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Access to Environmental Information in the Context of Development Activities in the Legal Framework of Cameroon

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Abstract: This article focuses on an examination of the substantive content of section 7 of Law No 96/12 of 5th August 1996 on Environmental Management in Cameroon (Law No 96/12) and argues that the incompleteness of section 7 has made it difficult for people to effectively gain access to environmental information held by public and private bodies (including foreign corporations) during the planning and implementation of development activities. The lack of access to publicly and privately held information appears to raise significant concerns about the environmental governance paradigm in the country, as well as the protection of human-and environment-related rights, when analysed from a rights-based perspective. Questions that arise in this regard include: what is the substantive content of section 7 of Law No 96/12 insofar as it relates to the right to access to information and environmental information in Cameroon generally? Does section 7 afford people a sufficient guarantee and protection for them to be able to effectively gain access to information generally and protection in the development context particularly? Could a Cameroonian court enforce the right embodied in section 7 of Law No 96/12, and what parameters could be used by the court to enforce the right? Are there any loopholes in section 7, and if so, how could they be closed?

This article attempts to provide answers to these interrelated questions by specifically focusing on an analysis of the substantive content of section 7 and the difficulty it poses to people who wish to gain access to publicly and privately held information. More importantly, the article relies on examples of development activities in Cameroon, and critically analyses them in order to be able to suggest the reason(s) behind the perceived reluctance to grant access to publicly and privately held information during the execution of development activities. The article concludes that there is an urgent need for the Cameroonian legislature

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to enact and adopt national legislation on access to information in order to address the current legal loophole.

A. Introduction

The right of public and private entities to gain access to environmental information[1] about development undertakings has among other rights been perceived to be a necessary prerequisite to public participation in the decision-making and implementation stages of such activities.[2] Generally, depending on the obligation imposed on government and other bodies to disclose relevant information, the right to access to information could either be a passive or an active right.[3] The passive right to access to information refers to the right of people to request information from both public and private bodies and the duty of the latter to provide the requested information.[4] On the other hand, an active right to access to information refers to the obligation on the state and increasingly private bodies to collect relevant information and disseminate it to the public without the public asking for it.[5]

1 Article 2(3) of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 1998 (Aarhus Convention) defined environmental information as: Any information in written, visual, aural, electronic or any other material form on *inter alia* (a) the state of elements of the environment, such as air and the atmosphere, water, soil, land, the landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements. Also see article 2 of the European Union Directive on National Legislation on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 2003 (EU Directive).

2 *Jean-Claude* N. *Ashukem,* A Rights-Based Approach to Foreign Agro-Investment Governance in Cameroon, Uganda and South Africa, Potchefstroom 2016, pp. 119-126 (on file with author); *Stuart Bell* & *Donald McGillivrary*, Environmental Law, Oxford 2008, p. 296; *Michael B. Gerrard* & *Sheila R. Foster,* The Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risks, American Bar Association 2008, p. 265; article 9 of the Aarhus Convention; Principle 19 and 10 of the United Nations Conference on the Human Environment of 1972 (the Stockholm Declaration); Principle 10 of the United Nations Conference on Environment and Development of 1992 (the Rio Declaration).

3 These two ways are extensively covered by the South African Access to Information Act 2 of 2000 (PAIA). For details see sections 11, 50 and 46 of PAIA. Also see articles 3 and 7 of the EU Directive.

4 Articles 4 of the Aarhus Convention; sections 11 and 50 of PAIA which deals with requests for information from public and private bodies respectively; *Willemien Du Plessis,* Access to Information, in: Louis J. Kotzé / Alexander R. Paterson (eds.) Environmental Compliance and Enforcement in South Africa: Legal Perspective, Cape Town 2009, p 198; *Carl Bruch* & *Meg Filbey,* Emerging Global Norms of Public Involvement, in: Carl Bruch (ed.), The New Public: The Globalisation of Public Participation, Environmental Law Institute 2002, p. 7.

5 Article 5 of the Aarhus Convention; Bruch & Meg, note 4, p. 8; section 46 of PAIA; *Iain Currie* & *Jonathan Klaaren*, The Promotion of Access to Information Act: A Commentary, Cape Town 2002, p. 59. In terms of section 52 of PAIA private bodies may disclose relevant information to the public without the public requesting for it. For details see Du Plessis, note 4, p. 199.

The ability of people to exercise their right to access to information on development activities that impinge on their interests serves as a necessary precondition for their being able to protect their environmental right during the planning and implementation of development activities that may otherwise lack inclusivity, transparency and accountability.[6] The right to access to information evokes a close relation with government's accountability and transparency[7] in that it provides the public with an opportunity to be able to scrutinise government-held information and to monitor the decisions that governments make, including decisions about development activities.[8] It has been submitted that transparency and accountability would be meaningless if an unqualified and enforceable right to access to information did not exist.[9] Conversely, it has been argued that where people are denied access to information, this illustrates a lack of transparency and accountability in the governance paradigm of a country.[10] This is the situation in the context of development activities in Cameroon.

Although Law No 96/12 of 5th August 1996 on Environmental Management in Cameroon (Law No 96/12) provides for this right in section 7, as will become evident below, significant concerns exist regarding the content and legal basis of the right. For example, it is unclear whether section 7 is sufficient to enable people to seek and to receive information from the relevant public and private entities when the need arises. Could a Cameroonian court enforce the right enunciated in section 7, and what parameters could be used by the court to enforce the right? Are there any loopholes in section 7, and how could such loopholes be closed? This article attempts to provide answers to these interrelated questions by focusing specifically on an analysis of the substantive content of section 7 and the difficulty it poses for people who wish to gain access to publicly and privately held information generally and in a development-related context more specifically.

The investigation is conducted firstly by problematising the right to access to environmental information in Cameroon. The second part of the investigation examines the Cameroonian legal framework on access to environmental information in order to determine whether the said framework provides people with a sufficient right to gain access to publicly and privately held information. This is achieved by critically analysing the substantive content of section 7 relating to the conditions and procedures of access to environmental information in the country. This part also provides possible reform measures. The article concludes with a third part, which provides recommendations to address the per-

6 *Celestin Nyamu-Musembi* & *Andrea Cornwall,* What is the Rights-Based Approach all About: Perspective from International Development Agencies in IDS Working Paper, Sussex 2004, p. 2.

7 *Elli Louka,* International Environmental Law: Fairness, Effectiveness, and World Order, Cambridge 2006, p. 130; *Pierre De Vos* & *Warren Freedman,* South African Constitutional Law, Oxford 2014, p. 619.

8 Articles 4, 5 of the Aarhus Convention; Du Plessis, note 4; Louka, note 7.

9 *George Devenish,* A Commentary on the South African Bill of Rights, Durban 1991, p. 445.

10 Ashukem, note 2, pp. 226, 246; *Samuel Nguiffo* & *Michelle S Watio,* Agro-Industrial Investment in Cameroon: Large-Scale Land Acquisition Since 2005, IIED 2005, p 48.

ceived limitations in the legal framework on the right to access to information in Cameroon, which are inimical to the advancement of the protection of human and environmental rights during the implementation of development activities in the country.

B. Problematising the right to access to environmental information in Cameroon

Cameroon, like most other sub-Saharan African countries, is rich in natural resources including minerals such as crude oil, iron and bauxite, diamond, gold, platinum, and timber. These resources are commonly exploited by foreign corporations because of the country's rich subsoil which is conducive to such activities. It has been reported that since 2013 over 600 research and mining permits have been granted to foreign companies.[11] In Cameroon, as elsewhere, development activities have resulted in the violation of a host of human and environmental rights generally.[12] The exploitation of these resources has led to waste, air and water pollution that has had a direct negative impact on both the environment and on people's health and well-being.[13] For example, it has been reported that the mining activities in the country have resulted to diverse pollution and ecological degradation and human impacts, including health impact and occupational hazards.[14] Consequently, a rights-based approach and particularly its procedural aspects, including the right to access to environmental information, could help to reinforce respect for and the protection of people's environment-related rights in this context. Elsewhere the author has argued that procedural environmental rights, which include the rights to access to information, public participation in decision-making and access to justice, constitute useful and vital elements for the protection of people's rights-based entitlements, including environmental rights, in the context of development activities.[15]

Yet, the actual implementation of the right to access to information, particularly during the implementation stages of development activities in Cameroon, has been sorely lacking, perhaps because there is no national legislation dealing specifically with the right, in contrast to the situation in other countries.[16] In South Africa, for example, the *Promotion of*

11 *Kevin N. Funoh,* The Impact of Artisanal Gold Mining on Local Livelihoods and the Environment in the Forested Areas of Cameroon, CIFOR 2014, p. 7.

12 For detail of the impacts of development activities on human and environmental rights see Ashukem*,* note 2, pp. 76-83.

13 However, it must be noted that environmental harm may not be avoided completely when development activities occur.

14 *Tiffany Fourment,* Extractive Industries in Cameroon: A Source Book for Teachers, UNAFAS 2012, p. 22; Funoh, note 11, pp. 10, 27.

15 Ashukem*,* note 2, p. 117-126.

16 Examples of African countries with access to information legislation include: Lesotho, Congo, South Africa and Uganda.

Access to Information Act (PAIA)[17] gives effect to the constitutional right of all people, whether collectively or in their individual capacities, to have access to any information held by the state or any other person.[18] Together with the *Constitution of the Republic of South Africa*, 1996, the PAIA intends in an environment-related context to ensure good, participative and transparent governance through the provision of access to information on matters that relate to and could affect either directly or indirectly people's health and well-being and the environment at large,[19] through the establishment of rules, conditions, procedures and mechanisms that pertains to keeping members of the public informed of all matters pertaining to their well-being. The right, together with its rules and conditions as contained in the PAIA, has frequently been applied by the South African courts in determining the categories of information which need to be disclosed, and the refusal of the disclosure of which could be a violation of people's right to access to information.[20]

In Cameroon the lack of explicit legislation dealing with people's right to access to information has implicitly resulted in the challenges to the dissemination of information in the context of environment-related activities, to the extent that the public is hardly aware of some environment-related activities or of their potential environmental and human rights impacts.[21] The government in particular has resorted to intimidation and the non-disclosure of vital information to the public and civil society organisations, including non-governmental organisations (NGOs), when executing major projects such as those in which multinational corporations engaged in large-scale development-related activities.[22] For example, during the Chad-Cameroon Oil and Pipeline project it is reported that the government used these tactics both in the preparatory and in the execution phases of the project, and vital information about the project and its potentially adverse impacts on environment-related rights, including impacts on human health and well-being, was never disclosed to the public.[23]

17 Act 2 of 2000. The Act was enacted under section 32 (2) of the Constitution of the Republic of South Africa, 1996, which mandated the state to enact national legislation to give effect to the right.

18 See section 32 of the Constitution of the Republic of South Africa, 1996.

19 *Louis J. Kotzé* & *Anel A. Du Plessis,* A Gold Rush to Nowhere? The Rights-Based Approach to Environmental Governance in South Africa's Mining Sector in Question, Verfassung und Recht in Übersee 4 (2014), p. 463.

20 For details on this see generally, Earthlife Africa v Eskom Holdings Ltd (2006) (2) All SA 632; ArcelorMittal South Africa v Vaal Environmental Justice Alliance 2014 (69) SA (SCA) 184.

21 Nguiffo & Watio, note 10, p. 21.

22 *Oliver N Fuo* & *Sama M. Semie,* Cameroon's Environmental Framework Law and the Balancing of Interests in Socio-Economic Development, in Michael Faure / Willemien Du Plessis (eds.), The Balancing of Interests in Environmental Law in Africa, Pretoria 2011, p. 88.

23 Centre for Environment and Development (CED) Report 1999 The Chad-Cameroon Oil and Pipeline Project: Putting People and the Environment at Risk, 1999, pp. 6-8; Fuo & Semie, note 23; *Theodore E. Downing,* Comments on Chad-Cameroon Pipeline Project's Impact on Bakola Pygmy Indigenous People's Plan, 1996, p. 3, http://allthingsaz.com/wp-content/uploads/2012/02/C

In addition, it has been reported that relevant information on how development activities are processed at the local level and by the central administration in Cameroon is not provided to the public.[24] According to a report by Nguiffo and Waito[25] on large-scale land acquisitions in Cameroon since 2005, there was apparently no public disclosure of information in terms of the application for a grant of land or its provisional or definitive allocation. In fact, a recent study by the Centre for Environment and Development relating to access to information by local communities and authorities pertaining to seven agro-industrial plantations highlights the gross lack of information on development activities in Cameroon, and suggests that:

> *The communities' level of knowledge about the company is linear, starting with the name of the company, its activities, the managers' nationality, the destination of the products, the date it was set up, whether or not there are plans for expansion, the amount of land allocated, and the length of the lease. It is relatively easy [to] find out the name of the company and [the] nature of its activities, but virtually impossible to get hold of two pieces of information that are crucial for the communities and the company to have an equal partnership: the amount of land the company has acquired and the duration of its contract.*[26]

Furthermore, vital information on other major on-going projects and their potential environmental and human impacts in the country, including *inter alia* the Herakles Farms palm oil project and the BioPalm palm oil project was not disclosed to the public.[27] Such practices not only illustrate a failure of the government to balance environmental protection, human rights and economic development, but also signal that there is a barrier against citizens being able to exercise their right to access to information. And this echoes Robertson's contention that the ability of the government to manipulate government-held information is a

omments-on-Chad-Cameroon.pdf (last accessed on 8 May 2017); *John Nelson*, *Justin Denrick* & *Dorothy Jackson,* Report on a Consultation with Bagyeli Pygmy Communities Impacted by the Chad-Cameroon Oil-Pipeline Project, 2001, p. 7, http://www.forestpeoples.org/sites/default/files/publication/2010/07/ccpbagyeliconsultmay01eng.pdf (last accessed on 8 May 2017).

24 Nguiffo & Watio*,* note 10, p 41.

25 Nguiffo & Watio*,* note 10, p 25.

26 CED, La Transparence Dans Le Secteur Foncier Au Cameroon: Etude De Cas Preliminaire De La Cohabitation Entre Agro-Indutries Et Communautes Locales et Autochtones, Yaounde 2013, pp. 11-12, www.transparenceforestiere.info/cms/file/353. (last accessed on 6 June 2017); Nguiffo & Watio*,* note, 25.

27 Ashukem*,* note 2, p. 228; Nguiffo & Watio*,* note 25; *Emmanuel Freudenthal*, *Tom Lomax* & *Messe Venant*, The BioPalm Oil Palm Project: A Case Study in the Département of Océan, Cameroon, in: Marcus Colchester / Sophie Chao / Norman Jwan (eds.), Conflict or Consent? The Oil Palm Sector at a Crossroads, Indonesia 2013, p. 348.

stark antithesis to the precepts of the rule of law, since it facilitates arbitrary decision-making, which "is associated with despotism and not democracy".[28]

The problem is further exacerbated by the fact that there is currently no single court case that deals exclusively with the right to access to information generally and environmental information specifically in the country. Although both the decision of the Mezam High Court in *Foundation for Environment (FEDEV) and another v Bamenda City Council and others*,[29] and the decision of the Widikum Court of First Instance in *Foundation for Environment (FEDEV) v China Road and Bridge Corporation*[30] involved issues relating *inter alia* to environmental impact assessment, public participation, access to environmental information, the precautionary principle, the environmental rights of local communities and environmental justice, it must be noted that the substantive merit, content, argument and judgement revolved around public interest litigation and broad *locus standi*.[31] The decision of the Bamenda Court of First Instance in *The People (MINEF) v Tame Soumedjong and Sotramilk (Ltd)*[32] was largely concerned with the pollution of natural waters, air pollution and the treatment of waste in an ecologically irrational and insensitive manner contrary to the precept of Law No 96/12 on Environmental Management, the decision of the Garoua Court of First Instance in *The People (Ministry of Environment and Forestry) v Sadou Mana* and others[33] was concerned with the poaching of, receiving and trafficking in black rhinoceros class 'A' protected species, an act which was considered contrary to the 1994 Wildlife Law, and the decision of the Court of First Instance Fundong in *The People v Ngam Sampson and others*[34] involved charges against illegal exploitation of the Laikom community forest, which was deemed contrary to section 156 of the 1994 Forestry Law. None of these decisions dealt in any meaningful way with the right to access to information.

The following section examines Cameroon's legal framework to ascertain if the said framework provides people with the right to gain access to privately and publicly held information.

28 *Ken G.Robertson*, Public Secrets: A Study in the Development of Government Secrecy, New York 1982, p. 11.

29 HCB/19/08. Unreported case.

30 CFIB/004M/09. Unreported case.

31 Fuo and Semie, note 23, p. 82. Also see *Joseph Foti*, Getting the local government right, in: Starke L (ed.), State of the World 2012, Washington D.C. 2012, pp. 183-187, https://link.springer.com/content/pdf/10.5822%2F978-1-61091-045-3_17.pdf (last accessed on 12 May 2017).

32 CFIBA/857/02/03. Unreported case.

33 Unreported judgment No 568/COR of 6 January 1998.

34 FM/47c/00-01. Unreported case.

C. The legal framework on the right to access to environmental information in Cameroon

The legal framework on the right to access to environmental information could be found in the Preamble of the *Constitution of the Republic of Cameroon*, 1996 (the Constitution). Explicit reference to the right is found in statutes such as Law No 96/12 and Law No 2003 governing Modern Biotechnology (Law No 2003/006),[35] and these are discussed below.

I. The Constitution of the Republic of Cameroon, 1996

The Constitution of Cameroon does not have a bill of rights in it and therefore does not provide for the right to access to information.[36] However, the Preamble of the Constitution, which in terms of article 65 is part and parcel of the Constitution, provides for incidental rights such as the right to freedom of expression,[37] and the right to freedom of expression is supportive of the right to access to information, because information is necessary for the expression of an opinion.[38] In addition, the Preamble affirms the country's commitment to the fundamental rights and freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and all duly ratified international treaties and conventions such as those mentioned above that provide for the respect of people's right to access to information.[39] This means that because the right to access to information is entrenched in these treaties and conventions, one could rely on them to assert his\her right to access to information in Cameroon.[40]

However, as stated earlier, Law No 96/12 and Law No 2003/006 provide for the right to access to information, particularly in an environmental context. So it could be inferred that the drafters of the legislation took cognisance of this lacuna and intended that these laws should fill this perceived legal loophole. For this reason the legislation is worthy of consideration here.

35 Law No 2003/006 of 21st April 2003 to lay down safety regulations governing modern biotechnology in Cameroon.

36 Ashukem, note 2, p. 234.

37 Para 5 (16) of the Preamble of the Constitution.

38 Devenish, note 9, p. 439.

39 Paragraph 5 of the Preamble of the Constitution.

40 Ashukem, note 2, p. 23; Carlyn Hambuda / Rachel Kagoiya (eds.), Freedom of Information and Women'sRights in Africa. A Collection of Case Studies from Cameroon, Ghana, Kenya, South Africa and Zambia, UNESCO 2009, pp. 18-19.

II. Law No 96/12

Law No 96/12 is Cameroon's main environmental framework legislation. It reinforces the state's commitment to protect the right to a healthy environment.[41] The law embodies sound environmental principles[42] as well as pertinent environmental procedural measures designed to ensure effective environmental protection generally and in the context of development activities that could potentially have an adverse impact on people's right to a healthy environment. One such procedural measure[43] is the provision of a public right to access to environmental information, with the object of opening up environmental decision-making to public scrutiny and influence, in order to protect human health and well-being in the context of development activities.[44] Law No 96/12 contains pertinent provisions on access to environmental information. Section 9 clearly provide for the public right to access to environmental information and states that:

> *Every citizen shall have access to environmental information which consists of substances and dangerous activities.*[45]

In addition, section 7 states that:

(1) All persons shall have the right to be informed on the negative effects of harmful activities on man, health and the environment, as well as the measures taken to prevent or compensate for these effects.
(2) A decree shall define the conditions for exercising this right.[46]

The term informed in section 7(1) above invokes the right to access to information. One can only be informed only if he/she has a right to access to information. Thus, it is apparent that section 7(1) provides the public with a right to be informed about the detrimental impact of various activities on human health and the environment. When read jointly with section 9 and the constitutional right to a healthy environment,[47] section 7(1) appears to be highly supportive of the right to access to environmental information in Cameroon. The fact that section 6 compels public and private bodies to integrate adequate plans and programmes on environmental management in their published plans in order to permit the public to have

41 The right to a healthy environment is provided in paragraph 5(22) of the Preamble of the Constitution of the Republic of Cameroon, 1996 (the Constitution).

42 Some of these principles include: the principle of precaution, the principle of preventive action and correction, the polluter and pay principle, and the principle of liability, among others. For details see sections 9(a)-(e) of law No 96/12.

43 Other procedural measures envisaged by the law include public participation, broad *locus standi* provisions, and access to justice. See Ashukem, note 2, pp. 234-244.

44 Section 6 of Law No 96/12.

45 Section 9(e) of Law No 96/12.

46 Section 7(1) and (2) of Law No 96/12. .

47 See Para 5(22) of the Preamble of the Constitution.

knowledge-information of the possible impacts of their activities on the environment[48] presupposes that section 7(1) could be invoked against public and private bodies in support of requests for information. In this regard, the state and private entities have a responsibility and duty to inform the public of the potential deleterious impacts of environment-related activities. The dissemination of environmental information may serve to promote the effective implementation of environmental laws and policies in the country,[49] and may even enhance governance for sustainability. The dissemination of information - mostly environment-related information about development-related activities could significantly help to reinforce government's efforts to initiate, co-ordinate and implement environmental protection measures geared towards strengthening the environmental governance paradigm in the country. Such measures could include measures designed to react to environmental emergencies or any other situation that may pose a serious threat to the environment. These measures could also be based in part on public input.[50]

Yet, section 7(2) provides that the conditions and procedures permitting effective public access to environmental information is subject to a decree. Regrettably, this decree has not been promulgated till date.

III. Law No 2003/006

Law No 2003/006 makes explicit reference to and considers the right to access to information as an appropriate tool for the attainment of its objective, which in terms of section 4(2) is to provide a mechanism for assessing, managing, communicating and controlling the risks inherent in the use, release and cross-border movement of genetically modified organisms (GMOs).[51] Section 12 enumerates instances or conditions under which an inspector or controller[52] may divulge information to the public. Such instances or conditions include: where the information is necessary for the effective implementation of the provisions of this law or related regulatory instruments;[53] for the purpose of legal proceedings within the

48 Section 6(1) and (2) of Law No 96/12.

49 Section 7(1) of Law No 96/12.

50 Section 10(1)(g) of Law No 96/12.

51 Section 5(36) of Law No 2003/006 defines a genetically modified organism as an organism whose genetic material has been altered following a process which cannot be replicated naturally through mating and/or natural recombination, and which has the capacity to replicate and to transmit the same genetic material.

52 Section 5(28) of Law No 2003/006 defines an inspector or controller as an accredited and sworn official of the competent service, who is well specialised in disciplines relating to biotechnology/safety, and whose duties consist of verifying, assessing, managing and ensuring the follow-up of risks and control with a view to granting prior approval and/or authorization with full knowledge of the facts on notifications and the release into the environment of genetically modified organisms and products thereof. He shall, in addition, be responsible for identifying offenders, and formulating and/or proposing appropriate sanctions.

53 Section 12(1) of Law No 2003/006.

framework of the law and subsequent regulatory instruments where a competent court of law so rules;[54] and where the inspector or controller is authorised by the competent national administration[55] to do so. Section 35 imposes a duty on the competent national administration to foster and facilitate the sensitisation and education of the public with regard to the use of GMOs, and ensure that any person involved in modern biotechnology must sensitise and educate the public on the risks and benefits of the use of GMOs.[56]

The competent national administration is further enjoined to open a national biosafety register that contains information relating to the use and release of GMOs, and the information must accordingly be disclosed to the public.[57] The publication of such information appears to be a useful and appropriate tool to enable the public to assert its constitutional[58] and legislative[59] right to a healthy environment regarding the impact caused by the release of GMOs into the environment. Yet, in terms of the law, people's right to access to environmental information could is subjected to state security concerns,[60] and could even be limited by invoking these concerns. The law does not define exactly what is meant by state security concerns. It may be possible to wonder if this could be a deliberate tactic employed by the state to stymie people's right to gain access to information, especially information about environment-related activities. Thus the state could interpret the clause in its own interests in order to avoid disclosing relevant information and thus in order to prevent the public from asserting its environmental right during the planning and implementation of investment-related activities.

However commendable the above may be, the extent to which the right in section 7(2) of Law No 96/12 could be realised in Cameroon is doubtful. The next part of this article examines the difficulty experienced in Cameroon in implementing this provision by critically analysing the substantive content of section 7(2).

IV. Critical appraisal

It must be emphasised that the underlying aim of the right to access to information generally, and environmental information specifically as espoused in international legal instruments is that the right is necessary for the protection of people's environmental-related

54 Section 12(2) of Law No 2003/006.

55 Section 5(2) of Law No 2003/006 defines the competent national administration as the national authority in charge of coordinating activities related to biosafety.

56 Section 12(3) of Law No 2003/006.

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

58 Para 5(21) of the Preamble of the Constitution.

59 For example s 5 of Law No 96/12.

60 Section 12 of Law No 2003/006; *Joseph Mewondo Mengang,* Evolution of Natural Resource Policy in Cameroon, Yale Forestry and Environmental Studies Bulletin 102 (1998), p. 246; Fuo & Semie, note 23.

rights in the context of development activities.[61] By way of an example, if a company 'X' intends to undertake a development activity on sparely populated land, farming land, next to a river, or in a biodiversity or protected areas, information about the activity and its potential deleterious impacts on the environment and on people's human rights has to be disclosed to the local population which may be affected by the project, whether adversely or not. Yet, it would be difficult if not impossible, to observe the realisation of such a right in Cameroon, because pragmatically people do not always have access to information about development activities. This much has been demonstrated in section B above. In Cameroon, there is no obligation on the state and private bodies either to disclose information on request or mandatorily to collect and disseminate information to the public to enable them assert protection of the environmental-related rights in the context of development activities generally. It remains unclear what category of information may be disclosed to the public and whether the public could rely confidently on section 7(2) to assert their right to gain access to environmental information from both public and private bodies. Not having proper access to information makes it difficult for people to claim protection of their environment-related human rights.

If it can be agreed that Law No 96/12 was specifically intended to fill the legal loophole relating to access to information, one would have expected at a bare minimum that section 7(2) would have provided clearly defined conditions and procedures such as those that *inter alia* oblige the state and private bodies to disclose information on request, or mandatorily to collect and disseminate this information to the public. Such measures would undoubtedly enable people to gain access to environmental information from private and public bodies when the need arose. This would be most beneficial, as the ability to exercise a right to access to information would enable concerned citizens to scrutinise development-related information and would play an important role in informing the public about the potentially adverse impacts a development activity could have on their environmental and human rights.[62] The existence of established rules, conditions, procedures and mechanisms would provide the basis for enabling the making of claims for access to information. Instead of making such claims possible, section 7(2) has postponed the provision of these conditions and procedures and made them subject to a presidential decree which to date has not been promulgated. It has previously been indicated that the practice of promulgating incomplete laws and particularly environmental laws[63] in Cameroon has the potential of hampering the effectiveness of the environmental governance paradigm in the country, which is designed

61 See for example, Principles 19 and 10 of the Stockholm and Rio Declarations respectively.

62 See the South African case of Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance 2014 (69) SA (SCA) 184. Also see Earthlife Africa v Eskom Holdings Ltd (2006) (2) All SA 632 (W).

63 For example, the implementation decree No 2005/0577 of 23rd February 2005 on environmental impact assessment was enacted only in 2005, nine years after the enactment of Law No 96/12.

to ensure environmental protection as well as to protect people's rights and interests.[64] It has been argued that if people are not informed of relevant information about potential development-related activities and the effects that may ensue from them, they could arguably challenge the lack of information as an infringement of their right.[65] Yet challenging an infringement of the right to access to information could require more than just the mere claim that one has a right to access to information, unless there are conditions and procedures to govern the granting of access to information.

As it is impossible for the government to enforce environmental protection alone, the public also has a duty to protect the environment,[66] which means that the concerned public, including NGOs and civil society organisations, should be allowed to effectively play their role as required by section 6 of Law No 96/12. They would need to be allowed access to relevant information about envisaged development activities in order for them to properly assert their environmental rights when such activities occur. However, because the effective exercise of the right to access to information could be dependent on conditions and procedures of access, the conspicuous absence of these conditions and procedures is indicative of the fact that gaining access to general information and environmental information in particular in Cameroon will remain a serious challenge until such time as the supposed decree meant to provide for these conditions and procedures is promulgated.

In this regard, it is very difficult at present to determine for example what the content of the disclosed information should be. Would it suffice to simply inform the public about the imminence of a particular project, or should all the technical details relating to the project and especially the possible impacts be revealed? It is evident that a definition of the term "environmental information" could serve as a catalyst to enable the concerned public to seek and receive particular environmental information that is important to enable them to assert protection of their environmental-related rights. Respecting and protecting the right to environmental information implies equal respect and protection of the environment and other related human rights.[67] Being in a position to take the actions required to prevent or mitigate environmental harm relies heavily on having knowledge of the relevant environ-

64 *Nchunu J Sama*, Criminal law and environment, prosecutors, inspectors and NGOs in Cameroon, 2008, pp. 6-7, http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=E343136EEE7E3DAF774FC8D50CDA8A39?doi=10.1.1.608.1093&rep=rep1&type=pdf (last accessed on 13 January 2017); Ashukem, note 2, pp. 266, 236, 246; Nguiffo & Watio, note 10.

65 *Michael Kidd,* Environmental Law, Cape Town 2011, p. 305.

66 Section 9 of Law No 96/12.

67 Louka, note 7, p. 129. For a detailed understanding of the link between human rights and the environment, see *Alan E Boyle* & *Michael R. Anderson*, Human Rights Approaches to Environmental Protection, Clarendon 1998; *David K. Anton* & *Dinah L. Shelton*, Environmental Protection and Human Rights, GW Legal Studies Research Paper No 2013-32, George Washington University 2011, pp. 1-16.

mental conditions,[68] and the impact of an activity on the environment cannot be properly evaluated and governed without recourse to the condition and knowledge of the environment.[69] Because a set of prescribed conditions and procedures for granting access to information is essential to this process,[70] it would be difficult to follow this precept in the Cameroonian context, as section 7(2) of Law No 96/12 is still to provide for these prescribed conditions and procedures.

The Cameroonian legal framework does not provide for the limitation of people's right to access to environmental information. As mentioned above, section 12 of Law No 2003/006 provide only that people's right to access to information is subject to state security concerns, and that refusal could be limited to these concerns.[71] But the law does not define exactly what is meant by state security concerns. It would have been proper for the law to provide a definition of state security concerns to enable the concerned public to know how and the extent to which it limits their right to access to information, as this requirement is clearly common in the international good practice.

Generally, courts are perceived to be the masters of the interpretation of rights, and the effective enforcement of people's rights by courts requires an interpretation of constitutional and legislative provisions of human rights, including the interpretation of rules, procedures, and conditions relating to the right to access to information. Because of the absence of established rules and mechanisms relating to the provision of access to information it might be difficult for people to make a claim for the violation of this right, and a court could find it difficult to rule in protection of the right in such a matter, as the court would be unable to determine what information ought to be disclosed to the public and what should not.[72] Furthermore, it is very difficult to determine, for example, the applicable sanction for a failure to provide information.

It makes no sense for legislation designed to protect people's rights, particularly in an environmental context, to be merely a beautiful declaration of intent, instead of translating into concrete reality by affording people adequate protection against the infringement of their right during development activities. This is very disturbing, especially taking into consideration that the government is committed to guaranteeing all citizens of either sex the

68 *Peter H. Sand*, The right to Know: Environmental Information Disclosure by Government and Industry, in: Durwood Zaelke / Donald Kaniaru / E Kruziková (eds.), Making Law Work: Environmental Compliance and Sustainable Development, Cameron 2005, p. 17.

69 *Alexandre Kiss* & *Dinah L. Shelton,* Guide to International Environmental Law, Nijhoff 2007, p. 98; *Bernard A. Weintraub,* Access to Information, in: Michael B. Gerrard / Sheila R. Foster, (eds.) The Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risks, American Bar Association, 2008, p. 265.

70 See the South African case of Trustee: Biowatch Trust v Registrar: Genetic Resources 2005 (4) SA 111 (T) at paragraphs 1421-143B and 145E-H; Du Plessis, note 4, p. 215.

71 Section 12 of Law No 2003/006; Mengang, note 61; Fuo & Semie note 23.

72 Also see Earthlife Africa v Eskom Holdings Ltd (2006) (2) All SA 632 (W).

rights and freedoms set forth in the Preamble of the Constitution.[73] It is practically more than 20 years down the line since the promulgation of this law directed at enhancing environmental protection in Cameroon by means *inter alia* of a rights-based approach to environmental protection. However, it seems that 20 and more years has not been long enough for this illusory and (in practice) elusive provision to become an effective safeguard of people's right to access to information generally and environmental information specifically, given the existence of a loophole in the legislation and a seeming reluctance to fill it in.

Based on the foregoing this article argues that there is an urgent need to realise the right to access to information generally, and environmental information specifically in Cameroon (through the enactment of a national legislation), and that the government has a duty and responsibility to ensure such realisation in order to enable its citizens or civic societies and NGOs to protect their rights and interests generally and in the context of development activities. Such national legislation would *inter alia* require:

- the public to have access to publicly-held information as well as information from private individuals and private bodies such as companies;
- the state and the public to either disclosed information to the public mandatorily or on request;
- the state to disclose information, accurately, timeously and at a reasonable cost to the public;
- enable the public to rely on public access to information as a useful tool to check government exercise of arbitrary power and further strengthen and promote democratic values of transparency and accountability generally, and in an environmental context;
- that public access to information serves to protect public interests;
- that the public ensures that access to information be regulated by defined appropriate conditions and procedures and limits and;
- the public to have access to administrative or judicial remedies when their right to access to information is denied.

D. Conclusion and recommendations

This analysis has clearly shown that the provision of access to environmental information is important in promoting and enhancing environmental governance, transparency and accountability, and the protection of people's environmental rights, while simultaneously enhancing sustainable development in the context of development activities. Thus it would be disingenuous to ignore and not acknowledge the increasingly important role access to environmental information plays generally, and particularly in a developmental context.

Yet, it has been argued that what are needed to support requests for access to information are clearly established rules, conditions, procedures and mechanisms of access which are generally embedded in national legislation giving effect to the right. They are important

73 Para 5(25) of the Preamble of the Constitution.

because of their triple role. Firstly, they permit ordinary citizens to again access to vital information in order that they may articulate and protect their fundamental and environmental rights during development activities. Secondly, they help to facilitate and build the foundational basis upon which provision relating to a right to access to information and its possible violation are constructed. Thirdly, they serve as guiding parameters for a court of law to determine claims for the alleged violation of the right to access to information.

To return to the questions asked in the introductory part of this article: Is section 7 merely a symbolic right without any foundational basis to afford people adequate protection to access to information during development activities? Could a Cameroonian court enforce the right embodied in section 7, and what parameters could be used by the court to enforce the right? Are there any loopholes in section 7, and if so, how can they be filled?

It has been argued that the incompleteness and vagueness of section 7(2) of Law No 96/12, in particular its failure to stipulate the conditions and procedures to use in accessing information in Cameroon, have become significant barriers to the effective exercise of people's right to access to information generally and environmental information specifically during environment-related development activities in the country.

In order to address the current legal situation, it is recommended that there is an urgent need for the Cameroonian legislature to adopt and enact national legislation on access to information in the country. Such legislation would enable and empower citizens to gain access to both publicly and privately-held information swiftly, inexpensively and effortless as reasonably as possible, assert protection of the environmental and other rights generally and in the context of development activities specifically, strengthen sustainability and environmental protection measures, promote transparency and accountability in the management of public affairs generally as well as in an environmental context.

It is also recommended that the Cameroonian legislature should provide a clear definition of what is meant by a "state security concern" to the extent that the public is made aware of the limitation of their right. It is further recommended that Law No 96/12 should be amended to extent that it provides clarity on the kind of environmental information that must be periodically collected and disclosed to the public, without the latter's requesting for it.