-environmental-information-reg8.pdf>.

⁵⁷⁰ *Ibid.*

2.2 The right to participate in environmental decision-making

*Throughout history, all too many factors relating to people's race, gender, status, income, education and health, have prevented some citizens from gaining as much influence over the public realm as others. Whether the pursuit of democracy moves forward or not depends on how effective we are in empowering citizens to participate as equal members in shaping their polity.*⁵⁷¹

The second pillar of Principle 10 of the Rio Declaration addresses public participation in environmental decision-making. Guideline 8 of the Bali Guidelines obligates States to ensure opportunities for early and effective public participation in decision-making related to the environment. Experts have bracketed the group of persons that public and private actors must have regard for before arriving at any decision that may impact the environment. Stern and Dietz define the concept of “public” to include: organized interests (stakeholders), people chosen by a systematic process to produce a representative sample,” people hand-picked “purposively to represent particular perspectives,” and “knowledge bases or interests, or individuals who themselves choose to engage in processes that are open to all.”⁵⁷² This group of actors is, therefore, critical to the validity of environmental decisions reached by public authorities. Hence, Creighton describes public participation as “the process by which public concerns, needs, and values are incorporated into governmental and corporate decision-making.”⁵⁷³

The International Association for Public Participation (IAP2), an institution that was designed to advance and extend the practice of public participation in the world, says public participation “means to involve those who are affected by a decision in the decision-making process.”⁵⁷⁴

Public participation, as used in this thesis, includes one of a variety of procedures used to engage

⁵⁷¹ Brannan, T., P. John and G. Stoker (eds) *Re-energizing Citizenship: Strategies for Civil Renewal* (New York: Pelgrave Macmillan, 2007) 26.

⁵⁷² Stern, C. S., and T. Dietz (eds), *Public Participation in Environmental Assessment and Decision Making* (Washington D.C.: National Research Council, 2008) 12.

⁵⁷³ Creighton, J. L., *The Public Participation Handbook: Making Better Decisions Through Citizen Involvement* (Jossey-Bass, 2005) 7.

⁵⁷⁴ The International Association for Public Participation (IAP2) is an international organization advancing the practice of public participation, IAP2, *supra*.

and draw on the general public or their delegates in the actions of actors that are involved in environmental decision-making. It constitutes a crucial opening for the affected and likely to be affected populations to shape their destiny, environmentally, economically, socially and culturally. It is crucial to mention that these definitions did not differentiate between poor and wealthy, indigenous and non-indigenous, or villagers and city dwellers. Public participation is for everyone, irrespective of one`s educational background, affluence or residency. Yet, to be able to understand and involve effectively in the public participation process remains a critical issue for vulnerable populations as will be illustrated in section 3 of this chapter.

Under the Bali Guidelines (Guideline 9) States shall ensure efforts to “seek proactively public participation in a transparent and consultative manner, including efforts to ensure that members of the public concerned are given an adequate opportunity to express their views.” In other words, an effectual public participation involves providing, among others, vulnerable groups, such as minorities with environmental information that they need to engage in the process of making decisions in their community and country. It may also involve addressing the barriers, both technical and literacy. The Cartagena Protocol on Biosafety says public authorities shall utilize public input and institutional capacities to strengthen human resources (including scientific and technical training) and promote an effective environmental management.⁵⁷⁵ Increasing human resources may go a long way to get the affected communities engaged in the decision-making process.

The International Association for Public Participation (IAP2) has suggested some ways that those who may be affected by an environmental decision can partake in decision-making

⁵⁷⁵ Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Montreal: Secretariat of the Convention on Biological Diversity, 2000), article 22 [Cartagena Protocol].

processes within their communities. For example, the public can take part in public meetings, surveys, polling, open houses, workshops, citizen’s advisory committees, as well as other forms of direct engagement with the public.⁵⁷⁶ As can be seen in Table 7, these are some of the prominent tools that government officials can employ to assist in providing the public with information that they need to adequately engage in the decision-making.

Table 7: Public participation toolkit

Tools	Impacts
Informing the public	It ensures the provision of information to enable the public understand the issues, options, and solutions and involves fact sheets, websites, and open houses.
Consulting the public	It ensures the acquisition of public feedback on alternatives or decisions and involves public comment, surveys, focus groups, public meetings.
Involving the public	It ensures that public concerns are considered throughout the decision process, particularly in the development of decision criteria and options and involves workshops, deliberate polling.
Collaborating with the public	It ensures the development of decision criteria and alternatives and identification of the preferred solution, and involves citizen advisory committees, consensus building, participatory decision making.
Empowering the public	It ensures that final decision-making authority is placed in the hands of concerned citizens and involves citizen juries, ballots, delegated decisions.

Source: Adapted by the author from the US EPA and the IAP2

The information in Table 7 is an illustration of a public participation toolkit. It shows the five major levels of public participation that have been identified by the US EPA and the IAP2.⁵⁷⁷ These institutions also underscore the need for the public to be aware of all impacts associated with each one of these levels/processes,⁵⁷⁸ perhaps because such an understanding may enable the concerned public to focus their skills and time on processes and issues that may most likely influence the final decision. As the US EPA proclaims, the engagement of the public in

⁵⁷⁶ IAP2, *supra*.

⁵⁷⁷ United States Environmental Protection Agency (EPA), “Public Participation Guide: Introduction to Public Participation”. Online: <http://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation>; IAP2, *supra*.

⁵⁷⁸ *Ibid*.

environmental decision-making “results in better outcomes and better governance,”⁵⁷⁹ suggesting that public participation is not just an administrative requirement. When encouraged to participate adequately, the outcome should reflect public concerns, values, and needs, and should be shaped in ways that enhance rather than undermines, the potential of local community members to achieve their basic human needs.

2.3 The right to access to Justice

Access to justice in environmental matters is the third pillar of Principle 10 of the Rio Declaration. It focuses on how the other two pillars—access to environmental information and public participation in environmental decision-making—can be enforced. Bali Guidelines expect States to guarantee that both natural and legal persons enjoy the right to an evaluation procedure before a court of law or an independent and impartial body to challenge an environmental decision.⁵⁸⁰ The right to access justice is also confessed in the 1948 *Universal Declaration of Human Rights* (UDHR)⁵⁸¹ and the *International Covenant on Civil and Political Rights* (ICCPR).⁵⁸²

UDHR proclaims that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁵⁸³ The Bali Guidelines, UDHR, and ICCPR indicate that the phrase “access to justice” can be substituted for phrases like “effective remedy” “review procedure,” “judicial remedy,” and “redress and remedy” as indicated in Table 8.

⁵⁷⁹ IAP2, *supra*.

⁵⁸⁰ Bali Guidelines, *supra*, Guideline 15.

⁵⁸¹ Universal Declaration of Human Rights, *supra*.

⁵⁸² Each State Party to the present Covenant undertakes: To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity, International Covenant of Civil Political and Cultural Rights, *supra*, Article 2.3.

⁵⁸³ Universal Declaration of Human Rights, *supra*, Article 8.

Table 8: Other terminologies for “access to justice”

Instrument	Substitute
Rio Declaration (Principle 10)	Redress and remedy
Bali Guidelines (Guideline 15)	Review procedure
UDHR (Article 8)	Effective remedy
ICCPR (Article 2)	Judicial remedy

Source: Compiled by the author

The information in Table 8 illustrates that access to justice calls on States to take measures to that can accelerate and inspire an effective access to judicial and administrative proceedings such as redress and remedy. Following the requirements of the Bali Guidelines, UDHR, and ICCPR, public authorities shall implement measures to guarantee the right to access an expeditious and inexpensive review procedure before a court of law for commissions/omissions infringing the public’s Principle 10 rights. Taking all of the above provisions into account, environmental decisions arrived at by public authorities can be challenged by a third party. For example, many different stakeholders, including governments, NGOs, regulators, researchers, bar associations, and educators have, under Principle 10 and other domestic laws, had access to courts and other dispute resolution tools. These stakeholders have lodged public interest litigations (PIL) to interdict other actors for promoting land-grabbing and environmental injustice.⁵⁸⁴

The fact that a PIL can be brought on behalf of aggrieved communities to challenge environmentally hazardous and economically and culturally unfair decisions makes access to justice an important empowerment strategy to eliminate economic, legal, and social barriers confronted by the most susceptible, sidelined, and less privileged members of society. NGOs and other concerned actors can use PIL “as part of a wider strategy to empower communities affected

⁵⁸⁴ Dhliwayo, M., *Public interest litigation as an empowerment tool: The case of the Chiadzwa Community Development Trust and diamond mining in Zimbabwe* (IIED, 2013) [Dhliwayo] 9; *Foundation for Environment and Development (FEDEV) & 1 OR. .Vs. Bamenda City Council, Bamenda II Council and Bamenda III Council* (HCB/19/08).

by” economic activities.⁵⁸⁵ Banisar and Parmar contend that access to justice facilitates a “more transparent, inclusive, and accountable decision-making in matters affecting the environment.”⁵⁸⁶ This is to say that the access right creates an opportunity for the public to enforce their right to be informed, participate, and hold public authorities and private bodies answerable for environmental damage in vulnerable communities.

To exercise the right to access justice, certain conditions must be satisfied. In a PIL, for example, the complainant (third party) must prove that the decision, act or omission of a public authority or private actor has an adverse influence on the environment or violates the State’s environmental legal norms, either substantive or procedural.⁵⁸⁷ In other words, the complainant must show that the government or an investor is in contravention of one or more of the Principle 10 rights. Next, the third party⁵⁸⁸ must prove “standing” to bring in the application.⁵⁸⁹ The Bali Guidelines did not define the concept of “standing.”

Glasson, Therivel, and Chadwick describe standing, in the context of the United Kingdom, as including economic or health interests.⁵⁹⁰ If the third party establishes it has sufficient interest, it also has to convince the court that the competent authority failed to act according to the environmental laws and procedures.⁵⁹¹ Until these conditions are satisfied, an environmental

⁵⁸⁵ Dhliwayo, *supra*, 1.

⁵⁸⁶ Banisar, D., and S. Parmar, *Moving from Principles to Rights Rio 2012 and Ensuring Access to Information, Public!Participation, and Access to Justice for Everyone* (The Access Initiative, 2011) 2.

⁵⁸⁷ Bali Guidelines, *supra*, Guideline 17.

⁵⁸⁸ A third party may include associations, organizations or groups promoting environmental protection, Aarhus Convention, *supra*, Article 3(4).

⁵⁸⁹ Bali Guidelines, *supra*, Guideline 18 proclaims that States “should provide broad interpretation of standing in proceedings concerned with environmental matters with a view to achieving effective access to justice.”

⁵⁹⁰ Judicial review proceedings in UK courts require that the third party prove “sufficient interest in the project by virtue of attributes specific to it or circumstances which differentiate it from all other parties,” Glasson, J., R. Therivel and A. Chadwick, *Introduction to Environmental Impact Assessment* (3rd) (London: Routledge, 2005) 188 [Glasson *et al*].

⁵⁹¹ Under the Bali Guidelines, third parties must be concerned that “his or her request for environmental information has been unreasonably refused or not adequately answered or handled” in accordance with applicable law.

decision arrived at by a competent authority in the United Kingdom cannot be quashed/challenged.

While the right to access justice in the Rio Declaration has been globally recognized, more is needed to ensure that it is truly available to empower the affected and interested public, in particular, and allow them to question environmental decisions adequately. In August 2010, the Working Group on Access to Environmental Justice published its report *Ensuring access to environmental justice in England and Wales*. The report highlights a number of respects in which the UK legal system failed to ensure compliance with this obligations.⁵⁹² Indigenous communities in some of Canada's most contaminated sites might have had this right violated. In a case in Nova Scotia, residents who brought a class action before the province's Court of Appeal were, rather, "ordered to pay more than \$730,000 in costs."⁵⁹³ This award could considerably have a chilling effect on public actions in indigenous communities: local peoples may construe it as environmentally unjust.

It is, therefore, crucial for States to guarantee that decision-makers and public authorities assist and provide affected/concerned public members with guidance that they may need when seeking access to justice in environmental matters. States should develop programs, within the framework of their domestic legislation and processes, which can enable the public to challenge a decision, act, or omission by regulators or polluters before a court or other independent and

⁵⁹²The Working Group concluded: "the main obstacle to access to justice for members of the public or NGOs is the issue of costs in judicial review cases. The problem is one of exposure and of uncertainty. In conclusion, it can be said that the potential costs of bringing an application for judicial review to challenge the acts or omissions of public authorities is a significant obstacle to access to justice in the United Kingdom," *Ensuring access to environmental justice in England and Wales Update Report August 2010*, 5.

⁵⁹³ Residents' class action was dismissed due to, according to the Nova Scotia Court of Appeal, a significant challenge—the distributed nature of pollution and the complexity of showing that it caused harms". The Huffington Post, "A Dark Day For Environmental Justice in Canada". Online: http://www.huffingtonpost.ca/ecojjustice/environmental-justice-canada_b_6547682.html

impartial bodies. With this, the people that are most affected by environmental inequalities may be encouraged to exercise their freedom, voice their concerns by targeting elected official and media, and bring to light the issues that are least known to the greater public.

The importance of procedural environmental justice is reflected in Principle 10 of the Rio Declaration. In addition to accessing environmental information and justice, the public should participate in making environmental decisions. Their input should, in practice, influence projects, policies, and plans (that have environmental impacts) at local, national, regional, and global levels. Again, when encouraged to participate, the final decision should reflect the environmental, social, economic, and cultural concerns of the affected public, and should enable them to achieve their highest potential. The aim of the following section is to study the condition that the Rio Declaration has set out for the public to participate in environmental decision-making.

3 Public participation in environmental decision-making

The Rio Declaration also proclaims that environmental impact assessment (EIA) “as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”⁵⁹⁴ EIA standards have been adopted through regional and global agreements,⁵⁹⁵ and by the World Bank,⁵⁹⁶ the Food and Agriculture Organization (FAO),⁵⁹⁷ and the United Nations

⁵⁹⁴ UNCED, *supra*, Principle 17.

⁵⁹⁵ *Convention on Environmental Impact Assessment in a Transboundary Context*, adopted in Espoo (Finland), on 25 February 1991 as amended on 27 February 2001 [Espoo Convention] and *Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment*, Official Journal of the European Communities No. L26/1. (2012) [Directive 2011/92/EU].

⁵⁹⁶ The World Bank, OP 4.01 - Environmental Assessment. Online: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064724~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html> [World Bank OP].

Development Programme (UNDP). These standards are found in domestic legislation, including in African jurisdictions.⁵⁹⁸ Hence, the assessment of environmental impacts of proposed developments could constitute a globally accepted practice.

3.1 Environmental impact assessment

EIA started with the passing of the National Environmental Policy Act (NEPA) of 1969 in the United States.⁵⁹⁹ The enactment of this Act postdated the environmental awakening of the 1960s when it was observed that many federal actions in the United States failed to contemplate their environmental effects in the planning phase, development phase, and implementation phase, and as a result, created in environmental problems.⁶⁰⁰ To authors like Momtaz, Kabir, and Lynton Caldwell, this environmental awareness was shaped by Rachael Carlson's 1962 publication titled *Silent Spring*, as well as rational planning theory, technology assessment, risk assessment, and the policy goals of the environmental movement.⁶⁰¹ So, the United States, by the end of the 1960s, already had an established legal machinery that could stimulate efforts to enhance social and ecological sustainability.⁶⁰² This section examines what is environmental impact assessment (EIA) and how the EIA tool could enable subsistence communities, especially the affected and likely-to-be-affected public, to adequately participate in environmental decision making in their communities and hence, prevent land-grabbing and environmental injustices.

⁵⁹⁷ International Institute for Sustainable Development (IISD), "FAO Releases Environmental Impact Assessment Guidelines". Online: <http://nr.iisd.org/news/fao-releases-environmental-impact-assessment-guidelines/>.

⁵⁹⁸ An assessment of the the institutional and regulatory framework for environmental assessment in 23 African countries showed that 18 countries have EIA-related legislation in place, United Nations Economic Commission for Africa (UNECA), *Review of the application of environmental impact assessment in selected African countries* (Addis Ababa: UNECA, 2005) xi.

⁵⁹⁹ Wood, C., *Environmental Impact Assessment: A Comparative Review* (Essex: Longman Group Limited, 1995) 1[Wood]; Glasson, Therivel, and Chadwick, 2; Noble, B. F., *Introduction to Environmental Impact Assessment: A Guide to Principles and Practice* (Oxford: Oxford University Press, 2006) 5 (Bram Noble).

⁶⁰⁰ Momtaz and Kabir, *supra*, 1.

⁶⁰¹ Caldwell, L. K. "Environmental Impact Analysis (EIA): Origins, evolution, and future directions" in Fisher, T. B. (ed), *Environmental Assessment* (London: Routledge, 2016) 30.

⁶⁰² NEPA calls on the publication, through an environmental impact statement (EIA Report), potential significant impacts of federal actions on the natural and built environments, *ibid*.

It can be seen from Table 9 that there are many different definitions of EIA. The assessment of environmental impacts was initially applied by NEPA. This policy document professes that “those proposing to undertake certain development projects had to demonstrate that the projects would not adversely affect the environment.”⁶⁰³ Referring to Table 9, EIA is a process and a decision-making tool that can enable decision makers to evaluate a proposed project; alternative projects and ways to implement them; future adverse environmental and social impacts of proposed developments; and measures to attenuate adverse outcomes of the project. Therefore, some researchers have described EIA as a planning tool to forecast and study the unwanted effects of a project proposal, as well as its alternatives.⁶⁰⁴ Rather than react to the environmental problems created by an established project, the EIA tool is proactive: it forecasts future adverse impacts of proposed developments before they occur.

Ortolano and Shepherd’s argument suggests that EIA is an information-gathering tool to notify the public and public authorities of the adverse environmental impacts of proposed developments, and measures to either prevent the adverse impacts or the proposed project from being implemented. To me, this is very critical because, as Ortolano and Shepherd had contended, “circulating information on impacts forces a hard look at the environmental effects of projects and it facilitates coordination among those affected by the proposed project.”⁶⁰⁵

⁶⁰³ Noble, *supra*, 6.

⁶⁰⁴ Ortolano, L. And A. “Shepherd, Environmental Impact Assessment: Challenges and Opportunities” (1995) 13:1 Impact Assessment 4 [Ortolano and Shepherd].

⁶⁰⁵ Ortolano and Shepherd, *supra*, 4.

Table 9: Some definitions of environmental impact assessment

Author	Definition
Harvey, 1998	EIA “is a goal and a process of identifying and predicting the potential environmental impacts...of proposed actions, programmes and projects, and communicating this information to decisionmakers before they make their decisions on the proposed actions.” ⁶⁰⁶
IAIA and IEA, 1999	EIA is “the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made.” ⁶⁰⁷
Noble, 2006	EIA is “A comprehensive and systematic process designed to identify, analyze, and evaluate the environmental effects of proposed projects; a process that allows for the effective integration of environmental considerations and public concerns into decision-making processes; and a powerful tool to help decision-makers achieve the goal of sustainable development.” ⁶⁰⁸
UNEP, 2006	EIA “provides a tool that would assist in the anticipation and minimization of development’s negative effects. Undertaken in the early stages of project planning and design, EIA could help shape development in a manner that best suits the local environment and is most responsive to human needs” ⁶⁰⁹
World Bank	EIA, “...in conjunction with monitoring tools and recourse mechanisms, allows the gathering of information on environmental quality and provides a venue for expression and discussion of diverging opinions.” ⁶¹⁰
FAO,	An EIA may be defined as a formal process to predict the environmental consequences of human development activities and to plan appropriate measures to eliminate or reduce adverse effects and to augment positive effects. ⁶¹¹

Source: Compiled by the author

Table 10 tells us that the EIA process has specific objectives, ranging from evaluating likely impacts and mitigation measures of project proposals, promoting public participation in the evaluation of future impacts and mitigation measures, ensuring that final decisions reflect the concerns and inputs of the affected and interested public, and advancing the participation of concerned communities in the enforcement of mitigation measures.

⁶⁰⁶ Harvey, N., *Environmental Impact Assessment: Procedures, Practice and Prospects in Australia* (Melbourne: Oxford University Press, 1998) 2.

⁶⁰⁷ Senécal, P. et al, *Principles of Environmental Impact Assessment Best Practice* (Fargo: IAIA and IEA, 1999) 2.

⁶⁰⁸ Noble, *supra*, 3.

⁶⁰⁹ Training Manual on International Environmental Law, *supra*, 295.

⁶¹⁰ The World Bank, Guidance Notes on Tools for Pollution Management. Online: <http://siteresources.worldbank.org/INTRANETENVIRONMENT/Resources/GuidanceNotonEIA.pdf> [World Bank Guidance Note].

⁶¹¹ Dougherty, T.C., A.W. Hall, and H.R. Wallingford, *Environmental Impact Assessment of Irrigation and Drainage Projects* (FAO, 1995) 5 [FAO 1995].

Table 10: Objectives of environmental impact assessment

Author/Institution	Description
IAIA and IEA, 1999	EIA aims to (1) ensure that environmental considerations are explicitly addressed and incorporated into the development decision-making process, (2) anticipate and avoid, minimize or offset the adverse significant effects of proposals, (3) protect the productivity and capacity of natural systems and the processes which maintain their functions, and (4) promote development that is sustainable and that optimizes resource use and management opportunities. ⁶¹²
World Bank, 2006	Environmental Impact Assessment (EIA) was developed in the 1970s as a tool to assess and reduce adverse impacts on the environment caused by projects. ⁶¹³
Noble, B., 2006	EIA aims to “facilitate the consideration of environment in planning and decision-making and, ultimately, to make it possible to arrive at decisions and subsequent actions that are more environmentally sustainable.” ⁶¹⁴
CEAA	An environmental assessment aims to minimize or avoid adverse environmental effects before they occur; and incorporate environmental factors into decision making. ⁶¹⁵
FAO, 1995	EIA has three main functions: to predict problems, to find ways to avoid them, and to enhance positive effects. The aim of any EIA should be to facilitate sustainable development. Beneficial environmental effects are maximized while adverse effects are ameliorated or avoided to the greatest extent possible. EIA will help select and design projects, programmes or plans with long-term viability and therefore improve cost effectiveness. ⁶¹⁶

Source: compiled by the author

3.2 The environmental impact assessment process

EIA is a process. Although globally acknowledged, it is important to outline here that every EIA process is set in an institutional context within which it operates, in addition to the issues it attempts to tackle.⁶¹⁷ Even if this means that the EIA process in the United States may vary from that in Cameroon, a common structure shared by most domestic EIA systems, and implemented in international EIA commitments do exist.⁶¹⁸ Generally, the EIA process that came out of the original NEPA and later diffused to other parts of the world can be thought of as comprising the

⁶¹² IAIA and IEA, *supra*, 2.

⁶¹³ World Bank, *Environmental Impact Assessment Regulations and Strategic Environmental Assessment Requirements Practices and Lessons Learned in East and Southeast Asia* (Washington D.C.: The World Bank, 2006) 5.

⁶¹⁴ Bram Noble, *supra*, 3.

⁶¹⁵ Canadian Environmental Assessment Agency, Basics of Environmental Assessment. Online: <http://www.ceaa.gc.ca/default.asp?lang=En&n=B053F859-1>. [CEAA Basics].

⁶¹⁶ FAO 1995, *supra*, 5.

⁶¹⁷ Bram Noble, *supra*, 12; Glasson *et al.*, *supra*, 91.

⁶¹⁸ Craik, N., *The International Law of Environmental Impact Assessment: Process, Substance and Integration* (Cambridge: Cambridge University Press, 2008) 27 [Neil].

following operating principles: screening; scoping; impact prediction and evaluation; impact management, review and decision-making and implementation and follow-up.⁶¹⁹ The International Association for Impact Assessment (IAIA) and the Institute for Environmental Assessment (IEA) caution how these operating principles (that is the different stages of the EIA process) should be applied:

*“as early as possible in decision making and throughout the life cycle of the proposed activity; to all development proposals that may cause potentially significant effects; to biophysical impacts and relevant socio-economic factors, including health, culture, gender, lifestyle, age, and cumulative effects consistent with the concept and principles of sustainable development; to provide for the involvement and input of communities and industries affected by a proposal, as well as the interested public; and in accordance with internationally agreed measures and activities.”*⁶²⁰

This quotation indicates the significance of each one of these elements in the pursuit to promote an active public participation and environmental justice.

3.2.1 Screening

EIA begins with project screening. Project screening is defined as the stage of the EIA process that ascertains whether an EIA is needed, and if so, at what level of detail.⁶²¹ A screening mechanism focuses on those projects with likely significant negative environmental impacts or other impacts that are unknown.⁶²² Screening ensures that the “level of any EIA review is commensurate with the significance of the issues raised by a proposal.”⁶²³ This discloses the vitality of project screening in differentiating between those development activities that could be executed without an assessment of environmental and social impacts from those that could not.

⁶¹⁹ Neil, *supra*, 27; World Bank Guidance Notes, *supra*, 1.

⁶²⁰ IAIA and IEA, *supra*, 4.

⁶²¹ Training Manual on International Environmental Law, *supra*, 295; IAIA and IEA, *supra*, 4; World Bank Guidance Notes, *supra*, 1.

⁶²² Glasson *et al.*, *supra*, 93.

⁶²³ Sadler, B., and M. McCabe, *EIA Training Resource Manual* (2ed) (Geneva: UNEP, 2002) 192 [EIA Training Resource Manual].

Screening can be partly influenced by the EIA rules operating in a region/country at the time of the assessment. As stated in the EU Directive 2011/92/EU, for instance, Annex 1 projects will be “screened in” for a “comprehensive assessment,” that is a thorough evaluation, given their scale and potential environmental impacts. However, the screening decision for Annex 2 projects is not very clear. This Directive says that EU Member States shall determine whether Annex 2 projects shall be made subject to an assessment.⁶²⁴ Similarly, the World Bank demands a full EIA for “Category A” (projects considered to be associated with significant negative environmental impacts) and limited EIA for “Category B” (projects likely to have adverse environmental impacts that are less significant).⁶²⁵

This discretion on public authorities to establish thresholds to help determine which project should be subject to EIA might lead to inconsistent, as well as unfair and contradictory outcomes. The same project, “intensive fish farming” for example, may be screened differently: it may be screened in for one developer and out for another. In the *Kraaijeveld* case, the European Court of Justice, while interpreting the scope of application of Article 4 of the EU Directive 2011/92/EU, ruled that the Directive has a “wide scope and a broad purpose.”⁶²⁶ This reveals that the EIA Directive, because of its extensive scope, may be subject to many interpretations.

⁶²⁴ Member States shall make that determination through a case-by-case examination; or thresholds or criteria set by the Member State, Directive 2011/92/EU, *supra*, Article 4(2).

⁶²⁵ Regarding Category C projects (projects that are likely to have minimal or no adverse environmental impacts), no EIA is required. The World Bank, OP 4.01 - Environmental Assessment, Annex B. Online: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064724~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>.

⁶²⁶ *Kraaijeveld and others v Gedeputeerde Staten Van Zuid-Holland*, judgment of the Court 24 October 1996, para. 39. Online: <http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d0f130d51a4b0f7979e847488601894d62ee8340.e34KaxiLc3eQc40LaxqMbN4Och8Re0?text=&docid=100313&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=442178>.

Project screening requires a certain level of basic information about the proposed project, in addition to the location and the time taken to complete project screening.⁶²⁷ Under the *2012 Canadian Environmental Assessment Act*, the Canadian Environmental Assessment Agency shall consider (within 45 days of posting the notice of consideration) the following in its decision-making: the description of the selected project; the possibility that carrying out the designated project may result in adverse environmental effects; public comments received within 20 days (after posting the project description summary); and the outcome of any relevant regional studies.⁶²⁸ In brief, these conditions determine whether an EIA is required for a proposed development in Canada.

FAO says it may be advantageous to have both a Ministry of the Environment (charged with the duty set norms and new legislation) and an Environmental Protection Agency (incharge of coordinating EIA) to carry out an EIA.⁶²⁹ FAO also explains that irrespective of the institutional structure, the institution promoting the proposed development will always need to carry out an EIA or assign others to execute it on their behalf.⁶³⁰ The EIA will then have to be approved or rejected by the central regulating authorities. Therefore, screening, a significant step of the EIA process, shall be conducted by a Ministry of the Environment or an Environmental Protection Agency in the host State.

⁶²⁷ This will depend upon the proposal type, the environmental setting and the degree of understanding of its expected effects. Screening data may include (1) a description of the proposal, (2) applicable policies, plans and regulations, including environmental standards and objectives, (3) the characteristics of the environment, including land use, significant resources, critical ecological functions, pollution and emission levels etc., (4) the potential impacts of the proposal and their likely significance, and (5) the degree of public concern and interest about the proposal, EIA Training Resource Manual, *supra*, 191-198.

⁶²⁸ CEAA Basics, *supra*.

⁶²⁹ FAO 1995, *supra*, 15.

⁶³⁰ *Ibid*.

There are two main approaches to project screening: the prescriptive (standardized) approach and the discretionary (customized) approach.⁶³¹ Glasson *et al.* refer to these methods as thresholds and case-by-case respectively.⁶³² With a prescriptive or threshold approach, each proposal is defined in legislation and assigned a threshold.⁶³³ Setting out thresholds and criteria (for example, the need for EIA may be ascertained by the size of the project) in EIA legislation might help to establish a clear-cut legal condition on the need for an assessment of significant environmental and social impacts of proposed developments. With the discretionary approach, however, a case-by-case evaluation will be useful in determining whether the proposal shall be made subject to an EIA.⁶³⁴ While both thresholds and case-by-case approaches to screening have their advantages and disadvantages,⁶³⁵ they all provide a precise method of defining whether or not a project shall be made subject to an EIA.

The screening process usually produces a document known as an “Initial Environmental Examination or Evaluation.”⁶³⁶ For the most part, the screening process can result in one of four results, including no further level of EIA is required; a full and comprehensive EIA is required; a more limited EIA is required, or further study is needed to determine the level of EIA needed.⁶³⁷ Under these circumstances, project screening lays the foundation for other stages of the EIA process.

⁶³¹EIA Training Resource Manual, *supra*, 192.

⁶³²Glasson *et al.*, *supra*, 194; World Bank Guidance Notes, *supra*, 2.

⁶³³ Threshold may include, for instance, project size (50 hectares and above, e.g.) and expected impacts. Under Directive 2011/92/EU, the proposal must be associated with future significant effect on biodiversity hotspots and discharge ...tonnes of waste annually, is needed for all Annex I projects, Directive 2011/92/EU, *supra*, Article 4(1).

⁶³⁴This approach requires the appraisal of the features of the proposed project. For “...projects listed in Annex II, Article 4(2) requires Member States to determine through (a) a case-by-case examination, or (b) thresholds and criteria set by the Member State whether the project shall be made subject to an assessment. Member States may decide to apply both procedures referred to in (a) and (b).”

⁶³⁵ Glasson *et al.* have outlined a number of advantages and disadvantages of thresholds versus case-by-case approach to screening, Glasson *et al.*, *supra*, 95.

⁶³⁶ FAO 1995, *supra*, 20.

⁶³⁷ EIA Training Resource Manual, *supra*, 192.

3.2.2 Scoping

The data in Box 2 shows that scoping is a refining process having different objectives. Scoping is considered by some researchers to be the most valuable stage in the EIA process.⁶³⁸ According to the World Bank, scoping is important for two reasons. First, so that problems are identified earlier, permitting “mitigating design changes to be made before expensive detailed work” is executed. It is also vital in order to make sure that “detailed prognosis work” is only conducted for important issues.⁶³⁹ These reasonings propose that the goal of EIA is not solely to complete an exhaustive study. The objective should be to evaluate significant environmental and social impacts for proposed projects in a comprehensive, yet in an economic manner.

Box 2: Objectives of scoping

- To inform the public about the proposal.
- To identify the main stakeholders and their concerns and values.
- To define the reasonable and practical alternatives to the proposal.
- To focus the important issues and significant impacts to be addressed by an EIA.
- To define the boundaries for an EIA in time, space and subject matter.
- To set requirements for the collection of baseline and other information.
- To establish the Terms of Reference for an EIA study.

Source: UNEP⁶⁴⁰

Scoping defines the breadth of impacts to be considered by EIA⁶⁴¹ using methods such as baseline studies, checklists, matrices and network diagrams. These techniques, FAO submits, “collect and present knowledge and information in a straightforward way so that logical decisions can be made about which impacts are most significant.”⁶⁴² So, during scoping, EIA authorities need to distinguish between likely significant impacts of a project from those that are

⁶³⁸ Glasson *et al.*, *supra*, 97; World Bank 1995, *supra*, 20..

⁶³⁹ World Bank 1995, *supra*, 20.

⁶⁴⁰ EIA Training Resource Manual, *supra*,.

⁶⁴¹ Training Manual on International Environmental Law, *supra*, 295.

⁶⁴² FAO 1995, *supra*, 21.

likely insignificant. Results confirmed to be insignificant shall be eliminated while those in the uncertain category shall be added to the initial category of other possibly significant impacts.⁶⁴³

Consequently, many important decisions have to be made during EIA scoping. Baseline and reasonable alternatives have to be considered, Terms of Reference (TOR) have to be established, and the public has to be informed and encouraged to participate in ensuring that significant issues are not neglected in the TOR.⁶⁴⁴ According to Beanlands, EIA scoping identifies priority issues to be tackled in other stages of the EIA process such as alternatives, time limits for assessment; significant impacts to be analyzed; other local agency requirements; as well as the calling of experts/consultants, conducting public meetings, piloting formal hearings, etc.⁶⁴⁵ Therefore, scoping constitutes a critical stage in identifying, among others, those who are likely to be affected by the proposal and in the preparation of an environmental assessment.

Many different studies have underscored the significance in the discussion of the identification of alternatives. The US Council on Environmental Quality (CEQ) proclaims that a discussion about alternatives lies at the heart of the EIA process.⁶⁴⁶ The findings of Steinemann show that the “quality of a decision depends on the quality of alternatives from which to choose.”⁶⁴⁷ To Glasson *et al.*, the consideration of alternatives allows individuals who were not directly involved in the decision-making process to assess different aspects of a proposed project, in addition to how decisions were reached. Hence, the consideration of alternatives offers a

⁶⁴³Glasson *et al.*, *supra*, 95.

⁶⁴⁴ EIA Training Resource Manual, *supra*, 228.

⁶⁴⁵ Beanlands, G., Scoping methods and baseling studies in EIA, in Peter Wathern (ed) *Environmental Impact Assessment: Theory and Practice* (London: Unwin Hyman, 1988) 33 [Beanlands].

⁶⁴⁶ Steinemann, A., “Improving alternatives for environmental impact assessment” (2001) 21 *Environmental Impact Assessment Review* 4 [Steinemann].

⁶⁴⁷ Steinemann, *supra*, 3.

framework for the competent authority's decision.⁶⁴⁸ All these signify the value that such researchers put on the examination of a project's alternatives.

Some broad types of options that researchers often consider include the "no action" option⁶⁴⁹ which refers to the "environmental conditions if a project were not to go ahead."⁶⁵⁰ Mainly, the "no action" option would raise the question: will the benefits of establishing a (palm oil) project outweigh its costs for subsistence communities? Perhaps because of its significance, the consideration of a "no action" alternative is mandatory in some jurisdictions. The Netherlands makes provision for the review of alternatives during scoping as an EIA good practice and insists that the "no action alternative" be thoroughly evaluated.⁶⁵¹

Even though the amended European EIA Directive strengthens the treatment of alternatives,⁶⁵² consideration of alternatives in EIA reports in the main jurisdictions of the world is a voluntary condition. Charles Eccleston notes that neither the US nor the EU impact assessment processes require developers to choose an alternative that promotes environmental quality. In line with this researcher, "both processes are largely founded on the premise that the analysis will lead to more informed decision-making and, ultimately, to decisions that will protect the environment."⁶⁵³ A question worth asking, therefore, is whether the objective is to promote justice in host communities or promote a more informed decision making.

⁶⁴⁸ The consideration of alternatives also ensures that a re-examination of these alternatives, if unforeseen difficulties arise during the construction or operation of a project, may help provide cost-effective solutions, Glasson *et al.*, *supra*, 98.

⁶⁴⁹ These include the "no action" option, alternative locations, alternative scales of the project, alternative processes or equipment; alternative site layouts, alternative operating conditions, and alternative ways of dealing with environmental impacts, Glasson *et al.*, *supra*, 98.

⁶⁵⁰ *Ibid*, 99.

⁶⁵¹ Wood, *supra*, 126.

⁶⁵² Directive 2011/92/EU, *supra*.

⁶⁵³ Eccleston, C. H., *Environmental Impact Assessment: A Guide to Best Professional Practices* (Boca Raton: CRC Press, 2011) 202.

An important event that takes place during the scoping of environmental impacts of proposed projects is the preparation of the Terms of Reference (TOR) or a formal scoping report. In fact, a TOR defines “the objectives and the scope of the evaluation outlines the responsibilities of the consultant or team, and provides a clear description of the resources available to conduct the study.”⁶⁵⁴ The information in Box 3 illustrates that a TOR guides a developer/proponent and enumerates what the environmental assessment should consider, the type of data present, and the depth of evaluation that is needed. Some international agencies have issued sample TORs, outlining the kinds of information that need to be included in a TOR. To the World Bank, the TOR should comprise a definition, content, preparation, and process needed to develop an active TOR.⁶⁵⁵ Moreover, the TOR should indicate the team considered vital for the EIA study.⁶⁵⁶ Depending upon the scope of the EIA study, the team should include one or many factors.⁶⁵⁷

Box 3: Content of Terms of Reference

- Project background and the main environmental effects of the proposed project, both in the project area and in the surrounding area and the timescale of the impacts, and alternatives to be examined
- The size and extent of the impacts based as on quantitative data rather than qualitative assessment
- Provisions for public involvement and purpose and application of the TOR
- The requirements for mitigation and monitoring
- The timeframe for completion of the EIA process
- Applicable policy and institutional considerations
- EIA requirements and decision-making particulars
- Statement of need for and objectives of the proposal
- The means for making changes to the TOR if necessary
- The information and data to be included in the EIA report

Source: Compiled by the author from the reports of FAO and UNEP⁶⁵⁸

⁶⁵⁴ World Bank, *Writing Terms Of Reference for an Evaluation: A How-To Guide* (Washington D.C.: World Bank, 2011) 1 [World Bank].

⁶⁵⁵ World Bank, *supra*, 1.

⁶⁵⁶⁶⁵⁶ FAO 1995, *supra*, 86.

⁶⁵⁷ It should include an irrigation specialist, drainage specialist, rural sociologist, terrestrial ecologist, aquatic ecologist/fisheries expert, hydrologist, agronomist, soil chemist or physicist, economist and epidemiologist. *Ibid.*

⁶⁵⁸ FAO 1995, *supra*; EIA Training Resource Manual, *supra*, 238.

The involvement of the public in the assessment process is the third important consideration that must also be made during EIA scoping. The FAO study shows that an important scoping activity is to identify chief interest groups—governmental and non-governmental organizations—and to “establish good lines of communication.”⁶⁵⁹ Glasson *et al.* say that public participation is carried out in discussions between the developer, the competent environmental authority, agencies, and other interested parties likely to be affected.⁶⁶⁰ Under certain jurisdictions, the scoping process is incomplete without a scoping opinion from the competent environmental authorities and other stakeholders.⁶⁶¹

The affected and interested communities shall be informed, whether by “notification/invitation for public comment and written submissions; consultation with the various stakeholders; public and community meetings; and workshops and facilitated discussion.”⁶⁶² Under Directive 2011/92/EU, the affected or likely-to-be affected public shall be informed of any request for development authorization and the fact that the project proposal is subject to an EIA procedure.⁶⁶³ The public also needs information on the competent authorities responsible for deciding on the EIA and providing information and the nature of likely decisions. Additionally, an indication of the availability of the data gathered, the times and places at which important

⁶⁵⁹ FAO 1995, *supra*, 21.

⁶⁶⁰ For example, individuals, communities, local authorities and statutory consultees Glasson *et al.*, 96.

⁶⁶¹ Directive 2011/92/EU, for example, requires Member States to adopt a guidance procedure to provide scoping opinion: a procedure whereby, at least, developers can seek for advice on the information to be submitted under the EIA procedure from competent authorities..This Directive urges Member States to “take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent...” Directive 2011/92/EU, *supra*, Article 6(1).

⁶⁶² EIA Training Resource Manual, *supra*, 232.

⁶⁶³ Directive 2011/92/EU, *supra*, article 6(2).

information will be provided to the public, and details of the arrangements for the involvement of the public need to be provided.⁶⁶⁴

3.2.3 Environmental impact assessment

The evaluation of environmental impacts is the “technical heart of the EIA process.”⁶⁶⁵ In other words, an environmental assessment is the central part of EIA, perhaps because it predicts and evaluates environmental impacts of a proposed project and alternative projects, which constitutes the principal objective of EIA. The term “impact” is closely associated with “effect,”⁶⁶⁶ such as effects on flora, fauna, ecosystems and biological diversity; human health and safety; and effect on soil, air, water, landscape, and climate. Impacts also include effects on land use, raw materials, and natural resources; protected areas and selected sites of historical, scientific, and cultural importance; recreation, heritage, and amenity assets; and sustenance, lifestyle, and living conditions of those impacted by a proposed development.⁶⁶⁷ These effects, thus, constitute the biophysical and socio-economic and cultural impacts that a developer should predict at this juncture of the process.

The assessment of environmental impact involves impact identification, prediction, evaluation, and mitigation.⁶⁶⁸ Impact identification pinpoints the nature, extent, magnitude, and duration of the major implications.⁶⁶⁹ The most familiar techniques used to identify environmental impact are matrices, checklists, overlays, networks, expert systems, geographic information systems

⁶⁶⁴ Directive 2011/92/EU, *supra*, article 6(2).

⁶⁶⁵ EIA Training Resource Manual, *supra*, 255; Glasson *et al.*, *supra*, 131.

⁶⁶⁶ Impacts describe the change in the difference between the environmental parameter with the proposed project compared to the environmental parameter without the proposed project. Environmental impacts are of different types: physical and socio-economic; direct and indirect; short-run and long-run; local and strategic (including regional, national and beyond); adverse and beneficial; reversible and irreversible; quantitative and qualitative; distribution by group and/or area; actual and perceived; and relative to other developments, Glasson *et al.*, *supra*, 21.

⁶⁶⁷ EIA Training Resource Manual, *supra*, 256.

⁶⁶⁸ *Ibid*, 255; Glasson *et al.*, *supra*, 131.

⁶⁶⁹ It should take account of all direct, indirect, and cumulative effects which may be potentially significant, EIA Training Resource Manual, *supra*, 255-257.

(GIS), and professional judgment.⁶⁷⁰ Given that a single method may not be best suited to apply on all occasions⁶⁷¹ blending the vital aspects of two or more different methods may be the best way to cogently identify impacts.⁶⁷² Hence, the EIA professional can combine two or more impact identification tools (for instance, GIS and overlays) to complete two or more EIA identification phases.

Impact prediction or forecasting encompasses the “identification of both direct and indirect impacts.”⁶⁷³ The geographical extent of impacts (local, regional, national), whether beneficial or adverse, the duration of the impacts, and cumulative impacts shall as well be predicted⁶⁷⁴ against a ‘baseline’ established by the prevailing environmental media (air, land, soil).⁶⁷⁵ After predicting the environmental effects of a project proposal, their “relative significance to inform decision-makers whether the impacts may be considered acceptable” also needs to be evaluated.⁶⁷⁶ Evaluation methods for significance⁶⁷⁷ can vary.⁶⁷⁸ Hence, impact prediction is

⁶⁷⁰ *Ibid.*

⁶⁷¹ *Ibid.*, 260.

⁶⁷² Research by André and Delisle illustrates that while GIS and overlays help ascertain and compare “alternative corridors and layouts for linear infrastructure projects,” lists, matrices, networks, and overlays are useful during EIA screening, scoping, and impact assessment, André, P., C. E. Delisle, J. Pierre Revéret, *Environmental Assessment for Sustainable Development: Processes, Actors and Practice* (Hampshire: Presses internationales Polytechnique, 2004) 286.

⁶⁷³ Glasson *et al.*, *supra*, 131-134.

⁶⁷⁴ Cumulative (or additive) impacts are the collective effects of impacts that may be individually minor but in combination, often over time, major. Such cumulative impacts are difficult to predict, and are often poorly covered or are missing altogether from EIA studies, Glasson *et al.*, *supra*, 134.

⁶⁷⁵ Baseline studies involve “the collection of data on relevant biophysical, social, and economic aspects, provides a “reference point against which the characteristics and parameters of impact-related changes are evaluated. To establish a baseline, information is gathered on: current environmental conditions; current and expected trends; effects of proposals already being implemented; and effects of other foreseeable proposals, EIA Training Manual, *supra*, 263.

⁶⁷⁶ Conditions for significance include: (1) the magnitude and likelihood of the impact and its spatial and temporal extent; (2) the likely degree of the affected environment’s recovery; (3) the value of the affected environment; (4) the level of public concern; (5) and political repercussions, Glasson *et al.*, *supra*, 143.

⁶⁷⁷ Significance criteria are criteria to evaluate whether or not adverse impacts are significant include: environmental loss and deterioration; social impacts resulting directly or indirectly from environmental change; non-conformity with environmental standards, objectives and guidelines; and likelihood and acceptability of risk, EIA Training Manual, *supra*, 278.

⁶⁷⁸ For example, comparison of likely impacts against legal requirements and standards (e.g. air quality standards, building regulations); multi-criteria analysis, decision analysis and goals achievement; cost—benefit analysis and

designed to spot out the magnitude and dimensions of identified environmental change with a proposal, in comparison with the condition without that proposal.

Impact mitigation comprises different tasks. To the US CEQ, these tasks include, but not limited to (1) prevent an impact by avoiding a given action or parts of an action, (2) minimize an impact by restraining the extent or magnitude of the action and its implementation, and (3) remedy an impact by rehabilitating or refurbishing the environment that has been affected.⁶⁷⁹ To avoid disturbance to subsistence communities from construction lorry traffic and night construction work, for example, Glasson *et al.* suggest the use of a designated truck route, and day-time working only as the best impact mitigation method.⁶⁸⁰ If impact mitigation aims to offset future environmental impacts, mitigating the environmental impacts of a large-scale land-based investments (a palm plantation for example) such as depletion of biodiversity and contamination of soil and water resources should involve plans to establish buffer zones and encourage minimal use of pesticides, herbicides, fertilizers, and other chemicals used in the palm nurseries, plantations, and mills.

3.2.3.1 Social impact assessment (SIA)

Although it is said to be a component of EIA, especially when the concept of environment is broadly defined, SIA is more than an EIA component.⁶⁸¹ SIA considers harmful impacts, goals,

monetary valuation techniques; and scoring and weighting and multi-criteria methods, Glasson *et al.*, *supra*, 144-152.

⁶⁷⁹ More to this point, (4) reducing or eliminating an impact over time through preservation and maintenance operations during the life of the action, and (5) compensating for an impact by replacing or providing substitute resources or environments. Council on Environmental Quality, "Memorandum for Heads of Federal Departments and Agencies," 4. Online: [file:///C:/Users/User/Desktop/Phd%20environmental%20justice%20chapter/NEPA-CEQ Mitigation and Monitoring Guidance 14Jan2011.pdf](file:///C:/Users/User/Desktop/Phd%20environmental%20justice%20chapter/NEPA-CEQ%20Mitigation%20and%20Monitoring%20Guidance%2014Jan2011.pdf).

⁶⁸⁰ Glasson *et al.*, *supra*, 158.

⁶⁸¹ Vanclay, F., "The Triple Bottom Line and Impact Assessment: How do TBL, EIA, SIA, SEA, and EMS Relate to Each Other" in Fischer T. B., (ed) *Environmental Assessment* (New York: Routledge, 2016)153[Vanclay] .

and processes associated with a project development.⁶⁸² The Centre for Good Governance describes SIA as the “consequences to people of any proposed development that changes the ways in which they live, work, play, relate to one another and organize themselves to meet their

Box 4: Examples of social impacts

- people’s way of life – that is, how they live, work, play and interact with one another on a daily basis;
- their culture – that is, their shared beliefs, customs, values and language or dialect;
- their community – its cohesion, stability, character, services and facilities;
- their political systems – the extent to which people are able to participate in decisions that affect their lives, the level of democratisation that is taking place, and the resources provided for this purpose;
- their environment, such as the quality of the air and water people use; the availability and quality of the food they eat; the level of hazard or risk, dust and noise they are exposed to; the adequacy of sanitation, their physical safety, and their access to and control over resources;
- their health and wellbeing – health is a state of complete physical, mental, social and spiritual wellbeing and not merely the absence of disease or infirmity;
- their personal and property rights – particularly whether people are economically affected, or experience personal disadvantage which may include a violation of their civil liberties;
- their fears and aspirations – their perceptions about their safety, their fears about the future of their community, and their aspirations for their future and the future of their children.

*Source: adapted by the author from Frank Vanclay*⁶⁸³

needs and generally function as members and individuals of society.”⁶⁸⁴ Like EIA, SIA has a strong focus on the impacts of economic activities on natural resources that people depend on for their survival. However, social impacts are different from environmental impacts. According to the International Principles for Social Impact Assessment,⁶⁸⁵ social impacts are alterations to any one or more of the following items in Box 4.

The assessment of the social implications of a palm plantation, among other economic developments, requires a multidisciplinary team approach. The reason is that, as UNEP indicated, SIA is related to cultural heritage, socioeconomics, gender, politics, and resource

⁶⁸² *Ibid.*

⁶⁸³ Vanclay, *supra*, 8.

⁶⁸⁴ SIA also includes cultural impacts involving changes to the norms, values, and beliefs that guide and rationalize their cognition of themselves and their society, Centre for Good Governance, *A Comprehensive Guide for Social Impact Assessment* (Centre for Good Governance, 2006) paras. 1(112).and 1(13) [SIA Guide].

⁶⁸⁵ The International Principles for Social Impact Assessment “is a statement of the core values of the SIA community together with a set of principles to guide SIA practice and the consideration of ‘the social’ in environmental impact assessment generally,” Vanclay, *supra*, 1.

utilization, and linked with public participation.⁶⁸⁶ Given its multifaceted nature, the concept of SIA has been defined variously over the years. For example, SIA is a process used to analyze, monitor, and manage the social consequences (expected and unexpected, beneficial and harmful) of a development proposal.⁶⁸⁷ SIA is concerned with “efforts to assess or estimate, in advance, the social consequences that are likely to follow specific policy actions (including projects), and specific government actions.”⁶⁸⁸ Given these viewpoints, the associated advantages,⁶⁸⁹ and the objectives of SIA as outlined in Box 5, SIA may constitute a necessary framework to manage the changes of proposed economic developments on society.

Box 5: Objectives of social impact assessment

- SIA makes it possible to better understand and better manage the social changes resulting from a development project;
- SIA makes it possible to predict possible social impacts and assess those caused by earlier projects;
- SIA makes it possible develop and implement mitigation measures for addressing potential social impacts and unexpected social impacts before they arise;
- SIA makes it possible to develop a monitoring and surveillance program to identify unexpected social impacts;
- SIA makes it possible to increase knowledge of the proposed project and inform the community affected by any positive or negative consequences.

Source: Government of Québec⁶⁹⁰.

SIA is also a reiterative process: it involves a continuous assessment of social impacts of developments. The Government of Quebec has identified three categories of SIA: (1) prospective

⁶⁸⁶ ACER, *Dams and Development Project Compendium on Relevant Practices: Social Impact Assessment of Affected People* (Nairobi: UNEP, 2007) 4 [UNEP 2007].

⁶⁸⁷ Bouchard-Bastien, E., D. Gagné, and G. Brisson, *Institut national de santé publique du Québec, Social Impact Assessment in the Environmental Sector: Health Network Support Guide* (Gouvernement du Québec, 2014) 9 [Gouvernement du Québec].

⁶⁸⁸ SIA Guide, *supra*, para. 1(13).

⁶⁸⁹ The major advantages of undertaking a systematic SIA include: (1) identifying project/ programme stakeholders; (2) identifying and prioritizing social issues associated with project; (3) mitigating negative impact on communities or individuals; (4) enhanced benefits to those affected; (5) avoids delays and obstruction in gaining development approval; (6) acts as a precautionary measure and avoids costly errors in the future; etc., *SIA Guide, supra*, para 1(18).

⁶⁹⁰ Gouvernement du Québec, *supra*, 9.

assessment which occurs before a proposed development is established;⁶⁹¹ (2) contemporary assessment which is carried out when a project becomes operational;⁶⁹² and (3) retrospective assessment which is done after a development project is completed.⁶⁹³ Accordingly, SIA should be carried out during a project's lifespan, especially because different activities have different impacts: the impact associated with developing a palm nursery or establishing a palm plantation, for example, may be different from those associated with decommissioning the project.

Demographic change,⁶⁹⁴ economic change,⁶⁹⁵ environmental change,⁶⁹⁶ and institutional change⁶⁹⁷ are the four main variables that are usually correlated with negative social impacts of proposed developments. These project-related changes may, in turn, result in different categories of social impacts (Box 6). The chief discussion of this paragraph is that social and environmental impacts are interlinked and should be evaluated simultaneously.⁶⁹⁸

⁶⁹¹ It is executed before a development project is carried out, making it possible to anticipate probable impacts. This also makes it possible to make changes to the proposed project in order to minimize negative impacts and maximize positive impacts for the community. Prospective assessment should encourage citizen participation, thus ensuring that the assessment's conclusions and recommendations are taken into account in the decision-making process and in the planning of the project, Gouvernement du Québec, *supra*, para. 2(3).

⁶⁹² And it makes it possible to react quickly to address any negative impacts that arise. It also makes it possible to determine whether the anticipated potential impacts actually come about, *ibid*.

⁶⁹³ Retrospective SIA makes it possible to take stock of what worked well and what should be changed when similar projects are carried out in the future, *ibid*.

⁶⁹⁴ Demographic change includes for example size and composition of resident population, influx of temporary work force or new recreational users (disrupt the cohesion of a small, stable community), EIA Training Manual, *supra*, 464.

⁶⁹⁵ Economic change includes new patterns of employment/income, real estate speculation (marginalises long term, older residents, *ibid*, 464.

⁶⁹⁶ This includes alterations to land use, natural habitat and hydrological regime, *ibid*, 464.

⁶⁹⁷ In the structure of local government or traditional leadership, zoning by-laws or land tenure, *ibid*.

⁶⁹⁸ This should be so chiefly because there are some impacts that, although they may have an overall impact on vulnerable communities, SIA does not evaluate. A good example is proposed impacts on roads, railways, atmosphere, among other environmental media: the developer assesses these impacts in the environmental assessment section, rather than the SIA. EIA Training Resource Manual, *supra*, 464.

Box 6: Types of social impacts

- Lifestyle impacts – impacts on the way people behave and relate to friends, family, and cohorts on a daily basis
- Cultural impacts – impacts on shared obligations, customs, values, religious beliefs, language and other elements which make a social or ethnic group distinct
- Community impacts: impacts on services, infrastructure, voluntary organizations, and activity networks.
- Quality of life impacts – impacts on sense of place, aesthetics and heritage, perception of belonging, security and livability, and aspirations for the future
- Health impacts – impacts on mental, physical and social wellbeing,

*Source: Centre for Good Governance*⁶⁹⁹

To sum up, SIA focuses on the effects of developmental interventions on the human environment. It seeks to identify the innumerable benefits and unintended detrimental effects on people brought by economic development projects. Some of the adverse consequences may include the disruption of social, cultural and communal amity, the loss of human income and life, the introduction of new sicknesses, and the destruction of renewable resources. These and other consequences can negate the positive benefits of economic developments. With SIA, therefore, social impacts of a proposed development may be identified, measured, and managed in such a way as to expand the positive side effects and lessen the adverse side effects.

3.2.4 EIA Reporting

EIA reporting is another critical stage of the EIA process involving the preparation of the EIA report. Also called the environmental impact statement or environmental statement,⁷⁰⁰ an EIA report “is a primary document for decision-making. It organizes the information obtained and synthesizes the results of the studies and consultations undertaken.”⁷⁰¹ Referring to Box 8, we can see that an EIA report documents the information and estimates of impacts derived from project screening, scoping, and impact assessment.⁷⁰² Accordingly, an EIA report should contain valuable information to assist the proponent, the responsible authority, and the public in

⁶⁹⁹ EIA Training Resource Manual, *supra*, 465; SIA Guide, *supra*, para.1 (12).

⁷⁰⁰ EIA Training Resource Manual, *supra*, 331-332.

⁷⁰¹ *Ibid.*

⁷⁰² Glasson *et al.*, *supra*, 5.

mitigating significant adverse environmental effects of a proposed development. An EIA report should be “written both in plain language for non-experts but also to appropriate technical standards”⁷⁰³ and could be stipulated in legislation or procedure.⁷⁰⁴

Box 7: Content of an EIA report

- Executive or non-technical summary (a public communication document)
- Statement of the need for, and objectives of, the proposal
- Reference to applicable legislative, regulatory and policy frameworks
- Description of the proposal and how it will be implemented
- Comparison of the proposal and the alternatives to it (including the no action alternative);
- Description of the project setting, including the relationship to other Training session outline proposals, current land-uses and relevant policies and plans for the area;
- Description of baseline conditions and trends (biophysical, socioeconomic etc.), identifying any changes anticipated prior to project implementation
- Review of the public consultation process, the views and concerns expressed by stakeholders and the way these have been taken into account
- Consideration of the main impacts that are identified as likely to result from the proposal, their predicted characteristics (e.g. magnitude, occurrence, timing, etc.) proposed mitigation measures, the residual effects and any uncertainties and limitations of data and analysis
- Evaluation of the significance of the residual impacts, preferably for each alternative, with an identification of the best practicable environmental option
- An environmental management plan that identifies how proposed mitigation and monitoring measures will be translated into specific actions as part of impact management
- Appendices containing supporting technical information, description of methods used to collect and analyse data, list of references, etc.

*Source: Adapted from UNEP and Glasson et al*⁷⁰⁵

Among the relevant information that an EIA report must contain is an environmental and social management plan (ESMP). The data in Box 8 shows that this plan must summarize a project's adverse impacts on land, air, water, soils, forest and communities, in addition to providing a description of the mitigation measures to assist in attenuating predicted impacts. The ESMP must also specify a program to monitor how the impacts will be mitigated and a description of the institutional framework detailing the actors and institutions for ensuring compliance with the mitigating and monitoring programs as part of an effort to manage impacts.

⁷⁰³ EIA Training Resource Manual, *supra*, 331.

⁷⁰⁴ Food and Agriculture Organization (FAO), *Environmental impact assessment: Guidelines for FAO Field Projects* (Rome: FAO, 2002) 17.

⁷⁰⁵ Glasson et al., 5; EIA Resource Training Manual, *supra*, 331-332.

Box 8: Components of an environmental management plan

Summary of impacts: The predicted adverse environmental and social impacts for which mitigation is required should be identified and briefly summarised. Crossreferencing to the EA report or other documentation is recommended.

Description of mitigation measures: Each mitigation measure should be briefly described with reference to the impact to which it relates and the conditions under which it is required (for example, continuously or in the event of contingencies). These should be accompanied by, or referenced to, project design and operating procedures which elaborate on the technical aspects of implementing the various measures.

Description of monitoring programme: The monitoring program should clearly indicate the linkages between impacts identified in the EIA report, measurement indicators, detection limits (where appropriate), and definition of thresholds that will signal the need for corrective actions.

Institutional arrangements: Responsibilities for mitigation and monitoring should be clearly defined, including arrangements for co-ordination between the various actors responsible for mitigation

*Source: EIA Training Resource Manual*⁷⁰⁶

3.2.5 EIA Review

EIA Review involves an evaluation of EIA quality. It is undertaken to ensure that “the information provided by the report complies with the TOR and is sufficient for decision-making purposes.”⁷⁰⁷ EIA review creates an “opportunity for public comment on the statement of significant impacts and their mitigation.”⁷⁰⁸ To UNEP, EIA review aims to (1) assess the adequacy and quality of an EIA report, (2) consider public comment, (3) determine if the information is sufficient for a final decision to be made, and (4) identify, as needed, the deficiencies that must be tackled prior to submitting the EIA report.⁷⁰⁹

While some jurisdictions, for example, Canada⁷¹⁰ and the Netherlands,⁷¹¹ have established EIA commissions or agencies to review the suitability and breadth of EIA reports, others have not.

⁷⁰⁶ EIA Training Resource Manual, *supra*, 314.

⁷⁰⁷ *Ibid*, 351.

⁷⁰⁸ *Ibid*.

⁷⁰⁹ *Ibid*.

⁷¹⁰ The Canadian Environmental Assessment Agency conducts an environmental assessment where a “physical activity is described in the Regulations Designating Physical Activities and the Agency is the Responsible Authority,” Canadian Environmental Assessment Agency, *supra*.

But even in the United Kingdom where such commissions are absent,⁷¹² the EIA review is done with the use of a review checklist,⁷¹³ in addition to employing seven evaluation criteria.⁷¹⁴ Review criteria have been established to assist developers to prepare a good quality EIA report in the European Union.⁷¹⁵ Competent authorities in host States shall therefore make decisions on projects authorization (or rejection) only after considering every decision made at the different stages of the EIA process.

As Glasson, Chadwick, and Terivel contend, “...the competent authority, when making a decision, shall consider all the information contained in the EIA report, as well as other documents and comments made by statutory consultees and public representatives.”⁷¹⁶ That is, observations and considerations that the public and private actors make within the EIA process, in addition to the complexity of some of the project proposals, all need attention at this stage of the EIA process. They went further to say “weighing up the information to reach a decision involves not only considering the views of different interest groups and the importance of the environmental issues.”⁷¹⁷ The EIA review also includes determining whether the proposal is in

⁷¹¹ The Netherlands Commission for Environmental Assessment provides advise on TOR for and reviews of environmental assessments of plans, programmes and projects (EIA/SEA); develops the capacity of systems and institutions to improve the environmental assessment practice; provides knowledge and learning resources on environmental assessment; and focuses as well on Dutch Sustainability Unit. Online: <http://www.eia.nl/en/about-us>.

⁷¹² Glasson *et al.* report that in the UK there are no mandatory requirements regarding the pre-decision review of EISs to ensure that they are comprehensive and accurate, Glasson *et al.*, *supra*, 183.

⁷¹³ This is a method designed to review the adequacy of the EIA report in terms of compliance with the requirements of the EU EIA Directive and commonly accepted good practice in the EIA process, European Union, Guidance on EIA: EIS Review (European Union, 2001) 5 [EU Guidance on EIA Review].

⁷¹⁴ The review criteria include: relevance; effectiveness; efficiency; sustainability; impact; coherence/complementarity; and Community value added, European Union, “Families of evaluation criteria”. Online: http://ec.europa.eu/europeaid/evaluation/methodology/methods/mth_ccr_en.htm.

⁷¹⁵ EU Guidance on EIA Review, *supra*, 5.

⁷¹⁶ Glasson *et al.*, *supra*, 185.

⁷¹⁷ *Ibid*, 186.

accord with the development plan.⁷¹⁸ Given the many different factors that need deliberation in EIA decision-making, the EIA decision-making may become a very complicated process.

The length and scope of EIA reports have been a matter of concern. In an attempt to be all-inclusive, EIA reports tend to be so voluminous as to be practically unreadable. Hence, some jurisdictions stress the need to focus the assessment on essential issues and draw up easy-to-read documents.⁷¹⁹ While an important section of the EIA report is public consultation and inputs,⁷²⁰ ensuring that vulnerable communities are provided with opportunities to contribute to the process has also been difficult, including in the Netherlands⁷²¹ and the United States.⁷²²

3.2.6 Decision-making

The environmental information that EIA serves to assemble may be useful in facilitating an environmentally, economically, and socially sustainable decision-making. The IAIA and IEA expressly state that EIA decision-making aims “to approve or reject the proposal and to establish the terms and conditions for its implementation.”⁷²³ Decision-making also involves “weighing the benefits and costs of considerations.”⁷²⁴ The “final approval of the major proposal is a

⁷¹⁸ *Ibid.*

⁷¹⁹ The Council on Environmental Quality (CEQ) guidelines proclaims: “the text of final environmental impact statements shall normally be less than 150 pages...Environmental impact statements shall be written in plain language...”, Council on Environmental Quality (CEQ) *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*, (CEQ, 2005) (§1502.7–8).

⁷²⁰ The consultation section shall outline: identify the interested and affected public, method used employed to inform and involve stakeholders; analysis of the views and concerns expressed; how these have been taken into account; and outstanding issues and matters that need to be resolved, EIA Training Resource Manual, *supra*, 335.

⁷²¹ The Netherlands, The Netherlands Commission for Environmental Assessment (NCEA). Online: <http://www.eia.nl/en>. [NCEA].

⁷²² In the US context, Canter underscores four areas for which EIA requirements need additional elaboration These include: how much an agency should identify and plan mitigation before issuing an EIS; ways to assess the cumulative impacts of proposed developments; ways to conduct “reasonable foreseeability” (or worst-case) analyses; and the monitoring and auditing of impact predictions, Canter, L.W., *Environmental impact assessment*, (2nd ed) (London: McGraw-Hill, 1996).

⁷²³ IAIA and IEA, *supra*.

⁷²⁴ EIA Training Resource Manual, *supra*, 385.

political decision, often taken by the national government, planning authority/other equivalent body.”⁷²⁵

Different actors have to arrive at different decisions during the EIA process. As the responsible authority defines “the disposition of the project proposal at the screening and scoping stages of the EIA process, the proponent often modifies the proposal to make it more environmentally and socially acceptable during EIA preparation.”⁷²⁶ Furthermore, “findings of significant impact contained in the EIA report, inputs from economic and social appraisals, and other external pressures/political inputs to decision-making are the chief factors in the final approval of a proposal.”⁷²⁷ At the international level, the responsibility to make decisions that affect the environment is outlined in the Rio Declaration and Agenda 21.⁷²⁸ These documents call on governments to take fuller advantage of EIA as a sustainability tool by widely applying the precautionary approach when tackling the environmental effects of project proposals.⁷²⁹

There are five key results from decision-making. The proposed development can be (1) approved, (2) approved with conditions, (3) placed on hold pending further investigation, (4) returned for revision and resubmission, (5) or rejected outright.⁷³⁰ These outcomes are indicative of the fact that EIA decision-making is the stage of the EIA process for public authorities to select between the main proposals and the alternative proposals, as well as the mitigation measures.⁷³¹

⁷²⁵ *Ibid.*

⁷²⁶ EIA Training Resource Manual, *supra*, 385.

⁷²⁷ *Ibid.*

⁷²⁸ Agenda 21 calls on governments to ensure that local communities get the skills needed to manage their resources in a sustainable manner, UNCED, *supra*, para. 40.

⁷²⁹ *Ibid.*, principle 15.

⁷³⁰ EIA Training Resource Manual, *supra*, 392.

⁷³¹ As mentioned in the earlier paragraphs of this thesis, a development authorizations or consent can be challenged by a third party under certain conditions. For example, that a project was established before the environmental

3.2.7 EIA follow-up

An oil palm plantation, among other projects, has a life cycle (planning, developing palm nursery, establishing the plantation, looking after the farm, harvesting, processing, and shutting down) that may cover decades. Given that all these may take 30-50 years to complete, EIA should not be limited to a tool to help obtain development authorization. Rather, it should go beyond project screening, scoping, assessment, review, and decision-making, and should consider the concrete impacts that ensue during project implementation and decommissioning. Decision-makers should, thus, ensure that assessment of environmental impacts endures over the entire life of the plantation: screening, scoping, impact assessment, review, and decision-making stages of the EIA process.

A follow-up program is very useful. The Canadian Environmental Assessment Agency note that an EIA follow-up program is designed to:

“verify predictions of environmental effects identified in the environmental assessment; determine the effectiveness of mitigation measures in order to modify or implement new measures where required; support the implementation of adaptive management measures to address previously unanticipated adverse environmental effects; provide information on environmental effects and mitigation that can be used to improve and/or support future environmental assessments including cumulative environmental effects assessments; and support environmental management systems used to manage the environmental effects of projects.”⁷³²

Without a follow-up program, therefore, it may be difficult for predicted environmental and social impacts to be adequately verified, and may be challenging for the effectiveness of mitigation measures to be determined. EIA follow-up has five major objectives: to (1) control projects and environmental impacts by providing verifying and controlling functions for implemented projects; (2) maintain decision-making flexibility and encourage an adaptive

assessment was completed and before the proposed development was approved. It can also be challenged when the concerns of the vulnerable communities were not adequately incorporated in the final decision.

⁷³² Government of Canada, “Follow-up Programs under the Canadian Environmental Assessment Act” (CEAA, 2011). Online: <http://www.ceaa.gc.ca/default.asp?lang=En&n=499F0D58->

management approach feedback from follow-up programs; (3) enhance technical and scientific knowledge, given that EIA are grounded in scientific method; (4) boost public awareness and acceptance about the actual effects of development projects on the environment; and (5) integration with other environmental information programs.⁷³³

Table 11: Summary of EIA follow-up

Elements of EIA follow-up ⁷³⁴	Objectives of EIA follow-up ⁷³⁵
1. Monitoring – a program of repetitive observation, measurement and recording of environmental variables and operational parameters over a period of time for a defined purpose. 2. Evaluation – the appraisal of the conformance with standards, predictions or expectations as well as the environmental performance of the activity 3. Management – making decisions and taking appropriate action in response to issues arising from monitoring and evaluation activities. 4. Communication – informing the stakeholders as well as the general public about the results of EIA follow-up.	• Confirm that the conditions of project approval are implemented satisfactorily • Verify that impacts are within predicted or permitted limits • Take action to manage unanticipated impacts or other unforeseen changes • Ensure that environmental benefits are maximized through good practice • Learn from experience in order to improve EIA practice and process

Source: Adapted by the author from the IAIA and UNEP⁷³⁶

The information in Table 11 shows the many different activities that are associated with EIA follow-up. To Morrison-Saunders, EIA follow-up activities include “the monitoring and evaluation of the impacts of a project for management of, and communication about, the environmental performance of that project...”⁷³⁷ EIA follow-up examines whether: the impacts are occurring as were forecasted; mitigation measures are effectually translated as planned; and

⁷³³ Morrison-Saunders, A., and J. Arts (eds.), *Assessing Impact: Handbook of EIA and SEA Follow-up* (Oxon: Earthscan, 2004) 4.

⁷³⁴ Arts, J., P. Caldwell, and A. Morrison-Saunders, “Environmental Impact Assessment Follow-up: Good Practice and Future Directions — findings from a workshop at the IAIA 2000 conference” (2001)19:3 *Impact Assessment and Project Appraisal* 176-177 [Arts *et al.*].

⁷³⁵ EIA Training Resource Manual, *supra*, 406.

⁷³⁶ *Ibid.*

⁷³⁷ Morrison-Saunders A., R. Marshall, and J. Arts, *EIA Follow-Up International Best Practice Principles* (Fargo: International Association for Impact Assessment, 2007) [IAIA 2007].

vulnerable communities are enjoying the projected benefits of the project. As a result, UNEP describes EIA follow-up as the collection of data through a chain of “repetitive measurements of environmental parameters,”⁷³⁸ water quality for instance.

The objectives of mitigation measures are to find better alternatives and ways of doing things; to enhance the environmental and social benefits of a proposal; to avoid, minimize or remedy adverse impacts; and to guarantee that residual unfavorable impacts stay within acceptable levels.⁷³⁹ These objectives are achievable, UNEP says, through different approaches that include establishing environmentally better alternatives to the proposal;⁷⁴⁰ making adjustments to project planning and design; carrying out impact monitoring and management;⁷⁴¹ and remunerating for impacts (by monetary payment, in kind measures, site remediation bonds, and a resettlement plan).⁷⁴²

EIA monitoring “involves the measuring and recording of physical, social and economic variables associated with development impacts.”⁷⁴³ To monitor an approved land-based project, a rubber plantation, for example, the variables would include the quality and quantity of the environment (water, land, soil, and trees) in the project impact area. The objective of the monitoring activity could include providing information about the functioning or the environmental implications of the project. In this way, monitoring can be valuable in detecting damaging tendencies in a vulnerable neighborhood before it becomes belated to take corrective

⁷³⁸ EIA Training Resource Manual, *supra*, 406.

⁷³⁹ EIA Training Resource Manual, *supra*, 305.

⁷⁴⁰ *Ibid*, 309.

⁷⁴¹ *Ibid*.

⁷⁴² *Ibid*.

⁷⁴³ Glasson *et al.*, *supra*, 195.

measures.⁷⁴⁴ Detecting harmful trends can occur through baseline monitoring,⁷⁴⁵ impact monitoring,⁷⁴⁶ and compliance monitoring.⁷⁴⁷ Without a proper implementation and follow-up to decision-making, thus, some developers may tend to regard an EIA process as one of those routine administrative exercises, rather than for a given purpose—mitigate adverse environmental health impacts—to guarantee project authorization.

4 Significance of public participation in environmental decision-making

*It is possible to conclude that the current trend towards greater interactive involvement of citizens in policy making is both unavoidable, and highly desirable. Indeed, where citizens are fully engaged in the policy process, their sense of empowerment is increased, their capacity to act as democratic citizens is enhanced, and the policy options available to government actively reflect the emotive and factual motivations of their constituents. The result: better citizens and better policy.*⁷⁴⁸

As Table ...indicates, every stage of the EIA process involves some consultation and public engagement. As such, the way the environmental information is presented, the way EIA actors (statutory consultees, developer, vulnerable communities, and the entire public) use the environmental information and the manner in which the final decision integrates the results of the environmental and social assessment and the perspectives of these actors are important constituents in EIA. These steps are all important in the pursuit to achieve the goal to prevent land-grabbing and promote sustainable development in subsistence communities.

⁷⁴⁴ This may be because investment decisions and environmental laws and policies of host States determine the impacts on host communities and may have to be changed if there is a wish to encourage environmental justice and promote sustainable development.

⁷⁴⁵ Baseline monitoring measures environmental parameters during a pre-project period for the purpose of determining the range of variation of the system and establishing reference points against which changes can be measured, EIA Training Resource Manual, *supra*, 406.

⁷⁴⁶ Impact monitoring measures the environmental change that can be attributed to project construction and operation and check the effectiveness of mitigation measures, EIA Training Manual, *supra*, 406.

⁷⁴⁷ Compliance monitoring ensures that applicable regulatory standards and requirements are being met, *ibid*.

⁷⁴⁸ Government of Canada, Policy Statement and Guidelines for Public Participation: Department of Justice. Online: <http://www.justice.gc.ca/eng/cons/pol.html>.

Table 12: The aims of public participation in EIA

Stage	Aim of public participation
Screening	To ascertain which proposal requires a partial or complete assessment
Scoping	To identify prospective impacts that are relevant for evaluation To publicize the project and identify the interest/values of vulnerable communities To draft the TOR for an EIA study To identify alternative solutions that prevent/minimize/compensate negative impacts
Impact assessment	To identify likely biophysical, socio-economic, and human health impacts of proposals To include public inputs when identifying, predicting, evaluating, and mitigating impacts To assess the relative significance of impacts and inform decision-makers whether predicted impacts may be considerable To enhance public acceptability of EIA report
Reporting	To provide important information and estimates of projected impacts that could be useful to competent authorities to avoid, revise, or abandon environmentally dangerous projects
Review	To equip competent authorities with the scientific expertise needed to weigh the benefits and burdens of a proposal and assess the suitability and inclusiveness of EIA reports
Decision-making	To obtain public comment on acceptability of project impacts To select between the main proposal and the alternative proposals or means of achieving the objective of the proposed project
Follow-up	To identify and communicate impacts that occur during project development and operation To check whether impacts are occurring as predicted To investigate and communicate that mitigation measures are effectively implemented To provide feedback from all parties to enhance the EIA process To ensure that projects' benefits are fairly enjoyed

Source: adapted by the author from the review of literature

The participation of the affected and interested public in environmental decision-making, specifically EIA (as can be seen in Table 12) is advantageous for many reasons. According to a 2015 research carried out by the UNEP, “public participation will result in better quality decisions, based on a greater range of information.”⁷⁴⁹ Previous analysis conducted by UNEP,⁷⁵⁰ the Canadian Environmental Assessment Agency (CEAA)⁷⁵¹ and many different researchers⁷⁵² enumerated some of the merits of involving likely-to-be-affected communities in the EIA

⁷⁴⁹ Stec, S., *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines* (Nairobi: UNEP, 2015) 59 [Putting Rio Principle 10 into Action].

⁷⁵⁰ Abaza, H., R. Bisset, B. Sadler, *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach* (Geneva: UNEP, 2004) 7.

⁷⁵¹ The CEAA reported that public participation in EIA can (1) prevent/reduce adverse environmental effects, (2); promote opportunities for public participation and Aboriginal consultation, (3) enhance the protection of human health, (4) reduce project costs and delays, as well as risks of environmental harm or disasters, (5) increase government accountability and harmonization, (6) lessen probability of trans-boundary environmental effects, and (7) promote informed decisions that contribute to responsible development of natural resources. Canadian Environmental Assessment Agency.

⁷⁵² Hartley, N. And C. “Wood Public Participation in Environmental Impact Assessment: Implementing the Aarhus Convention” (2005) 25:4 Environmental Impact Assessment Review 319-340.

process. These benefits range from preventing significant impacts, improving environmental democracy and transparency, and promoting sustainable development.

4.1 Preventing significant environment and socio-economic impacts

There are different instances where EIA has positively shaped environmental decisions by blocking environmentally hazardous projects, especially in Canada, and many other jurisdictions of the world, where almost every authorized project is accompanied by numerous mitigation measures and monitoring plans. An illustrative case is the New Prosperity Gold-Copper Mine Project, a proposed mining project to develop \$1.5 billion gold and copper deposit near Williams Lake in British Columbia, Canada.⁷⁵³ The federal government, after reviewing the report of the independent Review Panel, refused to grant federal authorization to proceed with the project because it would likely “cause significant adverse environmental effects that cannot be mitigated... those effects are not justified in the circumstances; therefore, the project may not proceed.”⁷⁵⁴ The company’s application for a development authorization was rebuffed after much public outcry.⁷⁵⁵

Proposals for: the expansion of the Richmond Landfill near Napanee, Canada;⁷⁵⁶ a proposed condo development behind a church in Charleswood, Winnipeg, Canada;⁷⁵⁷ and the Grand

⁷⁵³ David Suzuki Foundation. Online: <http://www.davidsuzuki.org/issues/freshwater/science/industrial-impacts/bc-mine-project-rejected-thanks-to-activism/>. ; Mining.com, “Taseko: Court approves judicial review of New Prosperity mines decision.” Online: <http://www.mining.com/web/taseko-court-approves-judicial-review-of-new-prosperity-mines-decision/>.

⁷⁵⁴ Canadian Environmental Assessment Agency, “New Prosperity Gold-Copper Mine Project – Environmental Assessment Decision” (2014). Online: <http://www.ceaa-acee.gc.ca/050/document-eng.cfm?document=98459>.

⁷⁵⁵ Environmental NGOs submit that “Thousands of Canadians of all political stripes opposed the project by sending personal letters, emails, and messages via Facebook and Twitter to the federal government.”

⁷⁵⁶ Ontario's Minister of the Environment, in November 2006, refused to approve the proposed expansion of the Richmond Landfill under the *Environmental Assessment Act* due to outstanding environmental concerns raised by agency and public commenters, Canadian Environmental Law Association, Richmond Landfill - Upholding Ontario's Environmental Assessment Process . Online: <http://www.cela.ca/collections/celacourts/richmond-landfill-upholding-ontarios-environmental-assessment-process>.

Canyon development project (Arizona, USA)⁷⁵⁸ were also rejected because the likely impacts could not be mitigated. These projects would have destroyed not only fauna and floral resources but also impacted on the lands and resources of millions of indigenous peoples and other vulnerable groups. It seems fair to submit that the outcomes of these proposals have had a chilling effect on some developers by discouraging them from submitting project proposals that would have created irreversible environmental and social damage, for concern that the propositions would not withstand an assessment of environmental effects.

Ortolano and Shepherd said that “the most common positive outcomes of EIA are suggestions for measures needed to mitigate the adverse effects of a proposed plan.” They described mitigation as including: renouncing environmentally destructive elements of a proposed development; reducing negative impacts by redesigning or scaling down a project; rectifying, rehabilitating, or reinstating those parts of the environment that are adversely impacted; and creating or acquiring environments similar to those negatively affected by an activity.⁷⁵⁹ To these researchers, significant environmental impacts of projects that were not successfully rejected during the EIA decision-making can nevertheless be attenuated through one or more of these measures. Therefore, if adequately implemented, these measures may go a long way towards successfully addressing the likely environmental effects of proposals.

⁷⁵⁷ CTV News Winnipeg, City committee rejects proposed condo development behind Charleswood church site . Online: <http://winnipeg.ctvnews.ca/city-committee-rejects-proposed-condo-development-behind-charleswood-church-site-1.1629094>.

⁷⁵⁸ Digital Journal, Grand Canyon development project rejected by Federal government. Online: <http://www.digitaljournal.com/news/politics/grand-canyon-development-project-rejected-by-federal-government/article/459703>.

⁷⁵⁹ Ortolano, L., and A. Shepherd, “Environmental Impact Assessment: Challenges and Opportunities” in Fischer, T. B. *Environmental Assessment* (ed) (London: Routledge, 2016), 66.

4.2 Improving environmental democracy and transparency

The Canadian Institute for Environmental Law and Policy says “democratic governance will be meaningless if governments do not ensure an effective and fully informed public participation in decision-making, in particular, in the impact assessment...”⁷⁶⁰ Research undertaken by the Department of the Environment, Transport and Region (DETR) in the UK indicates that “public participation can result in decisions that better meet the needs of more people (better decisions), decisions that are sustainable and decisions that have more validity.”⁷⁶¹ DETR’s argument suggests that “better decisions” may lead to improvements in the quality of life of every vulnerable community member.

As the quality of life (social conditions) increases for a sustained period of time, there is a possibility that economic quality (economy) will improve and so will the environmental conditions, especially as the vulnerable members of the public are engaged in the management of environmental impacts. By participating in EIA, therefore, an environment for affected and interested members of the public to provide decision-makers and investors with information that can enhance socio-economic and environmental conditions in host communities is created.

Kiss and Shelton’s findings center on the relationship between public participation on the one hand and legitimacy and legal compliance on the other hand. Their study indicates that the process by which “rules emerge, how proposed rules become norms and how norms become law

⁷⁶⁰ Bastidas, S., “The Role of Public Participation in the Impact Assessment of Trade Process Speaker paper for the Impact Assessment for Industrial Development – IAIA’04 (April 28th 2004, Vancouver)”. Online: <http://cielap.org/pdf/publicparticipation.pdf>.

⁷⁶¹ Department of the Environment, Transport and the Regions (DETR), *Public Participation in Making Local Environmental Decisions: The Aarhus Convention, Newcastle Workshop Good Practice Handbook* (London:DETR, 2000) 12 [DETR].

is highly important to the legitimacy of the law and legitimacy, in turn, affects compliance.”⁷⁶² Public participation in EIA can build trust, skills, acceptability, democracy, and confidence in the authority undertaking the exercise that change is feasible.⁷⁶³ The argument of Dietz and Stern is that the participation of the public should improve the quality of environmental assessments and decisions and their legitimacy among those involved and potentially affected.⁷⁶⁴ Likewise, public participation should strengthen the ability to implement decisions as soon as they are made by “producing better decisions and by producing legitimate, credible, and decisions that are well-understood.”⁷⁶⁵

4.3 Promoting sustainable development

Agenda 21 proclaims the need for public participation in Chapter 8 (integrating environment and development in decision-making), Chapter 23 (Strengthening the role of the major groups), Chapter 26 (Recognising and strengthening the role of indigenous people and their communities), Chapter 33 (Financial resources and mechanisms), and Chapter 37 (National mechanisms and international cooperation for capacity-building). Specifically, Chapter 23, in the context of environment and development, highlights “the need for individuals, groups, and organizations to participate in decisions, particularly those which affect the communities in which they live and work.” Chapter 26 declares that active participation is called for to incorporate the “values, views and knowledge” of indigenous people. Ergo, “one of the

⁷⁶² Kiss, A., and D. Shelton, *International Environmental Law* (3d) (New York: Transnational Publishers, 2004) 673; DETR, *supra*, 11-12.

⁷⁶³ *Ibid.*

⁷⁶⁴ Dietz, T., and P. C. Stern (eds) *Public Participation in Environmental Assessment and Decision Making* (Washington D. C.: The National Academic Press, 2008) 225 [Dietz and Stern].

⁷⁶⁵ Dietz and Stern, *supra*, 225.

fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making,”⁷⁶⁶

IAP2 declares that public participation “promotes sustainable decisions by providing participants with the information they need to be involved in a meaningful way, and it communicates to participants how their input affects the decision.”⁷⁶⁷ Public participation can provide decision-makers with crucial information that can lead to sustainable outcomes. This is because, as Dietz and Stern note, public participation can (1) clarify the nature of the problem(s) to be addressed, (2) identify the set of possible decision alternatives, (3) identify the set of outcomes of concern, (4) gather information on how environmental conditions are affecting outcomes of concern, (5) gather information on how each decision alternative might affect outcome, (6) evaluate the credibility and certainty of the information gathered, (7) consider the implications of available information for decisions at hand, (9) assess the decision against its objectives, (10) develop methods for evaluating results of decision, and (11) monitor results of decision.⁷⁶⁸ Research also shows that “interested parties can bring critical factual information and scientific analysis to the process, whether as scientists themselves, by employing scientists, or by contributing experiential, observational or traditional knowledge.”⁷⁶⁹

Principle 22 of the Rio Declaration explains why the participation of interested parties can improve decision quality which can lead to sustainable outcomes. Thus, subsistence communities and other vulnerable populations have a crucial role in the development and management of environmental resources “because of their knowledge and traditional practices. States should

⁷⁶⁶UNCED, *supra*;

⁷⁶⁷IAP2, *supra*.

⁷⁶⁸Dietz and Stern, *supra*, 44.

⁷⁶⁹*Ibid*, 34.

recognize and duly support their identity, culture and interests, and enable their effective participation in the achievement of sustainable development.”⁷⁷⁰ Perhaps, these advantages explain why EIA is now globally used. In countries where implementation is not strong enough, these benefits should act as an encouragement to host States to enhance the participation of vulnerable communities in environmental decision-making.

5 Some arguments against EIA

While EIA is globally hailed as a tool that can encourage the public to participate in the enhancement of sustainable (agricultural) development and environmental justice in their communities, a wide array of crucial issues, detailed by researchers such as Leonard Ortolano, Anne Shepherd, Lareef Zubair,⁷⁷¹ Iryna Makarenko,⁷⁷² James Creighton,⁷⁷³ John Devlin, Nonita Yap, Robert Weir,⁷⁷⁴ the United Nations,⁷⁷⁵ etc. concerning the EIA process persist have been highlighted. Some of the issues are with regards to failure of EIA to prevent land-based investments that are: environmentally degrading; and associated with inadequate participation of the affected and concerned public in EIA. These obstacles could undermine opportunities for subsistence communities to prevent land-grabbing and steer land-based developments towards a sustainable future.

⁷⁷⁰ UNCED, *supra*, principle 22.

⁷⁷¹ Zubair, L., “Challenges for environmental impact assessment in Sri Lanka” (2001) 21 Environmental Impact Assessment Review 469 – 478.

⁷⁷² Makarenko, I., “Challenges of Environmental Impact Assessment (EIA) Procedure for Transboundary Projects in the Black Sea Basin” (2012) 12 Turkish Journal of Fisheries and Aquatic Sciences 445-452

⁷⁷³ Creighton, J. L., *The public participation Handbook: Making Better Decisions through Citizen Involvement* (San Francisco: Jossey-Bass, 2005) [Creighton]; Devlin, J.F., N. T. Yap, and R. Weir, “Public participation in environmental assessment: case studies on EA legislation and practice” (2005) 26:3 Canadian Journal of Development Studies [Devlin].

⁷⁷⁴ Creighton, *ibid*; Devlin, *ibid*.

⁷⁷⁵ These challenges extend to: unreasonable timeframes for public participation; lack of information and inability to make EIA reports available to the public; and lack of proper regulation of the public participation process, including with regards to early notification, lack of procedures for taking comments into account, United Nations, Task Force on Public Participation in Decision-making, First meeting Geneva, 25-26 October 2010, Item 2(b) of the provisional agenda: Challenges in implementing public participation in decision-making

5.1 Inability to prevent environmentally damaging projects

Despite evidence of proposals that have been rejected because likely significant environmental and socio-economic impacts could not be mitigated, instances where economic policies have authorized proposals with significant and irreversible consequences for the biophysical and human environments abound. Neil Craik elaborates on this point: “despite its evaluative mandate, domestic EIA legislation does not impose specific environmental standards on the decision-making process.”⁷⁷⁶ Most EIA systems, undoubtedly, impose procedural duties on public officials (environmental ministries or environmental protection agencies) to carry out environmental assessments and prepare and publicize EIA reports for comment by public and private actors. However, the issue as to whether public authorities are obligated to guarantee that vulnerable communities are protected from environmentally dangerous actions is unclear.

Section 101 of the US NEPA proclaims that implementing the NEPA shall be “the continuing responsibility of the Federal Government to use all practicable means.” Any means that the Federal Government plans to take must be consistent with concerns of domestic policy to enhance federal functions, programs, plans, as well as resources in order that the United States may: (1) fulfill the responsibilities of each generation as trustee of the environment for the next generations; (2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and (3) reach the widest range of beneficial uses of the environment without undesirable and unintended consequences, including degradation, risk to human health or safety.⁷⁷⁷ Section 101 suggests that NEPA requires the federal government to

⁷⁷⁶ Craik, N., *The International Law of Environmental Impact Assessment Process, Substance and Integration* (Cambridge: Cambridge University Press, 2008) 3.

⁷⁷⁷ National Environmental Policy Act, the NEPA Statute. Online: https://ceq.doe.gov/laws_and_executive_orders/the_nepa_statute.html.

protect the environment and promote environmental justice in low-income and minority communities.

However, the United States Supreme Court described a different tale while interpreting Section 101. Richard Lazarus says in relation to the rulings of the US Supreme Court, NEPA does not impose substantive obligations on the federal government.⁷⁷⁸ NEPA imposes only procedural obligations.⁷⁷⁹ This proposes that, but for procedural duties (the duty to ensure that EIA is conducted for a proposal that can significantly affect the environment, for example), NEPA does not impose substantive obligations on the federal government to guarantee that mitigation measures stated in the environmental and social management plan are implemented in a way that would prevent irreversible destruction of biophysical and human environment.

The situation in the United States, where the Supreme Court has declared that NEPA imposes only procedural duties on the federal government, seems to be different from what obtains in other jurisdictions. In some jurisdictions outside the United States, the duty to carry out environmental assessment has a substantive and a procedural component. Italy offers a notable example. In addition to determining whether the EIA report satisfies the Terms of Reference and provides a satisfactory assessment of likely impacts, the EIA Committee has broader responsibilities, including making judgments about the “environmental compatibility” of the project proposal.⁷⁸⁰ Sadler says that “such judgments can be positive, leading to project approval

⁷⁷⁸ Lazarus, R., “The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains” (2012) 100 The Georgetown Law Journal, 1510.

⁷⁷⁹ *Ibid.*

⁷⁸⁰ Sadler, B., *Environmental Assessment in a Changing World: Evaluating Practice to Improve Performance* (Canadian Environmental Assessment Agency, 1996) 122 [Sadler].

conditional on recovering further information, or negative, leading to withdrawal of the proposal.”⁷⁸¹

An additional controversy surrounding EIA is that “even where an EIA discloses that a proposed activity is likely to have a significant adverse impact on the natural environment, the proponent of that activity is not necessarily required to abandon the activity or mitigate its adverse environmental affects.”⁷⁸² This argument can be supported by referencing the Herakles Farms EIA report which contains information on the natural and human environment. In particular, the project is located within five major biodiversity hotspots in Cameroon.⁷⁸³ These biodiversity hotspots are highly diverse rainforest: they are full of endangered plants and animal species.⁷⁸⁴ It is no doubt that by establishing a plantation within a rainforest, primary forest (with all its biological diversity) will be replaced by forest plantations (with low diversity and low capacity carbon sinks). Yet, the government of Cameroon cheerfully authorized the project.

5.2 Inadequate public participation

The UN Task Force on Public Participation in Environmental Decision-making, among other researchers, says major challenges in implementing public participation in environmental decision-making include, among others, lack of definition or interpretation of the public concerned, inability to timely inform the public concerned, and lack of public participation in

⁷⁸¹ *Ibid*, 122.

⁷⁸² Neil, *supra*, 3.

⁷⁸³ These are the Korup National Park, Rumpi Hills Forest Reserve, Bakossi National Park, Banyang Mbo Wildlife Sanctuary, and Takamanda-More sanctuary, Herakles Farms, *Environmental and Social Impact Assessment prepared for SG Sustainable Oils Cameroon Ltd.* (Yaoundé: Herakles Farms, 2011) 130-134 [Herakles Farms EIA Report].

⁷⁸⁴ Greenpeace, *Herakles Farms in Cameroon A showcase in bad palm oil production* (Washington D.C.: Greenpeace, 2013) 9; Oakland Institute, *Understanding Land Investment Deals in Africa Massive Deforestation Portrayed As Sustainable Development: The Deceit Of Herakles Farms In Cameroon* (Oakland: Oakland Institute, 2012) 5.

project screening and scoping.⁷⁸⁵ Unreasonable timeframes for public participation; a deficiency in environmental information; the inability to publish EIA reports; and the absence of an effectual regulation of the public participation process, including with regards to early notification, lack of procedures for considering comments, loss of traditional knowledge, and the lack of public education and awareness at all levels identified are additional obstacles to implementing EIA legislation.⁷⁸⁶

In the context of African jurisdictions, Felleman has identified public confusion, questions regarding the human ability to predict future impacts, and the cost and environmental effectiveness of the process as the challenges associated with EIA implementation.⁷⁸⁷ To Jenniger Li, these challenges include the lack of consultation and communication between government and local people, late preparation of EIA, inadequate government capacity to foster public participation, insufficient consideration of impacts, alternatives, and public participation; and in the worst case, they are not conducted at all.⁷⁸⁸ This is predominantly upsetting because EIA, often, is the most widespread means to evaluate the likely impacts of development projects in Africa and other developing countries where environmental safeguards are fragile due to institutional deficiencies.⁷⁸⁹

⁷⁸⁵ United Nations, “Task Force on Public Participation in Decision-making”, First meeting Geneva, 25-26 October 2010, Item 2(b) of the provisional agenda: Challenges in implementing public participation in decision-making, 1-3. Online: https://www.unece.org/fileadmin/DAM/env/pp/ppdm/PPDM_challenges.pdf. ;Ortalono and Shepherd *supra*, 74, Creighton, *supra*.

⁷⁸⁶ *Ibid*; Convention on Biological Diversity, COP 6 Decision VI/26. Online: <https://www.cbd.int/decision/cop/?id=7200>

⁷⁸⁷ Felleman, J., “Environmental Impact Assessment” (2013). Online: <http://www.eoearth.org/view/article/152590>.

⁷⁸⁸ Li, J. C., *Environmental Impact Assessments in Developing Countries: An Opportunity for Greater Environmental Security?* (USAID and FESS, 2008) 1; Kakonge, J. O., “Problems with Public Participation In EIA Process: Examples from Sub-Saharan Africa” (1996) 14 *Impact Assessment* 311.

⁷⁸⁹ These shortfalls may also have stern “effects in many areas of the developing world, where an ambitious line-up of major projects is being developed,” *ibid*.

Most jurisdictions in the world have legal requirements for public participation, and public participation is often characterized as a strategy for promoting environmental democracy and sustainable development. The government of Canada went as far as to declare that climate change cannot be addressed without engaging with Canadians, including Indigenous Peoples, on the development of a Canadian plan to attenuate the impacts of climate change.⁷⁹⁰ Nevertheless, some scholars, including Cross,⁷⁹¹ Bill Durodié,⁷⁹² Cass Sunstein,⁷⁹³ and Ventriss and Kuentzel,⁷⁹⁴ have contended that public participation can denigrate environmental decision-making. In particular, Ventriss and Kuentzel argue that public participation “may ironically limit the boundaries of possible change all under the normative guise of democracy and fair and open deliberations concerning environmental issues.”⁷⁹⁵

While elaborating on the political pitfalls of engaging the public in environmental decision-making, Dietz and Stern made four lines of argument: (1) the perception that involving the public confers legitimacy to policies may lead an environmental agency to initiate a participatory process simply for that purpose, without any intention of influencing decisions; (2) participatory processes can be used to insulate an environmental agency from legitimate external challenges, including from the legislative to the judicial branches, in addition to the public; (3) public participation may create/increase conflict rather than minimize it and entrench differences rather than solving differences; and (4) public participation can decrease an agency’s autonomy and

⁷⁹⁰ Government of Canada, Public participation and Consultation (2016). Online: <http://www.ec.gc.ca/consultation/>.

⁷⁹¹ Cross, F. B., “Facts and Values in Risk Management” (1998) 59 Reliability and Engineering and Systems Safety, 27-45.

⁷⁹² Durodié, B., “The True Cost of Precautionary Chemicals Regulation” (2003) Risk Analysis.

⁷⁹³ Sunstein, C.R., *Designing Democracy: What Constitutions Do* (Oxford: Oxford University Press, 2001);

Sunstein, C.R., *Infotopia: How Many Minds Produce Knowledge* (Oxford: Oxford University Press, 2008).

⁷⁹⁴ Ventriss, C., and W. Kuentzel, “Critical theory and the role of citizen involvement in environmental decision-making: a re-examination” (2005) 8:4 International Journal of Organization Theory and Behavior 519-539 [Ventriss and Kuentzel].

⁷⁹⁵ Ventriss and Kuentzel, *supra*, 519.

control, thereby making outcomes less predictable.⁷⁹⁶ From the standpoint of Dietz and Stern, these attributes of public participation constitute perceived disadvantages from the perspective of the sponsoring organizations, as public participation can be time-consuming, resource-intensive, and often results in “messier than what might emerge from a purely internal agency process.”⁷⁹⁷

5.3 Proposed mitigation and monitoring measures are often inadequately implemented

It has been argued that the “effectiveness of environmental impact assessment depends largely on fully implementing cost-effective measures and other activities designed to attenuate the undesirable impacts of a proposed project on the natural and human environments.”⁷⁹⁸ EIA reports usually incorporate measures or actions to prevent or attenuate adverse environmental impacts of development proposals. What may be unusual is to have these recommendations adequately implemented during the operational and decommissioning stages of the development project. This inadequacy can be triggered by different factors.

First, the project proponents may have no authority to implement the recommended measures.⁷⁹⁹

Next, comprehensive guidelines to achieve an effective implementation of mitigation measures is not adequate.⁸⁰⁰ The United States Department of Agriculture office of the Inspector General has

⁷⁹⁶ Dietz and Stern, *supra*, 53.

⁷⁹⁷ *Ibid*, 54.

⁷⁹⁸ There are contentions that the usefulness of the EIA process: “lies not so much in the accuracy of the impact predictions, but in the focus upon impact management” Bailey, J., V. Hobbs and A. Saunders “Environmental auditing: artificial waterway developments in Western Australia” (1992) 34 *Journal of Environmental Management*, 1–13, 12; Arts *et al* 2001, *supra*; Morrison-Saunders, A, J. Arts, J. Baker and P. Caldwell, “Roles and stakes in environmental impact assessment followup,” (2001) 19:4 *Impact Assessment and Project Appraisal*, 289–296. Morrison-Saunders, A, J. Baker, and J. Arts, “Lessons from practice: towards successful follow-up” (2003) 21:1 *Impact Assessment and Project Appraisal* 43–56.

⁷⁹⁹ Ortolano and Shepherd illustrate this with a measure that requires affected populations to “install double glazed windows to offset increased traffic noise,” Ortolano and Shepherd, *supra*, 75.

⁸⁰⁰ Enrique, L., *et al.*, “On the successful implementation of mitigation measures” (2005) 23:3 *Impact Assessment and Project Appraisal*, 182-190, 183; Government of Canada, *Review of Mitigation and Monitoring Measures for Seismic Survey Activities in and Near the Habitat of Cetacean Species at Risk* (Fisheries and Oceans Canada, 2015) 4.

reported that “reliance on speculative mitigation measures in order to reach a FONSI significantly compromised environmental quality.”⁸⁰¹

Three reasons for post-decision monitoring has been identified: monitoring for understanding, monitoring for progress, and monitoring for compliance.⁸⁰² While compliance monitoring aims to determine project compliance with regulations, agreements, or legislation, progress monitoring is aims to “confirm anticipated outcomes and to alert managers to unanticipated outcomes.”⁸⁰³ In this regard, EIA follow-up plays a watch-dog role: it ensures that a project is developing within specific parameters and that operating procedures are being complied with; it is useful to track social changes in order to “assign costs associated with the project and to ensure compliance with stated commitments.”⁸⁰⁴ Unfortunately, the absence of action-forcing mechanisms to ensure an effective implementation of impact mitigation measures is absent.⁸⁰⁵ The absence of a compliance program makes it difficult to ensure that mitigation measures are adequately implemented and complied with.

6 Chapter summary

This chapter raised two research questions: how can the affected public participate in environmental decision-making? What are some of the arguments for and against public participation in environmental decision-making? The analysis shows that the affected communities and other interested actors can be involved in environmental decision-making through participating in the environmental assessment of projects having significant

⁸⁰¹ United States Department of Agriculture (USDA), *Malheur National Forest (N.F.), Final Environmental Impact Statement and Proposed Forest Plan Amendments: Flagtail Fire Recovery Project* (Volume 1) (Oregon: USDA, 2004) 577.

⁸⁰² Noble, *supra*, 142.

⁸⁰³ *Ibid*, 142-143.

⁸⁰⁴ Noble, *supra*, 142-143.

⁸⁰⁵ Ortolano and Shepherd, *supra*, 75.

environmental impacts in their communities. This suggests, participating in EIA screening, scoping impact analysis, reporting, reviewing, decision-making, and follow-up.

With regards to why public participation is important, three major benefits were identified: preventing and attenuating significant environmental and socio-economic impacts; improving environmental democracy and transparency; and promoting sustainable development. The study shows that even though public participation in EIA is globally acknowledged as a tool to promote environmental democracy and sustainable development, there are challenges to achieving these goals. For example, failure in preventing environmentally damaging projects, failure in implementing, adequately, the proposed mitigation and monitoring measures, and inadequate public participation in environmental assessment. If EIA fails to avert projects with impacts that cannot be mitigated, achieving environmental justice and sustainable development would be implausible.

CHAPTER FIVE

THE EIA SYSTEM IN CAMEROON

1 Introduction

Cameroon is a developing country, endowed with abundant and diverse environmental resources. Given that resource exploitation very often resulted in degradation such as deforestation, and water, air, and soil pollution, and with ramifications for subsistence communities, provisions relating to environmental and socio-cultural considerations have been integrated into Cameroon's legislation.⁸⁰⁶ However, Cameroon cannot achieve its constitutional goal to protect human health and the environment⁸⁰⁷ without effectual institutional arrangements for environmental impact assessment (EIA).⁸⁰⁸

This chapter aims to examine the adequacy of Cameroon's institutional framework for EIA (the EIA system) in protecting subsistence communities from the environmental and socio-economic impacts of project developments, including the negative impacts of large-scale agricultural investments. Because the value of an EIA report (the result of an EIA process) is directly linked to the value of the EIA process in a country,⁸⁰⁹ this chapter will achieve its objective by also studying the EIA report for the Herakles Farms project, prepared in accordance with the EIA laws of Cameroon. So, the second objective is to critically study EIA practice in Cameroon.

⁸⁰⁶ Law No. 94-01 of 20 January 1994 to lay down Forestry, Wildlife and Fisheries Regulations (Forest Code), article 16; Law N° 96/12 of 5th August 1996 - Relating to Environmental Management in Cameroon [Environmental Code]; Decree 94/259/PM of 31 May 1994 - Creation of a National consultative Commission on the Environmental and sustainable Development; Ministerial Order N° 0069/MINEP of 08 March 2005 - Defining the categories of operations subject to EIA; and Rule N° 0070/MINEP of 22nd April 2005 Fixing the different categories of operations submitted to the realization of an EIA (article 19 of the law).

⁸⁰⁷ Law No. 2008-1 of April 14, 2008 to Amend and Supplement some Provisions of Law No. 96-6 of January 18, 1996 to Amend the Constitution of June 2, 1972 (CM013) Preamble [Cameroon Constitution].

⁸⁰⁸ An effective institutional arrangements for EIA serves as the basis for EIA practice in every nation, Momtaz, S. and S. M. Z. Kabir, *Evaluating Environmental and Social Impact Assessment in Developing Countries* (Elsevier, 2013) 29 [Momtaz and Kabir].

⁸⁰⁹ *Ibid*, 77.

This study is different to other outdated assessments⁸¹⁰ that looked into a few aspects of *Decree No. 2005/0577/PM of 23/02/2005, on the modalities for carrying out environmental impact assessments* (Decree No. 2005/0577/PM) to determine the effectiveness of the EIA system in Cameroon. The rationale behind evaluation of institutional arrangements in Cameroon is that the EIA system is comparatively new: Decree No. 2005/0577/PM was reviewed in 2013. Given that there has been no adequate appraisal of the revised legislation,⁸¹¹ more research is, therefore, needed to help investigate possible shortcomings, and make recommendations for a successful EIA implementation in Cameroon. Hence, the chapter will end with recommendations to address possible flaws and strengthen the EIA system to promote sustainable (agricultural) developments in the country.

2 Institutional framework for EIA in Cameroon

EIA institutional arrangement is a fundamental determinant of an effective EIA.⁸¹² As Momtaz and Kabir note, an effective institutional framework for EIA depends on two structures/arrangements: (1) legal structures (laws, rules, regulations, and traditions) and administrative arrangements (EIA procedures, administrative structures, the roles and responsibilities of agencies, resources, and capacity).⁸¹³ Seen from this perspective, there is a direct relationship between the efficiency of an EIA system and the adoption of substantial legal

⁸¹⁰ Alemagi, D., *et al.*, “Cameroon’s Environmental Impact Assessment Decree and Public Participation in Concession-Based Forestry: An Exploratory Assessment of Eight forest-dependent Communities” (2013) 6:10 *Journal of Sustainable Development* [Alemagi *et al.*]; Bitondo, D., “Environmental assessment in Cameroon: state of the art” (2000) 18:1 *Impact Assessment and Project Appraisal* [Bitondo]; Kengne, N., D. Bitondo and M. E. Emeran, “Public Hearings in Environmental and Social Impact Assessment for Energy Sector Projects in Cameroon (2013) 31:1 *Impact Assessment and Project Appraisal* [Kengne *et al.*]; and Nguene, F. R., *et al.*, “Role and Level of Stakeholders Involvement in the EIA Practice in Cameroon: Case of EIAs of the Upstream Energy Sector” (2012) *International Association for Impact Assessment* [Nguene *et al.*].

⁸¹¹ *Decree No.2013/0171/PM of February 14, 2013 laying down rules for conducting environmental and social impact studies* [EIA Regulation].

⁸¹² Sadler, B., *International study of the effectiveness of environmental assessment: final report* (Canadian Environmental Assessment Agency, 1996) 78.

⁸¹³ Momtaz and Kabir, *supra*, 15.

and administrative structures for EIA in most, if not all, countries in the World. It is important to evaluate the institutional arrangements for EIA as a poor and unclear legislation may impose considerable costs, insecurity in the application of EIAs, and delay in the realization of environmental goals.

2.1 Legal structures

Cameroon has contributed meaningfully to the development and advancement of EIA policy and practice in Africa. For example, environmental assessments were conducted for the Mokong dam project in the Far North Region of Cameroon,⁸¹⁴ the Waza-Logone project in 1995,⁸¹⁵ the Chad-Cameroon Pipeline in 1999,⁸¹⁶ the Lom Pangar dam project in the East Region of Cameroon in 2005,⁸¹⁷ the Herakles Farms project in South West Cameroon in 2011,⁸¹⁸ among others. The main objective of evaluating the environmental impacts of these projects was to obtain detailed information and views on the environment, both bio-physical and socio-economic, that could assist in supporting the integration of social and environmental concerns of these projects into the decision-making process in Cameroon. Because these projects were likely to have adverse impacts upon environmental resources of local communities, compliance with laws and policies governing EIA in Cameroon during project implementation and decommissioning was essential.

I will proceed with a discussion about Cameroon's EIA laws, beginning with the Cameroon Constitution which is the supreme law of Cameroon. It defines the powers of the government (the executive power, the legislative power, and the judicial power) and provides the

⁸¹⁴ Bitondo, *supra*.

⁸¹⁵ *Ibid*.

⁸¹⁶ Cameroon Oil Transportation Company (COTCO), *Specific Environmental Impact Assessment (SEIA) for the Interaction between the Chad-Cameroon Pipeline Project and the Lom Pangar Dam Project Lom Pangar, Cameroon* (Yaounde: COTCO, 2011).

⁸¹⁷ *Ibid*.

⁸¹⁸ Herakles Farms, *Environmental and Social Impact Assessment prepared for SG Sustainable Oils Cameroon Ltd.* (Yaoundé: Herakles Farms, 2011) [Herakles Farms EIA Report].

fundamental rules and principles that govern the Republic of Cameroon, including its land resources. Moreover, I will discuss the Forestry Law, the National Environmental Management Law, and the environmental and social impact assessment law.

2.1.1 The Constitution of Cameroon

Since the Constitution of Cameroon (Constitution) came into force in 1972, it has been amended two times.⁸¹⁹ The Preamble to the Constitution, serving as an introduction to the Constitution's guiding principles and underlying objectives, proclaims the country's desire to harness its land and environmental resources so as to ensure the prosperity of every Cameroonian.⁸²⁰ The Preamble reaffirms the State's duty to safeguard the protection of vulnerable populations, including subsistence communities, minority populations, and indigenous groups according to the law.⁸²¹ The Constitution also asserts the country's connection to the fundamental freedoms enshrined in the *Universal Declaration of Human Rights* and guarantees the rights to a healthy environment and to use and dispose of land and other property as basic human rights.⁸²² Specifically, the Preamble announces that "every person shall have a right to a healthy environment" and that the "protection of the environment shall be the duty of every citizen."⁸²³

The Constitution, comprising sixty-nine articles, describes the national frame of government in Cameroon. Its first article entrenches the doctrine of the separation of powers in Cameroon, whereby the government of the Republic of Cameroon is partitioned to (1) the executive branch, consisting of the Head of State (President) who shall define the national policy and ensure

⁸¹⁹ Cameroon Constitution, *supra*.

⁸²⁰ *Ibid*, preamble.

⁸²¹ *Ibid*.

⁸²² *Ibid*.

⁸²³ *Ibid*.

respect for the Constitution,⁸²⁴ (2) the legislative branch, consisting of the Parliament (National Assembly and Senate) which shall legislate and control Government action,⁸²⁵ and (3) the judicial branch, comprising the Supreme Court, Courts of Appeal and Tribunals, which shall administer justice in the territory of the Republic of Cameroon in the name of the people of Cameroon.⁸²⁶ Hence, the Constitution is interpreted, implemented, and supplemented, by constitutional law.⁸²⁷

2.1.2 The Forestry Law

Within the framework of the Rio Conventions adopted during the 1992 United Nations Conference on Environment and Development,⁸²⁸ the Government of Cameroon (GOC) enacted *Law No. 94-01 of 20 January 1994 (Forestry Law)*.⁸²⁹ The Forestry Law, in addition to the implementing instruments, lays down regulations for forestry, wildlife, and fisheries, with a view to ensuring sustainable conservation and use of these resources in Cameroon.⁸³⁰ The Forestry Law is divided into ten parts: general provisions; protection of nature and biodiversity; forests, financial and fiscal provisions; promotion and marketing of timber and forest products; transitional provisions; wildlife; fisheries; prosecution of offenses; miscellaneous; and final provisions.

⁸²⁴ Cameroon Constitution, *supra*, article 5.

⁸²⁵ *Ibid*, article 14.

⁸²⁶ *Ibid*, article 37.

⁸²⁷ This would include statutory law precedent, treaties, and international norms and rules—which define the relationship of the three branches of government.

⁸²⁸ The Rio conventions include the Convention on Biological Diversity (CBD), Convention on Biological Diversity (CBD) (ILM 31 (1992); *United Nations Framework Convention on Climate Change*, UN Doc. A/AC.237/18 (Part II)/Add.1; 31 I.L.M. 849 (1992).

⁸²⁹ *Law No. 94-01 of 20 January 1994 to lay down Forestry, Wildlife, and Fisheries Regulations* [Forestry Law].

⁸³⁰ *Ibid*, Section 1.

Under the Forestry Law, the State shall ensure the protection of the forestry, wildlife, and fishery heritage.⁸³¹ This legislation proclaims that the “...initiation of any development project that is likely to damage a forest or aquatic environment shall be subject to a prior study of the environmental hazard.”⁸³² This means that the implementation of any activity likely to cause disturbances in forests or water in Cameroon shall be subject to a prior assessment of environmental impacts.⁸³³ Hence, the Forestry Law, in addition to its implementing decree, establishes a classification of acts, including logging and fishing, that will be subject to environmental impact assessment, as well as conditions and norms for forest management in Cameroon.

2.1.3 The Environmental Management Law

The first major law for the protection of the environment is *the Law No. 96/12 of 5th August 1996 relating to environmental management* (Environmental Code). The Environmental Code is divided into seven parts—general provisions, preparation, coordination and financing of environmental policies, environmental management, implementation and follow-up of programs, incentive measures, liability and sanctions, and miscellaneous and final provisions. This law outlines the general legal framework for environmental management in Cameroon: it proclaims that the protection of the environment and the rational management of natural resources is a matter of general interests.⁸³⁴

The Environmental Code is predicated on the notion that the President of the Republic of Cameroon shall define the national environmental policy and the government shall formulate

⁸³¹ Forestry Law, *supra*, Section II.

⁸³² *Ibid*, Section 16.

⁸³³ *Ibid*.

⁸³⁴ Environmental Code, *supra*, articles 1-2.

national strategies, plans or programs for its implementation.⁸³⁵ So, while the Environmental Code establishes obligations and sets the tone for environmental management in the country, responsibility to implement the country's national environmental policy is delegated to national and local governments.

Under the Environmental Code, environmental management is based on six principles: precaution principle; prevention and corrective action principle; pollute and pays principle; participation principle; the principle of liability and mutual decision; and subsidiarity principle.⁸³⁶ With regards to the participation principle, the Environmental Code declares that each citizen shall have access to environmental information, each citizen shall safeguard the environment, private bodies shall promote the participation principle, and environmental decisions shall be taken after public consultation and public debate.⁸³⁷ Hence, this law imposes on public authorities a duty to involve the affected and interested public in environmental management in Cameroon.

The Environmental Code also takes account of the fact that environmental resources are affected by economic developments. Article 17 of this law calls on the promoter or owner of any development project "which may endanger the environment, owing to its dimension, nature... to carry out an impact assessment."⁸³⁸ The environmental assessment shall determine the direct and indirect impacts of the proposed development on the quality of life of populations in the project area and on the physical environment.⁸³⁹ The Environmental Code arguably establishes a

⁸³⁵ Environmental Code, *supra*, article 3.

⁸³⁶ *Ibid*, article 9(a-e).

⁸³⁷ *Ibid*.

⁸³⁸ *Ibid*, article 17.

⁸³⁹ *Ibid*.

procedural right of local communities and concerned publics to participate in EIA decision-making in Cameroon.

2.1.4 The environmental and social impact assessment law

In addition to other sectoral laws that Table 13 outlines and that overtly mention the need to conduct an environmental assessment, *Decree No.2013/0171/PM of February 14, 2013, lays down rules for conducting environmental and social impact studies* (EIA Law) is the regulation for environmental and social impact assessment in Cameroon.⁸⁴⁰ Introduced in Parliament and signed by the Prime Minister on February 14, 2013, the EIA Law became the code of conduct and procedural framework governing environmental decision-making in Cameroon. It was promulgated for the implementation of Article 17 (the EIA provision) of the Environmental Code. It epitomizes the first attempt made by the government of Cameroon to launch, officially, both social impact assessment and strategic environmental assessments as instruments for environmental assessment in the country.⁸⁴¹

The EIA Law outlines the EIA requirements in Cameroon: it stipulates the type of projects to be subject to an environmental and social impact assessment⁸⁴² and defines its basic content.⁸⁴³ Articles 5, 6, 7, 11, and 14 describe the central EIA authority to implement, coordinate, and enforce the EIA provisions during an environmental assessment study, including contents of the terms of reference (TOR) and the EIA report. As shall be illustrated in subsequent paragraphs,

⁸⁴⁰ *Decree No.2013/0171/PM of February 14, 2013 lays down rules for conducting environmental and social impact studies* [EIA Regulation].

⁸⁴¹ The EIA Regulation repealed *Decree no 2005/0577/PM of 23/02/2005 on the modalities for carrying out environmental impact assessments in Cameroon* which focuses predominantly on environmental impacts of proposed developments.

⁸⁴² It however exempts from EIA application, projects that have to do with national security, EIA Regulation, *supra*, article 23.

⁸⁴³ *Ibid*, article 4.

this regulation further describes the significant outcomes from EIA decision-making,⁸⁴⁴ outlines the validity of Environmental Compliance Certificate,⁸⁴⁵ and states the condition for public participation⁸⁴⁶ and the procedure of appeal and hearing about the rejection of EIA report by the Central EIA authority.⁸⁴⁷

Table 13: The EIA System in Cameroon

Subject matter	Law/Order/Decree
Environmental management	Law N° 96/12 of 5th August 1996 - Relating to Environmental Management in Cameroon Decree 94/259/PM of 31 May 1994 - Creation of a National consultative Commission on the Environmental and sustainable Development Decree N° 2001/718/PM of 3 September 2001 - The organization and functioning of the Inter-ministerial committee on the Environment Decree No. 2013/0171 of 14 February 2013 - Relating to Environmental Management in Cameroon Ministerial Order N° 0069/MINEP of 08 March 2005 - Defining the categories of operations subject to EIA Rule N° 0070/MINEP of 22nd April 2005 - Fixing the different categories of operations submitted to the realization of an EIA (article 19 of the law).
Dangerous substances	Law N° 98/015 of 14 July 1998 - Relating to installations classified as dangerous, insalubrious, and inconvenient; Decree N° 98/818/PM of November 1999 - Laying down conditions for construction and operation of installations classified as dangerous, insalubrious, and inconvenient.
Public health	Law N° 64/LF/23 of 13 November 1964 – relating to the protection of public health.
Seeds	Law No. 2001/014 of 23 July 2001 lays down the conditions for conducting seeding activities in Cameroon. ⁸⁴⁸
National parks	Law No. 78-23 relating to the protection of national parks and lays down the methods of reporting infringements and their corresponding sanctions.

2.1.5 Cameroon`s EIA Commitments

Multilateral environmental agreements (MEAs), including conventions, as well as customary international laws, general principles of law or court judgments, establish significant policies and principles and carry various commitments for countries that signed/endorsed them.⁸⁴⁹ Article 45

⁸⁴⁴ *Ibid*, article 14.

⁸⁴⁵ *Ibid*, article 15.

⁸⁴⁶ *Ibid*, article 9.

⁸⁴⁷ *Ibid*.

⁸⁴⁸ This law aims to promote agricultural development in Cameroon by enhancing the outcomes of agriculture research with a view to enhancing plant diversity; guarantee the quality of seeds distributed to farmers; prevent unfair competition; and promote the conservation of national phytogenetic resources.

⁸⁴⁹ Kurukulasuriya, L., and N. A. Robinson, *Training Manual on International Environmental Law* (Hertfordshire: UNEP, 2006) 1-3.

of the Constitution proclaims that the President shall negotiate and ratify conventions (treaties),⁸⁵⁰ and duly ratified treaties shall, “following their publication, override national laws.”⁸⁵¹ This quotation indicates that the treaties that Cameroon has ratified (Table 14) will take precedence over any domestic legislation, but the Constitution. Thus, the (environmental) human rights provisions of the Constitution should not be overridden by, say, an investment treaty. Irrespective of the government’s plan to foster investment and economic growth, it has to stay within the borders of the Constitution. Article 45, therefore, renders the Constitution the highest law of the land and the cornerstone of Cameroon’s politics.

Table 14: Cameroon’s EIA commitments

-
- Convention on Biological Diversity (ratified on 1994/08/29 and enforced on 17 January 1995).
 - Framework Convention on Climate Change (FCCC) ratified on 1994/10/19
 - Kyoto Protocol adherence in 2002 enforced in February 2005.
 - Convention to combat Desertification in 1994 ratified on 1997/5/29
 - Montreal Protocol on Ozone Depleting Substances (adherence in 30/08/1989 and signed in 1992)
 - Basel Convention on the Control of Trans-boundary Movements of Hazardous, adherence on 2002
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the •Washington Convention (CITES) (accession 5 June 1981 and enforced 3 September 1981
 - Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the
 - West and Central African Region (adopted on 23 March 1981 in Abidjan and enforced on 5 August 1984)
 - Convention on the Conservation of Nature and Natural Resources (Alger, 1968) CAB/LEG/24.1

*Source: compiled by the author from many different sources*⁸⁵²

2.2 Administrative arrangements

Momtaz and Kabir’s research shows that administrative arrangements comprise EIA procedures, administrative structures, the roles and responsibilities of agencies, resources, and capacity.⁸⁵³

⁸⁵⁰ Cameroon Constitution, *supra*, article 45.

⁸⁵¹ *Ibid.*

⁸⁵² Government of Cameroon, *NCSA Project: Inter Thematic Evaluation of Capacity Strengthening in the Implementation of the three Rio Conventions in Cameroon: Biodiversity, Climate Change And Desertification Control* (Yaounde: Government of Cameroon, 2007) 10; Herakles Farms EIA Report, *supra*, 13; and Rainbow Environment Consult Sarl, *Inter Thematic Evaluation of Capacity Strengthening in the implementation of the three Rio Conventions in Cameroon: Biodiversity, Climate Change and Desertification Control* (Yaounde: Republic of Cameroon, 2007) 10-11 [Rainbow Environment].

⁸⁵³ Momtaz and Kabir, *supra*, 15.

Observed from the standpoint of Momtaz and Kabir, I will start by studying the administrative structures and the responsibilities of EIA agencies before moving to the EIA process. In Cameroon, the administrative framework for EIA is controlled by three categories of actors from both the public and the private sector. These three categories of actors include (1) proponents or developers, (2) the public, including affected populations and environmental organizations, and (3) regulators or authorities. EIA regulators include the Ministry of Environment, Nature Protection, and Sustainable Development (Ministry of the Environment), the Inter-Ministerial Committee on the Environment, the National Consultative Commission on the Environment and Sustainable Development, and the National Environmental and Sustainable Development Fund. With respect to environmental management in Cameroon, each one of these actors has a major role.

2.2.1 The Ministry of the Environment

There was no separate or single authority to deal exclusively with environmental issues, including the EIA process, in Cameroon until 1994. Bitondo's research shows that "provisions relating to environmental consideration were found in laws regulating hunting, fishing, industrialization, utilization of water resources, forest exploitation, mine extraction, marine and coastal management, and public hygiene."⁸⁵⁴ Therefore, environmental management was piecemeal than holistic. This institutional constraint may have impeded the optimum use of natural resources as each sectoral agency, industrial agriculture or water pollution, for example, followed its objectives with little harmonization and integration such as the overall impact on the biophysical environment and human health.

⁸⁵⁴ Bitondo, *supra*, 33.

Chapter 10 of Agenda 21 calls for a holistic approach to the planning and management of natural resources.⁸⁵⁵ It proclaims that integration should consider all environmental and socio-economic factors, as well as land, water, air, biota, geological and other resources. According to Agenda 21, integrated consideration accelerates suitable choices and trade-offs, and hence, maximizes “sustainable productivity and use.”⁸⁵⁶ The World Bank has also emphasized the importance of taking a holistic approach to environmental management, and the need to recognize the meaningful interaction between different environmental media.⁸⁵⁷

Table 15: EIA departments in Cameroon

Ministry	Function
The Ministry of the Environment, Nature Protection and Sustainable Development (Ministry of the Environment)	The Ministry of the Environment elaborates, plans, promotes, oversees, and coordinates (and works with other ministries and departments) the implementation of environmental and sustainable development policies and programs.
The Ministry of Agriculture and Rural Development (MINADER)	The MINADER is responsible for the: development, planning and realization of the governmental programs related to agriculture and rural development. ⁸⁵⁸
The Ministry of State Property and Land Tenure (MINDAF)	The MINDAF is responsible for the management of State private property as well as goods, furniture, and buildings.
Ministry of Industry, Mines and Technological Development (MINIMIDT) ⁸⁵⁹	The MINIMIDT, together with the administrations concerned, promotes ecologically sustainable industrial development, monitors, and controls hazardous, harmful or inconvenient establishments regarding safety, hygiene and health, and develops and implements quality control programs.
The Ministry of Energy and Water Resources (MINEE)	The MINEE is in charge of the development of governmental plans and strategies concerning energy and water supply; the prospection, search and exploitation of water in urban and rural areas; • and the promotion of new sources of energy, in conjunction with the Ministry in charge of scientific research.

Source: Adapted by the author from the review of literature in Cameroon

⁸⁵⁵ UNCED, *supra*, Para 10.

⁸⁵⁶ *Ibid.*

⁸⁵⁷ Hanrahan, D. *et al.*, *Environment matters at the World Bank* (Washington, D.C. :World Bank, 1996) 48.

⁸⁵⁸ Among others, this ministry is also responsible for monitoring and protecting various agricultural chemicals, controlling pest, designing strategies and methods to guarantee food safety and self-sufficiency (as well as monitoring their implementation), promoting operations in the agricultural sector, participating in programme planning to improve living conditions in rural areas, and promoting community development and agricultural engineering, Herakles Farms EIA Report, *supra*, 41-42.

⁸⁵⁹ Decree No. 2005/260 of 15 July 2005.

The information in Table 15 is a representation of ministerial departments that are directly involved in environmental management in Cameroon. The Ministry of Environment and Forests, which was created in 1994,⁸⁶⁰ was split in December 2004 into the Ministry of Forestry and Wildlife and the Ministry of Environment and Nature Protection (MINEP).⁸⁶¹ MINEP, which was later dissolved in 2012, was responsible for developing, coordinating, and implementing the country's environmental policy.⁸⁶² The Ministry of the Environment, Nature Protection, and Sustainable Development (Ministry of the Environment) was created in 2012 and has special responsibilities under the *Decree No. 2012/431 of 01 October 2012, relating to the Ministry of Environment, Nature Protection and Sustainable Development*. Its creation reflects an amplified focus on sustainable development issues in Cameroon. For example, this law requires the Minister to:

- Define the terms and principles of rational and sustainable management of natural resources;
- Define environmental management measures, in liaison with the concerned ministries and specialized agencies;
- Develop sectoral master plans of environmental protection, in conjunction with the departments concerned;
- Coordinate and monitor activities of regional and international cooperation agencies environmental and nature in conjunction with the Ministry of Foreign Affairs and the concerned administrations;
- Monitor environmental compliance in the implementation of major projects; and

⁸⁶⁰The Government of Cameroon created the Ministry of Environment and Forests (MINEF) in 1994. MINEF was split on December 2004 into two Ministries: Ministry of Forestry and Wildlife (MINFOF) and Ministry of Environment and Nature Protection (MINEP).

⁸⁶¹ *Decree No. 2004/320 of 08 December 2004, relating to the organization of the government.*

⁸⁶² *Decree No. 2005/117 of 14 April 2005 to organize the Ministry of Environment and Nature Protection.*

- Negotiate international agreements and conventions on the protection of the environment and nature and their implementation in conjunction with the Ministry of External Relations.⁸⁶³

The Ministry of the Environment is responsible for establishing an ad hoc commission to prepare a report on the public hearings and veracity of the information in EIA reports and may employ external expertise to assess EIA reports that are forwarded to it.⁸⁶⁴ As central authority for EIA, this Ministry directly supervises and guides the activities of its subordinate units.

2.2.2 Other EIA institutions in Cameroon

The Environmental Code created sectoral administrations and environment departments such as the Inter-Ministerial Committee on the Environment (ICE), a National Consultative Committee on the Environment and Sustainable Development (NCCESD), and a National Environmental and Sustainable Development Fund (as a financial mechanism for implementation and enforcement of environmental law).⁸⁶⁵ Grassroots communities, decentralized territorial authorities, environmental associations, and administrative units further assist the government of Cameroon. Each one of these actors has a role to play (their duties are to be elaborated by implementing instruments⁸⁶⁶), making the management of the environment in Cameroon highly complex.

For example, ICE is organized by *Decree N° 2001/718/PM of 3 September 2001, relating to the organization and functioning of the Inter-ministerial Committee on the Environment*. ICE was established to assist the Cameroon government in formulating, implementing, and monitoring

⁸⁶³ Government of Cameroon, Ministère de L'Environnement, de la Protection de la Nature et du Développement Durable. Online: <http://www.minep.gov.cm/>.

⁸⁶⁴ EIA Regulation, *supra*, articles 11 and 13.

⁸⁶⁵ Environmental Code, *supra*, articles 10(2) and 11.

⁸⁶⁶ *Ibid*, article 8(2).

environmental policies in the country.⁸⁶⁷ ICE, which comprises 17 members,⁸⁶⁸ oversees the development of action plans to implement environmental policies in Cameroon.⁸⁶⁹ This institution also has the responsibility to ensure that environmental considerations are included in the design and implementation of economic development projects in the country. For instance, the law requires ICE to provide its reasoned judgment on all EIA reports and public consultation programs that the Ministry of the Environment submits to it.⁸⁷⁰ ICE is furthermore charged “with ensuring the participation of all ministries in the sustainable management of resources, directing the updating of the [national environmental management policy].”⁸⁷¹

NCCESD, which is placed under the authority of the Prime Minister, is organized by *Decree No. 94/259/PM of 31 May 1994*. Like ICE, NCCESD assists the Cameroon government to promote rational environmental management in the country. To this end, it assists in coordinating and translating environmental policies that the government develops.⁸⁷²

The National Environmental and Sustainable Development Fund (NESDF) was instituted in 1996 by Article 11 of the Environmental Code of Cameroon. It aims to contribute to the financing of environmental auditing and provide backstopping for sustainable development projects, environmental research, and education. Supporting clean technologies, encouraging

⁸⁶⁷ *Ibid*, article 10.

⁸⁶⁸ The 17 members are representatives from the following ministries: the Ministry of Territorial Administration and Decentralization; the Ministry of Agriculture and Rural Development; the Ministry of Defence; the Ministry of Urban Development and Housing; the Ministry of State Property and Land Tenure; the Ministry of Livestock, Fisheries and Animal Industries; the Ministry of Energy and Water Resources; the Ministry of Environment and Nature Protection; the Ministry of Forestry and Wildlife; the Ministry of Industry, Mines and Technological Development; the Ministry of Planning, Development Programming and Regional Development; the Ministry of Small- and Medium-sized Enterprises, Social Economy and Handicraft(s); the Ministry of Scientific Research and Innovation; the Ministry of Public Health; the Ministry of Tourism; the Ministry of Transport; the Ministry of Industry, Mines and Technological Development; and the Ministry of Public Works, Herakles Farms EIA Report, *supra*, 40.

⁸⁶⁹ Environmental Code, *supra*, articles 10(2) and 16(2).

⁸⁷⁰ EIA regulation, *supra*, article 13.

⁸⁷¹ Rainbow Environment, *supra*, 11.

⁸⁷² Environmental Code, *supra*, article 10(2).

local initiatives on environmental protection and sustainable development, promoting legalized environmental protection organizations; and buttressing the actions of ministries involved in environmental management in Cameroon are additional goals of NESDF.⁸⁷³ According to the Environmental Code, the resources for NESDF shall come from contributions from the State and international donors; voluntary donations; proceeds from environmental fines; and pollution fines.⁸⁷⁴ Thus, NESDF remains the Cameroon government's major treasury in the area of environmental and sustainable development financing in Cameroon.

2.2.3 The EIA process in Cameroon

According to the EIA Law, the administrative procedure of environmental assessments is organized and managed by the Ministry of the Environment. The EIA Law outlines the various steps through which a project requiring an environmental impact assessment will have to undergo. Although not clearly demarcated in the law these measures consist of screening, scoping, assessment and reporting, review and public participation, decision-making, and monitoring.

Screening: Like in other EIA systems, EIA in Cameroon begins with project screening, to determine whether or not an EIA is required. In Cameroon, Article 19 of *Order No. 0069/MINEP of March 8, 2005, laying down the different categories of operations whose realization is subjected to an environmental impact assessment* classifies projects submitted to the realization of an EIA into two categories. First, Category 1 projects (projects requiring a simple EIA); and next, Category 2 projects (projects needing a detailed EIA) as Table shows 16⁸⁷⁵ This listing supports public authorities to review the Terms of Reference (TOR) ascertain the category of the

⁸⁷³ *Ibid*, article 11(1).

⁸⁷⁴ Environmental Code, *supra*, article 11(1).

⁸⁷⁵ Order No. 0069/MINEP of March 2005, article 19.

proposed activity, and comment on the scoping of the likely environmental and social impacts of the proposal.

Table 16: Categories of EIA projects in Cameroon

Category I projects (simple EIA)	Category II projects (detailed EIA)
• Project of modification of installation that underwent a detailed EIA study • abstraction of rural water and real estate projects with 50-100 apartments • periodic maintenance of roads in rural areas, construction of thermal centres and other combustible installation with a capacity of less than 2 megawatts • Project requiring the reclamation of land from water on a lower scale • Water irrigation project with irrigation surface between 100 and 500 hectares • Aquaculture with surface area superior to 50 hectares • Exploitation of community forest • Artisanal and small-scale mining • Industries responsible for the transportation of forest products on a smaller scale • Artisanal leather industry • Industrial exploitation of mineral water • Installation for the repair of aircraft • Installation for the repair of rail way materials • Assembly of vehicles and machines	• Establishments classifies as dangerous, unhygienic and obnoxious of the first category • Dams • Canalization, aqueduct and other installations for the regulation of water: 100,000 meters cube/day as output • Waste recycling units • Installation for the treatment of domestic waste with a capacity greater than 50 tones per day • Large hospital units, large educational and research units • Community and sports infrastructure and other civil engineering Works • Economic infrastructure (construction and rehabilitation of roads, motorways, thermal centers and other combustible installation with capacity of more than 2 megawatts • Agricultural exploitation with surface area greater than 100 hectares • Water irrigation project with irrigation surface greater than 500 hectares with river water • Agro-forestry projects with surface area greater or equal to 50 hectares • Slaughter-house, shipping yard, tourist industry, and industrial fishing • Exploration and exploitation of hydrocarbons, crude oil and installation of gasification and liquefaction

Scoping: The system in Cameroon requires the consideration of baselines and reasonable alternatives, the preparation of TOR, and finally the participation of the public in the EIA process. If a detailed EIA is required, the EIA Law requires the proponent to forward a project file to the Ministry of the Environment and the Competent Administration which may refer to a ministry of relevance. For example, the Ministry of Agriculture and Rural Development, which is responsible for promoting investment in medium and large-scale plantations, would qualify to act as the Competent Administration for encouraging and evaluating proposed large-scale agricultural investments in the country. Under Article 5 of the EIA Law, the project file should contain the (1) name, share capital, the number of jobs that the project will provide, and the

sector of activity; (2) a description and justification of the proposed project and the site chosen, with emphasis on environmental protection of the site chosen; (3) TOR of the EIA study; and (4) proof of payment of the application fee. Until these conditions are satisfied, an application to conduct an EIA shall not be assessed by the appropriate institutions in Cameroon.

Upon receipt of the file, the Competent Administration reviews the application documents and forwards its reasoned opinion on the scoping of the project's potential impacts to the Ministry of the Environment, which is expected to comment on the TOR within 30 days from the date it was submitted.⁸⁷⁶ The scoping process results in a certificate of environmental compliance or a report with specification on the admissibility of the TOR. With an approved TOR, the developer may conduct the environmental assessment:⁸⁷⁷ the proponent may employ the services of a State-approved environmental assessment consultant.⁸⁷⁸

Impact assessment: In Cameroon, impact assessment involves rigorous and appropriate scientific evaluation. The content of the EIA report in Cameroon (which includes the significant issues and factors that the developer needs to address during the impact assessment) has been detailed in Box 9.⁸⁷⁹ Among other things that the developer must include in the EIA report is a description of the public participation program. Except for projects that have to do with national security or defense,⁸⁸⁰ impact assessment for Category I or Category II projects shall be conducted with the relevant population and within the concerned locality through public consultation and public hearings.⁸⁸¹

⁸⁷⁶ EIA Regulation, *supra*, article 5.

⁸⁷⁷ *Ibid*, article 6.

⁸⁷⁸ *Ibid* Article 5(5).

⁸⁷⁹ *Ibid*.

⁸⁸⁰ EIA Regulation, *supra*, article 12.

⁸⁸¹ *Ibid*, article 9.

A public hearing is a formal meeting that is aimed at achieving two goals: advertise the EIA report and obtain public input on the proposed project.⁸⁸² So, public hearing creates an opportunity for the concerned public to express their opinions. Regarding who should be involved in the participation process, the Environmental Code says all “concerned groups” must be consulted.⁸⁸³ The concerned public would include communities that are likely to be affected by a proposed development project.

Box 9: Typical elements of an EIA report in Cameroon

- A summary report in plain language
- Determination of the environmental and human conditions of the project site
- Determination of the environmental and socio-cultural impacts of the proposed project, besides the reasons for selecting the site;
- Description of the project and the suitability of the site among other possible options;
- Description of the method used to realize the environmental and social impact assessment;
- Review of the legal and institutional framework;
- Description of measures predicted to avoid, reduce or eliminate environmental impacts of the proposed project;
- An education and information program including minutes of meetings with the public (local communities, NGOs, trade unions, among others);
- An environmental and social management plan including follow-up mechanisms and a compensation plan;
- Terms of reference of the study and references; and a non-technical summary

The EIA Law obligates the proponent to forward the public consultation program to representatives of the concerned communities at least 30 days before the first meeting. About the content of the program, it shall be comprised of the date and venue of the meetings, a report describing the project, and the purpose of the meetings.⁸⁸⁴ However, the public consultation program will have to receive a *prima facie* approval of the Ministry of the Environment before the first meeting. As outlined in Figure 2, the public consultation program and the report of the

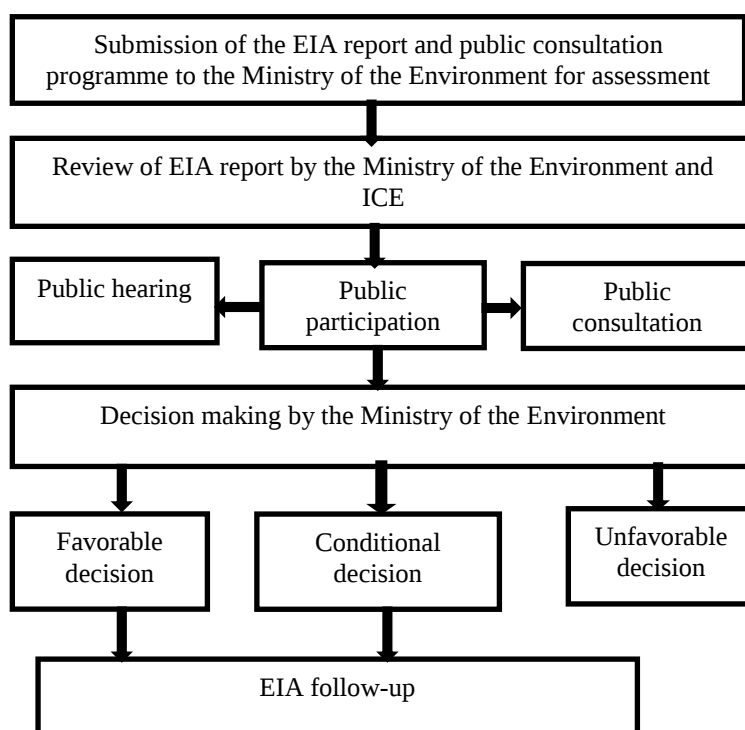
⁸⁸² *Ibid.*

⁸⁸³ Environmental Code, *supra*, article 9(e).

⁸⁸⁴ Environmental Code, *supra*, article 10.

EIA shall be forwarded to the Ministry of the Environment for review. What is more, this Ministry shall submit a copy of the public consultation program and the EIA report to ICE for evaluation and comments. ICE, an ad-hoc commission set up by the Ministry of the Environment, has up to 20 days to submit comments to the Ministry of the Environment,⁸⁸⁵ and where necessary, ICE may employ external expertise to assess the EIA report. Hence, the reasoned judgments of ICE, the concerned public, and this Ministry are vital in the review and the decision-making stage of EIA.

Figure 1: EIA review and decision-making process in Cameroon



Source: Adapted by the author during the literature review process

Figure 1 is a summary of the EIA review and decision-making process in Cameroon. As can be seen, ICE shall, after examining the adequacy of the consultation program and the EIA report,

⁸⁸⁵*Ibid*, article 13.

forward its reasoned judgment to the Ministry of the Environment, for it to make its approval decision. If satisfied with the consultation program and the EIA report, the Ministry of the Environment shall provide its support and shall also establish an ad hoc commission to prepare a report on the public hearings and the veracity of the information in the EIA report after visits to the project site and affected communities.⁸⁸⁶ Besides informing the affected communities and their representatives 30 days before the first meeting, the developer or promoter shall also ensure that for each public hearing, minutes are prepared, adopted, signed, and attached to the EIA report that is later submitted to the Ministry of the Environment for evaluation.⁸⁸⁷

Building on the opinion of ICE and the report of the ad hoc commission that was established to prepare a report on the public hearings and the veracity of the information in the EIA report after field trips to the project site and affected communities, the Ministry of the Environment will have to arrive at its final decision. One of three rulings is possible: a favourable decision (where a certificate of environmental conformity that allows the project to commence is issued); a conditional decision (where a certificate of environmental conformity is issued provided the proponent implements certain measures before commencing the project); and an unfavourable decision (where the Ministry of the Environment interdicts the implementation of the project).⁸⁸⁸

It is, therefore, illegal to implement proposed developments in Cameroon without a certificate of environmental conformity from the Ministry of the Environment .

Monitoring: With regards to checking on how an approved development is progressing, there are some requirements for EIA follow-up in the EIA Law. It proclaims that the Ministry of the Environment shall ensure that any project, whether Category I or Category II projects, for which

⁸⁸⁶ EIA Regulation, *supra*, article 11.

⁸⁸⁷ *Ibid.*

⁸⁸⁸ *Ibid*, article 14.

an EIA is undertaken is subject to a routine technical and administrative monitoring during the post-decision stage of the EIA process.⁸⁸⁹ The promoter is required under the EIA Regulation to submit to the Ministry of the Environment an interim report on the operationalization of the environmental and social management plan.⁸⁹⁰ Regarding penalties for non-compliance, for instance, fines or suspension of license, the proponent can be sanctioned as provided by Cameroonian laws and regulations.

Article 79 of the Environmental Code, which provides for penalties, proclaims that defaulters shall be liable to a fine of up to 5 million CFA FRS and a prison sentence of up to two years. In particular, “any person having implemented a project that does not conform to the criteria, norms, and measures spelled out for the impact assessment.” This sanction applies to any investor that fails to implement the measures designed to prevent, minimize, and resolve future negative impacts of the proposed development as outlined in the environmental and social management plan.

2.3 Critiquing Cameroon’s EIA system

Table 17 is a critical analysis of Cameroon’s environmental assessment system. As can be seen in this Table, it summarizes both strengths and weaknesses of the legal and administrative frameworks of EIA in Cameroon.

2.3.1 Legislative strengths

2.3.1.1 Clear legal basis of EIA

⁸⁸⁹ EIA Regulation, *supra*, article 16.

⁸⁹⁰ *Ibid.*

The research discloses the presence of a well-defined and a detailed legal requirement for EIA in Cameroon. The Environmental Code and the EIA Law are crucial legislation for Cameroon concerning environmental protection through the application of EIA. These laws clearly outline projects that shall undergo an EIA and those that need not, in addition to the responsibilities of the Ministry of the Environment and ICE. In fact, the Ministry of the Environment's duty is lucid regarding project screening, review of TOR, evaluation of EIA report, and decision-making. Because of the existence of a clear list of projects, proponents may not need decisions from the Ministry of the Environment as to whether the proposal requires a simple or detailed EIA.⁸⁹¹ That EIA is now a condition for all listed projects requiring environmental assessments might have avoided major threats on Cameroonian landscapes and biodiversity.

Table 17: Strengths and weaknesses of Cameroon's EIA system

Legislative strengths

- ❖ Clear legal basis of EIA
- ❖ Clear legal basis of social impact assessment
- ❖ Clear legal basis of sustainable development
- ❖ Clear legal basis of access to justice in environmental matters
- ❖ Clear environmental quality standards

Legislative weaknesses

- ❖ Lack of guidance on access to environmental information
- ❖ Public participation in EIA is inadequate
- ❖ Lack of adequate access to justice
- ❖ No legal standards for environmental consultants
- ❖ No provision of EIA for expansion of existing projects

Administrative strengths

- ❖ Separate environmental agency to manage EIA
- ❖ Defined mandate of environmental agencies

Administrative weaknesses

- ❖ The economic cost to promote environmental decision-making
- ❖ Unskilled manpower
- ❖ Weak coordination and conflict of roles/responsibility
- ❖ Weak coordination and conflict of roles/responsibility

⁸⁹¹ The EIA Regulation of 2013 says there is a cataloging of development projects based on precise benchmarks (like size, type, and site) for proposed developments to be screened.

2.3.1.2 Clear legal basis of social impact assessment

The enactment and implementation of the EIA Law of 2013 is a significant development by the government of Cameroon in its quest for protecting the land, water, and forests resources that sustain local communities. It is Cameroon government's first attempt to encourage public and private actors to assess social impacts (benefits and unintended detrimental effects) brought by economic development projects in Cameroon. The focus of this regulation is on the impacts of developmental interventions on both the biophysical and human environments.⁸⁹²

For example, the Environmental Code defines “environment” to include, among others, the economic, social, and cultural factors which are conducive to the existence, transformation and development of the environment, living organisms, and human activities.”⁸⁹³ This provision acknowledges not only the environmental impacts (of economic developments) but also social impacts. By incorporating social impact assessment into the EIA legal framework, social and psychological changes that are associated with project developments may be identified, measured, and managed in such a way that the positive side effects are expanded and the undesirable side effects are lessened.

2.3.1.3 Clear legal basis of sustainable development

Principle 27 of the Rio Declaration declares that States shall commit to “the further development of international law in the field of sustainable development.” The Environmental Code addresses the intersections between environmental, social, and economic laws towards actions that can last for the benefit of both present and future generations. For example, it stipulates, in its 63rd

⁸⁹² Some of the detrimental effects on people may include the disruption of social and communal harmony, the loss of human livelihood and life, the introduction of new diseases, and the destruction of renewable resources. These and other consequences can negate the positive benefits of economic development.

⁸⁹³ Environmental Code, *supra*, article 4(k).

article, that natural resources shall be managed rationally to “meet the needs of the present generations without compromising the capacity of future generations to meet their own needs.”⁸⁹⁴ This quotation tells us that in Cameroon, natural resource exploitation/use should consider long-term protection of human health and the environment.

To assist in the government’s mission to promote sustainable development, the National Environmental and Sustainable Development Fund was instituted in 1996 by Article 11 of the Environmental Code. In this regard, the exploration and exploitation of Cameroon’s environmental resources shall be carried out in agreement with the Rio Principle 27.

2.3.1.4 Clear legal basis of access to justice in environmental matters

Before the enactment of the Environmental Code, there seemed not to be any legal safeguard on public interest environmental litigation. Pre-1990 scholarships on Cameroonian victims or communities of corporate-related human rights abuses taking legal actions against their abusers for compensation are difficult to find. The promulgation of the Environmental Code marked the turning point in the history of environmental governance in Cameroon. With this achievement, grassroots communities and associations working for environmental protection can exercise the rights of grieved people and communities, and act against any development activities seditious to sustainable development.⁸⁹⁵

For example, the lawsuits and successes by the Struggle to Economize Future Environment (SEFE) against a foreign corporation for not effectively implementing EIA⁸⁹⁶ and the Foundation

⁸⁹⁴ Environmental Code, *supra*, article 63.

⁸⁹⁵ *Ibid*, articles 3 and 8(2).

⁸⁹⁶ *Struggle to Economise Future Environment v. SGSOC Ltd.* Suit No. HCN/03/0S/2011.

for Environment and Development (FEDEV) against another foreign investor⁸⁹⁷ and local governments (Bamenda City Council) for failing to adequately implement EIA and for polluting the environment⁸⁹⁸ respectively shows the courts' disposition to protect the Cameroonian environment. These cases may illustrate that Cameroonian courts are willing to safeguard the rights of subsistence communities, including indigenous peoples and other vulnerable groups, in accordance with the law. Under Article 8 of the Environmental Code, non-governmental organizations working for environmental protection "may exercise the rights of the plaintiff with regard to facts constituting a breach of the provisions of the Environmental Code and causing harm to the public they are intended to protect." It was as a result of this provision that SEFE and FEDEV were able to exercise the rights of the communities that were burdened with the impacts of the Herakles Farms oil palm project and activities of the Bamenda City Council in Cameroon.

2.3.2 Legislative weaknesses

2.3.2.1 Lack of guidance on access to environmental information

Access to environmental information is one of the three pillars of the Rio Declaration.⁸⁹⁹ The Bali Guidelines which aim to provide interested developing countries with general guidance on promoting the sound implementation of Principle 10 of the Rio Declaration has defined environmental information.⁹⁰⁰ The Bali Guidelines also call on States to periodically prepare and

⁸⁹⁷ *Foundation for Environment (FEDEV) vs. China Road and Bridge Corporation (CFIB/004M/09)*. Online: <http://www.accessinitiative.org/blog/2009/08/public-interest-litigation-cameroon-court-upholds-locus-standi-and-rational-pil>.

⁸⁹⁸ *Fondation for Environment and Development (FEDEV) & 1 OR. Vs. Bamenda City Council, Bamenda II Council and Bamenda III Council (HCB/19/08)*. Online: <http://www.accessinitiative.org/blog/2009/08/public-interest-environmental-litigation-high-court-upholds-citizens-fundamental-rights>.

⁸⁹⁹ Rio Declaration and Agenda 21, *supra*, Principle 10.

⁹⁰⁰ Among other things, Guideline 2 of the Bali Guidelines proclaims that environmental information should include information about environmental quality, environmental impact on health, and information about legislation and policy, Bali Guidelines, *supra*.

distribute updated environmental information.⁹⁰¹ Under the Agenda 21, there is an expectation that national authorities concerned with environmental protection must, upon request, disseminate information relevant to environment and development to all social groups (individuals, groups, and organizations) on environmental protection issues.⁹⁰²

Research in developing countries indicates that EIA laws can be conflicting, ambiguous, and inadequate for effective EIA practice when they are newly introduced.⁹⁰³ EIA in Cameroon experiences the same situation. For example, the Environmental Code is “umbrella” legislation: it provides for the legal and institutional framework for environmental management. Given that the 1996 Environmental Code lays down the basic principles without any effort at codification, subsidiary legislation addressing particular environmental issues and completing the broad view of the Environmental Code needs to be promulgated. So, despite the strengths (as mentioned earlier) of the EIA system, some flaws remain.

The Environmental Code acknowledges that all persons shall have access to environmental information and measures taken to prevent or compensate for harmful activities on human health and the environment. Specifically, this framework law stipulates that “a decree shall define the context and conditions exercising the” the right to access environmental information.⁹⁰⁴ However, the law that defines the settings and conditions exercising this right does not exist at all. The absence of an environmental information regulation or a freedom of information act means that this provision of the Environmental Code is not implemented. Inadequate

⁹⁰¹ *Ibid*, Guidelines 4-6.

⁹⁰² UNCED, *supra*, Chapter 23.

⁹⁰³ Mendez, J. M., and C. Diaz, *Environment in transition: Cambodia, Lao PDR, Thailand and VietNam* (Manila: Asian Development Bank, 2000) 52.

⁹⁰⁴ Environmental Code, *supra*, article 7(2).

implementation (due to the absence of an enabling legislation) may minimize the chances for the objective of the Environmental Code to be achieved.

The justification of this viewpoint is that, as Bogdanday *et al.* argue, implementing instruments are predominantly wanting as the mandates of the Constitution remain broad.⁹⁰⁵ They further say that the “lack of specific procedural law further reduces the intergovernmental character of norm development.”⁹⁰⁶ Therefore, environmental information plays a major role in understanding of environmental issues, and in public participation and access to justice that this awareness triggers. In the absence of an environmental information regulation, people may not be aware their vulnerability to environmental degradation and health hazards. Also “greater awareness helps increase public participation in decision-making; it makes public bodies more accountable and transparent and it builds public confidence and trust in them.”⁹⁰⁷

2.3.2.2 Public participation in EIA is inadequate

Agenda 21 proclaims “one of the fundamental prerequisites for the achievement of sustainable development is broad public involvement in decision-making,”⁹⁰⁸ including EIA. The objective of public participation is to help acquire “local and traditional knowledge that may be” vital for decision-making. Public participation also facilitates discussion of alternatives, measures to mitigate impacts, and tradeoffs, and ensure that essential consequences are not ignored, and benefits are amplified.⁹⁰⁹ Hence, the involvement of the affected and interested public is a vital

⁹⁰⁵ Von Bogdandy, A. *et al.* (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (New York: Springer, 2010) 518 [Von Bodandy].

⁹⁰⁶ *Ibid*, 518.

⁹⁰⁷ Information Commissioner’s Office, What are the Environmental Information Regulations?. Online: <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>.

⁹⁰⁸ Rio Declaration and Agenda 21, *supra*; public participation “promotes sustainable decisions by providing participants with the information they need to be involved in a meaningful way, and it communicates to participants how their input affects the decision,” IAP2, *supra*.

⁹⁰⁹ EIA Training Resource Manual, *supra*, 161.

strategy to obtain information on likely significant implications, measures to mitigate the impacts, and strategies to identify alternatives. Moreover, public participation is important in determining the scope of the environmental assessment, providing knowledge about the project site, evaluating unpleasant impacts of the proposal and mitigation measures, ensuring the objectiveness and sanity of the EIA report, and follow-up.⁹¹⁰

Because the Cameroon Constitution and the Environmental Code include provisions on public participation in EIA, one might assume that this has logically led to the institutionalization of the right to participate in EIA in Cameroon. Explicit legal provision for public participation in EIA planning, review of EIA report, and implementation of mitigation measures is inadequate in Cameroon. Active community involvement in EIA, under the EIA Regulation, is restricted to the stage of reviewing the EIA report: the EIA Regulation does not allow the affected communities to partake in EIA screening, scoping, impact assessment, decision-making, and follow-up. This deficiency in community participation in all stages of the EIA process may have resulted in uninformed choices and poor environmental outcome.⁹¹¹ It might have, as well, shielded proponents from responding to scoping comments by experts and public members, and hence undermined some of the benefits of public participation in EIA follow-up. As the IAIA “the benefits of active community involvement in EIA follow-up including sharing of special local knowledge, focussed program design, building trust and partnerships.”⁹¹²

The EIA Law says the developer of an authorized project shall produce a biannual report on the

⁹¹⁰ Glasson, J., R. Therivel and A. Chadwick, *Introduction to Environmental Impact Assessment* (3rd) (London: Routledge, 2005)157.

⁹¹¹ The UNEP states that “The inclusion of the views of the affected and interested public helps to ensure the decision making process is equitable and fair and leads to more informed choice and better environmental outcomes,” EIA Training Resource Manual, *supra*, 159.

⁹¹² IAIA 2007, *supra*.

implementation of the environmental management plan to the Ministry of the Environment.⁹¹³

The problem with this provision is that the authorizing agency—the Ministry of the Environment—is the sole “monitoring” institution, making it difficult for developers to be completely accountable to the communities that are affected by their projects and the government. Therefore, the law neither supports the management of authorized or existing projects by all concerned actors (developers, affected communities, and public authorities) nor encourages the affected or interested public to play a watch-dog function. Without public participation in EIA follow-up (monitoring, evaluation, management, and communication) of the project, the mitigation measures (that is the recommendations made by the EIA to attenuate likely impacts) in the environmental management plan in the EIA report may be overlooked by the proponent, and the benefits of EIA follow-up may be compromised. This makes it very crucial that the affected and interested public be engaged in impacts management and monitoring of a project.

EIA monitoring “involves the measuring and recording of physical, social and economic variables associated with development impacts.”⁹¹⁴ Once again, in the absence of an independent monitoring agency in Cameroon that can play a watch-dog function, it may also be challenging to ensure that proposed mitigation measures linked to proposed (large-scale land-based) projects is adequate. Without an independent agency comprising the communities concerned about environmental impacts created by investments in their neighborhood, nothing guarantees that the environmental and social protection measures in the environmental and social management plan will be converted to specific actions by the developer. Taking all these into consideration, EIA in Cameroon may just be a formality to guarantee project authorization: this is problematic in the

⁹¹³ EIA Regulation, article 16

⁹¹⁴ Glasson *et al.*, *supra*, 195.

sense that the goal of EIA—promoting environmental justice and sustainable development—may never be achieved in Cameroon.

2.3.2.3 Lack of adequate access to justice

Access to justice is about how the right to access environmental information and the right of the affected and interested public to participate in environmental decision-making can be enforced.⁹¹⁵ Under the Bali Guidelines, States are expected to ensure that everyone, both natural and legal, has access to a review procedure before a law court or other independent and impartial body to question an environmental decision.⁹¹⁶ The right to access justice implies that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁹¹⁷

The Environmental Code allows environmental grassroots communities and associations, including public authorities, to sue for environmental crimes committed by public and private bodies.⁹¹⁸ Yet, strengthening the right to access justice in environmental matters in Cameroon seems challenging, due to administrative weaknesses. As reported by Sama, the judiciary in Cameroon “is not independent and there is a high risk of abuse of the due process of law.”⁹¹⁹ The absence of an independent judiciary may have a chilling effect on environmental litigation in the country, with the result that the legitimate exercise of environmental rights by the public, including subsistence communities is discouraged.⁹²⁰

⁹¹⁵ UNCED, *supra*.

⁹¹⁶ Bali Guidelines, *supra*, Guideline 15.

⁹¹⁷ UN General Assembly, *Universal Declaration of Human Rights, Resolution 217 A(III)*, UN Document A/810 at 71 (1948), article 8.

⁹¹⁸ Environmental Code, *supra*, article 8(2).

⁹¹⁹ Sama, N. J., Criminal Law and Environment, Prosecutors, Inspectors and NGOs in Cameroon, 6. Online: <http://www.inece.org/conference/7/vol1/Sama.pdf>.

⁹²⁰ According to the Global Witness, the biggest continuing challenge for Cameroon’s Ministry of Forest and Wildlife and other public institutions “is the continuing inertia in pursuing litigation cases and in imposing the

Additionally, progress in enforcing compliance with environmental laws and punishing environmental perpetrators remain regrettably slow. Between 2000 and 2005 Global Witness, an independent forest monitoring organization, carried out independent forest monitoring in Cameroon in support of Forest law enforcement. Working closely with then Cameroon's Ministry of Forests and Environment (MINEF), this independent observer produced 123 field mission reports, three summary reports and the first-ever analysis of the official forestry information management system, which contained all logging authorization and production data.⁹²¹ Among others, the reports shows that “legal progress to bring to account those responsible—both individual infractors and those suspected of mismanaging the system of control—remained disappointingly slow.”⁹²²

Regarding infractions reported and sanctions imposed on the criminals by the MINEF, Global Witness documented that a total of FCFA 4.15 billion (US\$7.5 million) had been levied by the MINEF for illegal logging activities (a breach of Cameroon's forestry regulation), of which only FCFA 1.55 billion (US\$2.8 million), or 37% was reported as paid to the MINEF.⁹²³ The consequence of low progress in imposing compliance with environmental legislation and policies is that environmental crimes will continue to enjoy high impunity, with the result that the environment and natural resource upon which local livelihoods depend on will be threatened. With such barriers within the justice delivery system in Cameroon (such as the low speed with which environmental cases are processed and little progress to comply or enforce compliance with judgments), not only will subsistence communities be treated unfairly as the environmental

appropriate penalties” Global Witness, “Achievements and Lessons Learned from Independent Forest Monitoring (IFM) in Cameroon (2005). Online:

file:///C:/Users/HP/Downloads/lessons_learned_from_ifm_in_cameroon.pdf. [Global Witness].

⁹²¹ Global Witness, *supra*, 1-2.

⁹²² *Ibid*, 2.

⁹²³ *Ibid*.

burdens of local populations go unaddressed. The needs of subsistence communities that depend on the environment will not be met, and establishing and maintaining the rule of law will be impossible in Cameroon.

2.3.2.4 No provision of EIA for expansion of existing projects

Expanding or modernizing current projects is a common phenomenon in Cameroon.⁹²⁴ Therefore, there should be a provision in the EIA Law for expanding existing projects, especially because the need to execute an EIA is determined by whether the proposal (of a new project) exceeds certain threshold limits (for example, agricultural exploitation with surface area greater than 100 hectares shall be subject to a detailed EIA in Cameroon). An existing project (which was below 100 hectares), if expanded, may traverse the legal threshold limit (100 hectares) for environmental assessment, and so may have added environmental impacts to the originally proposed project. The EIA Law has not indicated whether EIA is required for expansion of ongoing projects in Cameroon. In the absence of this provision, a proponent may try to evade undertaking EIA study for the supplementary impacts. The consequences is that the environmental impact associated with project expansion will go unassessed, and possibly, unmitigated. To tackle this issue, the EIA Law should include a provision that requires EIA of project expansion.

2.3.3 Strengths of the administrative arrangements

2.3.3.1 Separate environmental agency to manage EIA

Article 19 of the EIA Law acknowledges the Ministry of the Environment as the national body to manage the environmental assessment process for proposals needing an environmental and social

⁹²⁴ See, for instance, the Cameroon Development Corporation's expansion projects. Online: <http://cdc-cameroon.net/new2014/expansion-projects/>.

impact assessment. Being the sole EIA agency in the country may lead to a greater uniformity and coordination of EIA practices across Cameroon through research, guidance, and dialogue with the private sector, including local communities and investors. Greater consistency and coordination may reduce administrative bottlenecks. The consequence: rapid and effective consultation with local and indigenous groups during the environmental assessment being promoted. Another interesting outcome is that greater consistency and coordination would ensure, adequately and timely, that mitigation measures are applied effectively and are working as planned. This strength of legal order for the Ministry of the Environment to apply EIA portrays the level of Cameroon government's policy to an efficient EIA system.

2.3.3.2 Defined mandate of environmental agencies

The Ministry of the Environment is mandated to address environmental issues in Cameroon. As aforementioned, this Ministry shall ensure the inclusion of environmental concerns in economic decision making, and guarantee that the environmental quality parameters established by the government of Cameroon, in addition to Cameroon's international commitments relating to environmental management and sustainable development, are operationalized. Besides, the involvement of the Inter-ministerial Committee for the Environment (ICE) (a 17- person committee), and concerned administrations in the project approval process is also essential. As aforementioned, these institutions are responsible for providing expert advice on the TOR, EIA report, public participation, and EIA follow-up. For example, ICE must give its reasoned opinion on the quality of the EIA report before the final decision is made by MINENPSD. ICE can employ external expertise to assess the adequacy of an EIA report.⁹²⁵

⁹²⁵ EIA Regulation, *supra*.

2.3.4 Weaknesses of the administrative arrangements of EIA in Cameroon

“No single EIA model is appropriate for all countries; this is neither possible nor desirable.”⁹²⁶

This quote suggests that EIA systems around the world are not the same. They differ, reflecting the socioeconomic, environmental, cultural, and political circumstances of the country it is established for. The transplanted EIA framework may not cause the exact environmental, economic and social relations as it did in the United States and other developed countries, especially if the transplant was a blind copy-paste action. There are some weaknesses in the administrative arrangements of EIA in Cameroon that need addressing for more operative and successful EIA.

2.3.4.1 The economic cost to promote environmental decision-making

The Ministry of the Environment depends on donor funds to cover the main items involved in environmental management such as training, equipment, human resources, infrastructure, education, research, technology development, information management, etc. Without these donations, therefore, the Ministry of the Environment’s effort to administer on the assessment of environmental impacts and effectively manage the environment, in general, may be difficult. Cameroon is currently suffering from weak enforcement of environmental laws, and this deficiency is attributed to, among others, lack of governmental funding and corruption.⁹²⁷

Deficits in the implementation of Cameroon’s EIA law, due to economic constraints, may widen

⁹²⁶ Momtaz and Kabir, *supra*, 48.

⁹²⁷ Global Conscience Initiative, “Legal System”. Online: <http://gci-cameroon.org/about-cameroon/legal-system/>; O. N. Fuo and S. M. Sama “Cameroon’s environmental framework law and the balancing of interests in socio-economic development,” in Faure, M. and W. du Plessis (eds), *The Balancing of Interests in Environmental Law in Africa* (Pretoria: Pretoria University Law Press, 2011) 75–94; Lebovitz, M., H. Newbigging, and A. Alice Puritz, “Empty-threat: Does the law combat illegal wildlife trade?: A Ten-Country Review of Legislative and Judicial Approaches (DLA Piper, 2014); Eyebe, A. *et al.*, “Integrating biodiversity conservation into national development policy: A case study of Cameroon,” (Poverty and Conservation Learning Group, 2012) [Poverty and Conservation Learning Group]. Online: <http://pubs.iied.org/pdfs/G03722.pdf>; Egute, T. O., E. Albrecht, and S. A. Ajonina, “The Legal Protection of Biodiversity in Cameroon” *Journal of Environment and Human*, 10 [Egute, Albrecht and Ajon].

the gap between theory and practice. That is, weak enforcement of environmental laws means inability to achieve the objectives of the EIA Law—the protection of the biophysical and human environments of communities relying on land and other natural resources to survive and thrive.

In countries like Canada, special programs have been created to support environmental NGOs and community-based organizations for projects that are designed to protect the environment and natural resources of the country.⁹²⁸ In the absence of governmental funding, providing financial support to projects that may protect, rehabilitate or enhance the natural environment, raise environmental awareness, promote capacity building in affected and likely-to-be affected communities to sustain environmentally beneficial projects into the future will be impossible.

There are ongoing allegations of corruption in the management and sustainable use of fauna and flora species in Cameroon.⁹²⁹ Corruption is a major factor promoting illegal wildlife trade such as poaching, trafficking, trade, sale, and supply.⁹³⁰ If “poachers [can] corrupt some wayward magistrates and forestry guards by giving them huge sums of money,”⁹³¹ the probability that influential corporate investors and foreign governments will bastardize environmental authorities with dollars, pounds, and Euros when local environmental rights have been violated is high.

This incidence of lack of governmental funding may be the reasoning behind the high cost imposed on proponents involved in making application for the assessment of a detailed environmental and social impact assessment in Cameroon. To illustrate, the application fee to the National Environmental and Sustainable Development Fund for executing a comprehensive EIA

⁹²⁸ Government of Canada, “EcoAction Community Funding Program”. Online: <https://www.ec.gc.ca/ecoaction/>.

⁹²⁹ Lebivitz, *supra*, 43.

⁹³⁰ *Ibid.*

⁹³¹ Poverty and Conservation Learning Group, *supra*, 13.

in Cameroon is CFA 5.000.000 francs (about \$ US 10,000).⁹³² This money shall be payable by the developer to the sustainable development fund as an application fee.⁹³³ This high cost that must be s paid to the Sustainable Development Fund before undertaking a detailed EIA may have a chilling effect, and hence discourage some proponents from spending additional money to collect environmental data in the public interest to facilitate the public consultation process.

2.3.4.2 Unskilled human resources

The Environmental Code and the EIA legislation assign the Ministry of the Environment with broader environmental responsibilities. The volume of tasks has been increasing with increased global awareness and willingness to address climate change issues and promote sustainable development. When the Ministry of the Environment was established in 2012, the responsibilities increased as the government`s focus on sustainable development issues amplified. Nevertheless, human resources, skill levels or training may not have improved. Environmental inspectors, among others, which are required to monitor implementation of environmental laws in Cameroon, lack the capacity necessary to execute the duties conferred on them.⁹³⁴

Some environmental officers in Cameroon require basic knowledge of substantive criminal law and skills to investigate environmental offenses: they know very little about court procedure or the rules of evidence etc.⁹³⁵ A 2012 report found that in Cameroon “judges are not always well informed about environmental laws and are not usually sensitive to wildlife crimes.”⁹³⁶ Another report revealed that magistrates are equally “reluctant to apply the maximum sentence to

⁹³² EIA Regulation, *supra*, article 8.

⁹³³ *Ibid.*

⁹³⁴ Sama Nchunu, *supra*.

⁹³⁵ *Ibid.*

⁹³⁶ Poverty and Conservation Learning Group, *supra*.

poachers, thus providing no disincentive to killing endangered species.”⁹³⁷ This lack of experience can threaten implementation and enforcement of environmental standards, and frustrate the government’s efforts to promote a sustainable management and use of biological diversity in vulnerable communities. EIA can contribute to environmental justice and sustainable development. Yet, it may be difficult to achieve this goal if planning authorities lack skills and know-how to adequately evaluate probable impacts and encourage developers to put forward mitigation measures that can effectually attenuate the impacts.

2.3.4.3 Weak interagency coordination and conflict of roles/responsibility

In Cameroon, the issue of poor inter-sectoral coordination and cooperation at the domestic level between the Ministry of the Environment and other institutions was highlighted in 2009 by the Global Environment Facility (GEF). Accordingly, the Ministry of the Environment’s capacity to bring together these different agencies to enforce compliance with the various laws and regulations in place is limited.⁹³⁸ A related issue is that of conflict of authority and duplication of functions as the Environmental Code spread environmental management responsibilities across many different ministries. The Environmental Code defines “environment” broadly to include flora and wildlife species, in addition to the human environment.⁹³⁹

However, many different ministries such as the Ministry of the Environment, Ministry of Forestry, Ministry of Agriculture, etc., have been created and are all involved in the management of land, fauna and flora species in Cameroon. A conflict of responsibility may arise between these ministries. A most likely case is a project proposal that simultaneously threatens (1) forests

⁹³⁷ Poverty and Conservation Learning Group, *supra*.

⁹³⁸ Egute Albrecht and Ajonina, *supra*, 13; Global Environment Facility, *GEF Country Portfolio Evaluation: Cameroon (1992–2007)* (Washington D.C.: Global Environment Facility Evaluation Office, 2009) 67 [GEF].

⁹³⁹ Environmental Code, *supra*, article 4.

and wildlife, (2) water, and (3) farmland and local communities, as the responsibility to manage these three categories of resources is vested, respectively, in the Ministry of Forestry and Wildlife, Ministry of Energy and Water Resources, and the Ministry of Agriculture and Rural Development.

Blurred roles/responsibilities and fragmentation of environmental decision-making officials in the country may impact negatively on the effectiveness of the administrative control and measures in sustainably balancing environmental, economic, and social concerns/interests.⁹⁴⁰ The absence of effective coordination between all institutions involved may hinder the smooth operation of EIA regime, and hence, the protection of the environmental resources of subsistence communities.

3 Evaluation of EIA practice in Cameroon

The product of an EIA process—an EIA report—and its value is likely to be directly linked to the effectiveness of the EIA process.⁹⁴¹ In addition to describing the environmental and socio-economic impacts, an EIA report includes an evaluation of the public consultation process; the views and concerns expressed by stakeholders and the way they are considered; and an environmental management plan that identifies how mitigation and monitoring measures will be implemented.⁹⁴² This part of the chapter reviews the quality of the EIA report that was prepared for the Herakles Farms Project in Cameroon, in order to critically analyze whether the report contains sufficient information on the project's adverse impacts and recommendations to remedy the impacts. By studying this report, the effectiveness of Cameroon's EIA system in protecting the rights of subsistence communities and preventing land-grabbing in their communities can be

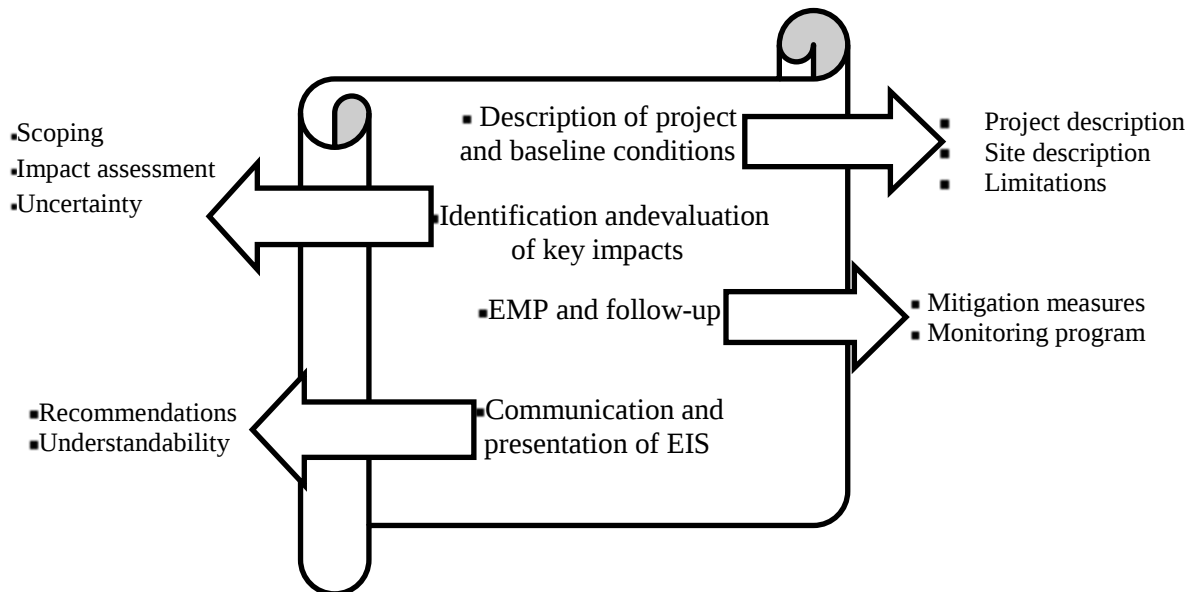
⁹⁴⁰ GEF, *supra*, 67.

⁹⁴¹ Momtaz and Kabir, *supra*, 77.

⁹⁴² Glasson *et al. supra*, 5; Sadler and McCabe, *supra*, 331-332.

evaluated. By so doing, changes that may encourage environmental justice and promote sustainable development could be made.

Figure 2: Review criteria for Herakles Farms` EIA report



Source: Prepared by the author based on information from Momtaz and Kabir

I will employ the review criteria that were developed by Lee and Colley⁹⁴³ in order to critically evaluate the effectiveness of the EIA report for the Herakles Farms project. Although the criteria were drawn up in the context of the United Kingdom, many different researchers have extensively adapted and contextualized them.⁹⁴⁴ For example, Momtaz and Kabir, Badr *et al.*,

⁹⁴³ Lee, N., and R. Colley, *Reviewing the quality of environmental assessments*, (EIA CentreUK: University of Manchester; 1992).

⁹⁴⁴ Badr E. A, A. A. Zahran, and M. Cashmore, "Benchmarking Performance: Environmental Impact Statements in Egypt" (2011) 31:3 *Environmental Impact Assessment Review*; Barker, A., C. Wood, "An evaluation of EIA system performance in eight EU countries" (1999) 19 *Environ Impact Assess Rev.* 387–404; Canelas, L., *et al.*, "Quality of environmental impact statements in Portugal and Spain" (2005) 25 *Environ Impact Assess Rev.*; Cashmore, M., E. Christophilopoulos, and D. Cobb, "An evaluation of the quality of environmental Impact Statements in Thessaloniki, Greece" (2002) 4:4 *Journal of Environmental Assessment Policy and Management* 371–95; Hughes Js, C. Wood, "Formal and informal environmental assessment reports-their role in UK planning decisions" (1996) 13:2 *Land Use Policy* 101–13; Pinho, P., R. Maia, and A. Monterroso, "The quality of Portuguese environmental impact studies: the case of small hydropower projects" (2007) 27 *Environ Impact Assess Rev* 189–

and Sandham and Pretorius modified the review criteria such that they would be appropriate to the context of Bangladesh, Egypt, and South Africa respectively. Bearing in mind that these are developing countries, this research considers these review criteria suitable to the context of Cameroon with some modifications. The criteria are divided into four major areas: description of project and baseline conditions; identification and evaluation of key impacts; environmental management plan (EMP) and follow-up; and communication and presentation of EIA report (Figure 2)

3.1.1 Description of project and baseline conditions

The collection of baseline data on the project locations is an essential basis for carrying out an EIA study and depends on whether data is publicly available or whether public authorities are able and ready to make information about a project's environmental impacts available upon request. According to Momtaz and Kabir, a description of the development and baseline conditions should include the project background (aims, scope, and the policy and legal framework), the site description (physical, natural, and socio-economic environments), and limitations of the project.⁹⁴⁵ I will review the description of Herakles Farms' project (Project) as contained in its EIA report.

The Herakles Farms project

Cameroon's EIA Regulation requires all designated proposals within the meaning of article 14 of the Regulation to obtain environmental compliance certificates before development begins. To acquire the certificate of conformity, article 4 of the same law obliges the proponent to prepare an EIA report containing an analysis of the possible impact, environmental and social, of the

205; Sandham, L. A., and H. M. Pretorius, "A review of EIA report quality in the North West province of South Africa" (2008) 28:4–5 *Environ Impact Assess Rev* 229–40; and Momtaz and Kabir.

⁹⁴⁵ Momtaz and Kabir, *supra*, 62.

proposed development and the mitigation and monitoring measures.⁹⁴⁶ The Herakles Farms project is most relevant for this analysis because, first, the project's site is in Cameroon. Moreover, an EIA report has been prepared by Herakles Farms to meet the requirements of the EIA Regulation. With the use of Lee and Colley's review criteria, I will evaluate the quality and adequacy of this EIA report to protect the local people affected by this project.

The collection of baseline data on a project location is an important basis for carrying out an EIA study. It is perhaps a comparatively straightforward and readily available undertaking. Momtaz and Kabir reasoned that a description of the development and baseline conditions should include the project background, the site description, and limitations of the project.⁹⁴⁷ This project has reviewed the project description as contained in the Herakles Farms EIA report. Accordingly, on September 17, 2009, the Government of Cameroon and SG Sustainable Oils Cameroon Plc. (SGSOC) signed a 99-year contract (Establishment Convention) to establish an oil palm plantation and associated palm oil processing mills. SGSOC is the Cameroonian subsidiary of Herakles Farms, an American multinational, which is the investor and operator of the project. The Project, which covers 80,506 hectares (300 square miles which are about the size of New York City), is located in the South West Region of Cameroon.⁹⁴⁸

The reviewed EIA report indicates that the project aims to produce commercial grade palm kernel oil, crude palm oil, and biodiesel. The company will use the 80,506 hectares to establish the plantation and processing mills to process the fresh fruit bunches. From the plantation, the palm bunches will be transferred to the mills in trucks where they will undergo some processing: sterilization; stripping; washing; mixing; extraction; clarification; finishing; defibration; and

⁹⁴⁶ EIA Regulation, *supra*.

⁹⁴⁷ Momtaz and Kabir, *supra*, 62.

⁹⁴⁸ Herakles Farms EIA Report, *supra*, 16.

palm kernel production.⁹⁴⁹ The project also involves the construction of social infrastructure (clinics, schools, housing and other social infrastructure).⁹⁵⁰ These activities, as highlighted in the EIS, will be regulated by Cameroon’s EIA legislation, in addition to the investor’s internal corporate mandates and a number of international policies, laws, and, regulations.⁹⁵¹

Site description

The Ndian Division (Mundemba/Toko section of the Project Area) and the Kupe-Manenguba Division (Nguti project area) in South West Cameroon are affected by the Project. Among others,⁹⁵² the EIA report provides information on the physical, natural, and the socio-economic environments in both divisions. It highlights details on the land use patterns in both regions to include farming, livestock, fishing, hunting, fuel-wood and wood for other purposes, and non-timber forest products (NTFPs). Shifting cultivation is seen as the basis of the farming system in these two areas, with the collection, processing and marketing of NTFPs traditionally representing a major source of income for the villagers in this area.⁹⁵³ The hydrological networks in the area are used for fishing, washing, and cooking, and the physical environment is “healthy”.⁹⁵⁴

⁹⁴⁹ Herakles Farms EIA Report, *supra*, 71.

⁹⁵⁰ *Ibid*, 16.

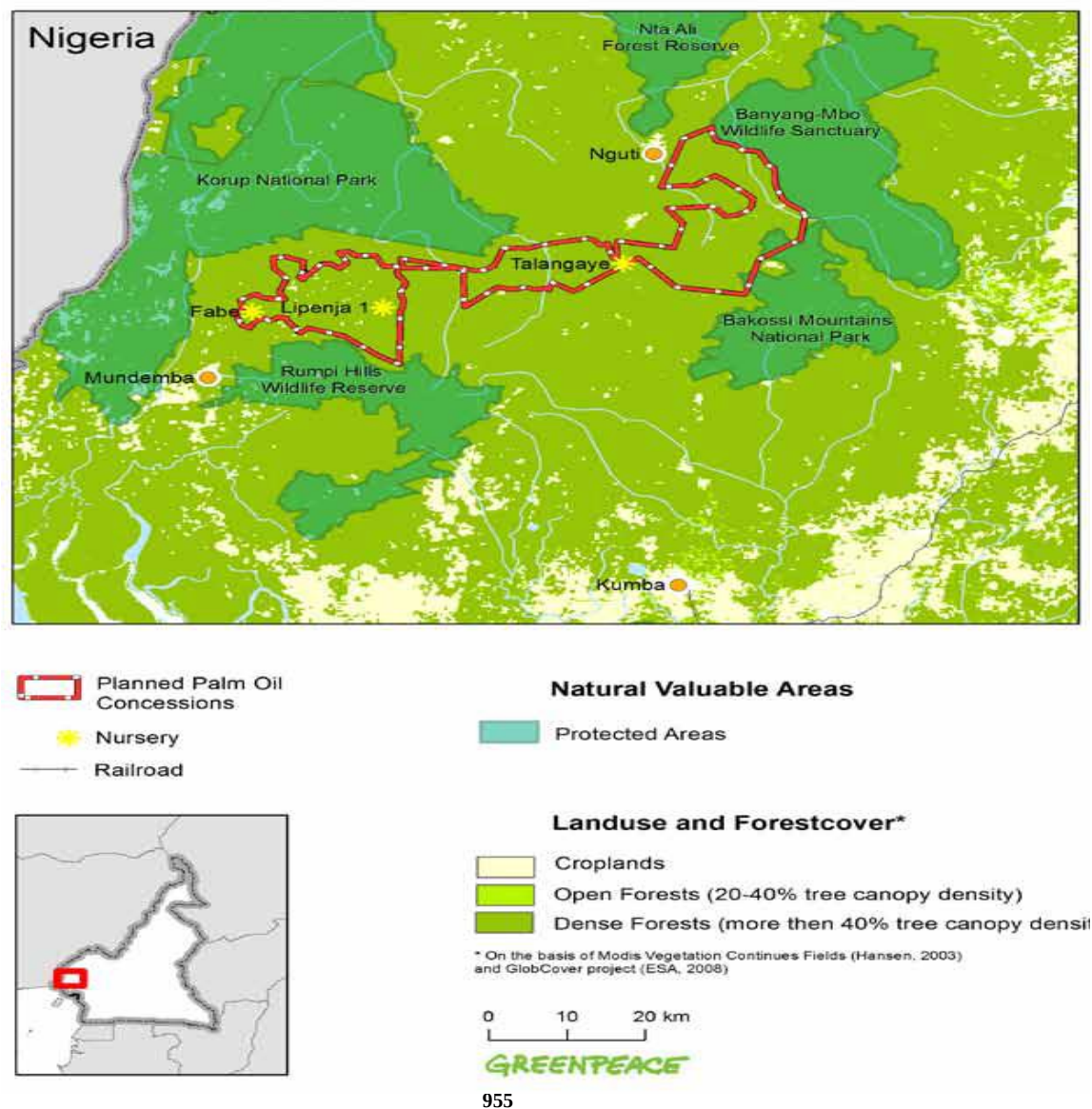
⁹⁵¹ These include Roundtable on Sustainable Palm Oil (RSPO) Principles, IFC Performance Standards, Equator Principles, Guidelines of the UN Global Compact, Good International Industry Practice that helps define leading industry practices, among others, *ibid*, 29.

⁹⁵² The EIA report also provides information on climatology and rainfall (climate and, winds rainfall), air quality, climate change, noise level, geology, hydrology, land use, and landscape, and seismicity, *ibid*.

⁹⁵³ Herakles Farms EIA Report, *supra*, 128-139.

⁹⁵⁴ *Ibid*, 126.

Figure 3: The Herakles Farms concession map



With regards to the natural environment, the EIA report contains information on natural habitat, fauna, flora, avifauna, and zones of ecological interest. Figure 3 illustrates that the Herakles Farms project is located within five major biodiversity hotspots (Korup National Park, Rumpi Hills Forest Reserve, Bakossi National Park, Banyang Mbo Wildlife Sanctuary, and Takamanda-More sanctuary), which are major parts of a tropical rainforest. These forests are highly diverse

⁹⁵⁵ Herakles Farms EIA Report, *supra*, 140.

and full of endangered plants and animal species.⁹⁵⁶ Although the EIA report indicates that in the Bayang-Mbo Wildlife Sanctuary, for example, the “populations of some large mammal species have been seriously affected by unsustainable hunting” yet, it says that the project impact on these species and in this region “will be minor.”⁹⁵⁷

3.1.2 Identification and evaluation of key impacts

According to Momtaz and Kabir, impact identification and evaluation of chief impacts should involve an examination of the EIA report for scoping, impact identification, impact prediction, assessment of significance, etc.)⁹⁵⁸ I will study these four actions because they seem to be the most critical areas of an EIA report, as they cover the outcomes of an EIA study. They are also the areas where the majority of EIA reports is judged as being “poor” and or “very poor.”⁹⁵⁹ The aim of the reviewed report was to identify and evaluate the possible impacts of the project on the natural and human environment, and the measures designed to avoid, mitigate or eliminate the adverse significant impacts effects of the project.⁹⁶⁰

3.1.2.1 Scoping

The EIA report shows that scoping for the project was undertaken in May/June 2010, and involved a literature review of baseline data and field visits (socio-economic, fauna and flora surveys). Key environmental and social impacts of the project (through construction, operation, and decommissioning), which are going to be explained in subsequent paragraphs, were

⁹⁵⁶ For example, large mammals, avifauna, herpetofauna, fishes, and butterflyfiles. About 410 bird species, 82 reptiles, 92 amphibians, 89 species of frogs and toads, 2 tortoises, 2 aquatic turtles, 15 lizards, 5 chameleons; 3 crocodiles, 55 snakes some 130 different kinds of fish species, 118 floral species (of which 8 species have been included on the IUCN red list, with 06 being classified as vulnerable, 1 endangered and 1 as near threatened) were recorded and believed to be present within the Korup National Park, Herakles Farms EIS, *supra*, 130-134.

⁹⁵⁷ It further says that 118 species belonging to 45 families are present in this eco-region, Herakles Farms EIA Report, *supra*, 140.

⁹⁵⁸ Momtaz and Kabir, *supra*, 64.

⁹⁵⁹ *Ibid* 63.

⁹⁶⁰ Herakles Farms EIA Report, *supra*, 21.

identified in the TOR for the EIA (scoping report). The TOR was submitted to the Ministry of Environment, Nature Protection and Sustainable Development on July 29, 2010, and were approved on August 9, 2010.⁹⁶¹

With regard to the consideration of alternatives, the EIA report proclaims that “there was no other alternative for this project as the environment is much more suitable and there is a large number of well-known advantages through the existence of other palm oil producers currently in the region.”⁹⁶² In other words, the investor is saying that there was no alternative site for the project and that the South West Region of Cameroon is the only region in the country with conditions that favor oil palm development.

According to the scoping report (TOR), individual and group meetings were to be considered. In particular, within the framework of the EIA study, administrative and traditional authorities, persons in charge of the engineering services, non-government organizations (NGOs) intervening in the zone, concerned populations, as well as other interested parties were to be consulted.⁹⁶³ Table 18 presents the group public consultation program that was carried out for the Herakles Farms project. These consultation meetings were summarized in a scoping report: the report outlines the objective of the discussions, as well as the strategy and time frame. The public meetings aimed⁹⁶⁴ at presenting the Herakles Farms project to different stakeholders and allowing them to have an understanding of the project’s impacts and mitigation measures.⁹⁶⁵

⁹⁶¹ Herakles Farms EIA Report, *supra*, 26.

⁹⁶² *Ibid*, 57.

⁹⁶³ Environmental and Social Impact Assessment for an Agro Industrial Project in Cameroon: Terms of Reference, 36. Online: <http://docslide.us/documents/final-sgsoc-esia-combined-annexes.html> [Cameroon TOR].

⁹⁶⁴ Cameroon TOR, *supra*, 37.

⁹⁶⁵ The consultation program also aimed to: allow recipients to express and share their concerns with respect to the project; collect relevant information to take into account in conducting the EIA; complete the identification of impacts and consider the interested parties, correction measurements and efficient compensation adapted to the local

Table 18: Public consultation in Herakles Farms’ scoping report

Date	Target actors	Place
20/09/2010 to 24/09/2010	MINEP, MINIMIDT ⁹⁶⁶ , MINEE ⁹⁶⁷ , MINSANTE ⁹⁶⁸ , MINAGRI, ⁹⁶⁹ MINCOMMERCE, ⁹⁷⁰ MINTSS, ⁹⁷¹ MINFOF	Centre Region—Yaoundé in their respective administration
28/09/2010	Populations Nguti Villages	South West Region—Nguti City Hall
30/09/2010	Populations Mundemba villages	South West Region—Mundemba City Hall

Although the TOR did not clarify the different stages of the project that consultations were to be held, the reviewed report provides some information on public participation in the EIA process. It contains data on the introduction of the project to key stakeholders, the methods applied to involve the public, and the timing of the public participation. The objective of the consultations with the public included providing information and education of stakeholders, gathering information on various environmental and social aspects, and seeking input from stakeholders on the planned intervention including its scale, timing, and ways to reduce its negative impacts.⁹⁷²

Indeed, meetings were held in Yaoundé (the Nation’s Capital) with concerned ministries,⁹⁷³ in Buea (capital of the South West Region where the project is located),⁹⁷⁴ and in the communities

context; and, engage local populations in dialogue on optimizing the project’s advantages for the local population. *Ibid*, 36-37.

⁹⁶⁶ Ministry of Industry, Mines and Technological Development (MINIMIDT)

⁹⁶⁷ Ministry of Energy and Water

⁹⁶⁸ Ministry of Public Health

⁹⁶⁹ Ministry of Agriculture and Rural Development

⁹⁷⁰ Ministry of Commerce

⁹⁷¹ Ministry of Labor and Social Security

⁹⁷² Herkles Farms EIA Report, *supra*, 42.

⁹⁷³ In Yaounde, meetings were held with the Ministry of Agriculture and Rural Development, Ministry of Water and Energy, Ministry of Industry, Mines, and Technological Development, Ministry of Commerce, Ministry of Public Health, and the Ministry of Labor and Social Security, Herakles Farms EIA Report, *supra*, 189.

⁹⁷⁴ In Buea, a meeting was held with the following stakeholders: Development and Conservation Organizations [GTZ (German Technical Cooperation), DED (German Development service), KfW/GFA (German Cooperation), PNPd, MUDEC (Municipal Development Counseling Group), WCS (World Conservation Society – USA), SODEWA (South West Development Authority), WWF], Local NGOs (Korup Rain Forest and Kreo-Kogan), the different Regional Delegates (MINEP, MINFOF, MINADER, MINEE, MINIMIDT, MINCOMMERCE, MINSANTE, MINDAF, MINTSS, MINAT) and PAMOL, *ibid*.

Table 19: Public consultation program for the Herakles Farms project⁹⁷⁵

Date	Place	Stakeholder concerned
22/09/2010	MINIMIDT, Yaoundé	Ministry of Industry, Mines and Technological Development (MINIMIDT)
22/09/2010	MINEE, Yaoundé	Ministry of Energy and Water (MINEE)
22/09/2010	MINSANTE, Yaoundé	Ministry of Public Health (MINSANTE)
22/09/2010	MINAGRI, Yaoundé	Ministry of Agriculture and Rural Development (MINADER)
23/09/2010	MINCOMMERCE, Yaoundé	Ministry of Commerce (MINCOMMERCE)
23/09/2010	MINTSS, Yaoundé	Ministry of Labor and Social Security (MINTSS)
27/09/2010	Chariot Hotel, Buea	Development and Conservation Organizations, Some Local Traditional Authorities, Regional Delegates of various ministries, Agro-industries (PAMOL)
28/09/2010	Nguti Council Hall, Koupe Manengouba Division, South West Region	Chiefs, notables, Mayor, Councilors, Local Non-governmental Organization, Gendarme officer, politician, members of the local think tank for SGSOC project,
30/09/2010	Mundemba Council Hall, for Mundemba and Toko Sub-Divisions, Ndian Division, South West Region.	Chiefs, notables, Mayor, elites, Chief of Konye in Meme Division.
7/06/2011	Meeting to create a Plantation Expansion Ecosystems and Livelihoods document at Kumba, Southwest Region	Open meeting involving local community leaders, chiefs, elites, government officials, and NGOs
July 2011 - Ongoing	Community development officers from each clan in the concession work with the communities to provide constant two way communication	Work with all communities within the Concession
04/08/2011 – 07/08/2011	Government consultation and at Mundemba, Mundemba subdivision	Mundemba Land Consultative Board
08/08/2011	Public consultation at Mundemba, Ndian Division, Southwest Region	Open Consultation with Community Chiefs and Stakeholders within the Mundemba/Toko subdivisions

Source: adapted by the author from the review of literature

where the palm nurseries and the plantations were to be established. Specifically, two public consultation meetings were conducted in 36 villages in the host communities.⁹⁷⁶ The methods

⁹⁷⁵ *Ibid*, 243.

used during the community involvement process included public hearings, open houses, focus groups, questionnaires, and production of participatory maps for surveys.⁹⁷⁷ Table 19 gives the date, place, and the stakeholders involved in the consultation process.

3.1.2.2 Impact Identification

The literature review shows that impact identification, which is the beginning of impact⁹⁷⁸ assessment, is the “technical heart of the EIA process.”⁹⁷⁹ Impact identification forecasts the nature, extent, magnitude, and duration of the major outcomes.⁹⁸⁰ The EIA report under consideration shows that the environmental and social effects, positive and negative, were identified after conducting many different studies.⁹⁸¹ With respect to the positive impacts, the EIA report says the project will satisfy Cameroon’s demand for palm oil, create up to 9,000 jobs for the local population, and promote rural development. The EIA report also claims that this investment will provide housing, education programs, training for employees and out growers, scholarships for local universities, enhance access to electricity, clean water, healthcare, and commercial opportunities for small-and-medium sized enterprises, and generate tax revenue for the Government.⁹⁸²

⁹⁷⁶ Herakles Farms EIA Report, *supra*, 189.

⁹⁷⁷ *Ibid*, 242.

⁹⁷⁸ Impact includes impact on (1) human health and safety, (2) flora, fauna, ecosystems and biological diversity, (3) soil, water, air, climate and landscape, (4) use of land, natural resources and raw materials, (5) protected areas and designated sites of scientific, historical and cultural significance, (6) heritage, recreation and amenity assets, and (7) livelihood, lifestyle and well-being of those affected by a proposal, Sadler and McCabe, *supra*, 256.

⁹⁷⁹ The most familiar techniques used to identify impact are checklists; matrices; networks; overlays; geographic information systems (GIS); expert systems; and professional judgment. *Ibid*, 255; Glasson *et al.*, *supra*, 131.

⁹⁸⁰ It should take account of all direct, indirect, and cumulative effects which may be potentially significant, Herakles Farms EIA Report, *supra*, 255-257.

⁹⁸¹ For example, the proponent conducted suitability soil studies, High Conservation Value Forests (HCVF), Implementation Plan, Social Impact Assessment, Flora and Fauna Studies, Environmental and Social Impact Assessment; and GIS mapping/3D mapping. Furthermore, the company imported technical support by intentional experts of Oil Palm growers to supplement Cameroonian local expertise, Herakles Farms EIA Report, *supra*, 13.

⁹⁸² Herakles Farms EIA Report, *supra*, 145.

The following negative impacts were identified to relate to the palm nurseries and palm oil mills: the destruction of habitats and species; air pollution; water and drainage system contamination; soil pollution and erosion; pest infestation; transportation traffic; and pollution from hazardous substances.⁹⁸³ Regarding the adverse socio-economic impacts, loss of land and non-timber forests products (NTFPs), destruction of community-based economy and indigenous cultural values, exposure to health risks, food insecurity, unappealing employment opportunities, low quality of life and working conditions of plantation and mill workers, low wages, among others, have been identified with the project.⁹⁸⁴

3.1.2.3 Impact prediction

According to the reviewed report, the “Leopold matrix” and the Fecteau matrix were useful in performing two major functions: (1) listing project activities at different stages and components of the biophysical, human and socioeconomic environment; and (2) measuring the impact from the basis of logical methods to give an esteemed value.⁹⁸⁵ In the EIA report under review, the main parameters used to characterize and assess related impacts were nature, magnitude or intensity (negligible, low, medium, high), extent or location (regional, local, precise), duration (long term, short term, temporary), reversibility (or irreversibility), and importance (major, moderate, minor) of impacts.⁹⁸⁶

Assessment of significance of impacts: According to John Glasson *et al.*, the conditions for assessing significance include (1) the magnitude and likelihood of the impact and its spatial and temporal extent, (2) the likely degree of the affected environment’s recovery, (3) the value of the affected environment, (4) the level of public concern, (5) and political repercussions and the

⁹⁸³ *Ibid*, 158-172.

⁹⁸⁴ *Ibid* 171.

⁹⁸⁵ *Ibid*, 190.

⁹⁸⁶ Herakles Farms EIA Report, *supra*.190

relative significance of the impacts.⁹⁸⁷ The significance of identifying the project's impacts was evaluated according to three criteria. These include minor importance (the magnitude of impact is below the standards or laws in force); moderate importance (negative impacts are close to exceeding an established legal standard, and reversibility is possible over a period of several years); and major importance (the impact is above standard and is sometimes irreversible).⁹⁸⁸

Table 20: Significance of predicted impacts of the Herakles Farms project

Project phase	Source of impact	Medium affected	Effect of the impact	Evaluation of significance		
				Duration	Intensity	Importance
Plantation development	Clearing, construction, transportation, Agrochemicals, sewage, open burning, pest infestation, and waste, emission of CO, SO ₂ , NO, NO ₂ and PM ₁₀	Environment (Fauna, floral, soil, water, air)	Loss of habitats and NTFPs	Permanent	Medium	Major
		Population	Loss of land and NTFP (bush meat, medicinal plants, and Fire-wood), destruction of the rural economy, exposure to health risks, food security, destruction of cultural values.	Permanent	Medium	Major
				Long Term		
					Medium	Major

Source: Adapted by the author from the EIA report

Table 20 summarizes the significance of the predicted adverse impacts during plantation development alone. Site clearing, construction of roads and base camp sites, open burning and

⁹⁸⁷ John Glasson *et al.*, *supra*, 143.

⁹⁸⁸ Herakles Farms EIA Report, *supra*, 192.

degradation of biomass, usage and application of agrochemicals, use of generators in the plantation for the water pump or the camp, sewage generated in the base camp, pest infestation, transportation of the products to the palm oil mills and seaport, waste, exhaust emission of metals and compounds etc., are the major sources of impacts during Herakles Farms' plantation development.

Table 20 suggests that Herakles Farms' activities will affect the environment and surrounding communities and will lead to soil erosion, water and air pollution, health risks, loss of non-timber forests products (NTFPs), and loss of biodiversity and species habitats. Regarding the duration, importance, and intensity of the NTFPs that may be lost, the EIA report evaluates the duration to be permanent, the intensity to be medium, and the importance as major. That the importance is major suggests that the impact on local communities, due to loss of NTFPs, is above the environmental standards or laws of Cameroon. Hence, reversibility is impossible even over a period of several years.

3.1.3 Mitigation and Monitoring

3.1.3.1 Impact mitigation

Impact mitigation refers to measures designed to prevent, minimize, and, if possible, resolve future adverse impacts of a project proposal.⁹⁸⁹ Mitigating the environmental outcomes of an oil palm development should involve plans to establish buffer zones to prevent deforestation and biodiversity depletion. Impact mitigation measures also should encourage minimal use of

⁹⁸⁹ According to the US Council on Environmental Quality, impact mitigation includes (1) avoiding an impact by not taking a certain action or parts of an action, (2) minimizing an impact by limiting the degree or magnitude of the action and its implementation, (3) rectifying an impact by repairing, rehabilitating, or restoring the affected environment, (4) reducing or eliminating an impact over time through preservation and maintenance operations during the life of the action; and (5) compensating for an impact by replacing or providing substitute resources or environments, Council on Environmental Quality, "Memorandum for Heads of Federal Departments and Agencies", 4. Online: [http://file:///C:/Users/User/Desktop/Phd%20environmental%20justice%20chapter/NEPA-CEQ Mitigation and Monitoring Guidance 14Jan2011.pdf](http://file:///C:/Users/User/Desktop/Phd%20environmental%20justice%20chapter/NEPA-CEQ%20Mitigation%20and%20Monitoring%20Guidance%2014Jan2011.pdf).

agrochemicals applied in the palm nurseries, plantations, and mills, to avoid soil and water pollution. Herakles Farms recognizes that the process of extracting palm oil generates large quantities of effluent, a waste that is highly counterproductive in combating global warming and eutrophication.⁹⁹⁰ To attenuate this effluent and its resultant impacts on air, soil, and water, the company has designed a Waste Management Plan (WMP) and a Spill Response Plan (SRP) within its environmental and social management plan (ESMP).

The WMP contains propositions made by the investor. To that effect, the company proposes to (1) run its generators using biodiesel, instead of fossil diesel, (2) initiate a study to determine the possibility of fuel switching (3) install a digester for the palm oil mill effluent, (4) establish a separate drainage system for its workshops, garages, and fuel filling stations, and (5) prepare a simple manual on procedures to educate its personnel in simple EIA procedures.⁹⁹¹ With regard to attenuating noise level, wildlife and flora species, and artifacts, Herakles Farms plans to (1) apply the admissible noise levels allowed by Cameroonian legislation and the World Bank Pollution Prevention Abatement Handbook,⁹⁹² (2) ensure that no animal shall be handled, removed, killed or be interfered with by the promoter or any of his associates, (3) keep the site clean, tidy, and free of garbage that may attract animals, (4) prevent any form of poaching of fauna and flora within the concession, and (5) ensure that if any artifact is discovered on the project site, work in the immediate vicinity shall be stopped instantaneously.⁹⁹³

The company defines spills as any discharge of solids or liquid substances, either intentionally or unintentionally, in a magnitude that could result in substantial unwanted effects on the system

⁹⁹⁰ Herakles Farms EIA Report, *supra*, 286-293.

⁹⁹¹ *Ibid*, 286-293.

⁹⁹² This, according to the investor, will help to protect the ears and health of personnel working on a permanent basis within the enclosed structures from noise and dust, *ibid* 29-293.

⁹⁹³ *Ibid*, 294-296.

receiving it (soil, river, lake, sea or the atmosphere).⁹⁹⁴ The EIA report articulates that spills may occur during daily refueling of equipment painting, changing of oil, and rinsing of drums containing harmful substances. It may also result following a burst hose or pipe, the malfunctioning of an “overflow valve of a tank, road accident of a fuel tanker and the like.”⁹⁹⁵ Because of their adverse impacts, the company has established a Spill Response Plan comprising materials to clean-up spilled products from concrete and other surfaces, and brooms, pans, picks, shovels and other miscellaneous small tools.⁹⁹⁶

3.1.3.2 Impact monitoring

According to the literature review, EIA monitoring is “a program of repetitive observation, measurement, and recording of environmental variables and operational parameters over a period of time for a defined purpose.”⁹⁹⁷ Because it measures and records physical, social, and economic variables of impacts of projects, EIA monitoring may be useful in identifying activities that may be significantly damaging in vulnerable neighborhoods before it becomes too late to reconstitute the affected environment. Information in the reviewed report shows different monitoring objectives for air quality,⁹⁹⁸ biodiversity,⁹⁹⁹ surface and ground water,¹⁰⁰⁰ soil,¹⁰⁰¹ noise

⁹⁹⁴ *Ibid*, 296.

⁹⁹⁵ *Ibid*, 295.

⁹⁹⁶ *Ibid*, 296.

⁹⁹⁷ Arts, A., P. Caldwell and A. Morrison-Saunders, “Environmental Impact Assessment Follow-up: Good Practice and Future Directions — findings from a workshop at the IAIA 2000 conference” (2001)19 IAPA, 176-177.

⁹⁹⁸ The aims are: (1) to measure emissions of particulate matter, sulphur dioxide, and nitrogen oxides, annually, to confirm whether emissions from the oil mill are within the guideline limit set by the World Bank, and (2) to measure concentrations of dust and gaseous emissions at selected locations surrounding the project area, in order that the outcomes can be assessed in relation to international air quality standard, Herakles Farms EIA Report, *supra*, 306.

⁹⁹⁹ The aim is to document terrestrial flora and fauna prior to land clearing for each planting phase, *ibid*.

¹⁰⁰⁰ The aim is to (1) to evaluate compliance of water quality with the standards set by the permit, (2) to monitor surface water on a monthly basis at the main discharge points from the drainage systems during the palm oil mill operations, (3) to assess the effectiveness of environmental management actions designed to minimize surface water contamination, and (4) to document changes in surface water flow if they occur, *ibid*.

¹⁰⁰¹ The aim is to assess the effectiveness of environmental protection measures aimed to minimize erosion, maximize sediment retention in surface runoff, and minimize suspended solid loads downstream of disturbed areas, *ibid*, 306.

levels,¹⁰⁰² transportation,¹⁰⁰³ traffic accidents, mitigating the nuisance associated with increased traffic,¹⁰⁰⁴ and social monitoring.¹⁰⁰⁵ Thus, the environmental monitoring program aims to guarantee that (1) the impact indicators (as specified in the ESMP) are respected, (2) the proposed procedures (waste management, for example) are being followed, and (3) that written documentation is available for future reference and guidance.¹⁰⁰⁶

To facilitate effective monitoring (that is to achieve these objectives), including social monitoring, the company promises to use different indicators (tools).¹⁰⁰⁷ Accordingly, social monitoring aims to (1) track impacts that may accompany the incoming workforce, (2) evaluate the effectiveness of recruitment policy to give preference to local villagers, (3) identify and address community concerns before they develop into serious relations issues, (4) ensure that grievances are resolved, (5) evaluate local community perception towards the project, (6) support government and local communities to prevent and combat diseases, (7) ensure that the spread of disease between the non-local workforce and local residents is kept to a minimum by multiple sensitization meetings, and (8) avoid deterioration in public health and environmental sanitation project.¹⁰⁰⁸

¹⁰⁰² The aim is to ensure that noise levels produced by operation of the Palm Oil Mill machinery and equipment do not exceed the applicable World Bank standards, *ibid*, 306.

¹⁰⁰³ The objective is to document disturbances to local villagers due to equipment or product transportation if they occur, *ibid*.

¹⁰⁰⁴ *Ibid*.

¹⁰⁰⁵ *Ibid*.

¹⁰⁰⁶ *Ibid*, 304.

¹⁰⁰⁷ For example, ambient air (Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, Nitrogen Oxides, Methane, and Particulate), soil and water (Tot. Pet. Hydrocarbons, Biological Oxygen demand, Chemical Oxygen Demand, Total Suspended Solids, and Agrochemicals), noise (noise level measurements), quantity of water produced (monitoring of effluent discharged), and hazardous and domestic waste produced (Monitoring of Waste Management Plan), *ibid* 305.

¹⁰⁰⁸ *Ibid*, 202.

3.1.4 Communication and Presentation of an EIA report

In this study, the EIA report is written and published in English. It contains valuable information that could assist the proponent, the responsible authority, and the public to avoid/revise environmentally dangerous activities. Some of the information was presented in tables, maps, pictures, and charts that made the report organized. With regards to the length, the reviewed EIA report was found to be 320 pages, in addition to a few more pages of the appendices. Furthermore, the EIA report shows that scoping for the project was undertaken in May/June 2010.¹⁰⁰⁹ The TOR was approved on August 9, 2010.¹⁰¹⁰

3.2 Critiquing the Herakles Farms EIA process

3.2.1 Identification and evaluation of key impacts

Scoping: Generally, the EIA report makes expansive and gorgeous mention of the scoping process. For example, it makes allusion to the scoping process in detail, including the methods of scoping, public involvement, development of TOR, data types, data sources, and distribution of likely impacts, both spatial and temporal. At least, there were discussions between the developer, the competent environmental authority, and agencies, and other interested parties (individuals, communities, local authorities) as provided by the law. The EIA report was not as shallow as some the EIA reports that were analyzed in Bangladesh,¹⁰¹¹ Which may have shielded the investor from the unpleasant costs that are involved in cases of poorly done scoping.

However, the EIA report indicates an absence of detailed explanation of stakeholder involvement in the scoping process. It contains a list of meetings that were held with experts and non-experts:

¹⁰⁰⁹ Specific field surveys, such as the wildlife/fauna-flora surveys and the socio economic study, have been done.

¹⁰¹⁰ Herakles Farms EIA Report, *supra*, 26.

¹⁰¹¹ An EIA report studied by Momtaz and Kabir failed to mention the scoping process in detail, including the methods of scoping, the involvement of stakeholders, the development of Terms of Reference (TOR), data types and sources, and the spatial (and temporal) distribution of potential impacts, Momtaz and Kabir, *supra*, 64.

there was no supporting data on the nature of public inputs and whether/how public inputs were incorporated into the decision-making process. The reviewed report also failed to mention when and at what other stage of the EIA process, including EIA follow-up, the public did/will participate. Deficiencies with public participation in EIA, which has been reported by researchers such as Creighton, Devlin, and Kakonge,¹⁰¹² can increase costs and promote delays for both the proponent and host government.¹⁰¹³

The sampled EIA is also unsatisfactory in relation to the consideration of alternatives, a decision that is at the heart of the EIA process, according to the US Council on Environmental Quality.¹⁰¹⁴ Consideration of alternatives guarantees that the developer has considered other approaches to the project and the means of preventing likely environmental damage.¹⁰¹⁵ In the absence of options, it may be difficult for the competent authority to focus on sustainable options or arrive at socially and environmentally just decisions. There are many broad types of alternatives that could have been considered,¹⁰¹⁶ including the “no action” option¹⁰¹⁷ which is a legal requirement in Cameroon.¹⁰¹⁸ Mainly, consideration of the “no action” option would have provided decision-makers with a foundation to raise the question: will the benefits of establishing the (palm oil) project outweigh the burdens on the vulnerable communities? In many cases in Cameroon,

¹⁰¹² Creighton, J., *supra*; Devlin, J. F., *et al.*, *supra*; Kakonge, J. O., *supra*.

¹⁰¹³ The riots that delayed the construction of the Narita airport in Tokyo for up to five years and the protests that cost the UK government over six million pounds for policing during construction of the M3 motorway at Twyford Down are apposite examples of impacts of inadequate and ineffective consultation and participation of the public in the EIA process, Dietz, T., and P. C. Stern, *Public Participation in Environmental Assessment and Decision Making*, eds. (Washington D.C.: The National Academies Press, 2008) 34.

¹⁰¹⁴ Steinemann, A., “Improving alternatives for environmental impact assessment” (2001) 21 *EIAR* 4.

¹⁰¹⁵ The findings of Anne Steinemann shows that the “quality of a decision depends on the quality of alternatives from which to choose.” *Ibid*, 3.

¹⁰¹⁶ Alternatives to be considered to a proposed project includes the “no action” option, alternative locations, alternative scales of the project, alternative processes or equipment, alternative site layouts; alternative operating conditions; and alternative ways of dealing with environmental impacts, Glasson *et al.*, *supra*, 98.

¹⁰¹⁷ A no action alternative refers to the “environmental conditions if a project were not to go ahead,” *ibid* 99.

¹⁰¹⁸ For example, article 4 of the EIA Decree makes provision for the review of alternatives during scoping as an EIA good practice and insists that the “no action alternative” be fully evaluated, EIA Regulation, *supra*.

however, agro-industrial project sites are selected politically rather than socio-economically and environmentally.¹⁰¹⁹ Hence, the assessment of alternative locations always becomes a formality.¹⁰²⁰

The major objective of the project under review is to produce crude palm oil and palm kernel oil as a way to meet global consumption of vegetable oil.¹⁰²¹ The proponent, nevertheless, failed to consider alternative ways of meeting this demand. The promoter seems not to have made any effort to, at least, compare between other forms of oil. For example, linseed oil, canola oil, soybean oil, safflower oil, and corn oil, sunflower oil on the one hand and palm oil on the contrary. In addition to alternative locations for projects, proponents should focus on the “no action” alternative, alternative technologies, and alternative mitigation measures to circumvent the likely adverse impacts of a proposal.

Impact assessment: One of the requirements of the Cameroon Environmental Code is the analysis of a project’s environmental impact. Article 4 of this code defines impacts to include, among others, the “economic, social, and cultural factors which are conducive to the existence, transformation and development of the environment, living organisms and human activities.”¹⁰²² Moreover, Article 4 of Cameroon EIA Regulation defines the content of the EIA report to include a description of all natural, human, and socio-cultural impacts of the proposed project.

¹⁰¹⁹ The South West Region (where this project is located), for example, has renowned advantages: its proximity to Cameroon’s major ports (air and sea), fertile soil, favorable climatic condition (good rainfall and ideal temperatures), among others.

¹⁰²⁰ It is, therefore, crucial that an EIA report describes all possible options for alternative project designs.

¹⁰²¹ Herakles Farms EIA Report, *supra*, 64.

¹⁰²² Environmental Code, *supra*.

The assessment of social and cultural impacts is necessary in an agrarian economy like Cameroon, where agriculture is the backbone of the country's economy.¹⁰²³

Apathy on the part of the proponent to identify social impacts in detail is detected in the EIA report. The report shows some social impacts. But, it did not do it with full coverage. It mentions threats to food security, loss of non-timber forests products, destruction of the community-based economy, and exposure to Malaria, HIV-AIDs, and STDs. It failed to identify the health risks associated with the use of agrochemicals, and undesirable effects on vulnerable groups, such as children, pregnant women, and the poor, in particular. In Cameroon, where local populations, among others, are frequently affected by plantation agriculture,¹⁰²⁴ this issue should receive strict attention by EIA consultants. This lapse is not unique to Cameroon. Fallouts from Steinmann's study show that over 62% of EIA reports in the United States do not mention health impacts.¹⁰²⁵

Social impact assessment (SIA) is an important instrument to promote sustainable development in vulnerable communities.¹⁰²⁶ Nonetheless, the EIA report of Herakles Farms lacks adequate

¹⁰²³ In Cameroon, the agriculture sector is significant in its employment of an estimated 75% of the active population in Cameroon, and its provision of livelihood to about 85% Cameroonians, Khan, S., and D. Gbetnkom, "Agricultural export supply determinants in Cameroon's economy" in Aloysius Amin, A. A. (ed), *Developing a Sustainable Economy in Cameroon* (Council for the Development of Social Science Research in Africa 2008) 29.

¹⁰²⁴ Assembe-Mvondo, S., *et al.*, "What Happens When Corporate Ownership Shifts to China? A Case Study on Rubber Production in Cameroon" (2015) *European Journal of Development Research*; Kimengsi, J. N, J. N. Lambi, and S. A. Gwan, "Reflections on the Role of Plantations in Development: Lessons from the Cameroon Development Corporation (CDC)" (2016) 1:1 *Sustainability in Environment*; World Rainforest Movement, *Cameroon: Oil palm, people and the environment*. Online: <http://wrm.org.uy/oldsite/bulletin/47/Cameroon.html>.; Forest Peoples Programme, "Community and civil society activists defend Cameroon's rainforests and propose rights-based solutions to forest threats." Online: [file:///C:/Users/HP/Downloads/FPP%20media%20briefing%20CAMEROON%20\(1\).pdf](file:///C:/Users/HP/Downloads/FPP%20media%20briefing%20CAMEROON%20(1).pdf); Banana Link, FAWU-Cameroon. Online: <http://bananalink.org.uk/partners-cameroon>.

¹⁰²⁵ Steinmann, A., "Rethinking human health impact assessment" (2000) 20 *EIAR* 627–45, 632.

¹⁰²⁶ According to the Government of Canada, SIA helps to increase the chances to better understand and manage the social changes resulting from a project, predict possible social impacts and assess those caused by earlier projects; develop and implement mitigation measures for addressing potential social impacts and unexpected social impacts before they arise; develop a monitoring and surveillance program for identifying unexpected social impacts; increase knowledge of the proposed project and inform the community affected of any positive or negative consequences, Bouchard-Bastien, E., *et al.*, *Institut national de santé publique du Québec, Social Impact Assessment in the Environmental Sector: Health Network Support Guide* (Gouvernement du Québec 2014) 9.

quantitative/qualitative data on (1) the number of people likely to be displaced, (2) sources of incomes (commercial fishery, hunting, and changes in status and employment) likely to be adversely affected, (3) cultural degradation, and (4) species likely to be threatened. As has been reported in the context of SIA, demographic change,¹⁰²⁷ economic change,¹⁰²⁸ environmental change,¹⁰²⁹ and institutional change¹⁰³⁰ are the chief variables that, usually, are correlated with negative social impacts of project proposals. It is important to carry out a practical assessment of social impacts because project-related social changes may, in turn, result in different categories of social impacts (as illustrated in the previous chapter) on vulnerable communities.

Impact prediction: Data in the EIA under consideration illustrate that the Leopold matrix was employed by the sponsor for impact prediction because, according to the proponent, matrix is renowned. The matrix method is deficient: research shows that “it is not possible to identify indirect effects using [matrix].” Besides, matrix “can be used subjectively.”¹⁰³¹ The proponent failed to make any reference to this weakness or provide any substantial justification for using the (Fecteau) matrix. Moreover, only one method—matrix—was used in predicting impacts. Using a single method to predict impacts may reduce the credibility of the impact outcome. Salim Momtaz has reported that the use of two or more methods to predict impacts “increases the credibility of impact results derived from an EIA.”¹⁰³² Some of the EIA reports assessed by

¹⁰²⁷ Demographic change includes for example size and composition of resident population, influx of temporary work force or new recreational users (disrupts the cohesion of a small, stable community), Sadler and McCabe, *supra*, 464.

¹⁰²⁸ Economic change includes new patterns of employment/income, real estate speculation (marginalises long term, older residents, *ibid*.

¹⁰²⁹ This includes alterations to land use, natural habitat and hydrological regime (loss of subsistence or livelihood in resource-dependent community), *ibid*.

¹⁰³⁰ Institutional change refers to changes in the structure of local government or traditional leadership, zoning by-laws or land tenure (reduced access or loss of control leads to disempowerment or impoverishment of the established population, *ibid*.

¹⁰³¹ Momtaz and Kabir, *supra*, 65.

¹⁰³² Momtaz, S., “Environmental impact assessment in Bangladesh: a critical review” (2002) 22 EIAR 175.

Momtaz and Kabir have used mathematical and physical models, in addition to a matrix, to predict a project's impacts.¹⁰³³

A wide array of the main agro-industrial projects is concentrated in South West Cameroon where the Herakles Farms project is established.¹⁰³⁴ Notwithstanding, the proponent did not predict cumulative impacts.¹⁰³⁵ Cumulative effect assessment is increasingly perceived as demonstrating best practice in conducting EIA.¹⁰³⁶ A cumulative "effects framework gives resource managers the procedures and tools to make decisions that support sustainable management and the needs of many different users."¹⁰³⁷ The proponent may not have mentioned cumulative impacts because minimal attention was paid to the description of spatial and temporal boundaries of the study, and to the definition of other existing projects in the region.

Evaluation of the relative significance of impacts: Regarding the identified social implications in the Company's EIA report, it may be argued that the relative significance was assessed with the simple supposition that the burdens would be evenly distributed to all people, regardless of their social position and income. There are helpless villagers within the vulnerable communities, such as pregnant women, orphaned children, female heads of households, ethnic minorities, and the sick and elderly. Rather than working in the plantations and oil mill factories as Herakles Farms has proposed, subsistence agriculture (that is based on rice, potatoes, beans, plantain, cassava, or collection of NTFPs) may be the only viable way that these sensitive groups may

¹⁰³³ Momtaz and Kabir, *supra*, 65.

¹⁰³⁴ SOCAPALM, SOCFIN, CDC, PAMOL are mainly based in the South-West Region of Cameroon.

¹⁰³⁵ The reviewed EIA report only says "there is also potential for some of these impacts to be cumulative," Herakles Farms EIA Report, *supra*, 145.

¹⁰³⁶ Cumulative effects are "changes to the environment that are caused by an action in combination with other past, present and future human actions." Hegmann, G., *et al.*, *Cumulative Effects Assessment Practitioners Guide* (Minister of Public Works and Government Services 1999) 16.

¹⁰³⁷ Government of British Columbia, "Cumulative Effects Framework." Online:
<http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/cumulative-effects-framework>.

obtain food and monetary entitlements. So, predicting the differential effects of impacts on such groups may be very useful in preventing/reducing the socioeconomic harms of the project.

3.2.2 Mitigation and monitoring

Impact mitigation: Previous chapters of this thesis show that displacement of people, as a result of economic developments, is a typical setting in Africa and other developing countries, besides the loss of farmland, pasture, and non-timber forest products. The reviewed EIA report outlines measures to remedy environmental impacts. This report lacks adequate information on the measures to attenuate or compensate for socio-economic impacts relating to monetary compensation and resettlement with other amenities. The EIA report says “no shrine or cultural site will be destroyed” by the investor.¹⁰³⁸ This statement may be the company’s strategy to prevent/mitigate the destruction of indigenous cultural values. It further proclaims that there will be “some buffer zones left as patches” to compensate for the loss of land and NTFPs.¹⁰³⁹ On the loss of access to fire-wood, the company proposes to “make fire briquettes from the left over fibers and shells to distribute to its workers and the population.” It anticipates establishing “a cow ranch to provide meat to the workers and villagers,” as a measure to address the issue of food security.¹⁰⁴⁰

As can be seen, there is an inconsistency between the significance of the predicted effects and the measures designed to prevent, mitigate, or compensate for such impacts. It is debatable whether building a cow ranch to provide meat to employees and other villagers will address the issue of local food security as the company proposes. Besides, food safety may not be enhanced, solely, by food aid (the provision of meat to villages that seems to be largely self-sufficient in

¹⁰³⁸ Herakles Farms EIA Report, *supra*, 238.

¹⁰³⁹ Herakles Farms EIA Report, *supra*, 238.

¹⁰⁴⁰ *Ibid.*

food production). The report shows that the vulnerable villagers are subsistence farmers, hence, they can, at least, be regarded as marginally self-sufficient with subsistence crops (maize, cocoyams, plantain, palm oil, cassava, and meat), some cash crops (cocoa and coffee) and bushmeat, fish, and herbal medicine for healthcare. It is also hard to believe that providing an alternative source of energy (fire briquettes) to thousands of villagers that may lose access to firewood in the concession will be honored.

The company's concession involves community land that thousands of villagers had access to,¹⁰⁴¹ some of whom will likely be forced to search for alternative homes and farmlands.¹⁰⁴² Notwithstanding, the EIA report did not provide for resettlement or a compensation plan as required by the Law in Cameroon. Cameroon's Environmental Code proclaims that the EIA study shall outline "measures envisaged by the investor to eliminate or compensate for the harmful consequences of the project."¹⁰⁴³ That little consideration was given to measures to address these impacts may cause impoverishment risks, particularly for the poor and the vulnerable. Mitigation procedures for each significant socio-economic impact that is predicted should be adequately defined, with the justification that they will likely lead to probable success. Appropriately defining the significance of identified impacts may provide decision-makers with information needed to understand whether proposed mitigation measures will be effective in addressing possible social and environmental impacts.

¹⁰⁴¹ Dupuy, J., and M. A. Bakia, *Report: Fact finding mission on Herakles Farms (SGSOC) oil palm plantation project* (February 2013) 1. Online: <http://cameroonveritas.files.wordpress.com/2013/04/03_01_2013_report-fact-finding-mission-sgsoc.pdf>.

¹⁰⁴² The Oakland Institute, *Understanding Land Investment Deals in Africa Massive Deforestation Portrayed As Sustainable Development: The Deceit Of Herakles Farms In Cameroon Land Deal Brief* (The Oakland Institute 2012) 3.

¹⁰⁴³ Environmental Code, *supra*, article 19(2).

Impact monitoring: Even though the EIA report contains an environmental and social management plan (ESMP), it did not sufficiently describe the monitoring program. And “without an appropriate monitoring program, it will be difficult to build up the knowledge and experience that is required to improve the effectiveness of mitigation measures and the EIA system at large.”¹⁰⁴⁴ The EIA report prescribes the environmental and social factors that can be monitored during and after the implementation of mitigation measures. However, the roles of the environmental and donor agencies, affected communities, and the proponent in implementing mitigation actions were not stated. The question of considering public participation in EIA follow-up—mitigation and monitoring measures—is found to be a highly problematic area in other scholarships.¹⁰⁴⁵

Herakles Farms plans to establish a Health, Safety, and Environment (HSE) Committee to undertake meetings on a weekly basis and address pertinent issues for, among others, non-compliances with the ESMP and actions needed to conform.¹⁰⁴⁶ There is no information on the role and responsibility of the public in this committee. This dearth suggests the investor’s unwillingness to commit to transparency and openness and to communicate the actions and decisions that will result from EIA follow-up to the vulnerable community members and environmental groups.

¹⁰⁴⁴ Momtaz and Kabir, *supra*, 70.

¹⁰⁴⁵ Sandhama, L. A. and H. M. Pretoriusb, ‘A review of EIA report quality in the North West province of South Africa’ (2008) 28 EIAR 229–240 [Sandhama].
; Momtaz and Kabir, *supra*, 69.

¹⁰⁴⁶ Herakles Farms EIA Report, *supra*, 283.

3.2.3 Communication and presentation of an EIA report

The works of Cashmore, Christophilopoulos, Cobb,¹⁰⁴⁷ and Sandham and Pretorius¹⁰⁴⁸ show that tasks linked with the presentation of an EIA report, including general structure and layout, tend to be performed well. The Canadian Environmental Assessment Agency expects all EIA reports prepared in Canada to be “...written in clear, precise language...” and should contain a glossary defining technical words, acronyms and abbreviations shall be included.”¹⁰⁴⁹ In this study, however, the communication and presentation of the EIA report are not well displayed: no clear definition of technical terms was given in this report. Failure to provide a technical terms section defining scientific concepts may discourage lay persons from adequately understanding the EIA report. Without sufficient data in the EIA report, revising or preventing environmentally dangerous activities may be challenging.

The United States stresses the need to focus the assessment on essential issues and draw up easy-to-read documents.¹⁰⁵⁰ While some EIA reports have been condemned for being only a couple of pages long, with some being only 60 or 70 pages in length,¹⁰⁵¹ an extremely lengthy EIA may create a negative impression for the reviewers. The length of the reviewed EIA study has been a matter of concern: it was found to be 320 pages in length. This number does not include the appendices. Moreover, the entire EIA report, including the executive summary, was written in a foreign language (English), rather than the local language of the affected villages (Pidgin).

¹⁰⁴⁷ Cashmore, M., *et al.*, “An evaluation of the quality of environmental impact statements in Thessaloniki, Greece” (2002) 4 JEAPM 371–95.

¹⁰⁴⁸ Sandhama, *supra*.

¹⁰⁴⁹ Canadian Environmental Assessment Agency, *Guidelines for the Preparation of an Environmental Impact Statement Pursuant to the Canadian Environmental Assessment Act for the Cliffs Chromite Project*, 17 <https://www.ceaa-acee.gc.ca/050/documents/53936/53936E.pdf>.

¹⁰⁵⁰ The Council on Environmental Quality (CEQ) guidelines proclaims: “the text of final environmental impact statements shall normally be less than 150 pages...Environmental impact statements shall be written in plain language...” Council on Environmental Quality, *supra*, 1502.7–8.

¹⁰⁵¹ Momtaz and Kabir, *supra*, 72.

It is important that the executive summary of an EIA report be written and published in an easily understandable language such that likely-to-be affected villagers could grasp the essence of the outcomes of the assessment, and get involved in the discussions. Briefly, the target of the EIA report should not be restricted to scientists, proponents, and decision makers. An EIA report should not be published/presented, uniquely, in English or French, especially in communities where the people do not have a good understanding of these languages. Cameroon is a developing country with a high rate of illiteracy in rural areas. It is likely that the EIA report was neither easily understandable nor accessible by some villagers.

Again, scoping for the project was undertaken in May/June 2010¹⁰⁵² and the TOR was submitted to the responsible ministry on July 29, 2010, for approval. The approval was granted on August 9, 2010.¹⁰⁵³ Hence, the time taken to conduct the EIA was below three months. There seems not to have been ample time for reviewing baseline data and conducting field visits on fauna, flora, and the vulnerable people. A 5-month period has been criticized in Bulgaria as being too short a period for adequate assessment of social and environmental impacts.¹⁰⁵⁴ It should not be an overstatement to say that ninety days is too short a time for quality assessment of a project site of such crucial importance to the global environment and local communities.

The limited time-frame may explain why alternative options for the project were not considered in the EIA report. It perhaps demonstrates why the consultant did not incorporate recommendations under “executive summary”, as has been the practice in other EIA reports.¹⁰⁵⁵

Moreover, the EIA report indicates that “expert judgment” was useful in carrying out the

¹⁰⁵² Specific field surveys, such as the wildlife/fauna-flora surveys and the socio economic study, have been done.

¹⁰⁵³ Herakles Farms EIA Report, *supra*, 26.

¹⁰⁵⁴ Stefanov, R., *et al.*, *Energy and Good Governance in Bulgaria: Trends and Policy Options* (Center for the Study of Democracy 2011) 46.

¹⁰⁵⁵ The EISs reviewed by Momtaz and Kabir’s study incorporated recommendations under “executive summary”, Momtaz and Kabir, *supra*, 71.

EIA.¹⁰⁵⁶ While expert judgment is quick and cost-effective,¹⁰⁵⁷ it is accurate only when impacts are not quantifiable (social or cultural effects) and when the EIA experts have an in-depth understanding of the scientific process involved.¹⁰⁵⁸ Where impacts are measurable, such as the amount of wildlife likely to be threatened, expert judgment is avoidable. So, the rationale for using expert judgment should always be justified in the EIA report. The fact that impact identification, prediction, and assessment of significance were not clearly demarcated in the EIS might have constrained non-experts to fully understand the activities that occurred at the different stages of the EIA process.

4 Recommendations

This section seeks to trace possible ways that developers and EIA practitioners in Cameroon can address the current challenges in the practice of EIA in Cameroon, and improve the performance of the EIA tool to promote sustainable agricultural developments. The analysis shows that Cameroon has an EIA system that can enable decision makers and investors to evaluate potential adverse and significant environmental and social impacts of agricultural projects, and also to adopt measures to prevent or mitigate such impacts as well as monitoring programs.

However, the system is deficient, especially at the follow-up stage. Despite its significance in managing impacts and monitoring the project developments, follow-up activities in Cameroon is driven, almost entirely, by the developer. The law does not require joint follow-up activities initiated by all groups of stakeholders (proponent, community, regulators) involved in EIA.

¹⁰⁵⁶ The EIA Report says “given the complexity of environmental issues, H&B CONSULTING has mobilized a multidisciplinary team composed of” environmentalists, public health specialist, safety expert, biodiversity expert, botanist, ecologist, zoologist, socio-economist, and agricultural development manager, Herakles Farms EIA Report, *supra*.

¹⁰⁵⁷ Momtaz and Kabir *supra*, 65.

¹⁰⁵⁸ The experts must have a “familiarity with the particular characteristics of the receiving environment and extensive relevant practical knowledge and skills that are involved in the EIA process,” Momtaz and Kabir, *supra*, 65.

Without an independent action by community members concerned about environmental effects in their neighborhood, nothing guarantees that the environmental and social protection measures in the environmental management plan will be translated into specific actions by a developer.

James Anya, the UN Special Rapporteur on indigenous peoples' rights, began tackling corporate environmental accountability issues in 2009. He recommended in his 2010 report that companies consider all feasible solutions to mitigate likely adverse impacts of their activities on the environment and the social, economic, cultural, and spiritual life of indigenous and other vulnerable community members.¹⁰⁵⁹ According to Elisa Morgera, concepts such as socio-cultural impact assessment and EIA that the Special Rapporteur has been calling for “can significantly contribute to fleshing out standards for corporate accountability with respect to indigenous rights.”¹⁰⁶⁰

Despite being a key piece to tackle land-grabbing and an important ingredient to promote environmental justice and sustainable development in land-dependent and other sensitive communities, corporate accountability is not the focus of my thesis. Much has been written about the positive relationship between corporate social responsibility and accountability on the one hand and sustainable development on the other hand.¹⁰⁶¹ Much has also been published on the need for international regulation of corporate (agricultural) investors.¹⁰⁶² Despite the fact that

¹⁰⁵⁹ Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anya, Doc. A/HRC/15/37 (2010), paras 73-74.

¹⁰⁶⁰ Morgera, E., “From Corporate Social Responsibility to Accountability Mechanisms” in Dupuy, P., and J. E. Viñuales (eds), *Harnessing Foreign Investment to Promote Environmental Protection Incentives and Safeguards* (Cambridge: Cambridge University Press, 2013) 336 [Viñuales].

¹⁰⁶¹ Campbell, J. L., “Why should corporations behave in socially responsible ways? An institutional theory of corporate social responsibility”, 2007, , 32:3; *Academy of Management Review*

¹⁰⁶² Simons, P., “International law’s invisible hand and the future of corporate accountability for violations of human rights” (2012) 3:1 *Journal of Human Rights and the Environment* 35; Benjamin J. Richardson, “Socially Responsible Investing Through Voluntary Codes” in Pierre-Marie Dupuy & Jorge E. Viñuales (eds.) *Harnessing Foreign Investment to Promote Environmental Protection: Incentives and Safeguards* (Cambridge: Cambridge University Press, 2013) [Benjamin Richardson].

corporate investments are associated with misappropriation of power¹⁰⁶³ and lack of transparency,¹⁰⁶⁴ there remains, at the international level, limited governance of transnational corporations and no regulatory measures to promote corporate accountability, including environmentally responsible investing.¹⁰⁶⁵ To date, according to Simons, United Nations actions have not addressed “human rights and environmental concerns related to transnational corporate activity in a consistent and interconnected fashion.”¹⁰⁶⁶ De Schutter argues that there are no “...strong regional or international approach to regulating large-scale investments in land...”¹⁰⁶⁷ This gap in governance tends to erode traditional values of the most vulnerable members of society, including women and children, in addition to help defy globally acknowledged human rights and ruin ecosystems and natural resources crucial for societal well-being.¹⁰⁶⁸

The strengthening of the EIA tool, especially at the follow-up stage, is the suggested path towards boosting EIA performance.¹⁰⁶⁹ Mitigation measures “must be translated into action in the correct way and at the right time if they are to be successful.”¹⁰⁷⁰ Efforts are underway to prepare guidance notes that can enable EIA practitioners to monitor, evaluate, manage, and communicate the environmental performance of a project, in addition to enforcing the mitigation measures in an EIA report.¹⁰⁷¹ In jurisdictions like Australia, for example, an EIA report that has

¹⁰⁶³ FDI in agriculture involves: “new transnational political struggles for authority and control over resources and governance”, Margulis, *supra*, 3; FDI in agriculture also involves the restructuring of laws on access, use and management of natural resources that can have “severe alienating impacts”, Fairhead, *supra*, 239.

¹⁰⁶⁴ Shepard Daniel, *supra*, 30.

¹⁰⁶⁵ Benjamin J. Richardson, 411.

¹⁰⁶⁶ Simons, P., “Selectivity in Law-making: Regulating Extraterritorial Environmental Harm and Human Rights Violations by Transnational Extractive Corporations” in A. Gear and L. Kotz (eds.) *Research Handbook on Human Rights and the Environment* (Edward Elgar Publishing, 2015) 3.

¹⁰⁶⁷ De Schutter, 267.

¹⁰⁶⁸ Geary opines that this deficiency tends to “leave too many poor families worse off, often evicted from their land with little or no recourse to justice”, Kate Geary, 2.

¹⁰⁶⁹ Arts *et al*, 2001, *supra*; MorrisonSaunders *et al* 2001, *supra*.

¹⁰⁷⁰ EIA Training Resource Manual, *supra*, 305.

¹⁰⁷¹ Environmental Impact Assessment Ordinance, Cap.499 Guidance Note. Online: <http://www.epd.gov.hk/eia/hb/materials/GN3.pdf>.

been submitted for review constitutes a legal document: a Statutory Declaration (a written statement of facts that is sworn or declared under oath) has to be signed by a project proponent when submitting the EIA report to the environmental assessment agency.¹⁰⁷² Signing the declaration suggests that the developer has fully complied with the public notification requirements of Sections 51 and 52 of the Environmental Protection Act of Australia.¹⁰⁷³ If said to have complied with, “citizens have the right to take a project proponent to court if mitigations agreed to by the proponent are not implemented.”¹⁰⁷⁴ In light of inherent deficiencies in Cameroon’s EIA system, I offer two solutions: the need to promote environmental contracting and encourage sustainability assessments.

4.1.1 Environmental Contracting

Jorge Vinuales says environmental contracting is an approach to environmental governance.¹⁰⁷⁵ Natasha Affolder defines environmental contracts as “negotiated and enforceable agreements addressing environmental issues. The contract may be between companies and regulators, businesses and community groups, or corporations and indigenous peoples.”¹⁰⁷⁶ She also notes that an environmental contract can either supplement current regulation or offer an alternative to an otherwise applicable regulatory system.¹⁰⁷⁷ According to Affolder’s assertions, environmental contracting may constitute the missing piece to provide some measure of control over the actions of corporations that the international community has been searching for decades.

¹⁰⁷² Queensland Government, “Environmental impact assessment guidelines.” Online: https://www.ehp.qld.gov.au/management/impact-assessment/environmental_impact_assessment_guidelines.html.

¹⁰⁷³ *Ibid.*

¹⁰⁷⁴ Ortolano and Shepherd, *supra*, 75

¹⁰⁷⁵ They encompass a diverse array of tools, ranging from environmental public-private partnerships, credit facility agreements with environmental clauses, to an array of agreements between a company and some public constituencies (federal governments, local governments, regulators, indigenous peoples, etc.), Vinuales, *supra*, 67.

¹⁰⁷⁶ Affolder, N., “Rethinking Environmental Contracting” (2010) 21 *Journal of Environmental Law and Practice* 156 [Affolder].

¹⁰⁷⁷ *Ibid.*

Table 21: Strategies to tackle the environmental concerns of the Ekati Mine project

EIA Strategies/measures	Functions
The Creation of a Monitoring Agency.	To provide expert evaluation and monitoring of both company and government To ensure the exchange of information between community members and the company, with particular attention to Aboriginal participation and oversight.
Environmental Management Plans (EMP).	The content of the EMPs is to be provided by BHPB and is not contained in the Agreement;
Environmental reporting	The Company must submit detailed annual reports containing summaries of compliance and monitoring information and a discussion of company responses to compliance problems. The parties have an opportunity to comment on these reports. The federal and territorial governments and BHPB are required to respond in writing to any recommendations from the Monitoring Agency that they will not implement;
Environmental Monitoring Obligations for Air and Water Quality and Wildlife.	The monitoring programs are not set out in the Agreement but are approved in conjunction with the Environmental Management Plans;
A security deposit	A Security Deposit in the amount of \$11.075 million for land impacts and a guarantee of \$20 million for potential water impacts are required. These funds may also be drawn upon if BHPB does not comply with other requirements in the Agreement including non-compliance with reporting requirements or failure to rectify faulty management plans
A Closure and Reclamation Plan	Reclamation of the project is to be undertaken progressively during the life of the project. Failure to restore the project site will lead to use of the security deposit for this purpose;
Dispute Resolution Mechanisms (DRMs)	DRMs include discussions, mediation, and binding arbitration that shall be open to the public;
Traditional Knowledge (TK)	TK is to be given “full consideration along with other scientific knowledge” and incorporated into all environmental plans and programs.

Source: Adapted from Affolder

Affolder has studied the environmental agreement that was concluded in 1997 as part of a package of contracts and regulation to govern the Ekati diamond mine in Canada. The parties to the agreement included different governments (the Government of Canada and the Government of the Northwest Territories) and the project proponent (BHP Billiton Diamonds Inc. (BHPB)). Four Aboriginal groups were actively involved in the contract negotiation. Although the indigenous communities (the Aboriginal groups) were not included as parties to the contract, they were signatories to a side agreement (an implementation protocol) that involved them in the establishment of a monitoring agency for the project.¹⁰⁷⁸ The environmental agreement tackled

¹⁰⁷⁸ Affolder, *supra*, 156.

the environmental concerns associated with the mine through eight major strategies, including the creation of monitoring agency as shown in Table 21.¹⁰⁷⁹

The review shows that the environmental agreement for the Ekati diamond mine project grew out of many different concerns. For example, (1) concerns about the inadequacy of existing statutory frameworks to deal with a large-scale projects in Canada, (2) a lack of trust by Aboriginal communities and other environmental groups that the government would rigorously monitor the environmental effects of the project, (3) the shortage of mechanisms to ensure that the investor (BHPB) would implement the verbal promises it made during the hearings, (4) the absence of a comprehensive environmental regime governing wildlife protection and air quality effects, (5) the need for financial security to backup environmental promises; and (6) the determination of Aboriginal communities to secure monitoring of both the company and government.¹⁰⁸⁰

As command and control forms of environmental regulation continue to receive a lot of criticisms,¹⁰⁸¹ and as researchers continue to highlight the inadequacies of monitoring¹⁰⁸² and the need for an independent oversight in the context of environment and human safety,¹⁰⁸³ people-

¹⁰⁷⁹ The Monitoring Agency has a seven member Board of Directors, four of whom are appointed directly by the Aboriginal organizations. The remaining three directors are appointed jointly by the federal and territorial governments and BHPB in consultation with the Aboriginal, *ibid*, 165.

¹⁰⁸⁰ Affolder, *supra*, 162.

¹⁰⁸¹ Cohen, S. A., *Employing Strategic Planning in Environmental Regulation* (New York: State University of New York Press, 1997) 117-118; Golub, J., *New Instruments for Environmental Policy in the EU* (New York: Routledge, 2000); Chertow, M. R. and D. C. Esty, *Thinking Ecologically: The Next Generation of Environmental Policy* (Yale: Yale University Press, 1997).

¹⁰⁸² The Auditor General of British Columbia, in a report that was subtitled *Improved oversight needed* concluded that improvements are needed to adequately meet expectations. The report raised so many issues, including: (1) an incomplete inventory of contaminated sites and their status; (2) the inability to provide information about the risk borne by the Province for contaminated sites; and (3) the need to evaluate provincial performance security provisions to ensure operators fulfill their site restoration responsibilities. Office of the Auditor General of British Columbia, *Oil and Gas Site Contamination Risks: Improved oversight needed* (Victoria: Government of British Columbia, 2010) 1.

¹⁰⁸³ Wells, R., *Offshore Helicopter Safety Inquiry: Canada-Newfoundland and Labrador Offshore Petroleum Board* (St. Johns: Canada-Newfoundland and Labrador Offshore Petroleum Board, 2010); Fournoy, A., *et al.*, "Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a

centred style of leadership seems to be a good supplement. Environmental contracts “are heralded as part of a promising “new generation” of environmental governance.”¹⁰⁸⁴ In order words, environmental contracts can provide for the establishment of independent environmental oversight bodies to protect the interests of vulnerable communities and promote environmental democracy. As can be seen, the Ekati diamond mine project agreement was an effort to provide some measure of control over the actions of the investor (BHPB).

In particular, it provided rules to address legal and administrative deficits that existed in the system when the application for a development authorization was tendered by the investor and formalized the environmental and socio-economic commitments of the investor. Also, it promoted public participation in EIA follow-up (monitoring, evaluation, management, and communication of the environmental performance of a project); and established a compliance mechanism. The absence of a compliance mechanism and limited public participation in EIA follow-up are some of the deficiencies associated with the Voluntary Guidelines, Principles for Responsible Agricultural Investments, as well as the EIA tool that were examined in the previous chapters.

The Ekati mine environmental agreement seems to be a good example of how the Principle 10 rights of the Rio Declaration¹⁰⁸⁵ can be operationalized to tackle corporate environmental accountability issues that researchers, including the United Nations, have been calling companies

Recurrence” (Center for Progressive Reform White Paper No. 1007, 2010); Carter, A., and G. Fraser, “A Framework for Effective Environmental Regulation in Newfoundland and Labrador’s Offshore Oil and Gas Sector: Applying Lessons from the Offshore Helicopter Safety Inquiry” (2011) (A Report Submitted to the Premier of Newfoundland & Labrador). Online:

http://research.library.mun.ca/99/4/Offshore_Environmental_Authority_Recommendation_-_Carter_and_Fraser.pdf.

¹⁰⁸⁴ Stewart, R. B., “A New Generation of Environmental Regulation” (2001) 29 Capital U.L. Rev. 21; Fiorino, D. J., *The New Environmental Regulation* (Cambridge: MIT Press, 2006).

¹⁰⁸⁵ These are the rights to access environmental information, public participation, and access to justice in environmental matters.

to consider, to promote the environmental performance of their projects. The environmental agreement and the monitoring agency that it established can go a long way in addressing the participation deficit issue that has been surrounding EIA follow-up. By way of illustration, (1) it recognizes that vulnerable groups need to be informed about environmental happenings in their neighborhoods, and the significant role that traditional knowledge plays in environmental management. Moreover, the agreement acknowledges that involving the affected communities and environmental groups in environmental decision making and providing a dispute resolution mechanism where aggrieved persons can challenge a decision, act, or omission by regulators or the investor are essential elements of corporate accountability.

Finally, it should be mentioned that many different researchers, ranging from William Ross,¹⁰⁸⁶ O’Faircheallaigh,¹⁰⁸⁷ Jorge Vinuales¹⁰⁸⁸, and Natasha Affolder¹⁰⁸⁹ have studied the strengths and weaknesses of the agreement and the Monitoring Agency. First, the agreement is said to “provide a basis for monitoring that exceeds statutory requirements.”¹⁰⁹⁰ Although the investor (BHPB) argues that “the Monitoring Agency adds complexity and confusion to the environmental management regime and allows government agencies to avoid the responsibility they would normally bear under conventional regulatory regimes,”¹⁰⁹¹ the monitoring agency has been singled out as an example of the difference the environmental agreement has made. For example, it is “widely perceived to be an effective mechanism for technical review and management of

¹⁰⁸⁶ Ross, W. A., “The Independent Environmental Watchdog: A Canadian Experiment in EIA Follow-up” in Angus Morrison-Saunders & Jos Arts (eds) *Assessing Impact: Handbook of EIA and SEA Follow-up* (London: Earthscan, 2004) 185.

¹⁰⁸⁷ O’Faircheallaigh, C., *Environmental Agreements in Canada: Aboriginal Participation, EIA Follow-up and Environmental Management of Major Projects* (Calgary: Canadian Institute of Resources Law, 2006) 18 [O’Faircheallaigh].

¹⁰⁸⁸ Vinuales, *supra*.

¹⁰⁸⁹ Affolder, *supra*.

¹⁰⁹⁰ *Ibid*, 164.

¹⁰⁹¹ O’Faircheallaigh, *supra*, 18.

environmental impacts at the mine.”¹⁰⁹² Environmental Agreements have now surfaced in different jurisdictions in Canada,¹⁰⁹³ the United States, Japan, and the European Union.¹⁰⁹⁴

4.1.2 Sustainability assessments

Ever since the 1987 Brundtland Commission defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs,”¹⁰⁹⁵ focus on the potential for project developments to yield sustainable outcomes has heightened.¹⁰⁹⁶ Sustainability assessment is a decision-making strategy that can enable public and private actors to achieve the social development, environmental protection, and economic growth that the Brundtland report asserts. A wide range of researchers, including Robert Gibson,¹⁰⁹⁷ Pope *et al.*,¹⁰⁹⁸ Waas *et al.*¹⁰⁹⁹, etc. hold that sustainability assessment is more instrumental in steering environmental decision-making (EIA) towards a sustainable future or, in the words of Alex Weaver to “push the vectors’ towards sustainability goals.”¹¹⁰⁰

¹⁰⁹² Affolder, *supra*, 167.

¹⁰⁹³ *Ibid*; Doelle, M., “Regulating the Environment by Mediation and Contract Negotiation: A Case Study of the Dona Lake Agreement” (1992) 2 J.E.L.P. 189; Noble, B., and J. Birk, “Comfort monitoring? Environmental assessment follow-up under Community–industry negotiated environmental agreements” (2011) 31 Environmental Impact Assessment Review, 17-24, 20 -22.

¹⁰⁹⁴ Orts, E. W., and K. Deketelaere (eds), *Environmental Contracts: Comparative Approaches to Regulatory Innovation in the United States and Europe* (London: Kluwer Law International, 2001); Rehinder, E., “Ecological Contracts: Agreements between Polluters and Local Communities” in G. Teubner, L. Farmer & D. Murphy, eds., *Environmental Law and Ecological Responsibility: The Concept and Practice of Ecological Self-Organization* (New York: John Wiley & Sons, 1994) 147 -151.

¹⁰⁹⁵ World Commission on Environment and Development (WCED) *Our Common Future* (Oxford: Oxford University Press, 1987).

¹⁰⁹⁶ United Nations, *Achieving Sustainable Development and Promoting Development Cooperation: Dialogues at the Economic and Social Council* (New York: United Nations, 2008); OECD, *Promoting Sustainable Consumption: Good Practices in OECD Countries* (OECD, 2008); UNEP, *Promoting Sustainable Agriculture and Rural Development*. Online: <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=52&ArticleID=62>

¹⁰⁹⁷ Gibson, R. B., *Sustainability-based assessment criteria and associated frameworks for evaluations and decisions: theory, practice and implications for the Mackenzie Gas Project Review* (Mackenzie Gas Project Joint Review Panel., 2006) [Gibson].

¹⁰⁹⁸ Pope, J., A. Morrison-Saunders, and D. Annandale, “Conceptualising sustainability assessment” (2004) 24:6 Environmental Impact Assessment Review 595-616.

¹⁰⁹⁹ Waas, T., *et al.*, *Sustainability Assessment and Indicators: Tools in a Decision-Making Strategy for Sustainable Development* (2014) 6 Sustainability 5512-5534.

¹¹⁰⁰ Weaver, A., *et al.*, *Contributing to sustainability as an environmental impact assessment practitioner* (2008) 26:2 Impact Assessment and Project Appraisal 91-98, 92.

Box 10: Common characteristics of sustainability assessment

- Positive contribution to sustainability as the basic criterion for evaluations and decisions
- Scope that is comprehensive of all requirements for progress towards sustainability, and their interrelations (and therefore includes all factors that may affect prospects for meeting these requirements),
- Focus on net gains as well as avoidance of significant (especially, permanent) losses,
- Selection of case-specific purposes informed by “contribution to sustainability” objective,
- Focus on identifying the best option, achieved in part by comparative consideration of possibly reasonable alternatives,
- Attention to the full set of global and regional as well as local sustainability concerns, achieved chiefly through application of generic criteria,
- Sensitivity to the particular context (ecological, cultural, socio-economic, etc.), achieved in part through direct engagement of stakeholders in identifying key case-specific concerns and priorities, and using these to supplement and/or elaborate the generic criteria,
- Efforts to achieve multiple, mutually reinforcing gains in all the interrelated areas of sustainability concern, in addition to serving core project purposes,
- Explicit attention to, and open rationales for, trade-offs among the recognized objectives,
- Contribution to sustainability through the assessment process itself as well as through the better decisions that result, achieved in part through incorporating open participative approaches, respecting different interests, and integrating different kinds of knowledge, and
- Treatment of assessment as an approach to decision making (in the conceptualization, planning, design, evaluation, approval, implementation and monitoring and eventual decommissioning of undertakings), not just a review at a particular stage.

Source: Robert Gibson 2006

There is a wide array of sustainability-based assessment processes,¹¹⁰¹ and hence, various definitions. To be more comprehensive, Waas *et al.* define sustainability assessment as any process that aims to: (1) contribute to a better understanding of the meaning of sustainability and its contextual interpretation (interpretation challenge); (2) integrate sustainability issues into decision-making by identifying and assessing (past and/or future) sustainability impacts

¹¹⁰¹ Bond, A.; Morrison-Saunders, A.; Pope, J., “Sustainability assessment: The State of the Art” (2012) 30 Impact Assessment and Project. Appraisal 53–62 [Bond *et al.*].

(information-structuring challenge); and (3) foster sustainability objectives (influence challenge).¹¹⁰² When compared with EIA, sustainability assessment is considered an “ex-ante” process intended to predict future outcomes¹¹⁰³ or evaluate the effects of decisions in advance and support an alternative between various options.¹¹⁰⁴ So, even though the major challenge associated with this tool is “that sustainability needs and options always depend heavily on the particular circumstances involved,”¹¹⁰⁵ Robert Gibson has adopted generic requirements/criteria/principles for sustainability assessment as represented in Box 10.¹¹⁰⁶ Because of their general nature, these requirements can be applied in any jurisdiction when assessing the sustainability of a project.

As mentioned earlier, initiatives in sustainability assessment have been associated with the field of environmental assessment¹¹⁰⁷ and have been launched and applied in many jurisdictions within the past few decades. For example, sustainability assessment processes have been used in Canada,¹¹⁰⁸ the Southern African Development Community (SADC),¹¹⁰⁹ Western Australia,¹¹¹⁰ Hong Kong, the European Union, and a bunch of other countries.¹¹¹¹ The essence of these policy initiatives is that mainstreaming of environmental, economic, and social impact assessments

¹¹⁰² Waas *et al.*, *supra*, 5516.

¹¹⁰³ Ness, B. *et al.*, “Categorising tools for sustainability assessment” (2007) 60 *Ecol. Econ.*, 498–508.

¹¹⁰⁴ Pintér, L., *et al.*, “Bellagio STAMP: Principles for Sustainability Assessment and Measurement” (2010) *Ecological Indicators* 1-30; Bond, A.; A. Morrison-Saunders, and J. Pope, “Sustainability assessment: The state of the Art” (2012) 30 *Impact Assessment and Project Appraisal* 53–62 [Bond *et al.*].

¹¹⁰⁵ Gibson, *supra*, 10.

¹¹⁰⁶ *Ibid.*

¹¹⁰⁷ Gibson, *supra*; Ness, B. *et al.*, “Categorising Tools for Sustainability Assessment” (2007) 60. *Ecol. Econ.* 498–508.

¹¹⁰⁸ *Canadian Environmental Assessment Act*, Section 4(1)(b)).

¹¹⁰⁹ Southern African Development Community (SADC), *SADC Policy and Strategy for Environment and Sustainable Development*. (Maseru: SADC Environment and Land Management Sector, 1996)

¹¹¹⁰ Government of Western Australia, *Hope for the Future: The Western Australian State Sustainability Strategy*. (Perth: Department of the Premier and Cabinet, 2003).

¹¹¹¹ Grace, W., and J. Pope (2005), “Sustainability assessment – issues of process, policy and governance” paper for presentation to the International experience and perspectives in Strategic Environmental Assessment of the International Association for Impact Assessment, Prague, Czech Republic, 26-30 September 2005; Guijt, I., Moiseev, A., and R. Prescott-Allen, *IUCN Resource Kit for Sustainability Assessment* (Geneva: IUCN, 2001).

should strengthen and steer decision-making towards a sustainable future. In Canada, sustainability-based criteria were applied in the assessment of the Voisey's Bay Nickel Mine and Mill Project,¹¹¹² the Mackenzie Gas Project case,¹¹¹³ and the White's Point quarry and marine terminal in Nova Scotia.¹¹¹⁴

Table 22: Examples of sustainable operations

Development	Sustainability Indicators
Century City', Cape Town, South Africa	• Wetland was enhanced and protected as an integral part of the development • Indigenous community member became the core of the environmental monitoring committee which acted as the watch-dog
Argyle Diamonds, Kimberly, Western Australia	• Employment and skills development programmes for local people • Shift in operations from open-cut to underground mining • 24% of the company's workforce constituting indigenous people in 2006, compared with 5% in 2000
Mozal Aluminium Smelter, Maputo, Mozambique	• Contribution to reduction in malaria in the local area around the smelter through supporting spraying programmes, providing mosquito nets and conducting awareness programmes. This has led to a reduction in the incidence of malaria cases from 80% (in 2001) to 8% (in 2006). • Contribution to local schooling, leading to the first secondary school in the local area and several new primary schools
The Water Corporation of Western Australia	• \$1 million programme of funding and technical assistance was provided to assist rural landowners to voluntarily implement projects on their properties to reduce the discharge of contaminants into water sources. Between 1999 and 2004, 44 projects were completed and total nitrogen loads had been reduced by 73.5 tonnes/year while phosphorous had been reduced by 18 tonnes, compared with the 29 tonnes of nitrogen and 4 tonnes of phosphorous that would have been removed by the proposed woodlot

Source: Adapted from Weavers et al

Pushing the sustainability vectors through EIA is also reflected in the concept of corporate social responsibility, with some developers inventing individual sustainability goals to navigate corporate activities. A good example is Pilbara Iron (2004) in Western Australia, a company that has developed sustainable development goals to: reduce water use, net land disturbance, net emissions (environmental); improve equal employment opportunities, contribution to community capacity building, reduce impact on heritage (social); and optimise long-term economic value

¹¹¹² Gibson, *supra*, 15.

¹¹¹³ *Ibid.*

¹¹¹⁴ *Ibid.*

(economic).¹¹¹⁵ Weaver *et al* have also provided some examples underlining cases in which EIA practitioners have supported more sustainable operations and outcomes.¹¹¹⁶ These cases and the sustainability impacts are summarized in Table 22

Table 22 shows how, through the EIA process, EIA practitioners were able to push the environmental, economic, and social vectors, and hence, support the enhancement of benefits to affected communities. Thus, EIA practitioners were able to operationalize these three vectors into different contexts. All these happened after the EIA incorporated management measures/activities to strengthen the environmental and socio-economic benefits of the projects for the affected communities; the companies concluded different agreements with local communities (in some cases) and incorporated the recommendations from the public authorities and the public into their environmental and social investment programmes. EIA practitioners in Cameroon and other parts of the world should follow suit: spearhead similar initiatives by developing management measures that can guide the decision-making process to a sustainable future.

5 Chapter summary

This chapter was designed for two reasons: to examine the adequacy of Cameroon's EIA system to protect subsistence communities against the adverse environmental and social impacts of large-scale agricultural investments. To address this issue, the legal and administrative arrangements of EIA in Cameroon was critically evaluated. The evaluation was focused on the Constitution of Cameroon, the Forestry Law, the Environmental Code, and the EIA Regulation, as well as the EIA process, the Ministry of Environment, Nature Protection, and Sustainable

¹¹¹⁵ Weaver *et al.*, *supra*, 93.

¹¹¹⁶ *Ibid*, 93-94.

Development, among others. While the institutional arrangement of EIA in Cameroon may create a satisfactory impression of the EIA system having an excellent footing, significant implementation, and enforcement deficits prevail in the framework. These deficits pose challenges for the promotion of environmental protection and sustainable management of land and other environmental resources. In particular, the EIA system is associated with: (1) absence of legal guidance on access to justice, and access to environmental information; (2) public participation in EIA is inadequate, (3) weak coordination and conflict of roles/responsibility, unskilled human resources; and (4) financial constraints.

This chapter also investigated the implementation of the EIA institutional framework. It did so by evaluating the quality of the EIA report that was prepared for the Herakles Farms project in Cameroon (as one of the important aspects of an effective EIA system) to mitigate the project's adverse impacts. The analysis demonstrates that the quality of the reviewed report is unsatisfactory with the consideration of alternatives, assessment of adverse impacts, and the measures adopted to attenuate possible burdens created by the project. In the absence of sufficient information in the EIA report on the implications and mitigation measures, EIA practitioners may find it difficult to develop management strategies that can guide the decision-making process to a sustainable future.

EIA is a tool to assess and reduce environmental and social impacts of proposed projects, and facilitate sustainable development. The fact that the government of Cameroon authorized the Herakles Farms project, despite its location in biodiversity hotspots (an indication that endangered species and forests will be destroyed) and association with human rights violations, including impacts that cannot be satisfactorily mitigated, indicates the inadequacy of the EIA system to protect the rights of subsistence communities. This inadequacy has been triggered by

institutional insufficiencies, including inadequate participation of the affected and interested public in scoping, environmental assessment, and follow-up which includes monitoring, evaluation, management and communication. The chapter ends with two recommendations for a successful EIA implementation in Cameroon: one that would help address existing flaws and promote sustainable (agricultural) developments in the country.

CHAPTER SIX

SUMMARY AND CONCLUSIONS

1 Introduction

The above chapters studied the problem of land-grabbing through an environmental justice lens.

In particular, the thesis:

- reviewed what environmental justice is, what the different concerns of environmental justice are and whether FDI in agriculture can result in environmental injustice, especially landlessness, food insecurity, and environmental and cultural degradation investigated the adequacy of international agreements such as the Minimum Human Rights Principles, the Voluntary Guidelines on the Responsible Governance of Tenure, and the Principles for Responsible Agricultural Investment to regulate against land-grabbing and promote responsible investments in agriculture;
- evaluated the efficiency of Cameroon's land tenure rules to protect subsistence communities against land-grabbing or expropriation without (adequate) compensation;
- questioned how subsistence communities can participate in environmental decisionmaking and promote environmental justice in their communities;
- examined the effectiveness of the EIA system in Cameroon to evaluate potential impacts of proposed developments and steer (large-scale agricultural) projects towards a sustainable path.

The literature review in Chapter two shows that environmental justice can be viewed from distributive, procedural, corrective and social justice viewpoints. It is about recognizing the environmental rights of vulnerable communities, incorporating their social and environmental concerns into a country's institutional framework, and guaranteeing public participation in the

development, implementation and enforcement of such frameworks. The analysis also disclosed that FDI in agriculture has the potential to create opportunities for environmental and cultural degradation, result in displacement and landlessness, and promote food insecurity in host communities in Cameroon and other African countries. To make way for food crops, energy crops, and tree plantations in Africa, some subsistence populations were forced (at gunpoint in some cases), without (adequate) compensation, to leave the lands they have routinely lived on and cultivated for ages, and were incarcerated, beaten and (some) killed.

According to the investigation in chapter three, international agreements regulating large-scale agricultural investments contain important principles for enhancing tenure of land, fisheries, and forests governance. However, such agreements are voluntary, and hence lack the binding force to coerce host States to comply with them, and promote sustainable investments in agriculture. In the absence of binding commitments and adequate means to check compliance, nothing obliges host States and agricultural investors to take the necessary steps to enforce them, especially when it is not convenient, economically or politically, to do so.

Chapter three also reveals that Cameroon has a land tenure system to regulate land, forests, and fisheries resources. Nevertheless, lack of legal recognition of local land rights or customary tenure under the current regime has remained an obstacle for subsistence Cameroonians to enjoy ownership rights for their property and be protected from land-grabbing. It is unreasonable, from a legal standpoint, to protect a right that does not exist under the same regime. By the same token, it was challenging for the affected communities in South West Cameroon to receive (adequate and timely) compensation when the Cameroon Government decided, in 2009, to allocate their land to Herakles Farms for the establishment of an oil palm plantation. A land title is a formal document that could be useful in acknowledging the rights of subsistence

communities to use, enjoy, and transfer land to a third party. However, the process of acquiring land title in Cameroon is fraught with challenges which have made it difficult for subsistence communities to have their land legally recognized and be protected from land-grabbing.

Chapter four, which focuses on public participation in environmental decisionmaking, illustrates that the public (the affected communities and interested actors) can be involved in environmental decision-making through participating in the environmental assessment of projects having significant environmental impacts. This suggests, participating in EIA screening, scoping impact analysis, reporting, reviewing, decision-making, and follow-up. According to the analysis, public participation is important because it can (1) preventing significant environmental and socio-economic impacts, (2) enhance environmental democracy and transparency, and (3) promote sustainable development. However, achieving these goals is fraught with challenges such as failure in preventing environmentally damaging projects, inadequate implementation of proposed mitigation and monitoring measures, and. limited public participation in EIA. These challenges have undermine the potential of EIA to stop proposed developments with impacts that cannot be mitigated.

Chapter five illustrates that Cameroon has adopted an EIA system that can enable decision-makers and (agricultural) investors to evaluate potential adverse impacts, including landlessness, food insecurity, environmental degradation, of proposed projects and adopt mitigation measures and monitoring programs to attenuate such impacts. However, the EIA system abounds with deficiencies, especially at the follow-up stage—a very important stage in the EIA process. EIA follow-up is vital in identifying and communicating impacts that occurred during project development and operation; checking whether impacts are occurring as predicted; and providing feedback from all parties to enhance the EIA process. In a nut shell, it is useful in promoting

accountability to the host government and affected communities. Despite the vitality of this tool, the follow-up stage in Cameroon is driven, entirely, by proponents or investors. The law does not require a joint follow-up activity initiated by all groups of stakeholders (proponent, community, regulators) involved in EIA. Without an independent action by community members concerned about environmental effects of the Herakles Farms project in their neighborhood, nothing guarantees that the environmental and social protection measures in the environmental management plan will be translated into specific actions by this investor.

To sum up, the thesis identified three major deficiencies in international agreements and domestic laws that were designed to improve governance of tenure of land and other environmental resources, and protect subsistence communities from developments that are associated with environmental injustice. These deficits include the absence of binding commitments and the means to check adequate compliance with international agreements against land-grabbing; lack of formal recognition of the land rights of subsistence communities in Cameroon; and inadequate participation of the affected public in EIA, especially in the follow-up stage of the EIA process. These obstacles might have undermined transparent and accountable governance of land and environmental resources, and as a consequence threatened the environmental performance of land-grabbing agreements and Cameroon's land tenure and EIA systems to promote environmental justice and sustainable agricultural developments in Cameroon.

2 Summary recommendations

*Since a spectator citizenry threatens modern democracy, the failures of participation demand special efforts to restore broad citizen participation in public affairs.*¹¹¹⁷

As an important component in the management of natural resources, and of any country or organization that believes that everyone should have equal rights, the participation of affected and interested individuals and actors is important in addressing the land-grabbing issue and corporate accountability gap. Decision-making that is reflective of public concerns helps in promoting environmental justice and sustainable development.¹¹¹⁸ To ensure that environmental justice concerns (distributive, procedural, corrective, and social) are considered and incorporated into laws and policies that regulate the environment, affected and interested public members must be informed, consulted, involved, and empowered to make such decisions.

Principle 3 of PRAI says that “processes relating to agricultural investments must be transparent and monitored, and ensure accountability by States and non-state actors within an appropriate regulatory, legal, and business environment.” If processes relating to the establishment, operation, and decommissioning of oil palm plantations are not transparent, and are not adequately monitored by host governments and affected communities, there is no guarantee that the environmental and social protection measures in the environmental management plan will be adequately translated into action by the concerned investor.

Herakles Farms has promised to protect all shrines or cultural sites in the concession; earmark buffer zones as patches; and supply fire briquettes to its labourers and the affected populations to offset the lost firewood. Herakles Farms has also pledged to set up and operate a cow ranch to

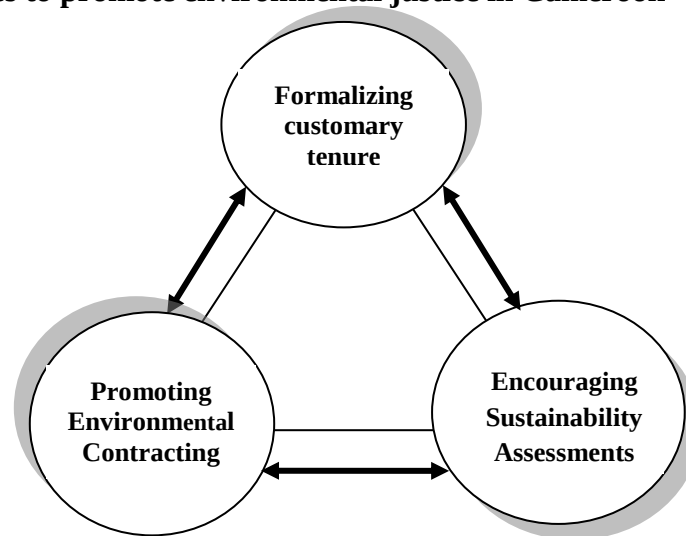
¹¹¹⁷ Kasperson, R. E., and M. Breitbart, *Participation Decentralization and Advocacy Planning* (Washington D.C.: Association of American Geographers, 1972) 517.

¹¹¹⁸ IAIA and IAE, *supra*, Dietz and Stern, *supra*; Creighton, J, *supra*; Glasson *et al.*, *supra*.

provide meat to indemnify the members whose hunting rights have been undermined by the investment. However, there is no mechanism to backup these promises and ensure that its operations are in the interest of the communities hosting the investment. In other words, there is no mechanism to hold the investor accountable to the host communities and the government of Cameroon. Monitoring and communicating compliance with these promises is key to promoting justice in affected communities. This makes public participation in EIA follow-up an indispensable prerequisite of the successful achievement of environmental justice and sustainable agricultural investments in Cameroon.

There is a need to enhance the environmental performance of Cameroon's land laws and EIA system to prevent land-grabbing and promote environmental justice and sustainable agricultural developments in the country. To that end, this thesis recommends three strategies and as can be seen in Figure 4, the recommendations comprise (1) promoting environmental contracting; (2) encouraging sustainability assessment; and (3) formalizing customary land rights.

Figure 4: Strategies to promote environmental justice in Cameroon



Source: designed by the author

2.1 Formalizing customary land rights

The analysis indicates that the statutory laws and State institutions that were established after independence have failed to protect customary land rights in Cameroon. The land rights of the communities that were affected by the Herakles Farms project are not legally recognized, and hence not protected under the current regime. While such communities are allowed to use the land to graze, farm, hunt, fish, or gather non-timber forestry products, their use rights are subordinate. In other words, their use rights lack the privileges of “land ownership”—the legal right to use, enjoy and dispose of property. Besides, the system permits the government to transfer National Lands (defined to include the lands on which subsistence communities farm, fish, hunt, harvest, etc.) to private investors. The fact that customary land tenure holders are not legally allowed to control, transfer, or prevent others from accessing “their land” renders them vulnerable to land-grabbing, and undermines their ability to achieve their greatest potential in a healthy environment.

If only the Government of Cameroon can take the necessary steps to legalize customary property rights, individually or at the community level, the land rights of customary landholders would be converted from use rights to ownership rights. Ownership rights allow subsistence communities to alienate or exclude others such as foreign agricultural investors. Some African countries have attempted to either delimit community land or codify dominant forms of customary tenure and replace the role of traditional authorities in land administration with formal, state-sanctioned administrative bodies. Formalizing customary tenure is an ideal model for the Cameroon Government to emulate and apply: it would go a long way towards protecting vulnerable communities from being kicked out by the government or forced to evacuate their property without appropriate and timely compensation as stipulated in the Constitution of Cameroon.

2.2 Promote sustainability assessments in Cameroon

Sustainability assessments can enable EIA practitioners in Cameroon and private actors to operationalize social development, environmental protection, and economic growth, being the three arms of sustainable development. If adopted in Cameroon, sustainability assessments will encourage EIA practitioners and developers to consider assessing the sustainability (environmental, social, and economic) of a project proposal, not just to review a given stage of the EIA process, but in the conceptualization, planning, designing, evaluation, approval, implementation, monitoring and eventual decommissioning of project developments.

Sustainability assessments can persuade developers to push the three sustainability vectors through EIA. Developers can do so by incorporating the concerns and recommendations of the affected communities and public authorities into their environmental and social investment programmes. Sustainability assessment will ensure that EIA incorporates management measures/activities to strengthen the environmental and socio-economic benefits of potential projects for the affected communities. This tool can also incentivize developers to invent individual sustainability goals to navigate corporate activities in order to, for example, (1) reduce water use, net land disturbance, net emissions (environmental); (2) improve equal employment opportunities, contribute to community capacity building, reduce impact on heritage (social); and (3) optimize long-term economic value (economic). To conclude, sustainability assessments will enable

2.3 Promoting environmental contracting

Once again, Cameroon has an EIA system that is deficient at the follow-up stage: the EIA law does not encourage a joint follow-up activity initiated by all groups of stakeholders (proponent, affected communities, and regulators) involved in EIA. This deficiency has threatened the

performance of the EIA tool to promote environmental justice and sustainable agricultural investments in Cameroon. Some of the concerns surrounding the Herakles Farms oil palm plantation and refineries are: (1) the inadequacy of the EIA law to manage the project to promote justice (2) lack of trust by the (affected and interest) public that the Cameroon government will rigorously monitor the adverse effects of the project; (3) the absence of mechanisms to ensure that the verbal promises made by Herakles Farms during the hearings are implemented; (4) the absence of financial security to backup environmental pledges; and (5) the determination of affected communities to secure monitoring of both the company and government. To conclude, there is no system in place to adequately provide some measure of control over the actions of Herakles Farms, as well as potential agricultural investors.

Environmental contracting can lead to the negotiation of enforceable agreements to tackle the environmental and social impacts created by a development project, including FDI in agriculture. If adopted, this strategy will motivate the establishment of an independent environmental oversight body that can provide expert evaluation, monitor both investors and the government of Cameroon. The oversight body will also motivate and ensure the exchange of information between vulnerable community members and potential investors. Precisely, the environmental contracts will include: (1) a security deposit clause to back-up promises that will be made by potential investors during public consultation meeting, and take care of investors' failure to restore project sites; and (2) a dispute resolution mechanisms clause to inspire discussions, mediation, and binding arbitration that shall be open to the public. As can be seen, environmental contracting can provide some measure of control over the actions of potential investors in Cameroon.

Not only are these strategies instrumental in fortifying land rights and EIA follow-up (monitoring, evaluation, management, and communication of the environmental performance of a project) in Cameroon. Together, they will help in triggering EIA practitioners, land managers, and the affected and interested public to translate the environmental, economic, and social facets of sustainable development and, by so doing, steer the decision-making process towards environmental justice and sustainable development.

2.3 Procedure for implementing the recommendations

Thinking about the billions of dollars that governments spend each year on research and the over \$ 100.000 that has been invested in my education, it is, therefore, important that my recommendations are adopted and spread throughout society. My research has produced a body of evidence-based knowledge that I hope to transfer to different types of stakeholders. For example, other researchers, industries, regulatory agencies, national policy makers, local administrators, professionals, subsistence communities. However, adopting and translating these recommendations into practice is challenging. Some of the difficulties include knowledge barrier¹¹¹⁹; path dependence;¹¹²⁰ economic barrier;¹¹²¹ implementation deficits;¹¹²² and time constraint¹¹²³ With regards to how to overcome these obstacles, I will remain a credible messenger by whom the research knowledge will be transferred. I plan to do so through

¹¹¹⁹ Until adopters, including the government of Cameroon and subsistence communities, become knowledgeable about an innovation and how it functions, adoption may be difficult.

¹¹²⁰ Potential adopters may be unwilling to change current practice model because they are so glued to history. The land tenure system that was adopted in the early 70s is still in force.

¹¹²¹ Financial costs involved in traveling to conferences, workshops or traineeships or giving lectures and in producing the volume of research evidence needed, in addition to learning costs and switching costs.

¹¹²² adopting instruments to implement framework laws in the country has always been a challenge to surmount.

¹¹²³ Time is a constraint because it seems to be taking unnecessarily long for manuscripts to get published.

education,¹¹²⁴ publication,¹¹²⁵ convincing government leaders,¹¹²⁶ and persuading opinion leaders.¹¹²⁷

3 Future research

This thesis offers different opportunities for research. First, it could be expanded to examine the effectiveness of the international Bill of rights for women to promote environmental justice in African communities vulnerable to land-grabbing. Under the Convention on the Elimination of Discrimination Against women (specifically Articles 2 and 14) and the Committee on the Elimination of Discrimination against Women General Recommendation No. 30, Canada has extraterritorial obligations to regulate the activity of its corporations operating abroad and to provide effective remedies to individuals harmed by such action. I would like to investigate the impact of Canadian Financial players, including private companies, universities, pension funds, and banks on the rights of Africa women and the steps that Canada is taking to ensure that its agricultural corporations are not involved in conduct that discriminates against women. Land has also been allocated for the establishment of tree plantations and conservation projects in order to capture atmospheric green-house gas emissions and promote sustainable development. I would like to study the environmental law and policy dimensions of land-grabbing, with a particular focus on the United Nations Framework Convention on Climate Change, The Paris

¹¹²⁴ Present papers at conference presentations and deliver lectures at universities.

¹¹²⁵ Author peer review articles and books in the areas of land-grabbing and how to promote a sustainable governance of large-scale agricultural investments in Cameroon and other African countries.

¹¹²⁶ Persuade Parliament of Cameroon, especially our local senator, the Inter-Ministerial Committee on the Environment, the National Consultative Commission on the Environment and Sustainable Development, Ministry of the Environment, Nature Protection and Sustainable Development, Ministry of Agriculture and Rural Development, Ministry of State Property and Land Tenure, Ministry of Industry, Mines and Technological Development, Ministry of Energy and Water Resources.

¹¹²⁷ Opinion leader would includes politicians, business leaders, environmental and social justice leaders, community leaders, journalists, educators, and celebrities. I am already in touch with international NGOs such as Oxfam and Match International and with a domestic NGO called Foundation for Environment and Development. FEDEV is an NGO that is educated on environmental and human rights issues, and FEDEV is influential in and out of Cameroon. FEDEV is a member of The Access Initiative, the largest civil society network in the world that is dedicated to promoting access to EI, public participation and access to justice.

Agreement on Climate change and the Sustainable Development Goal 13—combatting climate change.

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