

Chapter 16:

Public participation in environmental decision-making in Cameroon – myth or reality?

Jean-Claude Ashukem

1 Introduction

There seems to be an apparent parallel reality between the legal provision of the right to public participation and its actual implementation in Cameroon. The country's rules, procedures and processes of public participation in environmental matters are flawed to the extent that they seem to be void of effective participation by local communities. In this regard, it is doubtful whether local communities participate in environmental decision-making at all; or whether their views are ever taken into consideration prior to the implementation of development activities. Several examples are apparent to substantiate this assertion, and these form the focus of this chapter. Two examples are mentioned briefly below by way of introduction.

Firstly, several commentators have argued that in the context of forest governance, forest management plans are often approved without due regard to legal prescriptions that provide for public participation by local communities.¹ This is contrary to the objective of the Law on Forestry, Wildlife and Fisheries Regulation² of 1994. Secondly, public participation in decision-making relating to the approval of development activities under the Ordinance on the Management of State Lands³ of 1976 seems flawed. The Ordinance provides for public participation in the guise of the composition of the Land Consultative Board (LCB), but – as will be explored later in the chapter – several problems have been identified regarding the composition and function of this LCB. Examples such as this have led commentators to question whether public participation in environmental matters in Cameroon is a mere symbol of intent rather than a meaningful and powerful right designed to oblige the government to ensure the effective

1 Fuo & Semie (2011: 84–85); Alemagi et al. (2013: 9); and Ashukem (2016a: 242). For a detailed critique of the forest management plans in Cameroon, see Cerutti et al. (2008).

2 Law No. 94/01 of 20 January 1994 to lay down Forestry, Wildlife and Fisheries Regulation in Cameroon (Law No. 94/01).

3 Ordinance No. 76/166 of 25 April 1976 laying down the Management of State Lands in Cameroon (Ordinance 76/166).

involvement and full participation of local communities in environmental decision-making processes.⁴

The aim of this chapter is to critically appraise the legal framework on public participation in environmental decision-making in Cameroon. It assesses whether it empowers local communities to participate in environmental decision-making processes effectively; and whether or not their views and aspirations are taken into account in the decisions that emanate from these processes. The chapter is organised into four discrete but interrelated parts. Part 2 provides an overview of public participation in environmental decision-making and a synoptic perspective of its provision and use in relevant international and regional legal instruments. Part 3 outlines Cameroon's relevant legal framework with particular emphasis on the following: the Constitution of the Republic of Cameroon, 1996 (the Constitution); Law No. 94/1 on Forestry, Wildlife and Fisheries Regulation; Ordinance No. 76/166 on the Management of State Lands; Law No. 96/12 on Environmental Management; and Law No. 2003/006 on Biotechnology. Part 4 contains a critical appraisal of Cameroon's legal framework regarding public participation in environmental decision-making. This is followed by the conclusion and a set of recommendations for improving the current regime.

2 Public participation in environmental decision-making: an overview

Generally, public participation is a multi-layered activity that involves participation in decision-making and policy-making, proceedings to challenge the outcome of decision-making and governance processes. Since the 1970s, there have been calls for a 'bottom-up' more people-centred approach to socio-economic development,⁵ and for stronger environmental protection.⁶ This collectively gave impetus to public agitation for more democratic and participatory approaches in the environmental context.⁷ Public participation can be divided into two components: capacity building; and the process of participation. Capacity building relates to and focuses on environmental education and raising awareness. The participation process deals with transparent and consultative processes that provide an opportunity for concerned individuals to express their views, linked with some assurance that their views will be taken into account in the final decision-making process.⁸

Public participation, which must be backed by transparency, access to information, and access to justice, is considered one of the most recognised principles for achieving sustainable development, since it helps to balance the three conflicting and interwoven

4 Ashukem (2016a: 247).

5 Spyke (1999: 269); Morrow (2011: 140); and Ashukem (2016a: 128).

6 Barton (2002: 81-83); Kiss & Shelton (2007: 102); and Foster (2008: 225).

7 Ashukem (2016a: 128-129).

8 Du Plessis et al. (2016: 100).

dimensions of sustainable development.⁹ This has led to public participation becoming an indelible feature of modern environmental regulatory systems. It involves not only the engagement of state entities, but also the role of non-governmental organisations (NGOs), local communities and other interested and affected parties¹⁰ in environmental decision-making processes prior to the implementation of development projects impacting on the environment. Legislation in many countries incorporates the principle of public participation as a necessary catalyst to spur environmental protection measures.¹¹ This enables and promotes both state and non-state actors (including local communities and other interested and affected parties) to engage, deliberate and take meaningful decisions relating to the protection of the environment, ultimately seeking to improve the environment for the benefit of both present and future generations.¹²

At the international level, Principle 10 of the Rio Declaration on Environment and Development¹³ (1992) provides the basis for the use of a participatory approach in environmental decision-making. It advocates that every person should have access to information, an ability to participate in decision-making processes and access to justice in environmental matters. Similarly, both the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters¹⁴ (Aarhus Convention) of 1998 and the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines) of 2010 provide for and reiterate the importance of public participation in environmental decision-making as a necessary catalyst for environmental protection.

The Aarhus Convention provides for the right of the public to participate at an early stage in a wide range of environmentally-related activities; places an obligation on public authorities to consider a participatory approach when preparing plans and/or issuing decisions that permit certain activities that may significantly affect the environment; and recognises the need for the public to participate during the preparation of executive regulations and other generally applicable legally binding rules that may

9 Segger & Khalfan (2004: 156-158); Segger et al. (2003: 54); Charnovitz (1997: 183); Robinson (2011: 18-19); Steele (2001: 426); and Morrow (2011: 140).

10 Morrow (2011: 139).

11 See, for example: Section 2(4)(f) of the National Environmental Management Act 107 of 1998 (South Africa); Section 2(2)(b) of the Ugandan National Environment Act Cap of 1998; and Section 9(e) of the Law No. 96/12 on Environmental Management in Cameroon.

12 Petkova et al. (2002: 66-67); Ebbesson (2007: 684); and Razzaque (2007: 587).

13 United Nations Conference on Environment and Development (1992) 31 ILM 874.

14 The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matter (1998) 38 ILM 517. Although African states, including Cameroon, are not signatory to the Convention, it provides international benchmarks in terms of the observance and respect for the right to access to information, public participation in decision-making and access to justice in environmental matters.

have a significant impact on the environment.¹⁵ The Bali Guidelines call on states to: ensure, facilitate and provide opportunities for early and effective public participation in environmental decision-making; recognise their responsibility to undertake efforts to ensure proactive public participation operates in a transparent and consultative manner, including efforts to ensure that the concerned are given an adequate opportunity to express their views; ensure that relevant environmental information is made available to the public to facilitate their effective participation in decision-making processes; take due account of public comments received; and make sure that the final decision is made public.¹⁶ The Bali Guidelines furthermore call on states to: ensure public participation in review processes of previously unconsidered environmental sensitive issues; consider appropriate ways of ensuring public input into the preparation of legally binding rules that might have a significant effect on the environment and into the preparation of policies, plans and programmes relating to the environment; and finally, to provide measures that encourage and support capacity-building, including environmental education and awareness-raising and measures that serve to promote public participation in environmental decision-making.¹⁷ At the African regional level, public participation is enshrined in the African Charter on Human and People's Rights¹⁸ (African Charter) of 1982. It provides a broad approach to public participation and bestows an obligation on state parties to respect the right of all citizens, whether individually or through their chosen representatives, to freely participate in the governance of their country.¹⁹ This broad approach to public participation under the African Charter, it is argued, is not limited only to environmental decision-making processes and extends to participation in the formulation of laws, policies and implementation.²⁰ The right has been given serious attention by the African Commission on Human and Peoples' Rights (African Commission) in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 2010 (*Endorois case*),²¹ where the African Commission stated:²²

This duty requires the State to both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.

-
- 15 See Articles 6-8 of the Aarhus Convention. Also see Ebbesson (2002: 3); and Kravchenko (2006: 110).
16 Bali Guidelines (2010) 9-11.
17 Bali Guidelines (2010) 12-14.
18 African Charter on Human and People's Rights (1981) 21 ILM 58.
19 African Charter on Human and People's Rights (1981), Article 10.
20 Ashukem (2016a: 194).
21 Also see the *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria*, African Commission on Human and People's Rights, Comm. No. 155/92 (2001).
22 *Endorois case*, para. 289; and Du Plessis et al. (2016: 101).

The African Commission emphasised that an equal bargaining position is a necessary requirement for effective participation and that public participation must include local communities and other interested and affected parties having the opportunity to influence the outcome of a project's implementation on the environment. In terms of the *Endorois* case, it follows that merely noting an impending project as a *fait accompli* would not amount to effective public participation, since the local communities and affected stakeholders would not have had the chance to influence the outcome of the project.²³ The essential elements for effective and full public participation in environmental matters for the purposes of this chapter, are those set out in the *Endorois* case and include: effective public participation before the project is a *fait accompli*; an equal bargaining position must be established; literacy and an understanding of the project must be promoted; effective public participation must be made in good faith; effective and full participation of local communities has to be based on, and be facilitated by access to information and other procedural entitlements; and measures that facilitate public participation must be culturally sensitive.²⁴

The author has previously distilled relevant characteristic features from relevant international and regional instruments (including soft laws and multilateral environmental treaties) that are necessary for effective public participation in environmental matters.²⁵ It is important to bear in mind that the rationale for public participation is to attempt to influence policies and individual decisions made by government bodies relating to the protection of the environment.²⁶ This concerns, for instance, the ability to have access to, to understand, to evaluate, to formulate and to comment on proposals, plans and programmes that may impact on the environment. Generally, and within an environmental context, public participation takes various forms.²⁷ These include broad-based participation through representative bodies such as NGOs which speak on behalf of individuals and affected communities; and stakeholder participation through which formulated proposals are circulated for comment to parties interested in and affected by a development project.²⁸ It can also take the form of deliberative participation that entails agreeing the rules of decision-making. According to Richardson and Razzaque,²⁹ public participation in environmental decision-making has been rationalised from two perspectives: a process perspective and a substantive perspective. The process perspective is based on the argument that public participation improves the substantive outcome of decision-making; while the substantive perspective supports

23 *Endorois* case, para. 281; and Ashukem (2016a: 128).

24 *Endorois* case, para. 289; and Ashukem (2016a: 137).

25 Ashukem (2016a: 212-213).

26 Bell & McGillivray (2008: 311).

27 See generally: Arnstein (1969: 216); and Du Plessis et al. (2016: 100).

28 Bell & McGillivray (2008: 311-312); and Arnstein (1969: 216).

29 Richardson & Razzaque (2006: 170).

the view that public participation “bolsters the democratic legitimacy of decision-making”.³⁰

The law plays a crucial role in all of these approaches and perspectives, especially as it “creates a structure for participation that helps crystallise and protect environmental objectives”.³¹ This is because the law stipulates participatory procedures in environmental impact assessment (EIA) processes, for example, and considers public participation a necessary element for effective EIA decision-making. The proper implementation of public participation generally, and in EIA processes in particular, has the potential to ensure and promote environmental justice and human well-being, as it helps to balance the needs of both present and future generations in governmental decisions, to integrate environmental consideration within decisions, and to implement and enforce environmental standards.³² In sum, public participation in environmental decision-making provides a platform where voices meet and are heard. Whether this is the case in Cameroon’s legal framework is considered in the next section of this chapter.

3 The legal framework of public participation in Cameroon

Provisions relating to the right to public participation in Cameroon can be found in the Preamble of the Constitution, Law No. 94/1, Law No. 96/12, Law No. 2006/2003 and Ordinance No. 76/166. The relevant provisions of these laws are examined below.

3.1 The Constitution of the Republic of Cameroon, 1996

Although the Constitution of Cameroon has no direct provision on the right to public participation, the right could implicitly be inferred from the Preamble of the Constitution. In terms of Article 65 of the Constitution, the Preamble is part and parcel of the Constitution, with enforceable rights. The Preamble requires the state to harness its land and environmental resources in such a way as would benefit all Cameroonians. Furthermore, in guaranteeing the right to a healthy environment, the Preamble requires that the “protection of the environment shall be the *duty and responsibility* (emphasis added) of every citizen”. Finally, the Preamble affirms the duty and responsibility of the state to safeguard the effective protection of vulnerable populations, including *inter alia*, local communities, minority populations and indigenous communities. The foregoing suggests that the participation of the public is essential to ensure effective

30 Ibid.

31 Ibid: 167.

32 Birnie & Boyle (2002: 261); Verschuuren (2004); and Ashukem (2016a: 136).

environmental protection, the protection of the rights of vulnerable populations, and the harnessing of land and environmental resources for the benefit and prosperity of all Cameroonians. The reverse would be true if the decision-making processes of large-scale land investment activities were void of public participation.

3.2 Law No. 94/01

Section 1 of Law No. 94/01 provides a framework for the integrated and sustainable use of forests, wildlife and fisheries. This vision is also reflected in its Decree of Implementation.³³ According to the law, a *cahier de charges* (specifications) must be included in concession forest contracts which specifies the concessionaire's obligations. These contracts must be negotiated between local administrative authorities and the local community concerned, for which the latter would be provided an opportunity to be involved and participate in decision-making.³⁴

Section 23 of Law No. 94/01 provides that forest management plans (FMPs) must be submitted to the Minister of Forestry for approval. This compels logging companies to ensure the participation of local communities during the preparation of such plans so as to ensure the sustainability of forest resources. FMPs seem to provide a platform for agreements between logging companies and local communities where the latter could be involved and participate in decision-making insofar as the exploitation of forestry resources is concerned,³⁵ as without such participation, the FMPs may not be approved by the Minister. Hence, the involvement and participation of local communities and affected stakeholders in FMPs of forestry activities relating to carbon offset projects, for example, has the potential to enhance and ensure the sustainable use and exploitation of forest resources and their management. The participation of local communities in forest carbon offset projects may also promote the conservation of permanent value forest, which according to Sections 20 to 22 of Law No. 94/01, must constitute 30% of the national territory.³⁶ In this regard, the responsibility lies on the Minister to actually ensure that logging companies adhere to a participatory approach, thereby providing local communities and affected stakeholders with the right to be actively and fully involved in FMPs relating to forestry activities.

33 Decree No. 95/531/PM of 23 August 1995 setting the Modalities for the Implementation of Forests Regulations; and Decree No. 95/466/PM of 1995 setting the Modalities for the Implementation of Wildlife Regulations.

34 Alemagi et al. (2013: 9).

35 Ibid.

36 Fuo & Semie (2011: 84); and Ashukem (2016a: 241).

3.3 Ordinance No. 76/166

Ordinance No. 76/166 provides a framework for land management in Cameroon and creates a Land Consultative Board (LCB) to discharge this responsibility. In terms of the Ordinance, the LCB must consist of representatives of government, a Senior Divisional Officer (or Prefect), the chief and two village elders, and decisions on matters relating to land investment must be made with the participation of all the members.³⁷ The fact that decision-making on land-related matters must take place in this manner, is an indication that a land-related development activity cannot commence without the full and effective participation of local communities and affected stakeholders, who in terms of Article 12 of Ordinance No. 76/166, are members of the LCB.³⁸

3.4 Law No. 96/12

As with most national legislation that incorporates certain principles for effective and efficient environmental governance, Law No. 96/12 follows the same trend.³⁹ Section 9 of Law No. 96/12 provides for the principle of public participation, which entails, among other things, the right and responsibility of everyone to safeguard the environment and to contribute to its protection, where decisions concerning the environment shall be taken after the full and effective consultation and participation with other actors concerned, or through public debate.⁴⁰ Thus, to properly safeguard and protect the environment, local communities and interested and affected parties have to be actively involved in decision-making, plans and programmes of environment-related processes and procedures in order to properly assert protection of their environmental and other related rights. This means, therefore, that for local communities and interested and affected parties to be actively involved in environmental protection measures, they should be allowed to be part of environmental decision-making processes, as their participation could provide a necessary platform for public authorities to enhance environmental protection and other related human rights-based interests. Section 72 of Law No. 96/12 obliges the state to encourage and allow for public participation insofar as environmental governance and protection is concerned. The state is also required to create appropriate mechanisms to ensure the dissemination of environmental information through training, research and education about environmental issues.⁴¹

Law No. 96/12 also provides for an environmental and social impact assessment (ESIA) regime, which makes provision for the involvement and participation of local

37 Article 12 of Ordinance 76/166.

38 Ashukem (2016a: 242).

39 Section 9 of Law No. 96/12.

40 Ibid.

41 Section 72(i)-(iv) of Law No. 96/12.

communities in decision-making processes of activities impacting on the environment. For example, in *FEDEV v. China Road and Bridge Corporation* (FEDEV case),⁴² the Court of First Instance in Widikum, Cameroon, granted FEDEV *locus standi* to institute legal proceedings in the public interest, with a view to compelling the respondents to engage local communities in the ESIA process.

3.5 Law No. 2003/006

Law No. 2003/006 reinforces public participation with respect to genetically-modified organisms (GMOs). In terms of the law, the competent national authority is required to foster and facilitate active and effective public participation with regard to the safe movement, manipulation and use of GMOs.⁴³ Part III of the law, titled “Open testing and use of genetically modified organisms”, provides for public participation in matters relating to the use and release of GMOs. It expressly requires the competent national authority to hold a sufficient number of consultative and participatory meetings with the public in the context of the use, release and sale of GMOs and products containing GMOs.⁴⁴ The competent national authority is further required to ensure that there is adequate public consultation and participation in applications for the open testing of GMOs for risk assessment in order for an environmental safety attestation to be issued.⁴⁵ The foregoing means that any environmental safety attestation that is approved without full and effective public participation, is void and contrary to the law.

4 The myth or reality of public participation in environmental decision-making in Cameroon: a critical appraisal

Rules, procedures and processes governing public participation in Cameroon are flawed and do not often align with governance practices that provide for the effective involvement and participation of local communities during decision-making processes.⁴⁶ At worst, their views and opinions are rarely considered.⁴⁷ For example, during the regulation of the BioPalm palm oil project, a government official clearly disregarded public opinion and is quoted as saying that “I did not come to ask the opinion of the populace. The forest is the forest of the state”.⁴⁸ Such derogatory remarks

42 2009 Unreported decision No. CFIB/004M/09; and Fuo & Semie (2011: 89).

43 Section 35 of Law No. 2003/006.

44 Section 42(1) of Law No. 2003/006.

45 Section 42(2) of Law No. 2003/006.

46 Ashukem (2016a: 247-248).

47 Ashukem (2016b: 17).

48 Freudenthal et al. (2013: 348); and Ashukem (2016a: 229).

succinctly illustrate the top-down approach to environmental governance in Cameroon. It also highlights lack of transparency and accountability, and underlines the authoritarian nature of the governance structure in the country devoid of democratic norms and principles such as public participation. The BioPalm palm oil scenario illustrates that public participation in Cameroon is nothing short of a formality as opposed to a desire of the state to promote a culture of inclusive and participatory governance of natural resources generally, and in environmental decision-making specifically.

Law No. 94/1 could be criticised for failing to have an all-inclusive provision on public participation that guarantees the right of local communities and affected stakeholders to effectively participation in decision-making processes. Considering the fact that the prime objective of the law is to promote and ensure “the involvement of local communities in the management and protection of the forest”,⁴⁹ it would have been laudable if the law were to have a specific provision(s) obliging the state to facilitate and ensure the effective participation of local communities and affected stakeholders within this context. Without such a specific legal guarantee, it is hard to imagine how local communities and affected stakeholders can effectively participate in decision-making in the context of forestry-related projects. It has been argued that in practical terms, local communities rarely exercise this right because FMPs are often approved without due regard to legal prescriptions such as those providing for the participation of local communities.⁵⁰ Instead, concession-based forest, which clearly excludes local communities from decision-making processes, has been the order of the day with regard to the exploitation and management of forestry resources. In reality, local communities are generally not consulted and do not participate in decision-making processes about logging permits and other forestry-related investment.⁵¹ This lack of effective involvement and participation by local communities in decision-making processes relating to forestry activities is in direct contrast to the laws prime objective indicated above. It has been argued that in tandem with the Policy Document: National Forestry Action Programme of Cameroon⁵² (1995), the intention of the government to enhance sustainable and inclusive forestry governance has turned out to be nothing but a mirage,⁵³ since it is void of effective involvement and participation of local communities and affected stakeholders in the governance of forestry resources.

49 Section 23 of the 1994 Forestry Law. See further: Egbe (2001: 25-26); and Explanatory Statement to Parliamentary Bill No. 54/PJL/AN of November 1993.

50 Ashukem (2016a: 242); Fuo & Semie (2011: 85); Cerutti et al. (2008); and Alemagi et al. (2013: 9).

51 Dupuy & Bakia (2013: 6); and Ashukem (2016a: 248).

52 Ministry of Environment and Forestry (1996: 1-4 and 35).

53 Egbe (2001: 26).

It has been indicated that public participation suffers from a ‘decision-making hic-cough’.⁵⁴ This is predicated on the fact that the right to participate in environmental decision-making in Cameroon is heavily characterised by bribery and corruption,⁵⁵ with a corroboration and affirmation of decision-making processes largely amounting to carefully thought, planned and already considered governmental decisions. It is common for the public to have a superficial outline of the final form of some project or development as per prior agreement by government bodies, developers and other decision-makers.⁵⁶ Still, it has been warned that since such practices have the potential to negatively undermine the very essence of public participation, they must be prevented at all cost in order for public participation to be truly exercised from the outset of the decision-making process.⁵⁷ This is essential as people with *mala fide* intentions, who are usually paid, often partake in decision-making processes to the extent that it is only fair to question the merit of their inputs, as this could greatly affect the final outcome of the decision.⁵⁸ In fact, during the negotiation of the Herakles Farm palm oil project, it was reported that some chiefs and elders were paid large sums of money in order to support the project.⁵⁹ Freudenthal et al.⁶⁰ noted a similar problem during the regulation of the Biopalm palm oil project in Cameroon and reported that some chiefs had close personal links with the company from which they received payment in return for supporting the project’s approval.

Although the FEDEV case may seem to indicate the realisation of public participation in environmental decision-making in Cameroon, it must be noted that the substantive merits of the case focussed on the broad locus standi provision contained in Law No. 96/12. In fact, the case could be hailed as the first of its kind to set a precedent for the effective implementation of the locus standi provision in Cameroon. It did not, however, specifically deal with the issue of public participation.

Turning to consider the composition of the LCB, as prescribed by Article 12 of Ordinance No76/1 discussed above. It feasibly provides for and supports a participatory approach to land governance. However, Article 15 appears to bar the effectiveness of this right, particularly as it provides that “[T]he Commission’s recommendation are adopted by a simple majority of members present and valid if the head of the village or the community is present”. This undermines the intent of Article 12 in that decision-making on land matters should surely not be made without the presence of all members of the LCB being present. In this context, it could be possible for the Government of Cameroon to rely on the provision of Article 15 to restrain the effective participation

54 Oyono et al. (2005: 357).

55 Freudenthal et al. (2013: 350).

56 Du Plessis (2008: 7).

57 Ibid.

58 Ibid: 8; Ashukem (2016a: 137).

59 Mousseau (2013: 4); Ashukem (2016a: 186); and Ashukem (2016b: 17).

60 Freudenthal et al. (2013: 350).

of local communities and affected stakeholders in decision-making processes in order to approve internationally financed land-related-investment projects. It has been reported that the Herakles Farms land deal was implemented without proper consultation with, and the participation of, local communities.⁶¹ Concerns were raised by representatives of the village of Ebanga, who expressed dissatisfaction with the composition and functions of the LCB, and the demarcation of areas to be developed between Ebanga and Ndonga villages with respect to the Herakles Farm palm oil plantation.⁶²

Similarly, during the negotiation of the Nanga-Eboko rice project, it was reported that local communities and the local municipality were not consulted and did not participate in the decision to lease community land for the project. This was confirmed by the Mayor of Nanga-Eboko, who is alleged to have stated that "...the municipality and our administration had not been consulted in the selling of the land".⁶³ As mentioned above, the lack of public participation by local communities restricts their ability to make informed decisions on activities that have the potential to negatively impact on their rights. The lack of effective consultation and participation by local communities in decision-making clearly runs counter to the precepts of good governance.

It is argued that there is a glaring and complete absence of involvement and participation of local communities in ESIA processes relating to large-scale development activities in Cameroon.⁶⁴ It has been reported that there were flaws in the implementation of the Chad-Cameroun Oil Pipeline project, including for example, huge problems with the ESIA monitoring and control regime, and issues of institutional democracy and governance (or perhaps rather a lack thereof).⁶⁵ An empirical study by Alemagi et al.⁶⁶ highlighted that local communities from eight villages in the south-west region of Cameroon were entirely excluded from public participation processes relating to huge forest development projects. Commentators have also argued that the ESIA regime neither provides for, nor requires, prior consultation with local communities and interested and affected parties during the early phases of project development.⁶⁷ It furthermore does not explicitly stipulate that their views and opinions should be taken into account during decision-making processes relating to project plans.⁶⁸ Interestingly, the ESIA regime does not state whether or not an ESIA is required for the expansion of projects in Cameroon, and if local communities have a right to participate in the decision-making process relating to them. Given the fact that the expansion of

61 Dupuy & Bakia (2013: 6); and Ashukem (2016a: 229).

62 See <<http://www.sciencespo.fr/ecole-de-droit/sites/sciencespo.fr/ecole-de-droit/files/Analysis%20of%20Some%20Contested%20Legal%20Issues%20Reviewed%20FINALE%20VERSION.pdf>> (accessed 19-2-2018); and Ashukem (2016a: 229).

63 See: <<http://www.afronline.org/?p=2908>> (accessed 19-11-2017).

64 Alemagi et al. (2013: 10).

65 Eyong (2010: 36); and Bekhechi (2012: 78-80).

66 Alemagi et al. (2013: 8-24).

67 Foti & Silva (2010).

68 Alemagi (2013); Nguene et al. (2012); and Bitondo (2000).

already existing projects such as the Cameroon Development Corporation project⁶⁹ is a common phenomenon in Cameroon, one would have expected the ESIA regime to have subjected such expansions to additional ESIA's preceded by public consultation.⁷⁰ However, this does not seem to be the case and supposedly, their impact on the environment and on people's environmentally-related rights will be unidentified, unassessed and unmitigated, which amounts to a contradiction of the environmental management principles contained in Law No. 96/12.

According to a study undertaken by Eyong,⁷¹ over 68 ESIA reports have been processed by the Department of Environmental Assessment. Of these, 54 have been environmentally assessed and most of the ESIA's carried out were sponsored by international finance corporations including the World Bank. It therefore remains unclear whether these ESIA's, which should in principle promote and facilitate public participation in these projects, actually reflect a genuine response on the part of the Government of Cameroon to ensure and enhance the right to a healthy environment espoused in the Constitution.⁷² Perhaps they rather provide a mere guise designed to aid and abet the approval and implementation of these vast internationally-financed projects, notably for example, the Chad-Cameroon Oil Pipeline project mentioned above.

In Cameroon, the right of the public to participate in ESIA's is restricted to reviewing the ESIA report. It does not extend to the screening, scoping, decision-making and follow-up stages of the process.⁷³ This further demonstrates and supports the argument that local communities and affected stakeholders are rarely participate in decision-making processes relating to activities with great potential to impact on the environment. In terms of Article 16 of Law No. 96/12, developers of authorised projects must submit biannual reports about the implementation of their environmental management plans to the Ministry of Environment and Nature Protection, the authorising agency. Pragmatically, the Ministry is the sole monitoring institution of ESIA's, an indication that developers of projects must be accountable only to the Ministry and not other stakeholders, such as local communities and civil society organisations. This holds potential to undermine the essential independent scrutiny public participation can bring to the ongoing monitoring of projects post their commencement.

The above seeks to outline that effective public participation in the ESIA process may not occur.⁷⁴ This reality was clearly illustrated in the Cobalt Nickel Mining project where there was no effort to engage with local communities (the Pygmies and the Bantu).⁷⁵ There was also no input sought from those most closely affected by the

69 See <<http://cdc-cameroon.net/new2014/expansion-projects/>> (accessed 19-2-2018).

70 See, for example, the environmental management principles of Law No. 96/12.

71 Eyong (2010: 26-27).

72 See the Preamble of the Constitution of the Republic of Cameroon, 1996.

73 Sama (2017: 215).

74 Kravchenko (2009: 36).

75 Ibid: 9-10.

destruction of natural resources associated with the mining project, negatively impacting on the local communities' land and tenure rights, right to food and environmental rights. This example raises two concerns, namely: it shows the apparent fundamental disrespect by the government of the procedural rights of participation of local communities; and it impedes the protection of the environment and the environmentally-related rights of these local communities.⁷⁶

As with public participation in the forestry sector, it may be correct to submit that ESIA in Cameroon only serve as a formality for the approval of proposed development projects, and not necessarily a need to promote, facilitate and ensure effective involvement and full participation of local communities in decision-making processes with the hope of enhancing environmental governance and promoting justifiable sustainable development. For the latter to be a reality, the ESIA process would need to ensure the effective involvement and participation of local communities at all stages of the ESIA process. The proper implementation of public participation generally, and in ESIA processes particularly, has the potential of ensuring and promoting environmental justice and human well-being, as it helps to balance the needs of both present and future generations in government decisions, integrate environmental consideration in decisions, and implement and enforce environmental standards.⁷⁷

5 Conclusion

This chapter has sought to canvas public participation in environmental decision-making in Cameroon, and to highlight apparent serious problems with its enforcement and implementation. Despite having certain legal provisions aimed at promoting and facilitating public participation in environmental governance, the implementation of the relevant legal framework is very problematic. Local communities appear to be mere observers to the relevant environmental decision-making processes as opposed to meaningful and active participants in them. This supports the contention that public participation in Cameroon is just a formality that only exists on paper. In this light, it is apposite to say that the right to public participation in environmental decision-making processes in Cameroon is more of a myth than a reality. As demonstrated above, in Cameroon there is a top-down approach to environmental decision-making and this is not tempered by processes advocating public participation. Public participation processes are further characterised by intimidation, bribery and corruption. They furthermore often exclude vital role players such as local communities and other interested and affected parties, thereby undermining their environmental and related rights.

⁷⁶ Ibid: 36; and Ashukem (2016a: 185).

⁷⁷ Birnie & Boyle (2002: 261); and Verschuuren (2004: 29-48).

In light of the above, it is strongly recommended that the government of Cameroon respect its citizens' rights of access to information in order to facilitate their effective involvement and participation in decision-making relating to activities that have a direct bearing on their rights. It is furthermore suggested that the government should refrain from influencing the views and opinions of local communities through bribery and intimidation. Instead, it should commit to providing a platform where local communities can freely participate and make informed decisions on their own volition.

There is equally a need to revise the ESIA regime to include mandatory requirements for ESIA processes and the effective participation of local communities for project expansions, aligned with the environmental management principles prescribed in Law No. 96/12 on environmental management. It is also recommended that Article 15 of Ordinance 76/166 be repealed since it conflicts with Article 12 and appears to be an inherent barrier to the effective involvement and participation of local communities and affected stakeholders in decision-making processes relating to land-development projects.

Furthermore, it is recommended that with the proposed revision of Law No. 94/1, attention should be given to include provisions that allow an all-inclusive participatory approach designed to include and involve indigenous people and local communities in decision-making processes in forestry-related projects, while implementing public views and opinions during participatory processes in order to effectively attain the objective of the law as set out in its preamble. Finally, the government should ensure, promote and facilitate a platform of public participation where voices meet and are heard, without which the relevant rights of its citizens will remain a myth in Cameroon.

References

- Alemagi, D & R Kozak (2010) "Illegal logging in Cameroon – causes and the path forward" 12(8) *Forest Policy and Economics* 554-556.
- Alemagi, D, R Hajjar, Z Tchoundjeu & R Zozak (2013) "Cameroon's environmental impact assessment decree and public participation in concession-based forestry – An explanatory assessment of eight forest-dependent communities" 6(10) *Journal of Sustainable Development* 8-24.
- Arnstein, S (1969) "A ladder of citizen participation" *Journal of American Institute of Planning* 216-224.
- Ashukem, J (2016a) *A rights-based approach to foreign agro-investment governance in Cameroon, Uganda and South Africa* LLD thesis, North-West University.
- Ashukem, J (2016b) "Included or excluded? – an analysis of the application of the free prior and informed consent principle in land grabbing cases in Cameroon" *Potchefstroom Electronic Law Journal* 1-29.
- Barton, B (2002) "Underlying concepts and theoretical issues in public participation in resource development" in D Zillman, A Lucas & G Pring (eds) *Human rights in natural resource development: public participation in the sustainable development of mining and energy resources* 77-121.

- Bekhechi, M (2012) "The Chad-Cameroon pipeline project: some thoughts about the legal challenges and lessons learned from a World Bank-financed large infrastructure project" in D Zillman, M Roggenkamp, L Barrera-Hernandez & I del Guayo (eds) *Energy networks and the law: innovative solutions in changing markets* 78-101.
- Bell, S & D McGillivray (2008) *Environmental law* 7th Ed.
- Birnie, P & A Boyle (2002) *International law and the environment*.
- Bitondo, D (2000) "Environmental assessment in Cameroon: state of the art" 18(10) *Impact Assessment and Project Appraisal* 33-42.
- Cerutti, P, R Nassi & L Tacconi (2008) "Sustainable forests management in Cameroon needs more than just forests management plan" *Ecology and Society* 1-13.
- Charnovitz, S (1997) "Two centuries of participation: NGOs and international governance" *Michigan Journal of International Law* 183-286.
- Creighton, J (2005) *The public participation handbook-making better decisions through citizen involvement*.
- Du Plessis, E, A Mugadza, N Lubbe, J Ashukem, S Malan, M Parramon-Gurney & C Bocchino (2016) "South Africa: participation principle and protected areas" in P Martin, B Boer & L Slobodian (eds) *Framework for assessing and improving law for sustainability: a legal component of a natural resource governance framework* 42-45.
- Du Plessis, A (2008) "Public participation, good environmental governance and fulfilment of environmental rights" *Potchefstroom Electronic Law Journal* 2-34.
- Dupuy, J & A Bakia (2013) *Fact finding mission on Herakles Farm (SGSOC) oil palm plantation project*.
- Ebbesson, J (2007) "Public participation" in D Bodansky, J Brunnée & E Hey (eds) *The Oxford handbook of international environmental law* 681-703.
- Ebbesson, J (2002) *Information, participation and access to justice: the model of the Aarhus Convention* Background Paper No. 5 presented at the Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, 14-16 January 2002 Geneva 1-7.
- Egbe, S (2001) "The concept of community forest under Cameroonian law" *Journal of African Law* 25-50.
- Eyong, M (2010) *environmental assessment tools as a framework for decision-making: a comparative study between EIA theory and practice in Cameroon and Sweden* Masters thesis, Stockholm University.
- Foster, S (2008) "Public participation" in M Gerrard & S Foster (eds) *The law of environmental justice: theories and procedures to address disproportionate risk* 2nd Edition 225-263.
- Foti, J & L Silva (2010) *A seat at the table-including the poor in decisions for development and environment*.
- Freudenthal, E, T Lomax & M Venant (2013) "The biopalm oil palm project-a case study in the department of ocean, Cameroon" in M Colchester & S Chao (eds) *Conflict or consent? The oil palm sector at a crossroads* 337-354.
- Fuo, O & S Semie (2011) "Cameroon's environmental framework law and the balancing of interests in socio-economic development" in M Faure & W Du Plessis (eds) *The balancing of interests in environmental law in Africa* 75-93.
- Kiss, A & D Shelton (2007) *Guide to international environmental law*.
- Kozak, R, W Stetic, H Harshaw, T Maness & S Sheppard (2008) "Public priorities for sustainable forest management in six forest-dependent communities of British Columbia" 38(12) *Canadian Journal of Forest Research* 3071-3084.

- Kravchenko, S (2006) “The Aarhus Convention: a work in progress” *South African Journal of Environmental Law and Policy* 105-113.
- Kravchenko, S (2009) “The myth of public participation in a world of poverty” *Tulane Environmental Law Journal* 34-55.
- Morrow, K (2011) “The court and public participation in environmental decision-making” in J Benidickson, B Boer, A Benjamin & K Morrow *Environmental law and sustainability after Rio* 138-157.
- Mousseau, F (2013) *Herakles exposed – the truth behind Herakles farms false promises in Cameroon*.
- Nguene, F, C Fonochu, J Enjoh, L Taza-Asaba & S Nien Ngapout (2012) *Role and level of stakeholders involvement in the EIA practice in Cameroon-case of EIAs of the upstream energy sector*.
- Oyono P, C Kouna & W Mala (2005) “Benefits of forests in Cameroon: global structure, issues involving access and decision-making hiccoughs” *7 Forest Policy and Economics* 357-368.
- Petkova, E, C Maurer, N Henninger & F Irwin (2002) *Closing the gap: information, participation and justice in decision-making for the environment*.
- Pring, G & S Noé (2002) “Emerging international law of public participation affecting global mining, energy and resources development” in D Zillman, A Lucas & G Pring (eds) *Human rights in natural resource development* 11-76.
- Razzaque J “Linking human rights, development, and environment: Experiences from litigation in South Asia” (2007) *Fordham Environmental Law Review* 587-608.
- Rehbinder, E (2006) “Promoting and enforcing environmental law and sustainable development” *South African Journal of Environmental Law and Policy* 1-72.
- Richardson, B & J Razzaque (2006) “Public participation in environmental decision-making” in B Richardson & S Wood (eds) *Environmental law for sustainability* 165-194.
- Robinson, N (2011) “Reflecting on Rio: environmental law in the coming decades” in J Benidickson, B Boer, A Benjamin & K Morrow *Environmental law and sustainability after Rio* 9-30.
- Sama, S (2017) *Harnessing environmental justice to protect against land-grabbing in Cameroon* PhD thesis, University of Ottawa, Canada.
- Segger, M, A Khalfan, M Gehring & M Toering (2003) “Prospects for principles of international sustainable development law after WSSD: common but differentiated responsibilities, precaution and participation” *RECEIL* 54-68.
- Segger, M & A Khalfan (2004) *Sustainable development law: Principles, practices and prospects*.
- Spyke, N (1999) Public participation in environmental decision-making at the new millennium: structuring new spheres of public influence” *Boston College Environmental Affairs Law Review* 263-315.
- Steele, J (2001) “Participation and deliberation in environmental law: exploring a problem solving approach” *Oxford Journal of Legal Studies* 415-442.
- Verschuuren, J (2004) “Public participation regarding the elaboration and approval of projects, in the EU after the Aarhus Convention” in T Etty & H Somsen (eds) *Yearbook of European environmental law* 29-48.
- Wilkinson, P (1976) “Public participation in environmental management – a case study” *Natural Resource Journal* 117-135.

