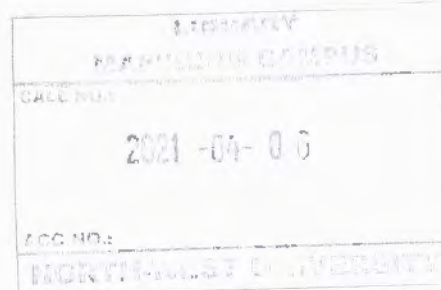


An analysis of legislative and institutional frameworks governing the rights of indigenous peoples in Cameroon

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(LLB, LLM)



Thesis submitted in fulfilment of the requirements for the degree
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DECLARATION BY CANDIDATE

I, Njieassam Esther Effundem, declare that this thesis entitled: "An analysis of legislative and institutional framework governing the rights of indigenous peoples in Cameroon" hereby submitted in fulfilment of the requirements for the degree of Doctor of Laws (LLD), at the North-West University, has not been submitted elsewhere by me for a degree at this or any other university and that it is my work in design and execution and that all materials contained herein have been duly acknowledged.



Njieassam Esther Effundem

May 2017

DECLARATION BY PROMOTER

I, Professor Melvin L.M. Mbao, hereby declare that this thesis entitled "An analysis of legislative and institutional framework governing the rights of indigenous peoples in Cameroon" submitted by Njieassam Esther Effundem for the degree of Doctor of Laws (LLD) in Public Law and Legal Philosophy, be accepted for examination.



Prof MLM Mbao

May 2017

DEDICATION

This thesis is dedicated to the undying spirit of all the oppressed and marginalised peoples in the world, more specifically to the indigenous communities in Cameroon and their quest for justice and identity.

I dedicate this thesis to my late father, Njieassam Daniel Etong. Dad, although the cold hands of death prevented you from reaping the fruits of your labour, I know you are smiling down at my success. You implanted the notion of this dream in my mind when I was young and I knew I was going to accomplish a Ph.D. I achieved this feat for you, and me. You might be gone but your legacy remains forever. Everyday you are in my thoughts. Adieu Papa.

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Unless the Lord builds the house, the builders labour in vain. Unless the Lord watches over the city, the guards stand watch in vain (Psalms 127:1).

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LIST OF ABBREVIATIONS AND ACRONYMS

ACC	Accident Compensation Corporation
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACHPRWGIP	African Commission on Human and Peoples' Rights' Working Group of Experts on Indigenous Populations
ACSA	Alaska Natives Claim Settlement Act
ACRWC	African Charter on the Rights and Welfare of Children
Afr. Hum. Rts. L.J.	African Human Rights Law Journal
Ariz. J. Int'l & Compa. L.	Arizona Journal of International & Comparative Law
Ariz. St. L. J.	Arizona State Law Journal
AIDS	Acquired Immune Deficiency Syndrome
AI	American Indians
AILR	Australian Industrial Law Review
AIMS	African Institute for Mathematical Sciences
AN	Alaska Natives
ART	Anti-Retroviral Treatment
B.C. Int'l. Comp. L. Rev.	Boston College International and Comparative Law Review
BIA	Bureau of Indian Affairs
BLCC	Bakweri Land Claims Committee

CA	Chieftainship Act
CABI	Centre for Agriculture and Bioscience International
CATUC	Catholic University of Cameroon
CAR	Central African Republic
CCLR	Carbon & Climate Law Review
CCPWCNH	Convention Concerning the Protection of the World Cultural and National Heritage
CDC	Cameroon Development Corporation
CDG	Care Dependency Grant
CED	Centre pour l'Environnement et le Développement
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPE	Certificat d'Etudes Primaires Élémentaires
CESCR	Committee on Economic Social and Cultural Rights
CF	Community Forest
CFDP	Community Forestry Development Project
CIDA	Canadian Cooperation
CIMENCAM	Ciments de L'Afrique Cameroon SA
CKGR	Central Kalahari Game Reserve
CMS	Convention on Migration Species

CMHC	Canada Mortgage and Housing Corporation
CNPS	National Social Insurance
COTCO	Cameroon Oil Transportation Company
COVAREF	Valorisation of Wildlife Resources
COMIPAC	Central African Forests Commission
CPDM	Cameroon People's Democratic Movement
CRC	Convention on the Rights of the Child
CSG	Child Support Grant
CTB	Belgian Technical Cooperation
CUP	Committee of the Union and Progress
DOs	Divisional Officers
DOs	District Officers
DAC	Department of Arts and Culture
DG	Disability Grant
DGAA	Dawes General Allotment Act
DRTD	Declaration on the Right to Development
DRC	Democratic Republic of Congo
EIA	Environment Impact Assessment
EFA	Education Framework Act
EFF	Education for Free
EHC	Emergency Health Centre

ELECAM	Elections Cameroon
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
EMONC	Emergency Obstetric and Neo-Natal Care
ETO	Extraterritorial Obligations
EU	European Union
FAO	Food and Agricultural Organisation
FCG	Foster Child Grant
FEDEC	Foundation for Environmental and Development in Cameroon
FEICOM	Fonds Spécial d'Equipement et d'Intervention Intercommunale
FLEGT	Forest Law Enforcement, Governance and Trade
FSLC	First School Living Certificate
FPIC	Free Prior and Informed Consent
FP	Family Planning
GDA	Green Development Advocate
GDP	Gross Domestic Product
GEF	Global Environment Facility
GIA	Grant in Aid
GSS	Government Secondary School
GSE	Government Secondary Education
GTZ	German Cooperation

Harv. Hum. Rts. J.	Harvard Human Rights Journal
HCA	High Court of Australia
HIV	Human Immunodeficiency Virus
HIPCI	Heavily Indebted Poor Country Initiative programmes
HPR	Human and Peoples Rights
HRH	Human Resources in Health
HSS	Health Sectoral Strategies
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IACHR	Inter-American Convention on Human Rights
IASGIP	Inter-Agency Support Group on Indigenous Peoples
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICE	Inter-Ministerial Committee on Environment
ICT	Information and Communication Technology
IFI	International Financial Institutions
IHC	Integrated Health Centres
IHS	Indian Health Services
IRA	Indian Reorganisation Act
IPC	Inter-Parliamentary Council



IPP	Indigenous Peoples' Plans
IPU	Inter-Parliamentary Council
ILO	International Labour Organisation
IMF	International Monetary Fund
TNCs	Transnational Corporations
IOF	International Osteoporosis Foundation
IRA	Indian Reorganisation Act
IRP	Inherent Right Policy
IWGIA	International Working Group on Indigenous Affairs
IWGIP	International Working Group on Indigenous Populations
KTP	Kgalagadi Transfrontier Park
LCB	Land Consultation Board
MBOSCUDA	Mbororo Social and Cultural Development Association
MDG	Millennium Development Goals
Melb. J. Int'l L.	Melbourne Journal of International Law.
MEP	Multilateral Environmental Agreement
MINAC	Ministry of Arts and Culture
MINAS	Ministry of Social Affairs
MINDCAF	Ministry of Land and State Property
MINEDUB	Ministry of Basic Education
MINESEC	Ministry of Secondary Education

MinEF	Ministry of Environment and Forestry
MINEP	Ministry of Environment and Nature Protection
MINFOF	Ministry of Forestry and Wildlife
MNCs	Multinational Corporations
MINSANTE	Ministry of Public Health
MINEPDED	Ministry of Environment, Nature Protection and Sustainable Development
MTCT	Mother -to-Child Transmission
NAM	Non-Aligned Movement
NCCSD	National Consultative Council on Sustainable Development
NCSAP	National Civic Service Agency for Participation
NCHRF	National Commission for Human Rights and Freedoms
NDAC	National Department of Arts and Culture
NEBRA	New Zealand Bill of Rights Act
NEMP	National Environment Management Plan
NTA	Native Title Act
NGO	Non-Governmental Organisations
NIEO	New International Economic Order
NIC	National Identification Card
NID	National Identification Document
NNTT	National Native Title Tribunal

NSAs	Non-State Actors
NTA	Native Title Act
NPFE	Non-permanent Forest Estates
NPFC	National Plan for Corruption
NPDP	National Participatory Development Programme
NPGG	National Programme on Good Governance
OAS	Organisation of American States
OAU	Organisation of African Unity
OECD	Organisation for Economic Cooperation and Development Countries
OECD	Economic Cooperation and Development Programme
OAG	Old Age Grants
ORA	Observe, Reflect and Act
PAP	Priority Action Plan
PAMOCCA	Project for the Modernisation of Surveys and the Business Climate
PC	Progressive Cameroon
PCI	Plan Cameroon International
PDPP/PNDP	National Community Driven Programme
PEA	Priority Education Area
PFEs	Permanent Forest Estates

PGDT	Perspectives on Global Development and Technology
PLP/PSFE	Pygmies Development Plan under Forest/Environment Sector Development Programme
PM	Prime Minister
PPAV	Plan pour les Peuples Autochtones Vulnérables
PRSP	Poverty Reduction Strategy Paper
PR	Proportional Representation
PRO-PTCA	Programme to the Technology and Professional Component
PTA	Parent Teacher Association
PULP	Pretoria University Law Press
PWD	People with Disabilities
RBAD	Rights-Based Approach to Development
RDFN	Rural Development Forestry Network
RDC	Reconstruction Development Programme
REDD+	Reducing Emissions from Deforestation and Forest Degradation Countries
REPAR	Parliamentary Network for Ecosystems in Central Africa
RGC	Genocide Network of Cameroon
RRI	Rights and Resource Initiatives
RTD	Right to Development
SAP	Structural Adjustment Plan

SDF	Social Democratic Front
SDOs	Senior Divisional Officers
SMC	Sub-divisional Medical Centres
SMD	Single Member District
SOLCARSA	Sol del Caribe S.A.
SRDG	Social Relief of Distress Grant
STVE	Secondary Technical Vocational Education
TFAP	Tropical Forest Action Programme
TGLP	Tribal Grazing Lands Policy
TLA	Tribal Land Act
TNCs	Transnational Corporations
TP	Termination Policy
TTTC	Teachers' Training Technical College
TTE	Teachers' Training Education
TVSE	Technical and Vocational Secondary Education
UDC	Union Démocratique du Cameroun
UDHR	Universal Declaration of Human Rights
UDR	Umbrella of Democratic Change
UK	United Kingdom
UNCCD	United Nations Convention to Combat Desertification
UNCHE	United Nations Conference on Human Environment

UNCED	United Nations Conference on Environment and Development
UNCS	United Nations Commission on Sustainable Development
U5MR	Under-Five Mortality Rate
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNDP	National Union for Democracy and Progress
UNDSD	United Nations Division for Sustainable Development
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UNDPSNR	United Nations Declaration on Permanent Sovereignty over Natural Resources
UNPFII	United Nations Permanent Forum on Indigenous Issues
UNPPA	United Nations Fund for Population
USA	United States of America
VAFAB	Västmanlands Avfallsaktiebolag
VDRL	Venereal Disease Research Laboratory
VDPA	Vienna Declaration of Programme of Action
VPAs	Voluntary Partnership Agreements

W. Va. L. Rev.	West Virginia Law Review
WB	World Bank
WFO	World Food Organisation
WHO	World Health Organisation
WSSD	World Summit on Sustainable Development
WWF	Worldwide Fund
WWI	First World War
WWII	Second World War
WVG	War Veteran Grants
ZICGC	Community-Managed Hunting Zones

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ABSTRACT

This thesis critically examines the legislative and institutional framework governing the rights of indigenous peoples in Cameroon. The study specifically investigates and explicates on selected political, economic, social and cultural rights of indigenous peoples. In so doing, the study expounds that indigenous communities in Cameroon encounter persistent forms of historic injustices including endemic marginalisation, systemic discrimination, subjugation, seclusion and stigmatisation from the larger society. They are also excluded from participating in the governance structure of the country, including decision-making processes particularly on issues that directly affect them, their livelihoods and environment. This study reveals that the protracted challenges indigenous peoples face daily is attributed to the lack of legal recognition as a distinct group with specific rights. This has resulted in massive loss of ancestral lands and excessive exploitation of natural resources within their territories. These extractive activities have rendered indigenous communities destitute, with no basic socio-economic services such as education, effective health care facilities, adequate housing, including social security services and inability to efficiently participate in the political affairs of the country. Thus, it is submitted that the prolonged challenges confronting indigenous peoples in Cameroon call for a critical analysis of the human rights situation of indigenous peoples in other jurisdictions, to assess the degree of neglect, recognition and violations of their human rights and fundamental freedoms.

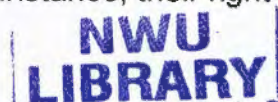
This study adopted a qualitative research method, complemented by unstructured interviews using aide memoirs with specific officials, non-governmental organisations, civil society, human rights institutions as well as relevant Ministries in the country concerned with promoting and protecting the human rights of indigenous peoples. The legal comparative research technique, including an historic component, has also played a significant role in this study. This thesis suggests practical policies that must be adopted and implemented to ensure that indigenous peoples are granted official and legal recognition they deserve, such that the human rights abuses perpetrated against them are brought to a halt. It also establishes a system of accountability, transparency, participative democracy, equality and rule of law, which are vital elements of good inclusive governance.

Keywords:

Cameroon, Indigenous peoples, marginalisation, Pygmies, Mbororo's, Participation, Land, natural resources.

Some key findings and conclusions

1. The study found that indigenous peoples do not only lack legal and official recognition at domestic level, but are equally neglected, marginalised, subjugated, discriminated against, ostracised, isolated and considered “less human” as compared to their non-indigenous counterparts. These historic injustices against indigenous communities have engendered persistent conflicts between government, non-indigenous groups and indigenous communities as they struggle for recognition of their rights as a distinct group with special rights that warrants protection as elucidated in several international and regional human rights instruments.
2. The study further established that indigenous peoples are under-represented in the government of Cameroon. To start with, the legislative frameworks enacted in Cameroon do not recognise indigenous traditional leaders as well as their local and internal institutions, thus hindering their full and active participation in the political affairs of the country and involvement in decision-making processes, especially on issues that have a direct bearing on them. Added to this, indigenous peoples’ civic and political rights are not respected, for instance, their right to vote and be elected into political positions in the country.
3. Additionally, the study also found that indigenous communities have the lowest development index rate in the country, even though their territories are surrounded by rich and diverse ecosystems that are bounded with vast natural resources. In all fairness, one would expect these communities to live in affluence and plenty. Regrettably, the indigenous peoples of Cameroon eke out a living in “lack” and “want” and are commonly referred to as the “poorest of the poor” in the society.
4. The plight of indigenous peoples is attributed to excessive exploitation and exploration of natural resources, leading to the loss of ancestral lands. The increasing demand for resource extraction has resulted in the massive destruction of indigenous peoples’ cultures, traditional beliefs, dispossession, leading to extreme poverty and lack of access to basic socio-economic facilities. The study observes that indigenous cultures and languages are threatened and almost facing



extinction as poachers, MNCs and other extractive industries forcefully evict them to make way for what government terms “development projects”. These activities have destroyed indigenous peoples' burial sites, cultural identity, traditional and ritual grounds which their roots and identity. For indigenous communities, the forest remains an essential part of their livelihood. The forest is not just the “trees within but the content therein”.

5. Further, the study established an underlying connection between massive timber exploitation and poverty, timber exploitation and corruption, as well as timber exploitation and gross human rights violations against indigenous peoples. This has earned them the appellation of the “poorest of the poor” and most vulnerable and dependent community in the society.
6. The persistent unrest within indigenous communities is reflective of the struggle for the preservation of their cultural and traditional values *vis a vis* the fight for resources between the host communities, MNCs, logging companies and the Cameroonian government.

The study recommends, *inter alia*:

- I. The government of Cameroon to adopt specific laws directed towards the recognition of indigenous peoples' rights, including their customary, traditional, political and socio-economic and cultural beliefs. These strategies should be geared at preserving the traditional ways of life of indigenous peoples.
- II. That the state should take necessary steps to facilitate and enhance the active participation of indigenous peoples in governance, as well as ensure that they are included at every stage of decision-making processes, especially on matters that impact negatively on their well-being. Through these fora, their voices will be heard and the many challenges they encounter on daily basis in the political, social, economic and cultural domain will be addressed in a systematic manner.
- III. That government should re-consider its development policies. By extension, the country's national economic development policies should focus more on development projects best suited for the local population, particularly the

indigenous communities, who are affected by “state-oriented” ideology of economic development. Development should be geared at improving the living standards of the host communities, alleviating poverty, protecting the environment and enhancing sustainable development.

- IV. That government take immediate steps to ensure the effective participation of indigenous peoples in all areas of public life to enhance equal representation in government. It is suggested that local populations be involved in the development and adoption of laws and strategies regarding resource extraction, use, control as well as the harmonisation of management strategies within indigenous societies with those of the modern state so as to provide long-lasting solutions to the relentless conflicts over resource extraction within indigenous territories.
- V. It is recommended that MNCs, logging companies and other extractive industries should assume full responsibility and be held liable for damages caused to the environment as a result of resource extraction within indigenous territories. Government should put in place an effective EIA strategy to guard against the many negative socio-economic, environmental and human rights impact caused by development projects on indigenous communities.
- VI. That the constitution and other national legislation aimed at protecting and promoting indigenous peoples be revised to re-define the scope and meaning of indigenous peoples within Cameroon context and precisely state which group deserve special protection as expounded in the Preamble to the Constitution. There is a need to give higher priority to indigenous peoples’ issues. Their protection and preservation should not only be limited in the Preamble to the Constitution, but be included in the main body of the Constitution to enable them demonstrate their significance in society. The passive protection of their rights in the Preamble has led to lots of controversy and ambiguity amongst legal scholars.

Given the above, it is anticipated that the findings and suggested recommendations highlighted in this thesis serve as a guide in securing the adequate recognition, protection and promotion of the political, social, economic and cultural rights of indigenous peoples in Cameroon. In addition, it is also expected that the above recommendations will go a

long way in preventing the long-standing problems of environmental degradation and enhancing sustainable development within their territories.

Chapter 1 Introduction

1.1 Background to the study

The debate over the existence of indigenous peoples and the demand for the recognition of their rights is not new. The concept of indigenous peoples has generated different opinions amongst many scholars and activists of international human rights law which, to date, remain problematic and contentious to resolve especially in Africa.¹ The historical marginalisation of indigenous communities throughout the world is strongly linked to European colonialism in the late nineteenth century as foreign governments professed all traditionally owned lands as *terra nullius*.² This colonial period ushered in a new beginning for indigenous peoples, leading to a complete transformation of their lifestyles, religious and cultural practices as they lost their ancestral lands and natural resources which were their only source of economic survival.³ As a result, they continue to encounter a myriad of challenges including social exclusion and widespread marginalisation, owing to their different backgrounds and conditions under which they find themselves.⁴ Dersso validates the above argument by stating that severe discrimination cuts across indigenous communities worldwide but varies from state to state and nation to nation.⁵ The extreme discriminatory practices experienced by indigenous peoples ultimately result in gross human rights violations, including the refusal by governments to grant them the special protection they deserve as a minority group.

Pre-colonial Africa was a continent with numerous societies, having different ethnic, linguistic, cultural aspirations and maintaining a collective way of life. These features changed with the colonial system of divide and rule, causing

¹ Pelican and Maruyama 2015 *African Study Monographs* 49.

² Coates *A Global History of Indigenous Peoples: Struggle and Survival* 138.

³ Coates *A Global History of Indigenous Peoples: Struggle and Survival* 138-139.

⁴ Dersso "Introduction" 3.

⁵ Dersso "Introduction" 3-4.

severe disruptions to the ways of life of indigenous and colonised communities.⁶ The situation in post-colonial Cameroon bears testimony to this reality where indigenous peoples have been denied access to basic social facilities, political representation and cultural development owing to their beliefs and distinct characteristics. As a country sheltering close to 2 million indigenous peoples,⁷ it is evident that the recurrent human rights violations suffered by indigenous peoples is attributed to their being marginalised and socially excluded from the mainstream of society thus relegating them to second class citizens.⁸ Related studies indicate that the loss of ancestral lands, resources and natural habitat have led to the pervasive discrimination, exclusion and marginalisation of indigenous peoples.⁹

This thesis is a critical analysis of the rights of indigenous peoples in Cameroon with specific reference to their human rights and fundamental freedoms. Human rights and fundamental freedoms here are approached from the premise contained in the Vienna Declaration of 1993 that civil and political rights, economic, social and cultural rights are universal, indivisible, interrelated and interdependent.¹⁰

For several decades, the rights of indigenous peoples have been the theme of numerous academic and policy debates, both at national and international levels.¹¹ Three obvious reasons account for this: first, they are hardly recognised as indigenous peoples who qualify as a vulnerable group (just like women, children, elderly persons, people with disabilities¹² and migrant workers). Secondly, because of the distinct attributes of indigenous peoples, especially their close affinity to land, territories, resources, environment and culture, they

⁶ Dersso SA *Taking Ethno-Cultural Diversity Seriously in Constitutional Design* 32-33; Dersso "Introduction" 4, 5-8.

⁷ Mikkelsen et al *The Indigenous World* 2015 417.

⁸ Swing et al 2012 *Journal of Developing Societies* 264-269.

⁹ Wachira "Indigenous Peoples Rights to Land and Natural Resources" 299.

¹⁰ Art 5 of the *Vienna Declaration and Programme of Action* (1993) hereinafter *Vienna Declaration*.

¹¹ *Declaration on the Rights of Indigenous Peoples* (2007) hereinafter UNDRIP.

¹² People with Disabilities hereinafter PWD.

become victimised by development projects, especially extractive industries that affect the environment adversely. Thirdly, the lack of recognition plus the pursuit of development has had negative impact on the protection, respect and promotion of the rights of indigenous peoples. It therefore becomes obvious that in countries where there are indigenous peoples like Cameroon, issues of human rights violations and systemic marginalisation always surface.¹³ From political participation to employment discrimination and provision of social services such as schools, hospitals and infrastructural development, communities hosting indigenous peoples discriminate against them.

History holds that indigenous peoples are widely known as the "First Nations" or "First Peoples".¹⁴ In other words, indigenous peoples are the first people to settle or inhabit a particular territory before the arrival of modern-day colonialism.¹⁵ Some academics have contested the accuracy of this view, especially on the existence of indigenous peoples.¹⁶ The crux of their argument is that all Africans are indigenous.¹⁷ For example, it is submitted that the concept of "indigenous peoples" originates from a cultural background where some groups are considered inferior to others, particularly by the dominant society.¹⁸ Short endorses this view by postulating that black Africans are uncivilised and backward when perceived from, and compared to, their European and Asian counterparts.¹⁹

In almost all parts of the world and Cameroon in particular, indigenous peoples are constantly relegated and remain subjects of decades of acute

¹³ Ndahinda 2011 *International Journal on Minority and Group and Rights* 480.

¹⁴ Waldron 2003 *New Zealand Journal of Public International Law* 55; Niezen 2000 *Comparative Studies in Society and History* 120.

¹⁵ Waldron 2003 *New Zealand Journal of Public International Law* 55; Niezen 2000 *Comparative Studies in Society and History* 120.

¹⁶ Anaya "Evolution of the Concept of Indigenous Peoples and its Contemporary Dimensions" 23-24; Viljoen "Reflections on the Legal Protection of Indigenous Peoples' Rights in Africa" 76-78.

¹⁷ Dersso "Introduction" 11-12; Pelican and Maruyama 2015 *African Study Monographs* 51.

¹⁸ Gagnon 2011 *Brill Journal of African and Asian Studies* 323.

¹⁹ Short *Reconciliation and Colonial Power* 79; Aiken and Leigh 2015 *Geografiska Annaler: Series B, Human Geography* 72.

marginalisation, isolation, inequality and discrimination.²⁰ Studies reveal that these discriminatory practices account for the fact that indigenous peoples live below poverty lines and are described as the poorest of the poor in the entire universe.²¹ The untold suffering of indigenous peoples over the years has initiated a global demand for the recognition of their specific rights.²² Most importantly, their right to land and natural resources remains fundamental to their claims.²³ This is attributed to the fact that for many decades indigenous peoples have been repeatedly refused access to and ownership of their ancestral lands which they have inhabited since time immemorial.²⁴ This explains the continuous struggle over the recognition of their right to the control and management of ancestral lands and resources without interference from governments or multinational corporations,²⁵ according to customary laws.²⁶

The debate over the loss of traditional land and repeated denial of access to natural resources in most of Africa has roots in the colonial episode because of the policies developed and implemented at that time.²⁷ Gagnon notes that even in the post-colonial era, these policies continue to be adopted and implemented in most African countries.²⁸ Graham and Wiessner see this as the reason why indigenous peoples are frequently experiencing a wide range of serious human rights violations such as inequality, forced re-locations, political, social, economic and cultural marginalisation, forced assimilation, subjugation and discrimination.²⁹ The unpalatable consequences of these practices have been the impoverishment of indigenous peoples and their communities. In addition, they are consigned to an inferior and despicable status of second-class human

²⁰ Mooney 2006/2007 *American Indian Law Review* 553.

²¹ Swing et al 2012 *Journal of Developing Societies* 262-263.

²² Gilbert *Indigenous Peoples' Land Rights under International Law: From Victims to Actors* 17, 36; Gilbert 2007 *International and Comparative Law Quarterly* 583-584.

²³ Gilbert *Indigenous Peoples' Land Rights under International Law: From Victims to Actors* 2.

²⁴ Gilbert *Indigenous Peoples' Land Rights under International Law: From Victims to Actors* 2.

²⁵ Multinational Corporations hereinafter MNCs.

²⁶ Gilbert 2007 *International and Comparative Law Quarterly* 591.

²⁷ Anaya 2010 *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: The Situation of Indigenous Peoples' in Botswana* 12.

²⁸ Gagnon 2011 *Brill Journal of African and Asian Studies* 323.

²⁹ Graham 2011 *UCLA Journal of International Law and Foreign Affairs* 403-404.

beings, “uncivilised” and “backward”, inextricably submerged under the murky waters of under-development.³⁰ On the basis of such spurious claims, it has been concluded that indigenous peoples lack the capacity to manage their own affairs even if they are granted all the rights they are demanding. Stoll corroborates this view by stating that:

If indigenous people are to have rights, presumably they must comply with laws. If they are to comply with laws, presumably they need to be led by professionals and politicians rather than shamans.³¹

Although access to, and ownership of, land and resources remain an important part of indigenous peoples’ entitlements, they also face formidable challenges in accessing health care services, education, cultural and political participation in their communities.³² Very often, communities that host indigenous peoples are excluded from developmental projects. Infrastructural developments such as the construction of roads, schools, provision of medical facilities and sufficiently qualified medical personnel, are kept at the lowest minimum. In short, socio-economic and political rights are neither realised nor respected among indigenous communities. The impact of this marginalisation is felt in the quality of life lived by indigenous peoples in their communities. As peoples within states, they are neither recognised as a vulnerable group nor are their rights (civil, political, social, economic and cultures) respected and promoted.³³ It is against this background that tensions often arise between indigenous peoples and the different stakeholders, especially those embarking on development projects. Often, these tensions spill into internecine conflicts between indigenous peoples and governments as is the case, for example, with the First People of the Kgalagadi in Botswana and Niger Delta in Nigeria.³⁴

³⁰ IWGIA date unknown <http://www.iwgia.org/regions/africa/indigenous-peoples-in-africa>; Aiken and Leigh 2015 *Geografiska Annaler: Series B, Human Geography* 72.

³¹ Stoll 2011 *Dialectical Anthropology* 137.

³² Barratt and Afadameh-Adeyemi 2011 *African Human Rights Law Journal* 568.

³³ Hunt 2013 <http://www.iwgi.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2013/ctgc-ip5pdf>; Knuth 2009 <http://www.fao.org/docrep/016/ap552e/ap552epdf>.

³⁴ Niezen 2000 *Comparative Studies in Society and History* 124.

The struggle for the recognition of indigenous peoples' rights gained worldwide momentum following atrocities committed during the First World War^{35, 36}. Of specific significance are atrocities that occurred during the famous Armenian "Genocide" of 1915 barely a day before the First World War.³⁷ The "Genocide" took place between 1915-1917 after government officials of the Committee of the Union and Progress³⁸ decided to execute and forcefully deport several Armenians living in the Ottoman Empire at the time.³⁹ History holds that over 800 000 to 1.5 million Armenians were brutally executed, others died from starvation, infectious diseases and unfavourable climatic conditions shortly after the collapse of the Ottoman Empire, during the course of deportation.⁴⁰ Those who escaped the massacre were forced to take part in "a death march" along the Mesopotamian desert under horrible conditions, coupled with physical abuse.⁴¹ Similar to the Armenian "Genocide" is the German extermination of the Jews shortly after World War II, where a special killing unit called "task forces" was created following Hitler's decision during the Wannsee Conference to eliminate 10 million European Jews with the exception of 2-3 million who served as labourers to the German economy.⁴² These atrocities, among others, gave rise to the birth of the United Nations.⁴³

Following the establishment of the UN, member states thereto felt an urgent need to develop a framework that would protect and promote the basic human rights and fundamental freedoms of every human being, including indigenous peoples within the society. It is against this background that the Preamble to the Charter of the UN has captured these aspirations in the following words:



³⁵ First World War hereinafter WWI.

³⁶ Anaya *Indigenous Peoples in International Law* 2nd edn 7.

³⁷ First World War hereinafter WWI.

³⁸ Committee of the Union and Progress hereinafter CUP.

³⁹ Dixon 2010 *South European Society and Politics* 468-469.

⁴⁰ Smith *et al* 1995 *Holocaust and Genocide Studies* 3; Dixon 2010 *South European Society and Politics* 469.

⁴¹ Kifner date unknown http://www.nytimes.com/ref/timestopics/topics_armeniangenocide.html; Smith *et al* 1995 *Holocaust and Genocide Studies* 3.

⁴² Gerlach 1998 *The Journal of Modern History* 761-786.

⁴³ United Nations hereinafter the UN.

...to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.⁴⁴

Eventually human rights became a central theme in the post-World War II era. With the adoption of numerous international human rights instruments,⁴⁵ recognition was given to specific sets of rights which have been subsumed under civil, political, economic, social and cultural rights.⁴⁶ Common to all these international human rights instruments are provisions against discrimination with respect to the protection and promotion of the rights contained therein. The rights enshrined in these international human rights instruments are universal (available to every human being), interdependent, indivisible and interrelated.⁴⁷ Based on the normative framework of these international human rights instruments, it is logical to argue that indigenous peoples, prior to their recognition as a vulnerable group, do possess civil, political, economic, social and cultural rights like any other people in any community. They are also entitled to protection against any form of discrimination, deserve to be recognised before the law and should be treated as human beings by the law. These are rights stipulated in international instruments, and States Parties thereto are obliged to undertake steps to respect, promote and protect these rights.⁴⁸

In addition to international human rights instruments and the momentum that the protection of human rights and fundamental freedoms gained in the aftermath of

⁴⁴ Para 1 of the Preamble to the *Charter of the United Nations* (1945), hereinafter the UN Charter.

⁴⁵ *Universal Declaration of Human Rights* (1948), hereinafter the UDHR, *International Covenant on Civil and Political Rights* (1966), hereinafter ICCPR, *International Covenant on Economic, Social and Cultural Rights* (1966), hereinafter ICESCR.

⁴⁶ These rights include the right to life, right to work, right to participate in political life, right to freedom of expression, right to information, right to education, right to health, right to social security, right to food, right to water and sanitation, right to culture and right to housing.

⁴⁷ Art 1 of the *Vienna Declaration and Programme of Action* (1993), hereinafter Vienna Declaration.

⁴⁸ ICCPR and ICESCR.

the establishment of the UN, recognition has been given to specific categories of natural persons who, for some reason, are vulnerable to human rights abuses. Tagged “vulnerable groups”, these include women, children, elderly persons, persons with disabilities, migrant workers, incarcerated persons and Human Immunodeficiency Virus⁴⁹ and acquired immunodeficiency syndrome⁵⁰ infected persons. These groups of persons have been the subject of supplementary international human rights instruments.⁵¹ Added to these are indigenous peoples.

Like the other vulnerable groups, indigenous peoples are the subject of the ILO Convention 169.⁵² ILO Convention No. 169 was the first international human rights instrument that gave specific and substantial recognition to the rights of indigenous and tribal peoples. Aimed at eradicating every form of discrimination against indigenous groups and ensuring respect for their cultural and distinct lifestyle,⁵³ ILO Convention No. 169 also imposed upon States Parties the duty to ensure that indigenous communities are involved in decision-making processes, especially with regards to issues that directly affect them.⁵⁴ It further requires States Parties to engage indigenous peoples on issues that directly affect their livelihoods.⁵⁵ It also addresses issues related to the employment and employability of indigenous peoples: these include vocational training, education, health and social security, customary law, traditional institutions, languages, religious beliefs as well as cross-border cooperation.⁵⁶

However, it is important to note that ILO Convention No.169 is not the only key international instrument that relates to indigenous peoples. On September 13, 2007, the United Nations’ General Assembly, by a vote of 144 in favour and 4

⁴⁹ Human Immunodeficiency Virus hereinafter HIV.

⁵⁰ Acquired Immunodeficiency Syndrome hereinafter AIDS.

⁵¹ *Convention on the Elimination of All Forms of Discrimination Against Women* (1989), hereinafter CEDAW, *Convention on the Right of the Child* (1989), hereinafter CRC, *United Nations Convention and Optional Protocol on the Rights of Persons with Disabilities* (1990), hereinafter PWD, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990), (1990) hereinafter Migrant Workers.

⁵² *ILO Convention on Indigenous and Tribal Peoples, No. 169* (1989).

⁵³ *ILO Understanding the Indigenous and Tribal People Convention, 1989 (NO.169)* 3.

⁵⁴ Art 6(1) of ILO Convention No. 169.

⁵⁵ See generally ILO Convention No. 169.

⁵⁶ Art 36 of UNDRIP.

against (Canada, United States of America, Australia and New Zealand) adopted the United Nations Declaration on the Rights of Indigenous Peoples.⁵⁷ As articulated in the Preamble to the UNDRIP, the goal is for UNDRIP to serve as “a standard of achievement to be pursued in a spirit of partnership and mutual respect”.⁵⁸ Even though it remains a Declaration, the substantive content of the UNDRIP, in my view, makes it stand out as an Indigenous Peoples’ Bill of Rights. The UNDRIP stipulates a wide range of indigenous peoples’ rights, from civil and political to economic, social and cultural. Of interest to this study is the fact that the UNDRIP provides in Article 1 as follows:

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

From this provision, it is evident that the rights contained in all international human rights instruments are also accorded to indigenous peoples, whether as a collective or as individuals. Article 2 of the UNDRIP regurgitates the prohibition of every kind of discrimination like other international human rights instruments do. Articles 3 and 4 provide for the right to self-determination in determining freely their political status as well as the right to an autonomous government on matters that relate to their internal and local affairs. Article 5 recognises indigenous peoples’ right to “maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State”. The UNDRIP stipulates numerous rights of indigenous peoples which include civil and political, economic, social and cultural rights. These rights can be grouped in thematic sections as:

- Civil and political rights
- Economic, social and cultural rights

⁵⁷ *Declaration on the Rights of Indigenous Peoples* (2007), hereinafter UNDRIP.

⁵⁸ See para 24 of the Preamble to the UNDRIP.

- Developmental rights
- Rights to indigenous knowledge, and
- Environmental rights

The UNDRIP does not only stipulate the corpus of rights of indigenous peoples, but also stresses on the fact that indigenous peoples are equal to all other groups of people and individuals, owing to the notion that people possess different rights, view themselves differently and as such must be respected in that regard.⁵⁹ In numerous instances, it also provides that states should refrain from acts that prevent indigenous peoples from freely exercising these rights. In summation, the UNDRIP requires states to undertake specific measures to prohibit and redress the following:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.⁶⁰

Similar to several African countries, Cameroon is amongst the 90 countries that host 370 million indigenous peoples worldwide.⁶¹ Indigenous communities in Cameroon face pervasive forms of marginalisation, exploitation and exclusion in almost all domains of life, ranging from forceful dispossession from ancestral lands, lack of political representation, lack of access to basic social services such as health care, education, adequate housing; stigmatisation, repeated violence

⁵⁹ Para 5 of the Preamble to the UNDRIP.

⁶⁰ Art 8 of the UNDRIP.

⁶¹ Anon 2016 <https://www.culturalsurvival.org/who-are-indigenous-peoples>.

and disregard for their cultural identities. Thus, the key question therefore becomes whether the Cameroonian government is in compliance with international standards regarding the protection and promotion of indigenous peoples' rights, or is in violation of them?

Beyond the international sphere, regional inter-governmental entities have developed regional human rights instruments aimed at giving recognition to specific human rights. These regional inter-governmental bodies include the Organisation of American States;⁶² the European Union and the then Organisation of African Unity (replaced by the African Union in 2000). The American Convention on Human Rights;⁶³ the European Convention for the Protection of Human Rights and Fundamental Freedoms;⁶⁴ and the African Charter on Human and Peoples' Rights;⁶⁵ are all regional human rights instruments adopted by, and implemented in, these regions respectively.

From the foregoing, it is indicative that there is sufficient degree of clarity on the nature and scope of the rights of indigenous peoples. First, international human rights instruments such as the UDHR, the ICCPR and the ICESCR, based on the concept of universality, are available to every human being. Secondly, these instruments prohibit every form of discrimination based on any of the listed grounds, especially social status or origin. Thirdly, given the inter-relatedness, indivisibility and inter-dependence of these rights, the full realisation of any right requires the realisation of the other. In addition, to these international human rights instruments, specific focus is given to indigenous peoples as a vulnerable group just like it has been done with other vulnerable groups such as children;⁶⁶ women;⁶⁷ persons with disabilities;⁶⁸ and older persons.

⁶² Organisation of American States hereinafter OAS.

⁶³ *American Convention on Human Rights* (1969), hereinafter American Convention.

⁶⁴ *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) hereinafter European Convention on Human Rights.

⁶⁵ *African Charter on Human and Peoples Rights* (1981), hereinafter the Banjul Charter.

⁶⁶ CRC.

⁶⁷ CEDAW.

⁶⁸ CRPD.

The ILO Convention No. 169 and the UNDRIP detail the contents of the rights of indigenous peoples. As articulated in Article 1 of the UNDRIP, first, indigenous peoples are entitled to all rights that exist in international human rights law. These instruments are further strengthened by regional international human rights instruments which speak of the rights of everyone. Cameroon is home to almost 2 million indigenous peoples, and it is a State Party to the Banjul Charter following her accession to it in 2007. With regards to the reception of international law in Cameroon, Article 46 of the Cameroonian Constitution states that all duly ratified agreements and treaties shall become law in Cameroon. This same article also enjoys a supreme status over domestic law. In effect, international law is not only law in Cameroon but law with a superior status over national laws. The question is this: with her ratification and accession to these international human rights instruments, and the Declaration, has Cameroon fulfilled its international obligations towards indigenous peoples? In other words, has Cameroon taken the necessary steps to recognise, promote and protect the rights of indigenous peoples in her territory?

Finding answers to this question, as well as others, is of immense importance for the simple reason that indigenous peoples in Cameroon are entitled to general and specific protection. Like most other African states, there was plenty of reluctance on the part of Cameroon to acknowledge and recognise indigenous peoples in that country as she argued that all Cameroonians are indigenous.⁶⁹ This attitude, to some extent, shaped the approach towards indigenous peoples, leaving them in a deplorable and under-developed state in their communities. They have been marginalised and deprived of basic amenities that would provide for an acceptable standard of living. However, with constitutional reforms that have been influenced by international pressure and the need to grant recognition to human rights, official recognition of indigenous peoples was enshrined in the 1996 Constitution which for the first time provided for the protection and

⁶⁹ Barume 2004 *Cadre Juridique et Coutumier Pour la Protection des Droits des Peuples Indigène et Tribaux au Cameroun: Point D'entrée 6-7.*

preservation of minorities as well as indigenous peoples' rights.⁷⁰ Beyond this constitutional recognition, there is a paucity of domestic legislation and policy framework as demanded by international and regional human rights instruments to which Cameroon is a State Party.

In spite of the above, the Government of Cameroon usually refers to these indigenous peoples as "marginal populations" or "minority groups".⁷¹ This attitude has been criticised by some scholars who are of the opinion that the phrase "marginal populations" is too broad as it includes other minority groups like the physically and mentally disabled.⁷² In my view, even though indigenous peoples qualify as minority groups, however, given the uniqueness of the attributes they possess, including their permanent attachment to traditional lands, cultural ideologies, practices and institutions, and the tendency to marginalise and exclude them from government and development projects renders them vulnerable. Thus, it is imperative for states to take deliberate and targeted programmes aimed at respecting, promoting and protecting the rights of such peoples.

1.2 Origins of indigenous peoples of Cameroon

The origin of indigenous peoples is as complex as the concept itself. Although little or no literature exists on the origins of indigenous peoples of Cameroon, few sources confirm that indigenous peoples are in fact the first inhabitants or "first peoples" to settle in the tropical forest of Cameroon before the arrival of European

⁷⁰ See Para 5(2) of the Preamble to the *Constitution of the Republic of Cameroon* (1996) to amend the Constitution of 2 June 1972 and 2008 respectively.

⁷¹ Speech by Mrs Catherine Bakang Mbock; Nguh *Implementing the Basic International Law Principles Relating to Indigenous Peoples' Rights: A Case Study of Cameroon* 8; ACHPR 2003-2005 Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights 119-120; Ministry of Justice Cameroon 2009 Report by the Ministry of Justice on Human Rights in Cameroon in 2009 271.

⁷² Nguh *Implementing the Basic International Law Principles Relating to Indigenous Peoples' Rights: A Case Study of Cameroon* 8; CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 73; Aiken and Leigh 2015 *Geografiska Annaler: Series B, Human Geography* 72.

colonisers.⁷³ This study adopts the term Pygmies and Mbororos to refer to the two groups identified as indigenous peoples in Cameroon. There are some controversies regarding the appellation of “indigenous peoples” as it is considered insulting to most indigenous peoples.⁷⁴ How and where exactly they originate from remain a mystery yet to be uncovered by scholars. However, Verdu opines that “Pygmies” in Western Central Africa have existed for over 2,800 years from an ancestral group which originated some 70,000 years ago from the ancestral heritage that gave birth to the non-pygmy population.⁷⁵ History holds that the Bakas are the first inhabitants to settle at the borders of South and East Provinces of Cameroon.⁷⁶ They self-identify as “forest peoples” or “indigenous peoples” on the basis of “aboriginality” and the spiritual attachment they have with the forests as well as the belief that they are the original inhabitants of the African tropical forests.⁷⁷ Their survival and well-being depend exclusively on the forest and resources therein; these resources serve as food and act as a source of medicine, religion and history as well as a symbol of their cultural identity.⁷⁸ Their main occupations are fishing, gathering and hunting although recently some have engaged in subsistence agriculture and eventually adopted a sedentary lifestyle following persistent contact with non-indigenous groups.⁷⁹ Thus, the forests remain a major source of economic subsistence to the indigenous communities in the country.⁸⁰ Also, it is significant to understand that the forest is a symbol of security and peace to indigenous peoples which must be preserved for the coming generations.⁸¹

⁷³ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 9.

⁷⁴ Anon date unknown <http://wwwsurvivalinternationalorg/tribes/pygmies>.

⁷⁵ Verdu “Population Genetics of Central African Pygmies and Non-Pygmies” 34-36.

⁷⁶ ILO 2015 http://wwwiloorg/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854pdf.

⁷⁷ Barsh date unknown <http://wwwsfuca/~palys/Barsh-TheWorldsIndigenousPeoplespdf>.

⁷⁸ Anon 2016 <https://wwwculturalsurvivalorg/who-are-indigenous-peoples>.

⁷⁹ Verdu “Population Genetics of Central African Pygmies and Non-Pygmies” 38.

⁸⁰ Verdu “Population Genetics of Central African Pygmies and Non-Pygmies” 40.

⁸¹ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 9.

In addition to the Pygmies, the Mbororos' origin is also contradictory as scholars have different views about their history and origins of the Fulani in general and Nomadic Fulani (commonly known as Mbororo). Some scholars maintain that the Mbororos originate from the Kano region, known as present day Nigeria, specifically from an ethnic group called Fulbe.⁸² They then migrated through the Sahel and Savannah belt from West to East Africa around the 19th century in search of fertile regions for cattle grazing as well as favourable political conditions.⁸³ The favourable climatic conditions in Bamenda enabled their settlement.⁸⁴ Other scholars believe that this group of peoples originated from the Berber community of North Africa and Sub-Sahara Africa between the 8th and 11th century AD.⁸⁵ They then journeyed through the Middle-East and later migrated to Senegal and eventually scattered throughout West and Central Africa and the borders of Ethiopia between 900-1900 AD.⁸⁶ This group of people have always retained a nomadic lifestyle as herders and traders which has helped to develop and set several trade routes throughout West Africa.⁸⁷ Although recently most of them have adopted a sedentary lifestyle, they are still regarded as strangers and face major challenges regarding land ownership and discrimination in political, social, economic and cultural spheres.

1.2.1 *Who are indigenous peoples?*

The debate as to which group constitutes indigenous peoples in Africa remains problematic and challenging since most governments are unable to distinguish or acknowledge the fact that certain groups self-identify as indigenous peoples in

⁸² Anon date unknown <http://wwwmboscudaorg/indexphp/mbororo-fulani/history-of-mbororo-fulani>.

⁸³ Pelican 2009 *American Ethnologist* 57.

⁸⁴ It is important to note that although the Mbororos are scattered in all provinces of Cameroon, majority of them are settled in North West Province of Cameroon called Bamenda and have adopted a sedimentary lifestyle; Pelican 2009 *American Ethnologist* 58.

⁸⁵ Anter date unknown <https://wwwmodernghanacom/news/349849/1/who-are-the-fulani-people-their-originshtml>.

⁸⁶ Anter date unknown <https://wwwmodernghanacom/news/349849/1/who-are-the-fulani-people-their-originshtml>.

⁸⁷ Anter date unknown <https://wwwmodernghanacom/news/349849/1/who-are-the-fulani-people-their-originshtml>.

the country.⁸⁸ As earlier mentioned in para 1.1 above, over 370 million people (4%) living in 90 out of the 184 countries worldwide self-identify as indigenous peoples and practice more than 500 different cultures.⁸⁹ They are usually known as the first people to settle in an area and live a distinct lifestyle from the rest of the community and inhabit all climates including the Arctic Circle to the tropical rain-forests.⁹⁰ Hunting, gathering and fishing are common characteristic features of the 4% of the world's indigenous peoples. These peoples lived in forested areas of the country and depend on whatever is found in the forests for daily survival.⁹¹ It is submitted that these peoples usually live in small family groups and in most instances dozens of them reside in extended clans and maintain a collective lifestyle.⁹² They have no financial interest in money terms but depend on a barter system of trade which requires them to exchange forest products with other food crops with their Bantu counterparts.⁹³

The nomadic pastoralists are another group that self-identify as indigenous peoples in Cameroon. As cattle breeders, they are found mostly in mountainous or grassland areas, since these areas are fertile for their cattle.⁹⁴ These pastoralists solely depend on these livestock for subsistence.⁹⁵ They are constantly on the move in search of greener pastures for their cattle, it is this behaviour that have caused most people to wrongfully consider them strangers, with no entitlement to land.⁹⁶

Indigenous peoples have a unique lifestyle with a special connection to the environment, land and natural resources. They face similar problems of severe marginalisation, isolation, discrimination, exclusion and forceful dispossession

⁸⁸ IWGIA date unknown <http://www.iwgia.org/regions/africa/indigenous-peoples-in-africa>.

⁸⁹ Sobrevila 2008 <https://siteresourcesworldbankorg/INTBIODIVERSITY/Resources/RoleofIndigenousPeoplesinBiodiversityConservationpdf>.

⁹⁰ Sobrevila 2008 <https://siteresourcesworldbankorg/INTBIODIVERSITY/Resources/RoleofIndigenousPeoplesinBiodiversityConservationpdf>.

⁹¹ IWGIA date unknown <http://www.iwgia.org/regions/africa/indigenous-peoples-in-africa>.

⁹² Swing et al 2012 *Journal of Developing Societies* 260-261.

⁹³ Swing et al 2012 *Journal of Developing Societies* 262.

⁹⁴ Dyson-Hudson and Dyson-Hudson 1980 *Annual. Review Anthropology* 16-17.

⁹⁵ Dyson-Hudson and Dyson-Hudson 1980 *Annual. Review Anthropology* 16-17.

⁹⁶ Dyson-Hudson and Dyson-Hudson 1980 *Annual Review Anthropology* 17-18; Pelican 2009 *American Ethnologist* 58.

from ancestral lands.⁹⁷ This has been the genesis of their struggles for the recognition, protection and promotion of their rights as a people.⁹⁸

1.2.2 Identification of indigenous peoples of Cameroon

The identification of indigenous peoples in Cameroon has been ambiguous and challenging, owing to that fact that no precise definition of the term exists. International instruments specifically addressing the rights of indigenous peoples such as the ILO Convention No. 169 and the UNDRIP do not adequately define the concept. In fact, no group in Cameroon has been officially recognised as indigenous in the country.⁹⁹ The official view has been that no official definition of the term would provide a true meaning of the concept; rather it is more appropriate to state some criteria that facilitate the identification of these groups of people.¹⁰⁰

This endless debate was resolved when the African Commission on Human and Peoples' Rights Working Group on Indigenous Populations/Communities,¹⁰¹ together with the ILO Convention No. 169 outlined the specific characteristics that describe and identify indigenous peoples in Africa as outlined in para 1.10.1 below under the definition of concepts. Given the above, future controversies regarding groups constituting indigenous peoples should adopt and implement the UN criteria.¹⁰² Based on the criteria's as provided by ILO Convention No. 169 and the ACHPRWGIP, coupled with the fact that the Constitution of Cameroon failed to specifically state which groups are classified as indigenous in the country,¹⁰³ government, in an effort to resolve this dilemma, ordered a study in

⁹⁷ Coates *A Global History of Indigenous Peoples* 138.

⁹⁸ Coates *A Global History of Indigenous Peoples* 138.

⁹⁹ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/-gender/documents/publication/wcms_438854.pdf.

¹⁰⁰ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/-gender/documents/publication/wcms_438854.pdf.

¹⁰¹ African Commission on Human and Peoples Rights Working Group on Indigenous Populations/Communities hereinafter ACHPRWGIP.

¹⁰² Kenrick and Lewis 2004 *Anthropology Today* 5.

¹⁰³ See para 5(2) of the Constitution of the Republic of Cameroon.

2009 aimed at investigating the group of peoples that qualified as indigenous peoples following the UN's criteria.¹⁰⁴

Based on the definition of indigenous peoples as provided by ILO Convention No. 169 and the ACHPRWGIP as well as government's efforts to investigate groups that qualify as indigenous peoples in the country, it became clear that two groups in Cameroon meet the criteria and qualify as indigenous peoples: the Mbororo nomadic pastoralists and the hunter-gatherer communities known as the Forest Peoples or the "Pygmies".¹⁰⁵ The Pygmies are forest peoples, (hunter/gatherers), while the Mbororos are nomadic pastoralists. It is only recently that Cameroon began recognising the concept of indigeneity and has officially recognised certain groups as indigenous communities.¹⁰⁶

1.2.2.1 Pygmies

The pygmies of Cameroon have been classified into three ethnic groups: the Baka, Bakola or Bagyeli and the Bedzang. Although no official record is kept of their population, the Baka, considered the most populous group amongst these indigenous communities living in the south and eastern part of the country with a population between 70000-100000. They occupy an area of 75,000 square kilometres.¹⁰⁷ The second largest group is the Baygeli/Bakola comprising some 10000 to 30000 people located in the southern part of Cameroon, particularly in

¹⁰⁴ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf, This Study is still to be finalized, it is significant to note that sufficient progress has been made and it is presently at its second stage.

¹⁰⁵ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf.

¹⁰⁶ See Speech by Ms Catherine Bakang Mbock, Ministry of Social Affairs at the ceremony marking the celebration of the second edition of the International Day of Indigenous peoples', referred to in Cameroon as Marginal Populations (9 August 2009); Nguh Implementing the Basic International Law Principles Relating to Indigenous Peoples' Rights: A Case Study of Cameroon 8; ACHPR 2003-2005 *Second Periodic Report on Cameroon within the Framework of the African Charter on Human and People's Rights* 119-120; Ministry of Justice Cameroon 2009 *Report by the Ministry of Justice on Human Rights in Cameroon in 2009* 271; CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 13.

¹⁰⁷ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf.

the Divisions of Akom II, Bipindi, Kribi and Lolodorf, inhabiting an area of 12,000 square kilometres.¹⁰⁸ Lastly, the Bedzang comprising 1,500 people reside in the central part of the country to the North-West of Mbam in the Ngambè Tikar region.¹⁰⁹ This group of people scattered in different parts of the region encounter several challenges like forced evictions by logging companies, intruding farmers and poachers, cultural genocide, marginalisation, discrimination, stigmatisation and exclusion from public life as well as decisions over development projects.¹¹⁰ They also face severe problems in political representation, social, economic and cultural domains.¹¹¹ They are denied representation at local and national levels because the government does not recognise their political, social and traditional institutions.¹¹²

The Pygmies retain a unique lifestyle and have a spiritual connection to land, territories and natural resources. It is on this basis that they have earned the name “forest peoples” signifying the centrality of the forest to their culture, livelihoods and history.¹¹³ Although the term “Pygmies” is commonly used to describe them, it has been criticised by many as insulting and provocative.¹¹⁴ Unlike the Bantu community where the man plays the central role in the household, the women from these indigenous communities are the major role players in every household.¹¹⁵ Apart from gathering, fetching wood and providing food for the entire household, the women are responsible for building the family huts called “mongulu”, bear and cater for children. They also assist their husbands during hunting seasons and ensure the well-being of the entire

¹⁰⁸ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf.

¹⁰⁹ Mikkelsen *et al* *The Indigenous World* 2015 417; Verdu “Population Genetics of Central African Pygmies and Non-Pygmies” 44.

¹¹⁰ Pelican 2009 *American Ethnologist* 58-59.

¹¹¹ They are not represented in the government of the country, not involved in any decision-making processes especially those that concern them, they are also deprived of the basic social services, their culture is threatened from constant displacement from their ancestral lands.

¹¹² ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf.

¹¹³ Anon 2016 <https://www.culturalsurvival.org/who-are-indigenous-peoples>.

¹¹⁴ Anon 2016 <https://www.culturalsurvival.org/who-are-indigenous-peoples>.

¹¹⁵ Verdu “Population Genetics of Central African Pygmies and Non-Pygmies” 44-47.

family.¹¹⁶ However, recently, with the increased exploitation of timber, the Pygmies have been forced to re-locate and integrate with the Bantu neighbours, thereby gradually adopting the majority cultures and ways of life. A major problem for indigenous peoples (Pygmies) is the persistent unwillingness by the government to recognise their land rights and the refusal to acknowledge them as a minority group having specific needs.¹¹⁷ Land to the Pygmies communities is not just the trees therein, but the content thereof. If indigenous peoples are recognised as the real custodians of their ancestral land, then their problems would have been solved as their survival solely depends on it.¹¹⁸

Pygmies of Cameroon in the forest



Source: <http://www.fingerwind.com/wp-content/uploads/Pigmies-of-African-rainforest.jpg>.

¹¹⁶ Mongulu is the name given to the traditional huts where indigenous peoples live. These huts are made from branches of trees and leaves mostly occupied by each family. Explanation and description of 'mongulu' was uncovered during an unstructured interview with some community Baka community members in Lomié, Cameroon on the 24th and 25th of January 2016.

¹¹⁷ Anon 2016 <https://www.culturalsurvival.org/who-are-indigenous-peoples>.

¹¹⁸ ACHPR and IWGIA *Indigenous Peoples in Africa: The Forgotten Peoples?* 17.

1.2.2.2 Mbororos

Apart from the Pygmies, the Mbororos are another indigenous group in Cameroon. The term "Mbororo" derives its meaning from the agro-pastoral Fulbe.¹¹⁹ The British and French had a common appellation for them known as "Fulani" and "Peul".¹²⁰ They make up a total population of over 1.8 million people and are scattered in almost every part of the country due to their nomadic lifestyle.¹²¹ As cattle herders, they hardly settle permanently in a certain place for long as they keep searching for pasture to feed their livestock.

Similar to the Pygmies, the Mbororos have been classified into three ethnic groups, namely the "Aku-en, Bodaabe and the Jafun-en".¹²² Although all Mbororos have many things in common, they are easily identified and distinguished from the colour of their cattle, including decorations of their bowls and nomadic nature.¹²³ The Jafun-en community of Lompta in Adamawa were the earliest to enter the Western grasslands area of Bamenda in the late 1910s and Sabga was the name used to identify their settlement.¹²⁴

In addition, the Mbororos have strong political, economic, cultural, religious ties to their environment and ancestral lands.¹²⁵ As nomadic herdsmen, their existence depends mainly on cattle rearing and grazing, their unique lifestyle (pastoralists) and cultural differences separate them from the rest of the society and are, therefore, considered indigenous in Cameroon.¹²⁶ They continue to encounter major challenges such as rejection, seclusion, discrimination, dispossession, political under-representation and severe marginalisation from

¹¹⁹ Bocquené and Ndoudi *Memoirs of a Mbororo* 89-90.

¹²⁰ ACHPR and IWGIA 2005 *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* 19-45.

¹²¹ Anon date <http://www.wilo.org/indigenous/Activitiesbyregion/Africa/Cameroon/lang--en/indexhtm>.

¹²² Mikkelsen et al *The Indigenous World* 2015 417; Anon date unknown <http://www.mboscudaorg/index.php/mbororo-fulani/history-of-mbororo-fulani>.

¹²³ Mikkelsen et al *The Indigenous World* 2015 417; Anon date unknown <http://www.mboscudaorg/index.php/mbororo-fulani/history-of-mbororo-fulani>.

¹²⁴ Pelican 2008 *Journal of the International African Institute* 542.

¹²⁵ Pelican 2008 *Journal of the International African Institute* 545.

¹²⁶ Davis 1995 *Review of African Political Economy* 218.

the larger society. The struggle over land is a major challenge to both the Mbororo and Pygmy groups as they are always seen as “strangers” or “late comers”.¹²⁷ The extensive grazing and seasonal transhumance agricultural system conflicts with the natives’ system of shifting cultivation results in endless clashes.¹²⁸ Recently, they have started engaging in subsistence agriculture as well as attending primary education to improve their living conditions.¹²⁹ However, it should be noted that the Mbororos as well as the Pygmies have a special relationship to the environment, traditional land and resources and desire to have access to, make use of, and manage the resources without hindrance.¹³⁰ Both groups have been fighting not only for the recognition of their rights as a distinct people, but also as Cameroonian citizens especially as they are constantly viewed as strangers, migrants, and late-comers having no rights to land and natural resources.¹³¹ However, it is worth mentioning that despite international, regional and national instruments advocating for the recognition of these group of people, regrettably, no formal or legal recognition has been granted to them at the national level.¹³²

¹²⁷ Pelican 2009 *American Ethnologist* 60.

¹²⁸ Dafinger and Pelican 2006 *Canadian Journal of African Studies* 130.

¹²⁹ Personal communication by way of an unstructured interview with some Mbororo community members in Banjah and Mamada Bamenda, Cameroon from the 14 and 15 of December 2015

¹³⁰ Pelican 2011 *Journal of Contemporary African Studies* 428.

¹³¹ Pelican 2008 *Journal of the International African Institute* 546; Pelican 2013 *Anthropology Today* 60.

¹³² Pelican 2013 *Anthropology Today* 53.

Mbororo pastoralist



Sources: Adapted from Pelican 2013

The introduction of a multi-party system in Cameroon in 1996 led to the formation of several political parties, including other political associations as well as constitutional amendments that in the entrenchment of human rights in the country's Constitution. Ethnic entities created social groups, for example, Mbororo Social and Cultural Development Association,¹³³ an active non-governmental organisation,¹³⁴ advocating for the rights of Mbororo people in Cameroon. MBOSCUDA has been very instrumental in the struggle for the recognition of indigenous peoples (especially Mbororo peoples) rights in the country. This has helped the Mbororo people to gain some degree of representation in the country as they are able to participate in debates concerning

¹³³ Mbororo Social and Cultural Development Association hereinafter MBOSCUDA.

¹³⁴ Non-governmental Organisation hereinafter NGO.

the development of their communities. It is against this background that thesis analyses the legislative and constitutional framework governing the rights of indigenous peoples in Cameroon.

1.3 Problem statement

Like most African countries, Cameroon went through the tutelage of European colonisation. Germany ruled Cameroon from 1884-1916 while the British and the French governed the country between 1916-1961 when the country eventually gained independence.¹³⁵ This accounts for the existence of a bi-jural system (common law applicable in the former Southern Cameroons and civil law in the former East Cameroons). Cameroon is situated in Central Africa on the Gulf of Guinea with a population of over 20 million people.¹³⁶ As previously indicated in para 1.3 above, the country experienced two colonial systems namely; colonial rule as a German Protectorate from 1884-1916 and the Franco-British mandate under the Mandates System established under the Covenant of the League of Nations.¹³⁷ Article 22 of the Covenant stated that:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the formance of this trust should be embodied in this Covenant.¹³⁸

In addition, these territories were to remain under the tutelage of Mandatory Powers until they were able to stand by themselves and the administration of these territories aimed at protecting the interests of indigenous peoples.¹³⁹ Unfortunately, the Mandates System in Cameroon not only failed to recognise

¹³⁵ Davis 1995 *Review of African Political Economy* 214-215; Kassea Sakki and Pirttilä-Backman 2009 *Journal of Community & Applied Social Psychology* 113.

¹³⁶ Mikkelsen et al *The Indigenous World* 2015 417.

¹³⁷ Art 22 of the *Covenant of the League of Nations* (1919).

¹³⁸ See Art 22 of the *Covenant of the League of Nations* (1919).

¹³⁹ Art 2 of the *Covenant of the League of Nations* (1919).

indigenous peoples but also deprived them of their lands and resources, thus, leaving them in a more destitute, poverty-stricken and marginalised state.¹⁴⁰ These practices did not only negatively affect indigenous communities' political, socio-economic and cultural life, but equally contributed to the many challenges they are confronted with today. This view has been endorsed by Anaya who opines that "the serious problems indigenous peoples' encounter on a daily basis stems from the historical loss of the vast amounts of lands and natural resources during colonisation".¹⁴¹ It is therefore significant to note that the legacy of colonialism has contributed to the denial of the basic human rights of the formerly colonised peoples. For indigenous communities, their situation was even worse. They suffer a double jeopardy: being colonised and indigenous.

According to Viljoen, indigenous peoples face a common problem of lack of official recognition and denial of their existence which scholars have attributed to the consequences of colonialism.¹⁴² The post-colonial government of Cameroon inherited most of the colonial laws denying indigenous peoples of their existence and undermining their cultural identities. Despite several constitutional and institutional changes, coupled with the fact that Cameroon was amongst the first few African countries that voted in support of the UNDRIP, indigenous communities are not given the proper recognition and special protection they deserve as a distinct group. It is well-known that Cameroon is among the many African countries that recognise indigenous peoples' rights in her national Constitution. That provision of the Constitution states that: - "the State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law".¹⁴³ However, indigenous peoples in

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¹⁴⁰ See for example CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 9-10.

¹⁴¹ Anaya "The Evolution of the Concept of Indigenous Peoples and its Contemporary Dimensions" 34.

¹⁴² Viljoen "Reflections on the Legal Protection of Indigenous Peoples' Rights in Africa" 76-79; "Indigenous Peoples' Rights in Southern Africa: An Introduction" 8-10.

¹⁴³ Para 5(2) of the Constitution of the Republic of Cameroon Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972 as amended.

Cameroon are still experiencing different forms of discrimination and marginalisation in all walks of life as will be adumbrated herein.

The vexing issue is that the Constitution of Cameroon has omitted to clearly specify the contours within which indigenous peoples' rights are protected.¹⁴⁴ Put differently, the Constitution has failed to expressly detail the various rights that warrant specific protection. The vague and ambiguous nature of this provision has intensified the endless challenges indigenous peoples in Cameroon come across daily. As nomadic and semi-nomadic pastoralists and hunter-gatherers, their problems include dislocation and dispossession from ancestral lands and natural resources, forced assimilation, marginalisation, poverty, illiteracy, persistent discrimination, stigmatisation, exclusion, deprivation from access to socio-economic, cultural and political spheres in their communities.¹⁴⁵ Thus, the struggle for the recognition of indigenous peoples' rights under national laws and constitution is still on-going.¹⁴⁶ The term "marginal population" as used by the government of Cameroon to refer to indigenous peoples is a lame excuse to escape responsibility in addressing the numerous socio-economic, cultural, civic and political challenges indigenous communities encounter in Cameroon.¹⁴⁷

Additionally, the colonial government had adopted policies that vested ownership and control of indigenous lands and natural resources in the government. These long-standing policies have generated contentious issues in post-colonial Cameroon, as it prevents indigenous peoples from exercising control and management over traditional lands they owned from time immemorial. In effect, colonial policies deprived indigenous peoples from participating in decision-making processes concerning the management and control of the resources they

¹⁴⁴ Pelican 2013 *Anthropology Today* 13.

¹⁴⁵ UNPFII 2013
https://www.un.org/esa/socdev/unpfii/documents/2013/Media/Fact%20Sheet_Africa_%20UNPFII-12.pdf.

¹⁴⁶ UNPFII 2013
https://www.un.org/esa/socdev/unpfii/documents/2013/Media/Fact%20Sheet_Africa_%20UNPFII-12.pdf.

¹⁴⁷ Pelican 2013 *Anthropology Today* 13-14.

depended on for subsistence for several decades.¹⁴⁸ The urgent need for inclusive and participative governance and decision-making processes globally triggered the revision of forestry laws in Cameroon in a bid to improve the livelihood of local peoples.¹⁴⁹ Indigenous communities did not only lose traditional lands, but could not benefit from proceeds derived from resource extraction.¹⁵⁰ To redress these injustices the Forestry Law No. 94/01 of January 20, 1994 regulating forestry, wildlife and fisheries and its implementation Decree No. 95-531-PM of 23rd August 1995 were enacted with the intention of increasing the full participation of local communities in decisions concerning the use, management and control of resources within their territories.¹⁵¹ Regrettably, the forestry law has failed to recognise and even address the needs of indigenous communities in Cameroon.

Indigenous peoples were undermined during the negotiation process following the enactment of the Forestry Law, as they were never involved in or invited to take part in the formulation and drafting process.¹⁵² Government persistently argued that the Pygmies and Mbororo groups were constantly migrating and did not have an organised and stable territory.¹⁵³ It is surprising that a policy meant to be participatory, improve living standards, eradicate poverty, promote social justice and environmental suitability is discriminatory against local communities. Increased exploitation of timber and other resources within indigenous communities has generated several socio-economic problems including environmental degradation, pollution, disruption of bio-diversity, deprivation of the means of livelihood, health issues arising from constant dislocation from their natural habitats.¹⁵⁴ Their lands and physical environment are under threat from poachers and land grabbers. These incursions into pristine forests have triggered

¹⁴⁸ Alemagi *et al* 2013 *Journal of Sustainable Development* 9.

¹⁴⁹ Alemagi *et al* 2013 *Journal of Sustainable Development* 10; Cerutti *et al* 2010 *International Forestry Review* 131.

¹⁵⁰ Cerutti *et al* 2010 *International Forestry Review* 133-134.

¹⁵¹ Alemagi *et al* 2013 *Journal of Sustainable Development* 8-9.

¹⁵² Oyono 2005 *The Journal of Environment and Development* 8.

¹⁵³ Oyono 2005 *The Journal of Environment and Development* 8.

¹⁵⁴ Oyono 2005 *The Journal of Environment and Development* 11.

the negative impact of climate change in the society.¹⁵⁵ In addition, indigenous peoples in Cameroon equally face marginalisation in education, housing, social security, destruction of cultures and languages.¹⁵⁶

Indigenous peoples' level of education is significantly lower than that of the dominant groups in society, for the girls the situation is relatively worse.¹⁵⁷ Although no major statistical data exists on the educational attainment of indigenous children, however reports confirm that very few indigenous children have attained university level with just a handful having completed secondary and high school levels in the country.¹⁵⁸ Several reasons account for this, including long distances to school, official documents needed like birth certificates and National Identification Cards,¹⁵⁹ the costs of school materials, the issue of sitting for an entrance examination to qualify for admission into secondary and high schools are all limiting factors. Stigmatisation practices by teachers and other students in the form of intimidation, provocation, harassment and insults contribute to high drop-outs rates.¹⁶⁰ A major challenge is that school curricula do not address the needs of these indigenous peoples.¹⁶¹

As far as the Government of Cameroon is concerned, indigenous peoples' involvement in political governance is not to be encouraged nor promoted.¹⁶² Studies reveal that very few or no indigenous peoples are represented in

¹⁵⁵ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/-gender/documents/publication/wcms_438854.pdf.

¹⁵⁶ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 10.

¹⁵⁷ UNPFII 2013 https://www.un.org/esa/socdev/unpfii/documents/2013/Media/Fact%20Sheet_Africa_%20UNPFII-12.pdf

¹⁵⁸ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 10-11, 20.

¹⁵⁹ National Identification Cards hereinafter NIC.

¹⁶⁰ Barume 2005 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100775.pdf.

¹⁶¹ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 10-11.

¹⁶² CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 10-11.

parliament and other top political and administrative positions in Cameroon.¹⁶³ A recent report of the International Working Group on Indigenous Affairs,¹⁶⁴ indicates that indigenous peoples are under-represented in political life in Cameroon both at the local, regional and national levels of government as their chiefs are not officially recognised.¹⁶⁵

This thesis addresses the following issues that have been identified as being problematic with regards to the legislative and instructional framework governing the rights of indigenous peoples' in Cameroon:

Why are indigenous peoples excluded from the political, socio-economic, and cultural aspects of the society?

Why is there continuous neglect of indigenous peoples in development and decision-making processes over internal and local affairs, especially on matters that directly affect them?

What is the government doing to control the activities of MNCs? In other words, what are the laws regulating the activities of MNC's engaged in the exploration and exploitation of natural resources?

Are state practices in conformity with international standards and obligations with regards to the human rights of indigenous peoples'?

What is the role of government in ensuring the domestication of laws regulating indigenous peoples' rights to basic social services?

What role could the government play in eradicating the existing negative trends and challenges with respect to the protection and promotion of the rights of indigenous peoples?

¹⁶³ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 10-11.

¹⁶⁴ International Working Group on Indigenous Affairs hereinafter IWGIA.

¹⁶⁵ Pyhälä 2012 *What Future for the Baka? Indigenous Peoples' Rights and Livelihood Opportunities in South-East Cameroon: IWGIA Report* 13.

Are there any gaps in the laws or enforcement mechanisms in relation to the situation of indigenous peoples in Cameroon?

Given the sensitive and topical nature of the various issues involved in this study, the questions posed above merit attention. This implies that each issue has been dealt with separately but overall in a holistic manner given their inter-relatedness.

1.4 Aims and objectives of the study

1.4.1 Specific aims

This thesis contributes to the existing body of knowledge and research on the legislative and institutional frameworks regulating indigenous peoples in Cameroon. There is currently a lacuna in the existing literature in relation to political, socio-economic and cultural rights of indigenous peoples in the country. Given the above, the specific aims of this study are set to:

1. Interrogate the root causes of the persistent refusal by the Cameroonian government to ensure indigenous peoples full and active participation in governance of the country.
2. Critically examine government's unwillingness to provide indigenous peoples with access to basic social services such as education, health care, adequate housing and social security. Failure by government to provide indigenous peoples with basic social facilities has subjected them to being victims of structural inequalities.
3. Investigate the legislative and policy frameworks dealing with the protection and promotion of indigenous peoples' rights with a view to assessing compliance with international standards.
4. Evaluate existing laws and policies and examine how they have impact on indigenous communities.
5. Interrogate the control mechanisms used to manage resource extraction and whether or not indigenous peoples benefit from the proceeds that

accrue therein, as well as propose lasting solutions for effective resource management.

6. Propose the implementation of programmes specifically tailored to mitigate the situation of indigenous peoples in Cameroon.

1.4.2 General aims

The continuous struggle for the recognition of indigenous peoples' rights has become a topical issue in international human rights law.¹⁶⁶ The ineffectiveness of the Constitution of Cameroon in addressing the rights of indigenous peoples has led to gross human rights violations in the society. Some of these violations include systematic discrimination, exclusion, rejection, segregation, subjugation, domination, dispossession and stigmatisation coupled with the government's inability to remedy the disheartening conditions of indigenous peoples.¹⁶⁷

Thus, the main objective of this study is to evaluate the extent to which the Constitution and the ordinary laws of the land protect the basic human rights and fundamental freedoms of indigenous peoples. This is done by critically examining the country's record on the domestication of regional and international instruments on the rights of indigenous peoples. In addition, the on-going conflicts between the human rights of indigenous peoples on the one hand and the interests of extractive industries, such as timber companies that are encroaching on the traditional habitats of indigenous communities on the other hand are examined. The primary aim is to investigate how the country's policies on resource extraction could be so implemented as to meet international standards. Such implementation is targeted to address and ensure the effective protection and promotion of indigenous peoples' rights in the country. These practices are perceived to help alleviate poverty, stem marginalisation, eliminate discrimination, ensure human security, improve socio-economic rights, mitigate

¹⁶⁶ Gilbert 2007 *International Journal on Minority and Group Rights* 207.

¹⁶⁷ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 9.

against environmental degradation within indigenous communities and enhance indigenous peoples' political participation in governance.

1.4.3 Objectives

This thesis examines the lack of accountability for the recurrent human rights violations against indigenous communities in Cameroon. This investigation is vital as it closes the gaps identified in the legal system and constitutional architecture regarding the protection and promotion of indigenous peoples' rights. Mindful of the above, this thesis aims at drawing practical experiences from other jurisdictions with indigenous populations such as Canada, USA, Australia, New Zealand, Botswana and South Africa on how they deal with indigenous peoples' marginality with the intention of adopting best practices from these juridical enactments.

1.5 Basic hypothesis

The basic hypothesis of this study is that the Cameroonian government has failed to adequately protect the basic human rights and fundamental freedoms of her indigenous peoples. In other words, why is the government unwilling and unable to address the political, social, economic and cultural rights of her indigenous peoples? What lessons can Cameroon adopt from successful model countries like Canada, Australia, New Zealand, USA, Botswana and South Africa? It is herein submitted that the denial or unwillingness of the Cameroonian Government to implement and enforce its national laws in a manner that protect and promote the human rights and fundamental freedoms of her indigenous peoples is attributed to the lack of an official and legal recognition of these peoples in the national Constitution, resulting in relentless conflicts and social unrest between indigenous communities and the national government.

1.6 Rationale and justification of the study

The on-going violations of basic human rights and fundamental freedoms of indigenous peoples in Cameroon constitute the basis for their systemic marginalisation and discrimination. This situation attests to the government's

unwillingness to fulfil its constitutional promises of protecting and preserving indigenous peoples' rights. This has eventually led to the undermining of the spirit of constitutional democracy which is the basis of modern post-Cameroon. A democratic country is one that honours its obligations of ensuring a more representative system of government founded on the principles of free and fair elections by political leaders such that they effectively govern the citizens.¹⁶⁸ In other words, constitutional democracy ensures that everyone has the right to equal treatment before the law without any distinction as to race, gender, religion and national origin. By implication, the state has the responsibility to provide the population with basic social services essential for their survival and well-being. These rights cannot be effectively realised on the basis of universality in a country like Cameroon where the survival of its indigenous communities is threatened. Thus, government is therefore required to honour its constitutional obligations towards its people, particularly indigenous communities. It is only when these issues are properly addressed that the country could be said to have achieved its democratic principles. It is therefore necessary to review the legislative framework and adopt a more robust legal system that is responsive to the needs and aspirations of indigenous peoples. Such an undertaking would ensure that Cameroon's democratic and developmental mandates are realised in an inclusive manner.

Additionally, although a lot has been written on the plight of indigenous peoples elsewhere, very little has been documented on the political, economic, social and cultural rights indigenous peoples in Cameroon. This is due to the weaknesses in the country's human rights record and, in fulfilling its obligations of recognising and protecting the special rights of indigenous peoples. Thus, this paucity of studies provides sufficient justification for this study. More so, the dearth of comparative legal studies as opposed to anthropological studies on the Pygmies of Central Africa makes this study even more significant.

¹⁶⁸ Hansen 2013 <http://new-compass.net/articles/what-would-real-democracy-look>.

1.7 Data collection and methodology

1.7.1 Research methodology

Traditionally, there are two types of research methods namely: qualitative and quantitative research methods.¹⁶⁹ Over the years, there has been an increasing debate regarding the integrity of the qualitative research methods over quantitative methods in relation to the mode of use as well as the relationship between both.¹⁷⁰ The term "qualitative research" stresses on the qualities of objects, processes and connotations that are not experimentally measured in relation to frequency, intensity and amount.¹⁷¹ Put differently, qualitative research puts emphasis on the socially formulated nature of reality as well as the link between the researcher, the study area and the situational limitations that inform the investigation.¹⁷² In other words, qualitative research is used to generate particular results without employing any statistical means or quantifiable data.¹⁷³ This method usually involves the use of case studies, phenomenology, demography as well as historical analysis.¹⁷⁴ It is a descriptive research method that aims at providing a particular hypothesis essential for a specific study.¹⁷⁵ According to Bryman, qualitative research is an open-ended research method whose results might be unpredictable and leads to new discoveries.¹⁷⁶ Its deductive nature provides rich information used to generate hypotheses and highlight the importance and value of the study. On the other hand, quantitative research requires the creation of statistical models using different variables.¹⁷⁷ Quantitative research also permits the researcher to acquaint themselves with the issue under investigation as well as produce hypothesis to be tested.¹⁷⁸

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¹⁶⁹ Bless, Higson-Smith and Kagee *Fundamentals of Social Research Methods* 44.

¹⁷⁰ Foss and Ellefsen 2002 *Journal of Advanced Nursing* 243.

¹⁷¹ Denzin and Lincoln *The SAGE Handbook of Qualitative Research* 8.

¹⁷² Denzin and Lincoln *The SAGE Handbook of Qualitative Research* 8.

¹⁷³ Neill 2006 <http://wilderdomcom/research/QualitativeversusQuantitativeResearchhtml>.

¹⁷⁴ Neill 2006 <http://wilderdomcom/research/QualitativeversusQuantitativeResearchhtml>.

¹⁷⁵ Christensen *Experimental Methodology* 89.

¹⁷⁶ Bryman 2006 *SAGE Publications* 48.

¹⁷⁷ Maree *First Step in Research* 58.

¹⁷⁸ Golafshani 2003 *The Qualitative Report* 597.

It is significant to mention that these research methods have some negative and positive effects resulting in controversy amongst proponents of each, especially in the social sciences that argue over the advantages and disadvantages of each of them.¹⁷⁹ These debates should not detain us unduly here.¹⁸⁰ Suffice to note that this study is grounded in the qualitative research method. The holistic nature of this research method gives an in-depth understanding of the research problem identified. It also allows the researcher to use subjective and idiosyncratic information as well as participant observation to define a particular context, natural settings and variables under consideration in the context.¹⁸¹

Notwithstanding the above, the qualitative research method has a number of weaknesses. Eisner observed that qualitative research might direct the researcher to a biased conclusion, especially when interpreting the data, since she might manipulate the views of participants.¹⁸² Another major weakness of qualitative research is that its subjective nature is time consuming which, in most cases, takes longer than anticipated.

Quantitative research, on the other hand, enables the researcher to investigate the link between independent and dependent variables; this is significant as the researcher is sure of the findings.¹⁸³ Despite the above, this research method has major weaknesses also. A major weakness is that the context of the study is usually ignored as it prevents the researcher to study things in their natural environments. In addition, the fact that a large population sample must be studied to come out with an accurate result might result in inaccuracies and unnecessary delays as most judgments risk being biased.¹⁸⁴

Nevertheless, this thesis adopts a qualitative research approach. Considering the critical and comparative analysis of legal issues involved in the study, the

¹⁷⁹ Leedy and Ormrod *Practical Research Planning and Design* 182; Matveev 2002 *Business Journal of Communications* 59-67.

¹⁸⁰ Eisner and Peshkin *Qualitative Inquiry in Education* 124.

¹⁸¹ Eisner and Peshkin *Qualitative Inquiry in Education* 126.

¹⁸² Eisner and Peshkin *Qualitative Inquiry in Education* 128.

¹⁸³ Neill 2007 <http://wilderdom.com/research/QualitativeVersusQuantitativeResearch.html>.

¹⁸⁴ Bryman *Integrating Quantitative and Qualitative Research: How is it Done?* 50.

qualitative research method has been chosen as the most appropriate method. Put differently, this thesis takes a purely doctrinal approach conducted in a comparative perspective by drawing lessons from other countries such as United States of America,¹⁸⁵ Canada, Australia, New Zealand, South Africa and Botswana which also have significant groups of indigenous populations. The *raison d'être* is that a comparative analysis enables the researcher to have a deeper understanding of the topic under investigation. The study uses both primary and secondary sources.

1.7.2 Data collection

The researcher adopted a purposive sampling technique. This entailed the collection of data and qualitative enquiry by means of participant observation with key role players in the form of unstructured interviews. The *rationale* for the adoption of this pattern is to gather first-hand information from the selected sample group. It is submitted that these groups of people have good knowledge and understanding as well as experiences on the subject matter. The targeted population included relevant Ministries, institutions and Non-Governmental Organisations¹⁸⁶ concerned with the promotion and protection of indigenous peoples' rights in Cameroon. To that effect, the following Ministries were visited, namely Ministry of Basic Education;¹⁸⁷ Ministry of Social Affairs;¹⁸⁸ Ministry of Environment, Nature Protection and Sustainable Development;¹⁸⁹ Ministry of Forestry and Wildlife;¹⁹⁰ Ministry of Justice¹⁹¹ including a few Human Rights Lawyers. In addition, the National Commission for Human Rights and Freedoms,¹⁹² the only institution charged with the mandate of protecting and promoting indigenous peoples' rights in Cameroon, was also visited. Further, the researcher also held interviews with Directors and senior staff members of some

¹⁸⁵ United States of America hereinafter USA.

¹⁸⁶ Non-Governmental Organisation hereinafter NGO.

¹⁸⁷ Ministry of Basic Education hereinafter MINEDUB.

¹⁸⁸ Ministry of Social Affairs hereinafter MINAS.

¹⁸⁹ Ministry of Environment hereinafter MINEPDED.

¹⁹⁰ Ministry of Forestry and Wildlife hereinafter MINFOF.

¹⁹¹ Ministry of Justice hereinafter MINJUSTICE.

¹⁹² National Commission for Human Rights and Freedom hereinafter NCHRF.

NGOs involved with the promotion and protection of indigenous peoples, rights such as MBOSCUDA; MBOYASCAM, Association OKANI;¹⁹³ Plan Cameroon International;¹⁹⁴ Centre for Environment and Development;¹⁹⁵ Green Development Advocates;¹⁹⁶ as well as some top officials of the Cameroon Oil Transportation Company.¹⁹⁷ The researcher also had an informal interview and panel discussions with members of the Baka, Bagyeli and Mbororo communities in Cameroon.

The primary legal sources used include international and regional instruments, national legislation, policy documents, statutes, law reports, case-law as well as participant observations by way of unstructured interviews. The researcher also made extensive use of the library and inter-campus library services. These include views of learned scholars as expressed in textbooks and articles in accredited journals. Internet sources were equally employed.

1.7.3 Validation

Validity is a qualitative research tool employed to determine the strength or accuracy of a study. In the words of Golafshani, validation aims to verify the different methods used to ensure that the outcomes are correct, reliable and related.¹⁹⁸ In other words, it is a method that enables one to establish whether the findings are valid, "True",¹⁹⁹ or "Certain".²⁰⁰ Scholars have identified four different types of triangulation: method triangulation, investigator triangulation, theory triangulation and data source triangulation.²⁰¹ Olsen explains triangulation from the point of view of social sciences, where he points out that it is a combination of two research strategies employed to obtain varied opinions on a

¹⁹³ OKANI is a Baka word which means "rise up".

¹⁹⁴ Plan Cameroon International hereinafter PCI.

¹⁹⁵ Centre for Environment and Development hereinafter CED.

¹⁹⁶ Green Development Advocates hereinafter GDA.

¹⁹⁷ Cameroon Oil Transportation Company hereinafter COTCO.

¹⁹⁸ Golafshani 2003 *The Qualitative Report* 598-599.

¹⁹⁹ True in this case reflects the correctness of the findings.

²⁰⁰ Certain in this sense ensure that research findings are accompanied by proper evidence.

²⁰¹ Denzin "Strategies of Multiple Triangulation" 64-68; Wilson 2014 *Evidence Based Library and Information Practice* 45-46.

subject matter.²⁰² This is vital as it helps to validate the findings obtained from a particular study. Carter *et al*, have also defined triangulation as a qualitative research technique essential to test and improve the validity of results using multiple research methods over a similar phenomenon.²⁰³ It is worth noting that only two of these methods are relevant for this study.²⁰⁴ Data triangulation is the first in this regard. Data triangulation is a method that comprises the use of different sources of data with the aim of analysing the evidence gathered from the various sources and determining if the findings are coherent and valid.²⁰⁵ Guion has observed that this is the most popular, effective, efficient and suitable method for studies of this nature.²⁰⁶ Carter endorses this argument by confirming that data triangulation is most relevant for qualitative researchers dealing with human phenomena as it facilitates the process of data collection using unstructured interviews with individuals or groups.²⁰⁷ Given the above, the researcher has conducted in-depth, unstructured interviews with the help of Aide Memoirs in order to acquire reliable and first-hand information of the problem under investigation.²⁰⁸

Another method used to validate the subject under investigation is peer debriefing. This was done by identifying relevant persons, organisations, institutions as well as Ministries related to the study. This method was employed in such a way that individuals other than the researcher could criticise, debate, deliberate and ask questions relating to the qualitative study. This ensured that the account would resonate with persons other than the researcher. In addition, this method has been beneficial through presentations at the North-West University Law

²⁰² Olsen 2004 *Developments in Sociology* 3.

²⁰³ Carter *et al* 2014 *Oncology Nursing Forum* 545.

²⁰⁴ Guion 2002 <https://sitesdukeedu/niou/files/2014/07/W13-Guion-2002-Triangulation-Establishing-the-Validity-of-Qualitative-Researchpdf>.

²⁰⁵ Creswell *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* 213.

²⁰⁶ Guion 2002 <https://sitesdukeedu/niou/files/2014/07/W13-Guion-2002-Triangulation-Establishing-the-Validity-of-Qualitative-Researchpdf>.

²⁰⁷ Carter *et al* 2014 *Oncology Nursing Forum* 546.

²⁰⁸ Given the rules of ethical considerations and for security purposes the names and identity of people interviewed for this study are not disclosed.

Faculty Friday seminars,²⁰⁹ as well as the University of Pretoria, Centre for Human Rights short training programmes.²¹⁰

1.8 Literature review

This section of the study focuses on a review of selected literature on indigenous peoples' rights issues in the Cameroonian context. The purpose of this review is to identify gaps in the existing literature as well as explicate the research's significant strengths.²¹¹ It is worth noting that the question of indigenous peoples' rights has an extensive and diverse literature, constituting different approaches and understandings by various academics regarding the subject matter.²¹² Given the controversial nature of this subject, the on-going struggle for the recognition of indigenous peoples' rights has received international attention pursuant to the increasing demand for the recognition and protection of their special rights as distinct societies with unique cultures.²¹³ To compliment this view, Anaya argues that the discourse on indigenous peoples rights has gone beyond the notion of mere objects regarding their status and fate to being the principal focus of today's human rights discourse involving national and international NGO's, independent experts, academics and human rights activists charged with the responsibility of promoting and protecting the rights of indigenous peoples.²¹⁴ On the other hand, the increasing demand for their rights has been widely challenged by most African states who contests the existence of the notion of "indigenous peoples"

²⁰⁹ During this process, the researcher had had the opportunity to present her proposal at the Faculty of Law Friday seminars organised by the Executive and Dean and the Director of Post-graduate studies.

²¹⁰ Chapter 4 of this thesis was presented at the Centre for Human Rights, University of Pretoria during a short training course on Indigenous Peoples Rights in September 2015. Participants of this course were expected to give a presentation on the situation of indigenous peoples' in their respective countries as well as the efforts made by their governments to improve their current situation. In this regard, the researcher gave a presentation on the current situation of indigenous peoples' regarding their representation in government and participation in decision-making processes in the country, looking at some of the policies put in place by the government to improve their situations as well as the challenges they are still facing.

²¹¹ Ndimurwimo *Human Rights Violations in Burundi* 16.

²¹² Cuneo 2005 *Arizona Journal of International and Comparative Law* 56.

²¹³ Wiessner 2011 *European Journal of International Law* 122-124.

²¹⁴ Anaya *Indigenous Peoples in International Law* 34.

in Africa, under the pretext that all natives of Africa are indigenous to their countries.²¹⁵ Kuper and Thornberry suggest that even though indigenous peoples lineage is linked to "blood" and "soil" that is not a guarantee for them to be granted "privilege" and "preferential" rights.^{216, 217} Thus, to avoid social unrest and instability in the country all population should be offered equal rights and opportunities.

Tobin disagrees with Kuper and Thornberry's notion of "preferential" and "privileged" rights, arguing that indigenous peoples are merely requesting for the repossession of deep-rooted traditional rights which they have long been deprived of by the colonial masters and the post-colonial governments.²¹⁸ In addition, Kenrick and Lewis on the other hand, supports Tobin's arguments by pointing out that Kuper and Thornberry's analysis of "privilege and special rights" disregarded or refused to take into consideration the persistent and systemic discriminatory practices, inequalities, marginalisation and historic injustices indigenous peoples had and continue to experience within the countries where they live.²¹⁹ They further maintain that Kuper and Thornberry also overlooked the efforts made by activists, NGOs, regional and international communities to redress these past injustices which many consider to be "racist and a rebirth of apartheid".²²⁰ In line with the above, and considering the many challenges indigenous peoples have and continue to face, including cultural genocide, mass murder, forced evictions, political marginalisation, exclusion, enslavement and lack of access to basic socio-economic services, it is essential that indigenous peoples be awarded the special rights, protection and legal recognition they are advocating for.

²¹⁵ ACHPR and IWGIA 2005 *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* 92; Gilbert and Couillard "International Law and Land Rights in Africa" 60; Hitchcock and Vinding "Indigenous Peoples' Rights in Southern Africa: An Introduction" 8.

²¹⁶ Kuper 2003 *Current Anthropology* 395.

²¹⁷ Thornberry *Indigenous peoples and Human rights* 33-60.

²¹⁸ Tobin *Indigenous Peoples' Customary Law* 33.

²¹⁹ Kenrick and Lewis 2004 *Anthropology Today* 5.

²²⁰ Kenrick and Lewis 2004 *Anthropology Today* 5-6.

Wiessner suggests that this process can only be achieved through the implementation of “imaginative measures of affirmative action” goals, which requires the granting of preferential treatment to indigenous peoples in all spheres of life.²²¹ This will permit indigenous peoples to showcase their collective autonomy in governance, culture, social, economic and development debates that directly affect them and their welfare.²²²

It is submitted that as other minority groups have been granted special protection in international law,²²³ granting a similar protection to indigenous peoples classified as another category of minority groups is fairly justified. It is only by granting them the special protection they deserve that the ongoing debate over the recognition, respect, protection and promotion of indigenous peoples’ rights will be realised. It is therefore incorrect and discriminatory to consider their demands as being “special”, “preferential”, unfair and discriminatory against the rest of the society.

In Kuokkanen’s opinion, globalisation is the basis of the numerous challenges indigenous communities face, especially with regards to state policies on environmental degradation from activities of mining and logging concessions.²²⁴ He further posits that although colonialism left negative impacts on indigenous communities and their economies, however, their subsistence way of life is capable of sustaining their communities if not for the deleterious activities of MNCs and other extractive industries.²²⁵ By this, he means that colonialism is not the cause of indigenous peoples’ plight, but the activities of most government’s and logging companies should be blamed for their misery. His characterisation of indigenous peoples is linked to the physical and spiritual attachment they have with their lands, natural resources and environment.²²⁶ Even though, land serves



²²¹ Wiessner 2011 *European Journal of International Law* 121.

²²² Carpenter and Riley 2014 *California Law Review* 180.

²²³ Other minority groups that have been accorded ‘special’ and ‘preferential rights’ are children, women, people with disabilities and older persons, to ensure its realisation specific instruments have been enacted to regulate and facilitate their protection and promotion.

²²⁴ Kuokkanen 2011 *American Indian Quarterly* 216.

²²⁵ Kuokkanen 2011 *American Indian Quarterly* 216.

²²⁶ Kuokkanen 2011 *American Indian Quarterly* 217.

as home and security to these groups of people, it is without doubt that the forest and its contents which serve as a source of livelihood is a significant aspect of indigenous peoples, given that they have inhabited this area since time immemorial.

As hunter-gatherers, fishermen and nomadic pastoralists, their livelihood solely depends on the natural forest for economic subsistence. Related studies reveal that the activities of logging and mining concessions have not only endangered indigenous cultures but have also left severe environmental and social challenges to their communities.²²⁷ To validate this view, Ohenjo *et al*, posit that displaced indigenous communities face serious health issues and high death rates than those still living in the forest.²²⁸ He argues that displaced indigenous peoples are unable to access traditional food and medicines that keeps them from contacting communicable and other infectious diseases.²²⁹ The statement below made by a displaced Twa man from the Kahuzi-Biega National Park in Democratic Republic of Congo,²³⁰ underscores the above assertion.

...since we were expelled from our lands, death is following us. We bury people nearly every day. The village is becoming empty. We are heading towards extinction. Now all the old people have died. Our culture is dying too...²³¹

A practical and common reasoning by most African states is that indigenous peoples are too “backward” and “uncivilised” to understand what is really best for them.²³² Thus, the state has to “help” them by managing, controlling and deciding their futures; this explains why their lands, territories and natural resources are threatened and risk extinction.²³³ However, Ohenjo *et al*, contest this view by

²²⁷ Giovannini 2014 *Community Development Journal* 72-73; Firestone, Lily and Torres de Noronha 2005 *American University International Law Review* 219.

²²⁸ Ohenjo *et al* 2006 *Series* 1939.

²²⁹ Ohenjo *et al* 2006 *Series* 1939.

²³⁰ Democratic Republic of Congo hereinafter DRC.

²³¹ This quotation was adapted from the work of Ohenjo *et al* 2006 *Series* 1939. It explains the experience of a Twa indigenous man displaced from the Kahuzi-Biega National Park in DRC.

²³² Aiken and Leigh 2015 *Geografiska Annaler: Series B, Human Geography* 72.

²³³ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf.

arguing that indigenous peoples should be allowed to actively take part in the management, control and use of their own affairs, to ensure equality as well as enhance their ability to take part in decision-making processes that affect them directly.²³⁴ Participating in decision-making processes on issues concerning them, does not only empower them but prepares and exposes them in political life. It also permits them to decide their priorities of development, especially those that will improve their well-being and living standards. Graham and Wiessner concur with this view in terms of the right to self-determination and cultural integrity, as they posit that the recognition of indigenous peoples' rights to self-determination is essential as it guarantees both their individual and collective rights, and that recognition facilitates the actual process of their rights as distinct societies.²³⁵ Recognition permits them to uphold their cultural values and preserve their societies for future generations.²³⁶ Iorns endorses this view by pointing that the right to self-determination is a pre-requisite to the enjoyment of all other human rights and helps eradicate decades of human rights violations against indigenous peoples.²³⁷ However, opponents disagree, fearing wars of secession and the possibility of endless tribal conflicts.²³⁸ Given the systemic marginalisation of indigenous peoples, it suffice to say that the recognition of their rights to self-determination is key in securing control over their political, economic, social and cultural activities.

In addition, Anaya has recommended the review and adoption of specific legislative frameworks that will assist indigenous peoples develop the capacity to pursue their own initiatives for natural resource management, political, socio-economic aspects as well as develop their own institutions.²³⁹ He further explicates that policies employed in most countries are not just discriminatory but act as a hindrance for the realisation of indigenous peoples' rights namely: right

²³⁴ Ohenjo *et al* 2006 *Series* 1940.

²³⁵ Graham and Wiesser 2011 *The South Atlantic Quarterly* 408-413.

²³⁶ Daes *Indigenous Peoples: Keepers of Our Past, Custodians of Our Future* 96.

²³⁷ Iorns 1992 Case Western Reserve *Journal of International Law* 235;

²³⁸ Tobin *Indigenous Peoples' Customary Law* 34.

²³⁹ Anaya *Indigenous Peoples in International Law* 110.

to self-determination, property, cultural, political participation and socio-economic rights regulating the well-being of indigenous peoples.²⁴⁰ To him, states have the obligation not only to promote, fulfil, respect and protect the human rights of indigenous peoples but to also desist from conduct that might violate such rights.²⁴¹ It is submitted that the endless marginalisation of indigenous peoples be given sufficient attention at the national levels particularly in Cameroon where the recognition of their rights is still at the infancy stage.

Furthermore, a burning issue surrounding the debate of indigeneity is the argument over which group constitute indigenous peoples in Africa. This issue has raised a lot of controversy as to the concept and application of indigenous rights discourse, confirms the difficulty in agreeing on a precise definition of the term.²⁴² Titanji maintains that the continuous refusal by member states of the UNDRIP to recognise and offer protection to indigenous communities might result in wars of secession.²⁴³ He recommends the involvement of indigenous peoples in the formulation and implementation of national legislation against discrimination and genocide.²⁴⁴ In support of the above statements, Gagnon requires African states to adopt an all "inclusive model of governance" which includes marginalised groups in the political affairs of their countries to prevent the clamour for autonomy and possible secession.²⁴⁵ It is argued that the concept of inclusivity will promote dialogue, social justice, good governance and economic development in Africa.²⁴⁶ However, although Anaya is of the opinion that the recognition of indigenous peoples' rights might result into a complete disregard of other members of the wider society, however, this does not rule out the fact that indigenous peoples do exist in Africa.²⁴⁷

²⁴⁰ Anaya *Indigenous Peoples in International Law* 112.

²⁴¹ Anaya *Indigenous Peoples in International Law* 112.

²⁴² Bojosi and Wachira 2006 *African Human Rights Law Journal* 394.

²⁴³ Titanji 2009 *Afr. Hum. Rts. L.J.* 52.

²⁴⁴ Titanji 2009 *Afr. Hum. Rts. L.J.* 57.

²⁴⁵ Gagnon 2011 *African and Asian Studies* 325.

²⁴⁶ Gagnon 2011 *Brill Journal of African and Asian Studies* 330.

²⁴⁷ Anaya *Indigenous Peoples in International Law* 78.

Additionally, Njoh's definition of indigenous peoples in Cameroon is even more complex and ambiguous as it failed to apply the criteria set for the classification of indigenous peoples in para 1.10.1 below. His understanding of indigenous peoples is related to any minority group fighting for the recovery of land formerly appropriated by government, by this he refers to the "Bakweri clan" in Buea, Fako Division of Cameroon.²⁴⁸ In clarifying this argument, Wachira's contention is that indigenous peoples are dissimilar to other rural communities identifying themselves as indigenous on the basis of the loss of traditional land they occupy and depend on for survival.²⁴⁹ He states that indigenous peoples are that group which self-identify as indigenous and who have experienced remarkable injustices and choose to retain a specific lifestyle from the majority of society.²⁵⁰ In sustaining Wachira's view, Iorn highlights that those who self-identify as indigenous peoples face a common challenge of political and economic oppression, loss of ancestral lands, cultural and ethnic marginalisation from traditions and lifestyles.²⁵¹ Based on this historical background, it is justified to state that Njoh's understanding of the term "indigenous peoples" is not in line with the criteria set by the African Commission on Human and People's Rights,²⁵² as a cross-cutting requirement for the identification of indigenous peoples in Africa.²⁵³ Failure to apply these criteria's will create problems in the jurisprudence of international law.

This was the position in *Bakweri Land Claims Committee v the Government of Cameroon*.²⁵⁴ This case involved a dispute concerning the violation of certain provisions (articles 7(1)(a), 14, 21, 22) of the Banjul Charter regarding the rights to use, control and manage traditional lands of the Bakweri people, an indigenous group in Fako Division of Buea, Cameroon. The Law suit was filed by the Bakweri

²⁴⁸ Njoh "Indigenous Peoples and Ancestral Lands: Implications of the Bakweri Case in Cameroon" 70.

²⁴⁹ Wachira "Indigenous Peoples Rights to Land and Natural Resources" 303.

²⁵⁰ Wachira "Indigenous Peoples Rights to Land and Natural Resources" 303.

²⁵¹ Iorns 1992 *Case Western Reserve Journal of International Law* 202.

²⁵² African Commission of Human and Peoples Rights hereinafter the Commission.

²⁵³ ACHPR and IWGIA 2005 *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* 92.

²⁵⁴ *Bakweri Land Claims Committee v Cameroon Communication* 260/02, (2004).

Land Claims Committee²⁵⁵ on behalf of the traditional rulers, notables and elites of the indigenous minority peoples of the Fako Division against the Government of Cameroon, following Presidential Decree No. 94/125 of 14th July 1994 to privatise Cameroon Development Corporation²⁵⁶ including about 400 square miles (104,000 hectares) of land in Fako Division owned, occupied and used by the Bakweri people. Following a protracted period of 9 years of waiting on government to address the Bakweri land issue, the Complainant approached the African Commission on Human and Peoples Rights²⁵⁷ demanding the Commission to grant them suitable relief in the case. In response, the Respondent challenge the law suit by stating that the Complainant lacks standing in the case, they have failed to exhaust local remedies, and the fact that the nature of complaint carries insulting language. In deciding the issue the Commission dismissed the case on grounds of inadmissibility. This means that the Complainant had failed to exhaust local remedies as the UN Sub-Commission had not made a final settlement on the case.

Hodgson holds the view that 'becoming indigenous' and granting them official recognition enables them achieve justice from the long-lasting economic, political, social and cultural marginalisation by colonial and post-colonial governments.²⁵⁸ This is in line with Igeo's views that being indigenous is a new phenomenon which does not 'miraculously preserve pre-colonial traditions' but rather is one of "cultural distinctiveness in the face of globalisation".²⁵⁹ Gilbert corroborates this assertion by arguing that development projects aimed at improving the tourism sector and environmental management are the major causes for the frequent social and economic problems indigenous peoples are experiencing daily.²⁶⁰ An example is the famous case of *Roy Sesana, Keiwa*

²⁵⁵ Bakweri Land Claims Committee hereinafter BLCC

²⁵⁶ Cameroon Development Corporation hereinafter CDC.

²⁵⁷ African Commission on Human and Peoples Rights hereinafter the Commission.

²⁵⁸ Hodgson 2002 *American Anthropologist* 1086.

²⁵⁹ Igeo 2006 *African Affairs* 400-401.

²⁶⁰ Aiken and Leigh 2016 *Journal Geografiska Annaler: Series B, Human Geography* 73-74; Gilbert 2011 *International and Comparative Law Quarterly* 258-265.

Sethobogwa and Others v the Attorney-General of the Republic of Botswana.²⁶¹

This case is significant as it concerned a suit against the government of Botswana regarding the violation of the rights to land, property, freedom of movement and basic social services claimed by the indigenous communities residing in the Central Kalahari Game Reserve.²⁶² The Court found that the decision by the Government of Botswana to terminate the supply of social services to these claimants coupled with the forceful evictions from the lands they lawfully owned and occupied for several years was unconstitutional and unlawful. The Court held that the Government had erred in its actions of forcefully displacing indigenous peoples from their ancestral lands and secondly the wilful refusal to issue and bring to end hunting licences which permitted them to hunt in the reserves was illegal. Similarly, in Cameroon, for instance, massive deforestation and exploitation of natural resources and land grabs have rendered indigenous communities hopeless, desperate, miserable and homeless,²⁶³ as they are usually forced to abandon their natural habitats in favour of mining and logging concessions.

Appiagyei-Atua, proposes the establishment of a special Protocol or Charter on the Rights of Minority and Indigenous Peoples' in Africa similar to that adopted for women in the African Charter on the Rights and Welfare of the Child,²⁶⁴ as the most appropriate means to ensure the recognition of indigenous peoples' rights.²⁶⁵ This suggestion is ideal as far as States Parties to the said Charter will be under specific obligations to their indigenous peoples. But adoption of legislation is one thing, getting States Parties to respect and put them into practice their international commitments is another topic for research.

According to Murphy, involving indigenous peoples in the political activities of the country, especially in legislative institutions such as in electoral processes of

²⁶¹ *Roy Sesana, Keiwa Sethobogwa v the Attorney-General* 2002 (1) BLR 452 (HC).

²⁶² Central Kalahari Game Reserved hereinafter CKGR.

²⁶³ Cerutti *et al* 2010 *International Forestry Review* 133.

²⁶⁴ African Charter on the Rights and Welfare of the Child hereinafter ACRWC.

²⁶⁵ Appiagyei-Atua 2008 *International Journal on Minority and Group Rights* 491.

modern states and drafting of national legislation is ultimate for the recognition of their rights.²⁶⁶ Bojosi and Wachira on the other hand remark that to ensure that states effectively respect their obligations to submit annual reports on the situation of indigenous peoples in their respective countries proper follow-up and a close monitoring system is advisable since this will make room for checks and balances on the socio-economic and political conditions of indigenous peoples.²⁶⁷ In my view, special bodies should be assigned to each African country on a regular basis to make surprise visits and take note of the situation on ground and report to the ACHPR for immediate intervention.

Human rights violations in Cameroon are recurrent issues to both indigenous and non-indigenous communities although those of the indigenous communities are severe given the fact that they are given minimal or no recognition. In fact all citizens in Cameroon encounter human rights violations on a daily basis, thus it suffices to say that the situation of indigenous peoples is double fold.²⁶⁸ Kamga has alluded to the fact that the Constitution of Cameroon does not enshrine a Bill of Rights.²⁶⁹ He argues that incorporating a Bill of Rights into its Constitution like other jurisdiction, such as Republic of South Africa,²⁷⁰ the Federal Republic of Nigerian,²⁷¹ will help to deal with recurrent cases of gross human rights violations in Cameroon. Che nurses the same view, in his words, "Cameroon should clearly and unequivocally integrate socio-economic and political rights in its Constitution, as well as adopt definite measures for their enforcement by state organs".²⁷² This will empower marginalised groups especially indigenous peoples to be politically and economically empowered and independent.

²⁶⁶ Murphy 2008 *The University of Toronto Law Journal* 185.

²⁶⁷ Bojosi and Wachira 2006 *African Human Rights Law Journal* 389-390.

²⁶⁸ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf.

²⁶⁹ Kamga 2011 *African Human Rights Law Journal* 189.

²⁷⁰ *Constitution of the Republic of South Africa*, (1996) The Bill of rights is found in Chapter 2; section 7 to 39. South Africa is a good example for several African countries to emulate as it has an elaborate Bill of Rights provisions in its Constitution.

²⁷¹ *Constitution of the Federal Republic of Nigeria* (1999) as amended, specifically elaborated in its Chapter 4 titled Fundamental Rights.

²⁷² Che 2008 *Cameroon Journal of Democracy and Human Rights* 68-69, as cited by Kamga 2011 *African Human Rights Law Journal* 189.

Brockington *et al*, have argued that all efforts made by NGOs in promoting indigenous peoples' rights locally and internationally are a way of extorting money for their own benefit.²⁷³ They further state that focusing on one group creates multiple problems to others who might think they have been completely left out.²⁷⁴ In Cameroon, for example, despite the huge amounts of money invested in remedying the deplorable situations of indigenous peoples by international non-governmental organisations and other institutions promoting indigenous peoples rights, their socio-economic, cultural and political conditions remain unchanged.²⁷⁵ This is attributed to the absence of an effective and efficient implementation mechanism to monitor the activities of stakeholders, and control the high levels of corruption and mismanagement of proceeds that accrue from resource extraction in the country. It is therefore my submission that the realisation of the human rights of indigenous peoples in Cameroon remains a pipe dream, a struggle which might never be realised, if the situation is not addressed immediately.

However, although scholars have written extensively on the issues raised in the problem statement nonetheless, some areas remain challenging and need to be addressed. First and foremost, most of the scholarly work is focused on the controversial meaning of the term "indigenous peoples", while others relate it to the fact that indigenous peoples just need special protection which if granted will amount to discrimination and a rebirth of apartheid. In addition, most academics have written extensively on indigenous peoples' rights to land, natural resources and self-determination as a hindrance to the recognition of their rights.

However, none of the scholars has critically unpacked the legislative and institutional framework set to regulate selected political and socio-economic and cultural rights of indigenous peoples in Cameroon. Put simply, none of these

²⁷³ Brockington, Igoe and Schmidt-Soltau 2006 *Conservation Biology* 250-251.

²⁷⁴ Brockington, Igoe and Schmidt-Soltau 2006 *Conservation Biology* 250-251.

²⁷⁵ Personal Communication by way an unstructured interview with some senior staff members in the Ministry of Basic Education, Division of Planning, Projects and Cooperation (DPPC) Yaoundé, Cameroon on 25 of January 2016.

authors has so far presented a detailed study on indigenous peoples' rights to political participation and decision-making processes in Cameroon. Although the country's Constitution provides for the promotion of equality, however, it is worth noting that excluding indigenous peoples from the political domain is not only a violation of their domestic laws but a violation of other international human rights instruments on equality to which Cameroon is a State Party. Indigenous peoples are not only under-represented at the national level, but also at the local levels, this is due to the fact local chiefs are not officially recognised, as they are answerable to the neighbouring Bantu chiefs.²⁷⁶ This aspect has greatly hindered their recognition and participation in the political life of the country in general and of their communities in particular.

In addition, no comprehensive study has been done on the socio-economic and cultural rights of indigenous peoples in the country. Indigenous peoples face a range of socio-economic and cultural hardships which have posed serious threats to their very existence. As such, there have been unquantifiable socio-economic problems ranging from low levels of education, access to health, social security and housing.²⁷⁷ More so, their cultures are endangered including traditional languages and land which are significant for the preservation of their cultural identities.²⁷⁸

Also, very limited studies exist on indigenous peoples' rights to sustainable development and environmental protection in Cameroon regardless of the fact that the Declaration on the Right to Development²⁷⁹ provides for the inalienable right of every individual in the society without distinction as enunciated in Article

²⁷⁶ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 10.

²⁷⁷ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 9-11.

²⁷⁸ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 9-11.

²⁷⁹ Declaration on the Right to Development hereinafter DRTD.

1(1) of the DRTD.²⁸⁰ Thus, indigenous peoples' right to decide their own priorities of development are constantly violated and undermined by government and extractive industries. Lastly there is no literature on appropriate policy recommendations with regards to the laws protecting indigenous communities in Cameroon. Put simply, scholars and others writing on the rights of indigenous peoples in Cameroon have failed to explicate in a substantial manner appropriate solutions to the plight of excessive human rights violations of indigenous peoples in the country. Thus, the debate surrounding indigenous peoples' rights remains topical and looms large today irrespective of the adoption of several international and regional instruments to address the issue. The above issues have triggered the need for further research in this area.

In light of the above, this study aims at filling the gaps identified by first providing a historical background of the Cameroonian state by assessing the pre-colonial, colonial and post-colonial periods, bringing out the political, social, economic and cultural aspects of the country. The discussion will also interrogate the origins of the two recognised indigenous groups as well as uncover the roots of resource extraction in the country. Secondly, by exploring regional and international instruments regulating the rights of indigenous peoples, this study will evaluate whether the national laws and policies adopted in Cameroon to address indigenous peoples' issues conform to international standards. Thirdly, indigenous peoples' right to political participation and decision-making processes will be examined as well as their socio-economic and cultural rights. This will be done in order to assess the wide range of challenges these group of people face. The discussion will further assess indigenous peoples' rights to sustainable development and environmental protection. This section will begin with an

²⁸⁰ For details see Article 1(1) of the DRTD which states that:

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.

2. The human right to development also implies the full realisation of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

examination of indigenous peoples' rights to development, to determine whether the state is respecting this right by complying with the provisions of the DRTD as echoed in chapter 1(1). The aim is to illustrate that if indigenous peoples' notion of development is considered, the idea of sustainable developed will be realised and subsequently the global out-cry over environmental degradation will be effectively addressed. A comparative analysis is also essential for a study of this nature to ascertain whether there are possible lessons that Cameroon can draw from other comparable jurisdictions and vice versa. Lastly, possible legislative and policy recommendations for future development will be proffered to ensure that the present situation of indigenous peoples is ameliorated.

By so doing, this study hopes to make a modest contribution to the existing body of knowledge regarding the on-going debate and efforts aimed at finding lasting solutions to the challenges relating to the protection and promotion of indigenous peoples' in Cameroon. The main aim is to ensure equality, prevent discrimination, promote political participation, improve the social and economic standards of indigenous peoples, ensure human security and terminate human rights violations which are prevalent within indigenous communities in Cameroon. Additionally, the study intends to provoke future scholarly research on the issue of indigenous peoples' in Cameroon specifically in the area of political, social, economic and cultural rights.

1.9 Scope and limitations of the study

1.9.1 Scope



This study is concerned with the rights of indigenous peoples in Cameroon. It intends to investigate the legislative and institutional framework regulating the rights of indigenous peoples in Cameroon. Indigenous peoples suffer from political marginalisation and social exclusion. In addition, their social, economic and cultural rights are constantly undermined by government and the mainstream society causing negative impact on their communities. This has been attributed to excessive exploitation of natural resources within indigenous communities coupled with government's unwillingness to grant them legal recognition. Given

that it is a comparative study, occasional references are made to the situation of indigenous peoples in other legal systems such as the Alaska Natives in the USA, Inuit in Canada, Aborigines in Australia, the Maoris in New Zealand, San in Botswana and the Khoikhoi or Khoisan in South Africa. This comparative analysis is done with the aim of drawing practical lessons from other jurisdictions for Cameroon to emulate. To achieve the above aims, this thesis has been presented into eight inter-related chapters.

Chapter one introduces the subject matter and offers a background to the study. It entails a discussion of the main issues within which the entire thesis is investigated. It comprises an identification of the main problem under investigation and further outlines the aims and objectives of the study. The chapter also discusses the rationale, justification, literature review, methodology, data collection, validation, scope and limitations as well as structure of the entire thesis.

Chapter two is a synoptic recap of Cameroon's history and the evolution of indigenous peoples, bringing out the political, socio-economic and cultural aspects of the country. This entails a discussion of the colonial, pre-colonial and post-colonial periods of Cameroon, and highlights the extent to which colonial policies of land appropriation and resource extraction, subsequently inherited by the post-colonial governments have etched negative imprints on the political, socio-economic and cultural life of indigenous peoples.

Chapter three examines indigenous peoples within Cameroon's legislative and institutional framework. This discussion will capture a range of issues, amongst others, are international and regional instruments that aim to promoting and protecting of indigenous peoples' rights in the country. The chapter will also examine if the country's policies and practices are in line with international standards.

Chapter four is an evaluation of indigenous peoples and their involvement in political spheres in the country. This section focuses only on indigenous peoples' rights to participate in government and decision-making processes on matters

that directly affect them. This is because the right to participation is fundamental for the realisation of all other rights that indigenous peoples are advocating for. In effect, representation in politics is an opportunity for indigenous representatives to table their grievances and ensure that their views and needs are not only heard but considered and addressed.

Chapter five focuses on selected socio-economic and cultural rights of indigenous peoples including the right to education, right to health, right to housing and social security. Just like political rights, socio-economic and cultural rights are crucial for the effective realisation of indigenous peoples' rights in Cameroon.

Chapter six focuses on indigenous peoples and the right to sustainable development. It evaluates whether or not indigenous peoples have a right to development. It also set to examine indigenous peoples' understanding of the concept of development, since their perception of development is linked to the realisation of sustainable development and environmental protection. Another important debate initiated here is why MNCs are not held accountable for damages caused to indigenous territories so as to provide long-lasting solutions regarding sustainable development, human security, environmental degradation and human rights and fundamental freedoms of indigenous peoples in the Cameroonian context.

Chapter seven deals with a comparative analysis of the situation of indigenous peoples in other jurisdictions. It evaluates comparatively the legislative and institutional frameworks set to respect, protect and promote these groups of people and the indigenous practices therein. The main trust of this chapter is to identify important lessons that Cameroon could draw from jurisdictions with success stories.

Chapter eight presents the conclusions and recommendations.

1.9.2 Limitations and delimitations of the study

The concept of indigenous peoples' rights is quite extensive; however, this study is limited to certain aspects of indigenous peoples' rights. The study confines itself to selected political, social, economic and cultural rights of indigenous peoples in Cameroon. Although the study is limited to an evaluation of specific legislative and institutional mechanisms enhancing the rights of indigenous peoples, reference has been made to the experiences of selected developed and under-developed countries where indigenous peoples are found, with the intention of ascertaining the level of human rights violations. Another significant reason for this comparative analysis is to examine whether governments in developed countries have put in place specific policies that cater for the rights of their indigenous peoples and that indigenous peoples in these countries are better-off than those in other developing countries such as Cameroon.

1.10 Technical terms defined

1.10.1 Indigenous peoples

The concept of indigenous peoples has had contentious history in international law. The debate has intensified amongst academics over the absence of an agreed and official definition of the term. The major obstacle for this argument is the notion that all Africans are indigenous within the African continent.²⁸¹ This controversial nature of the term has led to different views by scholars over this concept. Given the divergent opinions from anthropologists, Kuper, argues that granting indigenous peoples special (privileged) rights might result in apartheid in disguise, which might generate racial conflicts in the society.²⁸² In contention, Kenrich and Lewis argue that indigenous peoples' collective rights must be protected and their rights as an indigenous minority group require particular recognition.²⁸³ Other scholars have established that the term "indigenous peoples" as documented in international instruments has a different connotation

²⁸¹ ACHPR And IWGIA 2005 *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* 92.

²⁸² Kuper 2003 *Current Anthropology* 395.

²⁸³ Kenrich and Lewis 2005 *Anthropology Today* 5.

to “natives”, “first inhabitants” or “aboriginal” referred to by colonial masters in African states.²⁸⁴ In corroboration of the above, it is submitted that the term indigenous was used to refer to all Africans during the period of colonisation.²⁸⁵ Based on these arguments and historical background, Thornberry concludes that indigenous peoples are the primary inhabitants of regions that have been occupied by generations of European settlers in South and Central America.²⁸⁶ It is against this background that most African states uphold the argument that the term indigenous applies to all Africans and not a portion of the society.²⁸⁷ It is submitted that UNDRIP’s failure to provide a precise definition of the term indigenous peoples is a contributing factor to the on-going debate over which group qualifies as indigenous in Africa. It is on this basis that the Advisory Opinion of the African Group of November 2006 confirmed and states that this: “would be only not legally incorrect but could also create tension among ethnic groups and instability between sovereign states”.²⁸⁸ This is true as most African states are of the view that indigenous peoples are demanding for new and preferential rights.²⁸⁹

In order to provide a contemporary understanding of the term indigenous peoples, the African Commission on Human and Peoples’ Rights,²⁹⁰ argued that a comprehensive, universally accepted definition is impossible; rather certain criteria should be used to identify indigenous populations and communities in

²⁸⁴ Anaya “The Evolution of the Concept of Indigenous Peoples and its Contemporary Dimensions” 27; Gilbert and Couillard “International Law and Land Rights in Africa: The Shift from States’ Territorial Possessions to Indigenous’ People’s Ownership Rights” 62.

²⁸⁵ Dersso “The Right to Self-Determination, Minorities and Indigenous Peoples in Africa” 255-256.

²⁸⁶ Thornberry *Indigenous Peoples and Human Rights* 33-60.

²⁸⁷ Hitchcock and Vinding “Indigenous Peoples Rights in Southern Africa: An Introduction” 8.

²⁸⁸ African Commission on Human and Peoples’ Rights 2007 *Advisory Opinion of the African Commission on Human and Peoples’ Rights on the United Nations Declaration on the Rights of Indigenous Peoples* 60.

²⁸⁹ African Commission on Human and Peoples’ Rights 2007 *Advisory Opinion of the African Commission on Human and Peoples’ Rights on the United Nations Declaration on the Rights of Indigenous Peoples* 60.

²⁹⁰ African Commission on Human and Peoples’ Rights hereinafter the Commission.

Africa.²⁹¹ To this effect, the African Commission urged the IWGIP to deliberate on the characteristics of those groups that constitute indigenous peoples. Thus, the African Commission on Human and Peoples' Rights' Working Group of Experts on Indigenous Populations,²⁹² eventually came up with the following criteria to identify indigenous peoples. They are listed below as follows:

- Self-identification;
- A special attachment to and use of their traditional land whereby their ancestral land and territory have a fundamental importance for their collective physical and cultural survival as peoples;
- A state of subjugation, marginalisation, dispossession, exclusion, or discrimination as a result of their unique and distinct cultures traditional lifestyle. The long history of occupation and use of a specific territory.²⁹³

Given the above, the UNWGIP subsequently defined the term indigenous peoples as:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed in their territories, consider themselves distinct from other sectors of societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions, and legal systems.²⁹⁴

²⁹¹ African Commission on Human and Peoples' Rights 2007 Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples 61.

²⁹² African Commission on Human and Peoples' Rights' Working Group of Experts on Indigenous Populations hereinafter ACHPRWGIP.

²⁹³ Wessendorff K *The Indigenous World 2001/2002* 4.

²⁹⁴ See Cobo United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities Study of the Problem of Discrimination against Indigenous Populations 29, UN Doc. E/CN4/Sub.2 1986/7/Add.4, UN States No. E86. XIV.3 (1987). However, it is significant to understand that this definition by the UN was widely criticised on two grounds namely: Firstly, that aboriginality is not the only feature that constitute indigenous populations, Secondly, not much consideration was given on the concept of self-identification as well as other

This definition was first reiterated by the African Commission in deciding the ground-breaking case submitted by *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*,²⁹⁵ where the African Commission held that the Kenyan government must recognize the Endorois community as an indigenous group and enforce their rights to own property within its territories.

1.11 Ethical considerations

The discourse on Indigenous peoples' rights has recently captured the attention of many stakeholders and commentators on international and regional human rights instruments. The sensitive nature of this study warrants an in-depth knowledge of the activities and efforts of the key role players. To that effect, the researcher has taken into consideration the guidelines laid down by the Human and Health Ethics Committee of the North-West University, Mafikeng Campus, by obtaining permission to conduct interviews on key participants, civil society and other institutions established to enhance the rights of indigenous peoples in Cameroon. Bearing in mind the confidentiality clause the researcher has concealed the identity of the interviewees or participants. This is to safeguard their interest and well-being. The researcher undertakes to ensure that given the guidelines on academic dishonesty as well as the plagiarism rules of the North-West University, all sources consulted in the course of the study has been duly recognised and acknowledged.

1.12 Summary

This chapter dealt with introductory issues in this study. The basis upon which this thesis is prosecuted has been laid down. It introduced the subject matter by providing a general background to the study in question. The chapter has also

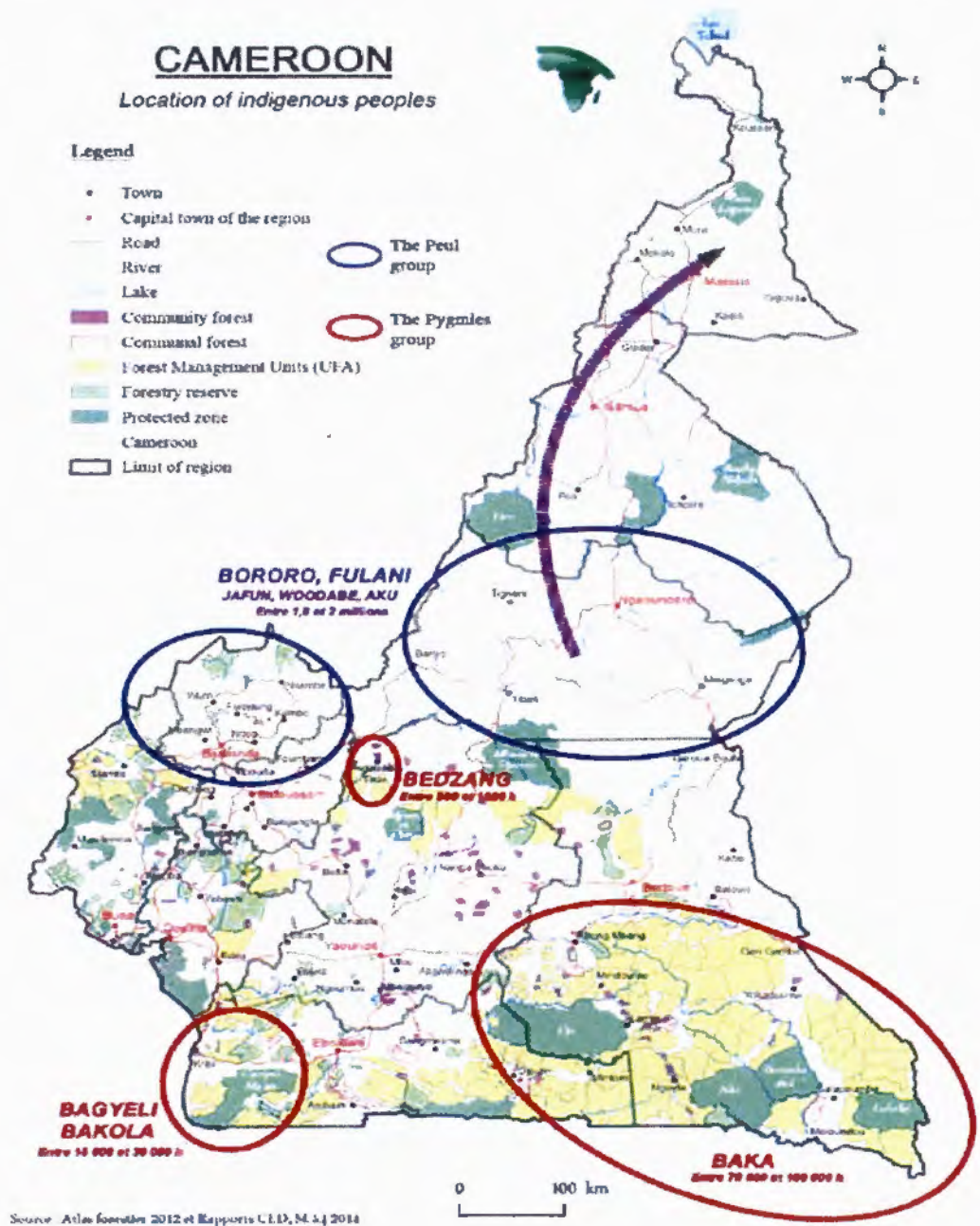
contemporary issues; For detailed reading on this see ACHPR 2007 *Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples* 3.

²⁹⁵ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya Complainant No. 276/2003.*

captured the main problem under investigation, outlined the aims and objectives, rationale and justification of the study. In addition, this chapter articulated the basic hypothesis, research methodology as well as an investigation of the relevant literature with the aim of identifying gaps in the existing literature. Additionally, this chapter delineated the scope, limitations and provided an overview of the structure of the entire thesis.

The next chapter is a synoptic recapitulation of Cameroon's history *vis a vis* the evolution of indigenous peoples capturing the political, social, economic and cultural aspects of the country.

Map of Cameroon showing the location of indigenous Communities



Source: Adapted from ILO 2015 Indigenous people of Cameroon: A guide for media professionals

Chapter 2 Historical and socio-economic development of Cameroon tracing the evolution of indigenous peoples and the impact of colonisation on indigenous communities

2.1 Introduction

To better understand the context within which indigenous peoples in Cameroon operate, it is significant to provide an ephemeral summary of the history of Cameroon as it helps to give the backcloth to the current socio-economic, political and legal maze in which they find themselves. Cameroon's history can be split into a few phases: first, the pre-colonial era, followed by the German colonisation of Cameroon (1884 up to the defeat of Germany in the WWI), the Anglo-Franco administration of Cameroon as a Trusteeship Territory under the auspices of the League of Nations, and lastly, Cameroon in its post-independence era. Given her scarred experience with foreign powers, Cameroon has the dubious distinction of being the only African state that underwent the tutelage of three European powers at different times.²⁹⁶ Beyond dispute is the fact that each European power, for the time spent in Cameroon shaped to some extent, the political, legal and socio-economic development of the country (in the respective areas under their administration). This explains why some scholars such as Anyefru have traced the challenges the country currently faces to its colonial past.²⁹⁷ This segment recounts the history of Cameroon and the significant socio-economic, political and legal developments that occurred in the different phases of its history and how these impacted on indigenous peoples' lives.

²⁹⁶ Njoh 2013 *International Journal of Urban and Regional Research* 750.

²⁹⁷ Anyefru 2011 *Journal of Third World Studies* 235.

2.2 Historical socio-economic development of indigenous peoples in Cameroon

2.2.1 Pre-colonial era

Over time, Cameroon has been known by different monikers: 'Africa in miniature'; its legendary performance in soccer; ("Mecca of African Soccer"); and its strategic location; ("Africa's crossroads between West Africa and East Africa").²⁹⁸ These appellations are fuelled by its ethnic diversity, ecology, rich climate and culture, languages, religions, different farming methods, and geographical location.²⁹⁹

Cameroon stretches from 2° N to 13° N latitude between 8° 25' E and 16° 20' W longitude, covering an area of 475,440 km².³⁰⁰ The country is positioned between Central Africa, specifically in West Africa on the Gulf of Guinea. Cameroon is surrounded by other African countries: to the North by Chad, to the East by the Central African Republic,³⁰¹ to the South by the Democratic Republic of Congo, Republic of Congo, Gabon and Equatorial Guinea.³⁰² To the West is the Federal Republic of Nigeria.³⁰³ With a population of over 22 million people, it comprises over 250 ethnic groups that speak over 270 different dialects whose speakers exhibit various cultural practices and institutions.³⁰⁴ Official languages are English and French, even though they are predominant in different areas.³⁰⁵

Sayer Harcourt and Collins describe the rainforest area as being located between latitudes 8° 30 to 16 to the East as well as between latitudes 1° 40 to 13° 05 North latitude, covering almost 475,000 square kilometres which makes up approximately 56% of the country's land area.³⁰⁶ Cameroon is divided into ten regions, 58 divisions and 269 sub-divisions that make up these regions. History



²⁹⁸ Gros J-G *Cameroon: Politics and Society in Critical Perspectives* xv.

²⁹⁹ Amungwa 2011 *Journal of Human Ecology* 53-54.

³⁰⁰ Jacqueline *et al* "Takamanda Forest Reserve, Cameroon" 1.

³⁰¹ Central African Republic hereinafter CAR.

³⁰² Sayer, Harcourt and Collins *The Conservation Atlas of Tropical Forests Africa* 110.

³⁰³ Sayer, Harcourt and Collins *The Conservation Atlas of Tropical Forests Africa* 110.

³⁰⁴ The two groups that self-identify as indigenous in Cameroon make up the 250 ethnic groups.

³⁰⁵ Echu 2013 *Linguistik Online* 19-20.

³⁰⁶ Foahom 2001 <https://www.cbd.int/doc/nbsap/forestry/cameroon.pdf>; Sayer Harcourt and Collins *The Conservation Atlas of Tropical Forests Africa* 111.

holds that the Baka were the first to migrate into the Cameroonian borders around 8,000 BCE before the arrival of the Bantu in 200 BCE in the southern and eastern regions of the country.³⁰⁷ Between 1770s and early 1800s the Fulani, a pastoral Islamic group who originated from Western Sahel, had settled in the Northern Province of Cameroon after defeating and forcefully evicting the hugely non-Muslim inhabitants.³⁰⁸ The arrival of the Bantus marked a turning point in the socio-economic problems facing indigenous communities with regards to land ownership.³⁰⁹ In order to have a grip over the vast lands which the Baka community owned at the time, the Germans who were the first to colonise and administer the country forcefully displaced indigenous communities from their ancestral lands.³¹⁰

Cameroon is rich in forest products with a wide range of natural resources, good climatic conditions and biological diversity.³¹¹ The geographical setting of the country contributes to its richness in natural resources where indigenous communities, particularly the Baka and Bakola, settled from time immemorial.³¹² These areas, consisting of moist forests zones, are where the majority of logging activities take place in Cameroon.³¹³ Mbatu is of the view that the rich and diverse nature of the forest fauna and flora has placed the country on the world map, given its huge contribution to the country's economy.³¹⁴ Cameroon's natural forest is estimated to comprise about 20.4 million hectares consisting of 43.7% of the country's total land surface, while 30% makes up the tropical rain forests, 55% is composed of the moist forest and the remaining 15% contains the dry and

³⁰⁷ Anon date unknown <http://africanhistory.com/od/cameroon/p/CameroonHis.htm>.

³⁰⁸ Anon date unknown Country Profile: Republic of Cameroon
<http://www.icricinternational.org/download/member/filegallery/45/Cameroon%20-%20CP.pdf>,
 Anon date unknown
<http://africanhistoryaboutcom/od/cameroon/p/CameroonHisthtm>.

³⁰⁹ Anon date unknown Country Profile: Republic of Cameroon
<http://www.icricinternational.org/download/member/filegallery/45/Cameroon%20-%20CP.pdf>,
 Anon date unknown
<http://africanhistoryaboutcom/od/cameroon/p/CameroonHisthtm>.

³¹⁰ Chem-Langh   1995 *Paideuma: Mitteilungen zur Kulturkunde*, Bd 17.

³¹¹ Amungwa 2011 *Journal of Human Ecology* 53.

³¹² Amungwa 2011 *Journal of Human Ecology* 54.

³¹³ Amungwa 2011 *Journal of Human Ecology* 54.

³¹⁴ Mbatu 2010 *GeoJournal* 444.

mountain areas.³¹⁵ This diversity in nature underpins the country's favourable climatic conditions and natural resources. For decades, the rain forest area has not only been home to millions of indigenous peoples ("Pygmies"), but also a source of food, water, shelter, clothing cultural and spiritual survival.³¹⁶

In pre-colonial Cameroon, land ownership was based on a first-come first-served basis.³¹⁷ This implies that the first people to settle on a piece of land became the rightful owners of that land and the resources therein.³¹⁸ Put simply, the land belonged to the entire community while traditional leaders remained custodians of that land, including natural resources, rivers used for fishing and ceremonial sites.³¹⁹ The local chiefs had the right to either "lease" out the land to community members for farming purposes or preserve it for future generations.³²⁰ In any case this land cannot be sold to strangers/outsideers since the goal is to pass it on to posterity. In fact, the entire community maintains a collective right over these lands and the resources therein. In practice, traditional societies during that time were governed by customary rules that is, customary land tenure system which governed the relationship between humans, the land and its resources.³²¹ Land was held under communal land tenure system.³²² During the pre-colonial era, no economic or monetary value was attached to land and natural resources.³²³ In effect, fishing, hunting, gathering and subsistence farming were practiced as a means of survival.³²⁴ The traditional practice of bartering was common between indigenous peoples and their Bantu neighbours as they could

³¹⁵ Purnel M 1993 <https://www.mplirdfr/crea/taller-colombia/FAO/AGLL/pdfiles/guideluppdf>.

³¹⁶ Mbatu 2010 *GeoJournal* 444-445.

³¹⁷ Wily 2011 http://www.fernorg/sites/fernorg/files/cameroon_eng_internetpdf.

³¹⁸ Wily 2011 http://www.fernorg/sites/fernorg/files/cameroon_eng_internetpdf.

³¹⁹ Coates A *Global History of Indigenous Peoples* 137.

³²⁰ Amungwa 2011 *Journal of Human Ecology* 54.

³²¹ Nguiffo Kenfack and Mballa "The Influence of Historical and Contemporary Land Laws on Indigenous Peoples' Land Rights in Cameroon" 49.

³²² Lanz 2000 *Environment and History* 103-104.

³²³ Lanz 2000 *Environment and History* 104; Nguiffo Kenfack and Mballa "The Influence of Historical and Contemporary Land Laws on Indigenous Peoples' Land Rights in Cameroon" 54.

³²⁴ Nguiffo, Kenfack and Mballa "The Influence of Historical and Contemporary Land Laws on Indigenous Peoples' Land Rights in Cameroon" 58.

easily exchange goods for goods according to their needs.³²⁵ Bartering is a system where indigenous peoples exchanged forest products in exchange for Bantu farm products. It is significant to mention that land and natural resources were considered ancestral gifts and were to be preserved and transmitted to the younger generations.³²⁶ Mbatu, shares a similar view in his explanation of the 'law of status' to mean a system commonly practiced by the indigenous peoples of Cameroon to ensure the use and management as well as guarantee the protection, governance and easy access to land and natural resources.³²⁷ Fonjong *et al* have confirmed this view by arguing that "land was and still is, a source of socio-cultural well-being of a people, deity and a spiritual link between a people and their god".³²⁸ This observation confirms the special bond indigenous peoples attach to their lands and natural resources.³²⁹ It is on this basis that community leaders protect these lands from extractive industries and poachers. Thus, no individual could sell any portion of land for fear of reducing the quantity of family or village property.³³⁰ For instance, in *Amodu Tijani v The Secretary, Southern Province Nigeria*,³³¹ the case concerned a dispute over compensation made in respect of land belonging to the Apapa community located in the then Colony of Nigeria. In accordance with the Public Lands Ordinance of 1903, the Governor has the right to possess any land considered not in use for public purposes, and to compensate the community through the Head Chief as at that time. The Head Chief holds the land in trust for the community. In this case, the Head Chief challenged the compensation paid and demanded the full value of the land. The Supreme Court held that, in accordance with the Public Lands Ordinance No.5 1903, the appellant should be compensated on the grounds that he provides full ownership and title to the land in question. The Court also held

³²⁵ Nguiffo, Kenfack and Mballa "The Influence of Historical and Contemporary Land Laws on Indigenous Peoples' Land Rights in Cameroon" 60.

³²⁶ Wachira "Indigenous Peoples Rights to Land and Natural Resources" 301-305; Lanz 2000 *Environment and History* 103-107.

³²⁷ Mbatu 2009 *International Journal of Environmental Studies* 750.

³²⁸ Fonjong, Sama-Lang and Fon 2010 *PGDT* 156.

³²⁹ Anon date unknown <http://www.survivalinternational.org/tribes/pygmies>.

³³⁰ Fonjong, Sama-Lang and Fon 2010 *PGDT* 157.

³³¹ *Amodu Tijani v Secretary, Southern Province Nigeria* [1921] 2 A.C. 399.

that the appellant should transfer the land to the Governor in full ownership, save that the land is not occupied together with his title to collect rents or tribute; the compensation awarded be distributed among the community in accordance with the Native Council District direction in agreement with the Governor.

Forest products were mainly used as wild fruits, nuts, game, honey, traditional medicines and fire wood.³³² Timber had no financial value by then other than for carvings, canoe construction and building of bridges.³³³ The arrival of the Portuguese in the coastal areas of Cameroon commonly known today as present day South West changed the social fabric of indigenous peoples.³³⁴ They immediately established coastal trading centres for ivory, slaves and spices. These activities ultimately resulted in the influx of European traders who did not only exploit the area in search for slaves but also for fertile and vacant land and natural resources.³³⁵ However, it should be noted that despite the trading methods introduced by the Europeans, the system of exchange and production practiced by the forest societies remained unchanged.³³⁶

2.2.2 Colonial era

Cameroon has experienced three different phases of foreign control: the German colonial era between 1884 to 1916,³³⁷ as well as the combined Anglo-French administrative system which went on from 1916 to 1960,³³⁸ when French Cameroon gained its independence.³³⁹ This period abolished the system of

³³² Amariei 2005 *Legal Compliance in the Forestry Sector Case Study: Cameroon Final Report* 6.

³³³ Amariei 2005 *Legal Compliance in the Forestry Sector Case Study: Cameroon Final Report* 7-8.

³³⁴ Ardener 1962 *The World Today* 341.

³³⁵ Ardener 1962 *The World Today* 342.

³³⁶ Lanz 2000 *Environment and History* 106.

³³⁷ After the First World War Germany was defeated by France and Britain and the two countries annexed Cameroon as a joint territory under the Trusteeship of the League of Nations.

³³⁸ During this period (between 1950) most African countries began fighting for independence and liberation from European colonial powers. This continuous struggle led to ceaseless conflicts until 1960 when Cameroon finally gained its independence and became a federated and unitary state in 1961 and 1972 respectively.

³³⁹ French Cameroun gained independence from France under the Leadership of President

communal ownership of land and introduced the individual form of ownership creating awareness among the indigenous population of the economic value attached to land and natural resources.³⁴⁰

2.2.2.1 German rule in Cameroon (1884-1916)

The European scramble for Africa resulted in the partition of Africa into different domains of influences, protectorates, colonies as well as free-trade areas and this was initiated at the Berlin Conference of 1884-1885 till the beginning of the 20th century.³⁴¹ During this period national borders were established at European capitals since Europeans had hardly settled in Africa and were still ignorant about the environment.³⁴² It is submitted that these artificial borders existed even after Africa gained independence in the 1960s, and is the root cause of the persistent struggles, violence, conflicts and instability amongst ethnic groups.³⁴³ The scramble for and partition of Africa left significant consequences on the African continent. It triggered the German colonisation of Cameroon initiated during the Berlin conference in 1884-1885.³⁴⁴ This led to the signing of treaties with the local chiefs of Douala which resulted in the creation of the German Protectorate of Kamerun in 1884 and another in 1885 with the British which granted them control of the Southern Cameroons to be administered as part of a German Protectorate of Kamerun.³⁴⁵

In addition, the construction of a warehouse by the Woermann Company of Hamburg on the banks of the river Wouri was a major development as it did not only attract German traders but also facilitated the establishment of a German

Ahmadou Ahidjo and finally united former British Southern Cameroons to form the Federal Republic of Cameroon on the 1st of October 1961. This new development ended the Trusteeship period that had existed in Cameroon.

³⁴⁰ Wily 2011 http://www.fernorg/sites/fernorg/files/cameroon_eng_internetpdf.

³⁴¹ Michalopoulos and Papaioannou 2011
https://www.dartmouth.edu/~elias/scramble_africa_stelios_eliaspdf.

³⁴² Michalopoulos and Papaioannou 2011
https://www.dartmouth.edu/~elias/scramble_africa_stelios_eliaspdf.

³⁴³ Michalopoulos and Papaioannou 2011
https://www.dartmouth.edu/~elias/scramble_africa_stelios_eliaspdf.

³⁴⁴ Nfah-Abbenyi 2016 *TYDSKRIF VIR LETTERKUNDE* 6.

³⁴⁵ Nfah-Abbenyi 2016 *TYDSKRIF VIR LETTERKUNDE* 6.

empire in Cameroon.³⁴⁶ For instance, Dr. Gustav Nachtigal, a German explorer whose mission was to colonise and annex Cameroon before the British could make a move, negotiated and ratified treaties with local Kings. One of such treaties was the Treaty of Annexation signed with King Akwa of Douala to facilitate the annexation of Cameroon.³⁴⁷ The terms of this Treaty were to transfer all power, legislation and administration of the territory to the Germans who would be in control on the condition that the Germans would respect the customary laws of the natives.³⁴⁸ To facilitate this, the German Kronland Act of 15 July 1896 was enacted by the German Imperial Government to expedite land appropriation from the local inhabitants.³⁴⁹ During the German rule the name adopted and used commonly was “Kamerun”.³⁵⁰

This decree permitted the German government to own and control all unexploited land and to transform the country into a German overseas territory, bringing to an end the collective customary system of ownership.³⁵¹ The Germans considered that land kept for hunting purposes or preserved as community reserves were not properly used, thus it was considered “*vacante et sans maître*” or “*terra nullius*” meaning land which did not belong to anyone.³⁵² The German system of rule initiated long-lasting conflicts between traditional laws and colonial state laws as it introduced new policies which eventually subordinated the customary laws of indigenous peoples in Cameroon at that time.³⁵³ For instance, the system of private land and state-controlled land weakened and outlawed the

³⁴⁶ Anon date unknown <http://www.historyworldnet/wrldhis/PlainTextHistories.asp?historyid=ad>.

³⁴⁷ Larner and Fisher 2000 *Journal of Medical Biography* 45; Anon date unknown <http://www.historyworldnet/PlainTextHistories.asp?ParagraphID=pau>.

³⁴⁸ Nfah-Abbenyi 2016 *TYDSKRIF VIR LETTERKUNDE* 6-7.

³⁴⁹ Most of the land appropriated during this period by the Germans, is where indigenous communities resided and call home. Since it is a community with no interest in economic activities, majority of this land was still undeveloped. Thus, the Germans quickly thought it was empty with no owner and felt it was best to development for economic gains.

³⁵⁰ Ardener 1962 *The World Today* 342.

³⁵¹ Nguiffo, Kenfack and Mballa “The Influence of Historical and Contemporary Land Laws on Indigenous Peoples’ Land Rights in Cameroon” 3.

³⁵² Nguiffo, Kenfack and Mballa “The Influence of Historical and Contemporary Land Laws on Indigenous Peoples’ Land Rights in Cameroon” 3.

³⁵³ Nguiffo, Kenfack and Mballa “The Influence of Historical and Contemporary Land Laws on Indigenous Peoples’ Land Rights in Cameroon” 3.

customary land laws of indigenous peoples including their access, use and ownership of land and resources.³⁵⁴

To exercise total control over the forest ecosystem rich in natural resources, the Germans instituted the dominant rule system through local or indigenous chiefs, this form of leadership allowed them to exploit the hinterlands.³⁵⁵ The rich and fertile nature of the land, especially around Mount Cameroon, instigated plantation agriculture for economic purposes.³⁵⁶ Also the land policy granted the natives very limited amount of land for farming, thereby reducing them to ordinary plantation labourers.³⁵⁷ Thus, between 1891-1896, about one-fifth of the total land in Kamerun was placed under direct control of two German companies, thereby depriving chiefs and natives from controlling and accessing their land as stipulated in the Treaty of Annexation.³⁵⁸ It should be mentioned that even though the German concessions enabled German settlers to gain complete control over economic activities in Kamerun, however, trading in palm products, ivory and wild timber extractions became more extensive and this systematically led to a new age of resource management in Cameroon under German rule.³⁵⁹

The advent of the German settler colonialism brought about major changes in the Kamerun. First, the Douala trading centres controlled by the Germans created a link between the coastal and inland areas of Kamerun.³⁶⁰ Secondly, the Germans managed to convert the coastal rain-forest into plantations resulting in a socio-environmental displacement of the local population.³⁶¹ Thirdly, traditional hunting and farming societies were transformed from subsistence cultures to forced labour with very low wages.³⁶²

³⁵⁴ Nguiffo, Kenfack and Mballa "The Influence of Historical and Contemporary Land Laws on Indigenous Peoples' Land Rights in Cameroon" 3.

³⁵⁵ Geschiere 1993 *Africa: Journal of the International African Institute* 151-152.

³⁵⁶ Fonjong, Sama-Lang and Fon 2010 *PGDT* 158.

³⁵⁷ Rudin *Germans in the Cameroons, 1884-1914* 298, 367.

³⁵⁸ Rudin *Germans in the Cameroons, 1884-1914* 301.

³⁵⁹ Gann and Duignan *The Rulers of the German Africa 1884-1914* 166.

³⁶⁰ Birmingham *The Decolonisation of Africa* 20.

³⁶¹ Birmingham *The Decolonisation of Africa* 20.

³⁶² Birmingham *The Decolonisation of Africa* 21.

The German land concessions policy introduced the capitalist system in that while the capitalist system focused on plantation agriculture, new forms of resource husbandry focused on every stage of production (for instance, from forest clearing and re-planting to harvesting of final products).³⁶³ As plantations extended into the hinterlands, timber companies also stretched into the formerly abandoned forest lands.³⁶⁴ This new development initiated investment programmes aimed at sustaining production and profits which led to the establishment of Johann-Albrechts Hohe (Barombi) as well as the Yabassi, Edea and Jang (Dschang) districts.³⁶⁵ The German system of rule left significant changes to indigenous communities as it detached them from their ancestral land and resources and eventually laid down the framework for resource management and control. However, some scholars have argued that despite its limited resources and incompetency in colonial administration, the German era records significant successes such as the creation of a plantation industry along the dense forested area of Mount Cameroon.³⁶⁶ It is important to note that the German colonial period generated limited monetary resources, added to its incompetence in colonial administration.³⁶⁷ It should be noted that the socio-economic and political challenges facing indigenous communities today have roots in the German colonial period.³⁶⁸ The German system of rule was adopted by the British and French when they inherited the former German colony as a Trusteeship Territory under the League of Nations.

2.2.2.2 The British rule and French rule (1916-1960)

The defeat of the Germans during WW1 changed the historical events in Cameroon, where it eventually lost its possessions to the British and French.³⁶⁹ Cameroon was partitioned between the two European countries following the

³⁶³ Gann and Duignan *The Rulers of the German Africa 1884-1914* 227.

³⁶⁴ Lanz 2000 *Environment and History* 106.

³⁶⁵ Lanz 2000 *Environment and History* 106.

³⁶⁶ Ardener 1962 *The World Today* 343.

³⁶⁷ Ardener 1962 *The World Today* 343.

³⁶⁸ Ardener 1962 *The World Today* 343.

³⁶⁹ Lanz 2000 *Environment and History* 107. The Allied Powers that defeated Germany during the WW1 are Italy, United Kingdom, France and USA.

Anglo-French Declaration of 10 July 1919 as a Mandated Territory of the League of Nations and as a Trust Territory of the United Nations respectively.³⁷⁰ Britain got one-fifth of the territory from 1919-1961,³⁷¹ while France had four-fifths of the territory from 1919-1960. Both territories had different appellations for the two territories they annexed namely: “Cameroons” for the British Mandate and “Cameroun” for the French.³⁷² The territory under British rule was administered as an integral part of Nigeria.³⁷³ The other four-fifths were placed under French administration as a separate French colony until independence.³⁷⁴ Britain and France adopted the German system of administration and jointly continued to manage German plantations.³⁷⁵

The French, just like the Germans, immediately declared all land and forests under their territory as “*terres vacantes et sans maître*” (vacant land without masters) and immediately enacted a Land Tenure Law (Ordinance No. 1 of 1927) which gave them the right to own and exploit all unoccupied land and the natural resources therein without consulting the indigenous peoples.³⁷⁶ The indigenous peoples were only given usage rights to cultivate food crops. As Fonjong rightly contends, “the concept of communal ownership or ancestral land was eventually changed to customary rights of occupancy”.³⁷⁷ In addition, the Ordinance instituted the issuance of land certificates to non-indigenes who had acquired land illegally.³⁷⁸ This system gave the French complete autonomy over native lands. Several sources maintain that the French system of administration angered the local population, particularly with the imposition of taxes and forced

³⁷⁰ Jua 2005 *Africa: Journal of the International African Institute* 327.

³⁷¹ This is when Southern Cameroons accepted to join the Cameroun Republic while Northern Cameroon voted to join the Federation of Nigeria in a plebiscite and on October 1st both the French and Southern Cameroons united to form the Republic of Cameroon, with French and English as the official languages.

³⁷² Ardener 1962 *The World Today* 346.

³⁷³ Stark 1976 *Canadian Journal of African Studies* 424.

³⁷⁴ Stark 1976 *Canadian Journal of African Studies* 424.

³⁷⁵ Fonjong, Sama-Lang and Fon 2010 *PGDT* 158.

³⁷⁶ Wily 2011 http://www.fernorg/sites/fernorg/files/cameroon_eng_internetpdf.

³⁷⁷ Fonjong, Sama-Lang and Fon 2010 *PGDT* 156.

³⁷⁸ This policy rendered indigenous peoples landless since they had no official documentation for the vast amount of unoccupied land they retained for collective use.

labour which ultimately developed into political parties demanding for independence and reunification.³⁷⁹

The British system of administration was based on the Lugardian principle of indirect rule through the local chiefs, since the intention was to expand plantation agriculture and exploit timber; they had to use the local chiefs to act as mediators (between the local population and the British administrators) to enable them achieve their aims.³⁸⁰ The local chiefs managed British businesses in the hinterlands on behalf of the British, since the local population trusted their leaders and believed they would protect their interests. To guarantee this, the forest estate was placed under the British Colonial Office and local chiefs had to report there. However, although both colonies had a central policy, each territory had different socio-political and economic responsibilities. For instance, the Southern Administrative Area in Nigeria which comprises Lagos, managed most of the colony's commercial timber reserves, while the Northern administrative region in the Savanna woodland was predominantly accountable for forest management as well as issues relating to grazing, water and fuel wood.³⁸¹

After WWII, the British administration witnessed a fall in resource development due to the high rate of exploitation.³⁸² This triggered an urgent need for control of access to forests and resource extraction in the country.³⁸³ Quite remarkable is the fact that timber exploitation became more pronounced under the British administration so as to satisfy the European industrial demand as well as protect the integrity of tropical ecosystems like soils and watersheds.³⁸⁴ Thus, the annexation treaty and the trusteeship agreement ratified by the Germans and the Anglo-French colonial masters deprived the indigenes of their rights to ancestral lands and resources.³⁸⁵ It also developed a framework which destroyed the

³⁷⁹ Elango 2014 *Journal of Global Initiatives: Policy, Pedagogy, Perspective* 112.

³⁸⁰ Ngoh 1979 *The Political Evolution of Cameroon* 77-80; Geschiere 1993 *Africa: Journal of the International African Institute* 52.

³⁸¹ Fonjong, Sama-Lang and Fon 2010 *PGDT* 159.

³⁸² Ngoh 1979 *The Political Evolution of Cameroon* 78-79.

³⁸³ Ngoh 1979 *The Political Evolution of Cameroon* 79.

³⁸⁴ Ngoh 1979 *The Political Evolution of Cameroon* 82.

³⁸⁵ Fonjong, Sama-Lang and Fon 2010 *PGDT* 159.

dynamics that maintained inter-ethnic relations in Cameroon, thus leading to tensions and conflict amongst ethnic groups.³⁸⁶

2.2.3 Post-colonial Cameroon

The post-colonial government of Cameroon inherited the colonial policies introduced by colonial masters. While French Cameroun was granted independence on January 1, 1960, in the subsequent year Southern Cameroon voted to merge with the Republic of Cameroon and on October 1, 1961, the two nations became the Federal Republic of Cameroon under President Amadu Ahidjo.³⁸⁷ This happened following a plebiscite agreement ordered by the United Nations in which the people of British Cameroon were asked to vote either to join British Northern Cameroon or remain with British Southern Cameroon.³⁸⁸ On 11 of February 1961, a majority of the people voted to join the Republic of Cameroon. It is submitted that after independence, both territories (that is East and West Cameroon) maintained two separate legal and administrative systems where the ruling government had absolute rights, control and management over land and natural resources, thereby undermining the local populations.³⁸⁹ The post-colonial government of Cameroon failed to meet the socio-economic needs of the local communities as the land laws adopted were influenced by the European ideology of private ownership and resource management.³⁹⁰ This system contributed to an increase in illegal acquisition of land previously owned by indigenous peoples and resource exploitation by both individuals and non-state actors which subsequently led to the further marginalisation and dissolution of indigenous communities in Cameroon.³⁹¹

As such, the first 15 years after independence witnessed an influx of laws, ordinances and decrees aimed at granting exclusive powers over lands, forest



³⁸⁶ Amungwa 2011 *Journal of Human Ecology* 54.

³⁸⁷ Ngoh 1979 *The Political Evolution of Cameroon* 51-97.

³⁸⁸ Achankeng 2015 *The Round Table: The Commonwealth Journal of International Affairs* 325'.

³⁸⁹ Movuh 2011 *Forest Policy and Economics* 70.

³⁹⁰ Amungwa 2011 *Journal of Human Ecology* 54.

³⁹¹ Alemagi and Kozak 2010 *Forest Policy and Economics* 556.

and natural resource management to the State.³⁹² These national instruments failed to address the needs and customs of indigenous peoples as the collective system of land ownership, use, control and management practiced by the local communities was abolished and replaced with individual ownership to ensure efficient land administration.³⁹³ Instead, Land Ordinance No. 74/01 of 6 July 1974 (which was the most prominent of all other laws) declared all lands were national lands: in effect, this meant that the State had complete control and management over all lands, forests and natural resources therein. That provision of the Ordinance reads thus:

[t]he state shall be the guardian of all lands. It may, in this capacity, intervene to ensure the rational uses of lands in the imperative defence of the interest and economic policies of the nation.³⁹⁴

The land policies introduced by government were a continuous attempt to prevent indigenous peoples from accessing land and natural resources thereby destabilising their entire communities and ripping them of their traditional inheritance. The laws equally established a system of land registration and land certificates on private land owners, both in urban and rural areas.³⁹⁵ This was aimed at granting security of tenure over lands that the colonial powers had acquired.³⁹⁶ In addition, they made provisions for private land owners, forest land, as well as holders of miscellaneous deeds and court judgments to register and obtain land certificates within a specified period: failure to comply would mean that the said property would become state property.³⁹⁷

³⁹² This include the *Land Ordinance No. 74/01 of 6 July 1974* (1974), hereinafter *Land Ordinance*; *Law No. 94/01 of 20 January 1994 to Lay Down Forestry, Wildlife and Fisheries Regulations* (1994), hereinafter *Forestry Law* as well as its *Implementing Decree NO. 95-531-PM of 23rd August 1995* (1995) hereinafter *implementing Decree* aimed at regulating land, forestry and natural resources.

³⁹³ Fonjong, Sama-Lang and Fon 2010 *PGDT* 159.

³⁹⁴ See section 1(2) of *Land Ordinance* 4.

³⁹⁵ This system did not favour indigenous communities because either they were ignorant about this new development or the timeframe set for it. In fact, they did not know how to go about it. Consequently, most of their land was appropriated and they were forced to move from the area they have lived, used and owned from time immemorial.

³⁹⁶ Fonjong, Sama-Lang and Fon 2010 *PGDT* 159-160.

³⁹⁷ Decree No. 76/165 of 27th April 1976 as well as Ordinance No. 77 of 10th January 1977. These two national instruments gave rise to the Land Certificate system adopted by the post-

Consequently, land management and control were centralised under the National Land Consultative Board with the supervision of the local administrative officers in each jurisdiction. It therefore became impossible for indigenous peoples to exercise control over, have access to, or make use of the land and the resources which had been the main sources of their livelihood.³⁹⁸ The argument put forward by the government was that they intended to reduce the high rate of forest exploitation so as to effectively manage the benefits thereof and improve living standards of the indigenes.³⁹⁹ However, this goal has never been realised as indigenous communities are still amongst the poorest and continue to suffer from socio-economic injustices, especially when compared to other groups.⁴⁰⁰ Some sources maintain that the land laws and policies in Cameroon favour mostly bureaucrats, politicians, entrepreneurs and other elites at the expense of the local communities.⁴⁰¹ The same land laws also increased corruption, fraud and bureaucracy in the country as the exploitation of resources in these territories yielded little or no benefits to indigenous communities.⁴⁰² This makes it an urgent necessity to have these laws repealed and revised.

2.3 Exploration and exploitation of timber on indigenous peoples' territories

Cameroon, like many other African countries, is rich in natural resources. The rich and diverse types of natural resources found in sub-Sahara Africa have been pull factors to MNCs from different parts of the globe. Based on the richness and diversity of Cameroon's natural resources, a certain level of socio-economic and infrastructural development including a stable economy and a high standard of living would be expected. Ironically, this is not the case: like in most other African countries, where despite the abundance of natural resources, the people therein

colonial government. The intention was to destroy the indigenous traditional concept of land tenure and community ownership; Fonjong, Sama-Lang and Fon 2010 *PGDT* 159.

³⁹⁸ Ardener 1962 *The World Today* 347.

³⁹⁹ Mbatu 2009 *International Journal of Environmental Studies* 750.

⁴⁰⁰ Mbatu 2009 *International Journal of Environmental Studies* 750.

⁴⁰¹ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 10.

⁴⁰² Alemagi and Kozak 2010 *Forest Policy and Economic* 556.

are still entrapped in chronic poverty, using Robinson's words resources are a 'curse' than a blessing, particularly in developing countries.⁴⁰³ This assertion has been affirmed by Frankel who observed that natural resources do not boost economic growth and this has been the situation in resource-rich countries like Angola, Nigeria, Sudan and Congo where despite the vast amount of oil, diamonds and other minerals found in their territories, living standards and per capita income remain extremely low.⁴⁰⁴

A similar situation is evident in resource-abundant countries like the Oil States in the Gulf of Mexico and Venezuela where despite the enormous natural resources economic development remains parlous.⁴⁰⁵ This is because most government officials embezzle funds generated from natural resource rents through corrupt practices, thereby mummifying economic development and growth, which results in dire poverty and under-development.⁴⁰⁶ Some academics have argued that there is a high possibility of recurrent conflicts and an outbreak of violence between indigenous communities and government that authorises resource exploitation on their territories.⁴⁰⁷ Sachs and Warner have explained that resource abundance reduces competition in the export market and ultimately leads to under-development.⁴⁰⁸ Robinson supports this argument by stating that bad governance and defunct economic policies are the root causes of the resource curse, since resource-dependent economies and resource booms lead to corrupt state behaviour, including large public sectors and weak budgetary policies.⁴⁰⁹

The exploitation of forests and other natural resources dates back to the colonial period when European settlers and traders such as Germany, Britain and France implemented the policy of indirect rule which enabled them to manage all land and forests resources in indigenous territories. Commercial logging was

⁴⁰³ Robinson et al 2006 *Journal of Development Economics* 448.

⁴⁰⁴ Frankel 2010 *HKS Faculty Research Working Paper Series* 4.

⁴⁰⁵ Sachs and Warner 2001 *European Economic Review* 835.

⁴⁰⁶ Sachs and Warner 2001 *European Economic Review* 835.

⁴⁰⁷ Bebbington et al 2008 *BWPI Working Paper* 57.

⁴⁰⁸ Sachs and Warner 2001 *European Economic Review* 835.

⁴⁰⁹ Robinson et al 2006 *Journal of Development Economics* 448.

introduced in Cameroon during German colonial rule in the 19th Century, and was later adopted by Britain and France shortly after WWI. France saw the vast resources in Cameroon as a source of income essential for the development of the country, to the detriment of the local population, thus relegating indigenous communities to a periphery position, as the management and control of these resources was centralised in the hands of French administrators.⁴¹⁰ During this period, close to 59,000 tons of timber were exported to France by 1920.⁴¹¹ Things became worse when in 1948, the Anglo-Franco administration of Cameroon at that time managed to secure logging concessions over a period of 25 years within an area of 714,000 hectares of forest land.⁴¹²

Cameroonians were reduced to mere cheap labourers in their own country and over lands they traditionally owned. Over 70% of the population of Cameroon depends on agriculture for subsistence.⁴¹³ Related studies show that agricultural products contribute to about 40% of the Gross Domestic Product,⁴¹⁴ against 20% of the industrial sector as well as 36% generated from the civil service.⁴¹⁵ The country experienced a serious economic recession in the late 1980s which resulted in a drastic fall in the prices of agricultural products and the country's GDP by 6% between 1986, 1988 and 1989 respectively.⁴¹⁶ This situation contributed to the persistent social unrest and instability experienced in the country during that period.⁴¹⁷ However, internal and external pressures from Western financial institutions forced the country to embark on a number of internal economic re-structuring projects such as the Structural Adjustment Programme⁴¹⁸ spurred by the International Monetary Fund.⁴¹⁹

⁴¹⁰ Fonjong, Sama-Lang and Fon 2010 *PGDT* 159.

⁴¹¹ Biesbrouck 2002 *IDS Bulletin* 56.

⁴¹² Oyono *et al* 2005 *Forest Policy and Economics* 358.

⁴¹³ Oyono *et al* 2005 *Forest Policy and Economics* 358.

⁴¹⁴ Gross Domestic Product hereinafter GDP.

⁴¹⁵ Djontu 2009 *Influence of NGOs, and Members of Parliament on the Cameroon Forestry Law* 10.

⁴¹⁶ Wunder *Oil Wealth and the Faith of the Forest* 183.

⁴¹⁷ Wunder *Oil Wealth and the Faith of the Forest* 184.

⁴¹⁸ Structural Adjustment Programme hereinafter SAP.

⁴¹⁹ International Monetary Fund hereinafter IMF.

In a bid to recover from the effects of the economic recession, the government of Cameroon has had to focus on the exploitation of forest products for export to ameliorate the living conditions of its population. Although revenues from the exports of other resources such as oil, cocoa, coffee and cotton contributed to the country's economy, however, with a significant drop in the prices of crude oil, the government has had no alternative but to turn to timber exploitation.⁴²⁰ Studies from the Ministry of Environment and Forestry,⁴²¹ show that the country has had a steady increase in demand for timber resources during this period,⁴²² especially with the advent of globalisation which promotes the free movement of goods and services from one country to the other. Thus, government has resorted to timber extraction for export as the only means to generate income and increase economic growth through taxes.⁴²³

Although timber exploitation plays a significant role in the country's GDP,⁴²⁴ it goes without saying that the country is experiencing a very high rate of depletion of the rain forests. The forests sector in Cameroon comprises an area of over 20 million hectares amounting to almost 40% of the entire national territory. It contains an important biodiversity and a of variety species essential for regulating climate change and ensuring environmental sustainability.⁴²⁵ Today timber is considered the most important source of income for economic growth and second in terms of export after oil in Cameroon.⁴²⁶ FAO studies on forestry reveal that the deforestation rate is estimated at 0.6%, constituting approximately 122,000 hectares per year.⁴²⁷ The government, on the other hand, maintains that about 2 million hectares of forest have been lost since 1975.⁴²⁸ The estimated rate of

⁴²⁰ Wunder Oil Wealth and the Faith of the Forest 184.

⁴²¹ Decree No. 92/069 of 9 April 1992 laid down the Ministry of Environment and Forestry (MINEF) in 1992, although it has been changed to Ministry of Forestry and Wildlife (MINFOW) following the passing of the Forestry Law with an Implementing Decree aimed at regulating the Forestry sector in Cameroon.

⁴²² Ekoko 2000 *Development and Change* 133.

⁴²³ Ekoko 2000 *Development and Change* 134.

⁴²⁴ The forest sector contributes roughly 9% of the country's GDP and it has been rated a major source of the country's revenue.

⁴²⁵ Djeukam, Gerber and Veuthey "Forestry and Communities in Cameroon" 4.

⁴²⁶ Djeukam, Gerber and Veuthey "Forestry and Communities in Cameroon" 5.

⁴²⁷ Anon 1995 <http://www.fao.org/docrep/t0829e/t0829e00.htm>.

⁴²⁸ See for instance the Cameroon Forest Policy (1995) 25.

exploitation carried out in Cameroon's dense forest is between 80,000 and 200,000 hectares yearly.⁴²⁹ In general, timber, firewood and non-timber products are the most commonly exploited products from the tropical, moist forests of Cameroon, although only firewood and non-wood forest products are used in the Northern part of the country.⁴³⁰ Nowadays, both private individuals and MNCs are actively involved in the exploitation of timber and logging industries in Cameroon. According to Eba'a Atyi, out of the 105 companies involved in timber extraction in Cameroon, 90 have obtained logging rights while 15 are concerned with timber processing and export.⁴³¹ However, majority of them are involved in illegal logging activities, ranging from violating their concession rules, and exploiting in prohibited areas as well as extracting protected species due to increased corrupt practices in the forestry sector and weak government policies.⁴³²

Most of the timber exploited in Cameroon is exported to European countries such as Belgium, France and the Netherlands.⁴³³ These companies, especially Rougier and Pallisco (two French-owned companies), operating in Cameroon have accumulated vast lands in Lomié (a district in upper Nyong division in the East Province of Cameroon) where indigenous peoples (Pygmies) are located.⁴³⁴ These MNCs and their logging activities have forcefully evicted the Baka from ancestral lands to the roadside near the Bantu community. These activities have grossly violated the fundamental human rights of indigenous peoples to a safe and healthy environment, access to land and natural resources, health care, food and the right to exist as a people. It has also violated section 23 of the Forestry

⁴²⁹ Ndoye and Kaimowitz 2000 *The Journal of Modern African Studies* 229.

⁴³⁰ See generally Ministère de l'environnement et de la protection de la nature /UNEP 2007 Plan d'action national de lutte contre la désertification, Yaoundé, Cameroun.

⁴³¹ Atyi 2009 *Development and Progress in Timber Procurement Policies Case Study: Cameroon* 4.

⁴³² Cerutti *et al* 2013 *Society & Natural Resources: An International Journal* 540.

⁴³³ These countries have established logging concessions in Cameroon. Although the new 1994 legislation has made provision for all logging companies to legally obtain legal documents before operating/exploitation. However, most of these companies still operate illegally in the country.

⁴³⁴ The estimated surface area occupied by them amount to 625 253 ha and 388 949 ha respectively. This is way beyond the minimum amount prescribed by the 1994 legislation which provides only for 200,000 ha.

Law No. 94/01 of January 20, 1994.⁴³⁵ The MNCs, together with the government, have greatly neglected the local population. In fact, one of the major roads found in Lomie is owned by the French logging company solely for transporting exploited timber.⁴³⁶ Indigenous communities are disgruntled not just for government permitting illegal operations, but allowing their activities to cause substantial damage to the environment and disrupting their well-being. It would be preferable if government imposed on each extractive company an obligation to either construct roads, build schools, or health centres within the affected communities to better the lives of the indigenes. It is frustrating realising that government and these extractive industries only work to safeguard their own selfish interest, leaving indigenous communities to perish in lack and want.

⁴³⁵ Section 23 of this law provides that: In this law, management of a permanent forest means the carrying out of certain activities and investments, based on previously established objectives and on a plan, for the sustained production of forest products and services, without affecting the primitive value or compromising the future productivity of the forest nor causing any damage to the physical and social environment.

⁴³⁶ During a field work in Lomié in January some indigenous community members made mention of the fact that they are forbidden to use the high constructed by the French multinational company. The road is blocked and no vehicle is allowed to use it. This assertion was confirmed by other transport drivers on our way back, when another timber tractor had a technical fault which obstructed the major highway. These drivers confirmed that they are not allowed to use the other highway because it is specifically meant for the French logging company vehicles. We had to spend two nights for the timber truck to be fixed and make way for other cars.

Timber Exploitation in Cameroon



Source: http://www.afd.fr/webdav/site/afd/shared/PORTAILS/PAYS/GABON/Acyu_gabon_2.JPG

Transported Timber



Source: http://www.rougier.fr/sites/default/files/medias/babylonne_mikongo_le_23_11_2010_048.jpg

It is evident that indigenous communities suffer from adverse effects from the activities of exploiting companies. For instance, this is evident in the construction of the Chad-Cameroon oil pipeline project and the development of the roads that pass through indigenous peoples' lands (Bagyeli lands).⁴³⁷ These activities have severely destroyed the forest resulting in significant decreases in wildlife which serves as a source of livelihood for indigenous peoples.⁴³⁸

The implementation of these projects has transformed these affected areas. The pipeline covers a distance of over 1,080 kilometres, constructed through the Lolodorf-Kribi corridor where the Bagyeli communities practice hunting and gathering as well as other traditional and spiritual rituals.⁴³⁹ The area has become a productive source for exploitation as poachers and strangers have converted the forests for agricultural purposes making it accessible for extracting industries and easy transportation of exploited timber and other resources.⁴⁴⁰ Although the Foundation for Environmental and Development in Cameroon,⁴⁴¹ and the Indigenous Peoples Plan,⁴⁴² were established by the World Bank to ensure the compensation of indigenous communities against environmental damages caused to their lands, even although, not much has been done in that respect.⁴⁴³ Some of the compensation has ended in private pockets of those in charge of supervising these projects.⁴⁴⁴ As a result, these indigenous communities are languishing in poverty as their conditions are worsen on a daily basis.⁴⁴⁵

FEDEC failed to take indigenous peoples' cultural and traditional aspirations into consideration during the establishment of the programme.⁴⁴⁶ As Swing opines, the houses constructed for them did not reflect their cultures as much as the

⁴³⁷ Swing et al 2012 *Journal of Developing Societies* 272-273.

⁴³⁸ Swing et al 2012 *Journal of Developing Societies* 272-273.

⁴³⁹ Swing et al 2012 *Journal of Developing Societies* 272-273.

⁴⁴⁰ Swing et al 2012 *Journal of Developing Societies* 272-273.

⁴⁴¹ Foundation for Environmental and Development in Cameroon hereinafter FEDEC.

⁴⁴² Indigenous Peoples Plan hereinafter IPP.

⁴⁴³ Marieme 2011 *Canadian Journal of Development Studies* 153.

⁴⁴⁴ Personal communication by way of an unstructured questionnaire with top official of the CED an NGO working for the protection and promotion of indigenous people's right to environment Yaoundé, Cameroon on the 15-17 January 2015.

⁴⁴⁵ Van den Berg and Biesbrouck 2000 *The Tropenbos-Cameroon Programme* 15-20.

⁴⁴⁶ Marieme 2011 *Canadian Journal of Development Studies* 156.

seedlings meant for cultivation were either delivered very late or never delivered at all.⁴⁴⁷ Also, the academic curriculum neither made provision for their traditional language nor took into consideration their nomadic lifestyles. Some scholars are of the opinion FEDEC failed to meet the expectations of the indigenous communities.⁴⁴⁸

To most indigenous peoples, the Chad-Cameroon Pipeline project has negatively affected indigenous peoples' lifestyles since it has exposed the territory to severe environmental degradation, destruction of plants and pollution of water sources.⁴⁴⁹ It has led to the creation of a Campo Ma'an National Park from which indigenous peoples are prohibited from carrying out their hunting activities.⁴⁵⁰ They have been forced to abandon their subsistence, hunter-gatherer lifestyles and adopt the cash economy system (or sedentary lifestyle) imposed on them. Studies have shown that the introduction of national parks has resulted in criminalising people over the use of their ancestral lands and accessing natural products for survival.⁴⁵¹ They feel if something is not done, their cultural values and traditional ways of life which they intend to pass on to future generations could soon be extinct. Culture to them is fundamental to their existence as it has a spiritual connectedness to their identity.

⁴⁴⁷ Swing *et al* 2012 *Journal of Developing Societies* 273.

⁴⁴⁸ Marieme 2011 *Canadian Journal of Development Studies* 156-158.

⁴⁴⁹ Owono 2001
http://apicommissiemernl/docs/cms/O83_037_detb_cameroon_campo_maan_engpdf.

⁴⁵⁰ Owono 2001
http://apicommissiemernl/docs/cms/O83_037_detb_cameroon_campo_maan_engpdf.

⁴⁵¹ Anon date unknown <http://wwwsurvivalinternationalorg/campaigns/wwf>.

Pipeline project cutting across indigenous peoples' lands



Source: http://www.businessincameroon.com/images/news/2405-4845-chad-cameroon-pipeline-operating-at-only-50_L.jpg.

Pipeline project cutting across indigenous peoples' lands



Source: Adapted from Swing Davidov and Schwartz 2012

Pipeline Project cutting across indigenous peoples' territories



Database COTCO Douala, Cameroon

In a bid to control the rate of exploitation in the Cameroon humid rain forests over the years, the European Union⁴⁵² developed a framework known as the Forest Law Enforcement, Governance and Trade⁴⁵³ Action Plan to eradicate illegal forest activities.⁴⁵⁴ The aim is to establish Voluntary Partnership Agreements⁴⁵⁵ with other timber-producing countries so as to promote governance reforms.⁴⁵⁶ In spite of the above efforts, state officials still engage in corrupt practices.⁴⁵⁷ It is against this backdrop that the government of Cameroon embarked on the enactment of a new forestry law to enable the control and management of the forestry sector.

⁴⁵² European Union hereinafter EU.

⁴⁵³ Forest Law Enforcement, Governance and Trade hereinafter FLEGT.

⁴⁵⁴ Cerutti *et al* 2013 *Society & Natural Resources: An International Journal* 539.

⁴⁵⁵ Voluntary Partnership Agreements hereinafter VPAs.

⁴⁵⁶ Cerutti *et al* 2013 *Society & Natural Resources: An International Journal* 541.

⁴⁵⁷ Cerutti *et al* 2013 *Society & Natural Resources: An International Journal* 541.

2.4 Management of the exploitation of timber on indigenous peoples' lands

The management of natural resources is fundamental in every rich tropical forest country such as Cameroon since it helps to regulate the rate of exploitation and exploration of resources by MNCs and other extractive companies. It is also essential as it endeavours to protect the environment and local communities that solely depend on these resources for survival. Over the years, illegal logging has been a top priority in most international policy discourse on forest management and environmental protection.⁴⁵⁸ Even though several communities in Cameroon depend on resource exploitation for economic growth, excessive logging activities in the dense forest of Cameroon is overwhelming and calls for immediate redress as they have had serious effects on the local population and the environment.⁴⁵⁹ Some of these effects range from soil erosion, crop destruction, water and fuel wood scarcities and damage to biodiversity and climate change.⁴⁶⁰ According to Ngwa and Fonjong, tropical forests remain the most 'important and endangered natural resource' in Cameroon.⁴⁶¹ They argue further that apart from generating foreign income specifically from the exploitation of timber, it also serves as food, medicine/herbs, fuel, building materials, meat from animals, plants, parkland and home to thousands of indigenous communities in the country.⁴⁶² This diverse usage usually results in high competition between the local population and MNCs, coupled with the fact forest products are easy to exploit when compared to other mineral resources such as copper, bauxite and petroleum which require some level of expertise.⁴⁶³

Studies carried out by Brunner and Ekoko reveal that hydro-carbons forest (timber) is the second major source of income to the country's economy.⁴⁶⁴ In

⁴⁵⁸ Alemagi and Kozak 2010 *Forest Policy and Economics* 554-555.

⁴⁵⁹ Oyono 2004 *The Journal of Modern African Studies* 93.

⁴⁶⁰ Ngwa and Fonjong 2002 *GeoJournal* 95.

⁴⁶¹ Ngwa and Fonjong 2002 *GeoJournal* 95-96.

⁴⁶² Ngwa and Fonjong 2002 *GeoJournal* 95.

⁴⁶³ Ngwa and Fonjong 2002 *GeoJournal* 95.

⁴⁶⁴ Burnner and Ekoko "Cameroon" 61.

support of the above assertion, statistics from Wunder indicate that the rich forest's biodiversity in Cameroon accounts for about 10% and 25% of the country's GDP and foreign earnings respectively.⁴⁶⁵ These activities have posed serious dangers to the forest and host communities and render it vulnerable as poachers and timber-exploiting companies extract the timber on a daily basis. This, as Rusko asserts, is attributed to an increase in human population and high demand for natural resources over the years.⁴⁶⁶ As a result, the international community has embarked on enacting legislative measures aimed at controlling the high rate of timber exploitation to ensure a sustainable environment conservation of the forest.

Thus, a specific Forestry Law (Law No. 94/01 of 20th January 1994) and an implementing Decree (No. 95-531-PM of 23rd August 1995) was enacted to regulate and manage the activities of logging companies.⁴⁶⁷ In Cameroon, the management and protection of natural resources is the sole responsibility of the state.⁴⁶⁸ This implies that the state is the only entity that manages natural resources in the country. This position was sealed with the enactment of the new Forestry Law aimed at regulating forestry activities in the country.⁴⁶⁹ The main goal of the 1994 Forestry Law is to integrate local communities into the management of forestry, wildlife and fisheries activities to ensure sustainable conservation and environmental sustainability.⁴⁷⁰ The *raison d'être* is to enable them to suggest and participate in decisions regarding the use, control, management and development of ancestral lands as well as deliberate on possible solutions on the issues of environmental degradation and sustainable development.

It is significant to note that prior to the enactment of the new Forestry Law, the management of natural resources was under the auspices of the Ministry of

⁴⁶⁵ Wunder *Oil Wealth and the Faith of the Forest* 170-185.

⁴⁶⁶ Rusko 2015 *Research Papers* 125-126.

⁴⁶⁷ Alemagi and Kozak 2010 *Forest Policy and Economics* 555.

⁴⁶⁸ See Part 11, Section 11, 64 of the 1994 Forestry Law.

⁴⁶⁹ See for instance Cameroon Forestry Law and Implementing Decree.

⁴⁷⁰ See for instance Part 1, Section 1 of the 1994 Forestry Law.

Agriculture, specifically, the Department of Forestry. In the 1980s, the effects of economic recession resulted in massive illegal exploitation of natural resources as farmers witnessed a significant fall in prices of goods and poverty wrecked their lives.⁴⁷¹ These activities attracted international concern which ultimately led to a debate during the G8 Summit to eradicate illegal logging and ensure effective forest management.⁴⁷² The Food and Agricultural Organisation⁴⁷³ and other international bodies have engaged in numerous debates on sustainable management and environmental protection of Cameroon's forests within the context of the Tropical Forest Action Programme.⁴⁷⁴ The new Forestry Law was therefore aimed at redressing these irregularities by promoting the economic, ecological, and social roles of the forest through integrative and participatory forest management.⁴⁷⁵ Thus, to ensure the effective management of forest resources in the country, the Forestry Law introduced the issuing of exploitation permits, eliminated the exportation of bark, stipulated the duration of concessions, and imposed the payment of special taxes by logging companies and extractive companies prior to exploitation.⁴⁷⁶

Although government is charged with the duty of managing natural resources in the country, however, other actors are involved in the management process. These actors include NGOs, civil society, local communities, Community Forestry Development Project;⁴⁷⁷ a body created within MINFOF; the German Agency for Technical Cooperation;⁴⁷⁸ the Canadian International Development Agency;⁴⁷⁹ and the British Cooperation.

⁴⁷¹ Burnner and Ekoko "Cameroon" 60.

⁴⁷² Cerutti *et al* 2010 *International Forestry Review* 540.

⁴⁷³ Food and Agricultural Organisation hereinafter FAO.

⁴⁷⁴ Tropical Forest Action Programme hereinafter TFAP. This was as a result of the failures and ineffectiveness of the previous forestry legislation to effectively protect the high rate of deforestation and safeguard the interests of indigenous communities.

⁴⁷⁵ Mvondo 2009 *Africa Today* 91-92.

⁴⁷⁶ Mvondo 2009 *Africa Today* 91

⁴⁷⁷ Community Forestry Development Project hereinafter CFDP.

⁴⁷⁸ German Agency for Technical Cooperation GTZ.

⁴⁷⁹ Canadian International Development Agency hereinafter CIDA.

In this regard, Forest Law grants local communities the right to access forest resources within their communities through a management agreement signed between the village communities and the state referred to as a simple management plan.⁴⁸⁰ This implies that local communities can collectively manage and exploit forest resources to promote the economic and social livelihood of the community as well as initiate local development as anticipated by the International Convention to Combat Desertification.⁴⁸¹ This process requires the state to allocate a portion of the forest to local communities following the SMP, so as to ensure sustainable exploitation and equitable management of forest resources to the advantage of local communities.⁴⁸² Unfortunately, this has only remained a pipe dream to indigenous communities who have lived and looked after these resources for several decades.

In addition, the Forestry Law has classified the forest into two types namely: the “permanent forest estate”⁴⁸³ and “non-permanent forest estate”.^{484, 485} The PFE includes state and council forests comprising an area of 30% of the national territory in Cameroon.⁴⁸⁶ This forest area is the private property of the state and managed solely by it, while the NPFE on the other hand consists of communal forests and forest is owned by private individuals.⁴⁸⁷ Put simply, the NPE is forest allocated to the local community and private individuals,⁴⁸⁸ although no specifications have been given as to the management of these forest areas.⁴⁸⁹ Forestry Law also embarked on revising the forestry taxation policies that



⁴⁸⁰ Simple management plan hereinafter SMP; Cunny Ango and Ondo date unknown <http://www.fao.org/docrep/010/ag131e/ag131e09.htm>.

⁴⁸¹ Cunny, Ango and Ondo date unknown <http://www.fao.org/docrep/010/ag131e/ag131e09.htm>; See generally the International Convention to Combat Desertification hereinafter ICCD. This Convention has imposed an obligation on states to recognised local communities and encouraged them to take part in the management of their environment and natural resources.

⁴⁸² Cunny, Ango and Ondo date unknown <http://www.fao.org/docrep/010/ag131e/ag131e09.htm>.

⁴⁸³ Permanent Forest Estate hereinafter PFE.

⁴⁸⁴ Chapter 1, Section 20 of the 1994 Forestry Law.

⁴⁸⁵ Non-Permanent Forest Estate hereinafter NPFE.

⁴⁸⁶ Section 21 and 22 of the 1994 Forestry Law.

⁴⁸⁷ Chapter 11, Section 34 of the 1994 Forestry Law.

⁴⁸⁸ Section 35 and 39 of the 1994 Forestry Law.

⁴⁸⁹ See generally the 1994 Forestry Law.

regulate large-scale export-oriented enterprises in the industrial forest sector, with the intention of abolishing illegal logging and enhancing sustainable development.⁴⁹⁰

It is significant to bear in mind that, even though the Forestry Law has classified the country's forests into PFE and NPFE and despite the fact local communities have been granted the right to manage and exploit their resources or government to engage with indigenous peoples on any decisions concerning their lands, however, most of the timber exploited in Cameroon is found in the NPFE areas meant for the local communities.⁴⁹¹ This exploitation usually takes place without any proper and prior consultation with indigenous communities as stipulated by the Forestry Law.⁴⁹² Added to that the 10% annual royalties meant for the affected villagers including the amount derived from the sale of forest products to assists in developing local communities is never realised. These good intentions, unfortunately, have not lived beyond the ink as the centralised system of bureaucratic administration has orchestrated corrupt practices resulting in the misappropriation of funds that ought to be channelled to indigenous communities. Hence, violating Article 8(2) of the Forestry Law which provides for the involvement of local communities in decisions concerning the management of forest in the country.

Also, efforts to control forest management in Cameroon led to the introduction of licenses to logging companies as well as conditions for exploiting timber in the dense forest area of Cameroon.⁴⁹³ This implies that only extractive companies with legal licenses are expected to exploit timber from the forest following the prescribed conditions. The license contract is set to last for 15 years renewable and assessed within a three-year period.⁴⁹⁴ Following the above, the license-

⁴⁹⁰ For a detailed reading on Forest taxation in Cameroon see generally Carret 2000 *Bois et Forêts des Tropiques*.

⁴⁹¹ Carret 2000 *Bois et Forêts des Tropiques* 37-39.

⁴⁹² Section 8(2) of the 1994 Forestry Law.

⁴⁹³ Chapter 3, Section 46(1) of the 1994 Forestry Law.

⁴⁹⁴ Chapter 3, Section 46(2) of the 1994 Forestry Law.

holder is allocated 200,000 hectares for exploitation of timber.⁴⁹⁵ It is surprising to understand that in most instances, logging companies violate these terms and could operate for many years without official licences.

Given that the 1994 Forestry Law, amongst other things, was aimed at integrating local populations in the management process of their natural resources, it should be noted that indigenous communities continue to face marginalisation in that regard. This has prompted scholars to conclude that the marginalisation of local communities in the management of the forest sector is a continuation of European policies where European colonisers centralised everything including natural resources under their control to the exclusion of local communities.⁴⁹⁶ The same situation has been transmitted into the post-colonial era despite the objectives of the new Forestry Law to regulate forest activities and include indigenous peoples in decisions and management of land and resources therein. However, most decisions concerning resource extraction within indigenous territories are concluded without their prior consent. The centralised nature of the system allows their representatives, top government officials and politicians to make decisions on their behalf, thus, undermining them and violating the objectives of the new Forestry Law. In addition, in most instances, the documents are too sophisticated (in terms of the language and intellectual maturity in the way they are written) for indigenous peoples to understand.

Furthermore, Prefects, Sub-Prefects and Mayors are also charged with the duty to facilitate the management of community forests through the Land Consultative Board.^{497, 498} Their responsibilities include classifying forest areas, settling disputes over ownership and demarcating community forest. Strangely enough, this process has recorded very little successes as only the Dimako forest in the

⁴⁹⁵ Chapter 3, Section 49 of the 1994 Forestry Law.

⁴⁹⁶ Bigombe 1998 *Towards Decentralisation of Forest Management in Cameroon* 2-12, as cited by Brown and Schreckenberg *The Development of Community Forests in Cameroon* 2.

⁴⁹⁷ Bigombe 1998 *Towards Decentralisation of Forest Management in Cameroon* 2-12, as cited by Brown and Schreckenberg *The Development of Community Forests in Cameroon* 3-4.

⁴⁹⁸ Land Consultative Board hereinafter LCB.

East Province of Cameroon has been classified.⁴⁹⁹ As such, the implementation process has been considered inefficient and ineffective, even though indigenous peoples have celebrated the classification process as the beginning of a period of justice, fairness and equality in relation to access to, benefits from, forest exploitation and end to “administrative apartheid”.⁵⁰⁰ It is submitted that the procedures laid down for the creation and establishment of community forests is not only long but too complex and slow, coupled with the high level of corruption in the country.⁵⁰¹

In addition, other academics like Oyono, Kouona and Mala have stated that the legislative framework put in place for the management of forest resources in Cameroon is a complete failure.⁵⁰² The Management Committees formed in the villages since 1999 have never provided “responsible representation”: hence they are not accountable to the local population.⁵⁰³ In most instances, the proceeds from the annual royalties intended to fund local projects finally end up in the private pockets of top administrative officials (usually appointed by the State – such as Division Officers,⁵⁰⁴ Sub-Divisional Officers,⁵⁰⁵ and some top officials of the MINFOF with the consent and full collaboration of village-level committee members). Also, the taxes (eco-tax) and income usually paid by the logging companies to the Management Committee from exploitation of community forests are often misappropriated and mismanaged.⁵⁰⁶

Given the effectiveness of government to exclusively manage timber exploitation, it is essential law makers take a second look at the current Forestry Law and make amends, to ensure that indigenous communities are more active in the management and decision-making process. According to Ngwa and Fonjong

⁴⁹⁹ Carret 2000 *Bois et Forêts des Tropiques* 40.

⁵⁰⁰ Carret 2000 *Bois et Forêts des Tropiques* 40.

⁵⁰¹ Oyono 2004 *The Journal of Modern African Studies* 97-103.

⁵⁰² Oyono, Kouona and Mala 2005 *Forest Policy and Economics* 362-364.

⁵⁰³ Oyono, Kouona and Mala 2005 *Forest Policy and Economics* 358-360.

⁵⁰⁴ Division Officers hereinafter DO's.

⁵⁰⁵ Sub-Divisional Officers hereinafter SDO's.

⁵⁰⁶ Oyono, Kouona and Mala 2005 *Forest Policy and Economics* 363.

forest laws should be revised to meet the cultural aspirations of indigenous peoples.⁵⁰⁷

2.5 Summary

This chapter examines the historical and socio-economic development of the Cameroon with a view of tracing the evolution of indigenous peoples in Cameroon *vis a vis* the impact of colonialism on these communities. The discussion evaluates the pre-colonial, colonial and post-colonial periods of Cameroon. In addition, the chapter elucidate on the origins indigenous peoples, who exactly are they as well as which group qualifies or has been identified as indigenous peoples within the Cameroonian legal system. It was observed that, although Cameroon like many African countries is in denial of the existence of indigenous peoples, however, the Constitution has officially guaranteed the protection of... and preservation of rights of indigenous peoples, although without any clear specifications as to the nature of these rights and the groups that deserves these rights. The main objective of this discussion is to clearly give an understanding on how the past has greatly affected present-day Cameroon and its indigenous peoples with the coming of European colonisers and the introduction of foreign policies which the post-colonial government have adopted.

The discussion also observed the exploitation and exploitation of natural resources by logging companies which have brought a cataleptic change to the livelihood and environments of indigenous peoples in Cameroon. It was revealed that timber is one of the major resources that contribute to the economy of the country. It also severs as a source of livelihood for several indigenous peoples. It is worth noting that the diverse use and importance of these forest products has attracted foreign investors and has led to severe social and environmental challenges. In addition, the chapter also explicate on how timber derived from indigenous peoples' land is managed, with the intention to assess whether indigenous peoples benefit from the process or take part in the management

⁵⁰⁷ Ngwa and Fonjong 2002 *GeoJournal* 96.

process at all. It was revealed that despite the many changes made to reform the forestry sector, such as to eradicate illegal exploitation, ensure integrative participative management with local communities, ensure proper conservation, promote local development on indigenous communities and improve their living standards, unfortunately, the Forestry Law has failed to meet the needs of indigenous communities. As aforementioned, local communities are not only marginalised but continue to be excluded in decision-making processes over the management and use of their resources. The mismanagement of proceeds derived from the exploitation of timber has led to severe socio-economic, political and developmental marginalisation on indigenous communities. Therefore, more robust forest management policy is urgently required.

The subsequent chapter assesses indigenous peoples' rights within Cameroon's legislative and institutional framework. This area focuses on Cameroon legal position as far as indigenous peoples are concerned. It also examines relevant international and regional instruments that Cameroon is party to as well as other institutional mechanisms in Cameroon aimed protecting and promoting indigenous peoples' rights.

Chapter 3 Indigenous peoples' rights within Cameroon's legislative and institutional framework

3.1 Introduction

In the previous chapter, Cameroon's history and how it shaped the "recognition" and rights of indigenous peoples were discussed. This chapter interrogates the recognition and protection of indigenous peoples' rights within Cameroon's legislative and institutional framework. The essence of this discussion is to identify whether or not there has been formal recognition of indigenous peoples in Cameroon as a vulnerable group, and secondly, whether or not the current institutional mechanisms for the protection of human rights have indigenous peoples as one of their focal areas. In doing this, the chapter is divided into three parts: the first part examines the rights of indigenous peoples under national legal instruments. The second part discusses the reception of international law in Cameroon and looks at the various international human rights instruments that have been ratified by Cameroon. Lastly, the chapter discusses national institutional mechanisms, specifically the NCHRF as well as other relevant Ministries involved in the promotion of indigenous peoples' rights in Cameroon. This discussion focuses only on the generic content of international instruments since detailed discussions of the provisions have been dealt with in the preceding chapters.

Indigenous peoples around the globe are victims of recurrent historic injustices. They have repeatedly faced pervasive and systemic forms of discrimination especially with regards to lands, natural resources, cultural and traditional identities, political representation and denial of socio-economic rights. This explains why indigenous peoples have gained global recognition in international human rights instruments, the African regional system and national legislations. The contentious issue is that while some states like Australia and New Zealand acknowledge the existence of indigenous peoples in their countries, most African states are still unwilling to provide the same recognition. In fact, most of these countries do not even acknowledge indigenous peoples' existence, thus resulting

in generalised forms of marginalisation.⁵⁰⁸ This is linked to their unique lifestyles and the different ways in organising their socio-economic and political institutions. Related studies describe them as the most “inferior” and “distinct” groups in the world.⁵⁰⁹ Although the Constitution of Cameroon guarantees the protection of minorities and preservation of the rights of indigenous peoples, indigenous peoples continue to face gross human rights violations ranging from exclusion in the political affairs of the country to deprivation from basic social services.⁵¹⁰ Indigenous peoples in Cameroon are gradually facing extinction as a result of continuous expulsion from their ancestral lands where they are forced to integrate with the mainstream society, thereby exposing them to many illnesses and other infectious diseases.⁵¹¹ It is against this backdrop that the United Nations adopted several international instruments to ensure that States Parties honour their obligations in protecting and promoting the rights of indigenous peoples within their respective countries.

The main thrust of this chapter is to assess indigenous peoples’ rights within Cameroon’s legislative and institutional framework. It also seeks to emphasise that indigenous peoples are an important group who deserve special protection within Cameroon’s legislative framework. Thus, the country ought to ensure that it respects and fulfils its human rights obligations with regards indigenous peoples. This chapter therefore reviews the position of the national constitution with regards the recognition, promotion and protection of indigenous peoples’ rights. A cross-section of relevant international and regional instruments which Cameroon has signed and ratified is assessed to determine whether or not state policies and practices conform to international standards. The next section examines related institutional mechanisms as well as relevant administrative institutions (Ministries) involved in promoting indigenous peoples’ rights in Cameroon.

⁵⁰⁸ Ndahinda 2011 *International Journal on Minority and Group and Rights* 485.

⁵⁰⁹ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 1.

⁵¹⁰ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 5.

⁵¹¹ Sherpa *et al* 2014 <http://www.wipo.org/PDF/publications/indigenous-enpdf>.

3.2 Indigenous peoples' rights within Cameroon's legislative framework

As a sovereign state with the power to enact national legislation, Cameroon has numerous national legal instruments in place to address the substantive content of human rights: rights that belong to every human being, without discrimination. However, a thorough inquiry into Cameroon's legal instruments leads to a worrying revelation: only the national Constitution of 1996 and the NCHRF stand as the national instruments that define the corpus of indigenous peoples' rights. The growing awareness at international and regional levels of the devastating conditions of indigenous peoples have prompted some administrative intervention, such as selected Ministries in Cameroon as highlighted hereunder.

3.2.1 The 1996 Constitution of the Republic of Cameroon

The amendment of the 1972 Unitary Constitution and the subsequent amendment in part in 2008 brought new innovations and a major transformation in the legislative recognition of the rights of minorities and indigenous peoples in Cameroon. The 1996 Constitution expressly provides in its Preamble that: "the State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law".⁵¹² This stipulation is not a stand-alone provision: it is entrenched in the Preamble which captures the aspirations of those who drafted the Constitution.

Granting constitutional recognition of human rights in general and the rights of indigenous peoples in particular places Cameroon in the spotlight: Cameroon is one of the few countries in the world that grants legislative recognition to indigenous peoples in a domestic legislation as supreme and sacrosanct as the Constitution.⁵¹³ This explains why some scholars view Cameroon as a good example for other African States to emulate.⁵¹⁴ It has been argued by some scholars that the rights of indigenous peoples ought to have been spelt out in

⁵¹² See para 5(2) of the preamble to the Cameroonian Constitution Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972 as amended in 2008.

⁵¹³ Viljoen *International Human Rights Law in Africa* 237.

⁵¹⁴ Viljoen "Reflections on the Legal Protection of Indigenous Peoples' Rights in Africa" 91.

specific provisions in the Constitution since there are controversies over the legal effects of a Preamble to a constitution.⁵¹⁵ However, scholars like Viljoen see it differently: to him, Cameroon stands out as one of the African States that has granted legal recognition to the rights of indigenous peoples in its national Constitution.⁵¹⁶

As aforementioned, legal scholars dispute the legal effect of provisions contained in the preamble to a constitution.⁵¹⁷ Some argue that the Preamble is not part of a constitution: rather, it is merely an introductory note as it outlines the spirit of the constitution itself.⁵¹⁸ Others find this argument untenable as they contend that the Preamble itself is an important segment of a constitution.⁵¹⁹ These controversies, fortunately, are laid to rest by the Cameroonian law-makers who, in the Constitution itself, stipulate that “the Preamble shall be part and parcel of this Constitution”.⁵²⁰ In effect, this means that whatever is articulated in the Preamble to the Constitution is legally binding like other provisions in the Constitution. Therefore, even though contained in the Preamble, indigenous peoples are legally recognised in Cameroon’s legal system and worthy of protection as human beings and an identified minority group.

Even though indigenous peoples are captured in the 1996 Constitution, few problems arise: first, the Constitution merely recognises indigenous peoples. It does not detail the substantive content of the rights of Indigenous Peoples in Cameroon.⁵²¹ Therefore, even though some scholars commend Cameroon’s efforts to grant legislative recognition to indigenous peoples, especially by addressing them in the Constitution, much is left unanswered as there is no

⁵¹⁵ Hansungule 2009 *Legal Protection of Indigenous Populations/Communities in Central Africa* 12.

⁵¹⁶ Viljoen *International Human Rights Law in Africa* 237.

⁵¹⁷ Hansungule 2009 *Legal Protection of Indigenous Populations/Communities in Central Africa* 12.

⁵¹⁸ Hansungule 2009 *Legal Protection of Indigenous Populations/Communities in Central Africa* 12.

⁵¹⁹ Orgad 2010 *International Journal of Constitutional Law* 722.

⁵²⁰ See Art 65 of the Constitution of Cameroon.

⁵²¹ Pelican 2013 *Anthropology Today* 13.

certitude as to what rights they have.⁵²² Secondly, as indicated earlier, the Preamble to the Constitution spells out only a few rights. In fact, according to the wording of the Constitution, Cameroon affirms its attachment to the UDHR and the Banjul Charter.⁵²³

It is further highlighted in the Preamble that, in addition to these international human rights instruments, Cameroon is firmly committed to the rights that are enumerated therein.⁵²⁴ If this is interpreted correctly, it means that the rights and fundamental freedoms stipulated in the Preamble to the Constitution are not exhaustive: reference should be made to other international instruments that have been ratified by Cameroon.⁵²⁵ In other words, the fact that the Constitution, in its Preamble, makes mention of the UDHR and ACHPR does not mean that these are the only international human rights instruments that define the substantive content of human rights in Cameroon. The reception of these international instruments is clearly stated in the Constitution, and is worthy of exploration prior to a discussion of international human rights instruments applicable in Cameroon.

3.2.2 *The Forestry Law*

For several years, the forestry sector in Cameroon has experienced many setbacks including illegal logging, unequal distribution of resource benefits, discrimination and exclusion of indigenous peoples in decisions over the control and management of these processes.⁵²⁶ This has resulted in a significant fall in deforestation rates and a substantial rise in degradation.⁵²⁷ As aforementioned in para 2.3 above, this discrimination has its roots in the colonial era when European

⁵²² Pelican 2013 *Anthropology Today* 13.

⁵²³ See para 2 and 3(2) of the Constitution of the Republic of Cameroon.

⁵²⁴ See para 3(2) of the Constitution of the Republic of Cameroon.

⁵²⁵ Other international instruments that Cameroon is signatory to are the ICCPR, ICESCR, CERD, CEDAW, CRC, ILO Convention No. 169 just to name a few, all these instruments are aimed at protecting and promoting the fundamental human rights of the entire population including indigenous peoples.

⁵²⁶ Egbe 2001 <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1216.pdf>.

⁵²⁷ Dkamela et al 2014 *Ecology and Society: A Journal of Integrative Science for Resilience and Sustainability* 1-2.

colonisers alienated indigenous peoples' lands and prevented them from accessing the resources therein. Subsequently, following global concerns over effective forest management, the post-colonial government saw a need for public participation and an inclusive system of government where participative decision-making is fundamental for the realisation of sustainable forest management.⁵²⁸ This led to the enactment of the Forestry and Wildlife Law No. 94/01 of 20 January 1994, and its implementation Decree No. 95-531-PM of 23rd August 1995 aimed at including indigenous communities in forestry management programmes, as well as granting ownership and exploitation rights (council forests) of some forested areas to the local communities.⁵²⁹ The Forestry Law gives specific directions on sustainable use of forests as well as permits indigenous peoples to benefit from revenues realised from the exportation of natural resources in improving their livelihood.⁵³⁰

The Forestry Law of 1994 classified the forests area into two parts namely: PFE and NPFE.⁵³¹ The PFE, otherwise known as State Forests, comprises state and council forests exclusively owned and managed by the State.⁵³² The NPFE, also known as unclassified forests, include communal and community forests belonging to private individuals.⁵³³ Although the Forestry Law aimed at ensuring participatory management of resources with local communities, regrettably, the expectations set by the Forestry Law have not been realised as far as indigenous peoples are concerned. In essence, the Forest Laws have been ineffective in addressing the socio-economic, cultural and ecological conditions which indigenous peoples need for local development and survival.⁵³⁴ There are some contentions that a policy aimed at redressing systemic injustices and promoting public participation excludes indigenous peoples during the negotiation and

⁵²⁸ Alemagi et al 2013 *Journal of Sustainable Development* 8-9.

⁵²⁹ Alemagi et al 2013 *Journal of Sustainable Development* 8.

⁵³⁰ Janville 2013 <http://www.focusonland.com/silo/files/cameroon-experiences-with-transferring-forest-rightspdf>; Alemagi et al 2013 *Journal of Sustainable Development* 9.

⁵³¹ See Part III, Section 20 of the Forestry Law of 1994.

⁵³² Chapter I, Section 21-33 of the Forest Law of 1994.

⁵³³ Chapter II, Section 34 of the Forest Law of 1994.

⁵³⁴ Alemagi 2010 *Land Use Policy* 932-933.

adoption process, thereby discriminating against them and defeating the purpose of inclusive participation in accessing and exploiting forest resources.⁵³⁵ Additionally, although the Forestry Law, through Order No. 0520/MINATP/MINFI/MINFOF of 2010 permits indigenous peoples to share in forest royalties paid by logging companies, scholars attest that this process has been unsuccessful.⁵³⁶ The Pygmy communities argue that they have not been getting their own share of the proceeds paid by logging companies meant for the development of their communities, and this attitude, according to Egbe, conflicts with section 85 of the Forestry Law.⁵³⁷

More so, the Forestry Law of 1994 has privatised all land and named it state land.⁵³⁸ Indigenous peoples were only granted customary rights, meaning they could only harvest all forest, wildlife and fisheries products for personal use, excluding protected species.⁵³⁹ This restriction implies that indigenous peoples could not sell forestry products which categorically explains the view of Egbe that “the new forestry law has certainly departed from the previous restricted definition of customary right”.⁵⁴⁰ As a result, indigenous communities are frustrated with the new Forestry Law and maintain that their communities remain under-developed while their lands and resources have been, and continue to be appropriated to their own detriment.⁵⁴¹ There is therefore a need to revisit the Forestry Law and implement a more comprehensive forest policy that takes into consideration the immediate needs of indigenous communities such that they stop experiencing persistent marginalisation.



⁵³⁵ Egbe 2001 *Journal of African Law* 43.

⁵³⁶ Commonwealth 2013 Report of the Commonwealth Expert Team: Cameroon Legislative and Municipal Elections 17.

⁵³⁷ Egbe 2001 *Journal of African Law* 49.

⁵³⁸ Izsák 2013 Report of the Independent Expert on Minority Issues: Mission to Cameroon 12. Section 8 of the Forestry Law.

⁵⁴⁰ Egbe 2001 *Journal of African Law* 28.

⁵⁴¹ Izsák 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 12; Alemagi 2010 *Land Use Policy* 928-936.

3.3 *The reception of international law in Cameroon*

Cameroon is a sovereign country with a unique legal system: she inherited both common and civil law system from her former colonial masters, Britain and France, respectively. As such, both common law and civil law are practiced in different parts of the country. However, other national legal instruments are in place to address the different areas of life such as criminal law, criminal procedure and civil status of natural persons. Legislation constitutes the principal source of law in Cameroon. So too are customary practices and laws that are not repugnant to natural justice, equity and good conscience. In addition, international law is law in Cameroon. Unlike some legal systems, international law in Cameroon is self-executing: there is no need for any additional municipal legislation to be enacted for international law to take effect.

The reception of international law in Cameroon's legal system is governed by Article 45 of the 1996 Constitution states thus:

Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.⁵⁴²

Based on the contents of this constitutional provision, the application of any international instrument in Cameroon is automatic. Per Article 45 of the Constitution, any international instrument that has been signed and ratified by Cameroon automatically becomes law. There is no need for any internal process aimed at enacting such into law.

Cameroon has ratified numerous international instruments, at global and regional levels. Common to all these international human rights instruments is the fact that they define the substantive content of rights and impose obligations upon States Parties. The nature of these obligations varies, including the obligation to respect, protect and promote the rights contained in the instruments. In fulfilment of these obligations, a State Party may have to embark on numerous administrative and

⁵⁴² Art 45 of the Constitution of the Republic of Cameroon.

institutional reforms. In the following discussion, specific international human rights instruments that are related to indigenous peoples at global and regional levels have been examined. Indigenous peoples are human beings: this means that they are entitled to all the rights that every human being is entitled to (base on the concept of universality). Then, classified as a vulnerable group, they are the subject of specific international human rights instrument. At regional level, they are entitled to the rights provided for in the regional human rights instrument.

3.3.1 International instruments

Within the UN human rights system, numerous international human rights instruments exist. However, those that specifically address the substantive contents of rights (civil, political, economic, social and cultural) are the UN; UDHR, ICCPR, ICCPR, ILO Convention No. 169 and the UNDRIP. Specific aspects of these instruments and how they relate to Indigenous Peoples are discussed below.

3.3.1.1 UDHR

The UDHR is nothing but a Declaration: in international legal discourse, it is categorised as “soft law” meaning that it is a persuasive source of law with a non-binding effect. However, the UDHR constitutes the founding document of the entire UN human rights movement and system as it lays down the very minimal standards of the way states must treat their people. As such, the UDHR is couched in very straightforward language, and espouses norms such as universality, equality, interrelatedness, indivisibility of rights. For example, words such as “any one” “everyone”, “no one”, are used to suggest that the right in question is available to everyone. In addition, the UDHR captures and expresses the fundamental human rights idea that all human beings are created equal: they are equal in worth and dignity, and therefore ought to be granted equal recognition before the law and protection by the law. Related studies confirm that the UDHR is based on the principle of universality of human rights and

fundamental freedoms.⁵⁴³ This statement has been captured in the Preamble thus:

Whereas recognition of the inherent dignity and of the equal inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.⁵⁴⁴

Although the UDHR makes no express reference to indigenous peoples, some provisions such as Articles 1 and 2 expressly secure the rights to equality and entitlement to all rights and freedoms without distinction. These clauses relating to non-discrimination of any kind could be construed to mean that the rights stipulated in the UDHR are available to everyone, including indigenous peoples. Nkongolo opines that the right of everyone to participate in the government of his or her country is fundamental, and measures should be put in place to ensure that local communities participate fully in decision-making processes that have a direct bearing on their well-being.⁵⁴⁵

3.3.1.2 ICCPR

A core international instrument that articulates the substantive civil and political rights is the ICCPR. Providing a list of civil and political rights, the wording of the ICCPR in most instances is similar to that of the UDHR. The concept of universality of these rights is seen in the way the rights are couched: "everyone has a right to...", "no one shall be ...". Given such universal expressions, the ICCPR clearly prohibits every form of discrimination. This is clearly the purport of Article 2(1) where it is stated as follows:

Each State Party to the present Covenant [ICCPR] undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁴⁶

⁵⁴³ Peter *The United Nations Human Rights System* 3.

⁵⁴⁴ Para 1 of the Preamble to the UDHR.

⁵⁴⁵ Nkongolo 2014 *African Journal of Democracy and Governance* 83.

A simple interpretation of the wording of Article 2(1) of the ICCPR suggests that every form of discrimination against any human being is prohibited. The prohibition should be followed by steps taken by States Parties to the ICCPR to ensure that the rights contained therein are respected. Even though indigenous peoples are not categorised in this non-discriminatory clause, Article 2(1) makes it unlawful for anyone to be subjected to any form of discrimination based on any of the enlisted grounds. The principle of non-discrimination and equality before the law as well as equal protection under the law without distinction is fundamental to the effective protection of human rights.⁵⁴⁷ States are therefore obliged to respect and ensure that everyone in the country and within its jurisdiction benefit from all the relevant rights guaranteed in the Covenant without distinction.⁵⁴⁸ In addition, states are expected to protect individuals against acts committed by private persons or entities which might impede the full enjoyment of the rights contained in the Covenant, as failure entails a violation to carry out their obligations, especially in adopting measures that deter, penalise, investigate or amend such damages.⁵⁴⁹

Equally relevant is the fact that States Parties are obligated to ensure that both men and women equally realise these rights. By so doing, the state is expected to adopt positive measures that promote and ensure the fulfilment of these rights without discrimination of any kind.⁵⁵⁰ To this effect States Parties may implement affirmative action policies to eliminate actions that incite discriminatory practices condemned by the Covenant.⁵⁵¹

⁵⁴⁷ HRC 1989 General Comment No. 18: Non-discrimination para 1.

⁵⁴⁸ United Nations 2004 *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* 1-2, 5; OHCHR 1989 *General Comment No. 18: Non-discrimination* para 3 and 4.

⁵⁴⁹ United Nations 2004 *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* para 1 and 3.

⁵⁵⁰ OHCHR 2000 *General Comment No. 28: Article 3 The Equality of Rights between Men and Women* para 2, 3 and 4.

⁵⁵¹ OHCHR 2000 *General Comment No. 28: Article 3 The Equality of Rights between Men and Women* para 10.

3.3.1.3 ICESCR

The ICESCR outlines a range of economic, social and cultural rights of natural persons, such as the right to education, housing, health and well-being, social security, adequate standards of living and cultural life. Like the ICCPR, it makes no specific reference of indigenous peoples. However, just as the ICCPR prohibits every form of discrimination on the grounds listed therein, the ICESCR obliges States Parties to take steps to ensure that the rights contained in the ICESCR are available to everyone. States Parties to the Covenant are under a duty to realise these rights. Thus, international guarantees of socio-economic rights as provided in the ICESCR and the other international human rights instruments are subject to two principles namely: “availability of resources” and “progressive realisation”. This in effect implies that access to socio-economic rights is not automatic or immediate, as it depends on state’s available resources and the possibility of realising these rights over a certain period (“progressive realisation”).⁵⁵² In other words, the realisation of socio-economic rights must pass the test of ‘availability’ and “progressive realisation” of resources.⁵⁵³ Given the above, General Comment No. 3 has outlined two essential obligations which necessitate immediate redress, that is: “undertake to guarantee” meaning that relevant rights “will be exercised without discrimination”.⁵⁵⁴ This permits States Parties to take effective measures, including the adoption of legislation within a specified period to ensure that these rights are protected and effectively enforced.⁵⁵⁵ General Comment No. 3, acknowledges that discriminatory practices can only be removed where a comprehensive legislation is put in place to realise socio-economic rights such as health and education.⁵⁵⁶ Article 2(2) of the ICESCR states as follows:

⁵⁵² Chenwi 2013 *De Jure Law Journal* 742-745.

⁵⁵³ Chenwi 2013 *De Jure Law Journal* 743.

⁵⁵⁴ OHCHR 1990 *CESCR General Comment No. 3: The Nature of States Parties’ Obligations* para 1.

⁵⁵⁵ OHCHR 1990 *CESCR General Comment No. 3: The Nature of States Parties’ Obligations* para 2.

⁵⁵⁶ OHCHR 1990 *CESCR General Comment No. 3: The Nature of States Parties’ Obligations* para 3.

The States Parties to the present Covenant undertake to guarantee the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Inferring from Article 2(2) of the ICESCR, every State Party to the ICESCR must take steps to ensure that the rights contained in the ICESCR are enjoyed by everyone including indigenous peoples. In fact, common articles 1(1) and 1(2) as highlighted above can be interpreted as making direct reference to indigenous peoples. These provisions reveal that self-determination is mandatory for the recognition of indigenous peoples' rights as it empowers and enables them to take part fully in the internal and local affairs, improve their socio-economic and cultural rights, preserve their identity and safeguard their survival through decision-making processes.⁵⁵⁷

Accordingly, the Limburg Principle indulges states to take necessary steps including legislative, administrative, and judicial measures to ensure the fulfilment of socio-economic and cultural rights.⁵⁵⁸ Furthermore, the obligation to achieve progressively the full realisation of these rights limits states ability in ensuring that these rights are realised.⁵⁵⁹ Thus, states are expected to progressively realise these rights based on the availability of resources within its states including financial support from international community in collaboration with international co-operation and assistance.⁵⁶⁰

In line with the above, the Maastricht Principles have also imposed legal obligations on State Parties to respect, protect and fulfil the social, economic and cultural rights of its population within and outside the territories.⁵⁶¹ The obligation

⁵⁵⁷ Foster 2001 *European Journal of International Law* 141, 143.

⁵⁵⁸ *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1987).

⁵⁵⁹ *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1987).

⁵⁶⁰ *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1987); para 13 of OHCHR 1990 CESCR General Comment No. 3: *The Nature of States Parties' Obligations* Art. 2.

⁵⁶¹ *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (1997).

to respect calls on states to refrain from activities that may impede the enjoyment of social, economic and cultural rights,⁵⁶² while the obligation to protect permits states to adopt legislative measures that discourage non-state actors from engaging in actions that might result in future violations.⁵⁶³ It further necessitates states to engage upon strategies that prevent possible threats most likely to limit the enjoyment of socio-economic and cultural rights. On the other hand, the obligation to fulfil allows states to take reasonable steps to adopt judicial, legislative and administrative measures as well as establish an international and enabling environment favourable for the realisation of economic, social and cultural rights, with regards bilateral and multilateral trade, investment, environmental protection, taxation and finance and development cooperation.⁵⁶⁴

3.3.1.4 ILO Convention No. 169



ILO Convention No. 169 is the first international treaty adopted by the International Labour Conference of the ILO in 1989 to promote and protect the rights of indigenous peoples. Cameroon has signed the ILO Convention No. 169 but has yet to ratify it. Since its adoption, only 20 states have ratified it, of which only one is an African state.⁵⁶⁵ It is speculated that Cameroon's unwillingness to ratify this instrument is partly attributable to fears related to disputes over land rights, natural resources and protected areas.⁵⁶⁶ ILO Convention No. 169 replaced Convention 157 that had been widely criticised on many aspects. Mainstreaming indigenous communities into the dominant society meant an extinction of their cultural identities. It also implied that major decisions concerning their internal affairs and development would be made by the wider society. ILO Convention No. 169, amongst others, covers a wide range of issues

⁵⁶² Principle 19-22 *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (1997).

⁵⁶³ Principle 23-27 *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (1997).

⁵⁶⁴ Principle 28-35 *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (1997).

⁵⁶⁵ The Central African Republic is the only African country that has duly ratified the ILO Convention No. 169 with the hope that other African countries will follow suit.

⁵⁶⁶ Pyhälä 2012 *What Future for the Baka? Indigenous Peoples' Rights and Livelihood Opportunities in South-East Cameroon: IWGIA Report 13* 51-52.

including the protection of indigenous peoples' cultures, identity, languages, religions, land, natural resources, and distinct ways of life which would enable them to decide their own priorities for development.⁵⁶⁷

The ILO Convention No. 169, like other international instruments mentioned above, aims *inter alia*, at promoting equality and eliminating discriminatory practices against indigenous peoples. In addition, it aims at ensuring that indigenous peoples participate in decision-making processes that might have an impact on their well-being. Furthermore, ILO Convention No. 169 also deals with other issues related to indigenous peoples such as employment;⁵⁶⁸ vocational training;⁵⁶⁹ education;⁵⁷⁰ health and social security;⁵⁷¹ customary law;⁵⁷² traditional institutions;⁵⁷³ languages;⁵⁷⁴ religious beliefs;⁵⁷⁵ and cross border cooperation.⁵⁷⁶ According to Joona, the implementation of this treaty is a complete transformation from the common notion of colonialism to a modern concept of indigeness.⁵⁷⁷ ILO Convention No. 169 imposes an obligation on States Parties to consult, in good faith, and allow indigenous peoples to participate at every stage of every decision-making process on matters that might have direct bearing on their welfare.⁵⁷⁸ It is against this background that studies have concluded that participation and consultation are vital elements of the Convention.⁵⁷⁹

Ever since its adoption, ILO Convention No. 169 has not only influenced national legislation but has equally been applied and implemented by some human rights bodies at national, regional and international levels, including domestic courts

⁵⁶⁷ Joona 2010 *International Community Law Review* 226.

⁵⁶⁸ Art 20 of the ILO Convention No. 169.

⁵⁶⁹ Art 21, 22 and 23 of the ILO Convention No. 169.

⁵⁷⁰ Art 26, 27, 28, 29, 30 and 31 of the ILO Convention No. 169.

⁵⁷¹ Art 24 and 25 of the ILO Convention No. 169.

⁵⁷² Art 8, 9 of the ILO Convention No. 169.

⁵⁷³ Art 4, 6, 8 of the ILO Convention No. 169.

⁵⁷⁴ Art 28 of the ILO Convention No. 169.

⁵⁷⁵ Art 5 of the ILO Convention No. 169.

⁵⁷⁶ Art 32 of the ILO Convention No. 169.

⁵⁷⁷ Joona 2010 *International Community Law Review* 219-227.

⁵⁷⁸ Art 6 of the ILO Convention No. 169.

⁵⁷⁹ ILO *Understanding the Indigenous and Tribal People Convention, 1989 (N0169)* 1.

particularly the Inter-American Court.⁵⁸⁰ A core obligation imposed upon States Parties by this Convention is the responsibility to adopt, review and implement national legislation and policies that address the political, social, economic and cultural challenges faced by indigenous peoples and communities.⁵⁸¹ The principle of consultation and participation elucidated throughout this Convention is a crucial guiding principle which must be applied by all States Parties to ensure the effective implementation of the Convention and realisation of indigenous peoples' rights.⁵⁸² States Parties are required to develop, plan, co-ordinate, execute and evaluate, in co-operation with indigenous peoples, on any proposed legislative measures to secure the rights of indigenous peoples.⁵⁸³

Unfortunately, Cameroon, like most States Parties to ILO Convention No. 169, is still reluctant to revise its national laws to address the needs of indigenous peoples. This is in spite the fact that international law applies directly without domestication. It is expected that national legislation should be drafted to give recognition to indigenous peoples' rights.⁵⁸⁴ For instance, in Cameroon, indigenous peoples still undergo generalised and marginalised forms of discrimination. In the words of Pelican, they have passed through phases of hope and despair, struggle and compliance'.⁵⁸⁵ In spite of the fact that ILO Convention No. 169 has provisions that require compliance at national levels, in Cameroon, indigenous peoples do not have access to health care as most health centres are located in major cities, many kilometres away from indigenous communities.⁵⁸⁶ In addition, indigenous peoples register the lowest rate in education because factors such as long distances, humiliation, costs of school materials and language, lack of adequate infrastructure with basic facilities such as electricity are barriers to accessing education in the country, as teachers are reluctant to

⁵⁸⁰ ILO *Understanding the Indigenous and Tribal People Convention, 1989 (N0169)* 5.

⁵⁸¹ ILO *Understanding the Indigenous and Tribal People Convention, 1989 (N0169)* 6.

⁵⁸² See generally the ILO Convention No. 169.

⁵⁸³ See Article 2(1) and 33(1)(2) of the ILO Convention No. 169.

⁵⁸⁴ Pelican 2013 *Anthropology Today* 16.

⁵⁸⁵ Pelican 2013 *Anthropology Today* 16.

⁵⁸⁶ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 10.

live in such underdeveloped areas as those currently inhabited by indigenous communities.⁵⁸⁷ It therefore implies that Cameroon is in violation of its international obligations as laid down in Article 27 and 28 of ILO Convention No. 169 which requires addressing the special needs, histories, languages, knowledge and technologies including the social, economic and cultural objectives of indigenous peoples.⁵⁸⁸ It is observed that if the UN definition of indigenous peoples is adopted and effectively implemented at national levels, then the many challenges indigenous peoples are facing will be brought to a halt.⁵⁸⁹ As they will be granted the official recognition and special protection they deserve as a distinct group, paying attention to their customs and traditions.

3.3.1.5 UNDRIP

Adopted by the UN General Assembly on 13 September 2007, UNDRIP has a non-binding status.⁵⁹⁰ However, it imposes a moral duty on states to respect and implement the provisions outlined therein in good faith. As mentioned in Chapter one, after several years of negotiations, the UNDRIP was supported by a majority of the States (144), although 4 states voted against the Declaration,⁵⁹¹ while 11 abstentions were recorded.⁵⁹² The Declaration marked a turning point for indigenous peoples' long history of systemic injustices and gross marginalisation. Following, several decades of exclusion and subjugation, there was need for the enactment of a specific legislation that would address the long-standing violations of indigenous peoples' rights globally. Cameroon is amongst the 144 states that voted in support of the Declaration. The Declaration provides for provisions respecting and promoting indigenous peoples' rights to self-determination,⁵⁹³

⁵⁸⁷ Kamga 2011 *African Human Rights Law Journal* 177.

⁵⁸⁸ See Articles 27 and 28 of the ILO Convention No.169.

⁵⁸⁹ Personal communication by way of unstructured interview with two senior officials of CED Yaoundé, Cameroon on the 21 of January 2016.

⁵⁹⁰ UNDRIP.

⁵⁹¹ These four states USA, Australia, Canada and New Zealand have later reversed their decision and supported the declaration.

⁵⁹² The 11 absent States are Burundi, Nigeria, Columbia, Bangladesh, Russia, Samoa, Ukraine, Azerbaijan, Bhutan Georgia and Kenya still maintain their decision.

⁵⁹³ Art 3, 4 of the UNDRIP.

rights over their ancestral lands and natural resources;⁵⁹⁴ respect to their spiritual, linguistic repertoires;⁵⁹⁵ culture and survival as distinct peoples.⁵⁹⁶ It therefore requires States to consult and cooperate in good faith with indigenous peoples' representatives concerning any legislative or administrative measures taken during exploitation or exploration of natural resources that may have a negative impact on their territories.⁵⁹⁷

The Declaration further guarantees the recognition of indigenous peoples' individual and collective rights and recommends the effective and active participation in the political, social, economic and cultural affairs of their country.⁵⁹⁸ In addition, it recognises indigenous peoples' rights to decide their own development strategies and requires States to improve indigenous peoples' social and economic conditions with regards education, health, social security, sanitation and housing without discrimination.⁵⁹⁹

3.4 Regional instruments

In addition to global instruments, at regional level there exists the Banjul Charter with substantive rights that transcend civil, political, economic, social and cultural rights. Having been signed and ratified by Cameroon, the Banjul Charter is applicable to Cameroon as law.

3.4.1 The Banjul Charter

The Banjul Charter was adopted on 27 June 1981 and it became effective on 21 October 1986.⁶⁰⁰ This regional human rights instrument aimed at developing a framework for the promotion and protection of human and peoples' rights at regional and national levels. All African States, with the exception of South

⁵⁹⁴ Art 25, 26, 27, 28, 29 of the UNDRIP.

⁵⁹⁵ Art 11 and 12 of the UNDRIP.

⁵⁹⁶ Art 31 of the UNDRIP.

⁵⁹⁷ Art 18 and 32(2) of the UNDRIP.

⁵⁹⁸ Art 5, 7 of the UNDRIP.

⁵⁹⁹ Art 20, 21, 23, 24, 32, 33 of the UNDRIP.

⁶⁰⁰ Banjul Charter.

Sudan, have ratified the Banjul Charter.⁶⁰¹ Dersso opines that the Banjul Charter recognises all classes of rights: civil, political, economic, social, cultural and collective rights of peoples.⁶⁰² These features earned it some credits, despite negative views from other scholars and activists over the nature of these rights.⁶⁰³ According to Kiwanuka, the Banjul charter differs from other human rights instruments as a result of the insertion of the notion “peoples”.⁶⁰⁴ The use of the word ‘all people’ throughout the Banjul Charter remains a contentious issue in international human rights law.⁶⁰⁵ Given the complex and controversial nature of the meaning of the term “peoples” it is argued that the Banjul Charter might have deliberately avoided defining the term “peoples” just like the UNDRIP did with the concept of indigenous peoples.⁶⁰⁶

However, his explanation of the meaning of “peoples” as used in the Banjul Charter relates to the African ideology of a person in the society or in relation to their situation in society.⁶⁰⁷ He further views the term through the lens of self-determination, referring to an ethnic community that officially assumes that identity owing to a communal entitlement.⁶⁰⁸ Thus, it is essential to grant them some degree of political, economic, social and cultural rights to independently manage their internal and local affairs.⁶⁰⁹ Put simply, to Kiwanuka, the word “peoples” in an African context are a group of persons suffering from generalised forms of marginalisation and seeking autonomy. In this instance, Kiwanuka

⁶⁰¹ Cameroon signed the Banjul Charter on the 23/07/1989, ratified it on the 20/06/1989 and finally deposited on the 18/09/1989; Anon date unknown <http://www.achpr.org/instruments/achpr/ratification/>.

⁶⁰² Dersso 2006 *African Human Rights Law Journal* 359.

⁶⁰³ Dersso 2006 *African Human Rights Law Journal* 359.

⁶⁰⁴ Kiwanuka 1988 *The American Journal of International Law* 81.

⁶⁰⁵ Kiwanuka 1988 *The American Journal of International Law* 81.

⁶⁰⁶ It is almost a common tradition with most international instruments such as the UNDRIP to escape long debates. The UNDRIP had preferred that each state define the concept based on the own understanding of the word. This argument might have been the intention of the ACHPR in this case.

⁶⁰⁷ Kiwanuka 1988 *The American Journal of International Law* 83.

⁶⁰⁸ Kiwanuka 1988 *The American Journal of International Law* 86.

⁶⁰⁹ Kiwanuka 1988 *The American Journal of International Law* 83, 86.

makes an allusion to colonised and oppressed peoples in the community (minorities and indigenous peoples).⁶¹⁰

The Banjul Charter recognises individual and collective fundamental human rights to health;⁶¹¹ education;⁶¹² equality;⁶¹³ non-discrimination and to freely participate in the government of one's country.⁶¹⁴ In summation, the Banjul Charter protects civil and political, social, economic and cultural rights.⁶¹⁵ It emphasises the rights to existence;⁶¹⁶ to freely dispose of wealth and natural resources;⁶¹⁷ to economic, social and cultural development;⁶¹⁸ to peace and security;⁶¹⁹ and to a general satisfactory environment favourable for development.⁶²⁰ The Banjul Charter ensures the universality of all human rights and fundamental rights on the African Continent. However, to ensure the effective implementation of the Banjul Charter, a special enforcement mechanism was established to safeguard the effective enforcement and monitoring of the Banjul Charter known as the Commission. The Commission is an organ established within the Banjul Charter with a mandate to protect human and peoples' rights and ensure their protection within the Banjul Charter.⁶²¹

Cameroon as a State Party, ratified the Banjul Charter on June 20 1989, and since then it has been praised by the Commission for honouring its obligations and submitting its reports on a regular basis as set out in Article 62 of the Banjul Charter, at the 54th Ordinary.⁶²² According to the Commission, the country has implemented mechanisms required for the promotion and protection of human

⁶¹⁰ Kiwanuka 1988 *The American Journal of International Law* 87-88.

⁶¹¹ Art 16 of the Banjul Charter.

⁶¹² Art 17, 18 of the Banjul Charter.

⁶¹³ Art 19 of the Banjul Charter.

⁶¹⁴ Art 20, 22 of the Banjul Charter.

⁶¹⁵ Para 8 of the Preamble to the Banjul Charter.

⁶¹⁶ Art 4 of the Banjul Charter.

⁶¹⁷ Art 21 of the Banjul Charter.

⁶¹⁸ Art 20 of the Banjul Charter.

⁶¹⁹ Art 23 of the Banjul Charter.

⁶²⁰ Art 24 of the Banjul Charter.

⁶²¹ Art 30 of the ACHPR.

⁶²² Para 7 of the African Union 2014 *Concluding Observations on the 3rd Periodic Report of the Republic of Cameroon*.

rights such as the establishment of an inter-ministerial committee responsible for monitoring the implementation and decisions of the international and regional human rights promotion and protection mechanisms.⁶²³ However, much still needs to be done in the area of indigenous peoples' rights.

3.4.2 *The African Court on Human and Peoples' Rights*

The African Court on Human and Peoples' Rights⁶²⁴ was established by the Protocol to the African Court on Human and Peoples Rights on the Establishment of the African Court,⁶²⁵ in 1998. The African Court was aimed at re-enforcing and complementing the activities of the Commission's protective mandates of human and people's rights within the African continent.⁶²⁶ In essence, the establishment of the African Court was considered a comprehensive and effective system of human rights protection within the African continent initiated by a global need to adopt regional human rights systems that could effectively eradicate human rights violations at the regional and national levels.⁶²⁷ More so, the African Court empowers and ensures the smooth running of the Commission as well as acting as an Appeal Court to the Commission.⁶²⁸ In practical terms, the African Court has powers to hear cases from the Commission,⁶²⁹ since it receives complaints directly from individuals or related NGO's against States Parties for alleged human rights violations.⁶³⁰ Complaints brought before the African Court must involve States Parties that have signed a declaration acknowledging the African Court's competence as specified in 5(3).⁶³¹

⁶²³ Para 9 African Union 2014 *Concluding Observations on the 3rd Periodic Report of the Republic of Cameroon*

⁶²⁴ The African Court on Human and Peoples Rights hereinafter the African Court hereinafter the African Court.

⁶²⁵ Protocol to the African Court on Peoples Human Rights on the Establishment of the African Court on Human and Peoples hereinafter the Protocol.

⁶²⁶ See for instance the Preamble and article 2 of the Protocol on Human and Peoples Rights.

⁶²⁷ African Union 2010 *FIDH Practical Guide on the African Court on Human and Peoples' Rights* 19-20.

⁶²⁸ Elsheikh 2002 *African Human Rights Law Journal* 254-256.

⁶²⁹ For instance, Article 5(1) (b) (c) of the Protocol affords a State Party (Complainant and Respondent that have filed a claim at the Commission to approach the African Court.

⁶³⁰ For details see Article 8 of the Protocol.

⁶³¹ For further reading on this see Article 5(3) and 34(6) of the Protocol.

The adoption of this judicial institution designed to resolve cases of grave human rights violations in Africa was celebrated by several minority and indigenous groups who thought this forum would bring to an end the long-standing human rights violations and conflicts that existed amongst states as well as individuals and their states.⁶³² Unfortunately, the African Court failed to meet the expectations of several indigenous and minority groups particularly in Cameroon and other African countries. For instance, the “Truth to be Told” Network, an NGO in Kenya headed by Hussein Barre and Ahola, and Ejembi who is head of the Civil Liberties Organisation, an indigenous group in Nigeria,⁶³³ expected to have redress from the African Court without domestic interference given the fact the decisions of the African Court are binding on all States Parties.⁶³⁴ Surprisingly this has not been the case as some critics have concluded that the African Court is more concerned with logistic issues rather than treating cases.⁶³⁵ It has been equally very challenging for individuals and NGOs to gain access to the African Court given that States are first required to make declarations before granting access to this Court.⁶³⁶ Recently there has been a growing concern over integrating the African Court on Human and Peoples Rights and the African Court of Justice to become an African Court of Justice and Human Rights, thereby creating a separate human rights section.

3.5 Institutional mechanisms

3.5.1 NCHRF

The NCHRF was established by Law No. 2004/016 of 22 July 2004 and set up by Decree No. 90/1459 of 8 November 1990 to regulate the organisation and

⁶³² Hansungule “African courts and the African Commission on Human and Peoples’ Rights” 233.

⁶³³ Civil Liberties Organisation, an indigenous group in Nigeria hereinafter Akweyi people.

⁶³⁴ Wachira 2008 *Report by the African Court on Human and Peoples’ Rights: Ten Years on and Still no Justice* 11.

⁶³⁵ Wachira 2008 *Report by the African Court on Human and Peoples’ Rights: Ten Years on and Still no Justice* 11.

⁶³⁶ It is interesting to mention that since its inception only two countries Mali and Burkina Fasso effectively made a declaration for individuals and NGO’s in their respective countries.

functioning of the NCHRF in Cameroon.⁶³⁷ The main objective of this human rights institution is to investigate alleged human rights violations as well as advise on other related human rights issues.⁶³⁸ The Commission is an independent institution charged with the mandate to consult, monitor, evaluate, promote and protect human rights.⁶³⁹ Apart from education, housing, health, work, environment and developmental issues, the Commission is also obliged to protect and promote women, children, and persons with disabilities as well as indigenous peoples' rights.⁶⁴⁰ It is also mandated with the following responsibilities:

- receive all denunciations relating to violations of human rights and freedoms;
- conduct all enquiries and carry out all the necessary investigations on violations of human rights and freedoms and report thereon to the President of the Republic;
- refer cases of violations of human rights and freedoms to the competent authorities;
- as and when necessary, inspect penitentiary establishments, police stations and gendarmerie brigades, in the presence of the competent State Counsellor or his representative; such inspections may entail the drafting of a report submitted to the competent authorities;
- study all matters relating to the promotion and protection of human rights and freedoms;

⁶³⁷ See Section 1(1) of Law No 2004/016 of 22nd July 2004 to set up the organisation and functioning of the National Commission on Human Rights and Freedoms, hereinafter The Commission or NCHRF.

⁶³⁸ *Report Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties due in 2006* (2009) 11.

⁶³⁹ See Section 1(2) of Law No. 2004 of 22 July 2004.

⁶⁴⁰ Effiom 2013 *E-Journal of International and Comparative Labour Studies* 68-72.

- propose to public authorities measures to be taken in the area of human rights and freedoms;
- popularise by all possible means, national legislation relating to human rights and freedoms and forge a human rights culture in the people through education, information and the holding of conferences and seminars;
- collect and disseminate international documentation relating to human rights and freedoms;
- liaise, where necessary with non-governmental organisations working for the promotion and protection of human rights and freedoms;
- maintain, where necessary, relations with the United Nations Organisation, international organisations, and foreign committee or associations pursuing similar goals; and inform the minister in charge of external relations thereon.⁶⁴¹

From the above, it is evident that the Commission does not work in isolation, but in collaboration with both private individuals, groups, national and international organisations, civil society and other structures dealing with cases of gross human rights violations. Its mandate covers all areas of rights ranging from civil, political, social, economic and cultural rights in Cameroon. As an organ of the state, its resources are derived from annual state budget allocations and other support from national and international partners, donations and legacies.⁶⁴² This implies that the Commission is unable to effectively carry out its mandate if the state fails to disburse funds. For instance, this has been the challenge in many cases, especially concerning the Sabga Mbororo Community and El Hadi Ahmadou Danpoulo where the Sabga community members in the North-West Province have repeatedly reported cases of alleged human rights violations by Mr Danpoulo, a wealthy business Fulani in Bamenda. Although these reports

⁶⁴¹ See Section 2, Chapter 2 of Law No. 2004 of 22 July.

⁶⁴² See Chapter IV Section 20, para 1 and 2 of the Law No. 2004 of 22 July.

have long been forwarded to the NCHRF head office in Yaoundé for investigation, budgetary constraints have prevented the Commission from carrying out proper investigations and making *in loco* visits to the area.⁶⁴³ This has hindered the Commission's ability in discharging its duties and granting justice to human rights victims.⁶⁴⁴ Apart from the NCHRF, other institutions in Cameroon (Administrative institutions such as relevant Ministries) are involved in the protection and promotion of indigenous peoples' rights in Cameroon. These are as follows: -

3.6 Administrative institutions

3.6.1 MINEDUB

MINEDUB has also been influential in promoting the rights of indigenous peoples, particularly in the area of education. MINEDUB was established by Decree No. 2005/140 of 25 April with the responsibility to provide schools in all regions in the country and to ensure that all children of school age have access to primary education. In this regard, Decree No. 2010/0247/PM of 26 February 2010 permits the state to allow Councils to exercise control on issues concerning basic education from the 2010 financial year. Following the Decree, MINEDUB is obliged to construct, furnish, manage and maintain all nursery, primary and pre-school establishments such as school structures, classrooms, offices, playgrounds and toilets. It has the duty to manage, maintain and monitor the hygienic conditions of these schools.⁶⁴⁵

In addition to the above, the United Nations International Children's Emergency Fund,⁶⁴⁶ PCI in collaboration with MINEDUB has introduced the use of Baka languages in a few Baka primary schools to boost the level of school attendance by Baka children and reducing school drop-out rates within these communities.⁶⁴⁷ In addition, a pilot programme was carried out where school books, uniforms,

⁶⁴³ Personal communication by way of an unstructured interview with the Protection Officer at the NCHRF on the 20 January 2016, Yaoundé, Cameroon.

⁶⁴⁴ As clearly stated in Section 5(2) of Law No. 2004 of 22 July.

⁶⁴⁵ See generally Decree No. 2010/0247/PM of 26 February 2010.

⁶⁴⁶ United Nations International Children's Emergency Fund hereinafter UNICEF.

⁶⁴⁷ Izsák 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 1.

bags and other teaching materials were distributed to children of school age, including the employment of well-trained teachers to teach in the Baka language to encourage them attend and remain enrolled in schools.⁶⁴⁸ It was observed that MINEDUB on occasions deploys workers to engage with Baka parents, sensitise and educate them on the importance of education and the need to preserve other cultures.⁶⁴⁹ It is important to mention that apart from just donating school kits to children, these organisations and administrative institutions sometimes offer them scholarships to increase school enrolment and improve literacy rates among the Baka communities.⁶⁵⁰ However, it is worth noting that these services are not sustainable, not all indigenous children in all regions of Cameroon benefit from these scholarships, coupled with the fact that they are not donated on a regular or yearly basis. As such children are forced to drop out from school when the scholarships stop since parents are unable to afford the Bills.

3.6.2 MINFOF

MINFOF is a governing body charged with managing and monitoring the dense rain forests of Cameroon, including the resources therein. MINFOF was set up by Law No.94/01 of January 20, 1994 to regulate Forestry, Wildlife and Fisheries in the country.⁶⁵¹ This law has an implementing Decree No.2005/099 of 6 April 2005 aimed at regulating the activities of MINFOF and direct the enforcement of the Forestry Law of 1994 as it outlines the procedures and requirements for allocating forest concessions.⁶⁵² The Forest Law of 1994 was aimed at managing and regulating forest, wildlife and fishery resources. It also guarantees the sustainable development, environmental protection, conservation and use of resources in the country.⁶⁵³ MINFOF is responsible for regulating the exploitation



⁶⁴⁸ Izszak 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 13.
⁶⁴⁹ Personal Communication by way of unstructured interview with two senior staff members in MINEDUB Department of DPP on the 25 of January 2016. These programmes usually goes on for a period of two weeks.
⁶⁵⁰ Personal Communication by way of unstructured interview with two senior staff members in MINEDUB, DPPC on the 25 of January 2016.
⁶⁵¹ The Forestry Law was adopted by the National Assembly and later enacted by the President of the Republic of Cameroon.
⁶⁵² Anon date unknown <http://www.forestlegality.org/risk-tool/country/cameroon-0>.
⁶⁵³ See Part 1, Section 1 of the Forestry Law.

and exploration of timber and other forestry products with the consent of the populations concerned with the aim of safeguarding against environmental degradation and illegal exploitation of resources.⁶⁵⁴

In addition, to promote the rights of indigenous peoples, MINFOF in collaboration with MINAS, donated the sum of CFA 148 million to facilitate the implementation of the Indigenous Pygmies Development Plan under Forest/Environment Sector Development Programme.⁶⁵⁵ This financial support, amongst others, provided material, financial and logistical assistance to Pygmies in Djoum, Bipindi and Lolodorf sub-divisions in the South, Ngambe Tikar and Yoko in the Centre Regions.⁶⁵⁶ MINFOF, on the other, hand has implemented policies such as the levy fines on individuals and multi-national corporations charged with illegal exploitation of timber and violation of extraction policies.⁶⁵⁷ In a bid to improve the standard of living amongst the Pygmies, MINFOF and MINAS donated school material, food, financial, farming tools and inputs to indigenous communities.⁶⁵⁸ In 2009, MINFOF and MINAS jointly signed a Memorandum of Understanding to promote the PLP/PSFE.⁶⁵⁹ It was observed that despite government policies, illegal exploitation of timber in Cameroon is yet to be curtailed.⁶⁶⁰ This is because of government mal-practices, corrupt government officials charged with the responsibility in ensuring that extractive industries pay taxes and fines for violating exploitation policies or operating illegally, coupled with weak policies and lack of proper implementation of these laws.⁶⁶¹ As a result, indigenous peoples continue to suffer from forced evictions, extreme poverty because of non-

⁶⁵⁴ See Part 1, Section 8(2) of the Forestry Law.

⁶⁵⁵ Indigenous Pygmies Development Plan under Forest/Environment Sector Development Programme hereinafter PLP/PSFE.

⁶⁵⁶ Ministry of Justice Cameroon 2010 *Report of the Ministry of Justice on Human Rights in Cameroon in 2010* 292.

⁶⁵⁷ Alemagi and Kozak 2010 *Forest Policy and Economics* 555-556.

⁶⁵⁸ Ministry of Justice Cameroon 2010 *Report of the Ministry of Justice on Human Rights in Cameroon in 2010* 292.

⁶⁵⁹ Ministry of Justice Cameroon 2010 *Report of the Ministry of Justice on Human Rights in Cameroon in 2010* 291.

⁶⁶⁰ Alemagi and Kozak 2010 *Forest Policy and Economics* 559.

⁶⁶¹ See generally Cerutti and Tacconi 2006 *Working Paper* No. 35.

compensation for lost lands and resources caused by extractive companies, denial of rights to access land and natural resources.⁶⁶²

3.6.3 MINAS

MINAS was set up by Decree No. 2005/160 of 20 May 2005 and is mandated with the duty for safeguarding the welfare of all peoples in the country including the “marginal and vulnerable groups”. To this effect, two units have been established under the Department of National Solidarity, meant to combat social exclusion and promote national solidarity.⁶⁶³

In addition, to reduce poverty within Pygmy communities the government of Cameroon, in collaboration with MINAS, adopted a plan for the development of the pygmy peoples.⁶⁶⁴ Thus in July 2013, MINAS published phase 11 of its development plan for Pygmies peoples by executing the National Participatory Development Programme.⁶⁶⁵ To this effect, the sum of 800 million CFA francs was allocated to fund Pygmy activities in education, health and agriculture. Furthermore, Ministry of Economy, Planning and Regional Development,⁶⁶⁶ MINEPAT and MINAS under Decision No. 2/B of 9 April enforced government’s 2012 socio-environmental Convention leading to the nomination of 31 Service Heads for Social Action to begin the project in 31 council’s including the Centre, East and South regions of Cameroon.⁶⁶⁷ As part of the National Community Driven Programme,⁶⁶⁸ MINAS engaged in community infrastructure amounting to

⁶⁶² Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 70.

⁶⁶³ Dkamela 2011 *Occassional Paper* 25.

⁶⁶⁴ Izsák 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 12.

⁶⁶⁵ Izsák 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 12; National Participatory Development Programme hereinafter NPDP.

⁶⁶⁶ Ministry of Economy, Planning and Regional Development hereinafter MINEPAT

⁶⁶⁷ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 284.

⁶⁶⁸ National Community Driven Programme hereinafter PDPP/PNDP.

CFAF 132 000 000 for constructing and equipping classrooms, community huts, food storage houses.⁶⁶⁹

Also, in an effort to promote income generating activities within indigenous communities, MINAS entered an agreement with the National Civic Service Agency for Participation,⁶⁷⁰ on June 5 2013, to train 67 boys and 13 girls in livestock breeding, farming as well as in artisanal production from Ngoketunja Division in the North-West Province and Marza areas of Ngaoundere, Nyambaka, Banyo and Ngaoundal in the Adamawa Region.⁶⁷¹ However, it was observed that there is still a significant amount of indigenous peoples who do not have access to basic social facilities and continue to suffer from generalised forms of exclusion and domination from the general public.

3.6.4 MINEPDED

The MINEPDED formerly known as Ministry of Environment, Nature and Protection,⁶⁷² was separated to form two Ministries namely: MINEP and MINFOF in 2004. However, although the two Ministries seemed to have similar functions MINEP in 2012 was charged with additional functions, of ensuring sustainable development in the country, this additional role earned MINEP the name MINEPDED.⁶⁷³ The major objective of MINEPDED is to preserve the environment and secure the health, culture and well-being of indigenous peoples through Impact Assessment processes. MINEPDED through the World Bank has developed a framework to ensure the protection of indigenous customs, identity and property rights. To achieve this goal, MINEPDED have delegated experts to monitor the process and ensure that the following conditions are respected:

⁶⁶⁹ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 285.

⁶⁷⁰ National Civic Service Agency for Participation hereinafter NCSAP.

⁶⁷¹ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 286.

⁶⁷² Ministry of Environment, Nature and Protection hereinafter MINEP.

⁶⁷³ Anon date unknown <http://thereddddesk.org/countries/actors/ministry-environment-nature-protection-and-sustainable-development-cameroon>.

- Non-destruction of trees with cultural significance;
- Non-destruction of graves and sacred places;
- Prohibition from taking measures with the negative effects that may cause the displacement of a peoples;
- Protection of the settlements of underprivileged people; and
- Prohibition from destruction of ecological mediums of underprivileged people.⁶⁷⁴

Additionally, MINEPDED is also manages the REDD+ programme, and together with MINFOF leads the United Nations Framework Convention on climate Change in Cameroon,⁶⁷⁵ programme in Cameroon.⁶⁷⁶ Adopted in 1992 at the “Rio Convention” during a “Rio Earth Summit” UNFCCC is aimed at combating any harmful human interference with the climate.⁶⁷⁷ Thus, it is submitted that MINEPDED is mandated by the government to implement the REDD+ and UNFCCC projects to effectively achieve these goals.⁶⁷⁸ It was observed, however, that despite government’s effort, there is inefficiency in implementing and enforcing government policies. For instance, the impact assessment procedures are constantly violated such that the challenges of environmental degradation, pollution, food insecurity and ill-health are sloppily addressed in this area.

⁶⁷⁴ Ministry of Justice Cameroon 2007 *Report by the Ministry of Justice on Human Rights in Cameroon in 2007* 367.

⁶⁷⁵ United Nations Framework Convention on climate Change in Cameroon hereinafter UNFCCC.

⁶⁷⁶ Anon 2012 <https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2012/Cameroon%20final%20R-PP-English-October,%202012.pdf>.

⁶⁷⁷ *United Nations Convention to Combat Desertification* (1992).

⁶⁷⁸ Anon 2012 <https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2012/Cameroon%20final%20R-PP-English-October,%202012.pdf>.

3.6.5 Ministry of public health

The Ministry of Public Health⁶⁷⁹ was established by Decree No. 95/040 of 7 December 1995 and Article 1 of the same Decree defines the position of the Minister of Public Health. Based on the Decree, the Minister of Public Health oversees health activities in the country. Majority of the population in Cameroon cannot access good health facilities, particularly the marginal and indigenous communities as most of the health centres are positioned in major cities. Thus, indigenous communities residing in remote areas find it extremely difficult and even expensive to access these services. MINSANTE was therefore established to improve on the health conditions and facilitate access to good quality health services for the entire population in Cameroon.⁶⁸⁰ To improve on the physical and mental health of indigenous peoples, MINSANTE has built and equipped 1000 health centres, integrated health centres,⁶⁸¹ and sub-divisional medical centres⁶⁸² in Lolodorf and Djoum (indigenous communities) in 2007.⁶⁸³ However, accessing health remains a huge challenge due to lack of efficient and qualified staff as most of them do not prefer living in such remote areas with no electricity and other social amenities. It is also important to note that the costs of consultation and medication are expensive for indigenous peoples to afford, thus resulting in increased death rates, communicable diseases and high mortality and morbidity rates. It would be proper if the government could employ well-qualified staff, increase their pay and provide them with basic facilities to encourage them live comfortably in rural areas. In addition, these health centres should be well-equipped with medication and other sophisticated equipment's to handle emergency cases.

⁶⁷⁹ Ministry of Public Health hereinafter MINSANTE.

⁶⁸⁰ Ngah *et al* 2013 http://www.who.int/hrh/tools/Cameroon_finalpdf.

⁶⁸¹ Integrated Health Centres hereinafter IHC.

⁶⁸² Sub-divisional Medical Centres hereinafter SMC.

⁶⁸³ Ministry of Justice Cameroon 2007 *Report by the Ministry of Justice on Human Rights in Cameroon in 2007* 366.

3.7 Summary

This chapter examined indigenous peoples' rights within Cameroon's legislative and institutional framework, stressing that indigenous peoples are an important group that requires official recognition and special protect as a distinct group. As such, the discussion involved an examination of the Constitution of the Republic of Cameroon and the Forestry Law enacted to enhance the rights of indigenous peoples in the country. It was observed that despite the constitutional recognition of indigenous peoples in the Preamble to the Constitution, the actual implementation process is challenging as this group of people are classified as "marginal populations". Thus, it is justified to conclude that the recognition of indigenous peoples in Cameroon is still at the infancy stage.

This chapter has also revisited some relevant international and regional instruments which aim at protecting and promoting the rights of indigenous peoples and to which Cameroon is party to. The above instruments not only promote individual and collective rights of indigenous peoples, it also emphasises on the protection and promotion of civil and political, economic, social and cultural rights of indigenous peoples. It reveals that the realisation of these rights is fundamental for their survival and existence as distinct peoples. This chapter also dealt with the relevant institutions in Cameroon mandated to protect and promote the rights of indigenous peoples, such as the NCHRF. From the above discussion, it evident that although the NCHRF is charged with the responsibility of promoting and protecting indigenous peoples' rights in the country, financial constraints remain a significant hindrance. As such, victims of human rights rarely receive justice for gross human rights violations. In addition, some administrative institutions such as relevant Ministries actively involved in the struggle for the recognition and protection of indigenous peoples' rights were analysed. It is clear from the above discussions that despite the numerous efforts by government, the situation of indigenous peoples in Cameroon remain unchanged since the financial and material contributions made are not sustainable including the absence of an adequate monitoring mechanism to eradicate government malpractices.

The next chapter explores the rights of indigenous peoples to freely participate in the political affairs of the country, specifically the extent to which the government of Cameroon has involved indigenous peoples in decision-making process on matters that directly or indirectly affect them.

Chapter 4 An analysis of selected civil and political rights of indigenous peoples of Cameroon

4.1 Introduction

The previous chapter examined the legislative and institutional frameworks responsible for the promotion and protection of indigenous peoples' rights in Cameroon. It focused on constitutional and institutional frameworks enacted to grant recognition to indigenous peoples' rights and evaluated some relevant international human rights instruments geared towards promoting and the protecting their rights. It was observed that although Cameroon denies the existence of indigenous peoples in the country, it has been recorded as the only African country that has granted constitutional recognition to her indigenous peoples.⁶⁸⁴ The discussion was aimed at ascertaining whether or not the country is living up to international and regional standards as far as recognition, protection and promotion of the rights of indigenous peoples are concerned. In spite of its short comings regarding the lack of clarity on the specific nature of the said rights, it was realised that Cameroon is not living up to its international obligations as indigenous peoples are still not granted the special protection they are entitled to.

Mindful of the above, this chapter focuses on the participation of indigenous peoples in the political affairs and decision-making processes of the country. The main thrust of the chapter is to determine whether or not indigenous peoples are given equal opportunities to operate on the same level with the dominant society as articulated in international human rights instruments. It is evident that indigenous peoples are victims of numerous fundamental human rights violations which include political marginalisation, including the right to freely and actively participate in governance and decision-making processes in matters concerning their livelihood. Even though some international and regional instruments stress

⁶⁸⁴ Para 5(2) of the Constitution of the Republic of Cameroon.

the need to include indigenous peoples in political life and decision-making processes, especially in countries where they reside, however, those in Cameroon are yet to realise these rights. Studies have shown that they are poorly represented in all aspects of life and even excluded in decision-making processes on issues that might impact negatively on their well-being.⁶⁸⁵

Given that political rights are quite extensive, this discussion is limited to specific political rights, particularly the right to political participation in government. In other words, the specific civil and political rights that attract an in-depth discussion is the right of a people to participate in their government. More importantly, the chapter considers the right to participate in governance of one's country which is strongly espoused in the UNDRIP. This concept calls for attention and scrutiny to decipher the extent to which the government of Cameroon has involved its indigenous peoples in politics and decision-making processes on matters affecting them and their environment.

The right to participation is a pre-requisite for the recognition of indigenous peoples' rights as encapsulated in the ICCPR, ILO Convention No. 169, UNDRIP and the Banjul Charter aimed at directly addressing indigenous peoples' issues.⁶⁸⁶ That notwithstanding, indigenous peoples still face several challenges in relation to political participation and decision-making in countries where they live. It is against this background that it becomes imperative to evaluate the level of participation of indigenous peoples in government and decision-making processes at the national and local levels in Cameroon.

This chapter evaluates the extent to which indigenous peoples are represented in the political governance structure in the country as well as their right to take part in decision-making processes on issues affecting them. To achieve these aims, the following questions require specific attention and scrutiny:

⁶⁸⁵ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 37.
⁶⁸⁶ Bojosi "Towards an Effective Right of Indigenous Minorities to Political Participation in Africa" 283.

- (i) To what extent has the government of Cameroon involved indigenous peoples in decision-making processes in internal and local affairs?
- (ii) How does government facilitate the political participation of indigenous peoples in government?
- (iii) How are electoral processes in the country managed to ensure that indigenous peoples equally, fully and actively participate as much as members of the dominant society and citizens with civic rights, in terms of accessibility?
- (iv) How many indigenous peoples are represented in Parliament and local councils in the country? Put differently what measures has government put in place to ensure the full and active participation of indigenous peoples in governance?
- (v) Are indigenous peoples involved in decision-making processes, especially when adopting legislative or administrative measures or prior to development projects regarding the exploration and exploitation of natural resources within their territories?
- (vi) What measures have government employed to ensure effective consultation and Free Prior and Informed Consent,⁶⁸⁷ prior to the execution of economic developments in the country?
- (vii) What is the importance of political representation for indigenous peoples, especially in a country that has based its principles on promoting democracy, equality, transparency, accountability and rule of law such as Cameroon?
- (viii) Is the government of Cameroon under any obligation to ensure that indigenous peoples realise the right to political participation?

⁶⁸⁷ Free Prior and Informed Consent hereinafter FPIC.

Answers to the above questions warrant a closer examination and clear understanding of government policies towards indigenous people, particularly, regarding political participation and decision-making processes in Cameroon.

This chapter is divided into two main parts. The first part examines the right of indigenous peoples to participate in the government of the country. This includes evaluating their level of participation and representation in government, including their representation in Parliament, elections and voting processes in the country. The second part examines the concept of consultation and participation as the basis for realising indigenous peoples' rights to decision-making processes on matters affecting them. Bojosi endorses that the right to take part in state affairs at local and national levels is crucial for the achievement of other internationally recognised human rights.⁶⁸⁸ It therefore implies that for indigenous peoples to effectively take part in governance, they must be actively involved in decision-making processes where critical decisions on running the affairs of the country are concluded. In addition, their socio-economic and cultural rights must be protected and guaranteed. Although international human rights have developed frameworks for effective participation in government, as well as imposed on member states the obligation to consult and seek the inputs of indigenous peoples before making decisions on their behalf, studies indicate that very little successes have been recorded in that domain in Cameroon.⁶⁸⁹ The principle of consultation and FPIC also forms the basis of this discussion.

The ambiguous nature of the right to political participation and decision-making processes have instigated debate amongst scholars who argue that the effective participation of indigenous peoples in all aspects of life is linked to their right to self-determination.⁶⁹⁰ In practice, the right to self-determination is a pre-requisite for the full participation of indigenous peoples in public affairs. This is because a guarantee of the right to self-determination permits indigenous peoples to



⁶⁸⁸ Bojosi "Towards an Effective Right of Indigenous Minorities to Political Participation in Africa" 283- 284.

⁶⁸⁹ Goodland 2004 *Sustainable Development Law and Policy* 68.

⁶⁹⁰ Clavero 2005 *Arizona Journal of International and Comparative Law* 43.

exercise control over their own affairs including political, social, economic and cultural development as well as make decisions through their chosen representatives on related issues regarding their existence.⁶⁹¹ In other words, effective collective participation of indigenous peoples stems from the right to autonomy. This debate informs Calvero's argument that any decision concluded, (especially those involving indigenous peoples' lands, resources, development of their territories and well-being), without their prior and informed consent is in violation of their right to prior consultation and FPIC as expounded in international human rights instruments.⁶⁹²

4.2 Political participation and representation of indigenous peoples in government

The emergence of democracy and the advent of a multi-party system in Africa at the end of WWII led to the second wave of democracy in 1962 with over 36 countries winning the democratic majority.⁶⁹³ This prompted an urgent call for the active representation and full participation of minority (men and women) in politics.⁶⁹⁴ There is a growing concern that indigenous peoples are highly disadvantaged in every area of life; particularly in government and decision-making processes, thus, limiting their rights and freedoms to decide their own priorities of development.⁶⁹⁵ Studies have blamed these practices on the lack of legal recognition of indigenous peoples in national Constitutions within the African continent,⁶⁹⁶ although over the years, some countries in Central Africa have included provisions in their national Constitutions that grant such recognition of indigenous peoples' rights.⁶⁹⁷ In particular, Kenya and Namibia have taken the lead in granting legal recognition of their indigenous peoples in their national

⁶⁹¹ Clavero 2005 *Arizona Journal of International and Comparative Law* 43; Article 1 of the UNDRIP.

⁶⁹² Clavero 2005 *Arizona Journal of International and Comparative Law* 41.

⁶⁹³ Huntington 1991 *Journal of Democracy* 12.

⁶⁹⁴ Richmond 2006 *Report of Electoral Systems and the Protection and Participation of Minorities* 6.

⁶⁹⁵ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR*.

⁶⁹⁶ Newman "Africa and the United Nations Declaration on the Rights of Indigenous Peoples" 146-149.

⁶⁹⁷ IWGIA 2016 <http://www.iwgia.org/regions/africa/indigenous-peoples-in-africa>.

Constitutions.⁶⁹⁸ It is worth noting that participation and representation of indigenous peoples in government of the states where they are found is a confirmation of state's recognition of their distinct characteristics, identity, cultures, needs, concerns and specific rights as a minority group.⁶⁹⁹ Reynolds validates this statement by stating that participation and representation in the political affairs of a country is crucial for the achievement of good governance, rule of law and enjoyment of all human rights and fundamental freedoms.⁷⁰⁰ Despite the significance of indigenous peoples' involvement in government, minority groups and indigenous peoples are repeatedly excluded from almost all domains of governance, including in electoral reforms, during the drafting and enactment of state Constitutions and other legislation as well as the establishment of new government policies that affect them directly.⁷⁰¹ It is thus important if all segments of the population are given equal opportunity to effectively take part in the affairs of the state so as to give them a feeling of belonging, empowerment and freedom to be who they really are, irrespective of the kind of life they have chosen to retain.

4.2.1 Political participation of indigenous peoples in government of Cameroon

Political participation as seen in para 4.1 above is an important human right that guarantees democracy and enhances the rule of law in every society. It does not only provide a sense of belonging but also enables people to exercise their civic and political rights as articulated in almost every national Constitution. It equally acts as a fundamental element in guaranteeing indigenous peoples existence, survival and cultural aspirations.⁷⁰² To this end, Bojosi has listed three important reasons why indigenous peoples need to be represented and allowed to fully

⁶⁹⁸ IWGIA 2016 <http://www.iwgia.org/regions/africa/indigenous-peoples-in-africa>.

⁶⁹⁹ Riedl 2014 *Beyond Numbers: The Participation of Indigenous Peoples in Parliament Survey Report* 5.

⁷⁰⁰ Richmond 2006 *Report of Electoral Systems and the Protection and Participation of Minorities* 493.

⁷⁰¹ Richmond 2006 *Report of Electoral Systems and the Protection and Participation of Minorities* 493.

⁷⁰² Riedl 2014 *Beyond Numbers: The Participation of Indigenous Peoples in Parliament Survey Report* 498.

participate in politics.⁷⁰³ They are listed as follows: first, it helps to include them in decision-making processes, so that they can challenge and demand for the revision of policies that undermine their cultural identities.⁷⁰⁴ Secondly, their participation in public life helps empower, advance and reinstate their self-esteem, especially from stereotypical attitudes from the general public, and finally, it helps restore peace and harmony in the society to prevent recurrent ethnic conflicts.⁷⁰⁵ In countries where indigenous peoples are politically marginalised, there are recurrent issues of racial conflicts and instability. This group of peoples always nurture the feeling that they are neglected, undermined and not considered as full human-beings in their own country. Given the above, states ought to take necessary measures to ensure that indigenous peoples are not only effectively represented and allowed to participate at the national, regional and international levels, but it is vital that their representation make meaningful contributions to public affairs,⁷⁰⁶ considering that their involvement in government is inherent for realisation of other human rights to better their living standards.

Several international human rights instruments enhance indigenous peoples' right to political participation at the regional, national and local levels of government in their respective countries and the instruments urge States Parties to effectively enforce these rights, through the enactment of appropriate legislation measures. For example, political participation has been affirmed and protected in the UDHR. Article 21 of this Declaration enhances indigenous peoples' right to public participation by guaranteeing them access to public services through periodic and genuine elections. It acknowledges that for indigenous peoples to effectively participate in governance, their voting rights and possible election into political positions must be guaranteed, including the possibility of accessing other basic social services, since any hindrance to these rights might prevent their full participation. Considering that political, economic, social and cultural rights are interrelated, the denial of access to one of these

⁷⁰³ Wachira "Indigenous Peoples Rights to Land and Natural Resources" 286.

⁷⁰⁴ Wachira "Indigenous Peoples Rights to Land and Natural Resources" 286.

⁷⁰⁵ Wachira "Indigenous Peoples Rights to Land and Natural Resources" 288.

⁷⁰⁶ Wachira "Indigenous Peoples Rights to Land and Natural Resources" 286.

rights hinders the realisation of the other. It therefore becomes necessary that drastic measures be put in place to ensure that indigenous peoples fully realise all these rights equally as other groups in the society. The relevant fact is that economic, social and cultural rights are crucial for human development and must be achieved through the rightful exercise of political rights.⁷⁰⁷

In addition, other international instruments relate this right to the right to self-determination since it enables indigenous peoples to freely make decisions regarding their political, economic, social and cultural development.⁷⁰⁸ This right has been reiterated in common Article 1 of the ICCPR and ICESCR and in the Charter of the United Nations,⁷⁰⁹ and the UNDRIP,⁷¹⁰ all affirming indigenous peoples' right to self-determination. These international human rights instruments confirm that the right to self-determination is central in ensuring that indigenous peoples actively participate in political institutions in communities where they live as well pursuing their socio-economic and cultural development to the best of their interests.⁷¹¹ Goodland supports this assertion by endorsing that effective participation requires reaching a conclusion on "the precautions, mitigation and compensation" to be made following development projects to be carried out.⁷¹²

Furthermore, the ICCPR, in safeguarding indigenous peoples' right to participation, guarantees the free disposal of their natural wealth and resources.⁷¹³ It further provides that equality of rights and opportunity be granted to everyone to allow them participate directly or through their chosen representatives in public affairs.⁷¹⁴ These rights include, *inter alia*, the right to vote and be elected in periodic elections through universal and equal suffrage

⁷⁰⁷ Olowu *An Integrative Rights-based Approach to Human Development in Africa* 17.

⁷⁰⁸ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 39-40.

⁷⁰⁹ See Art 1(2) of the UN Charter.

⁷¹⁰ Art 3 and 4 of the UNDRIP.

⁷¹¹ See United Nations 2010 *Progress Report on the Study on Indigenous Peoples and the Right to Participate in Decision-Making* 9.

⁷¹² Goodland 2004 *Summer* 66.

⁷¹³ Art 1(2) of the ICCPR.

⁷¹⁴ Art 25(a) of the ICCPR

and secret ballot.⁷¹⁵ States Parties are therefore obliged to take important steps to ensure that the above rights are realised, respected, protected and promoted, since this is a starting point in bringing indigenous peoples on the same platform with the dominant society and putting an end to the long-lasting historic injustices against them. By this, this international instrument is basically enhancing indigenous peoples' rights to freedom of opinion and expression,⁷¹⁶ peaceful assembly and association,⁷¹⁷ and freedom from fear and intimidation without distinction.⁷¹⁸ Through these provisions indigenous peoples can freely express their will, make decisions concerning their well-being.

The right to participation also forms the basis of ILO Convention No. 169. Given that ILO Convention No. 169 specifically deals with indigenous people's rights, its main objective is to include provisions that enable indigenous peoples to have complete control over their own institutions, preserve their way of life, identity, culture, language, and determine their own social, economic, cultural and development programmes.⁷¹⁹ ILO Convention No. 169 recognises the degree of inequality that exists between indigenous and non-indigenous groups and establishes conditions where indigenous peoples can freely and actively participate in government, especially in elective institutions, administrative and other sectors responsible for policies and programmes that directly concern them.⁷²⁰ This has been the groundwork of Article 15 which permits indigenous peoples to participate in the use, management, conservation and benefits that accrue from proceeds derived from the exploitation of natural resources within their territories. This provision requires States Parties to consult with indigenous peoples before engaging in related issues of sub-surface exploitation to enable them to determine its impact on the environment, communities and well-being of

⁷¹⁵ Art 25(b) of the ICCPR.

⁷¹⁶ Art 19 of UDHR.

⁷¹⁷ Art 20 of the UDHR and 22 of ICCPR.

⁷¹⁸ As outlined in Art 26 of the ICCPR.

⁷¹⁹ United Nations 2010 *Progress Report on the Study on Indigenous Peoples and the Right to Participate in Decision-Making* 6.

⁷²⁰ Art 6 of the ILO Convention No. 169.

the affected communities.⁷²¹ It is therefore essential to involve indigenous peoples at every stage of the decision-making process on issues relating to their livelihood, as this may help protect their environment, improve their health and enhances sustainable development.

Participation is also a guiding principle of the UNDRIP as it forms a foundation for the recognition of all human rights.⁷²² The UNDRIP provides indigenous peoples the right to collectively and individually enjoy all human rights and fundamental freedoms as provided in the UN Charter, UDHR and other international human rights instruments.⁷²³ To this end, for indigenous peoples to realise these rights, provisions must be made for them to effectively take part in the local and internal affairs of their respective governments.⁷²⁴ To this end, the UNDRIP has guaranteed the internal participation of indigenous peoples in all decision-making processes and government of their countries.⁷²⁵ In order to redress the issue of political marginalisation experienced by indigenous peoples, their right to political participation requires dedicated attention if their situation has to be improved.

Apart from international human rights instruments the Banjul Charter has also addressed the issue of indigenous peoples' active participation in government. The Banjul Charter recognises both individual and collective rights of all populations. Article 13 explicitly provides for the rights of peoples to freely participate in government, have equal access to public services and public property in their respective states. It guarantees indigenous peoples rights to self-determination and to freely determine the political status essential to pursue their economic and social development.⁷²⁶ This provision prohibits all forms of political domination that might impede them actively participating in the internal and local

⁷²¹ Art 15(2) of ILO Convention No. 169.

⁷²² See para 10 of the Preamble to the UNDRIP.

⁷²³ Art 1 of UNDRIP.

⁷²⁴ Art 21 of the UNDRIP.

⁷²⁵ Riedl 2014 *Beyond Numbers: The Participation of Indigenous Peoples in Parliament Survey Report* 498.

⁷²⁶ Art 20(1) of the Banjul Charter.

affairs of the state.⁷²⁷ Given the increasing nature of discrimination against indigenous peoples, it is expected that their full representation and active participation in government is a gateway in sustaining their freedoms and genuine recognition in the society.

However, despite these international promises, indigenous peoples are still confronted with the challenge of political participation and decision-making processes in the country. The exclusion of these groups in politics constitutes gross violations of their fundamental human rights and human dignity which are guiding principles to most international human rights instruments. Related studies confirm that the Pygmy and Mbororo groups are barely represented in political, administrative and decision-making processes in Cameroon as compared to the dominant society.⁷²⁸ In particular, none or very few of them have been appointed to the posts of government Minister, regional governor, senior-divisional officer, town or city mayor, Member of Parliament, senator or leader of a political party.⁷²⁹ For the Pygmy communities, the situation is worse as none of them has held any important position or are represented at the regional, national or local institutions in the country.⁷³⁰ The usual argument is that indigenous peoples are not educated enough to take part, hold important positions or to be involved in politics; they are equally framed as “backward”, “primitive” and “uncivilised” to understand the state of affairs in the country.⁷³¹ As such their presence in government would make no difference in these forums, since they are perceived as lacking the capacity and

⁷²⁷ Art 20(2) of the Banjul Charter.

⁷²⁸ AIWO-CAN, MBOSCUA, CADDAP and Planète Survey Environnement and Développement 2013 *Issues and Recommendations on the Situation and Rights of Indigenous Peoples in Cameroon in Relation with the Universal Periodic Review in Cameroon* 5.

⁷²⁹ AIWO-CAN, MBOSCUA, CADDAP and Planète Survey Environnement and Développement 2013 *Issues and Recommendations on the Situation and Rights of Indigenous Peoples in Cameroon in Relation with the Universal Periodic Review in Cameroon* 6.

⁷³⁰ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 10-11.

⁷³¹ Anon date unknown
<http://siteresourcesworldbankorg/INTRANETSOCIALDEVELOPMENT/8732041111663181192/20489321/sdn08pdf>.

ability to make meaningful contributions to improve the economy or develop the country.⁷³²

In addition, government argues that indigenous peoples do not have formal socio-political structures to facilitate their representation in government.⁷³³ This is exemplified in government's classification of local chiefs in the country, into first, second and third class degree chiefs. In Cameroon, third degree chiefs⁷³⁴ are the lowest grade of chiefs with no legal recognition in the country; they lack the status of any political representation.⁷³⁵ This policy is a significant barrier for indigenous peoples' full political participation in government, since non-recognition of their chiefs who are supposed to be representing them prevents them from taking part in public life.⁷³⁶ In fact studies maintain that indigenous villages and traditional social institutions are not awarded proper recognition in the country, where such implies that indigenous communities are answerable to the chiefs of wider society.⁷³⁷ This practice has greatly limited their active participation and representation in government.⁷³⁸ However, it is worth mentioning that over the years, a few *chefferies* (chiefs) from the Pygmy communities, like the Nomedjoh and Le Bosquet have been offered legal recognition and eventually granted the status of first class chiefs in the Pygmy societies.⁷³⁹ Even though their representation is still very minimal in relation to the broader society, the Pygmies peoples have celebrated these efforts as a great achievement. It is therefore essential for government to review its administrative and legislative strategies to



⁷³² Mouiche 2011 *Africa Spectrum* 80-92.

⁷³³ Pyhälä 2012 *What Future for the Baka? Indigenous Peoples' Rights and Livelihood Opportunities in South-East Cameroon: IWGIA Report* 13 16.

⁷³⁴ Chefferie de troisième degré as it commonly referred to.

⁷³⁵ Pyhälä 2012 *What Future for the Baka? Indigenous Peoples' Rights and Livelihood Opportunities in South-East Cameroon: IWGIA Report* 13 17.

⁷³⁶ Pyhälä 2012 *What Future for the Baka? Indigenous Peoples' Rights and Livelihood Opportunities in South-East Cameroon: IWGIA Report* 13 18.

⁷³⁷ AIWO-CAN, MBOSCUA, CADDAP and Planète Survey Environnement and Développement 2013 *Issues and Recommendations on the Situation and Rights of Indigenous Peoples in Cameroon in Relation with the Universal Periodic Review in Cameroon* 6.

⁷³⁸ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf.

⁷³⁹ Pyhälä 2012 *What Future for the Baka? Indigenous Peoples' Rights and Livelihood Opportunities in South-East Cameroon: IWGIA Report* 13 45.

grant official recognition to all Pygmies chiefs and Mbororo “Ardos” so that they can be elected and appointed to significant political positions in the country, to enable their voices heard and needs addressed in society.

Apart from the Pygmy group, the Mbororo communities in Cameroon also face similar challenges of under-representation in government and political affairs of the country. This is attributed to the nomadic lifestyle they chose to retain, as government has argued that they are more interested and focused on the herding and trading of cattle to politics.⁷⁴⁰ As indicated by a non-Mbororo: “They are more interested in trade. [...] They do not take part in meetings and do not complain. They are not ambitious because of their lack of education”.⁷⁴¹ It is submitted that indigenous communities do not have a smooth relationship with government as they always run into ethnic conflicts with each other over the use, management and control of their lands and continues neglect of their rights as a unique group. This is show-cased in a speech delivered by the District Officer⁷⁴² of Bansa during his address to the Mbororo communities in Bamenda, as he expressed his frustrations over the so-called “backward” and “uncivilised” nature of the Mbororo peoples in the following words:

You Mbororo people are tearing yourselves apart instead of coming together like the rest of Cameroon. You call yourselves an abandoned people? Who abandoned you? You abandoned yourselves! - Keeping away from others - keeping away from Me! How do you expect me to understand you when you keep away from me, keep away from others - when we are all here in the towns and you remain away from us, away from everything, away from me - up in the hills out there in the Bush!!⁷⁴³

From the above statement, it is suggested that the Mbororo and the Pygmy populations deprive themselves from enjoying the socio-economic and political benefits granted to everyone. However, things have changed with the introduction of multi-party politics and the persistent efforts from MBOSCUA.

⁷⁴⁰ Mouiche 2011 *Africa Spectrum* 77.

⁷⁴¹ Mouiche 2011 *Africa Spectrum* 77.

⁷⁴² District Officer hereinafter DO.

⁷⁴³ Davis 1995 *Review of African Political Economy* 213.

These NGOs have engaged in sensitisation and awareness programmes, aimed at educating Mbororo peoples on the importance of participating in governance, taking part in elections and voting processes, the need to register, attend and remain enrolled in schools.⁷⁴⁴ This political awakening has earned them representation in the government. Mouiche, has outlined three reasons for the availability of a conducive atmosphere including legal and institutional policies, the active role played by MBOSCUDA in creating awareness on the need for Mbororos' socio-political representation in the affairs of the country, and the emergence of a multi-party system. These three have instigated the mobilisation of minority groups to form and join political parties of their choice.⁷⁴⁵

That notwithstanding, Mbororo peoples are actively participating in government and voting processes and thus, some of them even hold important positions in government. Amongst them are Mr El Hadji Jaji Mamu Didado, the Alternate Senator of the North-West Region and President of MBOSCUDA was recently appointed as Secretary General in the Ministry of Livestock, Fisheries and Animal Industries on 22 of December 2015.⁷⁴⁶ In addition, Dr. Ibrahim Manu, a former Mbororo lecturer in the University of Dschang, has also been appointed to the position of Chargé de Mission at the Presidency of the Republic of Cameroon in December 2015. Also, subsequent reports reveal that a member of the Mbororo community, Mr Abdouramani Labi, has been nominated as the first and only Mayor from the Mbororo community in Ngaoui Sub-division, Mbere Division in the Adamawa Region to represent in Ngaoui council.⁷⁴⁷ The following hold the positions of Deputy Mayors, including Mr Sali Bello, as First Deputy Mayor of Ngaoundal Sub-division in Djerem Division in the Adamawa region, followed by Mr Abdu Bano, First Deputy Mayor of Jikwa Sub-division, Mono-division in the North-West Region and finally Mr Hadija Haro Hamajam also nominated as Second Deputy Mayor of the Zhoa Council in Fungom Sub-division, Menchum

⁷⁴⁴ Mouiche 2011 *Africa Spectrum* 72-73.

⁷⁴⁵ Mouiche 2011 *Africa Spectrum* 85.

⁷⁴⁶ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 76-78.

⁷⁴⁷ Database of MBOYASCAM accessed on 6 and 7 of January 2017 Bamenda, Cameroon.

Division in the North-West Region.⁷⁴⁸ In addition to the Mayors, 48 Councillors all from the Mbororo community won the positions of Councillors following the last twin Municipal and Legislative elections that took place on 30 September 2013. Below is a concise list of the Mbororo Councillors appointed in the last twin elections.

Winning Mbororo councillors of the 30th September twin elections

Table 1

S/n	Council	Division	Winning party	Sex		Total
				M	F	
1	Nwa council	DM	CPDM	2	-	2
2	Ndu council	DM	SDF	1	-	1
3	Nkambe	DM	CPDM	4	-	4
4	Mesaje	DM	CPDM	3	1	3
5	Ako	DM	CPDM	0	-	0
6	Nkum	Bui	SDF	1	-	1
7	Mbiame	Bui	CPDM	2	1	3
8	Kumbo central	Bui	SDF	1	-	1
9	Oku	Bui	CPDM	2	-	2
10	Nkor	Bui	SDF	2	-	2
11	Jakiri	Bui	SDF	2	-	2
12	Babessi	Ngoketunjia	CPDM	-	-	0
13	Ndop	Ngoketunjia	CPDM	1	-	1
14	Balikumbat	Ngoketunjia	CPDM	2	-	2
15	Tubah	Mezam	SDF	1	1	2

⁷⁴⁸ Data was gotten from the Database of MBOSCUA during a personal communication by way of an unstructured interview with a Mbororo Councillor and senior staff of MBOSCUA in North-West Region of Bamenda, Cameroon on 8 of February 2016.

16	Bafut	Mezam	SDF	1	-	1
17	Bamenda 1	Mezam	CPDM	-	-	-
18	Bamenda II	Mezam	SDF	-	-	-
19	Bamenda III	Mezam	SDF	1	-	1
20	Santa	Mezam	CPDM	2	-	2
21	Bali	Mezam	CPDM	1	-	1
22	Belo	Boyo	SDF	2	1	3
23	Njinikom	Boyo	SDF	1	-	1
24	Fundung Central	Boyo	CPDM	1	-	1
25	Bum	Boyo	CPDM	3	-	3
26	Mbengwi	Momo	CPDM	1	1	1
27	Ngie	Momo	CPDM	1	-	1
28	Njikwa	Momo	CPDM	1	-	1
29	Batibo	Momo	SDF	1	-	1
30	Widikum	Momo	CPDM	-	-	0
31	Menchum Valley	Menchum	CPDM	-	-	0
32	Wum Central	Menchum	CPDM	4	-	3
33	Fungom	Menchum	SDF	-	1	1
34	Fura-Awa	Menchum	SDF	-	-	0
	Total			37	06	48

Source: Database of MBOYASCAM

From the above statistics, it is evident that the Mbororo hold significant positions in government. This representation is credit to the substantial efforts of MBOSCUDA in collaboration with government which engaged in active sensitisation programmes on civil and political rights as well as the involvement

of national minorities groups in the election processes.⁷⁴⁹ Even though their representation in government is still low when compared to the number of non-Mbororos in the political spheres, some Mbororo peoples rejoice over these successes and compliment the emergence of democracy and multi-party politics in Cameroon.⁷⁵⁰ That notwithstanding, more effort is required in this regard to achieve equality in governance, especially in a country advocating for democracy and good governance. Borrowing Mbao and Komboni's words:

...democracy is now conceived not only as an end in itself but also as a means to political, economic and social rights. Human rights and democratic governance are inextricably linked and mutually reinforcing and share many core principles such as participation, accountability, transparency and responsibility. Indeed, human rights need a conducive and enabling environment, in particular appropriate regulations and procedures framing the action of the state.⁷⁵¹

Given the above it is imperative that a country advocating for democracy should ensure an inclusive system of participative governance where everyone, especially the marginalised groups and indigenous communities, are equally represented in all areas of government in the country. Thus, serious efforts must be adapted such that the Pygmy and Mbororo peoples who are left behind in public life can achieve equality and be fully represented in government to ensure transparency and accountability. These measures should be geared towards realising the socio-political, cultural and traditional institutions of indigenous communities. The tables below show other Mbororo people occupying political positions in government.

⁷⁴⁹ Mouiche 2011 *Africa Spectrum* 86-87.

⁷⁵⁰ Personal communication by way of an unstructured interview with two Mbororo counsellors who are also senior staff of MBOSCUA on the 7 of January 2016 in the North-West Region of Bamenda.

⁷⁵¹ Mbao and Komboni 2008 *Law, Democracy and Development* 51.

Mbororo agents and administrative staff native to Noun Division

Table 2

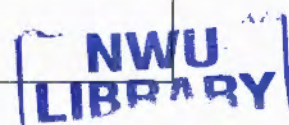
Names	Level of study and profession	Post occupied now	Village of origin
Sadou Daoudou	Degree in law; civil administrator	Sub-divisional officer	Koupa Menke
Fadimatou Dairou	Master's degree in law; treasury inspector	Member of the finance administrative staff in service at Yaoundé Nsimalen International Airport	Didango
Hassan Hamadou	GCE/A level; veterinary surgeon	Sub-divisional delegate for the Ministry of Livestock of Koutaba	Didango
Mohamadou Awolou	GCE/A level; telecommunications engineer	Member of the Telecommunication Regulating Board (ART) in Yaoundé	Didango
Ibrahim Sale	GCE/O level; state-trained nurse	Nurse at Tibati Hospital	Didango
Ibrahim Djobairou	GCE/A level	Foreman at AES SONEL (electricity provider) in Nkongsamba	Didango
Me Youssouf	Law degree; bailiff	Bailiff in Ngaoundere	Didango
Sanda Oumarou	Degree in economics; teacher at technical high school	Headmaster of Bankim Technical School	Didango
Amina Djamo	GCE/A level	Executive at SGBC Bank Yaoundé	Yolo
Lerah Amadou	GCE/A level; veterinary surgeon	Private veterinary surgeon in Bafoussam	Didango

Source: Adapted from Mouiche Ibrahim 2011

Proposals from MBOSCUDA for the recruitment of youths into Animal Husbandry and Agriculture

Table 3

SN	NAMES AND SURNAMES	QUALIFICATION	SPECIALITY
1	JENABU MUSA	1 st DEGREE	Special education
2	USMANU ISMAILA	1 st DEGREE	Economics
3	MANU UMARU	1 st DEGREE	Economics
4	AMINA JOBDI	1 st DEGREE + grade I certificate	Law
5	MUHAMADOU BASIRU	1 st DEGREE +1year masters	History
6	HAMIDOU UMARU	1 st Degree	Biology
7	MOHAMADOU ABDOLAI	HND	Medical Laboratory Technology
8	KUGARI SHAIDU	MASTERS	Anthropology
9	RAMATA YAYA BUBA	BAC G2	Accounting
10	ISMAHILA ADAMOU	ADVANCE LEVEL	
11	HOURERA OUMAROU	ADVANCE LEVEL	
12	IBRAHIM ESA	ADVANCE LEVEL	



13	ISMAILA SANI NUHU	ADVANCE LEVEL	
14	MUSA ISA BAIROU	ADVANCE LEVEL	
15	SALI ABUBAKAR	ADVANCE LEVEL	
16	DAHIROU YUSUFU MANJOU	ADVANCE LEVEL	
17	BUBA MOUSSA	ADVANCE LEVEL	
18	NAPHISATU KARIMOH	ORDINARY LEVEL	
19	SAOUDATU SALE	BAC + 3 + CAPIEM	Special Education
20	DJIBRIUA DAHIRU	BAC + 3	ACCOUNTING
21	ABDOUL BARIH	BAC + 1	
22	HADIJA ABDOURAMAN	ADVANCE LEVEL	
23	ABDOU RAOFU	ADVANCE LEVEL	
24	KUGARI HAMADOU ALI	ADVANCE LEVEL	
25	SALIFU BALEWA KURGARI	1 st DEGREE	LAW
26	YAOUBA ADAMU USMANU	1 st DEGREE	LAW
27	YUSUFA HAMADU	Advance level	

Source: Database of MBOYASCAM

4.2.1.1 Participation and representation of indigenous peoples in Parliament

Even though the Constitution clearly stipulates that everyone possesses inalienable and sacred rights without discrimination in any of the related grounds, it is worth noting that indigenous peoples in Cameroon are not treated equally like other groups in the society.⁷⁵² Reports from a survey on Cameroon disclose that despite the absence of a reliable data indigenous peoples are not represented in Parliament.⁷⁵³ Given that the country is State Party to the CERD which prohibits all forms of discrimination this group of people are still facing challenges with regards to Parliamentary representation in the country. In expressing its commitments and obligations to international instruments, government has outlined in its national Constitution the principle of equality as well as state promises to eradicate all forms of discrimination against any member of the society.⁷⁵⁴ This provision is corroborated by paragraph 5(2) of the Constitution which aims at protecting and preserving indigenous peoples' rights. It is therefore submitted that for this goal to be fully achieved government must ensure that indigenous peoples are represented in all domains of political affairs in the country, including, Parliament. As a marginalised group with special needs, representation in Parliament will give them the opportunity to freely express their political views and raise concerns regarding their political, economic and social situations as well as deliberate on possible solutions to address these problems as outlined below.⁷⁵⁵

- their representation in Parliament will facilitate the actual recognition and protection of their rights;⁷⁵⁶

⁷⁵² Para 4 of the Preamble to the Constitution of the Republic of Cameroon.

⁷⁵³ Riedl 2014 *Beyond Numbers: The Participation of Indigenous Peoples in Parliament Survey Report* 5.

⁷⁵⁴ Para 5(1) of the Constitution of the Republic of Cameroon.

⁷⁵⁵ Riedl 2014 *Beyond Numbers: The Participation of Indigenous Peoples in Parliament Survey Report* 5-6.

⁷⁵⁶ Riedl 2014 *Beyond Numbers: The Participation of Indigenous Peoples in Parliament Survey Report* 5-6.

- their special needs will be presented, addressed and ultimately included in related national legislation;⁷⁵⁷
- representation in Parliament will eradicate unnecessary conflicts between indigenous communities, their Bantu counterparts and government;⁷⁵⁸
- their participation in Parliament would be beneficial to the entire society, since their traditional knowledge and practices will provide lasting solutions to the intricate environmental, developmental as well as governance challenges the country is encountering.⁷⁵⁹

It is interesting to note that the Parliament of Cameroon consists of 180 seats and are divided as follows: - one hundred and fifty-three of these seats are occupied by the ruling party Cameroon Peoples Democratic Movement,⁷⁶⁰ the other sixteen seats are belong to the Social Democratic Front,⁷⁶¹ an opposition party, while six seats are owned by the National Union for Democracy and Progress,⁷⁶² four seats are for the Cameroon Democratic Union,⁷⁶³ and the remaining one seat is meant for the Progressive Cameroon.⁷⁶⁴ Of the 180 seats no indigenous person or indigenous political party is represented in the Parliament of Cameroon. The absence of an indigenous representative in Parliament has created a vacuum in the political system of the country and is evidence of the many challenges they face. It is therefore submitted that Parliamentary democracy, can only be achieved if legislative measures are put in place to allow indigenous peoples to be represented in Parliament on the basis of equality with other members of the society. It is therefore important for government to ensure that indigenous peoples are fully and equally represented

⁷⁵⁷ Riedl 2014 *Beyond Numbers: The Participation of Indigenous Peoples in Parliament Survey Report* 5-6.

⁷⁵⁸ Riedl 2014 *Beyond Numbers: The Participation of Indigenous Peoples in Parliament Survey Report* 5-6.

⁷⁵⁹ Riedl 2014 *Beyond Numbers: The Participation of Indigenous Peoples in Parliament Survey Report* 5.

⁷⁶⁰ Cameroon Peoples Democratic Movement hereinafter CPDM.

⁷⁶¹ Social Democratic Front hereinafter SDF.

⁷⁶² National Union for Democracy and Progress hereinafter UNDP.

⁷⁶³ Cameroon Democratic Union hereinafter UDC.

⁷⁶⁴ Progressive Cameroon hereinafter PC.

in Parliament to exercise their constitutional, civic and political rights. It is common cause that the lack of representation of indigenous peoples in Parliament is tantamount to an outright denial of their existence and recognition as citizens.⁷⁶⁵ Thus, it is important that government should review its policies that will facilitate the integration of indigenous peoples in Parliament like other African countries, such as Uganda,⁷⁶⁶ Gabon;⁷⁶⁷ Burundi;⁷⁶⁸ and Namibia,⁷⁶⁹ where despite the official recognition of indigenous peoples in the national Constitutions, they have adopted policies that allow vulnerable and minority groups to be represented in Parliament. It is significant that the government of Cameroon should adopt this good practice to better the socio-economic, political and cultural well-being of indigenous peoples.

4.2.1.2 Participation of indigenous peoples in electoral process in Cameroon

Participation in elections is a process of demonstrating one's civil and political rights granted to them as citizens in the country and these rights must be respected, protected and promoted by every government. In other words, it is a process whereby people are required to exercise their civic and political rights and an illustration of a country's democratic commitments to its population.⁷⁷⁰ Elections enables the population to take part in the voting process as a way of expressing their political will as well as freely elect a political leader that is capable of representing them in government.⁷⁷¹ It is usually perceived that this person will protect their interests, address their needs and concerns after assuming power in government. To this end, it is worthy to conclude that participation in elections is central to ensuring the effective participation of indigenous peoples in

⁷⁶⁵ Richmond 2006 *Report of Electoral Systems and the Protection and Participation of Minorities* 6.

⁷⁶⁶ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 42.

⁷⁶⁷ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 43.

⁷⁶⁸ Art 16 of Burundi's Constitution of 2005.

⁷⁶⁹ Daniels "Indigenous Rights in Namibia" 46.

⁷⁷⁰ Tchunkam date unknown https://www.google.co.za/?gfe_rd=cr&ei=IFahWJ3KoOp8wepgbGABQ#q=+Human+Rights+and+Elections:+What+Role+for+Political+Parties%3F+.

⁷⁷¹ Anon date unknown <http://www.dkfindout.com/uk/more-find-out/what-does-politician-do/what-is-an-election>.

government and the recognition of their fundamental human rights.⁷⁷² Thus, voting rights should be granted and made accessible to everyone, since it is the only forum where indigenous peoples can use to determine who and how the affairs of the country are managed?⁷⁷³ Despite the above, indigenous peoples right to participation in electoral politics is hindered by the fact that government is unable to provide with the necessary facilities and documentation required for this process. For indigenous women, the situation is even worse as very few of them take part in electoral processes than their male counterparts.⁷⁷⁴ Pelican is of the view that the lack of proper recognition has restricted indigenous peoples from actively participating or be involved in electoral processes in the country.⁷⁷⁵

Added to this is the fact that they are usually sidelined from elections, given that they live in remote areas, making it impossible for them to interact with mainstream society, to obtain information on the whole process of registration, voting and actual election dates.⁷⁷⁶ Several reasons account as barriers for lack effective participation in electoral processes: lack of official identification documents such as National Identification Cards,⁷⁷⁷ passports or birth certificates, lack of access to information, inability to access polling stations, limited knowledge on their civic and voters' rights, absence of an indigenous political party, language barrier, high rate of illiteracy, poverty, demarcation of electoral boundaries coupled with intimidation and stigmatisation from the broader society prohibits indigenous peoples from effectively exercising their civic, political rights and fundamental freedoms during electoral processes.⁷⁷⁸ In Reynolds words, "local discrimination, intimidation or violence are barriers

⁷⁷² ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 50.

⁷⁷³ Anon date unknown <http://www.dkfindout.com/uk/more-find-out/what-does-politician-do/what-is-an-election>.

⁷⁷⁴ United Nations 2010 *Progress Report on the Study on Indigenous Peoples and the Right to Participate in Decision-Making* 17.

⁷⁷⁵ Pelican and Maruyama 2015 *African Study Monographs* 51.

⁷⁷⁶ Personal communication by way of an unstructured interview with the a few Baka community members in Lomié in the East Region of Cameroon on the 27 January 2016.

⁷⁷⁷ National Identification Card hereinafter NIC.

⁷⁷⁸ Personal communication by way of an unstructured interview with the a few Baka community members in Lomié in the East Region of Cameroon on the 27 January 2016.

preventing minority groups to participate in voting” particularly a system that restricts minority registration to a specific region than the broader system.⁷⁷⁹

The international community, in emphasising on the right of everyone to freely participate in the electoral processes of their respective countries, has included in some international instruments the need to ensure that every member of the population takes part in electoral processes. To this end, the UDHR and ICCPR uphold everyone’s right to freely take part in the conduct of public affairs, vote and be elected at genuine periodic elections through universal suffrage without discrimination.⁷⁸⁰ This right is complemented in the national Constitution in which it recognises and guarantees the rights of everyone both male and female aged 20 and above to participate in elections and cast their votes. The real wording of this provision states thus: - “The vote shall be equal and secret, and every citizen aged twenty years and above shall be entitled to vote”.⁷⁸¹ Thus, the state is obliged to ensure that all populations, including indigenous peoples are able to exercise these rights, by making sure that all measures are put in place to facilitate the smooth running of this process, such that no segment of the population feels left out or neglected. It is worth noting that in Cameroon, to realise this goal, government has established a specific legislation aimed at governing and managing electoral processes in the country. This legislative framework is examined below to evaluate government’s role in enhancing indigenous peoples’ right to participate in electoral processes in the country.

4.2.1.2.1 Electoral Code

Electoral Code was set up by Law No. 2012/001 of 19 April 2012 and was later amended and supplemented by Law No. 2012/017 of 21 December 2012 to outline guidelines for electoral processes in Cameroon. According to Section 3 of the Electoral Code, Elections Cameroon⁷⁸² is an independent electoral body

⁷⁷⁹ Richmond 2006 *Report of Electoral Systems and the Protection and Participation of Minorities* 8.

⁷⁸⁰ Art 25 of the ICCPR.

⁷⁸¹ Art 2(3) of the Constitution of Cameroon.

⁷⁸² Elections Cameroon hereinafter ELECAM.

established to ensure the management, organisation and supervision of all democratic electoral processes and referendum operations in the country.⁷⁸³ Another major objective of ELECAM is to ensure transparency, accountability and credibility in elections by the electoral body and law enforcement officers in the country.⁷⁸⁴ In addition, seen in para 4.2.1.2 above, the Cameroonian Electoral Code provides that “elections shall be by universal suffrage and by equal and secret ballot”.⁷⁸⁵ This provision compliments that in Article 2(3) of the Constitution which prohibits all forms of discrimination against anyone including indigenous peoples on any of the recognised grounds including sex, national origin, race, colour and political opinion.⁷⁸⁶ Hence, given that electoral systems are necessary instruments through which decision-makers are appointed, the state should adopt an electoral system that is more inclusive and participative to everyone to facilitate decision-making processes.⁷⁸⁷

Furthermore, efforts to facilitate the participation of everyone in electoral processes have led to the establishment of certain conditions for registering on an electoral register. To this end, as earlier seen in para 4.2.1.2 above, the Electoral Code provides that all peoples of Cameroonian nationality of either sex must attain the age of 20 to be eligible to take part in elections and be elected in any political position.⁷⁸⁸ Accordingly, this provision gives everyone (including indigenous peoples) the right to take part in the electoral process, be nominated and elected into political positions. However, the requirement set in Article 46(4) which provides that only citizens whose names appear on the income tax assessment of a particular community for five continuous years are eligible to enter the electoral register of that community, and must obtain a certificate from

⁷⁸³ See Part 1 Section 3, 4(1) and 7(1) of the *Electoral Code* (2012) as amended and supplemented by Law n° 2012/017 of 21 December 2012.

⁷⁸⁴ Commonwealth 2013 *Report of the Commonwealth Expert Team: Cameroon Legislative and Municipal Elections* 8.

⁷⁸⁵ See Section 2 of the Electoral Code of Law n° 2012/017 of 21 December 2012.

⁷⁸⁶ See para 4 of the Preamble to the Constitution of the Republic of Cameroon.

⁷⁸⁷ Richmond 2006 *Report of Electoral Systems and the Protection and Participation of Minorities* 8-19.

⁷⁸⁸ Part III, Chapter 1, Section 45 of the Electoral Code; Chapter 2, Article 2 of the Constitution of the Republic of Cameroon amended.

the Council Branch of ELECAM having jurisdiction over the applicants place of residence to prove that the applicant has not registered or been previously disqualified is discriminatory against indigenous peoples.⁷⁸⁹ From the above perspective, it is significant to note that the Electoral Code does not accommodate indigenous peoples' needs, given that very few of them are not on the civil service pay roll, which means their names do not appear on the tax assessment list. These requirements prevent them from fully participating in elections and ultimately in government and political aspects in the country. Besides the above, the procedure for obtaining these certificates are too complicated and even more frustrating to indigenous peoples who are usually stigmatised and humiliated by the mainstream society.

Additionally, although the Cameroonian Constitution and the Electoral Code guarantee everyone's right to participate in elections, it is interesting to note that some provisions of the Electoral Code outlining the qualifications and eligibility criteria for nomination and election into political positions for the post of President of the Republic;⁷⁹⁰ Members of Parliament in to the National Assembly;⁷⁹¹ Municipal Councillors;⁷⁹² Senate Members;⁷⁹³ as well as Regional Councillors;⁷⁹⁴ does not favour indigenous peoples as these provisions provides that to be eligible to stand for any of the above positions, the candidate must be able to read and write English and French.⁷⁹⁵ This provision hinders indigenous peoples' effective participation in elections, given that the Mbororo and Pygmy peoples are the least educated ethnic groups in the country who hold on to their cultures, languages and traditional ways of life. This implies that very few of them neither read nor write English and French and do not meet the criteria to stand as candidates for elections and compete in political positions. This explains why no

⁷⁸⁹ Art 46(4) and (5) of the Electoral Code.

⁷⁹⁰ Section 117 of the Electoral Code.

⁷⁹¹ See Chapter 2, Section 156 of the Electoral Code.

⁷⁹² Part VI, Chapter 1, Section 169 of the Electoral Code.

⁷⁹³ Section 220(1) of the Electoral Code.

⁷⁹⁴ See generally the provisions that stipulate the qualification for eligible participation in elections process and be elected in to the political domain in Cameroon as articulated in the Electoral Code.

⁷⁹⁵ As expressly stipulated in Sections 156, 162, 169, 171 and 175 of the Electoral Code of Law.

indigenous person is represented in the National Assembly and very few of them hold top ranking political positions in the country.⁷⁹⁶ It is essential that certain government policies limiting indigenous peoples' active participation in elections be abolished and amended to accommodate their needs. In effect government policies should focus on ensuring the cultural aspirations of her indigenous communities are taken into consideration. It is also important that government involve indigenous people in high profile decision-making processes, especially those relating to the enactment of legislation and policies that might have a negative impact on their everyday life.

Studies show that indigenous peoples did not actively participate in the dual Municipal and legislative elections of 2007 and 2013.⁷⁹⁷ It is suggested that to guarantee indigenous peoples full and active participation in elections and government, the system of proportional representation⁷⁹⁸ should be given priority, especially as scholars have argued that it enhances minority representation in electoral systems and government.⁷⁹⁹ According to Moluh the realisation of PR in Cameroon is challenging, given that since the introduction of a multi-party system in the 1990s politicians have condemned the representation of ethnic groups in Parliament, a system practiced during the single party system between the periods of 1966 to 1990 to address the concerns of the population.⁸⁰⁰ Amy has challenged the system of single member district,⁸⁰¹ which grants representation solely to majorities to the exclusion of minority groups. As a result political minorities are always faced with securing sufficient votes to elect their own representatives, leading to the under-representation of minorities in government and decision-making processes.⁸⁰² To him, PR helps eradicate the

⁷⁹⁶ Commonwealth 2013 *Report of the Commonwealth Expert Team: Cameroon Legislative and Municipal Elections* 25-27.

⁷⁹⁷ AIWO-CAN, MBOSCUA, CADDAP and Planète Survey Environnement and Développement 2013 *Issues and Recommendations on the Situation and Rights of Indigenous Peoples in Cameroon in Relation with the Universal Periodic Review in Cameroon* 5.

⁷⁹⁸ Proportional Representation hereinafter PR.

⁷⁹⁹ Moser 2008 *Comparative Politics* 274.

⁸⁰⁰ Moluh 2013 *Law and Politics in Africa, Asia and Latin America* 264-265.

⁸⁰¹ Single Member District hereinafter SMD.

⁸⁰² Army 1995 *The Good Society* 23.

challenges of unequal representation of minorities and guarantee the equal representation of majorities and minorities in electoral processes in the country.⁸⁰³ Thus, it is important that effective measures should be adopted to ensure the implementation of the PR system in Cameroon as this will be the most effective means to facilitate minority and equal representation of both sections of the population in government in the country.

In addition, other proponents recommend the nomination of an indigenous person to represent them in the National Assembly as well as delegate a team composed of indigenous peoples to personally engage with, sensitise and educate them on their civic and political rights and the need to take part in these processes, as this will boost their participation in elections.⁸⁰⁴ Accordingly, other Scholars have argued that the involvement of minorities in politics is not just about their voting rights or the fact that their representatives are in best positions to protect them, but it also demonstrate that they have the capacity to stand for elections, be elected and effectively handle political positions at all levels.⁸⁰⁵ Thus, it is justified that the system of PR be implemented to give them the opportunity to empower themselves and showcase their abilities in all spheres of life.

Moreover, in an effort for the ELECAM to assume its role as an institution mandated with the powers to manage, organise and supervise election processes in the country,⁸⁰⁶ one of its key aims is to ensure the equal participation of all population in electoral processes, through educative programmes on their civic and political rights.⁸⁰⁷ These activities amongst others include engaging with women and people with disabilities.⁸⁰⁸ It is common cause that (minority/indigenous) men are more represented in government than women, the

⁸⁰³ Army 1995 *The Good Society* 23.

⁸⁰⁴ Commonwealth 2013 *Report of the Commonwealth Expert Team: Cameroon Legislative and Municipal Elections* 27.

⁸⁰⁵ Richmond 2006 *Report of Electoral Systems and the Protection and Participation of Minorities* 5-8.

⁸⁰⁶ See Part 1, Section 3 of the Electoral Code.

⁸⁰⁷ Commonwealth 2013 *Report of the Commonwealth Expert Team: Cameroon Legislative and Municipal Elections* 28.

⁸⁰⁸ See Commonwealth Secretariat 2011 *Report of the Commonwealth Expert Team: Cameroon Presidential Election* 22.

reverse should be true, as Reynolds asserts that women are known to be more knowledgeable and capable of making meaningful contributions in legislative and administrative policies which is essential to restore peace and stability in the country.⁸⁰⁹ A practical example is the significant transformation 68 women have made in the newly Afghan National Assembly.⁸¹⁰ Also, it is unfortunate that the Electoral Code does not make mention of indigenous peoples as a group that fall under minority groups, despite government's efforts obligation to ensure the full participation of everyone in electoral processes without distinction. The exact wordings read as: "Each list shall take into consideration the various socio-political components of the constituency concerned. It shall also take into consideration gender aspects".⁸¹¹ However, it is worth noting that indigenous communities, especially the Pygmy population have not benefited from this socio-political system of representation promised in the legislation. This is a clear indication that even the newly created institution (ELECAM) and legislation (Electoral Code) which aim at regulating electoral processes in the country tends to undermine indigenous peoples' rights to active and full participation in electoral processes.

In order to ensure, the equitable distribution of polling stations and effective participation of people with disabilities in the 2011 elections, the Director General of Elections signed Decree No. 0418/ELECAM/DGE of 15 September 2011 to facilitate the organisation of polling stations in the country.⁸¹² To this end, the Decree provided for specially designed polling stations as well as special polling agents to assists people with disabilities, pregnant women and the elderly persons, so as to accommodate and enable them effectively take part in the

⁸⁰⁹ Richmond 2006 *Report of Electoral Systems and the Protection and Participation of Minorities* 3.

⁸¹⁰ Richmond 2006 *Report of Electoral Systems and the Protection and Participation of Minorities* 3.

⁸¹¹ See Part V, Chapter 1, Section 151 of the Electoral Code on the Elections of Members of Parliament.

⁸¹² Commonwealth Secretariat 2011 *Report of the Commonwealth Expert Team: Cameroon Presidential Election* 23.

electoral process with ease and dignity, still no provision was made to accommodate indigenous peoples living in remote areas.⁸¹³

Additionally, the budget of 21, 000 million CFA allocated to run the elections of 2011 failed to take into consideration the special needs of indigenous peoples either by providing mobile polling stations within their communities or assisting them get identification documents needed for voting.⁸¹⁴ Added to that, subsequent reports of the 2013 twin Municipal and Legislative elections organised by Decree No. 2013/220 of 2 July 2013 provides that in a bid to guarantee the active and open participation of all populations during the upcoming elections, the President signed a Decree authorising the issuing of free identity cards to everyone of voting age.⁸¹⁵ However, it is surprising to note that indigenous peoples did not benefit much from these efforts as most of them were never informed, coupled with the fact that identification offices are located in major cities several distant from indigenous communities.⁸¹⁶ A better solution would have been deploying documentation officers to indigenous communities to assists them obtain identification cards for election purposes.

To support this line of argument, the Inter-Parliamentary Council⁸¹⁷ and the Inter-Parliamentary Union,⁸¹⁸ state that for a country to realise its democratic principles as well as experience peace and stability in the country there is an urgent need for Free, and Fair Elections.⁸¹⁹ This basically imply that for a country to realise free and fair elections appropriate measures must be put in place by government

⁸¹³ Commonwealth Secretariat 2011 *Report of the Commonwealth Expert Team: Cameroon Presidential Election* 42-43. This event led to the construction of 12 polling stations arranged with access ramps, fitting polling booths and ballot boxes were made very low approximately at floor level to assists peoples with disabilities. These fitting polling booths were distributed over nine localities across six regions.

⁸¹⁴ Commonwealth Secretariat 2011 *Report of the Commonwealth Expert Team: Cameroon Presidential Election* 73. The budget aimed at sensitising and informing citizens, especially women, people with disabilities and the elderly with the exclusion of indigenous peoples.

⁸¹⁵ Commonwealth 2013 *Report of the Commonwealth Expert Team: Cameroon Legislative and Municipal Elections* 33-36.

⁸¹⁶ Commonwealth 2013 *Report of the Commonwealth Expert Team: Cameroon Legislative and Municipal Elections* 36.

⁸¹⁷ Inter-Parliamentary Council hereinafter IPC.

⁸¹⁸ Inter-Parliamentary Union hereinafter IPU.

⁸¹⁹ Goodwin-Gill *Free and Fair Elections* 36.

to ensure that everyone fully takes part in electoral processes. However, it is significant to note that discriminatory practices and social exclusion in elections are potential elements hindering the realisation of democracy and equality between indigenous peoples and the broader society, since participation in elections demonstrates an expression of the “will of the people” and enhance democracy.⁸²⁰ Thus, in differentiating between free and fair elections, Goodwin-Gil explains “free” to mean participation and choice; while on the other hand “fair” refers to the equality of participation and the right to vote.⁸²¹ Generally, these two concepts aim at promoting fairness and non-discrimination as a means to demonstrate respect for human rights and eradicate oppression.⁸²²

Given that one of the major goals of the Electoral Code is to provide transparent and fair elections, unfortunately, for indigenous communities this is far from reality. First, the amount levied on each nominated candidate amounting to CFAF 1,000.000 is quite expensive for people from marginalised backgrounds to afford and this has actually discouraged many willing candidates.⁸²³ Secondly, the extension period provided for the withdrawal of voter’s card does not favour people residing in rural areas, coupled with the idea of early presentation of National identity Cards, and has led to inaccuracy in identification of voters during registration.⁸²⁴ It is recommended that a system be adopted where voters can register and collect voters card’s at same time.⁸²⁵ Thus, special measures for just and equitable policies that address the concerns of all groups including indigenous peoples are recommended in the Cameroonian electoral system, since it is recognised that the above weaknesses in the Electoral Code hinders indigenous peoples effective participation in elections and politics.

⁸²⁰ Goodwin-Gill *Free and Fair Elections* 37.

⁸²¹ Goodwin-Gill *Free and Fair Elections* 37-38.

⁸²² Goodwin-Gill *Free and Fair Elections* 38.

⁸²³ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 86.

⁸²⁴ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 27.

⁸²⁵ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 27.

Accordingly, political parties also have a significant role to play in ensuring the participation of everyone in election processes in the country. It is noted that the authority of any government is decided by the will of the people usually communicated in genuine, free and fair elections organised on the basis of universal, equal and secret suffrage.⁸²⁶ This principle obliges political parties and governments to eradicate all forms or acts of violence, provide mutual respect to the rights and freedoms of others as well as recognise the results of free and fair elections in the country.⁸²⁷ Political parties do not only safeguard the protection of human rights but also facilitate the exercise of political and democratic rights to freedom of association, speech and expression.⁸²⁸ It is understandable that candidates nominated to stand for elections into political positions must belong to a political party. This is rather unfortunate in the case of Cameroon as indigenous peoples do not have a political party of their own, but are attached to other political parties, which in most cases do not protect their interest and makes it difficult for them to be nominated as candidates for elections, yet, Article 3 of the Constitution states that: -

Political parties and groups shall help the electorate in the making of voting decisions. They shall be bound to respect the principles of democracy, national sovereignty and unity. They shall be formed and shall exercise their activities in accordance with the law.

This provision supplements that of section 59 of the Electoral Code which allows every candidate, lists of candidates or political parties to nominate three polling agents from each sub-division to assist in the polling stations. The question is do indigenous peoples have political leaders to help organise them? Secondly, to what extent can indigenous peoples exercise their rights within these political parties? Indigenous peoples do not have any political party that duly represents them. Despite the introduction of a multi-party system led by Law No. 90/56 of 19 December 1990, resulting to the legalisation of over 282 political parties in the

⁸²⁶ Article 1 of the *IPC on the Declaration on Criteria for Free and Fair Elections* (1994).

⁸²⁷ Anon date unknown [http://www.cnudhd.com/index.php?option=com_content&view=article&id=184%3Ahuman rights and elections&Itemid=155](http://www.cnudhd.com/index.php?option=com_content&view=article&id=184%3Ahuman%20rights%20and%20elections&Itemid=155).

⁸²⁸ Anon date unknown [http://www.cnudhd.com/index.php?option=com_content&view=article&id=184%3Ahuman right sand elections&Itemid=155](http://www.cnudhd.com/index.php?option=com_content&view=article&id=184%3Ahuman%20rights%20and%20elections&Itemid=155).

country in 2012.⁸²⁹ In addition, to this number, other six new political parties were made officialised in 2014. The table below shows the newly legalised political parties in 2014: -

Legalised political parties in 2014

Table 4

No.	Name of political party	Declaration of legal existence	Acronym
1	<i>Parti pour la Dynamique du Cameroun et ses Valeurs Institutionnelles</i>	Decision No. 21/D/MINATD/DAP/SDE/SPP of 24 February 2014	PADY-CAMVALINS
2	<i>Mouvement Camerounais pour la Sociale-Démocratie</i>	Decision No. 32/D/MINATD/DAP/SDE/SPP of 10 March 2014	MCPSD
3	<i>Croire au Cameroun</i>	Decision No. 250/D/MINATD/DAP/SDE/SPP of 15 July 2014	CRAC
4	<i>Parti des Démocrates Chrétiens</i>	Decision No. 312/D/MINATD/DAP/SDE/SPP of 26 August 2014	PDCH
5	<i>Front des Forces Républicaines</i>	Decision No. 395/D/MINATD/DAP/SDE/SPP of 22 October 2014	FFR
6	Cameroonian Citizens Council	Decision No. 00043/D/MINATD/DAP/SDE/SPP of November 2014	CCC

Source: MINDATD adapted from MINJUSTICE Report of 2014 17.



Surprisingly, out of this number none of these political parties is led or represented by indigenous peoples. However, a few of them with political ambitions tend to join the ruling or other opposition parties, in a bid to secure political positions as well as ensure that their concerns are taken into consideration. Unfortunately, in most instances they are easily forgotten by politicians after assuming power. More so, it is submitted that lack of exposure, low level of education and poverty status render them vulnerable and exposed to tricks of politicians as they easily fall prey to fake promises and political publicity.⁸³⁰ In addition, the ruling party shows little concern over indigenous

⁸²⁹ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 91.

⁸³⁰ Wessendorf K 2001 https://www.google.co.za/?gfe_rd=cr&ei=3UakV46zIMnU8gfd7JqAAg#q=Indigenous+People+s%27+Involvement+in+National+Politics%2C+by+Joan+Carling.

issues as their focus is only based on recording majority votes than addressing the needs of marginalised communities.⁸³¹ Thus, it is important that indigenous communities mobilise themselves and form political parties that share and address their needs and aspirations and at the same aim at safeguarding their traditional and political institutions. Although, studies have revealed that inadequate financial support, intimidation, fraud, political marginalisation and corrupt practices during elections prohibit them from forming and joining political parties of their own.⁸³²

4.2.1.2.2 Participation of indigenous peoples in voting

The right to vote is a political and fundamental human right granted to everyone. It is a means through which the population impacts government's decision-making process by enabling them to freely choose a candidate of their choice.⁸³³ The right to vote is therefore crucial for the recognition and realisation of their individual and collective rights as demonstrated in several international and regional instruments. All national Constitutions not only guarantee indigenous peoples the right to vote, but also endorses their right to form and join political parties of their own and be nominated as electoral candidates.⁸³⁴ Mindful of the above, indigenous peoples continue to experience major challenges in this area, as their voting rights as citizens of the country are repeatedly violated during elections.⁸³⁵

Government's efforts to enhance voting rights and ensure that everyone actively takes part in the actual voting process, led to the insertion of a provision in the Electoral Code which guarantee all Cameroonians both at home and abroad the right to exercise their voting rights.⁸³⁶ This confirms that the right to vote is also

⁸³¹ Wessendorf K 2001 https://www.google.co.za/?gfe_rd=cr&ei=3UakV46zIMnU8gfd7JqAAg#q=Indigenous+Peoples%27+Involvement+in+National+Politics%2C+by+Joan+Carling.

⁸³² Wessendorf K 2001 https://www.google.co.za/?gfe_rd=cr&ei=3UakV46zIMnU8gfd7JqAAg#q=Indigenous+Peoples%27+Involvement+in+National+Politics%2C+by+Joan+Carling.

⁸³³ Anon 2003 <http://hrlibraryumnedu/edumat/studyguides/votingrightshtml>.

⁸³⁴ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 50.

⁸³⁵ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 50.

⁸³⁶ See Part X, section 271 of the Electoral code.

extended to indigenous peoples to secure their effective participation in governance. In addition, the Electoral Code has also put in place effective measures to ensure that all Cameroonians including women, people with disabilities and the elderly exercise their civic and political rights during voting.⁸³⁷ However, the special needs of indigenous peoples are not addressed, considering their geographical location in the country, coupled with the fact that they constitute part of the marginalised population. It is just reasonable that whatever special measure government is providing to assist the PWD and women should also be extended to indigenous peoples, having regard to their different needs.

In addition, studies have shown that indigenous peoples are frustrated with the corruption and irregularities surrounding the voting and election processes in the country.⁸³⁸ They are of the view that politicians assist people to register twice in different regions using different identification documents, in some cases, the names of the deceased are used to register and vote, added to the fact that politicians also trade votes with gifts etc.⁸³⁹ Most indigenous peoples are disgruntled with the ruling government indicating that their participation in voting or not would never change their present situation as government shows no concern for their welfare.⁸⁴⁰ Their rights as indigenous peoples are repeatedly violated and live in destitute with no basic social services coupled with the fact that they have to cover long distances just to collect fruits, game, honey, tubers, fish and water for daily survival.⁸⁴¹ More frustrating is the non-recognition by the state of their rights to ancestral land and natural resources which are under threats by government and extractive companies. Thus, this discontentment is what is preventing indigenous peoples from freely exercising their civic rights to vote in the country. It is essential those policies that out rightly discriminate

⁸³⁷ See for instance, the two reports of the 2011 and 2013 twin Legislative and Municipal Elections of Cameroon.

⁸³⁸ Lesser 2013 <http://blograinforestfundorg/?p=247>.

⁸³⁹ Lesser 2013 <http://blograinforestfundorg/?p=247>.

⁸⁴⁰ Lesser 2013 <http://blograinforestfundorg/?p=247>.

⁸⁴¹ Lesser 2013 <http://blograinforestfundorg/?p=247>.

against indigenous peoples be stamped out. ELECAM cannot effectively realise its goal of ensuring transparency, accountability and credibility in elections if the needs of indigenous peoples are not properly addressed to safeguard their effective participation in government.

4.3 Participation of indigenous peoples in decision-making processes in Cameroon

Another major problem facing indigenous peoples in Cameroon is lack of participation in decision-making processes over issues concerning their internal and local affairs. Most of their challenges range from government's unwillingness and inability to liaise with them on issues that have a direct bearing on their livelihood and personality as a marginalised group in the society.⁸⁴² The rich forest areas occupied by indigenous peoples are supposed to improve their livelihood and provide them with well-developed structures but this has not been achieved as MNCs tend to use these resources and territories to their own advantage without consulting with indigenous representatives or sought their prior consent.⁸⁴³ International instruments focused on promoting indigenous peoples' rights stress on the need to consult and cooperate with indigenous peoples in good faith and seeking their informed consent prior to adopting any legislative measures or carrying out development projects that might have negative impact on them and their environment.⁸⁴⁴ Surprisingly, no proper negotiations are done with indigenous peoples regarding these process: they are equally not consulted nor their informed consent sought. Thus, their internationally recognised rights to FPIC and prior consultation are violated and undermined by government and other non-state actors.

In Cameroon, indigenous peoples are scarcely represented or involved in national or local administrative decision-making processes, their rights to

⁸⁴² Human Rights Council 2011 Final Study on Indigenous Peoples and the Right to Participate in Decision-Making 5.

⁸⁴³ Lennox "Natural Resource Development and the Rights of Minorities and Indigenous Peoples: Events of 2011" 11.

⁸⁴⁴ See for instance Art 19 of the UNDRIP.

consultation and FPIC have systematically been violated, leading to repeated violence and many other social problems, including constant dispossession and extreme poverty.⁸⁴⁵ As a result, they continue to experience severe patterns of discrimination which have eventually affected their capacity and freedom to make decisions on issues impacting negatively on their daily lives, including political, economic, social and cultural rights.⁸⁴⁶ This section aim at investigating the extent to which the Cameroonian government is honouring its international obligations in ensuring that indigenous peoples actively take part in decision-making processes at national, local and regional levels on matters of their interest as well as consult in good faith with them prior to the execution of any development project taking place within their communities. It has been argued that government policies and activities impede the effective and full participation of indigenous peoples in decision-making processes, as well as violate indigenous peoples' rights to prior consultation and informed consent.⁸⁴⁷ It is important that some government policies be reviewed to make provision for the active participation of indigenous peoples in decision-making processes and public affairs.

4.3.1 Consultation and FPIC as the basis for realising indigenous peoples' rights to decision-making

Consultation and FPIC have for over the years gained significant recognition within the international human rights law. This international responsibility requires government to effectively consult with and seek the consent of indigenous peoples on decisions regarding their welfare.⁸⁴⁸ These rights has been replicated in many international instruments like ILO Convention No. 169, the United Nations treaty regulatory systems and the UNDRIP. The obligation to consult with indigenous peoples have also be extended to, and endorsed by governments at

⁸⁴⁵ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 44-45.

⁸⁴⁶ APF and UNHR *The United Nations Declaration on the Rights of Indigenous Peoples* 19.

⁸⁴⁷ Bambanze 2011 *Report of the Expert Mechanism on the Rights of Indigenous Peoples on its Fourth Session* 9.

⁸⁴⁸ Anaya 2005 *Arizona Journal of International & Comparative Law* 7.

national levels.⁸⁴⁹ The principle of prior consultation aims at ensuring that indigenous peoples' rights to decision-making are effectively implemented, especially over the management, use and exploitation of natural resources and traditional lands.⁸⁵⁰ Despite international this recognition, controversies still exists as to the nature and extend of this right to indigenous peoples and whether their involvement in decisions on issues that negatively affects them supersedes government actions?⁸⁵¹ This question has been answered by Hanna and Vanclay who argue that since major development projects are likely to affect indigenous communities more than other groups in the society, it essential for them to be actively involved in all discussions prior to the approval of these projects.⁸⁵² This is important as it enables them determine the impact of these projects on their livelihood and environment and obliges government to consult with them at every stage to obtain their FPIC prior to the endorsement of these projects.⁸⁵³ In addition, other scholars have validated this argument by adding that the fact indigenous peoples depend on the content of these lands for survival and have an old age history over these territories, it is in all fairness that they have a say on decisions concerning the use, management, control and development of these territories.⁸⁵⁴ This is because they are in a good position to ensure that the said development project takes into consideration their cultural aspirations and traditional beliefs. Additionally, they will be able to determine the kind of development appropriate for them and their community, thus, prior consultation with indigenous peoples is very crucial

It is a general perception that there is no officially accepted definition to the notion of FPIC as scholars have varying opinions as to the precise meaning of the term.⁸⁵⁵ For instance, Zvobgo defines FPIC as an inherent right granted to indigenous peoples to decide their future and choose the type of development

⁸⁴⁹ Anaya 2005 *Arizona Journal of International & Comparative Law* 7.

⁸⁵⁰ Anon 2011 *Prior Consultation: A Fundamental Right for Indigenous Peoples*.

⁸⁵¹ Anaya 2005 *Arizona Journal of International & Comparative Law* 7.

⁸⁵² Hanna and Vanclay 2013 *Impact Assessment and Project Appraisal* 152.

⁸⁵³ Hanna and Vanclay 2013 *Impact Assessment and Project Appraisal* 152-153.

⁸⁵⁴ Vermulen and Cotula 2010 *The Journal of Peasant Studies* 907, 910.

⁸⁵⁵ Hanna and Vanclay 2013 *Impact Assessment and Project Appraisal* 150.

appropriate for their well-being, environment and territories.⁸⁵⁶ He further notes that FPIC guarantees indigenous peoples' access to environmental justice as it creates a forum for them to freely and openly express themselves on matters that are contrary to their distinct way of life and at same time enhance democracy.⁸⁵⁷ It has been argued by some scholars that FPIC alone is unable to address issues of democratic inclusion and participation, as it might rather trigger other political conflicts between social groups, society and state and impede social justice.⁸⁵⁸ Given that most development projects and other operations authorised by government poses substantial threats to the livelihood of indigenous peoples, especially as these territories are known to inhabit rich biodiversity and natural resources that endangers their cultures and well-being.⁸⁵⁹ As such, the idea of FPIC is important as it enable government and extractive industries to openly inform indigenous peoples about the nature of the project and possible effects on their communities as well as reasonable compensations to be paid to the communities for the damages or inconveniences the set project might have on the host communities. It is significant to mention that urgent need to address issues of environmental degradation and safeguard the well-being of indigenous peoples has caused the right to consultation and FPIC to be captured in many international human rights documents as analysed below.

The ILO Convention No. 169 for example, has expressly outlined conditions for the right to consultation and FPIC in Articles 6, 7, 16 and 22 with the intention of imposing an obligation on States Parties to take the necessary steps regarding the re-location and displacement of indigenous peoples from traditional lands particularly in respect of development projects that directly affects them, their lands, territories and environment. Additionally, ILO Convention No. 169 interprets the principle of consultation and FPIC in Article 6(1)(b) by obliging

⁸⁵⁶ Zvobgo 2012-2013 *Sustainable Development Law & Policy* 37.

⁸⁵⁷ Zvobgo 2012-2013 *Sustainable Development Law & Policy* 37.

⁸⁵⁸ Fontana and Grugel 2015 *World Development* 250.

⁸⁵⁹ Fontana and Grugel 2015 *World Development* 252; Tamang 2005 Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices 3.

states to develop mechanisms through which indigenous peoples can freely participate at the same level with the mainstream society in elective and administrative institutions as well as other bodies responsible for policies and programmes that concern them. This provision emphasises on the need for the state to take immediate strategies to reach agreements with indigenous peoples prior to the start of the project. It equally demands states to include indigenous peoples in forums where legislative measures and other policies concerning their territories are made. This is significant as indigenous peoples would be able to object certain provisions that would intend damage their land, cultures and ways of life.

Additionally, the principle of consultation and prior consent is the ground work of Article 7 which allows indigenous peoples to decide their own priorities of development, having regard to their cultures, spiritual well-being and beliefs. It also ensures that they participate in, and have control over their economic, social and cultural development as well as in the formulation, implementation and evaluation of plans and programmes for national and regional development.⁸⁶⁰ To this end, government and States Parties are charged with the responsibility to cooperate with indigenous peoples and obtain their informed consent on the social, spiritual and environmental impacts before the project takes effect.⁸⁶¹ Accordingly, this provision gives indigenous peoples the upper hands to reject and put an end to any project, as long as they believe that these projects will not be beneficial to the community, and the nature of project will destroy their cultural identities and unique characteristics.

On the other hand, Article 16(1) prohibits the forceful removal of indigenous peoples from traditional lands except otherwise it is necessary to do so. In any event their free and informed consent must be sought. It should be noted that this provision of the ILO Convention No. 169 is controversial since it gives states the upper hands to go ahead with the said project even where indigenous peoples

⁸⁶⁰ Art 7(1) (2) of the ILO Convention No. 169.

⁸⁶¹ Art 7(3) of the ILO Convention No. 169.

refuse to give their consent.⁸⁶² This has been the reason why most governments continue to violate indigenous peoples' right to consultation and FPIC. The question is why consult and sought the informed consent of indigenous peoples when their opinion might still be overlooked by government? Why prohibit the forceful displacement of indigenous peoples from traditional lands, when the same provision gives government the right to proceed with the project irrespective of indigenous peoples' resistance. Policy-makers are urged to reflect on this provision and make amends and ensure that indigenous peoples decisions cannot be overruled by government's authority, even when the project have detrimental effects on them.

Also, the UNDRIP equally provide for indigenous peoples' rights to FPIC in several provisions, including articles 10, 29 and 30. Article 10 prohibits the forceful eviction of indigenous peoples from traditional lands without their prior consent. It further requires that states must reach consensus with indigenous peoples on a possible and fair compensation with the possibility of returning to their lands. This provision gives indigenous peoples the right to participate in decisions through their chosen representatives or establish their own decision-making institutions to decide on matters of interest to them.⁸⁶³ Furthermore, Article 29 also states that "indigenous peoples have the right to the conservation and protection of the environment and productive capacity of their lands and natural resources".⁸⁶⁴ To this end, states must ensure that there is no storage or disposal of hazardous materials on the lands of indigenous peoples without proper consultation and informed consent.⁸⁶⁵ Article 30 further elaborates on the concept of informed consent by stating that prior to performing military activities on the lands and territories of indigenous peoples, the state is required to obtain the free consent of indigenous peoples using appropriate measures, specifically through their representative institutions before the commencement of any project on their lands. It is worth noting that these

⁸⁶² Art 16(2) of the ILO Convention No. 169.

⁸⁶³ Art 18 of the UNDRIP.

⁸⁶⁴ Art 29(1) of UNDRIP.

⁸⁶⁵ Art 29(2) of the UNDRIP.

principles are used as tools in international law to mitigate on the negative impacts of these projects on host communities.⁸⁶⁶ Despite these efforts host communities are suffering enormously from government policies that authorise extractive industries to resources in indigenous peoples. The damaging environment have several effects on the communities, ranging from social, economic and cultural ills.

Consequently, the enforcement of the right to consultation and informed consent remain a myth than a reality. This is true regarding indigenous peoples in Cameroon. In all fairness indigenous peoples should have the right to the lands they have occupied from time immemorial and be able to take part in decisions concerning the future development of these lands, regrettably, they are not always invited or consulted when decisions concerning them and the territories they inhabit are made.⁸⁶⁷ For instance, following a general concern for the official recognition of indigenous peoples' in national legislation, it is surprising that indigenous peoples in Cameroon were not only excluded, but were equally not consulted and their prior consent undermined during the actual drafting of the 1996 Constitution and its subsequent amendments.⁸⁶⁸ In my opinion this is why the provisions that protects and preserve the right of indigenous is passively limited in the Preamble to the Constitution. If for instance, indigenous peoples were part of this negotiation process, it is very clear they would have changed the idea and insists these rights be included in the body of the Constitution, in order to avoid the on-going controversy surrounding the validity and nature of their rights as limited in the Preamble to the Constitution. This attitude by government has grossly hindered indigenous peoples' right to participate in government and most importantly in decision-making processes on legislative and administrative measures connected to their welfare.

⁸⁶⁶ UNPFII 2005 http://www.un.org/esa/socdev/unpfii/documents/engagement_background_enpdf.

⁸⁶⁷ Being able to make decisions on the use, access and management of their lands and territories guarantee their rights to self-determination as articulated in the UNDRIP.

⁸⁶⁸ Pelican 2013 *Anthropology Today* 15.

More so, the Forestry Law which main goal is to redress past injustices introduced by colonial policies, embarked on initiating a participative system of management and protection of land and natural resources within indigenous communities.⁸⁶⁹ The Forestry Law and the implementation Decree No. 95/531 of 23 August 1995 established by a Ministerial Decree No. 0518 of 21 December 2001 identified indigenous peoples as the real caretakers of forestry and wildlife resources and want them to be part of every decision-making process regarding the management and control of these lands.⁸⁷⁰ Nonetheless, they were not part of the negotiating and drafting process nor were their informed consent obtained on certain provisions that directly points to their internal affairs. Subsequently, they were represented by Bantu chiefs following a Committee on the Valorisation of Wildlife Resources,⁸⁷¹ regarding the management of Community-managed Hunting Zones.⁸⁷² This indicates that the government of Cameroon and its subsequent policies are not only operating contrary to international and regional standards, but are also in violation of her own national canons, enacted to ameliorate the socio-economic conditions of indigenous peoples.

In addition, to ensure that indigenous peoples take part in forestry management, the Forestry Law has granted traditional hunting and exploitation rights in council and community forests areas.⁸⁷³ Promulgated by Law No. 94/01 and Decree No 95/466/PM indigenous peoples are to also benefit from forest resources and revenues from resource exploitation as well as be part of every decision regarding these activities.⁸⁷⁴ Mindful of the above, it is significant to note that indigenous communities are always side-lined and never consulted during these processes, as their Bantu neighbours claimed indigenous peoples are their property, given the fact that their local chiefs are not officially recognised and

⁸⁶⁹ Egbe "The Law, Communities and Wildlife Management in Cameroon" 2-4.

⁸⁷⁰ Egbe "The Law, Communities and Wildlife Management in Cameroon" 2-4.

⁸⁷¹ Committee on the Valorisation of Wildlife Resources hereinafter COVAREF.

⁸⁷² Ngo date unknown <http://livingearthorguk/wp-content/uploads/2013/07/SITUATIONAL-ANALYSIS-OF-MECHANISMS-FOR-VULNERABLE-PROCESSES-IN-CAMEROON.pdf>; Community-managed Hunting Zones hereinafter ZIGG.

⁸⁷³ Egbe "The Law, Communities and Wildlife Management in Cameroon" 5.

⁸⁷⁴ Ngo date unknown <http://livingearthorguk/wp-content/uploads/2013/07/SITUATIONAL-ANALYSIS-OF-MECHANISMS-FOR-VULNERABLE-PROCESSES-IN-CAMEROON.pdf>.

remain answerable to the Bantu chiefs, which means only the Bantu chiefs are allowed to seat in such forums and make decisions on their behalf.⁸⁷⁵ Hence, indigenous peoples are hardly consulted nor permitted to be part of the decision-making processes even when the intended discussions is related to management of their internal and local affairs. This practice not only contradicts but violates some provisions of the UNDRIP which requires indigenous peoples to participate in decision-making using their chosen representatives as well as maintain and develop their own decision-making institutions.⁸⁷⁶

Also, the Chad Cameroon Pipeline project which requires the drilling of oil wells in Chad and transporting them through pipelines that cut-across the coastal port of Kribi in East Cameroon has resulted to substantial violation of the fundamental human rights to Consultation and FPIC of the Baka and Bagyéli communities.⁸⁷⁷ Reports indicate that no formal negotiations and prior consultations were carried out prior to establishment of this project to obtain the informed consent of the affected communities.⁸⁷⁸ Thus, it was also observed that indigenous peoples right to FPIC were not only infringed upon but the consultation process was not properly carried out in good faith.⁸⁷⁹ From the above discussions, it is evident that international human rights standards (ILO Convention No. 169 and UNDRIP) which the Cameroonian government have committed itself to adhere to, is only read in papers, the actual implementation process is yet to be realised when it comes to indigenous peoples issues. The activities of the Chad-Cameroon Pipeline project have left devastating effects to the property, cultures, customs, traditions, environment and ways of life of indigenous peoples which reflects their

⁸⁷⁵ AIWO-CAN, MBOSCUA, CADDAP and Planète Survey Environment and Développement 2013 Issues and Recommendations on the Situation and Rights of Indigenous Peoples in Cameroon in Relation with the Universal Periodic Review in Cameroon 5; Ngo date unknown <http://livingearthorguk/wp-content/uploads/2013/07/SITUATIONAL-ANALYSIS-OF-MECHANISMS-FOR-VULNERABLE-PROCESSES-IN-CAMEROON.pdf>.

⁸⁷⁶ Art 18 and 19 of the UNDRIP.

⁸⁷⁷ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 17-18.

⁸⁷⁸ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 17-18.

⁸⁷⁹ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 17-18.

existence as a people. And today these group of people linger along the roadsides and can no longer practice their distinct cultures.

That notwithstanding, the government of Cameroon has consistently displaced indigenous peoples from traditionally owned lands without prior consultation and informed consent. For instance, the Mbororo communities have accused the agro-industrial and foreign owned companies for forcefully appropriating their ancestral lands in the areas of Kadey, Lom and Djerem Divisions in bid to establish sugar plantations and agro-businesses.⁸⁸⁰ Following this projects, some regions in the Adamawa Province have been transformed into ranching operations, while others have been converted into national parks (Ntakamanda national park in the South West) without the FPIC of the Mbororo communities residing in that area.⁸⁸¹ Given the magnitude of these projects, indigenous communities are left to battle with deleterious effects to their health; destruction of livestock's and homes.⁸⁸² It is submitted that government's development policies do not take in to consideration international standards and have no regard for the protection of the human rights and fundamental freedoms of her indigenous communities. Intense pressure from civil society and national and international NGOs as well as other institutions in Cameroon advocating for the protection of indigenous peoples' rights is recommended. It is anticipated that these joined efforts will force government to live up to international standards.

Furthermore, another circumstance where the rights of indigenous peoples to prior consultation and informed consent are dishonoured is seen in government's efforts to promote Reducing Emissions from Deforestation and Forest Degradation in Developing Countries,⁸⁸³ a policy initiated by government to enhance the human rights of indigenous peoples in Cameroon through the implementation of the principle of FPIC. REDD+ is a framework developed under

⁸⁸⁰ Izsák 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 13.

⁸⁸¹ Izsák 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 13.

⁸⁸² Izsák 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 13.

⁸⁸³ Reducing Emissions from Deforestation and Forest Degradation in Developing Countries hereinafter REDD+.

the United Nations Framework Convention on Climate Change,⁸⁸⁴ to guard against excessive exploitation of natural resources and its adverse effects on indigenous and local communities, including loss of ancestral lands, denial of rights to access, use, own and manage the said lands.⁸⁸⁵ Efforts to achieve these goals requires government, other stake holders and MNCs to seek the prior consent of indigenous peoples and ensure their effective participation these group of people at every stage of decision-making processes regarding these project is realised.⁸⁸⁶ It is interesting to note that local communities and domestic actors are not fully represented in the FPIC process. In addition, the non-binding status of the FPIC process coupled with the fact that no specifications are made in relation to specific stakeholders and the absence of an official definition of the concept has contributed to persistent violation of this principle.⁸⁸⁷ Thus, it is recommended that for the principle of FPIC to be effectively implemented in Cameroon, government should employ strategies that grant it a binding status to reduce the powers of stakeholders and hold them accountable in cases of gross human rights violations against indigenous communities. Furthermore, both international and national bodies should jointly come up with an agreed and official definition of the concept of FPIC to avoid future uncertainties. Immediate steps should also be adopted to ensure an all-inclusive participative system in the Cameroon.

Another instance where the right to FPIC of indigenous peoples (Mbororo) is undermined is in the case between Archbishop Cornelius Fontem Esua of the Catholic University of Cameroon⁸⁸⁸ and the Mbororo cattle herders of the Mamada Hills, Ndah village in Bamenda III, a Sub-Division in the North-West Province of Cameroon.⁸⁸⁹ It is noted that the earliest of Mbororo peoples had settled in this region since 1904 and since then have been recognised by the

⁸⁸⁴ United Nations Framework Convention on Climate Change hereinafter UNFCCC.

⁸⁸⁵ Savaresi 2013 *Ecology and Society* 1.

⁸⁸⁶ Carodenuto and Fobissie 2015 *CCLR* 163.

⁸⁸⁷ Carodenuto and Fobissie 2015 *CCLR* 157.

⁸⁸⁸ Catholic University of Cameroon hereinafter CATUC.

⁸⁸⁹ Personal communication by way of an unstructured interview with senior staff members of the MBOYASCAM on the 10 January 2016 Bamenda, Cameroon.

post-colonial government of Cameroon, following the British Colonial Administration's official recognition of their land in 1933.⁸⁹⁰ Subsequently, in 2009 Archbishop Cornelius of the Catholic Church began negotiating with the Fon [chief] of Ndzah village, the DO of Bamenda III and the SDO of Mezam having jurisdiction over the piece of land, to obtain the land for the construction of a Catholic University. He was given the impression it was vacant land and owned government therefore, it was not necessary to consult with local authorities, particularly as the land is meant for public purposes.⁸⁹¹

In 2011 the Archbishop secured a temporary grant from the Minister of Lands giving him ownership under the pretext that it is a category 2 land, vacant and good for business.⁸⁹² Shortly after these negotiations, conflicts erupted between the Mbororo community of the Mamada Hills and the Archbishop of Catholic church when the chief of the Mamada Hills Ardo Adamu attempted to prepare his portion of the land for the new farming season. The Archbishop ordered the arrest and torture of Ardo Adamu and his assistants destroyed their homes, cattle, farm crops and other valuable property. In addition, he filed a law suit No. CFIBA/798C/12 in the Bamenda Court of First Instance ordering the arrest of Ardo Adamu for trespassing and the forceful evictions from these lands.⁸⁹³ The Court of First Instance revisited the definition and classification category 1 and 2 land as provided by the Land Ordinance. In line with the above, Category 1 land in Cameroon refers to occupied and developed land while Category 2 land is empty and undeveloped land. The Court First Instance held that considering the definition, this piece of land falls under category 1, as Mbororo peoples lived and used it for grazing.

However, after a locus to the area, it was later held that the Court of First Instance in Bamenda has no jurisdiction to hear the matter. Following this verdict, Ardo



⁸⁹⁰ See Ref. No. 49 of 1933, as settled by D.C.E. Tovey Esq. D.O. of Bamenda Division; Database of MBOYASCM retrieved on the 10 of January 2016 Bamenda, Cameroon.

⁸⁹¹ Database of MBOYASCM retrieved on the 10 January 2016 Bamenda, Cameroon.

⁸⁹² Izsák 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 13.

⁸⁹³ Izsák 2013 *Report of the Independent Expert on Minority Issues: Mission to Cameroon* 13.

definition, this piece of land falls under category 1, as Mbororo peoples lived and used it for grazing.

However, after a locus to the area, it was later held that the Court of First Instance in Bamenda has no jurisdiction to hear the matter. Following this verdict, Ardo Adamu instituted Suit No. NWAC/R/CF/004/2013 in the Administrative Court having jurisdiction to preside over the matter, although the matter is still pending till date due to the absence a college of judges, after two of these Judges were recently appointed to serve in other departments.

It is essential to note that, even though the Mbororo of Mamada Hills and their Ardo [chief] Adamu were never consulted and their consent sought by government and the Archbishop regarding the acquisition of their traditional lands; they have also been denied justice. This shows the level of marginalisation indigenous peoples experience daily and how government practices and conduct ignore and undermine their rights due to their cultural beliefs and way of life. Below are pictures of the Mbororo Mamada Hill community displaced by Archbishop of the Catholic Church.

Displaced Mbororo by the Archbishop of Catholic Church



Source: Database MBOYASCAM accessed 7 January 2017

Displaced Mbororo peoples by the Archbishop of Catholic Church



Source: Database MBOYASCAM accessed 7 January 2017

Displaced Mbororo peoples by the Archbishop of Catholic Church



Source: Adapted from Pelican 2013 *Anthropology Today* 15

4.4 Summary

This chapter analysed the participation of indigenous peoples in the political affairs and decision-making processes in the country. In terms of political participation, it was revealed that indigenous peoples are the least under-represented group of people in the country. In addition, regarding their role in decision-making processes on matters that negatively affects them, it was demonstrated that indigenous peoples are not always invited in these forums. A number of factors account for this, amongst them are lack of legislative recognition for their local institutions and traditional leaders, high rate of illiterate amongst indigenous peoples which prevents them from integrating and interacting with the dominant society, lack of proper identification cards, extreme poverty, limited knowledge of their civic and political rights coupled with language barriers, stigmatisation and intimidation from the general public are all factors that hinder their active role government and decision-making processes in the country. It was also observed that government does not respect its international obligations of consulting in good faith with indigenous peoples to obtain their prior consent on issues of their interest.

That notwithstanding, it is worth noting that with the advent of a multi-party system in the country, coupled with the efforts of MBOSCUDA and other civil society organisations, some Mbororo peoples can now participate in elections, vote, be elected and now hold political positions in government. Although the number is still relatively insignificant when compared to other segments of the population, for example, no indigenous peoples' person is represented in the Parliament of the country, a forum where important decisions concerning the well-being of the population are made. Their absence in Parliament has created a huge gap in the political system and has defeated the purpose of democracy, equality, rule of law and good governance which are the founding principles government is advocating for. This chapter also revealed that the Mbororo are more active in government than the Pygmies, as the data gathered did not show any Pygmy holding a political position in government. It is therefore recommended that government direct its resources not only to improve the socio-

economic lives of the Pygmy peoples but also to formulate policies that will help enhance their political life and enable them be on the same page with their Mbororo counterparts.

More so, beyond this observation, this chapter also demonstrates that some African countries have adopted legislation that allow minority groups to participate in politics and be represented in Parliament, it is expected that the government of Cameroon should adopt such good practices to ensure that indigenous peoples have the potential to fulfil their civic and political rights and be actively represented in all areas of government.

That notwithstanding, the chapter revealed that indigenous peoples' rights to FPIC and consulted are constantly violated by government policies and activities of extractive industries. Indigenous peoples are not given the opportunity to reject or accept the proposed development projects to be executed in their communities. Related studies have also demonstrated that indigenous peoples do not even participate in forums where crucial decisions concerning their territories are made. This has been a major problem for indigenous communities as they are left to deal with the deleterious effects caused by resource extraction.

The forthcoming chapter entails an evaluation of selected socio-economic and cultural rights of indigenous peoples in Cameroon with the intention of establishing that indigenous peoples do not only face challenges in the political domain, but in all spheres of life including economic, social and cultural aspects.

Chapter 5 An illustration of selected social, economic and cultural rights of indigenous peoples of Cameroon

5.1 *Introduction*

The preceding chapter discussed the political participation of indigenous peoples in government as well as assessed their level of participation in decision-making processes in internal and local affairs regarding legislative and administrative measures and other development projects that might have major effects on their well-being in Cameroon. The chapter also analysed the principle of consultation and FPIC as the basis for enhancing indigenous peoples' right to actively take part in decision-making processes in the country. From that analysis, it was extrapolated that indigenous peoples have a very low level of representation in the government, particularly for the Pygmies. The Mbororo, to some extent, hold some significant positions in government such as Mayors, Deputy Mayors and councillors in some regions in Cameroon. It was also revealed that one Mbororo holds an important position at the Presidency, while another has recently been appointed as Minister. Despite these significant posts, their representation still seems very parlous when compared to the broader society. Generally, it was observed that indigenous women are still left behind as far as representation in government and decision-making processes are concerned.

In addition, it was generally confirmed that indigenous peoples are not included in decision-making processes as government is unwilling to consult and seek their informed consent prior to the start of development projects operating within their territories, thereby violating its international human rights obligations. This has caused serious challenges to indigenous communities including displacement, poor health, pollution, poverty, environmental degradation and poor nutrition.

The analysis above has informed the need for an investigation of selected socio-economic and cultural rights of indigenous peoples in Cameroon. The aim is to evaluate whether or not even though indigenous peoples are politically

discriminated in government and decision-making processes in the country, their socio-economic and cultural rights are actually protected and promoted as explicated in several international human rights documents. It is submitted that even though indigenous peoples are the principal custodians of the rich, extensive and diverse forest ecosystem, linguistic repertoires, cultural diversity and traditional knowledge, they remain socially, economically, and culturally marginalised as compared to their non-indigenous counterparts. It was established that they do not have basic social facilities, development and security systems provided for them.⁸⁹⁴

It is a shared premise that the realisation of economic, social and cultural rights of indigenous peoples is crucial for their development, well-being and existence in the society. This means that both rights are important and must be recognised to guarantee a better living standard for them. Oluwu confirms this argument by asserting that social, economic and cultural rights are constructive measures of realising human development.⁸⁹⁵ To him, social rights are as valid and important as economic rights, and cultural rights in several cases require social and economic values that usually cuts across the realm of human rights.⁸⁹⁶ By this, it is justified to state that the realisation of socio-economic and cultural rights of indigenous peoples is a pre-requisite for the development of their well-being and environment. Therefore, the unwillingness by government to grant indigenous peoples access to basic social amenities has hindered their human development and prevents them from living a life of dignity as human beings.

In fact, several international and regional instruments maintain that civil, political, economic, social and cultural rights as earlier mentioned in para 1.1 above are inter-related, inter-dependent and indivisible, meaning that the enjoyment of these rights paves way for the realisation of civil and political rights.⁸⁹⁷ This suggests that both rights must be realised together, as the absence of one limits

⁸⁹⁴ Carino *et al* *State of the World's Indigenous Peoples* 1, 22.

⁸⁹⁵ Oluwu *An Integrative Rights-Based Approach* 4.

⁸⁹⁶ Oluwu *An Integrative Rights-Based Approach* 4.

⁸⁹⁷ See ICCPR, ICESCR, ACHPR and the Vienna Declaration.

the effective realisation of the other. Over the years social, economic and cultural rights have enjoyed some currency in national Constitutions as well as in international and regional instruments. However, the level of enforcement, protection and actual recognition is very insignificant especially when it comes to indigenous peoples.⁸⁹⁸ This is due to government's inability and delays in giving priority to these sets of rights as well as failure by states to treat them as important aspects in several African contexts.⁸⁹⁹ It is therefore suggested that all national Constitutions should give preference to social, economic and cultural rights and these discussions should be at the top of the list of every regional and national discourse.

This chapter focuses on selected social, economic and cultural rights of indigenous peoples in Cameroon, including the right to education, health, housing, social security and culture. The purpose for this selection is that these rights form the basis of multiple international, regional and national documents with special systems aimed at monitoring, applying and promoting indigenous peoples' human rights and enhancing the survival of their communities. It is argued that the insistent violation of social, economic and cultural rights of indigenous peoples is qualified by the activities, decisions and actions of non-state actors;⁹⁰⁰ MNCs; Transnational Corporations;⁹⁰¹ government and other International Financial Institutions.^{902, 903} In addition, specific focus is given to these rights with regards to indigenous peoples, owing to the uniqueness of their communities and the kind of lifestyle that they have chosen to lead. These core socio-economic and cultural rights as seen in para 1.1 above are inter-dependent, inter-related and indivisible and have a direct bearing on every other socio-economic right as well as civil and political rights of indigenous peoples' well-being.

⁸⁹⁸ Oluwu *An Integrative Rights-Based Approach* 6.

⁸⁹⁹ Oluwu *An Integrative Rights-Based Approach* 134.

⁹⁰⁰ Non-state Actors hereinafter NSAs.

⁹⁰¹ Transnational Corporations hereinafter TNCs.

⁹⁰² Oluwu *An Integrative Rights-Based Approach* 135.

⁹⁰³ International Financial Institutions hereinafter IFIs.

5.2 Recognition of socio-economic and cultural rights of indigenous peoples in Cameroon

The recognition of socio-economic and cultural rights are all fundamental principles for the fulfilment and respect of human dignity, particularly for indigenous communities who are the most vulnerable, marginalised and under-privileged groups in the society. As victims of severe human rights violations, the refusal by state to grant them access to basic social services threatens their existence and makes them less human and have subsequently be over-represented as the poorest of the poor, the most illiterate and destitute human beings in the universe.⁹⁰⁴ These rights are examined below to contextualise their impact on indigenous peoples' well-being.

5.2.1 Right to education

Education is a fundamental human right essential for the realisation of all other human rights and fundamental freedoms. Academics have argued that to eradicate poverty and combat other social ills such as social and economic discrimination and exclusion, people must be intellectually empowered through education.⁹⁰⁵ In effect, education is an important tool for people to demonstrate their democratic values and regain dignity in the society.⁹⁰⁶ Thus, the right to education is an intersection between economic, social and cultural rights on the one hand and civil and political rights on the other hand.⁹⁰⁷ Tomaševski supports this argument by adding that the civil and political right aspect of education entails respect for the freedom to be empowered and to participate in the political affairs of the country; whereas the socio-economic and cultural notion of education obliges states to provide and fund educational opportunities that enhance the cultural and collective rights of indigenous peoples.⁹⁰⁸ As argued

⁹⁰⁴ Carino *et al* State of the World's Indigenous Peoples 1.

⁹⁰⁵ Pranevičienė and Pūraitė 2010 *Jurisprudence* 134.

⁹⁰⁶ Pranevičienė and Pūraitė 2010 *Jurisprudence* 134.

⁹⁰⁷ Tomaševski 2001 http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203pdf.

⁹⁰⁸ Tomaševski 2001 http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203pdf.

by Hays, this process can only be achieved through formal education systems.⁹⁰⁹ Literacy skills are a pre-requisite for the recognition of all indigenous peoples' human rights and fundamental freedoms.⁹¹⁰

In addition, education is an essential element for the development of individual and collective rights in every society since it is the only means through which people are socialised and empowered with knowledge and skills crucial for the running of their daily activities. Education also helps to train, shape and develop the mind-set of every individual in the community. It generates a sense of self-confidence, pride, personhood and promotes the effective participation of indigenous peoples in the broader society.⁹¹¹ This is in line with Graham's views that education is a framework that empowers, strengthens and enhances reasoning to facilitate interaction and proper functioning at all levels of society.⁹¹²

Related UN reports suggest that extreme poverty, systemic marginalisation, negative stereotyping behaviours and exclusion prevent indigenous peoples from accessing quality education, thereby, classifying them as the least educated group of people in the world.⁹¹³ Quality education is an essential socialisation process for indigenous children, youths and adults to enable them come out of their poor state and compete with the rest of the society.⁹¹⁴ To support this argument the EMRIP recommends as follows:

Education of indigenous children contributes to both individual and community development, as well as to participation in society in its broadest sense. Education enables indigenous children to exercise and enjoy economic, social and cultural rights, and strengthens their ability to exercise civil rights in order to influence political policy processes for improved protection of human rights. The

⁹⁰⁹ Hays 2011 *The International Journal of Human Rights* 128.

⁹¹⁰ Hays 2011 *The International Journal of Human Rights* 128.

⁹¹¹ Inter-Agency Support Group on Indigenous Peoples' Issues 2014 http://www.un.org/en/ga/president/68/pdf/wcip/IASG%20Thematic%20Paper_%20Education%20-%20rev1.pdf.

⁹¹² Graham 2011 *UCLA Journal of International Law and Foreign Affairs* 87.

⁹¹³ United Nations 2009 *Study on Lessons Learned and Challenges to Achieve the Implementation of the Indigenous Peoples to Education* 4.

⁹¹⁴ Inter-Agency Support Group on Indigenous Peoples' Issues 2014 http://www.un.org/en/ga/president/68/pdf/wcip/IASG%20Thematic%20Paper_%20Education%20-%20rev1.pdf.

implementation of indigenous peoples' right to education is an essential means of achieving individual empowerment and self-determination. Education is also an important means for the enjoyment, maintenance and respect of indigenous cultures, languages, traditions and traditional knowledge...Education is the primary means of ensuring indigenous peoples' individual and collective development; it is a precondition for indigenous peoples' ability to realise their right to self-determination, including their right to pursue their own economic, social and cultural development.⁹¹⁵

Additionally, other studies attest that education is central for the survival and self-development of indigenous peoples to assist them overcome domination and suppression.⁹¹⁶ The educational level of indigenous peoples remains lower, with higher drop-out rates especially for girls and women.⁹¹⁷ Furthermore, related studies have confirmed that failure by government to provide schools within indigenous communities, coupled with the high costs of fees, school materials, lack of well-built and equipped infrastructure and well-trained staff, unwillingness by government to adapt school curricula to meet the cultural, specific needs and ways of life of indigenous peoples' has contributed to indigenous children being left behind in education.⁹¹⁸

To this end, the Inter-Agency Support Group on Indigenous Peoples,⁹¹⁹ have identified three major limitations depriving indigenous peoples from accessing quality education. First, is the lack of access especially for indigenous communities who reside in remote areas. The second limitation is that indigenous children are exposed to the lowest quality of education in relation to those in privileged societies. The third barrier is informed by the second which results in poor outcomes, which in turn reduce indigenous peoples' chances of finding formal and well-paid jobs.⁹²⁰ It is well-known that indigenous peoples have long

⁹¹⁵ United Nations 2009 *Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education* 4-5.

⁹¹⁶ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 79.

⁹¹⁷ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 79.

⁹¹⁸ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 79.

⁹¹⁹ Inter-Agency Support Group on Indigenous Peoples hereinafter IASGIP.

⁹²⁰ Inter-Agency Support Group on Indigenous Peoples' Issues 2014 http://www.un.org/en/ga/president/68/pdf/wcip/IASG%20Thematic%20Paper_%20Education%20-%20rev1.pdf.

histories of abusive educational systems that focus on colonial policies and undermine indigenous cultures and identities.⁹²¹ This practice has also been adopted by post-colonial government and remain a common practice in parts of the world. It is important that post-colonial governments redirect their policies towards meeting the special needs of their indigenous peoples if the literacy level of this group of people is to be changed.

The right to education has been emphasised in most binding and non-binding international instruments. For instance, the UDHR has relevant provisions that guarantee everyone's right to free and compulsory education at elementary and foundational stages, and reckons that technical, professional and higher education systems ought to be made available and accessible to everyone.⁹²² It further states that education ensures the full development of human personality, respect for human rights and fundamental freedoms.⁹²³ The above provisions imply that an educated society is free from conflicts and other related challenges that stem from differences in social levels of behaviour and understanding. For example, in societies where indigenous peoples are found there are always conflicts between the indigenous and non-indigenous communities over the violation of their fundamental human rights and freedoms, leading to instability and incessant unrest. This usually occurs when their rights are undermined or they are excluded from major decision-making processes, following their cultural beliefs or inability to read, write or understand dialogues regarding the type of project to be carried out on their territories.

In addition to the UDHR, the ICESCR is equally involved in the promotion of the right to education for indigenous peoples. UDHR requires states to recognise and enhance indigenous peoples' right to education for these people to realise full development of the human personality and dignity and to ensure respect for human rights and fundamental freedoms.⁹²⁴ In agreement with Article 26 of the

⁹²¹ Hays 2011 *The International Journal of Human Rights* 128.

⁹²² Art 26(1) UDHR.

⁹²³ Art 26(2) UDHR.

⁹²⁴ Art 13(1) of the ICESCR.

UDHR, the ICESCR also affirms that primary education shall be free, compulsory and available to all.⁹²⁵ Free, compulsory and accessible education is intended to benefit indigenous and minority groups whose children are unable to access primary education. To this end, the ICESCR has listed two major role players in the promotion of the right to education namely: Parents and Guardians to choose preferred education for their kids which conforms to minimum standards as set by the state.⁹²⁶ These two bodies have the responsibility to choose the best educational system for their children that meets certain required standards. However, it is important to note that this provision does not favour indigenous peoples, since the lack of economic resources limits their choices and they tend to rely on states for whatever services is available. Their only request is that school curricular be adapted to address their special needs and pay regard to their cultural aspirations. The ICESCR therefore places an obligation on all States Parties to the present Covenant to adopt and implement within its national jurisdictions policies that promote compulsory and free education within a specific period. These are efforts to ensure that at least the most disadvantaged and marginalised communities can attain primary education.

Accordingly, the CRC also makes reference to indigenous children's right to free and compulsory primary education using progressive measures and equal opportunities.⁹²⁷ It guarantees the recognition of minority and indigenous children's right to education taking into consideration their cultural identity, ethnicity, language, religious or linguistic values.⁹²⁸ States Parties are thus obliged to take effective measures, both financially and materially, to ensure that indigenous children's right to education addresses their special needs. States are also reminded to implement educational policies that respect the child's dignity and eliminate ignorance and illiteracy in the society.⁹²⁹ Given that children are the future leaders of tomorrow, it is essential that they are empowered through

⁹²⁵ Art 13(2) (a) of the ICESCR.

⁹²⁶ Art 13(3) of the ICESCR.

⁹²⁷ Art 28 of the CRC.

⁹²⁸ Art 29 and 30 of the CRC.

⁹²⁹ Art 28(3) of the CRC.

education at a very early stage of their life to secure their future and enable them to become competitive with the larger society.

The ILO Convention No. 169 demands that appropriate measures be taken to ensure that indigenous children access and acquire all stages of education and be on more equal terms with the rest of the society.⁹³⁰ It equally directs that educational programmes be formulated and implemented to meet the needs, histories and cultural aspirations of indigenous peoples, establish their own educational institutions and facilities as long as they are in compliance with minimum standards.⁹³¹ Apart from preserving and promoting the development of indigenous languages, ILO Convention No. 169 requires that indigenous children be taught to read and write in their own languages as well as being given the opportunity to be fluent in the national and official languages.⁹³² In affirming the right of indigenous children to education, knowledge and skills that reflect their cultures are essential to assist them fully participate in drafting policies that regulate educational programmes.⁹³³ States Parties are therefore under a duty to liaise with indigenous communities to ensure that their educational institutions conform to minimum standards as outlined by the ILO Convention No. 169.⁹³⁴ Thus, equality and non-discrimination are central for the development process of every society. For this reason, there is a need to present indigenous peoples with similar opportunities with the mainstream society, to empower and expose them to face the challenges of the society.

To further emphasise the right to education as a means to mentally empower and develop indigenous peoples, the UNDRIP recognises that respect for indigenous knowledge, culture and traditional practices could be better achieved if educational programmes are delivered in their own languages, since this would ensure sustainable and equitable development to help them effectively and

⁹³⁰ Art 26 of ILO Convention No. 169.

⁹³¹ Art 27 of ILO Convention No. 169.

⁹³² Art 28 of the ILO Convention No. 169.

⁹³³ Art 29 (1)(2) of the ILO Convention No 169.

⁹³⁴ Art 29(3) of the ILO Convention No. 169.

independently manage their own affairs.⁹³⁵ The UNDRIP emphasises that indigenous children ought to attain all levels of education in their own languages and in a manner appropriate to their cultural methods of teaching and learning.⁹³⁶ States Parties are expected to cooperate with indigenous peoples to implement measures that reflect indigenous cultures and languages.⁹³⁷ In addition, Article 15 requires that the dignity and diversity of the cultures, traditions, histories and aspirations of indigenous peoples be appropriately reflected in education and public information systems. This provision is further supported by Article 15(2), which provides that it is only through this means that discrimination against indigenous peoples could be eradicated and peace restored in the society. Thus, the socio- economic and cultural rights of indigenous peoples cannot be fully realised if appropriate measures are not effectively implemented to improve their educational systems.⁹³⁸

In line with the above, Stavenhagen is of the opinion that the promotion and dissemination of indigenous languages is vital for preserving indigenous cultural identity, values and world views, therefore, educational programmes must be directed to reflect these cultures and traditions.⁹³⁹ This implies that for indigenous communities to be developed, state practices must be geared towards protecting inter-cultural bilingual educational systems, since this guarantee their interaction with the mainstream society and help them make meaningful contributions crucial for their development.⁹⁴⁰ In agreement, Jacob notes that only when efforts are made to build indigenous communities and revive their cultures and languages in the educational curricula will development be realised.⁹⁴¹ To ensure this, States Parties must therefore consult with indigenous peoples in the formulation of

⁹³⁵ Art 14 of the UNDRIP.

⁹³⁶ Art 14 (1) (2) of the UNDRIP.

⁹³⁷ Art (14 (3) of the UNDRIP.

⁹³⁸ Art 21 of the UNDRIP.

⁹³⁹ Stavenhagen 2015 *European Journal of Education* 256.

⁹⁴⁰ Stavenhagen 2015 *European Journal of Education* 256.

⁹⁴¹ Jacob 2010 *International Feminist Journal of Politics* 364.

legislative and administrative measures to ensure that educational curricula's are culturally oriented.⁹⁴²

In the same light, the World Conference on Education for All held in Jomtien, Thailand in 1990, provides that basic education is a fundamental principle for human development as it generates knowledge and skills required for mental growth.⁹⁴³ It further states that human development is a collaborative process for psychological and biological development achieved through learning and helps enhance living standards in the society.⁹⁴⁴ The Preamble and Article 1 of the World Declaration of Education for All supports these views and states that "everyone has a right to education (child, youth and adult) and both must benefit from educational opportunities aimed at realising these needs".⁹⁴⁵ The above illustration highlights the fact that international human rights instruments have gone beyond protecting indigenous peoples' rights, to emphasising the enhancement of their right to education as a special measure essential for the recognition of other human rights and fundamental freedoms.⁹⁴⁶ Based on these analyses, it is apparent that education is vital for the effective realisation of other socio-economic and cultural rights as it helps indigenous peoples to actively take part in decision-making processes and political governance structures in their respective countries.

The Banjul Charter also contains provisions that protect indigenous peoples' right to education. It elaborates on the general promise of guaranteeing everyone the right to education and to take part in the cultural affairs of their communities.⁹⁴⁷ These provisions apply directly to indigenous peoples since they do not only charge the state with the responsibility to protect and promote moral and

⁹⁴² Stavenhagen 2015 *European Journal of Education* 256.

⁹⁴³ UNESCO 1990 http://www.unesco.org/education/pdf/11_92.pdf.

⁹⁴⁴ UNESCO 1990 http://www.unesco.org/education/pdf/11_92.pdf.

⁹⁴⁵ See Preamble and Article 1 *World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs* (1990).

⁹⁴⁶ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 80-82.

⁹⁴⁷ Art 17(1) (2) of the ACHPR.

traditional values of the community,⁹⁴⁸ but also ensure that those values are incorporated into the school curricula. In addition, other African Human Rights Systems like the ACRWC and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa,⁹⁴⁹ are equally at the forefront in promoting indigenous children's rights to education. The ACRWC recognises the right to free and compulsory education for all as the only means to increase school enrolment rate.⁹⁵⁰ It there requires states to take suitable measures to ensure that disadvantaged children, particularly girls, attend regular school to reduce drop-out rates.⁹⁵¹ Given the fact that indigenous peoples fall within the framework of disadvantaged peoples and records the highest drop-out rates in the society, especially for girls, these provisions are relevant. Recent studies have upheld this view by stating that indigenous women and girls have the lowest rate of education compared to their male counterparts.⁹⁵² Carino *et al*, maintain that indigenous women are known to be over-represented amidst the most illiterate people in the society and as such are deprived of their very right to existence as they become repeated victims of rape, sexual harassment and other social abuse.⁹⁵³

The Maputo Protocol goes beyond a general demand of the right to education by demanding States Parties to adopt specific measures to eradicate all forms of discrimination against women and the girl child in all educational processes, such as textbooks, syllabi and media as well as promote the enrolment and retention of girls in schools and other training institutions.⁹⁵⁴ This international instrument is quite significant because it specifically addresses the educational situations of indigenous women and girls and recognises the historic inequalities that exist

⁹⁴⁸ Art 17(3) of the ACHPR

⁹⁴⁹ Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa hereinafter the Maputo Protocol.

⁹⁵⁰ Art 11(1) and 3(a) of the ACRWC.

⁹⁵¹ Art 11(3) (d) (e) of the ACRWC.

⁹⁵² Inter-Agency Support Group on Indigenous Peoples' Issues 2014 http://www.un.org/en/ga/president/68/pdf/wcip/IASG%20Thematic%20Paper_%20Education%20-%20rev1.pdf.

⁹⁵³ Carino *et al* State of the Worlds Indigenous Peoples 1.

⁹⁵⁴ Art 12 of the Maputo Protocol.

between them within their communities and directs the state to take immediate actions to eliminate them.⁹⁵⁵

This demand is far from reality in relation to indigenous peoples' right to education in Cameroon. Even though the Constitution of Cameroon provides that: -

the State shall guarantee the child's right to education. Primary education shall be compulsory. The organisation and supervision of education at all levels shall be the bounden duty of the State.⁹⁵⁶

Indigenous children in Cameroon still face major challenges in accessing education. Despite the universal recognition given to the right to education, indigenous peoples are unable to effectively exercise this right within their societies.⁹⁵⁷ It is submitted that state practices towards achieving this goal are weak and inefficient, and fail to focus on the targeted population. Other scholars are convinced that education is not just a basic human right but a major stage in a child's life which helps to enable them claim other human rights and enhance their human development.⁹⁵⁸ Although no reliable data exists on indigenous children in schools in Cameroon, the Second Periodic Report reveals that indigenous children, especially girls, have the lowest education rates in the country.⁹⁵⁹ Those who manage to attain primary level hardly reach secondary and high school levels; very few of them have reached or enrolled in tertiary education.⁹⁶⁰ This is because most indigenous parents maintain that the kind of education best for their children is the indigenous knowledge system which had been passed on to them by their ancestors.⁹⁶¹ They condemn the modern system of education which they term "colonial system of education" that does nothing but

⁹⁵⁵ Art 5 and 12 of the Maputo Protocol.

⁹⁵⁶ See para 24 of the Cameroonian Constitution.

⁹⁵⁷ Stavenhagen 2015 *European Journal of Education* 255.

⁹⁵⁸ Kamga 2011 *African Human Rights Law Journal* 171.

⁹⁵⁹ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 10.

⁹⁶⁰ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 10.

⁹⁶¹ Chimtom 2016 <http://www.wipsnewsnet/2016/08/education-an-elusive-dream-for-camerouns-indigenous-peoples/>. The above statement was made by a Baka parent whose two sons had dropped out from school to accompany the father carry out their traditional rituals in the forests.

deprive their children of their cultural integrity, language and dignity.⁹⁶² This system, according to indigenous parents, has reshaped indigenous children's minds and made them forget their very roots and cultural background. During an interview with a Baka parent he clearly states that "we" (referring to indigenous peoples) and our culture are two inseparable people...we cannot survive without our identity..."⁹⁶³

It is evident that no legislation prohibits children from accessing primary education based on their cultural, religious and family orientation.⁹⁶⁴ However, the geographical locations of most schools in Cameroon prevent indigenous children from accessing primary education.⁹⁶⁵ Several of these schools are situated in major cities many miles away from indigenous communities. Consequently, indigenous children find it difficult to cover the long distances to and from school on a daily basis.⁹⁶⁶ In addition to the pervasive patterns of discrimination, marginalisation, humiliation, stigmatisation and bullying experienced by indigenous children from teachers and school mates, the school calendar also conflicts with their cultural and traditional hunting seasons which results in increased drop-out rates during this period.⁹⁶⁷

Poverty is another limiting factor. Indigenous peoples cannot afford the cost of school materials; thus, children of school age end up helping their parents in hunting and gathering activities rather than pursuing education. Added to the above is the fact that most textbooks, teaching methods and syllabi have omitted indigenous peoples' traditional and cultural methods of learning captured in the epithet "observe, reflect and act",⁹⁶⁸ commonly referred to in French as "observe,

⁹⁶² Hays 2011 *The International Journal of Human Rights* 128.

⁹⁶³ Personal Communication by way of unstructured interview with three Baygeli Elders in Kribi East Region of Cameroon on the 17 and 18 of January 2016

⁹⁶⁴ Kamga 2011 *African Human Rights Law Journal* 174.

⁹⁶⁵ Personal communication by way of an unstructured interview with the Coordinator of MBOSCUDA, Bamenda, Cameroon on 2 of February 2016.

⁹⁶⁶ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 11.

⁹⁶⁷ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 11-12.

⁹⁶⁸ Observe Reflect and Act' hereinafter ORA.

réfléchir et agir".⁹⁶⁹ These cultures have apparently been destroyed with the introduction of formal educational systems which failed to adapt indigenous knowledge systems.⁹⁷⁰ To May and Aikman, education is therefore the only means for indigenous peoples to regain their cultural values and languages and to secure the development of their children.⁹⁷¹ The right to education is a controversial concept as scholars believe that child-centred education helps to eradicate poverty, promote and instil positive development and learning processes in the child.⁹⁷² It is therefore essential that cultural aspects be given priority during the formulation of educational curricula to accommodate indigenous peoples' aspirations.⁹⁷³ How this can be achieved is still challenging since not only indigenous communities are to be considered but the entire nation might be affected by these changes. However, government is advised to implement educational policies that cut across the two societies. In other words, the measures must accommodate both indigenous communities as well as non-indigenous communities.

5.2.1.1 Primary education

General Comment No. 13 by the Committee on Economic Social and Cultural Rights⁹⁷⁴ has defined specific conditions necessary for providing education for all, namely: availability, accessibility, acceptability and adaptability.⁹⁷⁵ Scholars have termed these basic principles the 4 "A's".⁹⁷⁶ Hence, primary education is viewed as the first phase of "basic education" and a vehicle that helps eradicate the huge income disparities that exist amongst different segments of the society.⁹⁷⁷ A major feature for primary education is that it must be compulsory

⁹⁶⁹ CED, RACOPY and FPP 2010 Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report 6, 12, 23.

⁹⁷⁰ May and Aikman 2003 *Comparative Education* 141-142.

⁹⁷¹ May and Aikman 2003 *Comparative Education* 141-142.

⁹⁷² Babaci-Wilhite, Geo-JaJa and Lou 2012 *International Review of Education* 630-631.

⁹⁷³ Babaci-Wilhite 2013 *Sustainability* 2001-2002.

⁹⁷⁴ Committee on Economic Social and Cultural Rights hereinafter CESCR.

⁹⁷⁵ CESCR 1999 *General Comment No. 13: The Right to Education* para 6(a-d).

⁹⁷⁶ Kamga 2011 *African Human Rights Law Journal* 171.

⁹⁷⁷ CESCR General Comment No. 13: The Right to Education (Art. 13) para 1 and 9; UNESCO 2007 <http://www.unesco.org/education/framework.pdf>.

and free of charge with specific Plans of Action.⁹⁷⁸ Below is an examination of the key characteristics essential for providing primary education for all.

5.2.1.1.1 Availability

Availability entails the supply of requisite educational institutions and programmes in substantial quantity, including trained and regular paid staff, decent infrastructure with equipped classrooms; decent sanitation facilities to cater for both sexes, safe drinking water, teaching materials, well-equipped libraries with computing and information technology programmes.⁹⁷⁹

According to Uchem and Onuh, formal education begins with pre-primary (early childhood education) necessary to develop a child's mental aptitude and prepare them for primary, secondary and higher educational system.⁹⁸⁰ It also helps to effectively integrate children into the community taking into consideration the economic, socio-cultural, political and ethical issues.⁹⁸¹ In Cameroon, primary education is between 6-12 years (although with high repetition rates) yet some pupils complete primary education at the age 14 years.⁹⁸² Given the urgent need to transform educational systems and make it more available, government has implemented several programmes to accomplish these goals. First in 1990, following the World Conference in Jomtien, Thailand, on Education For All,⁹⁸³ government embarked on reforming and decentralising the educational system and this has led to the adoption of the Cameroon's Education Framework Act no.633/PJ L./ATN of 1998.⁹⁸⁴ In continuation with the Jomtien spirit of transforming societies through the achievement of free and available education for all, the Dakar Framework of Action was adopted in 2000. The Dakar

⁹⁷⁸ Art 14 of the 1999 *CESCR and the Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 11*.

⁹⁷⁹ CESCR 1999 *General Comment No. 13: The Right to Education* para 6(a).

⁹⁸⁰ Uchem and Onuh 2014 *Children* 102.

⁹⁸¹ Uchem and Onuh 2014 *Children* 102.

⁹⁸² Anon date unknown education.stateuniversity.com/pages/229/Cameroon-PREPRIMARY-PRIMARY-EDUCATION.html.

⁹⁸³ Education for All hereinafter EFA.

⁹⁸⁴ Filmus 2005 <http://unesdoc.unesco.org/images/0014/001412/141221epdf>.

Framework of Action sets out six main goals and urges States Parties to incorporate them into their educational plans. These goals are outlined below: -

- expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children.⁹⁸⁵
- ensuring that by 2015 all children; particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality.⁹⁸⁶
- ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programmes.⁹⁸⁷
- achieving a 50 per cent improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults.⁹⁸⁸
- eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring that girls' have full and equal access to and can achieve quality education.⁹⁸⁹
- improving all aspects of the quality of education, and ensuring excellence of all so that recognised and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.⁹⁹⁰

⁹⁸⁵ *Dakar Framework for Action Education for All: Meeting our Collective Commitments* (2000) 14-15; UNESCO 2005 <http://unesdoc.unesco.org/images/0014/001410/141063epdf>.

⁹⁸⁶ *Dakar Framework for Action Education for All: Meeting our Collective Commitments* (2000) 15; *Education for All: National Plan of Action 2003-2015* 37.

⁹⁸⁷ *Dakar Framework for Action Education for All: Meeting our Collective Commitments* (2000) 15.

⁹⁸⁸ *Dakar Framework for Action Education for All: Meeting our Collective Commitments* (2000) 16.

⁹⁸⁹ *Dakar Framework for Action Education for All: Meeting our Collective Commitments* (2000) 16.

⁹⁹⁰ *Dakar Framework for Action Education for All: Meeting our Collective Commitments* (2000) 16.

Further, to embark on its reform and decentralisation programme, government in 2002 adopted the EFA National Plan of Action which requires the state to set specific periods for realising its objectives. For example, the short-term period ran from 2003-2005, while the medium term was set to begin from 2006 to 2010 and finally the long term was meant to take effect as from 2011-2015.⁹⁹¹ This National Plan established two functions which serve as a strategy document at the national as well as an instrument to be used by partners at the international level.⁹⁹² Additionally, continuous efforts by government to make primary education available for all triggered the government to enact several laws to facilitate the realisation of primary education for all. These laws are highlighted below: -

- Decree No. 2004/018 of 22 July 2004 to fix the rules and regulations applicable to local councils;⁹⁹³
- Decree No.2004/019 of 22 July 2004 to fix the rules and regulations applicable to regions;⁹⁹⁴
- Decree No. 2005/140 of 25 April 2005 to organise the Ministry of Basic Education;
- Order No. 62/C/13/MINEDUC/CAB of 16 February 2001 to reform the 'Certificat d'Etudes Primaires Elémentaires'⁹⁹⁵ and the First School Leaving Certificate⁹⁹⁶ (its English equivalent);⁹⁹⁷

⁹⁹¹ Filmus 2005 <http://unesdoc.unesco.org/images/0014/001412/141221epdf>.

⁹⁹² Filmus 2005 <http://unesdoc.unesco.org/images/0014/001412/141221epdf>.

⁹⁹³ Ministry of Justice Cameroon 2005 *Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005* 212.

⁹⁹⁴ Ministry of Justice Cameroon 2005 *Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005* 212.

⁹⁹⁵ Certificat d'Etudes Primaires Elémentaires hereinafter CEPE.

⁹⁹⁶ First School Leaving Certificate hereinafter FSLC.

⁹⁹⁷ Ministry of Justice Cameroon 2005 *Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005* 212.

- Order No. 806/B1/1595/MINEDUB of 20 September 2005 to establish Primary Education;⁹⁹⁸
- Circular No. 22/A/220/MINEDUC/CAB of 20 September 2001 to set up conditions for the functioning of school councils, the Permanent Commission and the Council of Students' Representatives in Government Schools.⁹⁹⁹

In addition, government's commitment to facilitate educational programmes in the country has instigated the enactment of Decree No. 2004/320 that sets up three different Ministries of Education with specific duties.¹⁰⁰⁰ These Ministries are government's efforts to emphasise the importance of education for all in the country, they are as follows: MINEDUB in charge of Nursery and primary education, the MINSEC focuses on organising general, technical, teacher training and secondary education programs, while the MINESUP is mandated with the responsibility to control, manage and ensure the smooth running of tertiary education as well as secure the organisation, functioning and pedagogic management of all higher education activities in Cameroon.¹⁰⁰¹ Thus, the provision of all these sectors and levels of education systems in the country in the country, means that even indigenous peoples are in the position to easily access at least primary education.

5.2.1.1.2 Accessibility

Accessibility of education means ensuring that all persons within the state have access to any educational institutions or programme available in the country

⁹⁹⁸ Ministry of Justice Cameroon 2005 *Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005* 212.

⁹⁹⁹ Ministry of Justice Cameroon 2005 *Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005* 212.

¹⁰⁰⁰ Ministry of Justice Cameroon 2005 *Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005* 212.

¹⁰⁰¹ Ministry of Justice Cameroon 2005 *Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005* 212-213.

without discrimination.¹⁰⁰² In this regard three characteristics were set as guiding principles to ensure that primary education is accessible:

- Non-discrimination, this implies that every individual in each community has the right to access education including the marginalised groups and indigenous peoples without distinction on any prescribed grounds. Thus, legislative or administrative policies must be adopted to ensure that this group of people are able to access education in the same way as those in the wider society.
- Physical accessibility requires educational institutions to be geographically located within communities where people especially indigenous peoples reside for safety purposes or be highly technological, for example distance learning programmes which people can easily be access with the help of internet facilities.
- Economic accessibility entails affordability of educational systems to everyone. This is beneficial to vulnerable groups' especially indigenous peoples with limited financial means. This is best illustrated in terms of free primary education and state efforts to use progressive methods to introduce free secondary and higher education for all as stated in the ICESCR.¹⁰⁰³

5.2.1.1.2.1 Non-discrimination



Cameroon is a state party to the CERD. To this effect, government has the duty to eliminate all forms of discrimination, including in the domain of education. The Constitution of Cameroon provides that "the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights".¹⁰⁰⁴ This declaration is further emphasised in the following words as: "all persons shall have equality of rights and obligations..."¹⁰⁰⁵ In addition to the Constitutional

¹⁰⁰² OHCHR 1999 *CESCR General Comment No. 13: The Right to Education* para 6 (b).

¹⁰⁰³ Art 13(2) of the ICESCR.

¹⁰⁰⁴ Para 4 of the Constitution of the Republic of Cameroon.

¹⁰⁰⁵ Preamble to the Constitution para 5(1) of the Constitution of the Republic of Cameroon.

provisions on equality and non-discrimination, Cameroon has also enacted Law No. 98/04 of 14 April 1998 dealing with procedures for accessing education in Cameroon. This Law stresses on the importance of equality in all educational systems. Article 7 of this Law states as follows: "[t]he law shall guarantee to every person equality of opportunity in regard to access to education, without distinction as to gender, political, philosophical and religious opinion, social, cultural, linguistic or geographical origin".¹⁰⁰⁶ More so, non-discrimination in education is also highlighted in the CESCR General Comment No. 13 in which it emphasises on the prohibition of discrimination against all persons of school age living within the territory including foreigners notwithstanding their legal status.¹⁰⁰⁷ Based on these principles, both indigenous and non-indigenous groups in Cameroon should be provided with equal access to educational services without discrimination. In view of the above, efforts to combat discrimination between boys and girls in schools has forced government to task the Ministry of Women Empowerment and the Family, MINEDUB and MINAS to monitor these activities in the country and bring perpetrators to justice.¹⁰⁰⁸

Unfortunately, as seen in para 5.2.1 above, indigenous communities are systematically discriminated at schools by teachers and their classmates.¹⁰⁰⁹ If these stigma and stereotypes are erased, indigenous children's drop-out rates would witness a significant decline. Conversely one of the fundamental goals for the decentralisation programme in Cameroon was to promote universality and democratisation of basic education. This entailed providing access to education for the most underprivileged groups including the local communities.¹⁰¹⁰ Apart from the general increase in drop-out rates amongst indigenous children, the overall enrolment rate for indigenous boys remains higher than for girls.¹⁰¹¹ This

¹⁰⁰⁶ CERD 2006 *Report Submitted by States Parties under Article 9 of the Convention* para 35.

¹⁰⁰⁷ CESCR 1999 *General Comment No. 13: The Right to Education* para 34.

¹⁰⁰⁸ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014*.

¹⁰⁰⁹ Personal Communication by way of an unstructured interview with some Mbororo students at the University of Yaoundé 1, in Yaoundé, Cameroon on 14 December 2015.

¹⁰¹⁰ Filmus 2005 <http://unesdoc.unesco.org/images/0014/001412/141221epdf>.

¹⁰¹¹ Personal communication by way of an unstructured interview with two senior staff members at the MINEDUB on the 25 January 2016, Yaoundé, Cameroon.

is common in Mbororo communities where cultural opinions hold that a girl or woman's place is in the kitchen and she is equally the property of another man, so it is pointless to invest in a woman.¹⁰¹² A similar situation also prevails within the Pygmies communities. A possible solution is an intensified sensitisation campaign in these communities making use of their own community members to communicate to the communities in their languages on the importance of education for all sexes particularly female children. Girls and women should be the target of such programmes as this directly affects them. Special scholarships could be granted for girls to encourage them attain and enrol in school, since they have been brain-washed by cultural ideologies that convince them marriage and baby-making is the best option for women and girls.

5.2.1.1.2.2 Physical accessibility

Physical accessibility requires government to build schools within indigenous communities to enable easy access to education for their children. If schools are located distances away from indigenous communities, marginalised groups like indigenous populations find it difficult to access education, thus, defeating the purpose of free, compulsory and accessible education for all in the country. General Comment No. 13 recommends the introduction of distant learning programmes to those communities that are unable to access schools within their communities.¹⁰¹³

That notwithstanding, physical accessibility is an effective means of achieving universal education in the country. To realise this goal, government enacted the Cameroon's Education Framework Act No. 633/PJ L./ATN in 1998, which obliges government to facilitate access to primary education for children by ensuring that schools reach the most excluded and secluded population in the society.¹⁰¹⁴ Given that indigenous peoples are isolated peoples living in remote areas, this

¹⁰¹² Personal Communication by way of an unstructured interview with some Mbororo community members residing in Wumse-Ndaz Bamenda III, Mezam Division, North West province, Cameroon on the 28-29 of January 2016.

¹⁰¹³ CESCR 1999 *General Comment No. 13: The Right to Education* para 6(b).

¹⁰¹⁴ Filmus 2005 <http://unesdoc.unesco.org/images/0014/001412/141221epdf>.

Act is aimed at ensuring that they benefit from such programme.¹⁰¹⁵ In addition, government has implemented special measures aim at encouraging indigenous, disadvantaged and children living in Priority Education Zones¹⁰¹⁶ in the Adamawa, North and Far North Regions, to access primary education. This has resulted in widespread sensitisation programmes involving civil society, NGOs and other activists to encourage parents educate their children, with a focus on girls. Additionally, government distributed 1, 800 birth certificates to vulnerable children of school age, including 1, 832 former school drop-outs composed of 1, 100 girls making up 60% were re-admitted into primary schools.¹⁰¹⁷

Other steps taken by government to ensure access to primary education for children in PEZ include the award of scholarships and the establishment of school canteens from the year 2009 through 2012. Following the above, about 13, 500 scholarships were granted to children from PEZ worth CFAF 135, 000, 000, meaning each learner received a sum of CFAF 10,000 to facilitate their registration process for the Certificate of Primary Studies examination and the Competitive Entrance Examination which qualifies them into Form One of the General and Technical Education.¹⁰¹⁸ Added to the above, specific measures were also employed in partnership with World Food Organisation,¹⁰¹⁹ to facilitate access to primary education for over 3, 778 girls,¹⁰²⁰ in which girls from class 4 to 6 eat from school canteens on a daily basis. In addition to that they were handed 50 kilograms of grain which they took home at the end of each term, to ensure that their parents permit them to return and finish the primary school phase which is considered the most essential aspect for human development.¹⁰²¹

¹⁰¹⁵ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 134.

¹⁰¹⁶ Priority Education Area hereinafter PEZ.

¹⁰¹⁷ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 135.

¹⁰¹⁸ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 135.

¹⁰¹⁹ World Food Organisation hereinafter WFO.

¹⁰²⁰ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 134.

¹⁰²¹ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 135.

Thus, bringing schools closer to their locations or establishing distant learning programmes empowers and improves their well-being. The disturbing question is whether or not government has available resources and facilities to offer distant learning programmes to address the needs of these people? Are indigenous peoples technologically knowledgeable and financially able to afford such programmes? Since distant learning programmes require the use of computers, lab-tops and other gadgets, how this can be realised in indigenous communities where there is no electricity is still challenging. Also, given that government has so many other socio-economic programmes to be achieved such as health, housing, social security, food, water etc. It would be practically impossible to direct all resources into education, as other aspects of socio-economic rights will suffer major setbacks.

5.2.1.1.2.3 Economic accessibility

The huge income disparity between indigenous and non-indigenous groups in Cameroon deprives them from accessing basic social services, like accessing to education on an equal level with the dominant society. Government's efforts in closing this gap has resulted in an inclusion in its national Constitution of a provision that guarantees free and compulsory basic education for all. This is to offer opportunities for children from disadvantaged societies to attain primary education and integrate them into the wider societies. The same provision also enables them to compete in the job market with their non-indigenous counterparts. Given that education is the back-bone to realising economic growth and eradicating poverty, especially in a country like Cameroon where economic growth is crucial to help transform societies and improve living standards for the most under-privileged groups,¹⁰²² it is essential that all costs to achieving free education be removed such that indigenous communities access and benefit from the free education system.

¹⁰²² Bloom *et al* 2006 http://www.uhasselt.be/Documents/UHasselt_EN/International/Lezing%20NZ%202013/Hiher_Education_and_Economic_Development_in_Africa.pdf.

Studies conducted on the educational situation in Cameroon indicate that access to free education is still a pipedream.¹⁰²³ This implies that at the time of the study educational systems in Cameroon were meant for the rich and those who can afford it. The marginalised groups, including indigenous communities could not afford the cost of sending children to school, owing to the costs of school materials, fees and other related school needs. Despite, the President's official declaration of free and compulsory public primary education for all, which was officially meant to take effect during the 2000 academic year, yet free education in Cameroon is far from being realised.¹⁰²⁴

Indigenous peoples still encounter problems accessing free education in the country. Tomasevski argues that barriers to accessing free education in Cameroon remain obvious.¹⁰²⁵ For instance, children are still expected to make frequent payments at schools, such as uniforms, textbooks, school materials, Parent Teacher Association,¹⁰²⁶ fees are compulsory financial obligations which are expensive for indigenous peoples to fund.¹⁰²⁷ The PTA levy is meant to subsidise part time teachers, since most government teachers are unwilling to return to schools following the 50% deduction in salaries in the country.¹⁰²⁸ In addition, pupils are expected to pay for compulsory medical examination certificates, a levy extremely expensive for indigenous peoples who have limited financial resources to afford. These barriers hinder access to free and compulsory education in Cameroon particularly for indigenous peoples.

However, to eradicate this irregularities MINEDUB has formed a management and governance structure, which includes the installation of control brigades in

¹⁰²³ Tomasevski 2006 *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report* 23.

¹⁰²⁴ See Presidential Decree 2002/004 of 14 January 2002 on the organisation of the Ministry of National Education.

¹⁰²⁵ Tomasevski 2006 *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report* 23

¹⁰²⁶ Parent Teacher Association hereinafter PTA.

¹⁰²⁷ Tomasevski 2006 *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report* 23.

¹⁰²⁸ Tomasevski 2006 *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report* 23.

the different 10 regions in the country to monitor, identify and bring to justice perpetrators of acts of corruption preventing access to free education through the imposition of PTA and other dues.¹⁰²⁹ This has resulted to the dismissal of 9 school officials in the Central Region, including 5 others from the North Region for collecting PTA fees from pupils, while 1 of them was given an official warning.¹⁰³⁰ Despite these efforts the realisation of free education is still a pipedream, a lot still need to be done to effectively realise free, compulsory and accessible primary education for all in the country.

5.2.1.1.3 Acceptability

The concept of acceptability in education necessitate that educational programmes be made suitable to both learners and parents, for instance, the form, teaching methods and curricula should not only focus on relevance but be of good quality and give recognition to cultural and religious affiliations.¹⁰³¹ Most importantly, school policies must be in conformity with the minimum standards set by government, in terms of offering equal opportunities to indigenous peoples specifically girls to put them on an equal platform with girls in non-indigenous communities.¹⁰³² Also for primary education to be acceptable to all, religious aspirations of parents are to be respected, although they must be in line with government policies and to the best interest of the learner. The use of corporal punishment in schools was abolished and human rights education incorporated into primary school curricula following Decree No. 748/B1/1464/MINEDUB/SG/IGE of 10 November 2006.¹⁰³³ Several workshops on capacity building and training of teachers on the knowledge and understanding of international, regional and national human rights instruments

¹⁰²⁹ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 137.

¹⁰³⁰ Ministry of Justice Cameroon 2012 *Report by Ministry of Justice on Human Rights in Cameroon in 2012* 135.

¹⁰³¹ CESCR 1999 *General Comment No. 13: The Right to Education* para 6(c).

¹⁰³² Tomaševski 2001 http://www.right-to-education.org/sites/right-to-educationorg/files/resource-attachments/Tomasevski_Primer%203pdf.

¹⁰³³ Ministry of Justice Cameroon 2007 *Report by the Ministry of Justice on Human Rights in Cameroon in 2007* 221-222, Human rights education in primary schools was to take effect from the year 2008-2009 academic year.

were organised in collaboration with government, NCHRF and United Nations Development Programme.¹⁰³⁴

The quality of education received by learners should be of high priority to ensure an acceptable, free and compulsory education for all.¹⁰³⁵ To realise this promise, government embarked on improving the quality of education by adopting special measures aimed at increasing the enrolment of girls, including indigenous and disadvantaged children in schools.¹⁰³⁶ Furthermore, to accommodate the influx of children enrolled in schools in 2013, government was supported with funding from a public investment budget, including financial assistance from other institutions through NGOs and development partners for the construction, renovation and equipment of schools in several regions in the country.¹⁰³⁷ The amount allocated for this project was CFAF171, 818,000,000, in which MINEDUB and Councils were to construct, equipped and renovate schools. Through this programme 33 nursery schools including 20 classrooms, 1, 720 small boards, 5,560 small chairs, 318 blackboards and 53 offices for teachers were newly installed and renovated. In addition, 33 new nursery schools and 20 classrooms were constructed.¹⁰³⁸

Pursuant to the efforts of providing quality and acceptable primary education, government in 2013 furnished 669 classrooms with same number of tables for teachers, provided 20,266 desks, including 300 micro-science kits.¹⁰³⁹ In addition, government also constructed 669 new classrooms, 82 latrine blocks and 5 new fences in public schools, in addition 6 public schools were electrified with AES-SONEL and connected with CAMWATER networks, while 83 public schools

¹⁰³⁴ Ministry of Justice Cameroon 2007 *Report by the Ministry of Justice on Human Rights in Cameroon in 2007* 131; United Nations Development Programme hereinafter UNDP.

¹⁰³⁵ Decree No. 2002/004 of 14 January 2002 setting up the Ministry of National Education in Cameroon.

¹⁰³⁶ Ministry of Justice Cameroon 2007 *Report by the Ministry of Justice on Human Rights in Cameroon in 2007* 129.

¹⁰³⁷ Ministry of Justice Cameroon 2007 *Report by the Ministry of Justice on Human Rights in Cameroon in 2007* 129.

¹⁰³⁸ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 115.

¹⁰³⁹ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 116.

were renovated.¹⁰⁴⁰ It is worth noting that other development partners such as the Japanese government, Islamic Development Bank, French government, UNICEF, NGO Counterpart and Councils also contributed in building, renovating and equipping several schools in the country. Despite government efforts access to free primary education in Cameroon for indigenous peoples remain impossible since several of these schools are concentrated in the major cities.

5.2.1.1.4 Adaptability

Adaptability in education involves flexible educational programmes that are adaptive to the needs of changing societies and communities as well as responsive to the needs of students in relation to their diverse social and cultural settings.¹⁰⁴¹ An adaptive system of education takes into consideration the diverse cultural aspects of the society, in terms of language, cultural and social backgrounds, religious aspirations and natural environment of the learners. It is evident that where educational systems respond to the specific needs of the society, the goal of making education free, accessible and compulsory to all at primary level in Cameroon would be easily achieved. Kamga holds that an adaptable educational system requires government to establish a mobile school system for nomadic populations.¹⁰⁴² It is submitted that this might have serious implications on the state to manage as non-indigenous communities might be negatively affected by this system. Another hindrance might be insufficient state resources to effectively run the programme since it would require the employment and training of new staff to effectively run this programme. A possibility might be for government to design special curricula for indigenous populations that takes into consideration their cultural practices such as hunting and gathering seasons.

Furthermore, the incorporation of indigenous local languages into school curricula is another means of ensuring an adaptable primary education system

¹⁰⁴⁰ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 116.

¹⁰⁴¹ CESCR 1999 *General Comment No. 13: The Right to Education* para 6(d).

¹⁰⁴² Kamga 2011 *African Human Rights Law Journal* 186, 193.

for all in the country. Given that French and English are the official languages used in schools, thus, this policy discriminates against indigenous communities and their children who have grown in typically traditional settings using just the mother tongue; it becomes extremely difficult for them children to adapt to a foreign language in schools. However, this issue should not be over-emphasised here as it has been extensively dealt with using practical examples in para 5.2.5.1 below, under the right to culture. That notwithstanding, there is a need to state that government through the MINEDUB, UNICEF and PCI has developed the Baka alphabet and it is now used in some primary schools in Baka communities.¹⁰⁴³

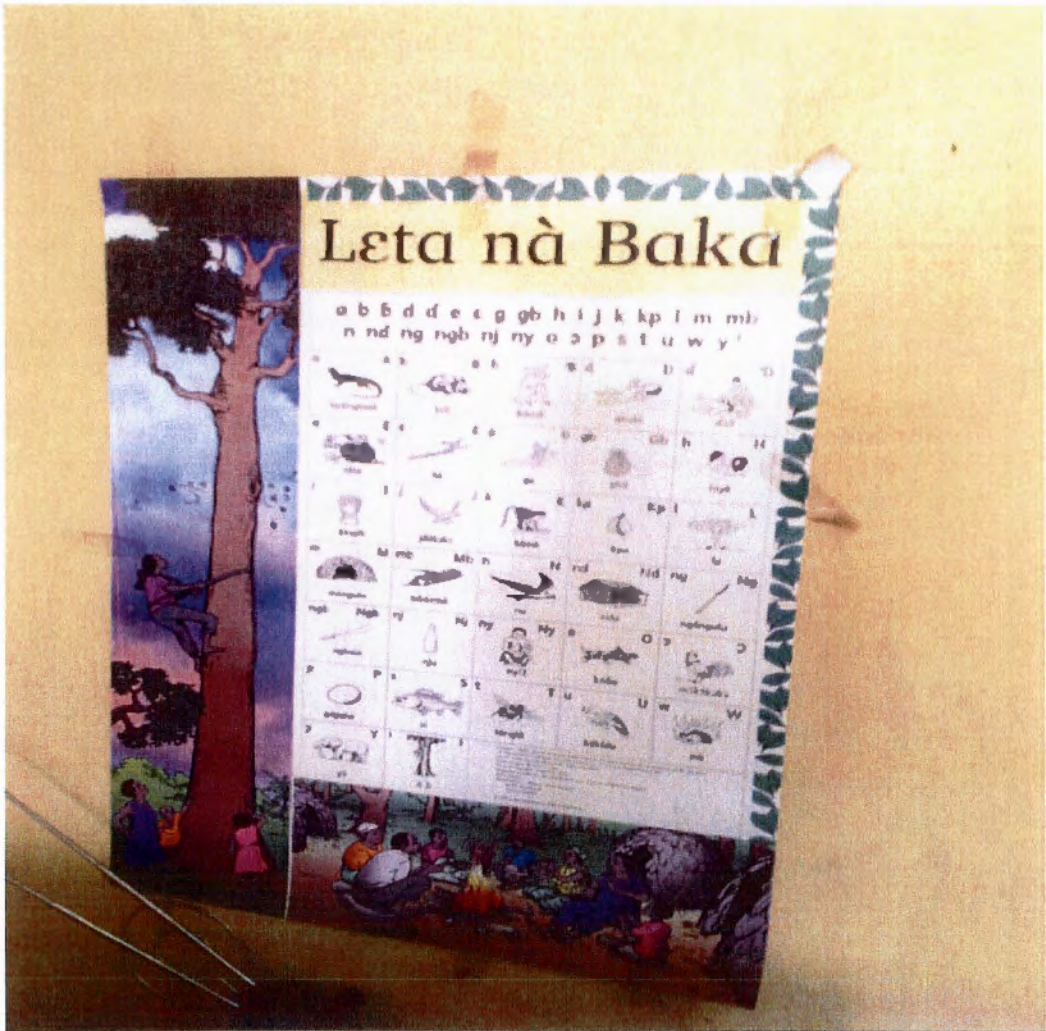
To this effect, 80% of Baka language is currently taught in primary one and 20% of English and French, while in primary two 70% of Baka language is taught and 30% of French and English in used.¹⁰⁴⁴ To facilitate this process teachers have been trained to teach in Baka languages; they have been provided with comfortable and well-equipped classrooms to ease their jobs. However, the usage of Baka language decreases as the learners go into higher classes. The aim is to avoid the challenge Baka children face of being taught in a language they are not familiar with as well as increase their enrolment and reduce drop-out rates for Baka children in schools. This also gives them the opportunity to benefit from the free, compulsory and adaptable educational system like the rest of the society. However, public exams like the Common Entrance and the FSLC examinations are only offered in English and French, reducing the performance of slow Baka learners, who are still struggling to read and write in English and French. It is suggested that government should endeavour to translate Baka public examinations into Baka languages to ease their understanding and improve their performance and pass rates, as this would make them competitive

¹⁰⁴³ Personal communication by way of unstructured questionnaires with two senior staff members of the Department of DDP, MINEDUB Yaoundé, Cameroon on the 25 of January 2016.

¹⁰⁴⁴ Personal communication by way of unstructured questionnaires with the Director, Department of DPP, Ministry of Basic Education, Yaoundé, Cameroon on the 26 of January 2016.

field work that out of the three groups of Pygmy communities in the country that attempts have only been made to incorporate Baka languages in some Baka schools. Efforts should be made such that other indigenous languages can be taught in primary schools. The translation of the alphabet into indigenous languages as done for the Baka community will be a good starting point. This will help increase the general enrolment rate for indigenous children in primary schools.

Baka Alphabet



Source: Archives MINEDUB Yaoundé, Cameroon.

5.2.1.1.5 Compulsory education

The idea of compulsory education urges parents, guardians and states to refrain from acts and decisions that prevent a child from accessing primary education.¹⁰⁴⁵ To this end, educational programmes should be satisfactory, relevant and geared at promoting the full realisation of a child's other rights.¹⁰⁴⁶

Cameroon has been at the forefront of promoting compulsory education for all, as enunciated in the Constitution and Law No. 98/004 of 14 April 1998, specifically, Article 9 which guarantees and promotes compulsory and free education for all.¹⁰⁴⁷ A serious challenge for indigenous communities is that schools are located far from their communities making it difficult for their children to enrol and complete the academic school programme.¹⁰⁴⁸ In addition, despite government's efforts to ensure that all children compulsorily enrol and attain primary level, most indigenous parents withdraw their children from school during hunting and gathering seasons, thus, increasing drop-out rates in schools for indigenous communities.¹⁰⁴⁹ In order to ensure that indigenous children benefit from the compulsory education programme, government should endeavour to establish more schools closer or within indigenous communities as well as make sure these school programmes adapt to their cultures.

5.2.1.1.5.1 Free of charge

A free of charge type of education is one that does not impose any financial obligation on the child, parents or guardians; it should also be made available and accessible to all.¹⁰⁵⁰ To this end, General Comment No. 11 requires states to take necessary steps to eradicate additional costs, such as expensive uniforms and other compulsory contributions levied on parents, as these factors hinder the

¹⁰⁴⁵ CESCR 1999 *General Comment No. 11: Plans of Action for Primary Education* para 6.

¹⁰⁴⁶ CESCR 1999 *General Comment No. 11: Plans of Action for Primary Education* para 6.

¹⁰⁴⁷ See Article 9 of Law No. 98/004 of 14 April 1998.

¹⁰⁴⁸ Personal Communication by way of unstructured interviews with ten Bagyeli Pygmy community members in the Southern part of Cameroon on the 05 January 2016.

¹⁰⁴⁹ Personal Communication by way of unstructured interviews with two senior staff members of MINEDUB on the 25 of January 2016.

¹⁰⁵⁰ CESCR 1999 *General Comment No. 11: Plans of Action for Primary Education* para 7.

fulfilment of a free of charge system of education for all, given that indigenous peoples are unable to fund these bills.¹⁰⁵¹ Further, in encouraging a free of charge system of education in Cameroon, government enacted Finance Law No. 2000/08 of 30 June 2000 pursuant to President Biya's decision to provide free of charge education from the start of 2000/2001 academic year as seen in para 5.2.1.1.2.3 above.¹⁰⁵²

The introduction of a free of charge primary education in Cameroon is government's commitment to its international and national policy obligations to reduce drop-out rates for the marginalised communities, and more importantly for girls. However, it is worth noting that free of charge education in the country is still a myth than a reality. Indigenous peoples complain that one of the key reasons their children are not attending school is the high cost levied for fees and expensive school materials. Apart from that learners are asked almost on weekly basis to bring one thing or the other.¹⁰⁵³ Thus, indigenous peoples find it difficult to meet up with frequent school financial demands. Therefore, to safeguard an efficient free of charge educational system, government must employ effective monitoring bodies in all national government primary schools to ensure that no additional levy is imposed on learners and parents. It is also important that government increase the pay packages of teachers, since this might be the main reason why teachers make frequent financial demands on parents.

5.2.1.1.6 Plans of action

States Parties are charged with the responsibility to develop a detailed plan of action essential for the progressive realisation of the principle of compulsory education free of charge for all within a specific time frame.¹⁰⁵⁴ The aim is to improve the lifestyle of some children who have been subjected to forced labour,

¹⁰⁵¹ CESCR 1999 *General Comment No. 11: Plans of Action for Primary Education* para 7.

¹⁰⁵² Ministry of Justice Cameroon 2005 *Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005* 211.

¹⁰⁵³ Personal Communication by way of an unstructured interview with a few Baka community members in Lomié, Cameroon from the 18-20 January 2016.

¹⁰⁵⁴ CESCR 1999 *General Comment No. 11: Plans of Action for Primary Education* para 1; Article 14 of the ICESCR.

living under horrific conditions and below the poverty lines including those experiencing other forms of exploitation.¹⁰⁵⁵ However, it is submitted that failure in the structural adjustment plans of the 1970s, including the widespread economic recession that affected the world prevented states from honouring their obligations.¹⁰⁵⁶ Despite these challenges, the CESCR General Comment No. 11, stresses that no State Party to the ICESCR can escape its obligation in establishing a plan of action for the progressive realisation of compulsory, free of charge primary education on grounds of financial constraints.¹⁰⁵⁷ States Parties are thus encouraged to seek the collaboration of the ILO, IMF, World Bank, UNDP, United Nations Educational, Scientific and Cultural Organisation¹⁰⁵⁸ and United Nations Children's Fund,¹⁰⁵⁹ in terms of preparation and implementation methods for the actual realisation of the plans of action for compulsory and free education.¹⁰⁶⁰

It is important to note that government has adopted the Education Framework Act no.633/PJ L./ATN, in 1998, to help develop a sectoral plan for the educational system in Cameroon. This sectoral plan is aimed at ensuring that primary education is accessible, adaptable, acceptable, available and above all compulsory and free of charge to all populations in the country.¹⁰⁶¹ The picture below shows Baka children at school.

¹⁰⁵⁵ CESCR 1999 *General Comment No. 11: Plans of Action for Primary Education* para 4.

¹⁰⁵⁶ CESCR 1999 *General Comment No. 11: Plans of Action for Primary Education* para 8 and 9.

¹⁰⁵⁷ CESCR 1999 *General Comment No. 11: Plans of Action for Primary Education* 9 and 10.

¹⁰⁵⁸ United Nations Educational, Scientific and Cultural Organisation hereinafter UNESCO.

¹⁰⁵⁹ United Nations Children's Fund hereinafter UNICEF.

¹⁰⁶⁰ CESCR 1999 *General Comment No. 11: Plans of Action for Primary Education* para 11.

¹⁰⁶¹ See UNESCO 2010 *EFA Global Report: Reaching the Marginalised* 253.

Baka Children at School



Source: http://cdn.ipsnews.net/Library/2016/08/Baka-kids-in-school-yard_629x418.jpg

5.2.1.2 Secondary education

In Cameroon, MINESEC is authorised by Decree No. 2012/267 of 12 June 2012 to organise secondary and technical educational systems. Secondary education is defined in Article 13 of the ICESCR and Article 28 of the CRC to mean technical, general and vocational secondary education. This level of education is usually attended by children of school age who have successfully completed the primary level. In Cameroon, children enrolled in general and technical secondary education are within the ages of 12 for smart kids and 14 or 15 years for slow learners.¹⁰⁶² It takes a cycle of five consecutive academic years to complete the first phase and two years to complete the second phase of secondary

¹⁰⁶² UNESCO 2010 *EFA Global Report: Reaching the Marginalised* 253.

education.¹⁰⁶³ Vocational secondary education is more of a professional nature and aims at preparing learners for the job market. The ICESCR and the CESCR has charged States Parties to take reasonable measures to ensure that secondary education is available and accessible to all through the progressive implementation of free education for the most vulnerable groups of people in the country.¹⁰⁶⁴ Unfortunately, related studies have confirmed that most indigenous children (particularly the Pygmy children) hardly reach secondary level due to challenges earlier mentioned above as listed in para 5.2.1 above.¹⁰⁶⁵

To provide access and improve the quality of secondary education, MINESEC embarked on enlarging the school map and staff. This led to the establishment of 66 Technical secondary schools, 87 Government Secondary Schools,¹⁰⁶⁶ 1 Technical Training College and 7 Teacher Training Technical College.¹⁰⁶⁷ Also, considering that bilingualism is one of the methods to enhance secondary education in Cameroon, government passed a Ministerial Circular No. 28/8/MINESEC/IGE of 2 December 2008 to transform some secondary schools into bilingual secondary schools. Following this Decree, 108 general secondary schools, including teacher training schools, were converted into bilingual schools. To ensure its effectiveness, a pilot programme was done on 44 schools to prepared students the bilingual BEPC including other 1,117 candidates for bilingual BEPC exams in 2013.¹⁰⁶⁸

Also, to enhance the quality and ensure access to secondary education, government opened 81 Technical secondary schools, 34 Technical High



¹⁰⁶³ The first five years, that from 1-5 a learner graduates with an Ordinary Level Certificate ('O' level) while the second stage of secondary that take two years which is commonly referred to as high school, a learner graduates with an Advanced level certificate ('A' level). This permits the learner to qualify to enrol at tertiary level.

¹⁰⁶⁴ UNESCO 2010 *EFA Global Report: Reaching the Marginalised* 253-254.

¹⁰⁶⁵ CED, RACOPY and FPP 2010 *The Situation of Indigenous Peoples in Cameroon: A Supplementary Report Submitted in Connection with Cameroon's 15th-19th Periodic Reports* 11-13.

¹⁰⁶⁶ Government Secondary Schools hereinafter GSS.

¹⁰⁶⁷ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 125.

¹⁰⁶⁸ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 129.

Schools, 76 GSS, 91 general education high schools, 1 Technical Training College and 7 Teachers Training Technical Colleges,¹⁰⁶⁹ constructed 861 classrooms (587 for General Secondary Education¹⁰⁷⁰ and 230 Secondary Technical and Vocational Education¹⁰⁷¹ as well as 44 Teacher Training Education centres.^{1072, 1073} In addition to the newly constructed schools, MINSEC renovated 119 classrooms, (for which 47 are Government Secondary Education, while 48 were meant for Technical and Vocational Education and 24 for TTE, to complement this 6, 900 tables new tables were distributed as follows 4,800 for GSE and 2,100 donated to TVE.¹⁰⁷⁴ To improve hygiene and sanitation in secondary schools 37 latrines were constructed 29 for GSE and 8 for TVE.

Government also gave out 224 permits to private individuals in a bid to promote private schools, 34,283 teachers were also recruited for private and private TTC, while other 3,132 student teachers were employed for TTTC in both public and private colleges in 2013 to match the number of newly established schools.¹⁰⁷⁵ Furthermore, the improvement of access to secondary education has initiated the training of 1,850,264 pupils, including, 1,355,376 in the public sector and 494,888 in the private sector (853,841 boys and 996,423 girls). More so, some vulnerable children were registered in GSE and Technical and Vocational Secondary Education¹⁰⁷⁶ in the 10 Regions of the country.¹⁰⁷⁷ MINESEC abolished the payment of PTA fees illegally instituted by most principals by signing Circular No.25/13/LC/MINESEC/CAB of 23 July 2013

¹⁰⁶⁹ Teachers Training Technical College hereinafter TTTC.

¹⁰⁷⁰ General Secondary Education hereinafter GSE.

¹⁰⁷¹ Secondary Technical and Vocational Education hereinafter STVE.

¹⁰⁷² Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 126.

¹⁰⁷³ Teacher Training Education hereinafter TTE.

¹⁰⁷⁴ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 126.

¹⁰⁷⁵ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 126.

¹⁰⁷⁶ Technical and Vocational Secondary Education hereinafter TVSE.

¹⁰⁷⁷ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 126.

to ensure that all heads of institutions respect the ban of irregular imposition of fees.

However, despite major milestone, much remains to be done as very few indigenous children are enrolled into secondary education.¹⁰⁷⁸ Government should consider adopting progressive measures to implement a system of free secondary education for all, such that children from marginalised backgrounds can benefit.

5.2.1.3 Higher education

Higher education refers to any stage above secondary and high school levels. The state is equally encouraged to progressively use appropriate measures to implement free higher education as well as make it accessible and available to all persons with the required capacity and qualification to further their studies. Efforts to improve higher education in Cameroon include the advancement of access to university training, improvement of infrastructure and enhancement of the quality of training received by students in 2013.¹⁰⁷⁹ To this regard, professional degree and masters programmes were incorporated into university's curricula in both private and public universities, to increase the number of trained professionals in different faculties. Additionally, continuous efforts to enhance the quality of education at tertiary level caused government to sign a partnership agreement with other international universities, in a bid to adopt new training areas. To this end, government signed partnership agreement with the Pan-African University Institute with the University of Yaoundé 1 and 11 in 2013 to offer "Governance and Humanities" courses in these universities.¹⁰⁸⁰ On the same note, an agreement was concluded with a South African institution named Centre of Excellence of the African Institute for Mathematical Sciences¹⁰⁸¹ which

¹⁰⁷⁸ Personal communication by way of unstructured interviews with two senior staff of MINESEC on 15 of December 2016 Yaoundé, Cameroon.

¹⁰⁷⁹ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 131.

¹⁰⁸⁰ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 132-133.

¹⁰⁸¹ African Institute for Mathematical Sciences hereinafter AIMS.

main objective was to train African youths, particularly Masters and Doctoral candidates in mathematical sciences that applied to economic development through entrepreneurship by 2013 academic year.¹⁰⁸²

Furthermore, in terms of infrastructure and equipment of universities, a “Support Programme to the Technology and Professional Component”¹⁰⁸³ was initiated leading to the building of a hostel amounting 156 beds in the University of Bamenda, in the University of Buea a lecture hall consisting of 1,000 seats was constructed for the Faculty of Health Sciences, including an open amphitheatre of 5,000 seats, roads and other networks were erected under this programme.¹⁰⁸⁴ In addition, major improvements were made in the University of Douala, including the building of a faculty of Industrial Engineering, the equipment of 7 new workshop halls, the building of a new amphitheatre constituting 1,540 seats, a laboratory attached with classrooms of 1,832 seats was also set up, while a library and faculty of Medical Pharmaceutical Sciences were equally established. Other Universities like Maroua, Dschang, Ngaoundere and Yaoundé 11 also received new buildings.¹⁰⁸⁵

More so, government to enhance the mentoring of students in higher institutions, granted scholarships, aid, holiday jobs as well as offer part-time internship programmes to those in professional institutions. To this end, MINESEC employed 200 students into central services while 50 others were deployed in different universities. Scholarships such as the National Scholarship Commission and Cooperation Scholarship were offered by friendly countries, including social aids to needy and vulnerable children as well as the Presidential Excellence Award.¹⁰⁸⁶ That notwithstanding, quality education cannot be efficient in higher

¹⁰⁸² Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 132-133.

¹⁰⁸³ Programme to the Technology and Professional Component hereinafter PRO-PTCA.

¹⁰⁸⁴ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 133.

¹⁰⁸⁵ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 133-134.

¹⁰⁸⁶ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 134.

institutions without providing a conducive and healthy working environment for staff, given the above, MINESEC signed Order No.13/644 of 30 December 2013 on the organisation and running of a Joint Advancement Commissions for Support Staff and Order No.13/645 of 30 December 2013 to set up rules for the functioning of the Disciplinary Board for Support Staff.¹⁰⁸⁷

In spite the numerous efforts made by government to improve higher education systems, some gaps are still discernible in relation to indigenous peoples in higher education. It is mentioned in the previous para that government provided aid to needy and vulnerable groups in the country, that is too broad, it is not clear if any indigenous student benefited from any of the financial aid offered by government, or other scholarship programmes. As most often MINJUSTICE reports, frequently mention governments efforts in addressing the needs of people with disabilities and women, without much information about indigenous peoples who have been identified as one of the most vulnerable groups in the country with specific needs, particularly especially in education. It is important that government pay attention to ameliorate the socio-economic situations of indigenous peoples, including their right to education, as it is vital to relive them from extreme poverty and systemic marginalisation. Thus, indigenous peoples should be given priority in scholarships and other financial aid programmes meant to assists students pursue tertiary education, to enable them improve their literacy rate.

Although little or no official data is available on the number of Mbororo and Pygmies students enrolled in Universities, however, studies reveal that in 2009 2 Mbororo students were enrolled in the University of Dschang, Cameroon, although this number has increased to 50 by 2012.¹⁰⁸⁸ However, it is worth mentioning that a good number of Mbororo children have enrolled in many

¹⁰⁸⁷ Ministry of Justice Cameroon 2013 *Report by the Ministry of Justice on Human Rights in Cameroon in 2013* 136.

¹⁰⁸⁸ Coalition Members 2012 *Minority Rights in Cameroon: Report of the National Workshop on the Participation of Minorities in the 2013 Parliamentary and Municipal Elections in Cameroon*.

Universities in Cameroon. The statistics below will throw more light. It is also important to note noting that the data below is not exhaustive. That is, it does not cover the entire nation, as the researcher was limited with the data provided at that time of the study. As such Mbororo students enrolled in other Universities like Maroua and Buea are not inclusive.

**DATA BASE FOR MBORORO STUDENTS IN STATE UNIVERSITIES AND
PROFESSIONAL INSTITUTIONS FROM NORTH WEST REGION OF
CAMEROON**

2015/2016 Academic Year

Table 5

Doctorate/Ph.D. Level

N O	NAME	SE X	INSTITUTION	FIELD OF STUDY	LEVEL OF EDUCATION	SUB DIVISION OF ORIGIN	REGION OF ORIGIN
1	ADAMU YUSUFA	M	UNIVERSITY OF YAOUNDE II	LAW	Ph.D.	NWA	NWR
2	BASIR U MANJO ISA	M	UNIVERSITY OF YAOUNDE I	ANTHROPOLOGY	Ph.D.	KUMBO CENTRE L	NWR

Post Graduate Level

NO	NAME	SE X	INSTITUTION	FIELD OF STUDY	LEVEL OF EDUCATION	SUB DIVISION OF ORIGIN	REGION OF ORIGIN
1	SALI DAUDA MUSA	M	UNIVERSITY OF YAOUNDE II	SPO	MASTERS II	TUBAH	NWR

2	LUKMA NU ABUBK AR MANU	M	UNIVERSITY OF YAOUNDE I	HISTORY	MASTER II	BUM	NWR
3	MANU YUSUF BOBBO	M	UNIVERSITY OF YAOUNDE I	MEDICAL ANTHROPO LOGY	MASTERS II	NKAMBE	NWR
4	YUSIFA AMADO U	M	UNIVERSITY OF YAOUNDE II	LAW	MASTERS II	JAKIRI	NWR
5	HAWAH DADJI DAHIRU	F	UNIVERSITY OF YAOUNDE II	SPO	MASTERS II	KUMBO	NWR
6	BUBA KADIM U	M	UNIVERSITY OF DSCHANG	FSEG	MASTERS II	MBENKWI	NWR
7	ABDUL MUMINI ADAMU	M	UNIVERSITY OF YAOUNDE I	GEOGRAPH Y	MASTERS HOLDER I	FONGOM	NWR
8	IBRAHI M AHMAD OU.S.M	M	UNIVERSITY OF YAOUNDE I	ENGLISH LANGUAGE	MASTERS I	BUM	NWR
9	USMAN U ILIASU	M	UNIVERSITY OF YAOUNDE I	ENGLISH LITERATUR E	MASTERS I	NGOKIETU NGIA	NWR

10	HAMMA DOU MUSA	M	UNIVERSITY OF YAOUNDE I	RI	MASTERS I	FUNDONG	NWR
11	IDIRISS OU ADAMU	M	SIANTOU	MANAGEMENT	MASTER I	SANTA	NWR
12	ADAMU ALKALI HAMAD OU	M	UNIVERSITY OF YAOUNDE I	SOCIOLOGY	MASTERS I	BUM	NWR
13	JULI YAUBA BOBO	M	UNIVERSITY OF DSCHANG	LAW	MASTERS 1	BOUM	NWR
14	IDIRISU YUNUS A	M	UNIVERSITY OF DSCHANG	BIOLOGY	MASTERS 1	KAMBE	NWR
15	AEHSA ATOU MANU	F	UNIVERSITY OF YAOUNDE II	LAW	BACHELOR' S DEGREE	KUMBO	NWR
16	HAMMA DOU ABDUL MUMINI	M	UNIVERSITY OF YAOUNDE II	FSEG	BACHELOR' S DEGREE	TUBAH	NWR
17	HAWA JIBO	F	UNIVERSITY OF YAOUNDE I	HISTORY	BACHELOR' S DEGREE	TUBAH	NWR
18	IBRAHI M YAYA MAGAJI	M	UNIVERSITY OF YAOUNDE I	HISTORY	BACHELOR' S DEGREE	NKAMBE	NWR

19	IDIRISU JAMILA TU LAMI	F	UNIVERSITY OF YAOUNDE I	PSYCHOLO GY	BACHELOR' S DEGREE	NKOR NONI	NWR
20	ISMAIL A ESA	M	CATHOLIC UNIVERSITY OF CENTRAL AFRICA	HEALTH SCIENCE	BACHELOR' S DEGREE	TUBAH	NWR
21	OUMAR OU JIMIRA	M	UNIVERSITY OF YAOUNDE I	AFRICAN LITERATUR E	BACHELOR' S DEGREE	WUM CENTRAL	NWR
22	RAMAT OU MUSA LINDA	F	UNIVERSITY OF YAOUNDE I	BALINGUAL LETTER	BACHELOR' S DEGREE	NDU	NWR
23	YUSUF A AHMAD OU	M	UNIVERSITY OF YAOUNDE II	SPO	BACHELOR' S DEGREE	BATIBO	NWR
24	AMINA ABDUL LAHI	F	UNIVERSITY OF YAOAUNDE II	FSEG	BACHELOR' S DEGREE	BALI NYONGA	NWR

Source: Database MBOYASCAM, Yaoundé

UNDER GRADUATE LEVEL

Table 6

1	ALI ABDUL NUROU	M	UNIVERSITY OF YAOUNDE II	LAW	LEVEL III	NKAMBE	NWR
2	HALIDOU SALIFU	M	UNIVERSITY OF YAOUNDE II	LAW	LEVEL III	JAKIRI	NWR
3	ALI SALE MUSTAPHA	M	UNIVERSITY OF YAOUNDE I NGOA-EKELE	GEOGRAPHY	LEVEL III	NONI	NWR
4	AMADOU AHIDJO	M	UNIVERSITY OF YAOUNDE II SOA	LAW	LEVEL III	BAMENDA	NWR
5	YUSUFU SALI	M	UNIVERSITY OF YAOUNDE I	GEOGRAPHY	LEVEL III	TUBAH	NWR
6	ISA MUSA	M	UNIVERSITY OF YAOUNDE II	LAW	LEVEL III	NONI	NWR
7	ISA UMARU	M	UNIVERSITY OF YAOUNDE II	METIERS DE ENTREPRISE ET DEV'T PME	LEVEL III	TUBAH	NWR
8	MOUHAMM DOU HASSAN	M	UNIVERSITY OF YAOUNDE II	SPO	LEVEL III	FUNGOM	NWR
9	YUSUFA ZAKARRYA	M	UNIVERSITY OF YAOUNDE I	PHYSICS	LEVEL III	WUM	NWR
10	ABDOULAH RAMATOU	M	BUST	NURSING	LEVEL III	FUNDONG	NWR
11	ZUHIRATU MUSA	F	CATHOLIC UNIVERSITY	ENVIROMENT SCIENCE	LEVEL III	NKWEN	NWR
12	MOHAMMA DU SANI		UNIVERSITY OF NCHANG	MANAGEMENT	LEVEL III	MBIAME	NWR
13	HUSEINI AHMADOU	M	UNIVERSITY OF YAOUNDE II	LAW	LEVEL II	WUM CENTRAL	NWR
14	ADAMU TANDAYE	M	UNIVERSITY OF YAOUNDE II	SPO	LEVEL II	JAKIRI	NWR
15	ALI KARIMU	M	UNIVERSITY OF YAOUNDE II	LAW	LEVEL II	MISAJE	NWR
16	BARIOU HARUNA	M	UNIVERSITY OF YAOUNDE I	CHEMISTRY	LEVEL II	BALI	NWR

17	DAHIROU IBRAHIMA	M	UNIVERSITY OF YAOUNDE II	FSEG	LEVEL II	NKAMBE	NWR
18	ISSA ABDOU	M	UNIVERSITY OF YAOUNDE II	LAW	LEVEL II	BAMENDA	NWR
19	MAMOUDA YAMSA	M	UNIVERSITY OF YAOUNDE II	FSEG	LEVEL II	BOYO	NWR
20	MOHAMMA DOU TIJANI	M	UNIVERSITY OF YAOUNDE II	SPO	LEVEL II	WUM CENTRAL	NWR
21	SUMAI PA-AMATOU	F	UNIVERSITY OF YAOUNDE II	LAW	LEVEL II	OKU	NWR
22	OSEINI GAMBO JIBRIL	M	NATIONAL POLITECHNIC BAMBUI	TORISM AND HOSPITALITY MANAGEMENT	LEVEL II	NKWEN	NWR
23	ADAMA DAUDA	F	UNIVERSITY OF YAOUNDE II	LAW	LEVEL I	NWA	NWR
24	SUAIBU YIDIKAOU	M	UNIVERSITY OF YAOUNDE II	FSEG	LEVEL I	BAMENDA	NWR
25	ABDU IBRAHIM RAMANI	M	UNIVERSITY OF YAOUNDE II	FSEG	LEVEL I	NJIKWA	NWR
26	HASSAN YAHUZA	M	UNIVERSITY OF YAOUNDE I	CHEMISTRY	LEVEL I	NONI	NWR
27	MAMI HAJARA ADAMU	F	SIANTOU	OFFICE SECRETARIATS HIP	LEVEL	NDU	NWR
28	ADAMU MUSA BABAN	M	SIANTU	ACCOUNTING	LEVEL I	KUMBO	NWR
29	RUGAYATO U SALI	F	UNIVERSITY OF YAOUNDE II	LAW	LEVEL I	SANTA	NWR
30	SHUAIBU SALI	M	ENS BAMBILI	DIPES	DIPLOMA	TUBAH	NWR
31	DAOUDA LAMU	M	UNIVERSITY OF YAOUNDE II	LAW	LEVEL I	SANTA	NWR

32	OSEINI GAMBO JIBRIL	M	NATIONAL POLYTECHNIC BAMBUI	TORISM AND HOSPITALITY MANAGEMENT	LEVEL II	NKWEN	NWR
33	RAMATA RAMNI	F	UNIVERSITY OF BAMENDA			TUBAH	NWR
34	HAWA 'U SAIDU	F	POLYTECH			TUBAH	NWR
35	SHATU DOI	F	POLYTECH			TUBAH	NWR

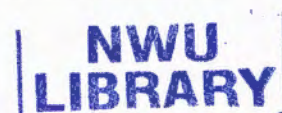
Source: Database MBOYASCAM, Yaoundé

List of Mbororo students in BAMENDA.xlsx

Table 7

CONTACT	CONTACT	CONTACT	CONTACT	CONTACT	CONTACT	CONTACT	CONTACT	CONTACT	CONTACT	CONTACT
OSEINI GAMBO JIBRIL	N P B			2	Torism and haspitality management	Bda 3 Nkwer	674357537			
ADAMU YAYA	N P B			2	management	santa	675976235			
ZUHIRATU MUSA	CATHOLIC UNV BDA			3	enviromental sciece	Bda 2 Nkwer	679328181			
AISHATU MUSA	UBA			1	micro biology	Bda2 nkwen	651034971			
JULI YAUBA BOBO	UN OF DCHANG			4	international trade and investment lw	boum	670092091			
SALIFU GAMBO	N P B			1	law	santa	673267063			
DAHIRU ABDOU	UN OF DCHANG						677090610			
MUSA MANU	UN OF DCHANG			2	goeography	boum	670486488			
MAIRAMU ISSA	UBA			1	management	tubah	670383574			
SALIFU UMAROU	NPB			2	management	kumbo	673264292			
YAYA ADAMOU	NPB			2	management	tatum	651832261			
ISMAILLA MANU	ST, LOUIS Bda			3	dental therapy	nkambe	676441397			
HAMIDOU JIBRILA	ST, LOUIS Bda			2	medical lab	kambe	679928489			
ABDOULAH RAMATOU	BUST			3	nursing	fundong	676451534			
IDIRISU YUNUSA	UN OF DCHANG			4	animal biology	nkambe	679914586			
YAUBA IBRAHIM	RIGIONA COLLEGE BAMBI			2	agronomy	Bda 3 nkwen	677105183			
ABDOULAH KARIMOU	UBA			1	agronomy	tubah	674110807			
YAUBA ADAMU USMANU	NPB			3	law	fungom	674533392			
MOHAMADOU SANI	UN OF DCHANG			3	management	mbiame				
buba cardimu	UN OF DCHANG			5	money banking and finance	mbebi	670349440			
juli eliasu	UBA			1	management	BOUM	672575141			
BANGOJI SALIFU MOH	N P B				law	tatum	670357215			
IBRAHIM FADIMATOU	CH I H S & B				nursing	babungo	677372895			
SUAIBOU JIBO	UBA					Bda 3 Nkwen				

Source: Database MBOSCUA, Bamenda



List of Mbororo students in the University of Ngaoundere

Table 8

N° d'ordre	NOM & PRENOM	FILIERE	NIVEAU	CONTACT
1	ALIOU BOUBA	MATHEMATIQUES	MASTER I	679937991/695655155
2	MOHAMADOU AMINOU	ECONOMIE & GESTION	NIVEAU II	679414272/695511666
3	ABBO HAMADMA	ECONOMIE & GESTION	NIVEAU II	674975559/694987152
4	MOHAMADOU AWALOU	ECONOMIE & GESTION	NIVEAU I	670009484
5	AMADOU TIDJANI	GEOGRAPHIE	NIVEAU II	694553210
6	MOUSSA OUMAROU	ECONOMIE & GESTION	NIVEAU I	653395612
7	INOUSSA MAI KOUDI	GEOGRAPHIE	NIVEAU I	670232504
8	NOUHOU AHMADOU	BIOLOGIE	NIVEAU I	676941926
9	SOUDI	MATH&INFO	NIVEAU I	677721261
10	ADAMOU HASSANA	MATH&INFO	NIVEAU I	679314231
11	ABDOUL BAGUI	DROIT	NIVEAU I	679314231
12	ALIOU GARGA	HISTOIRE	NIVEAU II	679314231
13	YAOUBA EGUY	ECONOMIE & FINANCE	NIVEAU III	650893046
14	SALIHOU HASSANA	ECONOMIE & FINANCE	NIVEAU III	679937991
15	ISMAÏLA BOUBA	SCIENCES TECHNIQUES & DE GESTIONS	NIVEAU III	674088861
16	HAWA-U SALIFU	ECONOMIE&GESTION	NIVEAU I	672715031
17	MOHAMADOU MMOKTAR	COMPTABILITE &FINANCE	NIVEAU III	650060808
18	BAMANGA GUIDADO	DROIT	NIVEAU III	673642215
19	ABOUBAKAR HAROUNA	DROIT	NIVEAU III	678146163
20	ABDOULAYE DAMINA	BIOLOGIE ANIMALE	MASTER I	675511561
21	HAROUNA INOUSSA	CHIMIE	MASTER I	675542628
22	OUSMANI BIRI	DROIT	MASTER I	678616299
23	AHMADOU PAUL-BI	HISTOIRE	NIVEAU II	679947624
24	ABDOUL- GAFFAR ADAMOU HODIRE	LANGUE&CIVILISATION ARABE	NIVEAU III	675912967
25	ABDOULAYE ADAMOU HODIRE	GENIE BIOLOGIE	NIVEAU III	677409199
26	SOULEYMANOU BAWOURO	BIOLOGI	NIVEAU II	679616455
27	AHMADOU YOUSOUFA	HISTOIRE	NIVEAU II	671400072
28	ABDOULRAHMANE YOUSOUF	I U T-INFO	NIVEAU I	653266191
29	DAHIROU OUMAROU	BIOLOGIE	NIVEAU I	677055115
30	ILASSOU ADAMOU	LETTRE FRANCAISE	NIVEAU I	666677769
31	ISMAÏLA AHMADOU	GEOLOGIE&ENVIRONNEMENT	DOCTORANT	674068365
32	MOHAMADOU ALHASSANE	PHYSIQUE	MASTER II	679314231
33	YAYA AHMADOU	GEOGRAPHIE	NIVEAU III	672805035
34	ADJARA ABDOULAYE	DROIT	DOCTORANTE	674018422
35	DAOUDA OUMAROU	CHIMIE	NIVEAU II	679616455
36	IDRISSOU DAMINA	DROIT	NIVEAU II	674068365
37	OUMAROU AHMED	LANGUE&CIVILISATION ARABE	NIVEAU II	679483439
38	ABDOULAYE LAWAN	DROIT	NIVEAU I	671501187
39	HOUSSEINI SINDO	LETTRE FRANCAISE	NIVEAU II	697419444
40	AHMADOU ROUFAÏ	DROIT	MASTER I	679213292
41	ABDOUL-RAOUFOU SALE	EGEM-MEIGANGA	CYCLE INGENIEUR	679228058

Source: Database MBOYASCAM, Ngaoundere

From the above statistics, it is revealed that a good number of Mbororo students are now enrolled in tertiary level and majority of them have attend up to Masters and Doctoral levels. This is quite impressive considering their background and cultural beliefs. Government is therefore urged to implement measures such as

the award of scholarships and presidential aids, so as to encourage more Mbororo youths to pursue tertiary education. It was also observed that no official date on the number of Pygmies enrolled in tertiary is available. The explanation is that Pygmy people still hold tight to their cultures and traditional ways of life and are not willing to integrate into the mainstream of society.¹⁰⁸⁹ Studies also record that indigenous women in general have the lowest rates in higher education. Government is required to adopt appropriate measures to ensure that indigenous women access education up till tertiary level. The introduction of a plan of action for compulsory and free of charge higher education for indigenous children and most especially women be adopted to encourage them enrol in universities, as this will empower and enhance their effective participation in governance and decision-making processes as well as the development of their environment.

5.2.1.4 Fundamental education

Fundamental education aims at encouraging and accommodating both adults and children who never received or complete the whole period of primary education.¹⁰⁹⁰ Defined by UNESCO during the first session of its General Conference in 1946, fundamental education refers to:

Fundamental education is that kind of education which aims to help children and adults who do not have the advantages of formal schooling, to understand the problems of their environment and their rights and duties as citizens and individuals, to acquire knowledge and skill for the progressive improvement of their living conditions and to participate effectively in the economic and social development of their community, making full use of facilities and techniques brought to the community from outside.¹⁰⁹¹

This form of educational system is essential because it impacts knowledge and skills necessary for better living standards in the community. It aim at educating students on how to effectively use modern technology in agricultural production,

¹⁰⁸⁹ Personal Communication by way of unstructured interview with three Baygeli elders in Kribi East Region of Cameroon on the 17 and 18 of January 2016.

¹⁰⁹⁰ Art 13(c) of the ICESCR.

¹⁰⁹¹ UNESCO 1955 <http://unesdoc.unesco.org/images/0014/001436/143693ebpdf>.

health, crafts and other related skilled occupations.¹⁰⁹² Practically, fundamental education is the basis for vocational and technical training where people are offer training on home life situations, such as hygiene and sanitation, home economics, use of natural resources to transform them into useful crafts and small industries in rural areas in a bid to improve community's socio-economic development programmes.¹⁰⁹³

Although the term has different appellations in different communities, the meaning remains the same. In Cameroon, fundamental education is commonly referred to as informal education which also mean adult literacy. Informal education is governed by the Ministry of Youths under Decree No. 2004/320 of 8 December as amended by Decree No. 2007/269 of September 2007 to organise and manage all government sectors in Cameroon including the Ministry of Youths.¹⁰⁹⁴ To empower youths and adults with no formal educational backgrounds, government created a literacy and Non-formal education system where 17, 573 adults were taught to read and write, while 50 new literacy centres with literacy kits were constructed and furnished.¹⁰⁹⁵ In addition, MINESEC revised school curricula to improve the vocational educational system with the intention of meeting the increasing demands for modern technology to assist young drop-outs and workers who missed formal education training.¹⁰⁹⁶ The aim of literacy education is meant to help these people attain at least some basic knowledge necessary to enable them get assimilated into the broader society.¹⁰⁹⁷

¹⁰⁹² UNESCO 1955 <http://unesdoc.unesco.org/images/0014/001436/143693ebpdf>.

¹⁰⁹³ UNESCO 1955 <http://unesdoc.unesco.org/images/0014/001436/143693ebpdf>.

¹⁰⁹⁴ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 218.

¹⁰⁹⁵ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 116

¹⁰⁹⁶ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 117.

¹⁰⁹⁷ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 128.

Literacy and informal basic education centres established in 2014

Table 9

No.	Regions	Number of FLCs	Number of CEBNF
1	Adamawa	218	28
2	Centre	49	0
3	East	31	0
4	Far North	108	0
5	Littoral	63	0
6	North	149	0
7	North West	28	0
8	West	98	0
9	South	1	0
10	South West	125	0
Total		870	28

Source: MINEDUB adapted from MINJUSTICE Report of 2014, 112.

In Cameroon, for example in indigenous communities both children and adults record very high illiteracy rates. In this premise the fundamental system of education should aim at targeting these groups. Considering the definition of fundamental education as provided by UNESCO, the focus should be on children and illiterate adults who have had no opportunity of attaining formal education. However, these institutions are centralised in major cities far from indigenous communities, thus limiting their access and possible attendance. This explains why despite all efforts at the international, regional and national levels to promote indigenous peoples right to education, their illiteracy rate remains unchanged.

5.2.2 *Right to health*

Like other socio-economic rights, the right to health is a human right and crucial for the recognition of other socio-economic and cultural rights. This suggests that any violation of this right impede the full enjoyment of other human rights and fundamental freedoms.¹⁰⁹⁸ General Comment No. 14 affirms this claim and

¹⁰⁹⁸ OHCHR date unknown <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

maintains that the right to health is essential for the realisation of other human rights such as the right to housing, food, education, human dignity and social security.¹⁰⁹⁹ According to World Health Organisation's fact sheet No, 31, "the right to health is a fundamental part of our human rights and of our understanding of a life in dignity".¹¹⁰⁰ It is acquiesced that indigenous peoples encounter severe forms of social marginalisation, including, in the health sector.¹¹⁰¹ Even though no reliable data exists on the health conditions of indigenous peoples in Cameroon, studies have proven that their disjointed communities and lack of proper legal recognition hinders the effective collection of reliable statistics on their health status.¹¹⁰² It is submitted that indigenous peoples right to health has been highly neglected, thus, for indigenous peoples to fully gain the recognition they are requesting for, their right to health care must be treated as a matter of urgency by government.¹¹⁰³ Kufe *et al*, attest to the argument that racial and tribal inequalities within the society, including other social threats initiate the spread of diseases that have led to the many challenges the public health sector is facing with regards to indigenous peoples health.¹¹⁰⁴ The continuous effects on the health status of indigenous peoples is qualified to stereotype attitudes manifested towards them, extreme poverty, low nutritional level, higher level of illiteracy, displacement, environmental degradation and over-populated households.

Indigenous peoples right to health has been emphasised in a number international and regional instruments which Cameroon is party to, including the UDHR, CERD, ICESCR, CRC, UNDRIP and ACHPR. The term health as defined by World Health Organisation refers to "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".¹¹⁰⁵ This basically infer that the right to health care has gone beyond mere access to good

¹⁰⁹⁹ CESCR 2000 *General Comment No. 14: The Right to the Highest Attainable Standard of Health* para 3.

¹¹⁰⁰ OHCHR date unknown <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

¹¹⁰¹ Ohenjo *et al* 2006 *Series* 1937.

¹¹⁰² Ohenjo *et al* 2006 *Series* 1943.

¹¹⁰³ Ohenjo *et al* 2006 *Series* 1944.

¹¹⁰⁴ Kufe *et al* 2016 *BMC Public Health* 2.

¹¹⁰⁵ *Constitution of the World Health Organisation* (2006) para 1(2).

medical services, to good living standards such as sanitation, food, shelter, education and safe drinking water. The UDHR provision on the right to health is linked to the above explanation as it is described as a “standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical and other social services”.¹¹⁰⁶ It further extends to include motherhood and childhood; and suggest that children born in or out of wedlock should also benefit from same health services.¹¹⁰⁷ By this, it goes without saying that the right to health care is an essential right guaranteed to every individual including indigenous peoples.

This is the position of CERD as it urged States Parties to ensure that everyone, has “the right to the protection of health...”¹¹⁰⁸ it equally calls on States Parties to eliminate all forms of discrimination against women in the domain of health in relation to family planning and pregnancy, through the provision of free medical services and proper nutrition during pregnancy to maintain equality between men and women.¹¹⁰⁹

The ICESCR provision on the right to health also provides that “everyone has the right to the enjoyment of the highest attainable standard of physical and mental health”.¹¹¹⁰ It also outlines major steps to be taken by States Parties to ensure the complete realisation of the right to health which include a decrease in still-birth and infant mortality rates, the healthy development of the child, promote a healthy environmental and industrial hygiene, the prevention, treatment and control of epidemic, endemic, occupational and other diseases.¹¹¹¹ In addition, the CRC obliges states to recognise the child’s right to the enjoyment of the highest attainable standard of health and to facilities of treatment of illness and rehabilitation of health, eradicate infant and child mortality, provide primary health care to all children, offer effective pre-natal and post-natal health care for

¹¹⁰⁶ Art 25(1) of the UDHR.

¹¹⁰⁷ Art 25 of the UDHR.

¹¹⁰⁸ Art 11(1)(f) of the CERD.

¹¹⁰⁹ Art 12 of the CERD.

¹¹¹⁰ Art 12 of the ICESCR.

¹¹¹¹ Art 12 (2) of the ICESCR.

mothers, and ensure that everyone has appropriate knowledge about their physical and mental health care.¹¹¹² Thus, the right to health care requires states to educate the population about the significance of having access to affordable and efficient health care services within their territories.

Furthermore, General Comment No. 14 states that the right to health care is guaranteed to every human being to enable them live a more comfortable and dignified life as they both constitute aspects of the right to health.¹¹¹³ By this provision, guarantee to a comfortable and dignify life is prerequisite to having a right to good and efficient health facilities. Similarly, the UNDRIP in emphasising on the right to health stresses that indigenous peoples have the right to their traditional medicines to maintain their health practices as well as preserve important medicinal plants, animals and minerals. They equally have the right to access social and health services without discrimination.¹¹¹⁴ By implication, states are expected to encourage and promote indigenous knowledge, especially with regards to traditional medicines as well as guarantee them access to public health facilities, as this is the only means through which they can afford the highest attainable standard of health care.

At the regional level, the Banjul Charter, in Article 16, requires every individual to have the right to enjoy the best attainable state of physical and mental health and urges states to adopt suitable measures to protect the health of their people and make sure they receive medical attention during illness.¹¹¹⁵

Given the above, it is evident that the right to health is significant in enabling people lead a safe and healthy lifestyle. Despite the fact that Cameroon is a State Party to the above international and regional instruments however, the realisation of the right to health for indigenous communities remains problematic.¹¹¹⁶ In fact,

¹¹¹² Art 24 and 25 of the CRC.

¹¹¹³ *CESCR 2000 General Comment No. 14: The Right to the Highest Attainable Standard of Health* para 1.

¹¹¹⁴ Art 24 of the UNDRIP.

¹¹¹⁵ Art 16 of the ACHPR.

¹¹¹⁶ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/gender/documents/publication/wcms_438854.pdf.

London and Schneider blame the prevalent inequalities in health care services to the advent of globalisation, indicating it has caused serious health issues to most societies including indigenous communities.¹¹¹⁷ This situation according to them have greatly prevented developing countries like Cameroon from providing efficient health care facilities to their communities.¹¹¹⁸ There is a need therefore for States Parties to honour their international human rights obligations and ensure that all populations equally realise the right to health care and retain their dignity.

The government of Cameroon has discovered that a society without an efficient health care system cannot realise economic development and combat poverty, for this reason government has placed the health sector at the centre of its agenda, by making the health system more efficient, accessible, effective, available and affordable to all populations.¹¹¹⁹ To achieve these goals, government assigned the sum of CFAF 207,066,000,000 to cater for health care services including maternal, adolescent and child health care, disease control, health promotion and governance.¹¹²⁰ In terms of availability and accessibility government embarked on the construction of new health care facilities in partnership with China-Cameroon cooperation, such as the Gynaecology, Obstetrics and Paediatric hospitals in Douala on the 17 November 2015 worth CFAF 13,000,000,000 including 300 beds and cutting edge equipment.¹¹²¹ In addition, the sum of CFAF 17, 000,000,000 was also allocated for the construction of a new Referral Hospital in Sangmelima, equipped with modern technical facilities including a medical imaging unit and scanner, an intensive care unit, a modern theatre and a heliport which became operational on the 23 of July

¹¹¹⁷ London and Schneider 2012 *Social Science & Medicine* 7.

¹¹¹⁸ Meier and Fox 2008 *Human Rights Quarterly* 262-263.

¹¹¹⁹ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 143.

¹¹²⁰ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 143.

¹¹²¹ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 143.

2015.¹¹²² In Yaoundé, government in collaboration with the Republic of Korea erected an Emergency Health Centre,¹¹²³ specifically for victims of accidents and other emergencies cases, well-furnished with high quality materials that started functioning on the 18 August 2015.¹¹²⁴ Added to the EHC built in Yaoundé, polio monitoring unit laboratory aimed at detecting and treating poliomyelitis and other related infections like yellow-fever, measles and common cold was also erected and installed at the Centre Pasteur, Yaoundé on the 16 of April 2016.¹¹²⁵

Furthermore, in an effort for government to achieve its goal of providing efficient health care facilities within every 5 kilometres nationwide, the sum of CFAF 700,000,000²⁴⁶ was disbursed for the construction of a Medical Imaging Centre in Bamenda and furnished with 2 X-ray machines, a dental scan, scanner and a mammography and ultrasound machines.¹¹²⁶ A similar Centre was built in Ngaoundere and Garoua worth FCFA 700,000,000 which became functional on 3 June 2015. The sum of CFAF 6,548,942,000 was also set aside for the renovation of 364 health facilities which include, 45 Sub-divisional Medical Centres,¹¹²⁷ 268 Integrated Health Centres,¹¹²⁸ 26 District Hospitals, 2 Regional Hospitals, 1 house for a nurse of an SMC, 11 houses for nurses of IHCs, 2 mother and child wards of SMCs, 6 houses for medical doctors of SMCs, 1 house for a medical Doctor of IHC, 1 mother and child ward at a District Hospital, and 1 District Health Service.¹¹²⁹

Continuous efforts to improve the quality and quantity of health services government trained and employed several staff amongst them are medical

¹¹²² Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 144.

¹¹²³ Emergency Health Centre hereinafter EHC.

¹¹²⁴ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 144.

¹¹²⁵ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 144.

¹¹²⁶ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 144.

¹¹²⁷ Sub-divisional Medical Centres hereinafter SMC.

¹¹²⁸ Integrated Health Centres hereinafter IHC.

¹¹²⁹ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 145.

Doctors, pharmacists, dentists, midwives, nurses and other health personnel's.¹¹³⁰ Over 291 newly trained health personnel's were deployed to start a pilot programme in almost 105 remote areas identified as the most deficient health facilities in the Adamawa, North, Far-North, and South-West Regions in an effort to close the gap of unequal distribution of health care services and personnel's in the country.¹¹³¹

Government's continuous efforts to improve the health situation of its population and making health care services accessible and affordability for the financially unstable, resulted to the signing of a protocol agreement between MINSANTE and 2 Regional Funds in the North and South Regions to promote community health and good governance.¹¹³² Accordingly, government also dropped down the prices of drugs including hospital facilities, to reduce maternal, adolescent and child mortality rates.¹¹³³ To achieve this objective, government, the United Nations Fund for Population Activities¹¹³⁴ and World Health Organisation¹¹³⁵ established a National and Multi-sector Programme to combat Maternal and Child Mortality by 21% from 2014-2018.¹¹³⁶

To this end, a Priority Action Plan¹¹³⁷ was established by MINSANTE for (2014-2018) to promote the availability of health services, this resulted to the training of 2, 629 health personnel to improve reproductive health services as well as prevent mother-to-child transmission¹¹³⁸ of HIV, provide Emergency Obstetric

¹¹³⁰ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 145.

¹¹³¹ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 145.

¹¹³² Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 138.

¹¹³³ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 138.

¹¹³⁴ United Nations Fund for Population Activities hereinafter UNFPA.

¹¹³⁵ World Health Organisation hereinafter WHO.

¹¹³⁶ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 139.

¹¹³⁷ Priority Action Plan hereinafter PAP.

¹¹³⁸ Mother-to-Child Transmission hereinafter PMTCT.

and Neonatal Care,¹¹³⁹ Family Planning¹¹⁴⁰ and the Integrated Management for Childhood Diseases.¹¹⁴¹ Despite these initiatives complete access to quality health care for indigenous peoples and vulnerable groups remain a huge challenge, as it is observed that infant and child mortality and morbidity rates within indigenous communities is excessively high when compared to the larger society.¹¹⁴² Some scholars have argued that this is as a result of the unequal distribution of human resources in health¹¹⁴³ services in the country.¹¹⁴⁴ Additionally, reports from the World Bank also confirm that the country is yet to realise its Millennium Development Goals,¹¹⁴⁵ specifically goal 4 which required government to “reduce two-third the under-five mortality rate”¹¹⁴⁶ from 18 deaths per 1,000 lives in 1990 to 46 by 2015, unfortunately, this was only reduced to 88 deaths by 2015.¹¹⁴⁷

Additionally, Cameroon failed to realise the targets set to “reduce maternal mortality by three quarters between 1990 and 2015” in goal 5 of the MDGs, subsequently, the maternal mortality rate experienced an increase rate to 782 maternal deaths per 1,000 live births as against the previous 728 recorded in 2011.¹¹⁴⁸

A similar situation is documented for child mortality rates, where it is estimated that over 20% of children born die before attaining the age of 5, the estimated figure ranges between 173 and 154 deaths per 1,000 live births as compared to

¹¹³⁹ Emergency Obstetric and Neonatal Care hereinafter EmONC.

¹¹⁴⁰ Family Planning hereinafter FP.

¹¹⁴¹ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 140; Integrated Management for Childhood Diseases hereinafter IMCI.

¹¹⁴² Ohenjo *et al* 2006 Series 1940; OHCHR date unknown <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

¹¹⁴³ Human Resources in Health hereinafter HRH.

¹¹⁴⁴ Kingue *et al* 2013 *Bull World Health Organ* 864.

¹¹⁴⁵ Millennium Development Goals hereinafter MDGs.

¹¹⁴⁶ Under-Five Mortality Rate hereinafter U5MR.

¹¹⁴⁷ Anon 2016 Combined Project Information Documents: Integrated Safeguards Data Sheet (PID/ISDS) Appraisal Stage 2.

¹¹⁴⁸ Anon 2016 Combined Project Information Documents: Integrated Safeguards Data Sheet (PID/ISDS) Appraisal Stage 2.

the total average of 103 deaths nationally.¹¹⁴⁹ Similarly, evidence from recent studies indicate that indigenous women experience difficulties in accessing maternal mortality and reproductive health services within their communities, thus, the highest death rates are recorded in extremely poor and marginalised communities.¹¹⁵⁰

In 2007-2010 the World Bank, IMF and the French Government supported the HRH services through the Heavily Indebted Poor Country Initiative Programmes,¹¹⁵¹ and the Deliverable and Development Contract respectively in a bid to increase the pay packages of health workers, with the intention to improve the quality, quantity and secure access of health care services in rural areas.¹¹⁵² However, there remain a huge shortage of well-trained medical staff; little or no medical facilities in marginalised communities, since the majority of individuals are unable to access good medical facilities in urban areas.¹¹⁵³

Hence, for effective integration and development of health care facilities there is an urgent need for a reduction in the number of people living in abject poverty, by stamping out inequality that is prevalent in the country. It is evident that a significant improvement in public health policies might expedite the realisation of economic development and enhancement of health care services within indigenous communities.

In addition, malnutrition has also been identified as a common health challenge affecting indigenous communities; studies reveal that malnutrition rates for indigenous children for the last 20 years remain on an increase, for example, 41% of children in rural communities as against 22% for children in urban areas.¹¹⁵⁴ The above statistics indicate that the health situation of indigenous children is

¹¹⁴⁹ Anon 2016 *Combined Project Information Documents: Integrated Safeguards Data Sheet (PID/ISDS) Appraisal Stage 2*.

¹¹⁵⁰ Lennox 2013 *State of the World's Minorities and Indigenous Peoples* 17.

¹¹⁵¹ Heavily Indebted Poor Country Initiative Programmes hereinafter HIPCI.

¹¹⁵² Kingue *et al* 2013 *Bull World Health Organ* 865.

¹¹⁵³ Kingue *et al* 2013 *Bull World Health Organ* 865.

¹¹⁵⁴ Anon 2016 *Combined Project Information Documents: Integrated Safeguards Data Sheet (PID/ISDS) Appraisal Stage 2-3*.

generally under serious threats. Ohenjo *et al*, are of the opinion that the impact of environmental degradation, gross contamination of ecosystems, pollution of waterways, loss of lands and natural resources are contributing factors to the high rate of malnutrition in indigenous communities.¹¹⁵⁵ The resulting effects are shortages and scarcity in forest food sources resulting in changes in diet and lifestyles.¹¹⁵⁶ They argue that the Pygmy communities still residing in the forest retain better health conditions than those dispossessed from their natural habitat since the forest is key to their well-being and survival and as such majority of them are unable to survive outside this natural environment.¹¹⁵⁷ For indigenous peoples the forests is not just the trees in it, but the content therein, thus, once that is taken away from them, their health is endangered and they are subsequently exposed to chronic malnutrition, parasites, infectious and communicable diseases, including HIV and AIDS.¹¹⁵⁸

Malaria and tuberculosis are pressing health risks affecting indigenous communities more, immediately coming from poorly constructed and overcrowded huts (mongulu), coupled with the fact that they are exposed to the forest a natural habitat for mosquitoes and other harmful insects.¹¹⁵⁹ Added to that is the escalating exploitation and destruction of their lands and territories wherein medicinal plants indigenous peoples often used to treat diseases like malaria, fever, tuberculosis and other intestinal and skin diseases, thus, aggravating their health conditions.¹¹⁶⁰ Indigenous peoples are viewed as the greatest healers who use their indigenous knowledge of traditional medicines.¹¹⁶¹ This statement was corroborated by a Bagyeli traditional expert who affirmed that:-

When the pipeline destroys the medicinal trees, it will destroy everything. I am a healer; I don't use the medicines of the hospital. I

¹¹⁵⁵ Ohenjo *et al* 2006 *Series* 1941.

¹¹⁵⁶ Ohenjo *et al* 2006 *Series* 1939.

¹¹⁵⁷ Ohenjo *et al* 2006 *Series* 1939.

¹¹⁵⁸ Ohenjo *et al* 2006 *Series* 1938, 1941.

¹¹⁵⁹ Ohenjo *et al* 2006 *Series* 1940.

¹¹⁶⁰ Betti 2004 *African Study Monographs* 3, 10-11.

¹¹⁶¹ Betti *et al* 2013 *European Journal of Medicinal Plants* 175.

was born in the forest, I live in the forest, I will die in the forest. I live from the forest – the pipeline destroys the forest by which I live.¹¹⁶²

The above affirmation reveals that the forest is fundamental to indigenous peoples' existence, hence the appropriation of their forest is a major risk to their survival as most of them prefer traditional healing methods to fancy hospital treatments which they do not trust and believe in.¹¹⁶³

Thus, the lack of adequate and effective health care, access to treatment and or medical facilities within indigenous communities have resulted in high death rates. For example, those suffering from terminal diseases such as HIV and AIDS are unable to access anti-retroviral treatment¹¹⁶⁴ nor feed properly due to poverty.¹¹⁶⁵ It is imperative to understand that the present situation prevents them from accessing nutritious food to live a healthy lifestyle, especially as their land and resources are endangered by extractive companies. To that effect, they remain vulnerable and exposed to high levels of communicable diseases and absence of a balanced diet for patients suffering from terminal diseases that weaken their resistance and immune system, thereby causing other infections and illnesses and eventually resulting in deterioration and subsequent death. Thus, for indigenous peoples to have the highest attainable standard of health, government must provide effective, integrative, affordable, accessible and efficient health care systems to all without distinction.¹¹⁶⁶

States have the duty therefore to respect, promote and protect the right to health as well as desist from activities that limit indigenous people from accessing efficient health care services.¹¹⁶⁷ General Comment No. 14 also require States Parties to take appropriate measures to promote the right to health as well as refrain from enforcing discriminatory practices that hinder free and equal access



¹¹⁶² Nelson Kenrick and Jackson 2001 *Report on a Consultation with Bagyeli Pygmy Communities Impacted by the Chad-Cameroon Oil-Pipeline Project*

¹¹⁶³ Sawyer and Gomez *The Politics of Resource Extraction* 222.

¹¹⁶⁴ Anti-Retroviral Treatment hereinafter ART.

¹¹⁶⁵ Ohenjo *et al* 2006 *Series* 1943.

¹¹⁶⁶ Hunt and Backman 2008 *Health and Human Rights* 81-92.

¹¹⁶⁷ OUNHCHR and WHO <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

to health care services in societies.¹¹⁶⁸ Generally government of Cameroon has no existing laws that guarantee equal access to health for indigenous communities and prevent endemic diseases, immunisation campaigns for children, fight against HIV and AIDS and other venereal diseases.¹¹⁶⁹ It is therefore suggested that government revisits its health policies and adopt legislation that focuses on addressing the health situations of indigenous and vulnerable groups in Cameroon to prevent the excessive death rates recorded in these societies.

5.2.3 Right to housing

Although indigenous peoples have succeeded in making their voices heard in several international and regional human rights instruments, their socio-economic and cultural situations remain unsatisfactory especially with regards their right to adequate housing. Indigenous peoples in many countries including Australia, Canada, New Zealand, Kenya, Finland, USA, Mexico, Ecuador as well as other parts of Africa face severe housing shortages.¹¹⁷⁰ Studies have confirmed that recurrent displacement of indigenous peoples from ancestral lands have resulted in inadequate housing conditions for them.¹¹⁷¹ In describing the housing conditions of indigenous peoples, Christensen reports that these people live under horrific and dreadful conditions, including over-crowded houses, insecure tenure systems, increased squatting and lack of permanent shelters with no schools and health services.¹¹⁷² It is also submitted that the increase in expulsions of indigenous peoples from their ancestral lands has resulted in their frequent migration to urban cities where barriers to adequate housing are more severe.¹¹⁷³ These barriers include unemployment leading to

¹¹⁶⁸ CESCR 2000 *General Comment No. 14: The Right to the Highest Attainable Standard of Health* para 5.

¹¹⁶⁹ See AIWO-CAN MBOSCUDA and CADDAP 2013 *Issues and Recommendations on the Situations and Rights of Indigenous Peoples in Cameroon*.

¹¹⁷⁰ Anaya 2015 *Arizona Journal of International and Comparative Law* 150-150.

¹¹⁷¹ UN-HABITAT and OHCHR 2005 *Indigenous Peoples' Right to Adequate Housing: A Global Overview* 1.

¹¹⁷² Christensen 2016 *Health & Place* 83-84.

¹¹⁷³ UN-HABITAT and OHCHR 2005 *Indigenous Peoples' Right to Adequate Housing: A Global Overview* 1-5.

abject poverty, lack of affordable and adequate housing, absence of income generating activities, extensive discrimination and limited access to social services are reasons that deprive indigenous peoples from accessing affordable and adequate housing.¹¹⁷⁴

It is submitted that indigenous peoples who were forcefully displaced and migrated to townships are faced with the challenge of expensive house rents, thus, they resort to informal settlements like slums while others remain homeless, sleeping under bridges and along the streets.¹¹⁷⁵ Subsequently, they have become exposed to drug and alcohol abuse, while women and young girls remain more vulnerable and have become frequent victims of rape, rampant kidnapping, used as sex slaves and human trafficking.¹¹⁷⁶

Numerous international instruments have been put in place to address the complex issues surrounding indigenous peoples' rights to adequate housing. These instruments recommend that indigenous peoples be allowed to enjoy the same rights to adequate housing as their non-indigenous counterparts even if they reside in traditional lands or in urban regions.¹¹⁷⁷ For instance, the UDHR, in promoting the right to housing prohibits any interference in the privacy, family, home and attacks upon the honour and reputation of indigenous peoples.¹¹⁷⁸ According to this provision, the home represents comfort, provides security and dignity, thus, any interference in the exercise of these rights eventually leads to a violation of indigenous peoples' rights to living a dignified life. The UDHR clearly guarantees everyone the right to freely reside in everyplace within the boundaries of their state.¹¹⁷⁹ Apart from the UDHR, the right to adequate housing is articulated in the ICESCR and is aimed at safeguarding adequate standards of

¹¹⁷⁴ UN-HABITAT and OHCHR 2005 Indigenous Peoples' Right to Adequate Housing: A Global Overview 1-5.

¹¹⁷⁵ Farha and McKay 2009 <http://www.equalityrights.org/cera/wp-content/uploads/2010/03/Housing-Indigenous-Peoples-in-CitiesLRpdf>.

¹¹⁷⁶ Farha and McKay 2009 <http://www.equalityrights.org/cera/wp-content/uploads/2010/03/Housing-Indigenous-Peoples-in-CitiesLRpdf>.

¹¹⁷⁷ Farha and McKay 2009 <http://www.equalityrights.org/cera/wp-content/uploads/2010/03/Housing-Indigenous-Peoples-in-CitiesLRpdf>.

¹¹⁷⁸ Art 12 of the UDHR.

¹¹⁷⁹ Art 13 of the UDHR.

living. States Parties have the responsibility to take immediate action to ensure that indigenous peoples' rights to adequate housing and improved standard of living is guaranteed.¹¹⁸⁰ This implies that access to adequate housing is essential for the attainment of improved and better living standards for indigenous communities.

The right to adequate housing does not impose an obligation on states to construct houses to everyone, but rather places an obligation on governments to ensure that everyone has access to adequate housing, including indigenous peoples, vulnerable groups, women, children and persons with disabilities.¹¹⁸¹ This can be attributed to Article 2(2) of the ICESCR which requires States Parties to refrain from any form of discrimination on any of the listed grounds which might deter any member of the society from realising the rights as set in the Covenant. Subsequent studies reveal that indigenous peoples' right to self-determination is associated to land, natural resources and right to an adequate housing as highlighted in Article 1 of the ICESCR.¹¹⁸²

In emphasising the importance of an adequate housing, the CESCR enacted two important documents, namely General Comment No. 4 and No.7. General Comment 4 defines housing beyond the limits of a mere roof over one's head or as a service, but views it as a right to reside in a place with full security, peace and dignity.¹¹⁸³ General Comment No. 4 equally recognises that everyone deserves security of tenure to secure legal protection from forced dispossession, harassment and other dangers, since the forced removal from a person's natural habitat is contrary to the provisions laid down in the Covenant.¹¹⁸⁴ However,

¹¹⁸⁰ Art 11(1) of the ICESCR.

¹¹⁸¹ Farha and McKay 2009 <http://www.equalityrights.org/cera/wp-content/uploads/2010/03/Housing-Indigenous-Peoples-in-CitiesLRpdf>.

¹¹⁸² Farha and McKay 2009 <http://www.equalityrights.org/cera/wp-content/uploads/2010/03/Housing-Indigenous-Peoples-in-CitiesLRpdf>.

¹¹⁸³ CESCR 1991 *General Comment No. 4: The Right to Adequate Housing* para 7.

¹¹⁸⁴ CESCR 1997 *General Comment No. 7: The Right to Adequate Housing* para 1.

forced displacements make for a challenging subject that stares back at the international community and requires immediate redress.¹¹⁸⁵

In Cameroon, the right to adequate housing has been recognised as an essential right and government has focused on ameliorating housing conditions of her people. To this end, government have embarked on establishing plots and making them accessible, making building materials available and affordable, building low-cost houses, advertising newly government constructed houses as well as providing a healthy living environment to all population.¹¹⁸⁶ However, the housing gaps between indigenous and non-indigenous peoples remain exceedingly wide in the country.¹¹⁸⁷

Additionally, General Comment No. 4 outlines seven characteristics that govern the right to adequate housing and urges states to fulfil and promote these rights. These are: Security of tenure, Availability, Affordability, Habitability, Accessibility, Location and Cultural Adequacy. These conditions are examined below: -

5.2.3.1 Security of tenure

Security of tenure is an essential element for the realisation of an adequate housing in every society. It requires maximum security in any housing system occupied by indigenous peoples, including private or public rental shelters, cooperative residences, lease or owner-occupation housing, emergency, informal dwellings as well as land or other property used for shelter.¹¹⁸⁸ The burden is placed on States Parties to implement appropriate measure to ensure that all persons including indigenous peoples enjoy full security of tenure and protection against involuntary dispossession, harassment and other forms of danger after due consultations with them.¹¹⁸⁹ The term “forced eviction” refers to

¹¹⁸⁵ CESCR 1997 *General Comment No. 7: The Right to Adequate Housing* para 1.

¹¹⁸⁶ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 199.

¹¹⁸⁷ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 179.

¹¹⁸⁸ CESCR 1991 *General Comment No. 4: The Right to Adequate Housing* para 8(a).

¹¹⁸⁹ CESCR 1991 *General Comment No. 4: The Right to Adequate Housing* para 8(a).

“the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.¹¹⁹⁰ The forceful eviction of peoples from their natural habitat deter the full enjoyment of their right to security of tenure, as most often they migrate and settle in inadequate houses with little or no security.

Indigenous peoples as well as other vulnerable groups have been identified as the group without any proper security of tenure. A number of reasons account for this (i) land expropriation by the State for the unsustainable exploitation of resources; (ii) forcible displacement by the State and other third-parties, such as regional and international financial institutions, to make way for large scale infrastructural developments; (iii) implementation by private individuals of customs and traditions which dispossess widowed or divorced women from their homes and lands; and (iv) inadequate response to racist practices by landlords and other housing providers.¹¹⁹¹ This are the challenges faced by several indigenous peoples in most countries where they live and Cameroon is no exception, as indigenous peoples often encounter forced displacement from traditional lands, following government development policy, thus, depriving them from access to natural habitat and a place they consider home. This usually occurs when government issue exploiting licences to logging companies, or engages in other development projects on indigenous peoples’ territories without proper consulting or obtaining their informed consent, hence violating their right to adequate housing and security of tenure.

Apart from insecure tenure problems indigenous peoples also face several challenges like exclusion and loss of cultural identity resulting from the repeated

¹¹⁹⁰ CESCR 1997 *General Comment No. 7: The Right to Adequate Housing* para 3. However, it should be noted that any act of involuntary expulsion carried out legally and in accordance with the rules of international human rights instruments is considered legal and falls outside the realms of the definition as highlighted in para 3 of the General Comment No. 7.

¹¹⁹¹ UN-HABITAT and OHCHR 2005 *Indigenous Peoples’ Right to Adequate Housing: A Global Overview* 19-20.

displacement from their territories.¹¹⁹² It is significant to understand that even though, the Constitution of Cameroon obliges the state to protect and promote the family, particularly women, the young, elderly and disabled, no mention is made of indigenous peoples, however, the term family can be interpreted to constitutes indigenous families as well.¹¹⁹³ As such they deserve the same protection against involuntary removal from ancestral lands as well as security of tenure as other members of the community.¹¹⁹⁴ It is essential that to prevent controversies and the believe that government often neglect indigenous peoples in legislative and administrative policies, government is urged to always extent legislative protection in all aspects to indigenous peoples, as it usually does in the case of PWD, elderly and women.

In guaranteeing security of tenure government has embarked on enabling the process of land ownership, combat forced evictions, open land reserves and order compensations to those whose lands was previously appropriated for public purposes.¹¹⁹⁵ To this effect, government created a one-stop facilitation process whereby 11 regional headquarters including Kribi were furnished with special buildings in the Land Conservation process.¹¹⁹⁶ This has resulted to a total of 6, 411 lands being granted land titles, broken down as follows:- 4,307 were done by direct registration, 2,104 through parcelling while 149 land titles were set up for customers of Mission for the Development and Equipment of Urban and Rural Lands.¹¹⁹⁷

Government also focused on providing access to land titles in collaboration with the support Project for the Modernisation of Surveys and the Business

¹¹⁹² UN-HABITAT and OHCHR 2005 *Indigenous Peoples' Right to Adequate Housing: A Global Overview* 21.

¹¹⁹³ See para 5(17) of the Preamble to the Constitution of the Republic of Cameroon.

¹¹⁹⁴ Personal Communication by way of an unstructured interview with the Secretary General of MBOYASCAM on the 5 January 2017, Yaoundé, Cameroon.

¹¹⁹⁵ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 179.

¹¹⁹⁶ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 179.

¹¹⁹⁷ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 179; Mission for the Development and Equipment of Urban and Rural Lands hereinafter MAETUR.

Climate,¹¹⁹⁸ to facilitate the process of land ownership.¹¹⁹⁹ Divided in to four categories, the Geodesic Network of Cameroon¹²⁰⁰ oversaw the establishment of single geodesic referential to guarantee the genuineness of cadastral documents, enhance the legality of land titles and resolve land disputes.¹²⁰¹ This resulted to the distribution and planting of 25 pillars and 510 base terminals in the cities of Bamenda, Bafoussam, Bertoua and Ebolowa in 2014 making a total of 1,159 pillars installed in the country.¹²⁰² Other projects like the National Large Scale Cartography, National Survey and Strengthening the Capacities of Surveyors are still in the pipeline.¹²⁰³

Additionally, to continue enhancing security of tenure in the country, government made provisions for litigation on the registration of lands which grants parties the right to appeal a decision in cases of violation of their rights, this led to the institution of 1,521 appeals before the Administrative Bench including 514 brought before the Judicial Bench in which 61 judgements were granted in favour of government.¹²⁰⁴ Also, to facilitate the compensation process for any expropriation carryout for public purposes, 14 decrees were endorsed and signed, in which the amount of CFAF 25,747,151 were paid to 79 victims by MAETUR following the Yaoundé-Nsimaleng Highway Project before the actual execution of the project.¹²⁰⁵

Moreover, government in a bid to prevent foreign investors from appropriating vast amounts of lands, Circular No. 1/CAB/PM of 1 April 2014 was passed to

¹¹⁹⁸ Project for the Modernisation of Surveys and the Business Climate hereinafter PAMOCCA.

¹¹⁹⁹ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 180.

¹²⁰⁰ Geodesic Network of Cameroon hereinafter RGC.

¹²⁰¹ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 180.

¹²⁰² Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 180.

¹²⁰³ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 180.

¹²⁰⁴ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 180.

¹²⁰⁵ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 181.

establish rules and monitor the procedure for accessing land in the country. Given the above, land is to be allocated only for economic development projects, on conditions that the social and cultural rights of host communities are respected.¹²⁰⁶ This required extensive consultations with host communities regarding the nature of the project and its benefits to the communities. Security of tenure was also enhanced through access to land, in which government embarked on facilitating the composition of land reserves, as demonstrated in the table below: -

State Land Reserves

Table 10

Allocation of land Reserve	Forecast	Development	Location
Land allotment	24,000 ha programmed in 24 Divisions	18,000 ha completed in 18 Divisions between 2012 and 2014	Benoue, Bui, Djerem, Diamare, Haute-Sanaga, Mayo-Tsanaga, Mbam-and Inoubou, Mbam-and-Kim, Meme, Menoua, Mezam, Mefou and Akono, Mungo, Nde, Nkam, Noun, Ocean, Sanaga-Maritime
Agribusiness	700,000 ha programmed	415 ha 80a 99 ca achieved in 5 of 8 Divisions	Benoue, Mayo-Danay, Mbam-and-Inoubou, Ocean, Ntem Valley
Social Housing	400 ha programmed in 2 Divisions	50a 58ca 183ha realised in 2 Divisions	Mfoundi: 62a 49ca 103ha Mvila: 79ha 88a 09ca

Source: MINDCAF adapted from MINJUSTICE Report 2014 182

Furthermore, in establishing plots to safeguard security of tenure, government created 1,104 building plots in the cities of Yaoundé (Mbalngong and Olembe) including Douala (Bwang Bakoko), other projects such as the connection of

¹²⁰⁶ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 182.

water, electricity, telephones networks and tarring of the high way are in process.¹²⁰⁷ The table below illustrates the percentage of land development carried out in 2014.

Land development

Table 11

Title	Number of Planned Plots	Number of Plots Developed beyond 50%	Location
Developed Building Plots	50,000	1,104	Mbalngong (Yaounde): 384 plots Olembe (Yaounde): 296 plots Bwang Bakoko I (Douala): 238 plots Bwang Bakoko II (Douala) 186 plots

Source: MAETUR adapted from MINJUSTICE Report 2014 183

From the above, it is observed that the government of Cameroon is making enormous efforts to guarantee adequate housing with appropriate security to the population, although all these efforts are directed to benefit larger communities, neglecting indigenous communities who stands out with specific needs regarding adequate housing with security of tenure. Indigenous communities are undermined and overlooked as far as adequate housing and security of tenure is concerned. Given that indigenous peoples are viewed as the most vulnerable and destitute group of people in the society, with limited social facilities, such as adequate housing and insecurity, government's focus should be geared in ensuring that they are afforded the best security possible in terms of adequate

¹²⁰⁷ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 183.

housing to redress their living conditions and bring them on the same platform with the dominant society.

5.2.3.2 Availability of services, materials, facilities and infrastructure

General Comment No. 4 in para 7 states that a house does not only mean having a roof over one's head but must provide comfort, security and reflect one's dignity as a human being. Thus, in line with this understanding "an adequate house must contain certain facilities essential for health, security, comfort and nutrition".¹²⁰⁸ This guarantee is not limited to specific individuals but extended to the entire family. The family is expected to enjoy and be able to have access to natural and common resources, safe and clean drinking water, energy for cooking, proper lighting and heating systems, sanitation and washing facilities, good food storage facilities, refuse disposal systems, site drainage as well as efficient emergency services.¹²⁰⁹ This services ensures adequate housing and enable people live a dignified life. Unfortunately, this is not realised in many communities where indigenous peoples are found, given that they live in the forest in self-constructed traditional huts call "mongulu". The conditions of these huts do not match the description of an adequate house as defined in para 7 of General Comment No. 4. It therefore, becomes very difficult for them to access basic social services such as clean drinking water, electricity, health care and adequate sanitation in these settings. The same situation applies even to those indigenous peoples who have been forced to relocate to urban cities, as the high cost of living hinders their full access to adequate housing with the basic facilities required for living a comfortable live. Eventually they settle for informal dwellings and dilapidated structures with no security and proper sanitation facilities.

However, it is significant to mentions that government have attempted to redress these challenges by increasing the number of companies that produces cement to 4 in the country such as Dangote Cement Cameroon, Ciments de L'Afrique

¹²⁰⁸ CESCR OHCHR 1991 *General Comment No. 4: The Right to Adequate Housing* para 8(b).

¹²⁰⁹ CESCR 1991 *General Comment No. 4: The Right to Adequate Housing* para 8(b).

Cameroun SA,¹²¹⁰ Medcem Cameroun¹²¹¹ and Cameroon Mira Company to enhance the availability of services, materials, facilities and infrastructure to ensure adequate housing for the population.¹²¹² The idea is to increase competition in the sale of building materials to cut down prices, such that people can afford and can construct houses for themselves. Also, government's efforts to promote public property development led to the construction of 10,000 low-cost houses in 2014 to guarantee adequate housing with available facilities with the intention of improving the living conditions of low income earners and marginalised groups.¹²¹³ In addition to this, the Cameroon Housing Fund granted 76 loans worth the sum of FCFA 1.358,000,000,000 as a means to assist government provide adequate houses to the population, thus, 114 houses were bought in Yaoundé and Douala.¹²¹⁴ Roads and utility networks were also constructed and connected to facilitate the availability of services in these houses. The unanswered question is how many indigenous peoples were granted access to these houses? Or benefited from these projects? If at all these developments are aimed at ameliorating their living conditions, were they ever consented? Why are these services all concentrated in major cities? Considering that indigenous peoples have a close affiliation with ancestral land, thus, bringing these facilities close to their natural settings will be preferable as long as they will be able to access their traditional land and the resources therein.

A good view of indigenous peoples' dwellings (huts) below shows that their housing conditions face severe crisis and requires immediate attention. It is noted that the chronic housing situations of indigenous peoples have had negative impacts on their socio-economic conditions.¹²¹⁵ Apart from the absence of a

¹²¹⁰ Ciments de L'Afrique Cameroun SA hereinafter CIMENCAM.

¹²¹¹ Medcem Cameroun is a Cement company owned by Turkish group Eren Holding and was officially installed on the 16 of December 2016 in Douala.

¹²¹² Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 184.

¹²¹³ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 184.

¹²¹⁴ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 185.

¹²¹⁵ Anaya 2015 *Arizona Journal of International & Comparative Law* 150.

suitable infrastructure, indigenous huts lack available services such as water, energy and other housing supplies necessary to fit the definition of adequate housing. Government is urged to focus its resources on improving the housing conditions of indigenous peoples and ensure that the structures reflect their cultures and address their specific needs. In addition, government should establish special funding for housing for indigenous peoples like the one provided by the Canadian government in the Inuit communities. Another suggestion is for government to impose strict conditions with the consent of indigenous peoples to logging companies to construct houses, health care services, build roads and construct bridges in indigenous communities before the start of any project within their communities. This will bring development to their communities, improve their living standards including health and housing conditions and enable them be integrated into the mainstream of society freely without any fear of experiencing stigmatised attitudes. In addition, these efforts will enable indigenous peoples to benefit directly from the proceeds of exploiting their resources.

Traditional huts of Pygmy peoples of Cameroon called “mongulu”



Source: http://assets.survivalinternational.org/pictures/69/pygmes-42_screen.jpg accessed on 08/09 /201



Source: <http://fortheinterim.com/wp-content/uploads/2011/03/pygmies2.jpg>.

5.2.3.3 Affordability

Affordability refers to the costs of the house including other living expenses. In General Comment No. 4, affordability refers to: -

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States Parties to ensure that the percentage of housing related costs is, in general, commensurate with income levels. States Parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases.¹²¹⁶

Given that indigenous peoples in Cameroon are not involved in any economic generating activities, nor employed in the formal sector, their poverty-stricken conditions forbid them from affordable adequate housing with basic facilities. The

¹²¹⁶ CESCR 1991 General Comment No. 4: *The Right to Adequate Housing* para 8(c).

conditions forbid them from affordable adequate housing with basic facilities. The Land and natural resources indigenous communities own is the backbone of their wealth, therefore, the loss of that land deprives them of a means of subsistence and ability to access affordable adequate housing for themselves and their families.¹²¹⁷ The widespread poverty prevalent within indigenous communities is a common feature used to identify this group of people and which prevent them from living a dignified life as other members of the society.¹²¹⁸ Reports indicate that efforts to improve the living conditions of all populations in the country, through the provision of adequate housing does not take into consideration indigenous peoples and their different needs.¹²¹⁹ The low-cost housing system introduced in the country should target indigenous and other marginalised groups. Related studies on the housing conditions of indigenous peoples demonstrate that there is an undue absence of adequate, affordable, culturally and safe housing due to the lack of a specific legislation and policy that identifies the needs and distinct cultures of indigenous peoples.¹²²⁰ Government should adopt the South African model of building Reconstruction Development Programme¹²²¹ houses for peoples with very low or no income, as this system will help accomplish the idea of affordable adequate housing which is posing a huge problem for indigenous communities in Cameroon.

5.2.3.4 Habitability

Habitability is related to safety and health conditions in a home. An adequate house must be habitable, in terms of space, protection against cold, damp, heat, rain, wind or other related dangers to health, structural hazards, and transmissible diseases, thus, the physical safety of tenants or occupants must

¹²¹⁷ UN-HABITAT and OHCHR 2005 Indigenous Peoples' Right to Adequate Housing: A Global Overview 25.

¹²¹⁸ UN-HABITAT and OHCHR 2005 Indigenous Peoples' Right to Adequate Housing: A Global Overview 25.

¹²¹⁹ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 206.

¹²²⁰ UN-HABITAT and OHCHR 2005 Indigenous Peoples' Right to Adequate Housing: A Global Overview 25.

¹²²¹ Reconstruction Development Programme hereinafter RDP.

also be effectively guaranteed.¹²²² It is evident that indigenous peoples in Cameroon live in very unhealthy and unsafe environments and are exposed to many social ills. The situation is a triple curse for those in urban cities who are unable to afford adequate housing with the necessary facilities, and have resorted to poorly maintained houses as well as over-crowded houses, while majority of them sleep on streets and under bridges. In addition, the traditional huts (mongulu) commonly used by the Pygmies in Cameroon are not well protected and secured as they are built from bark of trees and leaves. Furthermore, the fact that the single bedroom huts is used by the entire household result to acute health conditions, due to overpopulation and exposure to cold and other harmful creatures. Hence, the debate surrounding adequate housing for indigenous peoples remains an area of major concern for government officials in the country and should be given priority. It is suggested that government take effective legislative measures to ensure that indigenous peoples have access to adequate and habitable housing conditions that reflects their cultural aspirations. The picture of indigenous peoples' huts seen above shows that it is void of meeting the criteria of a habitable house, since this structures can be easy destroyed by wind or heavy rains during the raining seasons. This is a call for concern for policy and law makers in the country.

5.2.3.5 Accessibility

Accessibility in practical terms means having easy admission or free entrance in to one's premises taking into consideration all category of people. General Comment No. 4 defines accessibility as: -

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy

¹²²² CESCR 1991 *General Comment No. 4: The Right to Adequate Housing* para 8(d).

should take fully into account the special housing needs of these groups. Within many states parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal...'¹²²³

Indigenous communities in Cameroon do not always benefit from adequate and accessible housing. This is common with those who have been forced to move and integrate with the Bantu communities, thus, violating their right to adequate and accessible housing. In addition, they experience pervasive forms of discrimination and stigmatisation due to their unique lifestyles and cultural identities. The Bantu view indigenous peoples as “backward”, “uncivilised” and dirty, and for that reason are not good enough to integrate into the broader society but meant to be confined in zoos for touristic purposes.¹²²⁴ This perception about indigenous peoples has resulted to stereotypes and stigmatised attitudes towards them from the broader society. This has destroyed their self-esteem as they do not feel comfortable being around the dominant society and decide to stay secluded in the forest where no one gives them degrading looks. This is one of the reasons why majority of them once rejected the houses constructed for them as compensation by the Chad-Cameroon Pipeline project. Therefore, for indigenous peoples to enjoy accessible housing the general perception of non-indigenous peoples towards them must change. In other words, they must be accepted into the society and allowed to freely take part in all activities of that community like others. Government must take appropriate measures to ensure that indigenous peoples can access secure and adequate houses where they can reside in peace and dignity as well as exercise control over their land and the resources they depend on for subsistence.¹²²⁵

5.2.3.6 Location

For a house to be adequate, it must be geographically positioned in an area where social services such as schools, health care facilities, and emergency

¹²²³ CESCR 1991 *General Comment No. 4: The Right to Adequate Housing* para 8(e).

¹²²⁴ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 15.

¹²²⁵ CESCR 1991 *General Comment No. 4: The Right to Adequate Housing* para 8(e).

security services can be easily accessed. Location as a feature for adequate housing is defined as:-

Adequate housing must be in a location which allows access to employment options, health care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.¹²²⁶

Indigenous peoples in many reside in forested areas of the country. They share a spiritual and special connection with land and natural resources which to them is a symbol of their identity and means of survival. These forests areas are located far from major cities where health care centres, schools and other social amenities necessary for human survival are located. Development projects and massive resource extraction within these territories have forced them to relocate to urban cities where they are confronted with more severe social challenges, such as unemployment and poverty. Poverty prompts them to settle in informal dwellings with little or no security, health care and other services.

In Cameroon, indigenous peoples' lifestyle and special attachment with the forests and its resources prevent them from enjoying adequate housing locations. The idea is to bring social services closer to their communities and educate them on the importance to accept and adapt to the new cultures and developmental changes, without altering their beliefs and identities as this will help improve their living standards and enhance their well-being.

5.2.3.7 Cultural adequacy

Culture is an essential aspect for the survival of indigenous communities. Indigenous peoples fear that state activities including that of extractive industries are gradually diminishing their cultural identities. To indigenous peoples' education begins with a good understanding of cultural values, respecting,

¹²²⁶ OHCHR 1991 CESCR General Comment No. 4: *The Right to Adequate Housing* 4.

protecting and promoting them. Thus, culture needs to be reflected in all aspects of their daily lives. Cultural adequacy with regards to accessing adequate housing is mirrored in the following words: -

the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernisation in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.¹²²⁷

In Cameroon, with a view to compensating the Bagyéli indigenous communities for the violation of their rights to land and natural resources during the introduction of the Chad-Cameroon Pipeline project, subsequent houses were constructed for them by the roadside, particularly for those directly affected by the project.¹²²⁸ Unfortunately, the offer was turned down by the affected group, on grounds that the structures failed to reflect or take into consideration their cultural aspirations, while others members compliant that the houses were too complex and hot as compared to their traditional huts (mongulu).¹²²⁹ In this regard, it is important to highlight that in future extractive industries and governments should consult with indigenous peoples on the type of compensation or the alternative accommodation they would prefer and such compensation must be made owing to their demands and needs. In fact, giving the uniqueness and distinct characteristics, indigenous peoples needs should gear towards recognising their cultural identities.

5.2.4 *Right to social security*

For several years, the right to social society was never given priority as scholars considered the subject irrelevance within the structural adjustments strategic plans, to the contrary, emphasis was on short term policies to develop

¹²²⁷ CESCR 1991 *General Comment No. 4: The Right to Adequate Housing* para 8(f).

¹²²⁸ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 3.

¹²²⁹ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 3.

international financial agencies rather than establish structures that address minimum living standards for everyone.¹²³⁰ In other words, social security schemes were not considered as essential in addressing the widespread poverty affecting peoples, especially indigenous communities. Subsequently, persistent pressures from international organisations like the ILO and UNICEF instigated the recognition of social security and social insurance systems as a framework to combat poverty and improve living standards in the society.¹²³¹ However, it is argued that despite the establishment of social security systems in all Organisations for Economic Cooperation and Development countries¹²³² no significant achievement was realised, as it is submitted that over 80% of the entire population did not have access to social security systems.¹²³³

“Social security” has been defined as a framework developed to facilitate the provision of basic social needs to individuals including the retired, unemployed, disabled during the course of employment, old aged, maternity, dependants of a deceased family member as well as the underprivileged communities in the society.¹²³⁴ The funds for such programmes are usually derived from compulsory contributions deducted from the employees’ payroll, employers and government’s tax revenues which constitute about 5-8% of their total income.¹²³⁵ General Comment No. 19 defines social security as:

...the right to access and maintain benefits without discrimination in order to secure protection, *inter alia*, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, disability, old age, or death of a family member; (b) unaffordable access to health care (c) insufficient family support, particularly for children and adult dependents.¹²³⁶

Put simply, the right to social security is a prerequisite for the achievement of all socio-economic and cultural rights. This concept has been validated by General

¹²³⁰ Townsend 2007 <https://poseidon01ssrncom/deliveryphp?ID=98&EXT=pdf>.

¹²³¹ Townsend 2007 <https://poseidon01ssrncom/deliveryphp?ID=98&EXT=pdf>.

¹²³² Economic Cooperation and Development Countries hereinafter OECD.

¹²³³ Townsend 2007 <https://poseidon01ssrncom/deliveryphp?ID=98&EXT=pdf>.

¹²³⁴ Anon date unknown <http://www.businessdictionary.com/definition/social-security-system.html>.

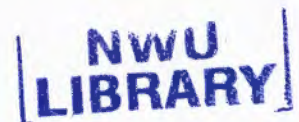
¹²³⁵ Anon date unknown <http://www.businessdictionary.com/definition/social-security-system.html>.

¹²³⁶ CESCR 2007 *General Comment No. 19: The Right to Social Security* para 2.

Comment No. 19 which provides that the right to social security is vital in safeguarding the human dignity of everyone in the community.¹²³⁷ This concept was first enunciated in the 1944 Philadelphia Declaration to mean the “process of providing basic income to all in need of such protection and comprehensive medical care”.¹²³⁸ Additionally, the right to social security is a fundamental right in some international human rights instruments and applies to everyone without discrimination. For instance, the UDHR in addressing the right to social security provides that:

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.¹²³⁹

A more detailed illustration of the right to social security is further provided for in Article 25(1) which stressed that “everyone has the right to security in the event of unemployment, sickness, disability, widowhood, old age and other lack of livelihood in circumstances beyond their control”. This indicate that the right to social security is crucial for the enjoyment of other human rights, especially the most disadvantaged and underprivileged groups, since it enable them get integrated into the mainstream of society and live a life of dignity. The right to social security as provided for in the ICESCR places an obligation on States Parties to ensure that everyone enjoys an adequate right to social security including extension to social insurance.¹²⁴⁰ This is aim at catering for the sick, unemployed, disabled, elderly, their dependants and low income earners and eradicate discrimination in choosing beneficiaries and inadequate coverage for people who genuinely need assistance.¹²⁴¹



¹²³⁷ CESCR 2007 *General Comment No. 19: The Right to Social Security* para 1.

¹²³⁸ See Part III para f *Declaration Concerning the Aims and Purposes of the International Labour Organisation* (1994) hereinafter Declaration of Philadelphia.

¹²³⁹ See Art 22 of the ICESCR.

¹²⁴⁰ Art 9 of the ICESCR.

¹²⁴¹ Townsend 2007 <https://poseidon01ssrncom/deliveryphp?ID=98&EXT=pdf>.

Similarly, the CRC demands States Parties to implement national legislation to provide for the realisation of a child's right to social security, including social insurance.¹²⁴² Article 26(2) supplements the above provision by elaborating on the various conditions under which a child can benefit from social security, namely; available state resources, circumstances of the child including that of the parents or guardian as well as other conditions essential to receive social security benefits for a child.¹²⁴³ In spite of the general obligations imposed on states, the provision of social security measures is qualified by the requirement of progressive realisation taking into account available resources. This simply suggests that the realisation of the right to social security is subject to the available resources. It is thus important that the state should take account of the child's needs and parents' living conditions in granting social security measures to ensure that those in need are effectively protected.

Furthermore, in enhancing the right to social security, General Comment No. 19 prohibits any activity or irrational conditions that discourages access to social security schemes, including equal and satisfactory protection from social risks.¹²⁴⁴ Although social security is a framework that provides social benefit to people and enables them live independently despite their socio-economic and health situations, nonetheless, it is essential to understand that social security systems have had negative effects on the community, it destroy skills, discourages hard work and personal savings, increases unemployment rate, create social disparity and intensify poverty rates in the country.¹²⁴⁵ Others maintain that the system is very expensive and destroys economic growth and development.¹²⁴⁶ In Cameroon, the Ministry of Employment, Labour and Social Security and the National Social Insurance Fund¹²⁴⁷ are in charge of providing

¹²⁴² Art 26(1) of the CRC.

¹²⁴³ Art 26(2) of the CRC.

¹²⁴⁴ CESCR 2007 *General Comment No. 19: The Right to Social Security* para 9.

¹²⁴⁵ ILO 2001 *Social Security: A New Consensus* 42.

¹²⁴⁶ ILO 2001 *Social Security: A New Consensus* 33.

¹²⁴⁷ Social Insurance Fund hereinafter CNPS. CNPS is the secular arm of the Cameroonian State social security system.

social security schemes, which requires the registration of newly insured persons as well as payment of social benefits to cater for the services.¹²⁴⁸

The social security insurance system in Cameroon mostly recognises people in the formal sector to the exclusion of those in the informal sector. Efforts to promote social security systems led to the enactment of Decree No. 2015/2517/PM of 16 July 2015 to set up the required mechanism of Law No. 2001/17 of 18 December 2001 which aim at modifying the recovery process of social insurance contributions in the country.¹²⁴⁹ This Decree established the rules on affiliation, registration, declaration and payment; terms and conditions of checking employers bound by the obligation to make declarations and payment of social insurance contributions; and rules governing pre-disputes, disputes, and forced recovery of social insurance contributions in the country.¹²⁵⁰ In Cameroon to benefit from a social insurance scheme a person must be registered with their National Social Insurance Fund¹²⁵¹ through their employer and make monthly payment of social benefits.¹²⁵²

The Cameroonian social security system introduced the voluntary and compulsory social security scheme. The compulsory scheme is limited to contributors such as workers, pensioners and disabled while the voluntary scheme covers contributors in the informal sector following Decree No. 2014/2377/PM of 13 August 2014 from 10% to 20% in 2015.¹²⁵³ However, despite these efforts the social security system does not extend to indigenous peoples,

¹²⁴⁸ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 218.

¹²⁴⁹ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 218.

¹²⁵⁰ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 218.

¹²⁵¹ National Social Insurance Fund hereinafter NSIF.

¹²⁵² Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 218.

¹²⁵³ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 197.

the voluntary scheme meant to cover those in the informal sector is limited to the old aged, invalidity including the death risk pensioners.¹²⁵⁴

General Comment No. 19 recommend that social assistance be provided to the unemployed, such as part-time, casual, seasonal, self-employed as well as those working in the informal sector, to enable them support themselves.¹²⁵⁵ Given that most indigenous peoples in Cameroon fall within the framework of the informal sector, the disturbing question is whether the government of Cameroon can afford to cater for those in the informal sector, considering its economic situation? The informal sector in a more practical sense refers to those activities that fails to follow the normal formal work procedures. On the other hand, the International Labour Conference defines the “informal economics system as ‘all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements’”.¹²⁵⁶

Thus, General Comment No. 19 places a duty on States Parties to take immediate measures within its available resources to refrain from acts that prevent indigenous peoples, ethnic or linguistic minorities from benefiting directly or indirectly from social security systems in the country.¹²⁵⁷ To this regard, government is urged to encourage indigenous peoples to engage in businesses, promote their indigenous knowledge or traditional medicines skills, sale of hunting products and other natural resources, as this might enable the actively involve into the informal sector system that generates income. It is evident that this will enable them to be economically productive and dependent to fund their social benefits. Furthermore, government should place an obligation on MNCs and other extractive companies that employ indigenous peoples as casual workers to compulsorily insure them to guarantee their safety and prevent them from frequent unfair dismissals and undue exploitations. As this will eradicate the

¹²⁵⁴ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 197.

¹²⁵⁵ CESCR 2007 *General Comment No. 19: The Right to Social Security* para 16.

¹²⁵⁶ ILO 2002 *Resolution Concerning Decent Work and the Informal Economy* para 3.

¹²⁵⁷ CESCR 2007 *General Comment No. 19: The Right to Social Security* para 35.

long-lasting challenge of poverty and unemployment, improve the livelihood and guarantee the security of indigenous peoples.

5.2.5 *Right to culture*

Culture is part and parcel of indigenous peoples' livelihood, it is a true reflection of their unique lifestyle, identity and custom as a distinct people. One of the important demands for indigenous peoples in most international gatherings amongst others, have always been the struggle for the recognition of their cultural identities and specific ways of life.¹²⁵⁸ They aspire to ensure that their diverse cultures are not only respected but also protected and preserved for the younger generations, particularly their cultural heritage, language rituals and land.¹²⁵⁹ The term "culture" means different things to different people and represent an important aspect for peoples' daily life.¹²⁶⁰ To Genia, culture refers to the combination of those aspects of an ethnic society that describe the people including ceremonies, arts, artefacts, songs, dances, languages knowledge systems and values that have developed from time immemorial and constantly evolving in response to the ever-changing world.¹²⁶¹

General Comment No. 21 in promoting the right to culture stresses that culture is an essential aspect of human rights and similar to other rights, the effective promotion and respect for cultural rights is critical for the preservation of human dignity and interaction between individuals and communities in a diverse world.¹²⁶² This indicate that just like other human rights, cultural rights are universal, indivisible and interdependent in nature.¹²⁶³ Quane approves this argument by arguing that the right of indigenous peoples to their culture is fundamental for the development of their communities, particularly with regards

¹²⁵⁸ Wiessner 2011 *The European Journal of International Law* 121.

¹²⁵⁹ Wiessner 2011 *European Journal of International Law* 121.

¹²⁶⁰ Genia 2012 *Aritz. St. L.J.* 657; Barratt and Afadameh-Adeyemi 2011 *African Human Rights Law Journal* 554.

¹²⁶¹ Genia 2012 *Aritz. St. L.J.* 657.

¹²⁶² CESCR 2009 *General Comment No. 21: Right of Everyone to Take Part in Cultural Life* para 1.

¹²⁶³ CESCR 2009 *General Comment No. 21: Right of Everyone to Take Part in Cultural Life* para 1.

to the possible effects over ownership, use, control, exploitation of land and natural resources.¹²⁶⁴ Thus, in line with the above argument it is worth noting that the recognition and promotion of indigenous peoples' right to culture is pre-requisites for the advancement of their societies and preservation of their unique characteristics.

According to Olaka-Onyango, although the forces of globalisation, especially the media has considerable effects on the protection and promotion of cultural development and identity of the African people,¹²⁶⁵ however, for indigenous peoples culture is and will always remain an integral part of their well-being and human development.¹²⁶⁶ It is submitted that indigenous peoples right to culture is associated with their entitlement to ancestral land and natural resources, therefore the recognition of their cultural rights is a guarantee of their survival.¹²⁶⁷ Surprisingly, indigenous communities continue to suffer from gross human rights violations and pervasive discrimination as a result of their cultural uniqueness, which according to Barratt and Afadameh-Adeyemi qualifies them for official recognition as indigenous peoples.¹²⁶⁸ Genia is of the opinion that cultural rights are realised if states make available economic opportunities for their people, having regard to their unique cultures and enable them have control over their resources as well as expand their tribal sovereignty.¹²⁶⁹ She is of the opinion that the freedom to "practice ones culture is an expression of sovereignty".¹²⁷⁰ Thus, the absence of a legal framework to protect and promote indigenous peoples cultural aspirations have resulted to the desolation of their sacred and burial sites.¹²⁷¹ Wiessner acknowledges this fact by stating that self-determination is the only means through which indigenous peoples can enjoy their cultural rights,

¹²⁶⁴ Quane 2005 *Human Rights Quarterly* 671.

¹²⁶⁵ Olaka-Onyango 2005 *Human Rights Quarterly* 1251.

¹²⁶⁶ Olaka-Onyango 2005 *Human Rights Quarterly* 1252.

¹²⁶⁷ Wiessner 2011 *European Journal of International Law* 121.

¹²⁶⁸ Barratt and Afadameh-Adeyemi 2011 *African Human Rights Law Journal* 563, 565.

¹²⁶⁹ Genia 2012 *Aritz. St. L.J.* 665-666.

¹²⁷⁰ Genia 2012 *Ar St. L.J itz.* 665-666.

¹²⁷¹ Genia 2012 *Aritz. St. L.J.* 660.

since it intend to empower and enable them exercise total control over their internal and local affairs.¹²⁷²

The right of everyone to freely take part in the cultural life of their communities has been elaborated in various international instruments. For example, Article 27(1) of the UDHR requires all persons to freely partake in the cultural affairs of their communities, and to enjoy the arts and share in scientific development and its benefits. This above formulation emphasised on the collective nature of cultural rights and grants everyone the freedom to enjoy their own cultures. This promise goes beyond the mere notion of State Parties responsibility in enforcing this rights through effective measures.¹²⁷³ The UDHR on the other hand, further promote cultural rights through the protection of moral and material interests ensuing from scientific, literary or artistic production.¹²⁷⁴ Furthermore, the right to culture is also recognised in Article 27 of the ICCPR which obliges everyone to refrain from any act that might dissuade minority groups from enjoying, professing and practicing their own religion, or use their own language.¹²⁷⁵ From these provision, indigenous peoples are also expected to openly and actively practice their cultures, profess their beliefs and promote their languages on an equal level with the rest of the community. States Parties are therefore required to refrain from acts that will prohibit indigenous peoples from freely exercising their cultural rights.

In addition, General Comment 21 also emphasise the need for everyone to take part in cultural life of his or her community. This provision which is similar to the wordings of article 15(1)(a) of the ICESCR requires everyone to participate in cultural life... and to benefit from the moral and material interests resulting from every scientific, literary or artistic production to which they are authors.¹²⁷⁶ To this end, States Parties are bound to respect, protect and adopt necessary measures

¹²⁷² Wiessner 2011 *European Journal of International Law* 121.

¹²⁷³ Genia 2012 *Aritz. St. L.J.* 672.

¹²⁷⁴ Art 27(2) of the UDHR.

¹²⁷⁵ Art 27 of the ICCPR.

¹²⁷⁶ Art 15(1)(a)(b)(c) of the ICESCR.

to promote indigenous peoples' right to culture as well as desist from interfering with indigenous peoples cultural practices including arts.¹²⁷⁷

It is common cause that indigenous people maintain a unique culture and way of life different from that observed by the dominant society, this has negatively affected their communities leading to severe dangers and possible extinction of their cultural identity.¹²⁷⁸ In Cameroon, for instance, the Forestry Law which declared all land into state owned property have greatly resulted to the destruction of the cultural rights indigenous peoples' as the activities of MNCs have seriously damaged the cultural values of indigenous peoples which they have been preserving from time immemorial.¹²⁷⁹ For instance some of the areas indigenous peoples considered as secret sites to perform traditional rituals and communicate to their ancestors have been transformed into national parks (Campo' National Park, Nki National Park, and Bouba National Park) as well as protected areas and fertile ground for resource extraction.¹²⁸⁰ Additionally, indigenous traditional knowledge and expertise used to identify different species of trees as well as their skills to mimic and communicate with animals during hunting seasons have been ruined by these activities.¹²⁸¹

More so, the relevance of culture as a human right has also been articulated in several other international instruments such as the Convention on the CEDAW which recognises in Article 13(c) the right to take part in recreational activities, sports and all aspects of cultural life.¹²⁸² Furthermore, Article 31(2) of the Convention of the Right of the Child (CRC) calls on States Parties to ensure that children's right to participate in cultural life are respected and promoted.¹²⁸³ This

¹²⁷⁷ Art 15(2) of the ICESCR; Chapman 1996 *Human Rights Quarterly*; CESCR 2009 *General Comment No. 21: Right of Everyone to Take Part in Cultural Life* 2.

¹²⁷⁸ Feiring 2013 *International Land Coalition* 44.

¹²⁷⁹ Venant 2009 *Securing Indigenous Peoples' Rights in Conservation: Reviewing and Promoting Progress in Cameroon* 1-2.

¹²⁸⁰ Venant 2009 *Securing Indigenous Peoples' Rights in Conservation: Reviewing and Promoting Progress in Cameroon* 1-2.

¹²⁸¹ Venant 2009 *Securing Indigenous Peoples' Rights in Conservation: Reviewing and Promoting Progress in Cameroon* 1-2.

¹²⁸² Art 13(c) of CEDAW.

¹²⁸³ Art 31(2).

implies that culture is an inherent right for the development of every human person as it guarantee their participation, contribution and full enjoyment of their socio-economic and political development.¹²⁸⁴ These principles underpins the vital role culture plays in indigenous communities.¹²⁸⁵

The right to culture is also provided for in the UNDRIP, an international instrument which specially deals with indigenous peoples' issues. It prohibits any state activity that encourages the forced assimilation and destruction of indigenous peoples cultures, integrity, values and ethnic identities as a distinct group.¹²⁸⁶ Cultural rights are also articulated in Article 11 as it permits indigenous peoples to practice and revitalise their cultural traditions and customs aimed at maintaining, protecting and developing the past, present and future expressions of their cultures.¹²⁸⁷ States are therefore required to provide redress in the form of restitution, with respect to their cultural, intellectual, religious and spiritual property.¹²⁸⁸ Additionally, indigenous peoples cultures must be practiced, developed, used and revitalise to reflect in all aspects of their daily lives including education, literature, languages, oral traditions, histories, cultural heritage, religion, traditional knowledge as well as passed on to unborn generations.¹²⁸⁹ States Parties have the duty to take necessary steps to eliminate bias, prohibit discrimination, promote tolerance, understanding and good relations amongst indigenous peoples so as to ensure the protection and promotion of indigenous peoples rights to culture.¹²⁹⁰ The UNDRIP have provided a holistic approach in realising indigenous peoples rights to culture. It acknowledges the importance of culture in human existence and recommend the practice of culture in all spheres of life and recommend practices for younger generations. This specifically imply despite the age of modernisation, culture remain a fundamental aspect of

¹²⁸⁴ Art 1(1) of the DRTD.

¹²⁸⁵ Barratt and Afadameh-Adeyemi 2011 *African Human Rights Law Journal* 365.

¹²⁸⁶ Art 8 of the UNDRIP.

¹²⁸⁷ Art 11 of the UNDRIP.

¹²⁸⁸ Art 11(2) of the UNDRIP.

¹²⁸⁹ See Art 12, 13, 15, 31 and 34 of the UNDRIP.

¹²⁹⁰ Art 14(3), 15(2) of the UNDRIP.

indigenous peoples' life, which must not only be protected by protected and preserved.

Apart from international instruments, the Banjul Charter offers everyone the right to freely, participate in the cultural life of their community and demand states to promote and protect the moral and traditional values practiced by indigenous peoples within this communities.¹²⁹¹ Article 22 equally has a non-discriminatory provision which stresses on the freedom to exercise economic, social and cultural development programmes taking in to consideration identity and common heritage of mankind.¹²⁹² Furthermore, in promoting the culture of indigenous peoples, the AU Cultural Charter emphasised on the significance of culture to indigenous communities as it reflect their traditional values, distinct characteristics and personality.¹²⁹³ To this regard, efforts must be made to liberate indigenous communities from cultural marginalisation affecting the achievement of the socio-economic development of their communities.

Culture as rightly stated para 5.2.5 above is associated with the way of life, livelihood, and natural environment of indigenous peoples. However, over the years indigenous peoples cultural values are endangered by logging companies, poachers and other development projects initiated by government such as the construction of dams, roads and establishment and other illegal activities all which have destroyed the cultural rights of indigenous peoples.¹²⁹⁴ Indigenous peoples in Cameroon are particularly worried about the extinction of their cultural values following government activities as the forest areas has been transformed as productive areas for extractive companies mining and logging companies, making it difficult for indigenous peoples to freely revitalise and practice their cultures as articulated in international instruments. According, to Survival International, the forests is significant for the realisation of indigenous peoples'



¹²⁹¹ Art 17 of the ACHPR.

¹²⁹² Art 22 of the ACHPR.

¹²⁹³ See Preamble to the *Cultural Charter for Africa* (1976).

¹²⁹⁴ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 71.

culture, history and livelihood.¹²⁹⁵ Unfortunately, indigenous communities have gradually been pushed out of the forest zones to margins and are forced to adopt a sedentary lifestyle thus, their cultures and ancient traditions are gradually disappearing in the face of the earth.

Baka people protesting against the forceful eviction from their lands



Source: <http://www.dw.com/en/ancient-baka-culture-in-cameroon-under-threat/a16088853>.

In Cameroon, the Ministry of Arts and Culture¹²⁹⁶ is in charge of promoting cultural activities in the country. To this regard, efforts have been made by government to promote cultural artefacts and services as well as protect copyright owners, which led to the safeguarding of artistic and cultural heritage, access to and

¹²⁹⁵ Anon date unknown <http://www.survivalinternational.org/tribes/pygmies>.

¹²⁹⁶ Ministry of Arts and Culture hereinafter MINAC.

enjoyment of cultural heritage and the protection of the financial and moral interest of artists.¹²⁹⁷ Owing to the above, Decree No. 2014/881/PM of 30 April 2014 authorises the setting up and functioning of National Museums and were officially opened on 16 January 2015 after suspension in 2008.¹²⁹⁸ The events which took place in three phases as follows:- the National Museum in January, on the occasion of the celebration of the National Youth Day in February and in May during the celebration of the National Day aim at educating the population on significant events of the country's history and cultural heritage.¹²⁹⁹

Furthermore, MINAC organised several workshops and other training programmes in Ebolwa, Centre Province, East and South Regions to educate local chiefs on the relevance of inventory and techniques of gathering information regarding the country's cultural backgrounds.¹³⁰⁰ In addition, MINAC funded several other cultural programmes, such as the International Festival Celebration which took place on the 21 of June 2015 including the funding of 6 Baka Pygmy dancers from Djoum to a Festival in Chuidono, Bergamo, Italy from 29 May to 14 June 2015 to perform during the 15th edition of the "Lo Spirito de pianeta".^{1301, 1302}

In addition, to promote cultural activities, MINAC signed several agreements with Cinema Numérique Ambulant and Libraries Without Borders on 26 November 2016 within the context of C2D Cultural programme with the intention of bringing books through the use of a mobile bus and cinema's nearer to people in rural

¹²⁹⁷ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 227.

¹²⁹⁸ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 204; Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 227.

¹²⁹⁹ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 227.

¹³⁰⁰ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 229.

¹³⁰¹ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 228.

¹³⁰² "Lo Spirito de pianeta" translated in English as "The Spirit of the Planet".

areas.¹³⁰³ Also, a one month holiday workshop was organised between July and August in Yaoundé to culminate the 6th edition of the Cameroon Cultural Centre, in which 80 children were trained in different areas of Cameroon's cultural heritage including reciting stories, speaking in mother tongue, perform traditional dances, playing of traditional instruments and cooking of traditional dishes.¹³⁰⁴

It is worth noting that government have been very active in promoting cultural activities in the country. For example, the following Decrees signed by government aim at enhancing and restructuring the music industry, including Decree No. 58/PM/CAB signed on 8 July 2015 to develop and organise the functioning of Copyright Monitoring and Management Committee of the Music Sector. Following the above, the Prime Minister also signed three other legislation thus: -

- Decree No. 2015/3978 / PM of 25 September 2015 on the organisation and functioning of the Arbitration Commission established by Law No. 2000/011 of 19 December 2000 relating to copyright and related rights;
- Decree No. 2015/3979 / PM of 25 September 2015 on modalities for the implementation of Law No. 2000/011 of 19 December 2000 relating to copyright and related rights;
- Order No. 90/CAB/PM of 29 September 2015 on the organisation and functioning of the Control Commission for Collective Management Bodies.¹³⁰⁵

Additionally, Decision No.123/MINAC/CAB of 26 October 2015 was signed by MINAC to facilitate the Commission of Arts and Letters, MINAC was charged with the responsibility of demanding funding on behalf of authors, artists, cultural associations and enterprises, professional mutual aid associations and spouses

¹³⁰³ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 230.

¹³⁰⁴ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 230.

¹³⁰⁵ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 232.

and ascendants of deceased artists under the Trust account.¹³⁰⁶ Further, in appreciation of efforts made by artists to promote culture, the President of the Republic through MINAC on 15 December 2015 granted award to two artists namely: Eyoum Mouangue Adolphe¹³⁰⁷ and plastic artist Ondigui Onana Theodore for their role in promoting cultural activities in the country.¹³⁰⁸

In 2014 government focus on renovating all movable and immovable artistic and cultural artefacts, thus, over 30 cultural sites in the 10 Regions were established. In safeguarding the legal protection of cultural and artistic heritage Decree No. 2014/1001/PM of 15 May 2014 was enacted to lay down the framework for the functioning of the National Ensemble which authorised the promotion of culture through festivals, shows, exhibitions and other events.¹³⁰⁹ The above Decree permitted the National Ballet to perform cultural dances during the 103rd Annual Convention of the National Association for the Advancement of Coloured People¹³¹⁰ in Las Vegas, USA and at The Liberty Theatre in New York, USA in August 2014.¹³¹¹

Government further facilitated the participation in cultural activities by sponsoring cultural events such as the 18th edition of the film festival called "Ecrans Noirs",¹³¹² other cultural events include the 2014 edition of the Ngondo Festival in Douala, the 454th edition of the Nyang Nyang Festival in Bafoussam and the 15th edition of the "Festi-Bikutsi" Festival from 3 to 15 November 2014 in Yaoundé.¹³¹³ Added to the above, government organised many workshops aimed at improving the skills of journalist in understanding, report and analyse shows,

¹³⁰⁶ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 232.

¹³⁰⁷ Eyoum Mouangue Adolphe hereinafter Ben Decca.

¹³⁰⁸ Ministry of Justice Cameroon 2015 *Report by the Ministry of Justice on the State of Human Rights in 2015* 232; Ondigui Onana Theodore hereinafter Otheo.

¹³⁰⁹ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 203.

¹³¹⁰ National Association for the Advancement of Coloured People hereinafter NAACP.

¹³¹¹ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 203.

¹³¹² "Ecrans Noirs" translated in English to mean Black Screen.

¹³¹³ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 205.

films, arts or books and other cultural issues, such workshops include amongst others a two day seminar on “Cultural journalism and art criticism” organised by the Arterial Network Cameroon in Douala as well as the Cameroon Art Critics seminar held at Goethe Institute in Yaoundé from 16 to 17 December 2014.¹³¹⁴

It is significant to mention that very little efforts are made by government to promote indigenous peoples’ cultures. They are usually ignored during cultural festivals that take place in the country. The only forum where indigenous peoples showcase their cultures is during the International Day of the World’s Indigenous Peoples organised on a yearly basis in Cameroon as can be seen in the pictures below. It is suggested that Cameroon should include a provision in the Constitution that recognises, protect and promote indigenous peoples’ cultures, just like South Africa has done in Article 31(1) of its Constitution.

Pygmies performing at the 2015 International Day of the World’s Indigenous Peoples in Yaoundé, Cameroon.



Source: <http://yaounde.sites.unicnetwork.org/files/2015/08/Photo6.jpg>

¹³¹⁴ Ministry of Justice Cameroon 2014 *Report by the Ministry of Justice on Human Rights in Cameroon in 2014* 205.

Mbororo women displaying their culture at the 2015 International Day of the World's Indigenous Peoples, Yaoundé, Cameroon.



Source: <http://yaounde.sites.unicnetwork.org/files/2015/08/Photo91.jpg>

5.2.5.1 Languages

Language is a crucial aspect of indigenous peoples' cultural identity; it is one of the things that reminds them of their origin and background as it upholds their cultural values and dignity. Thus, for indigenous peoples' distinct cultures to be effectively recognised their languages must be respected and promoted. Reports from ILO and ACHPR state that language is central for indigenous peoples' survival, hence, language and culture are interdependent and indivisible principles for the recognition of indigenous peoples' socio-economic and cultural rights.¹³¹⁵ According to the Preamble to the UNESCO Language Vitality and Endangerment 50% of the world's more than 6,000 languages are under serious threats as it is predicted that about 90% of indigenous languages in many parts

¹³¹⁵ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 69.

of the country risk extinction by the end of the 21st century.¹³¹⁶ This explains why Hornberger argue that indigenous languages are undergoing serious threats that have resulted to irresistible socio-economic and political pressures.¹³¹⁷ It is submitted that indigenous peoples can effectively communicate their religious beliefs using their mother tongues so as to protect their cultural identity and retain their unique way of life, thus, the unwillingness by government to promote indigenous languages poses a serious danger to their culture and identity.¹³¹⁸

It submitted that French and English are the two official languages used in Cameroon,¹³¹⁹ including over 250 ethnic languages.¹³²⁰ These two official languages are the recommended languages used in schools and other public administrative institutions. However, for indigenous communities, the use of French and English as official languages in the country is discriminating against them, particularly as a community than finds it difficult to communicate in other languages except their mother tongue. Indigenous languages of the Pygmy and Mbororo peoples are neither recognised nor used for official purposes in the country. This justifies the reason for their lack of participation in governance, decision-making processes and high rate of illiteracy in the country.

In Cameroon, indigenous peoples continue to fight for the recognition and use of their traditional languages in schools and other public places. They consider the French and English languages taught in schools as foreign languages which may ultimately lead to the disappearance of their mother tongue and cultural identity. In addition, indigenous children are not conversant with the so called “foreign languages” taught in schools and can hardly understand debates or decisions concerning their well-being. To this effect, indigenous peoples are urging government to grant official recognition to their traditional languages especially

¹³¹⁶ Para 4 of the Preamble to UNESCO Language Vitality and Endangerment (2003).

¹³¹⁷ Hornberger 1998 *Language in Society* 439.

¹³¹⁸ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 69.

¹³¹⁹ English language is commonly spoken in the English-speaking part of Cameroon precisely in the South and North West Provinces, while the French language which is the most language in the country is frequently used in almost eight Northern provinces in Cameroon.

¹³²⁰ The 250 different ethnic languages are used by different tribes locally.

in schools.¹³²¹ This is challenging for a country like Cameroon where majority of the population does not understand or speak any of the indigenous languages, as these languages are only used by indigenous peoples themselves. This argument has led indigenous peoples to nurse the feeling that their languages are being undermined and considered inferior, backward and less useful in a contemporary society as compared to other languages.¹³²²

Similarly, in Botswana government only recognises English and Setswana languages as official languages used in schools and public offices, indigenous languages are neither recognised nor promoted in Botswana.¹³²³ For instance, in *Kamanakao and Others v Attorney-General and Another*,¹³²⁴ the applicants in this case are the Paramount Chief of Wayeyi village including other Wayeyi community members who have been active in the struggle for the promotion of Wayeyi culture and language as well as their freedom. The applicants in this case instituted a claim in the High Court of Botswana challenging section 2 of the Chieftainship Act¹³²⁵ (Cap 41:01) as it failed to grant recognition to their Paramount Chief. They maintain that these provisions contravene sections 3-15 of the Botswana Constitution which guarantees respect for the fundamental rights and freedoms of every person in Botswana. To this effect the applicants demand for the amendment of section 2 of the CA and the Tribal Territories Act Cap 32:03, as they are discriminatory against their tribes.

The facts of the case concern the Wayeyi people (a tribe in Botswana) who reside in the North-West region of the Republic of Botswana, the area they occupy make up part of the Botswana Tribal Territory and governed by the Chief of Botswana. As a distinct group, they retain a separate ethnic language and culture from the rest of the society. This group of people have for decades been demanding for the formal recognition of their tribe, cultures, leaders and structures, this request



¹³²¹ Personal communication by way of an unstructured interview with a few Baygeli in Kribi, East Cameroon.

¹³²² ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 76.

¹³²³ ILO/ACHPR 2009 *Overview Report of the Research Project by the ILO and the ACHPR* 76.

¹³²⁴ *Kamanakao v Attorney-General* 2002 (1) BLR 110 (HC)..

¹³²⁵ Chieftainship Act hereinafter CA.

have constantly been denied and ignored, in the midst of this frustration, members of the Wayeyi community decided to appoint and installed a Paramount Chief to rule and manage their affairs. Unfortunately, sections 2 of the CA (Cap 41:01) definition of 'tribe' and 'chief' have expressly excluded the Wayeyi tribe and other ethnic groups. Thus, members of the Wayeyi community therefore sought a claim demanding for the amendment of section 2 of the CA. The Court found in favour of the applicants, demanding for the amendment of section 2 of the CA, including other laws which discriminates against the Wayeyi and other tribes and that prevent them for enjoying equal rights and protection as elucidated in section 3(a) of the Constitution.

South Africa is a good example of a country that has officially granted constitutional recognition and promotion of indigenous peoples' languages in, and call on government to practically adopt positive measures to preserve and resuscitate indigenous languages such as the Khoi, Nama and San languages.¹³²⁶ Given the above, it is essential that the promotion of indigenous peoples' languages be given some official recognition in the Constitution of Cameroon as these languages are principal aspects for the realisation of their cultural rights. Government is also required to adopt best practices in Botswana and South Africa as illustrated in the previous para above.

5.2.5.2 Land and natural resources

The debate over the cultural significance of indigenous peoples' rights to land and natural resources continue to evolve in international human rights law, following the awful history of forced displacement from ancestral lands.¹³²⁷ This is due to colonial policies that required indigenous peoples to possess land titles for ancestral lands they traditional owned and maintain sovereignty for decades¹³²⁸. The absence of these land titles resulted to repeated displacement

¹³²⁶ Art 6(2)(5) of the *Constitution of the Republic of South Africa*, 1996.

¹³²⁷ Pereira and Gough 2013 *Melb. J. Int'l L.* 451.

¹³²⁸ Pereira and Gough 2013 *Melb. J. Int'l L.* 451.

According to Northcott, indigenous peoples have an “inalienable and inherent right to land and natural resources”, this means that the demand for the recognition of their right to land and natural resources is undeniable and essential for the cultural development of their communities.¹³³⁵ Land is also symbolic for their spiritual identity and continued survival as a distinct group, according to Northcot, this rights ensue from the long history of occupation and use from customary laws regarding the management of ancestral lands.¹³³⁶ Thus, given that land and natural resources are integral to indigenous peoples cultures, survival and identity, the denial of access to land and forceful removal from these lands and natural resources negates their right to economic development and subsequent denial of the preservation of their cultures. In validation, Northcot maintains that the effective enjoyment of indigenous peoples’ rights is subject to access to and control over their land and natural resources, as it would prevent their communities from harmful activities of MNCs and government without their informed consent.¹³³⁷ If indigenous peoples are granted the right to have control of over their lands, then their right to economic dependence will be guaranteed and this will enable them preserve their cultures and decide their own future.¹³³⁸

As indicated in para 2.2.3 above, in Cameroon for example, the colonial and post-colonial laws enacted have had serious implications for indigenous peoples’ rights to use, own and access to land and natural resources.¹³³⁹ It is a common belief that the loss of ancestral lands hinders the survival of indigenous communities as well as destroy their traditional, cultural, spiritual and religious ceremonies.¹³⁴⁰ This assertion is particularly true for indigenous communities in Cameroon where the forest area supposedly home and a means of survival for indigenous communities has been completely destroyed by logging companies and other MNCs where, in the process of harvesting timber end up destroying

¹³³⁵ Northcott 2012 *The International Journal of Human Rights* 74.

¹³³⁶ Northcott 2012 *The International Journal of Human Rights* 74.

¹³³⁷ Northcott 2012 *The International Journal of Human Rights* 74.

¹³³⁸ Northcott 2012 *The International Journal of Human Rights* 74-75

¹³³⁹ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon’s Second Periodic Report* 3-4.

¹³⁴⁰ Barratt and Afadameh-Adeyemi 2011 *African Human Rights Law Journal* 566.

the younger trees and even protected species.¹³⁴¹ Thus, according to Shambong indigenous peoples' forests area remain a potential threat to deforestation,¹³⁴² thus, subjecting them to constant victims of systemic injustices and depriving them from forest land and cultural values.¹³⁴³

5.3 Summary

This chapter has dealt with issues of selected socio-economic and cultural rights of indigenous peoples in Cameroon, especially the rights to education, health, culture, housing and social security. It was realised that although indigenous peoples have succeeded in making their voices heard at international and regional levels, the recognition and realisation of their socio-economic and cultural rights remain a matter of major concern. Indigenous peoples still experience severe forms of discrimination and remain the most underprivileged and poorest groups nationwide.¹³⁴⁴ The above conditions of indigenous peoples have been reflected in all areas including political, environmental, economic, social, cultural aspects of their livelihood. For example, in the domain of education, despite the absence of a complete up to date statistics, indigenous peoples' record a high illiteracy and drop-out rates in the country, as most of them hardly complete primary education, while very few are enrolled in secondary, high or university levels. Additionally, coupled with government's unwilling to design educational curricula to match their cultural, linguistic and language backgrounds.¹³⁴⁵ Although the study shows that the Mbororo have recently been able to enrol in secondary and higher educational systems, however, the overall percentage of those in school is still very low. Thus, more needs to be done to

¹³⁴¹ Shambong 2010 *Chad-Cameroon Petroleum Development and Pipeline Project Impact Assesment of the Porject of the Local Community: Case Study of the Ocean Division of Cameroon* 7-8.

¹³⁴² Shambong 2010 *Chad-Cameroon Petroleum Development and Pipeline Project Impact Assesment of the Porject of the Local Community: Case Study of the Ocean Division of Cameroon* 7-8.

¹³⁴³ Pereira and Gough 2013 *Melb. J. Int'l L.* 451.

¹³⁴⁴ UN-HABITAT and OHCHR 2005 *Indigenous Peoples' Right to Adequate Housing: A Global Overview* 1.

¹³⁴⁵ Graham 2010 http://www.wafnca/uploads/files/education/28_2010_nov_lorie_graham_suffolk_law_school_education_and_undrippdf.

improve this number of Mbororo in secondary and tertiary education. For the Pygmies, the absence of a reliable data on the educational their level, indicate that they are still very background regarding education as well as realising other socio-economic rights. The wide gap identified is a call for concern for policy and law makers in the country to immediate redress the situation.

In addition, this chapter has pointed out that indigenous peoples' lack access to health care services as most health centres are situated in urban centres many kilometres away from their communities. They also lack official documentation required for consultation such as NICs, costs of consultation and medication, they also suffer from the challenge of discrimination, insults, stigmatisation and serotype attitudes from hospital staff and non-indigenous peoples, thus, depriving them from accessing and obtaining efficient and attainable health care services. As such, their health conditions continue to deteriorate leaving the with the highest rate of maternal, mortality, mental illnesses, alcohol and substance abuse including other conventional and infectious diseases.

Furthermore, with regards to the rights to housing, this chapter found that indigenous peoples living conditions are horrific. It was observed that the loss of ancestral lands and natural resources resulting from development projects initiated by government is a major hindrance to their ability to access adequate housing, as they are constantly evicted and forced to abandon their natural habitats and migrate to insecure and inadequate houses with no security of tenure and basic facilities. It was also revealed that the situation for women is more depressing as they are unable to inherit property after divorce or own land, thus, they become more vulnerable and exposed to several abuses as weapon of rape, human trafficking, prostitution and as sex slavery.

Also, it is evident that indigenous peoples' culture is endangered and near extinction. Their cultures have been destroyed by government policies in collaboration with logging companies following excessive exploitation of natural resources. These activities have greatly destroyed indigenous peoples' traditional knowledge of medicine, burial sites and ritual grounds where they often go to communicate with their ancestors. In addition, their mother tongue is

gradually being faced-out as they have been forced to assimilate with the mainstream society while their children are being taught “foreign” languages at schools. Indigenous peoples are worried that if immediate steps are not taken, their land and cultures which is meant to be transmitted to the forthcoming generations will be extinguished.

The next chapter examines indigenous peoples and their right to sustainable development.

Chapter 6 Indigenous peoples and the right to sustainable development

6.1 Introduction

In chapter five the socio-economic and cultural traits of indigenous peoples of Cameroon were discussed. Given the socio-cultural background of indigenous communities, it was easy to identify the absence of an organised social structure with regards to the educational, health, housing, cultural and social security systems in the country. It was observed that despite governments efforts to provide socio-economic services in the country, several of these facilities are concentrated in urban cities where indigenous peoples are unable to have access to. It was also noticed that even where these services are found within indigenous communities, the services are poor, ineffective and unsustainable with no equipment or amenities to address indigenous peoples' needs. This explains why indigenous peoples' conditions continue to deteriorate and are rated the poorest and underprivileged group in the country.

This chapter is therefore set at examining indigenous peoples' and the right to sustainable development with a view to investigating whether this group of people have the right to determine their own development priorities as echoed in the DRTD and other international human rights instruments. In addition, the chapter assesses whether development is imposed or voluntary? In summary, it deliberates on the notion that indigenous peoples understanding of development is linked to the right to secure a sustainable environment essential for their existence. In essence, it deliberates on the fact that sustainable development is central for the realisation of a sustained environment necessary to be transmitted on to the unborn generations.

This chapter consists of two sections. The first part discusses indigenous peoples right to development in general with a view to illustrating that if indigenous peoples' notion of development is considered, the idea of sustainable development would be easily realised and subsequently the global outcry

regarding environmental degradation would also be effectively addressed. The second part of this chapter examines sustainable development and the need for environmental protection in the country. The aim is to demonstrate that excessive exploitation of forest resources within indigenous peoples' territories is in violation of not only the political, socio-economic and cultural rights of indigenous peoples, but also has devastating effects on the environment, territories and the local communities living within that area.

6.2 Situating the link between the right to development and human rights

Scholars sustain that for a very long time the concept of development functioned independently from the human rights system, this is because developmentalists felt that development agenda's had no connection with the human rights system and as such both concepts should be dealt with separately.¹³⁴⁶ This ambiguity has generated endless debates within the international human rights law as scholars express different views over the subject matter.¹³⁴⁷ Mazur corroborates this argument by sustaining that before the 1990s the concept of development was considered an independent mechanism and has since then remain in isolation of all human rights systems.¹³⁴⁸ Subsequently, major transformation that took place in the 1990s changed the trend of events, such as the effects of Cold War that ushered in missionary fanaticism, failures of the structural adjustments programmes instigated by the absence of government accountability led to an urgent need for good governance and democracy within states coupled with the willingness by development proponents to develop a definition of development that include human rights concepts.¹³⁴⁹

It is against this background that academics and developmentalist concluded that human rights and development should be integrated to give a holistic meaning to the concept in international human rights law.¹³⁵⁰ Despite the above, it is

¹³⁴⁶ Uvin 2007 *Development in Practice* 597.

¹³⁴⁷ Uvin 2007 *Development in Practice* 597.

¹³⁴⁸ Mazur 2004 *GeoJournal* 62.

¹³⁴⁹ Uvin 2007 *Development in Practice* 597.

¹³⁵⁰ Uvin 2007 *Development in Practice* 597.

significant to highlight that the right to development¹³⁵¹ continue to remain a challenging subject due to failures by States Parties and scholars to clearly define its nature and scope.¹³⁵²

The RTD was efforts by Non-Aligned Movement¹³⁵³ countries aimed at integrating human rights and development to ensure equality and eliminate poverty amid developing countries.¹³⁵⁴ Mazur shares a similar view as he added that RTD serves as an influential tool for poverty reduction and a framework for enhancing sustainable development.¹³⁵⁵ The NAM felt that after decades of colonisation and insistent marginalisation, it was time for developing countries to be granted complete freedom and liberation from developed countries to enable them benefit from the globalisation process.¹³⁵⁶ To this end, Eastern European countries supported the demands made by developing countries for the establishment of a New International Economic Order¹³⁵⁷ that was meant to improve, manage and develop their states without any interference.¹³⁵⁸ Thus, ceaseless efforts from third World countries compelled the UN to finally re-visit its policies on civil and political rights and passed a resolution on the RTD, this concept was later granted recognition in the then Organisation of African Union, now the African Union and was eventually incorporated into the Banjul Charter in 1981.¹³⁵⁹ This principle was later adopted by the UN DRTD in 1986 to impose international obligations on States Parties to adhere to and ensure that this right is realised by every individual within the state without discrimination.¹³⁶⁰

It also elaborates on the nature of the rights including the specific responsibilities for states and government (both individually and collectively) that arise from the

¹³⁵¹ Right to development hereinafter RTD.

¹³⁵² Vandenbogaerde 2013 *Netherlands Quarterly of Human Rights* 187.

¹³⁵³ Non-Aligned Movement hereinafter NAM.

¹³⁵⁴ Marks 2004 *Harv. Hum. Rts. J.* 139.

¹³⁵⁵ Mazur 2004 *GeoJournal* 61.

¹³⁵⁶ Marks 2004 *Harv. Hum. Rts. J.* 139.

¹³⁵⁷ New International Economic Order hereinafter NIEO.

¹³⁵⁸ Alston 1988 *Harv. Hum. Rts. Y.B.* 22.

¹³⁵⁹ United Nations 2004 *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*.

¹³⁶⁰ UN General Assembly Resolution. The DRTD is a non-binding force with no specific obligation imposed on State Parties.

right.¹³⁶¹ The Preamble to the DRTD acknowledges that development is an all-inclusive economic, social and political procedure aimed at improving living standards and livelihood of all persons to secure their full and active participation as well as guarantee the equal distribution of resources in development processes.¹³⁶² Also, given the fact that all human rights and fundamental freedoms are indivisible, interrelated and interdependent, therefore to realise development, priority must be given to the proper implementation, respect, protection and promotion of civil, political, economic, social and cultural rights to ensure peace and security within the society.¹³⁶³ It is against this backdrop that the Vienna Declaration and UN Millennium Declarations approved and adopted the DRTD.

That notwithstanding, there are varying views regarding the meaning and interpretation of the concept of development. Development in a practical sense entails access to basic social services to improve peoples' well-being particularly with regards health, education, water, food, housing and environment. All these are essential elements for the realisation of economic, social and the cultural advancement of peoples' living standards which Stewart refers to as "economic development".¹³⁶⁴ Development might also imply the equitable distribution of resources in a community with the intention of improving the quality of life and wellbeing of the population.¹³⁶⁵ Sen equates development to the degree of freedom, security and amount of wealth accumulated, including access to socio-economic, civil and political rights granted to the population including education, health and the right to participate in public debates in the society.¹³⁶⁶ Therefore, governments are urged to eradicate poverty, domination, inequality, dispossession and denial of access to basic social services that prohibit the

¹³⁶¹ Mazur 2004 *GeoJournal* 62.

¹³⁶² See para 2 of the UN Declaration on the Right to Development GA res. 41/128, annex, 41 UN GAOR Supp. (No. 53) at 186, UN Doc. A/41/53 (1986).

¹³⁶³ See para 9 of the UN Declaration on the Right to Development GA res. 41/128, annex, 41 UN GAOR Supp. (No. 53) at 186, UN Doc. A/41/53 (1986).

¹³⁶⁴ Stewart 1989 *Human Rights Quarterly* 348.

¹³⁶⁵ Stewart 1989 *Human Rights Quarterly* 348-349, 351.

¹³⁶⁶ Sen Development As Freedom 4.

effective realisation of development.¹³⁶⁷ However, it is worth noting that millions of people are denied access to basic social services and this has greatly affected development in their communities. The absence of basic social services impedes the attainment of the right to development. According to Gibbs the violation of any of the fundamental human rights that constitute the right to development as encapsulated in the ICCPR and ICESCR is in violation of the right to development.¹³⁶⁸ In other words, the promotion of one human right to the exclusion of others in the development agenda undermines the fulfilment of the right to development.¹³⁶⁹

It is a shared premise that human beings are key to the realisation of human rights and human development where the realisation of the inherent dignity of all persons is crucial for the achievement of human development and other human rights.¹³⁷⁰ This is essential to enable marginalised and disadvantaged communities realise development strategies that meet their needs and aspirations.¹³⁷¹ Additionally, continuous efforts to develop a framework for a global culture of human rights in all domains has led UNESCO to establish policies that aim at mainstreaming human rights based approaches into all strategies of development agendas.¹³⁷² To this end, some important stages were identified as crucial for the implementation of the human rights to development including:-

- the formulation of goals and implementation processes in human rights terms;
- an agreement by all stakeholders on the appropriate performance indicators;



¹³⁶⁷ Sen Development As Freedom 4.

¹³⁶⁸ Gibbs 2005 *World Development* 1366.

¹³⁶⁹ Gibbs 2005 *World Development* 1366.

¹³⁷⁰ Anon 2005 https://www.un.org/ruleoflaw/files/HRPN_Englishpdf.

¹³⁷¹ Anon 2005 https://www.un.org/ruleoflaw/files/HRPN_Englishpdf.

¹³⁷² Frankovits 2006 <http://unesdoc.unesco.org/images/0014/001469/1469999epdf>.

- an evaluation of the outcomes based on human rights and participation.¹³⁷³

However, considering that development involves the realisation of political, economic, social, educational rights and the cultural advancement of all individuals, the vexing question is whether indigenous peoples have the right to development? Put differently, is development a human right as far as indigenous peoples of Cameroon are concerned? To respond to this question, it is important to look at the policies and programmes of the Cameroonian government in ensuring that all its population enjoy the right to development. Accordingly, Para 6 of the Constitution states that:

all people shall have equal rights and obligations. The State shall provide all citizens with the conditions necessary for their development.¹³⁷⁴

This Constitutional promise guarantees indigenous peoples the right to development as well as places an obligation on government to adopt legislative measures that enhance their right to development. Unfortunately, this does not apply to indigenous peoples as illustrated below.

The Banjul Charter also has provisions that guarantee the right to existence and full enjoyment and disposal of their wealth and natural resources as captured in Articles 20, 21 and 22 as follows:

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

¹³⁷³ Frankovits 2006 <http://unesdoc.unesco.org/images/0014/001469/1469999epdf>.

¹³⁷⁴ See para 27 of the Preamble to the Constitution of the Republic of Cameroon.

These provisions acknowledge that the effective realisation of the right to development depends on the recognition of their socio-economic and cultural rights. In effect, if indigenous peoples are granted the right to self-determination, they could better manage their internal affairs and decide their own development priorities. Thus, development agendas ought to be designed in a way that creates fora for social justice and combat economic exploitation by government and extractive industries. This implies that the Banjul Charter imposes a compulsory responsibility on states which they can not escape from, as stated by Serge the RTD is a legal rights which must be fulfilled by all States Parties.¹³⁷⁵

Furthermore, at the international level, several international instruments have been adopted on the right to development. These instruments also call on States Parties to respect and promote individual and collective rights to development. For example, the UDHR affirms in Article 22 that:

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.¹³⁷⁶

The right to development is also highlighted in the ICCPR and the ICESCR, particularly in common Article 1. These instruments not only promote civil and political right to development but also emphasise on economic, social and cultural rights to development as well as an exclusive right over the management and control of their resources. It further mandates states to take reasonable measures to respect these rights as articulated in common Article 1 below:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

¹³⁷⁵ Kamga 2011 *De Jure* 386.

¹³⁷⁶ See Art 22 of the UDHR.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case, may a people be deprived of its own means of subsistence.

In addition, the right to development has to be embedded in certain provisions of the United Nations Declaration on Permanent Sovereignty over Natural Resources,¹³⁷⁷ securing both human and peoples' rights to development and economic development. These provisions guarantee both individual and collective rights to development which have been the goal for many developing countries over the years. The UNDPSNR provides *inter alia* as follows:

The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.¹³⁷⁸

The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorisation, restriction or prohibition of such activities.¹³⁷⁹

Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the

¹³⁷⁷ United Nations Declaration on Permanent Sovereignty over Natural Resources hereinafter UNDPSNR.

¹³⁷⁸ Art 1 of the *Permanent Sovereignty over Natural Resources* (1962) hereinafter UN General Assembly Resolution 1803.

¹³⁷⁹ Art 2 of the UN General Assembly Resolution 1803.

development of international co-operation and the maintenance of peace.¹³⁸⁰

The provisions above uphold the collective right to natural resources and recognises the need for everyone to actively participate in decision-making processes concerning the exploitation and exploration of their resources. It suggests that the use, management and exploitation of indigenous peoples' resources should be geared towards developing their communities and improving their well-being. This declaration posits that violation of this right impedes the realisation of the right to development and prevents international cooperation and peace. Furthermore, DRTD has also been spelt out in clear and unambiguous terms in the meaning of the right to development as articulated in Article 1 as:

...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.¹³⁸¹

This international instrument provides for the recognition of economic, social, cultural, civil and political rights as the basis for recognition of human development. Even though the DRTD has no legal binding status, it embraces the different concepts of human rights and urged states to take effective measures to ensure that all persons individually and collectively benefit from these rights. This has been the basis of the DRTD.¹³⁸² Thus, the idea that the RTD entails a process of developing the poor, marginalised and under-privileged groups as well as guarantees equality of opportunities and social justice for all means that indigenous peoples of Cameroon are entitled to these international, regional and nationally recognised rights. They deserve to fully enjoy the rights articulated in these instruments like other segments of the society.

¹³⁸⁰ Art 7.

¹³⁸¹ Art 1 of the *Declaration on the Rights to Development* (1986) hereinafter DRTD.

¹³⁸² See generally the DRTD.

Added to the above is the United Nations Permanent Forum on Indigenous Issues.¹³⁸³ The forum recognises the active participation of indigenous peoples in any developmental processes in the country.¹³⁸⁴ The UNPFII acknowledges that indigenous knowledge systems are essential for indigenous peoples' development, although development paradigms such as globalisation, industrialisation and the new age of modernisation have left negative impact on the political, economic, social cultural, educational, spiritual and traditional knowledge.¹³⁸⁵ It is significant that indigenous peoples' concept of development be considered in development processes on their territories, especially if these programmes are meant to benefit them and their communities. Most governments define development in terms of integrating indigenous peoples into the mainstream of society as well as incorporating their lands and resources into a resourceful market economy.¹³⁸⁶ It is my contention that the type of development indigenous peoples are requesting is not integrating them into the broader society, but development that protects their integrity, cultures, environment and well-being. This development should retain their position as the real custodians of their ancestral lands and natural resources.

It is a common belief that indigenous peoples' cultural beliefs and traditional practices impede development programmes within their communities. As such, a majority of them have resisted this transformation and have elected to be loyal to their cultures and identity. The question that comes to mind is whether indigenous peoples are in fact an obstacle to development? Development is best realised when the population, in this case, indigenous communities, are allowed to define development in their own terms. Development cannot be achieved by forcibly appropriating their lands and resources, destroying the environment and livelihood of local population under the pretext of "civilisation" and introducing the

¹³⁸³ United Nations Permanent Forum on Indigenous Issues hereinafter UNPFII.

¹³⁸⁴ Para 14 of the United Nations 2010 *Permanent Forum on Indigenous Issues: Report on the Ninth Session*.

¹³⁸⁵ Para 4 of the United Nations 2010 *Permanent Forum on Indigenous Issues: Report on the Ninth Session*.

¹³⁸⁶ Aiken and Leigh 2011 *Geographical Review* 472.

market economy to these communities.¹³⁸⁷ Development programmes should be formulated to address the perceptions and understandings of ethnic minorities, particularly indigenous communities.¹³⁸⁸ This implies that barriers to realising development must be eradicated.¹³⁸⁹ This unfortunately has not been the case for indigenous communities in Cameroon. Gibbs contend that for several decades little efforts have been made in relating the right to development to indigenous peoples particularly in developed countries where majority of these people suffer from recurrent discrimination and unequal access to benefits of development instigated by colonisation.¹³⁹⁰ Regrettably, several of the right to development debate is geared towards enriching individuals and people of developed countries as well as accumulating resources from developed to developing countries to make way for rights-based development policies.¹³⁹¹

The DRTD seeks to advance the welfare of individuals and communities that are lagging behind in development. Extreme poverty is a serious challenge facing marginalised and disadvantaged communities and such poverty eventually deprives them of realising economic development in their communities. Poverty is considered the root cause of the many problems underpinning human rights violations of disadvantaged groups in the community.¹³⁹² In line with this assertion Alston argues that extreme poverty is caused by severe inequality. He further contends that the absence of a framework aimed at addressing these inequalities hinders a resolution to the plight of extreme poverty.¹³⁹³ Poverty is the most atrocious human right violation that deter disadvantaged people from enjoying their freedom and intensifies the inconsistency of socio-economic and cultural rights.¹³⁹⁴ In differentiating between economic and social inequalities, Alston highlights that: “social inequalities” is the “unequal distribution of wealth amongst

¹³⁸⁷ Aiken and Leigh 2011 *Geographical Review* 472-473.

¹³⁸⁸ Darrow and Tomas 2005 *Human Rights Quarterly* 477.

¹³⁸⁹ Sen *Development As Freedom* 129.

¹³⁹⁰ Gibbs 2005 *World Development* 1365.

¹³⁹¹ See generally Bunn 2000 *American University International Law Review*.

¹³⁹² United Nations 2012 *Reports of the Special Rapporteurs on Extreme Poverty and Human Rights* 4-5.

¹³⁹³ Alston 2015 *Report of the Special Rapporteur on Extreme Poverty and Human Rights* 4.

¹³⁹⁴ Mazur 2004 *GeoJournal* 63.

people in the society".¹³⁹⁵ Economic inequalities on the other hand are "often expressed using the Gini coefficient of inequality, which varies between 0 and 1".¹³⁹⁶ This is easily explained by the Horizontal notion of inequalities that exists between men and women, majorities and minorities groups in the society, this explains why minority groups remain in abject poverty and unable to realise development.¹³⁹⁷

6.3 Poverty and the right to development

Poverty remains a major hindrance preventing most societies from achieving the right to development. Thus RTD can only be achieved if poverty and inequalities are alleviated and under-privileged communities empowered to realise equality, full participation and control of their affairs.¹³⁹⁸ According to Alston, democracy, civil and political rights are essential for the equal distribution of economic, social and cultural rights and enhancement of the livelihood of the population.¹³⁹⁹ Regrettably, in many developed and developing countries dominant groups have a grip of the political sphere while disadvantaged groups are totally excluded.¹⁴⁰⁰ As a result, most of the laws and policies enacted tend to favour the powerful groups to the detriment of minority groups, such that they remain constantly marginalised, suffer from abject poverty and under-development.¹⁴⁰¹

Thus, studies hold that eradicating extreme poverty is not just about improving access to housing, food, education, health services, water and sanitation, but rather requires the provision of resources, skills, choices, security and power necessary for enjoyment of a wide range of other human rights including the RTD.¹⁴⁰² Poverty therefore violates not just some specific human rights but also

¹³⁹⁵ Alston 2015 *Report of the Special Rapporteur on Extreme Poverty and Human Rights* 4.

¹³⁹⁶ Alston 2015 *Report of the Special Rapporteur on Extreme Poverty and Human Rights* 4.

¹³⁹⁷ Alston 2015 *Report of the Special Rapporteur on Extreme Poverty and Human Rights* 5.

¹³⁹⁸ Sengupta 2002 *Human Rights Quarterly* 845-846.

¹³⁹⁹ Alston 2015 *Report of the Special Rapporteur on Extreme Poverty and Human Rights* 8.

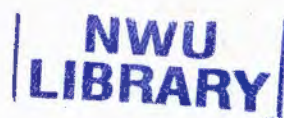
¹⁴⁰⁰ Alston 2015 *Report of the Special Rapporteur on Extreme Poverty and Human Rights* 8.

¹⁴⁰¹ Alston 2015 *Report of the Special Rapporteur on Extreme Poverty and Human Rights* 8.

¹⁴⁰² United Nations General Assembly 2012 *Extreme Poverty and Human Rights: Report of the Special Rapporteur on Extreme Poverty and Human Rights* 4-5.

deters the realisation of the human right to development.¹⁴⁰³ Extreme poverty restricts marginalised groups from living a dignified life and prevents them from accessing basic social services that eventually hinders their right to develop their communities.¹⁴⁰⁴ According to Pogge, billions of people suffer from severe poverty and other social ills including low life-expectancy, high rates of communicable diseases, high mortality rate, shortened lifespan, dependency, enslavement and social exclusion.¹⁴⁰⁵ He argues further that poverty (which many refer to as a “colonial cause” in developing countries) has greatly devastated the territories, lands, cultures, traditions and natural resources of indigenous and marginalised communities.¹⁴⁰⁶

Efforts to eradicate extreme poverty, promote human dignity, and equality and achieve peace, democracy and environmental sustainability led to the establishment of the UN Millennium Declaration of 2000 in which heads of states adopted the MDGs as a mechanism to urge states to eliminate income inequalities, gender inequalities and widespread hunger.¹⁴⁰⁷ Reports reveal that more than 1.2 billion people (one in every five persons on earth) live on less than \$1 dollar a day.¹⁴⁰⁸ It is estimated that the number of people living in extreme income poverty has dropped by 8% (30% to 23%). This has been blamed on the dearth of a sustained poverty-reducing agenda.¹⁴⁰⁹ States Parties are obliged to implement policies that enhance the connection between economic growth and poverty reduction, thus, growth can only be realised by local communities if resources are equally distributed between all segments of the population, secondly, if it is labour intensive than capital intensive and if government incomes



¹⁴⁰³ Doz Costa 2008 *International Journal on Human Rights* 91.

¹⁴⁰⁴ Sen *Development As Freedom* 129.

¹⁴⁰⁵ Pogge 2005 *Ethics & International Affairs* 1; United Nations General Assembly 2012 *Extreme Poverty and Human Rights: Report of the Special Rapporteur on Extreme Poverty and Human Rights* 5.

¹⁴⁰⁶ Pogge 2005 *Ethics & International Affairs* 1.

¹⁴⁰⁷ Fukuda-Parr Birdsall and Sachs 2003 *Millennium Development Goals: A Compact among Nations to End Human Poverty* 1.

¹⁴⁰⁸ Fukuda-Parr Birdsall and Sachs 2003 *Millennium Development Goals: A Compact among Nations to End Human Poverty* 5.

¹⁴⁰⁹ Fukuda-Parr Birdsall and Sachs 2003 *Millennium Development Goals: A Compact among Nations to End Human Poverty* 5.

are properly invested in human development programmes like education, health, nutrition, water and sanitation.¹⁴¹⁰

The RTD requires everyone to exercise their freedom, improve their well-being, protect their cultures and determine their own development programmes.¹⁴¹¹ To this end, governments are obliged to develop a collective security system needed to combat terrorism, restore peace in war zones, boost democracy, promote human rights, and development of in the society.¹⁴¹² It is submitted that the idea of "larger freedom" is a guarantee of political freedom to all population including "freedom from want and fear" since both concepts are interrelated and indivisible.¹⁴¹³ This imply that the realisation of one depends on the development of the other. Kofi Annan urges States Parties to collectively formulate a comprehensive national strategy that would promote security, establish effective policies for development agendas, improve the environment and enhance human rights and democracy worldwide.¹⁴¹⁴ In his words, "a world in which every year 11 million children die before their fifth birthday, almost all from preventable causes, and 3 million people of all ages die of HIV and AIDS is not a world of larger freedom".¹⁴¹⁵ This was the basis for the MDGs to be realised by 2015 with a focus on halving the percentage of people living in extreme poverty and hunger, as well as guarantee that all children obtain primary education, eradicating HIV and AIDS, malaria and other communicable diseases.¹⁴¹⁶

However, although progress was realised in some countries, most countries in sub-Sahara Africa, including Cameroon, were unable to meet their targets, especially in the areas of extreme poverty and hunger, maternal and mortality rate, realising development and environmental resources.¹⁴¹⁷ In addition, it was

¹⁴¹⁰ Fukuda-Parr Birdsall and Sachs 2003 *Millennium Development Goals: A Compact among Nations to End Human Poverty* 6.

¹⁴¹¹ Mazur 2004 *GeoJournal* 62.

¹⁴¹² Annan 2005 http://www.unisunvienna.org/pdf/freedom_annanpdf.

¹⁴¹³ Annan 2005 http://www.unisunvienna.org/pdf/freedom_annanpdf.

¹⁴¹⁴ Annan 2005 http://www.unisunvienna.org/pdf/freedom_annanpdf.

¹⁴¹⁵ Annan 2005 http://www.unisunvienna.org/pdf/freedom_annanpdf.

¹⁴¹⁶ Annan 2005 http://www.unisunvienna.org/pdf/freedom_annanpdf.

¹⁴¹⁷ United Nations 2008 http://www.ohchr.org/Documents/Publications/Claiming_MDGs_enpdf.

also noticed that human rights values, including the right to development, equality, accountability and inclusive participatory mechanisms were deliberately overlooked by States Parties, which were necessary guidelines for the realisation of MDGs.¹⁴¹⁸ To this end, economic, social and cultural rights, including the rights of women, migrant workers and minorities which form the basis of the MDGs could not be achieved.¹⁴¹⁹ It is against this background that a human rights-based approach to development was adopted and incorporated into the MDGs to facilitate the achievement of MDGs, with the aim of integrating development programmes into human rights systems focusing on vulnerable groups, empowering and safeguarding their participation as well as ensure that duty-bearers are held accountable in cases of any violations.¹⁴²⁰ A statement made in 2003 by the UN agencies stressed on the need for human rights standards to reflect the principles of development and emphasised on the importance to uphold the rights of duty-bearers and rights-holders.¹⁴²¹

6.4 Rights based approach to development

Sengupta has described the RTD dictum of a rights-based approach to development to mean a process of development which involves the realisation of all human rights through a rights-based approach that conforms to international standards.¹⁴²² It is submitted that there is no universal definition of the term rights-based approach to development.^{1423, 1424} Scholars approach the term differently based on their own understanding. Boesen and Martin define RBAD as a framework that develops and incorporates norms, principles, standards and goals of international human rights systems into development processes.¹⁴²⁵ RBAD views poverty through the lens of injustice affirming that marginalisation,

¹⁴¹⁸ United Nations 2008 http://www.ohchr.org/Documents/Publications/Claiming_MDGs_enpdf.

¹⁴¹⁹ United Nations 2008 http://www.ohchr.org/Documents/Publications/Claiming_MDGs_enpdf.

¹⁴²⁰ United Nations 2008 http://www.ohchr.org/Documents/Publications/Claiming_MDGs_enpdf.

¹⁴²¹ United Nations 2008 http://www.ohchr.org/Documents/Publications/Claiming_MDGs_enpdf.

¹⁴²² Sengupta 2002 *Human Rights Quarterly* 846.

¹⁴²³ Sarelin 2007 *Human Rights Quarterly* 475.

¹⁴²⁴ Rights-based Approach to Development hereinafter RBAD.

¹⁴²⁵ Boesen and Martin *Applying a Rights-Based Approach* 9.

discrimination and exploitation are the backbone of poverty.¹⁴²⁶ It also aims at ensuring the full enjoyment of all human rights and fundamental freedoms without any distinction.

As a normative framework, RBAD guarantees non-discrimination, accountability, transparency and equality of opportunities.¹⁴²⁷ The rights based approach equally draws a distinction between right-holders and duty-bearers. Right-holders are the beneficiaries while duty-bearers are the states that have the duty not only to protect and promote but also to ensure the realisation of these rights.¹⁴²⁸ RBAD aims at situating the root cause of poverty as well as empower right-holders to make claims, while duty-bearers honour their duties and hold states and non-state actors accountable for any violations.¹⁴²⁹ The principle of accountability is fundamental in realising the human rights of marginalised and vulnerable groups in the society.¹⁴³⁰ Given that economic growth fails to realise social development and improve the living conditions of the marginalised, RBA therefore focuses on equating issues of power imbalances such as discrimination, insecurity and vulnerability to ensure that marginalised societies are strengthened and develop themselves and their societies.¹⁴³¹

Considering that equality and non-discrimination are fundamental principles for the realisation of the RTD, indigenous peoples of Cameroon continue to face severe inequalities from both government and private individuals, especially in the economic, social, political and cultural spheres. This situation has resulted in grinding poverty and deprivation and has had devastated effects on indigenous communities.¹⁴³² Despite the close affection they have with their traditional home lands and the resources therein, indigenous peoples are not given the opportunity to determine the kind of development they prefer on their lands. Their livelihood

¹⁴²⁶ Boesen and Martin *Applying a Rights-Based Approach* 9.

¹⁴²⁷ Sengupta 2002 *Human Rights Quarterly* 846.

¹⁴²⁸ Boesen and Martin *Applying a Rights-Based Approach* 9-10.

¹⁴²⁹ Boesen and Martin *Applying a Rights-Based Approach* 9-10.

¹⁴³⁰ Sarelin 2007 *Human Rights Quarterly* 477-478.

¹⁴³¹ Boesen and Martin *Applying a Rights-Based Approach* 11.

¹⁴³² Uvin 2007 *Development in Practice* 597.

has been adversely affected by government policies all in the name of developing their communities. However, all this has yielded no good for indigenous communities who are left behind to deal with the resulting consequences of exploitation.

The sophisticated machines coupled with toxic chemicals have polluted the air, contaminated water sources, poisoned plants, crops, animals, the environment and destroyed the soil of indigenous communities. These inhabitants are most often affected by the contaminated air leading to serious health challenges and other diseases such as cancer, kidney, and cardiac arrests. Despite the country's promises to ensure a healthy environment for its population as itemised in the Preamble to the Constitution, indigenous peoples' right to a clean and healthy environment is constantly violated by the same people who have been charged with the responsibility of protecting them.¹⁴³³ The provision reads as follows:

every person shall have the right to a healthy environment. The Protection of the environment shall be the duty of every citizen. The State shall ensure the protection and improvement of the environment.¹⁴³⁴

The Cameroonian government is not only abandoning its own national policy but also abrogates various regional and international obligations they are party to. For instance, the Banjul Charter provides in Article 24 that:

All peoples shall have the right to a general satisfactory environment favourable to their development.¹⁴³⁵

This implies that a healthy environment is central for the development of its population. The rich dense forests of Cameroon supposedly home to several indigenous peoples has become an extractive factory for MNCs and other extractive industries leading to under-development and environmental degradation and other social impacts as earlier indicated in para 6.2 above.

¹⁴³³ The Government of Cameroon is in continuous violation of Article 2 (3) of the DRTD.

¹⁴³⁴ See Para 27 of the Preamble to the Constitution of Cameroon.

¹⁴³⁵ Art 24 of the ACHPR.

Despite all efforts, the goals set in the MDGs could not be achieved by 2015, resulting in the adoption of the new sustainable development goals to replace the MDGs. The aim of the new sustainable development goals is to achieve global peace and eliminate the deep-rooted poverty and hunger that is prevalent, particularly in indigenous communities.¹⁴³⁶ A greater commitment by all member states of the UN is highlighted in para 2 of the 2030 Agenda for Sustainable Development and reads as follows: -

All countries and all stakeholders, acting in collaborative partnership, will implement this plan. We are resolved to free the human race from the tyranny of poverty and want and to heal and secure our planet. We are determined to take the bold and transformative steps which are urgently needed to shift the world onto a sustainable and resilient path. As we embark on this collective journey, we pledge that no one will be left behind.

The last sentence is quite interesting in that it endeavours to improve the living standards, promote dignity and ensure equality to everyone in the society, with the intention of realising sustainable development goals and addressing economic, social and environmental issues.¹⁴³⁷ Evidently, the present condition of indigenous peoples is very frustrating particularly within the context of Cameroon. Indigenous peoples' livelihoods are threatened due to the despicable nature in which their environment is used. This observation calls for an investigation into the nature of environment protection within indigenous communities and possible right to sustainable development.

6.5 Sustainable development and indigenous peoples' rights to environmental protection in Cameroon

Over the years, the concept of sustainable development has gain currency in most international discourses following severe social environmental impacts instigated by the recent trend of economic development.¹⁴³⁸ The emerging development has

¹⁴³⁶ See Preamble to the *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015).

¹⁴³⁷ See Para 3 of the Preamble to the *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015).

¹⁴³⁸ Segger "International Law, Criminal Justice, and Sustainable Development" 17.

exposed the world to two major challenges namely: huge environmental degradation and under-development.¹⁴³⁹ The increasing need for economic growth has provoked excessive exploitation of natural resources, which has resulted in severe socio-economic, cultural, and environmental problems on host communities.¹⁴⁴⁰ According to Gordon, several of these economic development projects have been declared unsustainable in a number societies, following its social devastating impacts.¹⁴⁴¹ Although it was concluded that countries could develop their economies, bearing in mind issues of environmental protection and social justice as well as preserve the benefits for the younger generations, the current modes of economic developments are unsustainable.¹⁴⁴² It is a shared premise that most developed countries have experienced excessive exploitation of natural resources and rapid industrialisation, which has resulted in environmental deprivation including pollution and climate change.¹⁴⁴³ Unfortunately, developing countries pursuing rapid economic development are also encountering similar threats of environmental degradation.¹⁴⁴⁴ Developing countries are so engaged in these activities that they no longer adhere to international norms prohibiting excessive exploitation that cause environmental problems.¹⁴⁴⁵ This recurrent human activity has led to a deadlock between developed and developing countries following issues of environment and development and subsequently resulting to the idea of sustainable development.¹⁴⁴⁶

The term sustainable development has conflicting meanings and can be viewed from different contexts.¹⁴⁴⁷ It is key to several political, economic and social agendas.¹⁴⁴⁸ Segger refers to sustainable development as states efforts to realise



¹⁴³⁹ World Bank 2003 *World Development Report on Sustainable Development in a Dynamic World: Transforming Institutions, Growth, and Quality of Life* 1.

¹⁴⁴⁰ Redclift 1993 *Environmental Values* 3.

¹⁴⁴¹ Gordon "Unsustainable Development" 50.

¹⁴⁴² Segger "International Law, Criminal Justice, and Sustainable Development" 19.

¹⁴⁴³ Segger "International Law, Criminal Justice, and Sustainable Development" 19.

¹⁴⁴⁴ Tladi *Sustainable Development in International Law* 2.

¹⁴⁴⁵ Tladi *Sustainable Development in International Law* 2.

¹⁴⁴⁶ Segger "International Law, Criminal Justice, and Sustainable Development" 19.

¹⁴⁴⁷ Redclift 1993 *Environmental Values* 4.

¹⁴⁴⁸ Redclift 1993 *Environmental Values* 3.

growth (development) in a way that can be preserved for future use ("sustainable").¹⁴⁴⁹ Ndang argues that a better interpretation of sustainable development should be focused on the immediate and future needs of indigenous peoples, given that sustainable development is key to their survival.¹⁴⁵⁰ This argument fits in with Redcliff's explanation that sustainable development entails an equitable use of the environment while preserving it for the unborn generations.¹⁴⁵¹ This controversy and urgent need to address the alarming problems caused by extractive industries have instigated the immediate adoption of environmental policies that enhance sustainable development.¹⁴⁵²

The most preferred and accepted definition of sustainable development is that provided by the Bruntland Commission, adopted by the UN General Assembly to mean: meeting the needs of the present, without destroying opportunities for future generations to meet their own needs.¹⁴⁵³ From the above description, three features have been identified as essential for the attainment of sustainable development and requires particular attention namely: environment, economy and the society, thereby, placing environmental concerns at the focus of every development agenda.¹⁴⁵⁴ In other words, decisions relating to development must be peoples centred; requiring effective consultations at every stage of all development processes. Sustainable development is therefore viewed as key to solving the severe challenges of environmental degradation and other social hazards caused by a global shift in economic development.¹⁴⁵⁵

The concept of sustainable development has been documented in many environmental treaties as well as other international instruments. For instance, in 1972, UN Conference on Human Environment¹⁴⁵⁶ led to the adoption of the

¹⁴⁴⁹ Segger "International Law, Criminal Justice, and Sustainable Development" 18.

¹⁴⁵⁰ Ndang 2015 *African Institute of South Africa* 35-36.

¹⁴⁵¹ Redcliff 1993 *Environmental Values* 3-4.

¹⁴⁵² Emas 2015 *Florida International University* 1.

¹⁴⁵³ United Nations 1987 *Report of the World Commission on Environment and Development: Our Common Future*.

¹⁴⁵⁴ United Nations 1987 *Report of the World Commission on Environment and Development: Our Common Future*.

¹⁴⁵⁵ Rusko 2015 *Research Papers* 126.

¹⁴⁵⁶ UN Conference on Human Environment hereinafter UNCHE.

Stockholm Declaration of Human Environment.¹⁴⁵⁷ It recognises that environmental protection is essential for the attainment of human rights and economic development, and require states to formulate appropriate policies and actions that promote the present and future growth of developing countries.¹⁴⁵⁸ The Stockholm Declaration calls for the rational exploitation and use of natural resources in a way that will sustain the environment for up-coming generations.¹⁴⁵⁹ Given that human beings are the main focus of sustainable development, states are urged to collaborate with the local community in developing international law principles that are geared towards realising sustainable development.¹⁴⁶⁰ This entails a participative and all-inclusive approach where local communities are involved in environmental decision-making processes including possible solutions for a better, harmless and healthy environment.¹⁴⁶¹ As Shelton argues human rights protected under international and constitutional law places a restriction on majority rule and prohibits any form of authoritarian rule.¹⁴⁶²

In addition, the establishment of the United Nations Environment Programme¹⁴⁶³ coupled with the need to decide on some multilateral environmental agreement¹⁴⁶⁴ led to the adoption of the Convention on International Trade in Endangered Species on Wildlife Fauna and Flora¹⁴⁶⁵ in 1973. These international instruments envisaged a global transformation to the economic, social and environmental problems and calls for an integrative approach to realising sustainable development and enhancing environmental sustainability.¹⁴⁶⁶ Owing to human rights concerns on environmental sustainability, the UNEP is focused

¹⁴⁵⁷ United Nations 1972 *Report of the United Nations Conference on the Human Environment* 3.

¹⁴⁵⁸ See generally principle 11 and 14 United Nations 1972 *Report of the United Nations Conference on the Human Environment* 3.

¹⁴⁵⁹ United Nations 1972 *Report of the United Nations Conference on the Human Environment*.

¹⁴⁶⁰ Principled 27 of the *The Rio Declaration on Environment and Development* (1992).

¹⁴⁶¹ Shelton 2010 *Journal of Human Rights and the Environment* 91.

¹⁴⁶² Shelton 2010 *Journal of Human Rights and the Environment* 91.

¹⁴⁶³ United Nations Environment Programme hereinafter UNEP.

¹⁴⁶⁴ Multilateral Environmental Agreement hereinafter MEA.

¹⁴⁶⁵ Convention on International Trade in Endangered Species on Wild Fauna and Flora hereinafter CITES.

¹⁴⁶⁶ Anon date unknown http://www.unep.org/pdf/UNEP_and_the_2030_Agenda.pdf.

on ensuring that States Parties enact and adopt specific environmental laws to ensure that environmental issues enhance development models.¹⁴⁶⁷ Given that indigenous peoples are the best custodians of the environment, following their experiences and use of these territories from time immemorial, thus, their understanding of sustainable development should be given some consideration. For indigenous peoples' what constitutes sustainable development is linked to a conducive and peaceful environment that is habitable, productive, safe and secure and is properly maintained to meet the needs of the present and future generations.¹⁴⁶⁸ Hence, anything out of this concept is unsustainable and detrimental to them and their territories.

Additionally, efforts to protect the environment and ensure sustainable development is highlighted in the 1983, World Commission on the Environment and Development¹⁴⁶⁹ in which States Parties are charged with the duty to suggest long-term environmental policies necessary in achieving sustainable development by the year 2000 and beyond, this has led to the prompt enactment of the 1987, Bruntland Report also known as "Our Common Future" provided a universally accepted definition of the "sustainable development".¹⁴⁷⁰ The aim of this report was to adopt new strategies that eradicate environmental degradation and ensure that economic developments do not compromise the opportunities of future generations to benefit.

Twenty years later the UN conveyed a conference in Rio de Janeiro, in 1992, called the United Nations Conference on Environment and Development¹⁴⁷¹ in an effort to link economic activities and protection of the earth to secure a sustainable future for the young generations, this requires that states development activities be carried out in way that do not compromise the well-being of other states.¹⁴⁷²

¹⁴⁶⁷ Anon date unknown http://www.unep.org/pdf/UNEP_and_the_2030_Agenda.pdf.

¹⁴⁶⁸ Ndang 2015 *African Institute of South Africa* 36.

¹⁴⁶⁹ World Commission on the Environment and Development hereinafter WCED, also known as the (Earth Summit).

¹⁴⁷⁰ As earlier stated sustainable development is defined as 'meeting the needs of the present, without compromising the ability of future generations to meet their own needs'.

¹⁴⁷¹ United Nations Conference on Environment and Development hereinafter UNCED.

¹⁴⁷² Meakin 1992 <http://publicationsgcca/Collection-R/LoPBdP/BP/bp317-ehm>.

The Earth Summit is significant because it triggered the adoption of other instruments crucial for the achievement of sustainable development. For example, the Rio Declaration of 1992,¹⁴⁷³ the 1992 Agenda 21, the United Nations Framework on Climate Change,¹⁴⁷⁴ the 1992 United Nations Convention on Biological Diversity,¹⁴⁷⁵ and the United Nations Convention to Combat Desertification in 1992.¹⁴⁷⁶ All these international instruments were measures to ensure that States Parties are commitment to ensure sustainable development, protect the environment and secure the livelihood of their population.

That notwithstanding, other subsequent instruments were implemented for monitoring purposes, like the Global Environment Facility¹⁴⁷⁷ and the United Nations Commission on Sustainable Development¹⁴⁷⁸ as an initiative of the Bruntland Report and Agenda 21 and the World Bank. In 2002, continuous efforts to battle against sustainable development resulted in a World Summit on Sustainable Development¹⁴⁷⁹ in Johannesburg, South Africa. The WSSD summit aimed at engaging governments to suggest and adopt plans of action to help realise sustainable development goals.¹⁴⁸⁰ Added to the above are the Convention on Migration Species,¹⁴⁸¹ Convention Concerning the Protection of the World Cultural and Natural Heritage¹⁴⁸² were all efforts to battle environmental menaces.

At the regional level, the Banjul Charter has also emphasised the right to sustainable development by guaranteeing all Africans the right to a satisfactory environment through the protection of economic, social and cultural development,

¹⁴⁷³ *The Rio Declaration on Environment and Development* (1992) hereinafter Rio Declaration.

¹⁴⁷⁴ *United Nations Framework Convention on Climate Change* (1992) hereinafter UNFCCC.

¹⁴⁷⁵ *United Nations Convention on Biological Diversity* (1992) hereinafter Biodiversity Convention.

¹⁴⁷⁶ *United Nations Convention to Combat Dissertification* (1994) hereinafter UNCCD.

¹⁴⁷⁷ Global Environment Facility hereinafter GEF.

¹⁴⁷⁸ United Nations Commission on Sustainable Development hereinafter UNCSD.

¹⁴⁷⁹ World Summit on Sustainable Development hereinafter WSSD.

¹⁴⁸⁰ Robinson 2004 *William & Mary Journal of Women and the Law* 594.

¹⁴⁸¹ Convention on Migration Species hereinafter CMS.

¹⁴⁸² Convention Concerning the Protection of the World Cultural and Natural Heritage hereinafter CCPWCNH.

owing respect to their identity and enjoyment of their common heritage.¹⁴⁸³ Further, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa equally promotes the development of indigenous women knowledge system,¹⁴⁸⁴ and imposes a responsibility on States Parties to respect, protect and fulfil indigenous peoples' rights to sustainable development within their territories.¹⁴⁸⁵ These provisions recognise the unique relationship indigenous peoples have with nature and the need to preserve their land for future purposes. It also acknowledges the fact that a safe environment is crucial for the achievement of human rights and sustainable development. The African Convention on the Conservation of Nature and Natural Resources¹⁴⁸⁶ and the Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa all envisioned developing the Central African Forests Commission.¹⁴⁸⁷ These agreements anticipate remedying challenges relating to biodiversity loss and ecosystem degradation at international and regional levels.¹⁴⁸⁸

In responding to the 1992 UNCED and its programme of action for sustainable development outlined in Agenda 21, the Bruntland Report, UNCSD and the WSSD obliges States Parties to collectively enact policies needed to address the socio-economic and environmental problems affecting their well-being.¹⁴⁸⁹ To this end, government in collaboration with civil society have adopted several policies to enhance the socio-economic, environmental and sustainable development agendas in the country.¹⁴⁹⁰ These legislation include the National Environmental Management Plan,¹⁴⁹¹ an official policy used by government to foster sustainable development. It lays down the process of realising sustainable development



¹⁴⁸³ Article 22 and 24 of the Banjul Charter.

¹⁴⁸⁴ Article 18(c) of the Maputo Protocol.

¹⁴⁸⁵ Article 19 Maputo Protocol.

¹⁴⁸⁶ African Convention on the Conservation of Nature and Natural Resources hereinafter ACNNR.

¹⁴⁸⁷ Central African Forests Commission hereinafter COMIFAC.

¹⁴⁸⁸ Egute Albrecht Ajonina date unknown *Journal of Environment and Human* 1-2.

¹⁴⁸⁹ Swanson and Pintér 2004 https://www.iisd.org/pdf/2004/measure_nat_strategies_sdpdf.

¹⁴⁹⁰ Alemagi 2011 *Journal of Environmental Science and Technology* 65.

¹⁴⁹¹ National Environmental Management Plan hereinafter NEMP.

through Environmental Impact Assessment strategies.^{1492, 1493} Accordingly, the Plan requires that an EIA be conducted prior to the execution of any development projects to prevent negative impacts on the environment and the society.¹⁴⁹⁴ To facilitate this process, Decree No. 2005/0577/PM of 23rd February 2005 was passed following a Ministerial Order No. 0069/MINEP of 8th March 2005. This Decree laid down the procedure for executing an EIA study prior to any development project. To this end, the Ministry of Environment and Nature Protection¹⁴⁹⁵ was charged with the mandate of carrying out an EIA before any development project takes effect in the country.¹⁴⁹⁶ Generally, the essence of an EIA study is to mitigate the challenges that the said project have on the environment and host communities as well as proposed possible solutions to prevent future social impacts. The EIA study is not only limited to socio-economic impacts, but to other aspects of natural and human environment.¹⁴⁹⁷ The project should be authorised only when government, MNCs including local communities to be affected had agreed on remedies to prevent future socio-economic impacts within their territories.

This Decree established by the Ministry of Environment and Forestry¹⁴⁹⁸ now known as MINFOF created the Permanent Secretary of the Environment in 1996, with a Department of sustainable development mandated with the duty to ensure the effective implementation of this Plan in the country.¹⁴⁹⁹ As a result, two significant implementing mechanisms were established under the NEMP to monitor developmental activities within the country, including the National

¹⁴⁹² Bitondo 2000 *Impact Assessment and Project Appraisal* 35.

¹⁴⁹³ Environmental Impact Assessment strategies hereinafter EIA.

¹⁴⁹⁴ Bitondo 2000 *Impact Assessment and Project Appraisal* 35.

¹⁴⁹⁵ Environment and Nature Protection hereinafter MINEP.

¹⁴⁹⁶ Alemagi 2011 *Journal of Environmental Science and Technology* 65.

¹⁴⁹⁷ Ogola 2007 <http://wwwosis/gogn/unu-gtp-sc/UNU-GTP-SC-05-28pdf>.

¹⁴⁹⁸ Ministry of Environment and Forestry hereinafter MinEF.

¹⁴⁹⁹ Bitondo 2000 *Impact Assessment and Project Appraisal* 35.

Consultative Council on Sustainable Development¹⁵⁰⁰ and the Inter-ministerial Committee on Environment.¹⁵⁰¹

Another strategic policy implemented to achieve sustainable development in the country is the Poverty Reduction Strategy Paper.¹⁵⁰² The PRSP is described as a “framework for blending a new generation of economic and social policies into a coherent set for accelerating growth and fighting poverty in a sustainable fashion”.¹⁵⁰³ This in turn means that PRSP should focus on addressing economic and social features aimed at achieving sustainable development in the country. However, despite the relationship between poverty and environment, the PRSP makes no mention of the NEMP and the NCCSD. This in effect has resulted in failure by PRSP in realising sustainable development.¹⁵⁰⁴

In addition, the National Programme on Good Governance,¹⁵⁰⁵ the National Plan for Fight against Corruption,¹⁵⁰⁶ as well as the national strategic plan addressing HIV and AIDS were all policies that were enacted to guarantee environmental sustainability and protect the local population against its adverse effects. This is because as Bitondo explain the effects of environmental harm are usually irreparable, difficult and too expensive to amend, thus, comprehensive and preventive measures are always necessary as far as environmental problems are concerned.¹⁵⁰⁷ To supplement its constitutional commitment Cameroon enacted Law No. 96/12 of 5 August 1996 including the FLEGT, meant to regulate and manage the environment with the intention of not only regulating the activities of

¹⁵⁰⁰ National Consultative Council on Sustainable Development hereinafter NCCSD.

¹⁵⁰¹ International Institute for Sustainable Development 2004 https://www.iisd.org/pdf/2004/measure_sdsip_cameroonpdf; Inter-ministerial Committee on Environment hereinafter ICE.

¹⁵⁰² Poverty Reduction Strategy Paper hereinafter PRSP.

¹⁵⁰³ International Institute for Sustainable Development 2004 https://www.iisd.org/pdf/2004/measure_sdsip_cameroonpdf.

¹⁵⁰⁴ International Institute for Sustainable Development 2004 https://www.iisd.org/pdf/2004/measure_sdsip_cameroonpdf.

¹⁵⁰⁵ National Programme on Good Governance hereinafter NPGG.

¹⁵⁰⁶ The National Plan for Fight against Corruption hereinafter NPFC.

¹⁵⁰⁷ Bitondo 2000 *Impact Assessment and Project Appraisal* 34.

extractive industries including illegal logging but also to ensure environmental sustainability in the country.

Considering that environmental issues have transcended international to national levels, it is essential for states to enforce laws aimed at protecting the environment, enhance economic and sustainable development. Over the years several governments have ignored public policies and opinions on environmental hazards within their territories and collaborates with MNCs and related extractive industries to engage in activities that threaten the well-being of host communities.¹⁵⁰⁸ For instance, in *Zander v Sweden*¹⁵⁰⁹ where the applicants filed a suit claiming an alleged violation of their right to safe drinking water. The applicants maintained that the activities of Västmanlands Avfallsaktiebolag,¹⁵¹⁰ an industrial waste company, polluted and contaminated a well which served as the main source of drinking water for the community. In response to this allegation, the municipality had supplied the local community with temporary drinking water for a short period in relation to government policies. Given the health issues, the community objected to the renewal of VAFAB licence which intend to renew its contract and enable them continue and expand its activities within these territories. Subsequently, their claim was dismissed by the Court for lack of basis, on grounds that the companies' activities does not in effect cause pollution and contamination to the wells. The case above indicates that despite international obligations on states to adopt and implement policies that prevent economic development from destroying the environments and livelihood of marginalised people, national policies hinder the achievement of these goals and in effect leaves the host community with serious harms.

In Cameroon, human activities in the rich tropical rain-forest area have intensified environmental issues and thwart sustainable development procedures, resulting to a decline in economic production and consumption, including climate change,

¹⁵⁰⁸ Segger "International Law, Criminal Justice, and Sustainable Development" 19.

¹⁵⁰⁹ *Zander v Sweden* (Application no. 14282/88) 25 November 1993.

¹⁵¹⁰ Västmanlands Avfallsaktiebolag hereinafter VAFAB.

global warming and loss of land and resources.¹⁵¹¹ It is evident that the forestry sector faces huge challenges caused by excessive logging, thus aggravating the socio-economic and cultural conditions of the most disadvantaged groups in the country.¹⁵¹² Its negative impacts are not only felt on the health of indigenous peoples but has equally posed serious threats to the environment which to indigenous communities is the major source for their livelihood. This is contrary to some provision in the Constitution of the Republic of Cameroon which has guaranteed everyone a safe and healthy environment as seen in para 6.2 above, and call on the population to collectively protect the environment to ensure sustainable development.¹⁵¹³ This implies that the realisation of sustainable development is a collective commitment to the entire population, as it requires significant development on the socio-economic and ecological aspects of the society essential for their survival.¹⁵¹⁴

Anyu and Moki have argued that the enormous natural resources such as minerals, aluminium, copper, bauxite, gold, iron ore, uranium and timber found in Cameroon, can boost sustainable development if they are effectively exploited in a way that accommodates the younger generations.¹⁵¹⁵ He further posits that sustainable development is a framework necessary for developing countries to rapidly improve their economies.¹⁵¹⁶ To this end, the standard of living of the population is associated to a favourable and healthy environment, since sustainable development cannot be attained in an environment threatened by economic growth.¹⁵¹⁷ Identifying the possibility of strengthening the forestry sector (timber) to boost economic development and enhance sustainable development, government became the sole administrator in charge of managing and controlling the forest resources following the adoption of the new Forestry Law¹⁵¹⁸ and an

¹⁵¹¹ Oginni and Omojowo 2016 *Economies* 1.

¹⁵¹² Alemagi 2011 *Journal of Environmental Science and Technology* 65.

¹⁵¹³ Para 5(22) of the Constitution of the Republic of Cameroon.

¹⁵¹⁴ Alemagi 2011 *Journal of Environmental Science and Technology* 67.

¹⁵¹⁵ Anyu and Moki 2013 *Mediterranean Quarterly* 89.

¹⁵¹⁶ Anyu and Moki 2013 *Mediterranean Quarterly* 89.

¹⁵¹⁷ Anyu and Moki 2013 *Mediterranean Quarterly* 100.

¹⁵¹⁸ Section 35 of the Forestry Law.

Implementing Decree with the intention of promoting sustainable development and averting environmental challenges in the country.¹⁵¹⁹ Regardless of the above, government is unable to ensure efficient sustainability in Cameroon's forestry sector as logging companies engaged in the exploitation of timber, contaminate the ecosystems, which eventually hinders production. The destruction of traditional food sources leads to persistent poverty and hunger resulting from food scarcity. The polluted air results in severe health issues, poisonous plants, contaminated water sources and forced displacement to make way for development projects. Even though the Brundtland Report endorses collective stewardship for the effective protection of the environment, including government, stakeholders, civil society, and indigenous communities, MNCs, private and public bodies, unfortunately, the achievement of sustainable development in Cameroon is almost impossible. Excess exploitation, increase in demand for natural resources and economic growth coupled with the advent of globalisation and improved technology remain a potential threat to the environment of local communities.

On several occasions, the intended development projects fail to comply with government policies, coupled with irregularities in the implementation of domestic laws, maladministration, misappropriation of state funds, high level of corruption and recklessness.¹⁵²⁰ These activities are inconsistent with government's obligation to protect, improve and provide a healthy environment for the population. In Cameroon, the local community and MINFOF have been charged with the mandate to monitor illegal operations carried out by MNCs on indigenous lands.¹⁵²¹ According to Alemagi, government is unable to realise sustainable community development due to weak and ineffective legal systems that fail to adequately protect the environment, promote sustainable development and

¹⁵¹⁹ Oyono, Kouna and Mala 2005 *The Journal of Environment and Development* 358, 365.

¹⁵²⁰ See generally discussion by Alemagi 2011 *African Journal of Environmental Science and Technology*.

¹⁵²¹ Alemagi 2010 *Land Use Policy* 929-933.

secure the fundamental human rights for her population.¹⁵²² MNCs and other foreign operators tend to undermine the safety, health and environmental conditions of host communities, especially as they are supported by government oppressive policies and continuous intimidation, thus, causing severe socio-economic challenges for the affected communities.¹⁵²³

By implication, indigenous communities are better managers of the environment, owing to the fact that using Bitondo's words, they live in perfect harmony with their lands.¹⁵²⁴ Thus, their model of usage is more sustainable than other segments of the dominant society, as they effectively use the land with the intent of preserving it for up-coming generations. It is important therefore that indigenous peoples be consulted on measures regarding sustainable development and environmental protection. Kravchenko and Bonnie suggest that the proper recognition and protection of indigenous peoples is central for the effective protection of a healthy environment and enhancement of sustainable development goals, although environmentalists question the way indigenous peoples use and manage the environment, since most often the land is vacant with no economic activity taking place on it.¹⁵²⁵

However, despite numerous environmental laws enacted by government to guard against environmental degradation and promote sustainability, Mvondo remarks that social disorder, corruption, injustice and non-enforcement of laws impedes government's ability in executing its national responsibility in safeguarding the human rights and fundamental freedoms of the population.¹⁵²⁶ This, he argues, renders the state weak, ultimately resulting in poor governance and extreme poverty. The ultimate end compromises the purpose of economic development and environmental sustainability.¹⁵²⁷ As a matter of example, the 1994 Forestry

¹⁵²² Egute, Albrecht and Ajonina date unknown *Journal of Environment and Human* 1-4; Alemagi 2011 *Journal of Environmental Science and Technology* 67.

¹⁵²³ Alemagi et al 2013 *Journal of Sustainable Development* 67-69.

¹⁵²⁴ Bitondo 2000 *Impact Assessment and Project Appraisal* 33.

¹⁵²⁵ Kravchenko "Indigenous Rights and Environment" 147.

¹⁵²⁶ Mvondo 2009 *Africa Today* 85; Schutter *International Human Rights Law Cases, Materials, Commentary* 242-243.

¹⁵²⁷ Mvondo 2009 *Africa Today* 86.

Law aimed at enhancing inclusive forest participation, promotes sustainable management and environmental sustainability and alleviates poverty prevalent amongst indigenous communities, was not achieved as state officials charged with these responsibilities tend to ignore and undermined these policies to favour extractive industries.¹⁵²⁸ This has curtailed indigenous peoples' ability to improve their economic, social and political life through a sustained and healthy environment.¹⁵²⁹ Mvondo has termed this outright denial of rights to mean 'environmental injustice' on the part of indigenous peoples. As original inhabitants of these territories, the decentralisation process of Forestry Laws should be geared at protecting the interest of indigenous communities and safeguarding their environment from degradation.¹⁵³⁰

Furthermore, following principle 17 of Agenda 21 of the UNCED, the government of Cameroon has considered and adopted the EIA policy as an essential requirement prior to the execution of development projects that can trigger environmental degradation on local communities, however, this process is far from being effective as most often the conditions laid down for the EIA are those designed by funding institutions and tend to undermine national policies on EIA.¹⁵³¹ A practical example is the procedure used in carrying out an EIA on the Mokong Dam Project (Waza-Logone project, 1995) including the EIA conducted during the Chad-Cameroon Pipeline Project of 1998 in Cameroon.¹⁵³² The Mokong Dam is situated 42 kilometres west of Maroua in the Far North Region of Cameroon. The Mokong Dam construction required an EIA prior to the project to assess its bio-physical and socio-economic impacts on the environment surrounding the Waza National Park and River Longone. The EIA was conducted by some Cameroonian experts with the collaboration of a Brazilian expert. The reports revealed that the Dam construction would have adverse effects on the bio-physical, economic and social life the local communities. However, following

¹⁵²⁸ Oyono 2005 *The Journal of Environment and Development* 319.

¹⁵²⁹ Beauchamp and Ingram 2011 *The International Forestry Review* 390.

¹⁵³⁰ Mvondo 2006 *International Journal of Environmental* 682-683.

¹⁵³¹ Bitondo 2000 *Impact Assessment and Project Appraisal* 33-35.

¹⁵³² Bitondo 2000 *Impact Assessment and Project Appraisal* 35-36.

the absence of specific clarifications of the impacts to the general public coupled with irregularities in conducting and handling of the report, government has suspended the project and has embarked on employing alternative means in developing the region.¹⁵³³

Similarly, the Chad-Cameroon Pipeline projects a joined project between Cameroon and Chad to transport crude oil using pipelines and offshore loading services. Prior to the implementation, an EIA was considered priority with an intention to involve public participation, regrettably, the country's NEMP which goal is to realise sustainable development was ignored, no proper consultations was done with host communities to be affected, the effects on the socio-political aspect of the country and local population was not clearly addressed.¹⁵³⁴ Subsequently, local communities are left with devastating effects including alienation from traditional lands and natural resources.

It is argued that high levels of deforestation in Cameroon are caused by non-state actors, leading to increased degradation. Nonetheless, while developing countries assume responsibilities, non-state actors walk away free and unnoticed.¹⁵³⁵ The worrying question is why non-state actors are not held accountable for human rights violations perpetrated in other countries? It is only when this missing link is properly addressed within international human rights law that increased environmental problems taking place within local communities will be effectively addressed to ensure sustainable development. Scholars argued that globalisation and trade liberalisation have created powerful states that are contributing to human rights violations and subsequent environmental degradation experienced in the country.¹⁵³⁶ In other words, non-state actors engaged in economic activities and investment programmes with developing countries having weak legislative policies that lacks transparency, accountability,

¹⁵³³ Bitondo 2000 *Impact Assessment and Project Appraisal* 35-36.

¹⁵³⁴ Bitondo 2000 *Impact Assessment and Project Appraisal* 37-38.

¹⁵³⁵ Dkamela, Brockhaus and Djegni 2014 *Ecology and Society: A Journal of Integrative Science for Resilience and Sustainability* 1.

¹⁵³⁶ Shelton 2002 *BC Int'l Comp. L. Rev.* 273-274.

public participation with no policies that effectively respect human dignity and fundamental freedoms.¹⁵³⁷

Henkin blames the ineffectiveness of these laws as they are enacted by powerful states who are the very perpetrators of human rights violations. These laws are framed in such a way that non-state actors including state agents escape responsibility and accountability.¹⁵³⁸ These laws have weakened host communities and prevented them from interfering and challenging their actions, especially as governments most often have financial interests in foreign businesses than the local population, rendering the implementation of international and national laws on environmental protection ineffective.¹⁵³⁹

This explains why, despite the persistent outcry by indigenous communities following multiple oil spills from the Chad-Cameroon Pipeline Project, in Kribi East of Cameroon, government is more focused on the financial proceeds derived from the projects than the welfare of local communities. For instance, Prior to the project oil companies had promised to improve the living standards of indigenous peoples, however none of the promises have been realised, except for social and environmental challenges that these communities are left to battle with, such as the destruction of flora and fauna, dispossession, contamination of water sources, pollution and poisoning of the natural habitats, plants, destruction of ecological and cultural structures.¹⁵⁴⁰ To complement this argument, it is submitted that economic development projects have ideologically and economically driven agendas as opposed to national and international models of development and resource extraction.¹⁵⁴¹ These practices have caused endless conflicts between the state, logging companies and indigenous communities over government's failed policies to guarantee a sustainable environment for the population.¹⁵⁴² As

¹⁵³⁷ Schutter *International Human Rights Law Cases, Materials, Commentary* 242-243.

¹⁵³⁸ Henkin *The Age of Rights* 38.

¹⁵³⁹ Swing, Davidov and Schwartz 2012 *Journal of Developing Societies* 262, 268-269.

¹⁵⁴⁰ Swing, Davidov and Schwartz 2012 *Journal of Developing Societies* 273.

¹⁵⁴¹ See a better understanding of this argument see generally Swing, Davidov and Schwartz 2012 *Journal of Developing Societies*.

¹⁵⁴² Alemagi 2011 *Journal of Environmental Science and Technology* 69-70.

such, indigenous peoples' livelihoods are endangered as they fear that increased exploitation of natural resources and destruction of their traditional lands would ultimately reduce their chances of survival and increase poverty.

It is important to note that despite the universality of human rights as articulated in many international human rights instruments, majority of states have restricted the respect for human rights obligations within their boundaries, thus creating a vacuum in the actual achievement of human rights values. To address this issue, the international community has adopted the Maastricht Principles on Extraterritorial obligations¹⁵⁴³ to promote the socio-economic and cultural rights of all peoples within the state.¹⁵⁴⁴ The ETO's imposed on states are defined as: -

- a) obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory; and
- b) obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realise human rights universally.¹⁵⁴⁵

To this end, states are expected to respect,¹⁵⁴⁶ protect¹⁵⁴⁷ and fulfil these rights as well as refrain from acts that have negative impacts on their rights.¹⁵⁴⁸ It is submitted that if states are held accountable for acts committed beyond their borders the issue of environmental sustainability would have been remedied and put to end. There is an urgent need therefore for states to take immediate steps to ensure that non-state actors are held accountable for their actions

¹⁵⁴³ Extraterritorial Obligations hereinafter ETO's.

¹⁵⁴⁴ Preamble to the Maastricht Principles.

¹⁵⁴⁵ Art 8 Maastricht Principles.

¹⁵⁴⁶ Art 19, 20, 21 and 22 of the Maastricht Principles.

¹⁵⁴⁷ Art 23-27 of the Maastricht Principles.

¹⁵⁴⁸ Art 28-35 of the Maastricht Principles.

6.6 Summary

This chapter examined indigenous peoples' right to development, including the right to secure sustainable development as well as safeguard the environment having regard to the unborn generations. It has been argued that sustainable development is fundamental for the achievement of economic development and well-being of local communities. The chapter revealed that increased human activities triggered by the global demand for natural resources for economic development is the root cause of excessive resource exploitation resulting in environmental degradation. It is therefore essential that non-state actors, MNCs and governments are jointly and severally held accountable for acts violating the socio-economic and cultural rights of indigenous peoples. To that end, legislative measures should be adopted to ensure the effective prohibition of acts that impact negatively on the environment of indigenous communities.

The next chapter evaluates the recognition and protection of the rights of indigenous peoples in a comparative perspective.



Chapter 7 Recognition and protection of indigenous peoples' rights in comparative perspectives

7.1 Introduction

The previous chapter examined indigenous peoples and their right to sustainable development. The aim was to assess whether indigenous peoples of Cameroon have a right to decide their own development priorities or they are perceived as obstacles to development processes taking place in their territories. In the same chapter, it was observed that even though indigenous peoples share a spiritual bond with their ancestral lands and the resources within, the global trend of resource exploitation for economic growth has greatly transformed their societies resulting in huge environmental problems. This disturbing situation obliges states to adopt a comprehensive and efficient national policy that holds non-state actors accountable for gross human rights violations committed in other states. Government is also required to establish a special monitoring body that regulates the activities of those in charge of issuing exploitation permits to ensure that their activities conform to the conditions stated in those permits. In addition, development processes must gear at not only targeting the needs of indigenous peoples, but that government and other development agencies should consult with indigenous peoples prior to the initiation and execution of any development projects that might have a negative impact on indigenous peoples' well-being and environment.

This chapter subsequently evaluates indigenous peoples' rights in comparative perspectives. The main thrust is to draw important lessons from other countries for Cameroon to emulate. The chapter has been broken down into three sections: the first part evaluates best practices in selected countries like USA, Canada, New Zealand, Australia, Botswana and South Africa looking at their constitutional and legislative policies aimed at protecting indigenous peoples' rights. The second section outlines some differences and similarities identified from various countries. The last part deals with some comparative lessons drawn from the countries examined.

7.2 Indigenous peoples in comparative perspectives: General overview

It is worth noting that indigenous peoples around the globe face the same challenges and such a view has been corroborated by several scholars who argue that despite varied historical, geographical and cultural backgrounds of indigenous peoples, their social, economic, political and cultural conditions are almost similar.¹⁵⁴⁹ Sambo contends that the above reasons explain why indigenous communities worldwide are marginalised, especially after their encounter with European colonisers.¹⁵⁵⁰

The conditions of indigenous communities are worsened by government policies that collaborate with foreign companies to secure their own selfish interests through the exploitation and exploration of natural resources found on indigenous peoples' land which is the major source of subsistence.¹⁵⁵¹ This has resulted in repeated dispossession, domination, exploitation, subjugation, extreme poverty, seclusion, exclusion and inequality of opportunities for indigenous communities.¹⁵⁵² In many jurisdictions a significant number of indigenous populations live below average levels, in deplorable and dreadful conditions than non-indigenous communities.¹⁵⁵³ In addition, most African, European and American states still grapple with inequality and racism against indigenous peoples. This is because they are unwilling to enact specific legislation that grants official recognition to the rights of indigenous peoples at domestic levels.¹⁵⁵⁴ This explains why indigenous peoples' demand for the recognition of their rights to land, territories and natural resources remain a huge challenge at national, regional and international level, since these rights are perennially violated by governments after granting concessions to logging companies without their consent.¹⁵⁵⁵ Saugestad recommends socio-economic development is essential

¹⁵⁴⁹ Stephens *et al* 2006 *Series* 2024.

¹⁵⁵⁰ Sambo 1992 *Études/Inuit/Studies* 28.

¹⁵⁵¹ Sambo 1992 *Études/Inuit/Studies* 28.

¹⁵⁵² Sambo 1992 *Études/Inuit/Studies* 28.

¹⁵⁵³ Stephens *et al* 2006 *Series* 2023.

¹⁵⁵⁴ Stephens *et al* 2006 *Series* 2023-2024.

¹⁵⁵⁵ Anaya and Williams Jr 2001 *Harv. Hum. Rts. J.* 75, 77.

for indigenous peoples' livelihood as this would empower their communities and guarantee them proper recognition.¹⁵⁵⁶

Although USA, Australia, Canada and New Zealand are highly developed countries, the political, social, economic and cultural situations of indigenous peoples in these countries are not any different nor better than those in 'other' states less developed countries.¹⁵⁵⁷ Regrettably, the socio-economic disparities between indigenous and non-indigenous peoples in these developed countries are almost the same as those of their Africa counterparts.¹⁵⁵⁸ Although most of these jurisdictions have made strides in adopting legislative measures that enhance the rights of indigenous peoples, these group of people still face serious socio-economic, cultural and political challenges.

This chapter offers a comparative perspective on the rights of indigenous peoples from an international perspective by looking at other jurisdictions with a view to drawing important lessons for Cameroon. Very few comparative studies have been done in highly developed countries such as United States, Australia, New Zealand and Canada. Even thinner comparative studies if any have been undertaken in less developed countries such as Botswana and South Africa on the question of selected political, socio-economic and cultural rights of indigenous peoples. The countries chosen for the comparative study are all signatories to the UNDRIP, ILO Convention No. 169 and other international instruments that specifically address indigenous peoples' rights. Secondly USA, Canada, Australia and New Zealand are highly developed, wealthier and advanced countries with "mature" legal systems that have been framed to protect the human rights and fundamental freedoms of indigenous peoples, thus, it is essential to assess whether or not their policies towards indigenous peoples are different from under-developed countries such as South Africa, Botswana and Cameroon. Also, all these countries except for the USA are Commonwealth countries with a large number of indigenous peoples facing the same challenges

¹⁵⁵⁶ Saugestad "The Indigenous Peoples of Southern Africa: An Overview" 23-24.

¹⁵⁵⁷ Cooke *et al* 2007 *BMC International Health and Human Rights* 1.

¹⁵⁵⁸ Cooke *et al* 2007 *BMC International Health and Human Rights* 1.

in multiple spheres of life. Another reason is to examine and evaluate the domestication of various legal systems at the national levels to assess the level of protection, promotion and recognition of indigenous peoples' rights in these countries. Furthermore, the chapter aims at a better understanding of the legal systems in other jurisdictions.¹⁵⁵⁹ Using Jansen words 'it is important to be acquainted with other foreign legal systems in order to best carry out a comparative research'.¹⁵⁶⁰

While a detailed discussion concerning the political, socio-economic and cultural situation of indigenous peoples in Cameroon has been systematically analysed in the previous chapters, this chapter introduces a fresh understanding of the political, socio-economic and cultural situations of indigenous peoples in different jurisdictions. Hence, this comparative approach provides insight to appreciate the historical precedents that affect indigenous peoples residing in these developed and developing countries.

7.3 United States of America

Generally indigenous peoples of the USA constitute a diverse group retaining distinct characteristics like other indigenous populations worldwide. They are commonly referred to as Native Americans, although in reality they are known as American Indians,¹⁵⁶¹ Alaska Natives¹⁵⁶² and in some instances referred to as Native Hawaiians.¹⁵⁶³ Historically, AI and AN migrated 12,000 years ago from Asia and settled in present day Alaska.¹⁵⁶⁴ Over the years about 10 million of AI and AN have occupied the area today known as USA before European colonisation.¹⁵⁶⁵ These people migrated south and east, maintaining the same habitats and features.¹⁵⁶⁶ History holds that Russian colonial powers during that

¹⁵⁵⁹ Miler and Ruru 2008 *W. Va. L. Rev.* 2.

¹⁵⁶⁰ Jansen "Comparative Law and Comparative Knowledge" 307, 339.

¹⁵⁶¹ American Indians hereinafter AI.

¹⁵⁶² Alaska Native hereinafter AN.

¹⁵⁶³ Anaya 2015 *Arizona Journal of International and Comparative Law* 53.

¹⁵⁶⁴ Anon date unknown <https://www.warpaths2peacepipes.com/native-american-culture/>.

¹⁵⁶⁵ Miler and Ruru 2008 *W. Va. L. Rev.* 6.

¹⁵⁶⁶ Anon date unknown <https://www.warpaths2peacepipes.com/native-american-culture/>.

period were more interested in exploiting the rich and diverse resources within the AN territories, while Western Europeans searched for lands to settle.¹⁵⁶⁷ In other words, European colonisers operated on the premise of the "Doctrine of Discovery".¹⁵⁶⁸ By 1867 conflicts erupted between European settlers and the AN over the recognition of their lands, which resulted in racial disparities between these two groups.¹⁵⁶⁹ The conflicts ranged from differences over indigenous cultural values *vis a vis* "Western" values, religious, traditional practices, burial sites as well as arguments over land ownership, especially the sacred sites that the indigenous peoples used for communal and private rites".¹⁵⁷⁰

Studies indicate that about 6.6 million peoples in the USA, constituting 2% of the entire population self identify as Native Americans or Alaska Natives solely or combination with other ethnic groups.¹⁵⁷¹ In this number, over 2.5 million, or 0.8% of the population identify as AI or AN.¹⁵⁷² The USA government has granted federal recognition to over 567 AI and AN tribes and villages, 230 of which belong to AN population.¹⁵⁷³ This group of people have inhabited and occupied the Northern and Southern parts of the Klamath and Smith River banks known as present day North-West California for several decades.¹⁵⁷⁴ They identify themselves as AI or AN and they practice different cultures with separate languages, although scholars argue that these languages are moving towards extinction.¹⁵⁷⁵ It has been argued that in spite of their huge influence in the country, AI and AN are still battling with serious political and socio-economic injustices, including broken treaties, oppression, erroneous state policies which have prevented AI and AN from freely exercising their individual and collective

¹⁵⁶⁷ Miller and Ruru 2008 *W. Va. L. Rev.* 1-2.

¹⁵⁶⁸ Miler and Ruru 2008 *W. Va. L. Rev.* 1-2.

¹⁵⁶⁹ Anon date unknown <https://www.warpaths2peacepipes.com/native-american-culture/>; Miller and Ruru 2008 *W. Va. L. Rev.* 4.

¹⁵⁷⁰ Van Niekerk 2007 *Comparative and International Law Journal of Southern Africa* 30, 32-34.

¹⁵⁷¹ Hansen et al *The Indigenous World* 2017 103.

¹⁵⁷² Hansen et al *The Indigenous World* 2017 103.

¹⁵⁷³ Anaya 2015 *Arizona Journal of International and Comparative Law* 53.

¹⁵⁷⁴ Wessendorff K et al *The Indigenous World* 2001/2002 66-71.

¹⁵⁷⁵ Miller date unknown http://www.earthisland.org/journal/index.php/eij/article/more_than_words/.

rights.¹⁵⁷⁶ Hoover *et al*, validates this view by adding that even though the AI and AN have different cultures and ways of life, they regrettably encounter similar challenges.¹⁵⁷⁷ These problems include abject poverty, unemployment, substance and alcohol abuse, forced displacement, high morbidity and high mortality rates, violence, use of corporal punishment in schools and other significant challenges.¹⁵⁷⁸ The poverty rate amongst AI and AN totals 27%.¹⁵⁷⁹

Federal recognition of AI and AN granted them restricted autonomy over lands and established over 300 reserves in more than 200 AN villages, following treaties entered between the 18th and 19th Centuries.¹⁵⁸⁰ Most of these treaties are signed through Acts of USA Congress, Presidential Executive Orders and the Federal Department of the Interior in return for land reservations and official recognition of their jurisdictional boundaries.¹⁵⁸¹ However, that of the AN communities has its origin from the Alaska Statehood Act of 1959 and the Alaska Native Claims Settlements Acts of 1971.^{1582, 1583} However, while several of the Federally recognised indigenous communities reside in the reservations and lands managed by Natives, others are scattered in urban centres beyond indigenous territories, while a handful of them live within the borders.¹⁵⁸⁴ Those near the United States–Mexico border have difficulties accessing other community members following the Federal Government’s border security policy.¹⁵⁸⁵ The AI and AN with federally recognised status benefit from the Bureau of Indian Affairs¹⁵⁸⁶ and Indian Health Services¹⁵⁸⁷ Federal programmes. Federal recognition is a framework that established a close link between the legally

¹⁵⁷⁶ Anaya 2015 *Arizona Journal of International and Comparative Law* 53.

¹⁵⁷⁷ Hoover *et al* 2012 *Environmental Health Perspectives* 1645.

¹⁵⁷⁸ Hoover *et al* 2012 *Environmental Health Perspectives* 1645.

¹⁵⁷⁹ Hansen *et al* *The Indigenous World* 2017 103.

¹⁵⁸⁰ Cornell and Kalt 2010 http://nniarizonaedu/pubs/jopna-wp1_cornell&kaltpdf.

¹⁵⁸¹ Cornell and Kalt 2010 http://nniarizonaedu/pubs/jopna-wp1_cornell&kaltpdf.

¹⁵⁸² Cornell and Kalt 2010 http://nniarizonaedu/pubs/jopna-wp1_cornell&kaltpdf.

¹⁵⁸³ Alaska Native Claims Settlements Acts hereinafter ACSA.

¹⁵⁸⁴ Anaya 2015 *Arizona Journal of International and Comparative Law* 54.

¹⁵⁸⁵ Anaya 2015 *Arizona Journal of International and Comparative Law* 54.

¹⁵⁸⁶ Bureau of Indian Affairs hereinafter BIA.

¹⁵⁸⁷ Indian Health Services hereinafter HIS.

recognised indigenous communities in the USA and the Federal government. In other words, it provides government to government contacts.¹⁵⁸⁸

It is submitted that the history of AI and AN in USA is marked by complex and ambiguous USA policies based on inter-governmental relationship between the AN and the government of the USA.¹⁵⁸⁹ The USA signed several treaties with its indigenous communities as a guarantee to recognise, acquire, protect and resolve disputes involving Indian lands.¹⁵⁹⁰ Wame comments that almost all treaties entered into force between the USA and the tribal nations had a clause which states: "promise of all proper care and protection in exchange for tribal land and natural resources".¹⁵⁹¹ This implies that the government of the USA is under a duty (trust responsibility) to provide adequate social services to the AI and AN communities through BIA and IHS programmes. The BIA, which operated under the auspices of the Department of the Secretary of the Interior, was charged with the mandate to direct, supervise and provide funding for the benefit, care and assistance of Indians in the USA.¹⁵⁹² However, the BIA failed in providing effective service delivery resulting in the absence of proper and inadequate IHS within AI and AN communities.¹⁵⁹³ For instance, *Cherokee Nation v Georgia*¹⁵⁹⁴ concerned a suit filed by members of the Cherokee Nation, a very popular Native American tribe in the USA who, following the enactment of new laws by the state of Georgia, were deprived of the right to access basic socio-economic services as formerly declared in the treaties.



The Cherokee Nation therefore, brought an interdict before the Supreme Court of the USA challenging the enforcement of these laws on grounds that the Cherokee Nation had been recognised and should equally be treated as a state of the USA. In addition, the numerous treaties entered between them and the

¹⁵⁸⁸ Anaya 2015 *Arizona Journal of International and Comparative Law* 53.

¹⁵⁸⁹ Warne and Frizzell 2014 *American Journal of Public Health* S263.

¹⁵⁹⁰ Riley 2013 *Journal of Supreme Court History* 369.

¹⁵⁹¹ Warne and Frizzell 2014 *American Journal of Public Health* S263.

¹⁵⁹² Warne and Frizzell 2014 *American Journal of Public Health* S263.

¹⁵⁹³ Warne and Frizzell 2014 *American Journal of Public Health* S264-S265.

¹⁵⁹⁴ *Cherokee Nation v Georgia* 30 U.S. 1 (1831).

USA government also recognise them as a people able to restore peace and assume responsibilities in their political character in relation to any violation against citizens of the USA by any individual in their community. Accordingly, these laws, especially the Indian Removal Act of 1830, permitted the State of Georgia to forcefully evict the AN from their traditional lands. As such they demanded the laws be repealed as they violated their fundamental human rights. The Supreme Court held that the Cherokee Nation was a foreign nation with regards the Constitution, and therefore has the right to institute a claim against the state of Georgia. Legally, the issue of an injunction was a valid means to stop the implementation of these laws.

Based on the above, it is submitted that the USA government has been unwilling to keep to its trust obligations in providing social services to the AI and AN communities.¹⁵⁹⁵ These failures are blamed on the several legislative changes enacted in the 20th Century which effected some important modifications to service delivery within AI and AN populations.¹⁵⁹⁶ They include the Snyder Act, Transfer Act, Indian Self-Determination and Education Assistance Act and the Indian Health Care Improvement Act just to mention a few.¹⁵⁹⁷ These legislative changes affected the political, economic, social and cultural lives of the AI and AN populations. They face severe discrimination and marginalisation including social seclusion in schools usually resulting in frustration, alcohol abuse, deprivation from land resources and high suicidal rates. This would partially explain why suicidal rates amongst AI and AN are extremely high compared to the broader society.¹⁵⁹⁸ AI and AN woman are more vulnerable: they are victims of rape, human trafficking, kidnapping, sex slavery, prostitution, drug, substance, physical as well as sexual abuse.¹⁵⁹⁹

¹⁵⁹⁵ Warne and Frizzell 2014 *American Journal of Public Health* S264.

¹⁵⁹⁶ Warne and Frizzell 2014 *American Journal of Public Health* S264.

¹⁵⁹⁷ Warne and Frizzell 2014 *American Journal of Public Health* S264-S265.

¹⁵⁹⁸ Zamora-Kapoor et al 2016 *Centres for American Indian & Alaska Native Health* 70-89.

¹⁵⁹⁹ Farley et al 2016 *American Indian and Alaska Native Mental Health Research* 65-67.

Another major challenge facing indigenous communities in the USA is the appropriation of their traditional lands through treaties that are never respected. Many of these have emerged to be fake promises of guaranteed protection as well as forceful evictions from their traditional lands and resources.¹⁶⁰⁰ An example is the displacement of the members of the Cherokee and Choctaw communities from the South-eastern region of USA to Oklahoma under horrific conditions termed “trial of tears”.¹⁶⁰¹ This displacement destroyed the strong cultural, religious and political institutions indigenous peoples have retained for decades. The sacred sites for ritual performance have been transformed into mining, logging, hydroelectric and developmental sites.¹⁶⁰²

There have also been issues of misappropriation of funds meant for the Native tribes in the form of fees derived for royalties paid for resource extraction on their lands. Compounded, this has had negative impact on indigenous communities.¹⁶⁰³ Additionally, the educational system of indigenous children in the USA has been horrific, coupled with the institution of corporal punishment on children caught speaking their mother tongue. The operation “kill the Indian in him, save the man”, was quite devastating; the light socket system was frequently used to punish children caught speaking their mother tongue in schools.¹⁶⁰⁴ They were also forcibly removed from their families to distant boarding schools under horrific conditions. Currently, they are exposed to multiple acts of violence such as rape, emotional, physical and sexual abuse.¹⁶⁰⁵

However, it is essential to mention that the Inter-American Commission on Human Rights¹⁶⁰⁶ and the Inter-American Court on Human and Peoples' Rights¹⁶⁰⁷ adopted under the Inter-American Convention on Human Rights¹⁶⁰⁸

¹⁶⁰⁰ Anaya 2015 *Arizona Journal of International and Comparative Law* 61-62.

¹⁶⁰¹ Anaya 2015 *Arizona Journal of International and Comparative Law* 63.

¹⁶⁰² Anaya 2015 *Arizona Journal of International and Comparative Law* 63.

¹⁶⁰³ Wessendorff K *et al The Indigenous World 2001/2002* 67.

¹⁶⁰⁴ Anaya 2015 *Arizona Journal of International and Comparative Law* 63.

¹⁶⁰⁵ Anaya 2015 *Arizona Journal of International and Comparative Law* 63.

¹⁶⁰⁶ Inter-American Commission on Human Rights hereinafter IACHR.

¹⁶⁰⁷ Inter-American Court on Human Rights hereinafter IACtHR.

¹⁶⁰⁸ Inter-American Convention on Human Rights hereinafter IACHR.

have recorded many success stories involving the human rights violations of indigenous peoples' rights to land and natural resources in the Americas. For example, *Yanomami Indigenous Peoples v Brazil*,¹⁶⁰⁹ concerned the violation of the right to life, health, security and property of the Yanomami people, an indigenous community in Brazil. In this case the government of Brazil had granted permission to a multinational company to exploit natural resources on land owned by the Yanomami people without appropriate consultation with the indigenous community members. The IACHPR held that the government of Brazil violated the American Declaration and demanded government to demarcate the boundaries of the traditional lands of the Yanomami people. The IACHPR also called on the Brazilian government to implement measures that would improve the health, living standards and cultural values of the Yanomami people as provided for in Article 27 of ICCPR.

Furthermore, another situation where the rights of indigenous peoples to land was protected in the America's was in *Mary and Carrie Dann v United States*.¹⁶¹⁰ This case involved an alleged violation of the right to use and occupy traditional lands owned by an indigenous community of the Western Shoshone, including the "Dann sisters" residing on a ranch in the rural community of Crescent Valley, Nevada. Government had illegally appropriated the set land as federal property before the Indian Claims Commission¹⁶¹¹. The government had forcefully evicted members of the Western Shoshone community, including their livestock, from ancestral land to make way for future exploitation of gold. The government of the United States appropriated this land without prior consultation and the informed consent of the Danns sisters and other indigenous peoples, thereby violating Articles II, III, VI, XIV, XVIII and XXIII of the American Declaration. After considering the evidence presented by both parties, IACHPR

¹⁶⁰⁹ *Yanomami Indigenous Peoples v Brazil* Caso N° 7615. Resolución N° 12/85.

¹⁶¹⁰ *Mary and Carrie Dann v United States* Case 11.140, Report No. 75/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 860 (2002).

¹⁶¹¹ Indian Claims Commission hereinafter ICC.

held that the state violated the Danns' right to property and equality as articulated in Article II, XVIII and XXIII of the American Declaration.

In addition, *Maya Indigenous Community of the Toledo District v Belize*,¹⁶¹² also passed jurisdiction on an alleged violation of the right over the use and occupation of ancestral land and natural resources by the government of Belize. The Maya community members have lived, used and managed this land collectively from time immemorial. Over the years, the Belize government decided to grant logging and oil concession rights to foreign companies, causing immense damage to their property, land and environment. The Commission held that the state of Belize had not only violated Article XXIII of the American Declaration but had also failed in its duty to carry out proper consultation with the informed consent of the Maya community concerning the nature of the project and the consequences that could arise from such activities. To this end, the Commission requested that in future the state must allow the Maya community to fully participate either as individuals or collectively in decisions regarding any of such projects on their territories.¹⁶¹³

In *Mayagna (Sumo) Awas Tingni Community v Nicaragua*,¹⁶¹⁴ the Mayagna indigenous community (Awas Tingni) filed a complaint alleging violations of their property rights. In this case, the Republic of Nicaragua had granted a Korean-based corporation the right to exploit timber for a period of 30 years on indigenous peoples' lands (Mayagna) without effective consultations or negotiations as required by the Inter-American Convention. The IACHR requested the Nicaraguan government to cancel the project, demarcate the lands and compensate the Awas Tingni community for the damaged resources.¹⁶¹⁵ The IACHPR later referred the matter to the IACtHR after the Nicaraguan government

¹⁶¹² *Maya Indigenous Community of the Toledo District v Belize* Case 12.053, Report No. 40/04, Inter-Am.C.H.R., oea/Ser.LV/II.122 Doc. 5 rev. 1 at 727 (2004) para 142

¹⁶¹³ *Maya Indigenous Community of the Toledo District v Belize* Case 12.053, Report No. 40/04, Inter-Am.C.H.R., oea/Ser.LV/II.122 Doc. 5 rev. 1 at 727 (2004) para 142.

¹⁶¹⁴ *Mayagna (Sumo) Awas Tingni Community v Nicaragua* Inter-Am. Ct. Hum. Rts. (Ser. C) Case No.79, para. 103(k) (Judgement of Aug. 31, 2001).

¹⁶¹⁵ Grossman 2001 *Human Rights Brief* 1.

failed to comply with the IACHPR's recommendations. The IACHR requested the IACtHR to charge the Nicaraguan government for the violation of Articles 1, 2, 21 and 25 of the Inter-American Convention to which Nicaragua is a signatory since 1979 and to compensate the Awas Tingni community for their loss as provided for by Article 63(1) of the Convention.¹⁶¹⁶ In deciding this case, the IACtHR upheld the earlier decision of the IACHR by stating that the Nicaraguan government had violated Article 21 of the Inter-American Convention which guarantees indigenous peoples rights over their traditional lands.¹⁶¹⁷

7.3.1 Legislative framework recognising indigenous peoples' rights in the USA

7.3.1.1 The Constitution of the USA

Given that the USA is a highly-developed country with a well advanced legal system built on the principles of equality, non-discrimination and fundamental freedoms of the American peoples, yet very little or no mention is made on indigenous peoples in the Constitution.¹⁶¹⁸ Even though the Bill of Rights was later enshrined in the USA Constitution throughout the 10 amendments,¹⁶¹⁹ it does not extend the same protection to the AI and AN people in the USA. Indian tribes were only mentioned in Article 1, section 8(3) of the Constitution which provides that, "the Congress shall have the power...to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".¹⁶²⁰ Apart from the provision on trade collaboration with indigenous peoples, no major recognition or protection of their rights has been emphasised in the Constitution of the USA. This lack of constitutional recognition explains why the rights of AI and the AN are constantly violated, as indigenous peoples' issues are only limited to the federal government level and not the state level.¹⁶²¹

¹⁶¹⁶ Grossman 2001 *Human Rights Brief* 3.

¹⁶¹⁷ See Art 21 of the IACHR.

¹⁶¹⁸ Anaya 2015 *Arizona Journal of International and Comparative Law* 55.

¹⁶¹⁹ *Constitution of the United States of America as amended on 25 July 2007* (1787).

¹⁶²⁰ Art 1, Section 8(3) of the Constitution of the United States.

¹⁶²¹ Anaya 2015 *Arizona Journal of International and Comparative Law* 56.

Despite the above, indigenous peoples of USA can invoke Amendment 14, section 1, to institute a claim when their fundamental rights to liberty and property are endangered. This provision reads as follows:

All persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.¹⁶²²

In addition, Article 1, section 2 of the Constitution of USA excludes Indians from paying taxes. Lujan has observed that their non-taxable status is the reason why Indians Nations are not enumerated during census programmes in the country.¹⁶²³ She explains that it is because almost all AI and AN land are held in trust by the Federal Government, thus making it tax free. This is articulated in Article 1, section 2 below:

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The exact enumeration shall be made within three years after meetings of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.¹⁶²⁴

7.3.1.2 Dawes General Allotment Act, 1887



The Dawes General Allotment Act¹⁶²⁵ enacted by Congress in 1887 was aimed at integrating Indian nations into the mainstream of society. In this regard, land held in the collective for the entire Indian Nations as prescribed by Indian Treaties was later reallocated to individual tribal members.¹⁶²⁶ Section 1 of the DGAA provides that the President has the absolute right to assign lands to individual

¹⁶²² See Amendment 14, section 1 of the Constitution of the USA.

¹⁶²³ Lujan 2014 *The American Indian Quarterly* 320.

¹⁶²⁴ See Article 1, Section 2 of the Constitution of the USA.

¹⁶²⁵ The Dawes General Allotment Act 1887 hereinafter DGAA.

¹⁶²⁶ Echohawk 2013 *Expedition* 21.

Indians within the reservations as prescribed by the Treaty, Act of Congress or Executive order. This Act encourages Indian Nations to engage in farming to improve their living standards.¹⁶²⁷ Accordingly, section 2 permits Indians allottees to choose a specific portion of land they so desire for their children while agents could also choose for orphans. These lands are held by the USA government “in trust for the sole use and benefit of the Indian” or his heirs after death for a period of 25 years.¹⁶²⁸ Section 6 further provides that every individual belonging to a band or tribe and who have been allocated land must adhere to the laws within their state or territory and are automatically granted USA citizenship.¹⁶²⁹ This policy prompted the enactment of the Indian Citizenship Act of 1924, in honour of the many Indians who fought for the USA during the WWI.¹⁶³⁰ It is important to note that the DGAA does not apply to all Indian Nations as stated in section 8 of the DGAA:

None of the Cherokees, Creeks, Choctaws, Seminoles, Osage, Miamies, Peorias, Sacs and Foxes, in Indian Territory, nor any reservations of the Seneca Nation of New York, nor an executive order reservation in Nebraska, are subject to the provisions of the General Allotment Act.

This basically implies that although the DGAA affords to better the conditions of Indian Nations in the USA, not all the Indians Nations are entitled to these benefits: some communities such as those highlighted in section 8 are excluded. This reveals the systemic forms of discrimination and inequalities that indigenous groups encounter in the USA. A policy that recognises and provides equal opportunities to all indigenous groups in the USA is urgently recommended.

7.3.1.3 Indian Reorganisation Act, 1934

The Meriam Survey of 1924 conducted by Congress revealed that the DGAA of 1887 implemented policies that impacted negatively on Indian Nations, and for this reason, there was a need for reform. This led to the enactment of the Indian

¹⁶²⁷ Echohawk 2013 *Expedition* 21.

¹⁶²⁸ Section 5 of the DGAA.

¹⁶²⁹ It is worthy of noting that section 6 has been amended by the Burke Act in 1906.

¹⁶³⁰ Echohawk 2013 *Expedition* 21.

Reorganisation Act¹⁶³¹ also known as the Wheeler-Howard Act. This Act was aimed at reducing the level of Federal control over American Indian affairs so as to enhance Indian self-government and responsibility in appreciation of the American Indians' services during the WWI.¹⁶³² The IRA suggested that in addition to the allocation of communal land to individuals, the surplus lands be handed to the tribes than to homesteaders. Also, it recommended that written Constitutions and Charters be enacted to give Indians absolute right to manage their internal affairs.¹⁶³³ In this regard, available funds were allocated for credit to facilitate educational systems as well as assist tribal organisations to develop.¹⁶³⁴ The significance of this Act is that over 160 tribes and villages adopted written Constitutions; also through the revolving credit funds many Indians Nations improved their socio-economic conditions, including an increase in staff and services in health and educational domains, thus increasing the number of Indian children in public schools by 1950.¹⁶³⁵ In addition, more Indians became interested in civic affairs, making the IRA the foundation for federal legislation in relation to Indian affairs in the USA.¹⁶³⁶

7.3.1.4 Termination Policy 1953-1968

The Termination Policy¹⁶³⁷ of 1953 came about following a survey that was conducted by the USA Senate in 1943 in which it was realised that the policies implemented by the BIA and the federal bureaucracy had a serious influence on the living conditions of the Indian Nations.¹⁶³⁸ It found that Indian Nations in the reservations lived under horrifying conditions with poverty as a major challenge. This anomaly was attributed to maladministration and mismanagement of state resources meant to improve the welfare of the AI and AN community in the

¹⁶³¹ Indian Reorganisation Act (1934) hereinafter IRA.

¹⁶³² Echohawk 2013 *Expedition* 21.

¹⁶³³ Section 2 of the IRA.

¹⁶³⁴ Echohawk 2013 *Expedition* 21.

¹⁶³⁵ Echohawk 2013 *Expedition* 21.

¹⁶³⁶ Echohawk 2013 *Expedition* 21.

¹⁶³⁷ The Termination Policy of 1953-1968 hereinafter TP.

¹⁶³⁸ Anon date unknown http://www.nrcprograms.org/site/PageServer?pagename=airc_hist_terminationpolicy.

reserves.¹⁶³⁹ As such, government felt a need to reverse Indian Policy by implementing a new policy known as the "TP". "TP" aimed at assimilating all Indians and granting them the same status as every American and put an end to tribal governments, the sale of tribal lands as well as integrating them into the mainstream of American society.¹⁶⁴⁰

This policy began with the most powerful of the Indian Nations, like the Klamaths and Agua Caliente tribes, which ultimately affected over 109 tribes. In this regard, about 2, 500,000 acres of trust land lost its status, including 12,000 Native Americans whose tribal affiliation status were removed.¹⁶⁴¹ In addition to the TP, the Public Law 280 was also enacted in 1953 and this gave authority to state governments to adjudicate on regular criminal laws within the reservations. This enactment was greatly criticised by state governments and Indian tribes who disapproved states having control over their territories without their consent.¹⁶⁴² Ultimately, this led to an amendment of the Public Law 280 and the subsequent abolition of the TP in 1970.¹⁶⁴³

7.3.1.4.1 Indian Self-Determination and Education Assistance Act, 1970

The Indian Self-determination and Education Assistance Act¹⁶⁴⁴ came about in 1970 when President Richard Nixon stated in his Indian policy pronouncement that the TP passed in 1953 was a mistake and should be changed to a new Indian policy called Indian Self-determination Act. The aim of the Indian self-determination Act was to grant recognition to Indian Nations and grant them self-government.¹⁶⁴⁵ The Self-determination Act revived the formerly tribal form of governments which allowed Native Americans to manage and control their

¹⁶³⁹ Anon date unknown http://www.nrcprograms.org/site/PageServer?pagename=airc_hist_terminationpolicy.

¹⁶⁴⁰ Echohawk 2013 *Expedition* 23.

¹⁶⁴¹ Anon date unknown http://www.nrcprograms.org/site/PageServer?pagename=airc_hist_terminationpolicy.

¹⁶⁴² Anon date unknown http://www.nrcprograms.org/site/PageServer?pagename=airc_hist_terminationpolicy.

¹⁶⁴³ Echohawk 2013 *Expedition* 23.

¹⁶⁴⁴ Indian Self-determination and Education Assistance Act (1970) hereinafter Indian Self-determination Act.

¹⁶⁴⁵ Echohawk 2013 *Expedition* 23.

internal affairs, including education. Since its inception, the Native Americans have been able to manage and run over 70 schools, implement the use of their languages, beliefs and philosophies in schools.¹⁶⁴⁶ In addition, the Indian self-determination has been operating in the USA for 43 years now.¹⁶⁴⁷

Given the above, some best practices can be drawn from the USA with regards the recognition of the rights of her indigenous peoples. For instance, the USA government has granted federal recognition to 566 AI and AN tribes and villages following Acts of USA Congress, Presidential Orders and the Federal Department of Interior. In addition, AI and AN have equally been granted autonomy over 300 reserves in 200 AN villages regarding Treaties signed between the 18th and 19th Centuries.¹⁶⁴⁸

Furthermore, the DGAA of 1887, IRA of 1934 and the Self-determination Act of 1970 all permitted the AI and AN to control and manage their internal affairs. It is submitted that over 160 tribes and villages have adopted written Constitutions to facilitate the functioning of their governments. The provision of revolving credits funds has enabled several Indian Nations to improve their socio-economic conditions.¹⁶⁴⁹ In addition, Indian Nations in the USA now manage and run over 70 schools of their own where their languages, beliefs and philosophies are practiced and taught in schools.¹⁶⁵⁰ These are good exemplar lessons for Cameroon government to adopt so as to enhance, protect and promote the rights of her indigenous peoples.

7.4 Australia

Indigenous peoples of Australia were the first settlers in Australia as early as fifty thousand years before European colonisation.¹⁶⁵¹ They self-identify as Aboriginal

¹⁶⁴⁶ Anon date unknown http://wwwnrcprogramsorg/site/PageServer?pagename=airc_hist_self_determinationact.

¹⁶⁴⁷ Echohawk 2013 *Expedition* 23.

¹⁶⁴⁸ Cornell and Kalt 2010 http://nniarizonaedu/pubs/jopna-wp1_cornell&kaltpdf.

¹⁶⁴⁹ Anon date unknown http://wwwnrcprogramsorg/site/PageServer?pagename=airc_hist_self_determinationact.

¹⁶⁵⁰ *The Indian Reorganisation Act* (1934).

¹⁶⁵¹ Bowler *et al* 2003 *Nature* 838.

or Torres Strait Islander peoples, although other names are used to identify them such as Koori, First Australian and Indigenous.¹⁶⁵² They occupied the regions along the riverbanks, lakes and wetlands of Australia's Murray Basin for several years, and ultimately developed a special relationship with the land, marine and the coastal areas.¹⁶⁵³ Over the years the Aborigines relied on rivers, lakes and wetlands for the fish and other animals for subsistence.¹⁶⁵⁴ History records that fishing, hunting, herding, and gathering remained their main occupation, thus, rivers and lakes became a source of livelihood to the community and integral to the culture of the Aborigines.¹⁶⁵⁵ Nuttall *et al*, admit that their reliance on hunting, gathering, fishing and herding made a significant contribution to their socio-economic and cultural survival.¹⁶⁵⁶

The fish and meat derived from lakes, animals and birds, including fruits such as berries and other consumable plants, constitute high nutrients with a balanced diet essential for their health and well-being.¹⁶⁵⁷ Apart from the above, the Aborigines of Australia retain a special connection with the physical environment that has ensured the effective growth and survival of natural resources.¹⁶⁵⁸ The environment here is not just the physical environment but the land, lakes, rivers and the resources therein. The spiritual and cultural connection to the environment and wetlands remain a major contributor to the development of the Australian economy.¹⁶⁵⁹ In other words, Aborigines were comfortable with the intricate rituals and lifestyle they have elected to live, including language, customs, dreaming and spirituality.¹⁶⁶⁰ However, these values all but disappeared



¹⁶⁵² Gibson *et al* 2015 *Australian Occupational Therapy Journal* 214.

¹⁶⁵³ Humphries 2007 *Ecological Management & Restoration* 106-108.

¹⁶⁵⁴ Bowler *et al* 2003 *Nature* 839.

¹⁶⁵⁵ Anon date unknown <http://www.crystalinks.com/aboriginals>.

¹⁶⁵⁶ Nuttall *et al* 2005 *Arctic Climate Impact Assessment* 650.

¹⁶⁵⁷ Nuttall *et al* 2005 *Arctic Climate Impact Assessment* 650-651.

¹⁶⁵⁸ Humphries 2007 *Ecological Management & Restoration* 108-110.

¹⁶⁵⁹ Jackson 2005 *Australasian Journal of Environmental Management* 136-138; Humphries 2007 *Ecological Management & Restoration* 108.

¹⁶⁶⁰ Anon date unknown <http://www.aboriginalheritageorg/history/history/>; see generally Reichardt 2012 *Scriptura*.

with the arrival of European settlers who invaded and displaced the settled indigenous peoples.¹⁶⁶¹

In spite of the absence of a well-recognised political structure and institutions to run and monitor the day to day activities of these communities, the Aborigines and Torres Strait Islander peoples of Australia have organised tribes with over three hundred languages.¹⁶⁶² This implies that there are no chiefs and Kings to rule and govern the communities.¹⁶⁶³ It is the responsibility of the entire community to use, manage, control resources, land and the environment for the benefit of all others.¹⁶⁶⁴ Studies indicate that the Aboriginal and Torres Strait Islander peoples of Australia constitute a population of about 713,600 amounting to 3% of the Australian population in 2014.¹⁶⁶⁵ The majority of the indigenous groups, particularly the Torres Strait Islander peoples, consisted of 63, 700 people making up about two-thirds (63%) of the population found in Queensland.¹⁶⁶⁶ Their cultural and traditional ways of life are commonly attributed to rivers, lakes and fish and this has been the practice for over forty thousand years before colonisation.¹⁶⁶⁷ According to Humphries, most of these rivers, creeks and lakes were named after Aboriginal Australians before colonisation, although this trend has changed with massive dispossession of the Aborigines, ranging from traditional lands to the destruction of their cultures.¹⁶⁶⁸ It is submitted that the Aborigines of Australia are scattered all over the country, although recently about 32-43% live in central cities while the majority reside on ancestral lands.¹⁶⁶⁹ The Aborigines continued to maintain their relationship with the rivers

¹⁶⁶¹ Barrie 2009 *Tydskrif vir die Suid-Afrikaanse Reg* 156.

¹⁶⁶² Barrie 2009 *Tydskrif vir die Suid-Afrikaanse Reg* 156.

¹⁶⁶³ Bourke "Australia's First Peoples: Identity and Population" 3:38-39.

¹⁶⁶⁴ Barrie 2009 *Tydskrif vir die Suid-Afrikaanse Reg* 156.

¹⁶⁶⁵ Anon date unknown <http://www.aihw.gov.au/indigenous-observatory/reports/health-and-welfare-2015/indigenous-population/>.

¹⁶⁶⁶ Anon date unknown <http://www.aihw.gov.au/indigenous-observatory/reports/health-and-welfare-2015/indigenous-population/>.

¹⁶⁶⁷ Jackson 2005 *Australasian Journal of Environmental Management* 136, 139-140; Barrie 2009 *Tydskrif vir die Suid-Afrikaanse Reg* 156.

¹⁶⁶⁸ Humphries 2007 *Ecological Management & Restoration* 106, 108.

¹⁶⁶⁹ Mikkelsen *et al The Indigenous World* 2015 218.

and biota until European colonisation in 1788, when they were forcefully evicted from these lands.¹⁶⁷⁰

European colonisation of Australia began when Lt James Cook, embarked on a mission to forcibly occupy all empty lands or get consent from the local inhabitants to possess lands that were untenanted at that time.¹⁶⁷¹ In 1770, despite the large number of natives he found residing in that area, he evicted them from these lands and named the lands after King George III of Britain after declaring them "*terra nullius*."¹⁶⁷² The Europeans considered Aboriginal lands as vacant and therefore available for agricultural activities and human settlement, specifically for the white invader.¹⁶⁷³ This marks the beginning of the historic socio-economic and cultural problems the Aborigines of Australia face even today.

This dispossession resulted in the loss of traditional lands and resources, causing significant impact on Aboriginal economy, particularly in the domains of social, political, economic and cultural life.¹⁶⁷⁴ Extreme poverty, discrimination, destruction of cultures, languages and marginalisation define the Aborigines during that period. Inequalities in health, particularly life expectancy rates are relatively high as compared to non-aboriginal population, educational policies, housing and other social systems, including marginalisation in political representation have grossly aggravated the socio-economic conditions of Aboriginal peoples.¹⁶⁷⁵ The life expectancy rate for Aboriginal peoples is much higher than that of non-Aboriginal peoples, including high maternal and childbirth rates, stillbirth and preterm birth rates that remain on an increase.¹⁶⁷⁶ In general,

¹⁶⁷⁰ De Villiers 2004 *SA Public Law* 440.

¹⁶⁷¹ Anon date unknown <http://www.aboriginalheritageorg/history/history/>.

¹⁶⁷² Anon date unknown <http://www.aboriginalheritageorg/history/history/>.

¹⁶⁷³ Anon date unknown <http://www.aboriginalheritageorg/history/history/>.

¹⁶⁷⁴ For a detailed synopsis on this discussion see Lane and Rickson 1997 *Society & Natural Resources*.

¹⁶⁷⁵ Möller *et al* 2015 *Journal Information* 899.

¹⁶⁷⁶ Brown *et al* 2015 *Birth* 28.

indigenous Aboriginal and Torres Strait Islander families in Australia face severe disparities in the health system despite efforts by government.¹⁶⁷⁷

These problems have continued even after the country gained independence in 1986. By the 19th and 20th centuries the struggle for the recognition of indigenous peoples' rights had intensified, following newly enacted government policies that stripped the Aborigines of their political, social, economic and cultural rights.¹⁶⁷⁸ Similar to other countries, Aboriginal children have been separated from families and placed in secluded boarding schools several kilometres away from what they recognise as home.¹⁶⁷⁹ Despite the low quality education they receive, these children live under deplorable conditions exposed to emotional and physical abuses.¹⁶⁸⁰ More so, unemployment, forced displacement including legislation that deprives them of accessing social security schemes, such as the old age pension, maternity benefits, child endowment, funding for mothers originally meant for everyone irrespective of their status or origin remain contentious issues among the Aborigines.¹⁶⁸¹ Repeated discontent with these policies caused Aborigines to demand not only for the recognition of their rights to land, resources, social, economic and cultural rights but also constitutional recognition as a group with specific rights.¹⁶⁸² It is therefore suggested that gross marginalisation predominant within Aboriginal communities needs specific attention and immediate policy review at national level.¹⁶⁸³

7.4.1 Legislative framework for the recognition of Aborigines of Australia

7.4.1.1 The Australia Constitution

The Constitution of every country is the most powerful and supreme set of rules that govern the affairs of the state. It also guarantees human rights and

¹⁶⁷⁷ Brown et al 2015 *Birth* 28.

¹⁶⁷⁸ Robbins 2015 *Australian Journal of Social Issues* 172-174; Murphy 2013 *Australian Historical Studies* 206-217.

¹⁶⁷⁹ Möller et al 2015 *Journal Information* 900.

¹⁶⁸⁰ Möller et al 2015 *Journal Information* 901-903.

¹⁶⁸¹ Murphy 2013 *Australian Historical Studies* 209-212.

¹⁶⁸² Murphy 2013 *Australian Historical Studies* 213-218.

¹⁶⁸³ Robbins 2015 *Australian Journal of Social Issues* 185.

fundamental freedoms of all members within that state. Australia, like other countries with indigenous peoples, has denied the indigenous people constitutional recognition. Neither the Preamble nor the Commonwealth of Australian Constitution adopted on the 1st of January 1901, gave constitutional recognition to its indigenous populations. Although the Aboriginal and Torres Strait Islander Australians were known as the “First Peoples of Australia” (First Nations), before European colonisation, their rights are not protected in the country’s Constitution.¹⁶⁸⁴ Wood has reasoned that the huge ‘gap’ maintained between the Aborigines and non-Aborigines communities in Australia has created socio-economic, political and cultural differences which have ascerbated a history of over 200 years of inequality.¹⁶⁸⁵

It is submitted that the Constitution contains several provisions that explicitly discriminate against Indigenous Australians.¹⁶⁸⁶ This is the case despite the fact that over 90% of the people voted for a change of these provisions during the 1967 Federal Referendum.¹⁶⁸⁷ Sections 25 and 51(xxvi) of the Australian Constitution still contain provisions that are discriminatory against Aborigines of Australia. Section 25 permits states to marginalise and subjugate people belonging to another race. The actual wording of section 25 reads thus:

For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of the race resident in that State shall not be counted.¹⁶⁸⁸

Additionally, reducing the number of representatives in the House of Parliament within a state is not only discriminatory but a violation of the right to political

¹⁶⁸⁴ Beck 2014 *UNSW Law Journal* 407-410.

¹⁶⁸⁵ Wood 2014 *Legal date* 13.

¹⁶⁸⁶ Anon date unknown <https://www.reconciliation.org.au/wp-content/uploads/2013/12/Recognising-Aboriginal-and-Torres-Strait-Islander-people-in-the-Australian-Constitution.pdf>

¹⁶⁸⁷ Anon date unknown <https://www.reconciliation.org.au/wp-content/uploads/2013/12/Recognising-Aboriginal-and-Torres-Strait-Islander-people-in-the-Australian-Constitution.pdf>.

¹⁶⁸⁸ Section 25 of the *Commonwealth of Australia Constitution Act No. 84* (1997).

participation and representation in the affairs of the state. Another problematic and contentious provision in the Australian Constitution is section 51(xxvi). This provision gives the Commonwealth Parliament exclusive powers to make laws that govern people belonging to a specific race. This particular provision has provoked scholarly attention as academics and politicians have criticised and demanded the repeal of this provision from the Commonwealth of Australian Constitution since it has detrimental consequences on Aboriginal and Torres Strait peoples' socio-economic and cultural lives.¹⁶⁸⁹ Pritchard for example, perceives this provision as specifically intended to enact racially detrimental laws on the Aboriginal and Torres Strait peoples.¹⁶⁹⁰ Thus, it is suggested that for barriers of inequality and racial disparity to disappear in Australia against the Aboriginal and Torres Strait communities, the Constitution must be amended. Morris suggests that constitutional reforms should be geared at eradicating the structural barriers that deter the Aborigines of Australia from achieving their socio-economic and cultural aspirations.¹⁶⁹¹

Since then there have been repeated calls for the amendment of section 51 of the Australian Constitution and complete removal of the "race power" discriminatory clause from the Constitution with no success. As Pritchard correctly posits, 'such a provision is inconsistent with Australia's international obligations, and has no place in a modern constitution'.¹⁶⁹²

7.4.1.2 Native Title Act 1993 (Cth) as amended in 1998

The Native Title Act¹⁶⁹³ was enacted to ensure the recognition of Aboriginal and Torres Strait Peoples' rights in Australia. NTA also known as 'bundle of rights' enables the Australian government to protect the traditional laws and customs of

¹⁶⁸⁹ Morris 2013 *Legaldade* 7.

¹⁶⁹⁰ Pritchard 2011 *Australian Indigenous Law Review* 44.

¹⁶⁹¹ Morris 2013 *Legaldade* 8.

¹⁶⁹² Pritchard 2011 *Australian Indigenous Law Review* 52.

¹⁶⁹³ *Native Title Act 1993 No. 110, 1993 (1993)* as amended by *Native Title Amendment Act 2009 No. 83, 2009 (2009)* hereinafter NTA.

indigenous peoples of Australia.¹⁶⁹⁴ There are four central aims for the formulation of the NTA as outlined in part 1, Section 1, thus:

- (a) to provide for the recognition and protection of native title; and
- (b) to establish ways in which future dealings affecting native title may proceed and to set standards for those dealings; and
- (c) to establish a mechanism for determining claims to native title; and
- (d) to provide for, or permit, the validation of past acts and intermediate period acts, invalidated because of the existence of native title.¹⁶⁹⁵

The first obligation requires the state to recognise, respect, protect and forbid the extinguishment of native titles except as specified by the Act itself.¹⁶⁹⁶ The second characteristic demands for the adoption of legislative measures that grant Aboriginals and Torres Strait Islander peoples the right to participate in decision-making process particularly on issues that concern them.¹⁶⁹⁷ This implies that the state has a duty to consult in good faith to obtain their free consent. This provision gives them the right to accept or reject the said development projects to take effect on their territories as well as demand for reasonable compensations to cover major harm caused by the project. This includes their right to accept or oppose as well as demand for compensation in regard to any development on their land and make it official with the National Native Title Tribunal.^{1698, 1699} The NNTT serves as an independent federal government agency and assists in the following circumstances:



¹⁶⁹⁴ Anon date unknown <http://www.nnttgovau/Information%20Publications/Native%20Title%20an%20overviewpdf>.

¹⁶⁹⁵ See Part 1, Section 1 of the NTA No. 110 of 1993 as amended by Act No. 122 of 2009.

¹⁶⁹⁶ Human Rights Council of Australia date unknown <http://www.hrc.org.au/wp-content/uploads/2008/05/native-title-a-simple-guidepdf>.

¹⁶⁹⁷ Human Rights Council of Australia date unknown <http://www.hrc.org.au/wp-content/uploads/2008/05/native-title-a-simple-guidepdf>.

¹⁶⁹⁸ Human Rights Council of Australia date unknown <http://www.hrc.org.au/wp-content/uploads/2008/05/native-title-a-simple-guidepdf>.

¹⁶⁹⁹ National Native Title Tribunal hereinafter NNTT.

- negotiating agreements
- information about native title
- mediation services
- access to Tribunal research
- land information, including mapping and other geospatial products.

In addition, the NTA made provision for the creation of Aboriginal Land Fund specifically to those indigenous Australians who are unable to benefit from native title due to government's policy of extinguishment. Thus, the NTA established a special account aimed at helping communities buy new lands.¹⁷⁰⁰ The NTA has been widely commended by the Aboriginals and Torres Strait Islander peoples for reinstating the statutory procedures of native title in Australia.¹⁷⁰¹

The enactment of the NTA was instigated by the landmark High Court decision of *Mabo and Another v Queensland (No.2)*.¹⁷⁰² This case concerned a dispute over *terra nullius* regarding the acquisition and sovereignty over the Aboriginal and Torres Strait Islander people's land. Prior to the Mabo case, Aboriginal and Torres Strait Islander peoples' land rights were recognised under British colonial rule. This was guaranteed by the 1937 House of Commons proclamation which allowed all inhabitants to retain exclusive rights over their ancestral lands.¹⁷⁰³ However, this international recognition was later contested by the Australian government relying on the concept of "*terra nullius*" before European colonisation. This argument was also based on previous court judgments such as *Cooper v Stuart*¹⁷⁰⁴ where the Privy Council held that most land in Australia

¹⁷⁰⁰ Human Rights Council of Australia date unknown <http://www.hrc.org.au/wp-content/uploads/2008/05/native-title-a-simple-guide.pdf>.

¹⁷⁰¹ See generally Gray et al 2014 *Social Justice and Native Title Report 2014: Aboriginal and Torres Strait Islander Social Justice Commissioner*.

¹⁷⁰² *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992).

¹⁷⁰³ For details see Gray et al 2014 *Social Justice and Native Title Report 2014: Aboriginal and Torres Strait Islander Social Justice Commissioner*.

¹⁷⁰⁴ *Cooper v Stuart* (1889) 14 App Cas 286.

was “*terra nullius*” or no man’s land. This explains why European colonisers claimed these portions of uninhabited lands as part of their territories.

However, the Mabo case judgment brought this concept of *terra nullius* to an end after the Supreme Court ruled in favour of Mabo by dismissing *terra nullius* from Australian law. It also introduced the adoption of the NTA in the Australian Legal system by guaranteeing the rights of indigenous Australians over lands and waters in terms of access, possession, occupation, as well as participation in decisions concerning the use and management of these lands.¹⁷⁰⁵ While the concept of “*terra nullius*” was abolished, a new ground of Australian land law was established which in effect, reinstated the recognition of Aboriginal and Torres Strait Islander land rights in Australia by the Commonwealth Parliament. The passing of the NTA brought a new development to the situation of indigenous peoples in Australia. It is essential to note that the Mabo case and the NTA enhanced the special protection of the land rights of the Aboriginal and Torres Strait Islander peoples in Australia. Additionally, the Mabo decision restored justice to indigenous Australians by protecting their cultural, religious and land rights.¹⁷⁰⁶

The most important lesson drawn from Australia is that the Aborigines are not only recognised in the Australian Bill of Rights, but have been reserved special seats in Parliament and actively participate in elections and voting processes. Thus, their active role in government helped to better their socio-economic conditions, as this forum enables them to challenge and recommend new policies that previously had a negative impact on their well-being. Also, they can constantly remind policy makers that they are a distinct group with special rights. However, a lot remains undone to change their socio-economic, political and cultural situations.

¹⁷⁰⁵ Pelczynski 1993 <http://treatyrepublicnet/content/brief-outline-mabo-judgement-and-its-implications>.
¹⁷⁰⁶ Pelczynski 1993 <http://treatyrepublicnet/content/brief-outline-mabo-judgement-and-its-implications>.

7.5 Canada

In Canada, three groups of indigenous peoples are legally recognised in the Constitution, namely: "Métis", "Inuit" and "First Nations" ("Indians") commonly referred to as "Aboriginal peoples".¹⁷⁰⁷ Similar to other indigenous communities worldwide, the Inuit of Canada have a distinct cultural identity, beliefs and practices; they rely on resources of the sea and land for survival. In other words, hunting and fishing are their main occupation.¹⁷⁰⁸ They have gradually established a significant relationship with the Arctic Ocean due to its abundant resources.¹⁷⁰⁹ The total population of Aboriginal people of Canada is estimated at over 1 400 685 people following the National Household Surveys in 2011, constituting about 4.3% of the total Canadian population.¹⁷¹⁰ The various groups are classified as follows: 60.8% of the First Nations constitute over 851, 560 individuals totalling 2.6% of the Canadian population and are officially registered under the Canadian's Indian Act, speaking over 60 different languages.¹⁷¹¹ A good number of them, close to 55%, reside in reserves, while 45% are scattered throughout Canada.¹⁷¹² The Métis, on the other hand, are commonly found in urban areas particularly in the Western part of Canada and made up 451795 of the total population.¹⁷¹³

History has it that the population today referred to as the Aborigines of Canada were the first to occupy the Arctic region, specifically the northern, western and eastern Arctic regions of Canada for close to 12,000 years.¹⁷¹⁴ They lived in small family groups and strictly uphold a natural bond with their environment, land and resources and depend on traditional diets like freshwater fish, seals, mammals,

¹⁷⁰⁷ Mikkelsen et al *The Indigenous World* 2015 48; Voyageur and Calliou 2000/2001 *The London Journal of Canadian Studies* 105; Doubleday 1988-1989 *Denv. J. Int'l L. & Pol'y* 374-375

¹⁷⁰⁸ Doubleday 1988-1989 *Denv. J. Int'l L. & Pol'y* 375.

¹⁷⁰⁹ Doubleday 1988-1989 *Denv. J. Int'l L. & Pol'y* 375.

¹⁷¹⁰ Mikkelsen et al *The Indigenous World* 2015 48.

¹⁷¹¹ Mikkelsen et al *The Indigenous World* 2015 48.

¹⁷¹² Mikkelsen et al *The Indigenous World* 2015 48.

¹⁷¹³ Mikkelsen et al *The Indigenous World* 2015 48.

¹⁷¹⁴ Bonesteel *Canada's Relationship with Inuit* 1.

whales and other natural resources for daily subsistence.¹⁷¹⁵ It is only in the 19th Century that European settlers, Whalers, and fur-traders started encroaching on Aboriginal lands, thus changing Aboriginal ways of life as well as economic and traditional practices of subsistence, hunting and fishing to commercial trapping.¹⁷¹⁶ Over the years, the aborigines of Canada have had little access to commercial fisheries, no participation in its management, environment as well as land.¹⁷¹⁷ They have been gradually pushed away from their natural habitat and forced to relocate to barren lands.¹⁷¹⁸

In addition, the Aborigines are faced with challenges in education, health, employment, inadequate and overcrowded housing.¹⁷¹⁹ This has been attributed to misguided government policies which deliberately ignore the Aborigines of Canada.¹⁷²⁰ Government policies such as the Indian Act had rendered the majority of them homeless; other policies like residential school policies and child welfare legislation have also impacted negatively on Aboriginal rights in Canada.¹⁷²¹ The implementation of a reserve system restricts efforts to acquire mortgage and home improvement loans to assist improve their living conditions.¹⁷²² Green terms the Canadian government policies towards its indigenous communities as “bullying policies” with a double face as it uses military, police, political and bureaucratic power to maltreat, exploit, dominate, subjugate and forcefully integrate the Aborigines into the mainstream society.¹⁷²³ This is not surprising to several academics who recall that the Canadian government had earlier made its position very clear when it decided to adopt the UNDRIP by renouncing all responsibilities to implement and enforce the

¹⁷¹⁵ Bonesteel *Canada's Relationship with Inuit* 3.

¹⁷¹⁶ Bonesteel *Canada's Relationship with Inuit* 4.

¹⁷¹⁷ Wiber and Milley 2007 *The Journal of Legal Pluralism and Unofficial Law* 163-166.

¹⁷¹⁸ Wiber and Milley 2007 *The Journal of Legal Pluralism and Unofficial Law* 163-164.

¹⁷¹⁹ Patrick 2014 <https://yorkspacelibraryyorku.ca/xmlui/bitstream/handle/10315/29365/AboriginalLiteratureReviewpdf?sequence=1&isAllowed=y>.

¹⁷²⁰ Patrick 2014 <https://yorkspacelibraryyorku.ca/xmlui/bitstream/handle/10315/29365/AboriginalLiteratureReviewpdf?sequence=1&isAllowed=y>.

¹⁷²¹ Patrick 2014 <https://yorkspacelibraryyorku.ca/xmlui/bitstream/handle/10315/29365/AboriginalLiteratureReviewpdf?sequence=1&isAllowed=y>.

¹⁷²² Patrick 2014 <https://yorkspacelibraryyorku.ca/xmlui/bitstream/handle/10315/29365/AboriginalLiteratureReviewpdf?sequence=1&isAllowed=y>.

¹⁷²³ Green 2011 *Prairie Forum* 9.

Declaration within its nation state.¹⁷²⁴ Thus, the many challenges Aborigines encounter are linked to the lack of implementation of the UNDRIP in Canada.

For instance, in the health domain Smylie and Firestone mention that there exists a wide gap between the Aborigines and non-Aborigines communities in Canada.¹⁷²⁵ Wheatley and Wheatley are of the opinion that their poor health conditions are linked to their traditional diets, arguing that it exposes them to terminal and other related illnesses.¹⁷²⁶ This assertion is connected to that of Sharp who points out that the rate of diabetes amongst the Aborigines of Canada is three to five times higher than that of the non-Aborigine groups in Canada.¹⁷²⁷ Unlike the non-Aborigine groups, the Aborigines retain a distinct lifestyle that has exposed them to deplorable conditions such as poverty, poor housing, unsafe drinking water, little or no formal educational systems, lack of medical facilities, isolation, deprivation, discrimination and unemployment.¹⁷²⁸ Besides infectious diseases, indigenous communities in Canada register high rates of violent deaths, alcohol and substance abuse, maternal smoking, suicides, obesity, tuberculosis, high morbidity and mortality rates.¹⁷²⁹

Apart from poor health, the Aborigines of Canada do not effectively take part in the formulation of legislative and administrative measures, for example the amendment of the Canadian Environmental Assessment Act, the National Energy Board Act and the Fisheries Act.¹⁷³⁰ It is submitted that even though these acts directly affected them, they were not consulted.

The Federal Government of Canada has continuously violated the rights of Aborigines of Canada.¹⁷³¹ This is seen in the case of *Tsilhqot'in Nation v. British*

¹⁷²⁴ Neve and Benjamin 2011 *Prairie Forum* 2.

¹⁷²⁵ Smylie and Firestone 2015 *Statistical Journal of the IAOS* 76.

¹⁷²⁶ Wheatley and Wheatley 2000 *Science of the Total Environment* 24-25.

¹⁷²⁷ Sharp 2009 *International Journal of Circumpolar Health* 316-318.

¹⁷²⁸ Anon 1997 <http://www.wahfca/downloads/gathering-strength.pdf>.

¹⁷²⁹ See generally Reading 2009 <https://dspace.library.uvic.ca:8443/bitstream/handle/1828/5380/Chronic-Disease-2009.pdf?sequence=1&isAllowed=y>.

¹⁷³⁰ Anaya 2015 *Arizona Journal of International & Comparative Law* 157.

¹⁷³¹ Mikkelsen *et al* *The Indigenous World* 2015 49.

Columbia,¹⁷³² where the Tsilhqot'in nation, a group of indigenous communities practicing six different cultures instituted a law suit against the government of British Columbia for granting logging concessions to commercial logging companies on lands owned by indigenous Canadians for centuries. This was met with an outright rejection from indigenous communities. The Supreme Court of British Columbia held in favour of the Aborigines. This ground-breaking case is significant in Canadian history where the right to Aboriginal title over ancestral lands, including user rights, as well as benefits from proceeds over the use of their resources were recognised. The Court also requested the government of British Columbia to consult with Aboriginal peoples prior to any development projects carried out within their territories in future. This decision is significant to the Aboriginal communities in Canada as it does not only recognise their land titles but also grants them absolute right over the control, use and management of ancestral lands.

Furthermore, in *Delgamuukw v British Columbia*,¹⁷³³ the case involves the right to Aboriginal title as articulated in section 35(1) of the Constitution Act, 1982. The Gitksan and Wet'suwet'en people instituted a claim of Aboriginal title and self-government over 58000sq km of land in present day Northern British Columbia. After much deliberations and rejections from the lower courts, the Supreme Court finally upheld indigenous peoples of British Columbia's claim for "Aboriginal Title" over this land. This protracted ground-breaking case in Canada turned the tables on the recognition of Aboriginal titles in Australia.

¹⁷³² *Tsilhqot'in Nation v. British Columbia* Case No. 34986, 2014 SCC 44, [2014] 2 SCR 257.

¹⁷³³ *Delgamuukw v British Columbia* [1997] 3 S. C. R 1010 [also known as *Delgamuukw v the Queen*] (S.C.C).

7.5.1 *Legislative frameworks recognising the rights of the Aborigines in Canada*

7.5.1.1 The Constitution Act, 1982 as amended

Even though the Government of Canada is unwilling to grant the Aborigines of Canada the special rights and protection they deserve, the Canadian Constitution adopted in 1982 has provisions that explicitly recognise Aboriginal and Treaty rights of Aboriginal Peoples in Canada. The Constitution has embedded a Charter of Rights and Freedoms which grants legal and formal recognition of Aboriginal rights in the country. For instance, sections 25 and 35 are specific provisions that officially recognise Aboriginal rights and freedoms as well as Aborigines and treaty rights for Indians, Métis and Inuit people. Section 25 provides that:

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognised by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

The above provision states that all rights granted in that Charter shall not be construed as to affect any rights previously granted to the Aboriginal Peoples of Canada. By implication, Aboriginal rights and freedoms are still protected under the Canadian Constitution.

Furthermore, section 35 is specifically related to Aboriginal Peoples as it indicates in the heading of part II of the Canadian Constitution as follows:

- (a) The existing aboriginal and treaty rights of aboriginal people of Canada are hereby recognised and affirmed.¹⁷³⁴
- (b) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.¹⁷³⁵
- (c) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.¹⁷³⁶
- (d) Notwithstanding any other provision in any written law, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.¹⁷³⁷

The above sections are buttressed by the declaration made in section 52 of the Constitution Act, 1982 as the "Supreme law of Canada",¹⁷³⁸ thus giving recognition to Aboriginal rights as enshrined in section 35 of the Canadian Constitution Act, 1982. It is against this background that many cases have been decided by the Canadian Courts to address the rights of Aboriginal peoples in Canada referring to section 35 of the Canadian Constitution which advocates for the recognition, protection and promotion of indigenous peoples' rights. To this end, the Supreme Court has termed the protection of these rights "an important underlying constitutional value" and "a national commitment".¹⁷³⁹ Thus, the state is under an obligation to respect the pre-existing Aboriginal rights. Despite the constitutional recognition of Aboriginal rights and Canada's ratification of the UNDRIP, the Federal government of Canada is still adamant in providing absolute recognition and protection to the Aboriginal peoples of Canada both at local, national and international levels. However, in the landmark case of

¹⁷³⁴ Section 25(1) Constitution Act, 1982.

¹⁷³⁵ Section 35(2) Constitution Act, 1982.

¹⁷³⁶ Section 35(3).

¹⁷³⁷ Section 35(4).

¹⁷³⁸ Section 52 Constitution Act, 1982.

¹⁷³⁹ Mikkelsen *et al* *The Indigenous World* 2015 48-50.

Tsilhqot'in Nation v. British Columbia,¹⁷⁴⁰ the Supreme Court's decision has set a precedent for the recognition of Aboriginal title in Canada.

7.5.1.2 Canadian Fisheries Act, 1985

The main objective of the Fisheries Act was to regulate the management and control of fisheries, ensure the preservation and protection of fisheries as well as safeguard the protection of fish habitat to prevent pollution.¹⁷⁴¹ The Act grants exclusive rights to the Federal government over inland waters to oversee the protection, preservation and management of fisheries. To this end, the Federal government has the responsibility, not only to determine the quantity of fish harvested per person, but to monitor and control the type of equipment used in fish harvesting in some locations. These restrictions have generated controversy between the Aborigines and the government. The landmark case below throws more light on this issue.

In *Sparrow v the Queen*,¹⁷⁴² the dispute was over fishing rights for food in Canada. Mr Sparrow, a member of the Musqueam Indians in British Columbia, was charged with violating the rules of the band fishing license. The charges involved the use of a fishing drift net that was allegedly longer than that authorised by the band food fishing licence. Instead of 25-fathom in length, Mr Sparrow was caught using a 45-fathom net. During defence, Mr Sparrow agreed using a net that exceeded the limits of a band fishing license, but argued that he was merely exercising an existing aboriginal right to fish and that the restriction placed in the band licence regarding the seize violated section 35(1) of the Constitution Act, 1982.¹⁷⁴³ The Supreme Court of Canada reflected on the scope of section 35(1) which gave recognition and affirmation to aboriginal and treaty rights of aboriginal peoples of Canada, such as the right to fish for food, social and ceremonial purposes. Thus, according to the court, the rights recognised and affirmed in

¹⁷⁴⁰ *Tsilhqot'in Nation v. British Columbia* Case No. 34986, 2014 SCC 44, [2014] 2 SCR 257.

¹⁷⁴¹ See generally the *Fisheries Act* R.S.C., 1985, c. F-14 (1985).

¹⁷⁴² *Sparrow v the Queen* [1990] 1 S.C.R. 1075.

¹⁷⁴³ *Sparrow v the Queen* [1990] 1 S.C.R. 1075.

section 35 were incomplete; hence, it was left for the Crown to establish a legislation that interfered with aboriginal rights.

In interpreting section 35, the Court finally ruled that section 35 of the Constitution Act, 1982 only applied to rights that existed when the Constitution Act came into force, with the exclusion of those rights that were extinguished prior to the adoption of the Constitution.¹⁷⁴⁴ On appeal, the Supreme Court upheld the Aboriginal right to fish, food, cultural identity as indicated in Section 35 of the Constitution Act, 1982. It is essential that these rights, including the rights to conservation, be given preference. Since the judgment, the Sparrow case has remained a ground-breaking guarantee of the legal and constitutional protection of Aboriginal rights in Canada. It is the first case in Canadian history that has expressly defined and interpreted the meaning of Section 35 of the Constitution Act, 1982.

7.5.1.3 The Indian Act, 1876 Reviewed in 1951

This Act was enacted by Parliament in 1876 to control and manage the activities of Aboriginal peoples. The controversial nature of the Act has initiated conflicts between the Aborigines and the state. One of the contentious issues is the racial classification of Aborigines as “status Indians” and “non-status Indians”.¹⁷⁴⁵ In addition, the Act granted absolute rights to government over the management and control of Aboriginal cultures and identity thus destroying their political and cultural institutions.¹⁷⁴⁶ The intention was to integrate, protect and develop the Aborigines since they were considered “too backward” and “primitive” to manage their own affairs.¹⁷⁴⁷ Mainstreaming would give the Federal government as well

¹⁷⁴⁴ *Sparrow v the Queen* [1990] 1 S.C.R. 1075.

¹⁷⁴⁵ Coates 2008 http://fngovernanceorg/ncfng_research/coatespdf.

¹⁷⁴⁶ Coates 2008 http://fngovernanceorg/ncfng_research/coatespdf.

¹⁷⁴⁷ Tobias “Protection, Civilisation, Assimilation: An Outline History of Canada's Indian Policy” 148-150.

as civil servants comprehensive control over indigenous economic, social, political and cultural life.¹⁷⁴⁸

The Indian Act had several provisions that discriminated against Aboriginal peoples in all areas of life. Indigenous Canadians have described the Indian Act as a combination of Canadian colonialism and paternalism, a system inherited from the colonial masters.¹⁷⁴⁹ The Indian Act did not only outlaw the Potlatch (a luxurious ceremonial feast performed during the celebration of important events in their communities) but also abolished their traditional systems of governance.¹⁷⁵⁰ Eventually, by the late 19th and 20th Centuries, political leaders of the indigenous communities protested against discriminatory provisions in the Indian Act. Amongst others was the denunciation of anti-Potlatch and abolition of cultural practices, and enactment of laws that prevented Aboriginal peoples from access to justice.¹⁷⁵¹ They instead demanded for equal participation in the country's affairs and recognition of their rights as a distinct people.¹⁷⁵²

Unfortunately, this did not yield any good results as the government in turn adopted the White Paper on Indian Affairs in 1969. This White Paper failed to meet the demands of the indigenous peoples.¹⁷⁵³ The White Paper demanded for the complete and instant assimilation of the Aborigines into the Canadian society.¹⁷⁵⁴ It abolished the Indian Reserves and Status Indians and proposed the replacement of the collective rights of Status Indians into the mainstream of society.¹⁷⁵⁵ Given the continuous pressure from critics over the Indian Act, the Canadian government revised its policies to give recognition to and promote aboriginal rights, empower their governments and communities and establish a framework for political and administrative accountability.¹⁷⁵⁶ This development

¹⁷⁴⁸ Tobias "Protection, Civilisation, Assimilation: An Outline History of Canada's Indian Policy" 148-150.

¹⁷⁴⁹ Coates 2008 http://fngovernanceorg/ncfng_research/coatespdf.

¹⁷⁵⁰ Sayers date unknown <http://www.turtleisland.org/news/sayersfngpdf>.

¹⁷⁵¹ Cole and Chaikin *An Iron Hand upon the People* 214-220.

¹⁷⁵² Weaver *Making Canadian Indian Policy* 79-85.

¹⁷⁵³ *Canadian Government's 1969 White Paper* (1969).

¹⁷⁵⁴ *Canadian Government's 1969 White Paper* (1969).

¹⁷⁵⁵ Coates 2008 http://fngovernanceorg/ncfng_research/coatespdf.

¹⁷⁵⁶ Coates 2008 http://fngovernanceorg/ncfng_research/coatespdf.

eventually led to the adoption of the First Nations Governance Act aimed at controlling and governing aboriginal communities.

7.5.1.4 Inherent Right Policy 1995

The Inherent Right Policy¹⁷⁵⁷ was adopted following Aboriginal peoples' continuous outcry for self-government. Put differently, the IRP was enacted to facilitate Aboriginal peoples' processes towards self-government, particularly over their lands claims. Contrary to the Governance Act, the IRP was adopted following a negotiation and consultation process with the Aboriginal representatives, provincial and territorial governments. It provided for self-government as endorsed in section 35 of the Constitution of Canada. The significance of this policy is that it served as a framework for the recognition of Aboriginal rights to govern their own affairs and have complete control over their lives without interference.¹⁷⁵⁸ The IRP imposed an obligation on government to consult with Aboriginal representatives, provinces and territories on legislative measures governing Aboriginal societies, having regard to previously adopted treaties.¹⁷⁵⁹ The IRP has been heralded by the Aborigines of Canada as it ushered in the beginning of the recognition of a long-standing history of discrimination and marginalisation against them.

7.5.1.5 Gathering Strength: Canada's Aboriginal Action Plan, 1997

This 1997 Action plan formed the basis of the Royal Commission on reconciling Aboriginal and non-Aboriginal peoples through nation building and ensuring an efficient and accountable Aboriginal government.¹⁷⁶⁰ It was meant to strengthen the long-standing partnership between the sectors of the Canadian state. The main goal of this plan is to create fora for discussions between First Nations, governments and relevant stakeholders as instigated by the Crown-First Nation Gathering on January 24 2012, in collaboration with almost 170 local chiefs,

¹⁷⁵⁷ Inherent Right Policy hereinafter IRP.

¹⁷⁵⁸ Barros 2013 *Canadian Journal of Latin American and Caribbean Studies* 43-44.

¹⁷⁵⁹ Barros 2013 *Canadian Journal of Latin American and Caribbean Studies* 44.

¹⁷⁶⁰ Anon 1997 <http://www.hfca/downloads/gathering-strength.pdf>.

Governor General, Prime Minister and 12 Cabinet members.¹⁷⁶¹ An important lesson drawn from Canada is the constitutional recognition granted to her indigenous peoples, although government is still reluctant to grant them the special protection they deserve.

7.6 New Zealand

The indigenous peoples of New Zealand are referred to as the Māori, although they are sometimes called Tangata Whenua or Aotearoa peoples.¹⁷⁶² For the purposes of this study the term “Māori” is used throughout. They make up 15% of the entire population of 4.5 million people of which the majority (84.4%) live in urban areas.¹⁷⁶³ The Māori people inhabited most of the territories in New Zealand before the European settlers.¹⁷⁶⁴ The Māori population during this period maintained very close ties with the land, culture, language and traditions. The earliest European explorers in New Zealand met with hostility from the Māori population which resulted in the death of four Europeans in 1643; the next attempt was recorded after 127 years in 1769.¹⁷⁶⁵ The Māori’s major occupation is bird hunting, seal and shell-fish and represent an important source of survival with Te Reo Māori as the main language after English.¹⁷⁶⁶ Reeves and Zombori state that New Zealand’s history cannot be properly discussed without a good background knowledge of the Māori’s culture.¹⁷⁶⁷ This is reflected in their language as “Te Whenua ko te tangata, ta tangata ko te Whenua. Te moana ko te tangata, te tangata ko te moana”.^{1768, 1769}

The influx of Europeans and North Americans into New Zealand witnessed a rapid growth by the 18th century and facilitated the trading relationship between

¹⁷⁶¹ Barros 2013 *Canadian Journal of Latin American and Caribbean Studies* 44.

¹⁷⁶² Hill 2016 *Ethnopolitics* 144.

¹⁷⁶³ Mikkelsen *et al* *The Indigenous World* 2015 225.

¹⁷⁶⁴ Anon date unknown <http://www.nzhistory.net.nz/culture/history-of-new-zealand-1769-1914>.

¹⁷⁶⁵ Anon date unknown <http://www.nzhistory.net.nz/culture/history-of-new-zealand-1769-1914>.

¹⁷⁶⁶ Anon date unknown <http://history-nz.org/mori.html>.

¹⁷⁶⁷ Reeves and Zombori 2016 *Town Planning Review* 574.

¹⁷⁶⁸ Hill 2010 *American Society for Ethnohistory* 292.

¹⁷⁶⁹ Meaning “the land is man, man is the land: the sea is man, man is the sea”.

the “Hapū”, “Iwi” and the Europeans.¹⁷⁷⁰ However, while this activity improved the Māori’s trading and agricultural skills, they began losing huge tracts of land through purchase by the British colonialists.¹⁷⁷¹ To prevent any unrest and resistance, Māori tribes (35) signed a Declaration of Independence which appointed a British Resident to govern the Nu Tirene in 1835, while all chiefs, including heads of the Iwi tribes, were granted absolute authority over the newly established states.¹⁷⁷² Over four decades of colonisation, the Māori tribes became a marginalised population in New Zealand, with no rights to land and with the settler population focused on enriching their country with produce from New Zealand.¹⁷⁷³ This resulted in the outbreak of a series of tribal wars and diseases which caused a serious decline in the Māori population by the 19th century.¹⁷⁷⁴ According to Hill the “Maori were widely believed to be a “dying race”.¹⁷⁷⁵ This instigated the signing of the Treaty of Waitangi in 1840 with the intention to protect the health, land and rights of all Māori people.¹⁷⁷⁶ As a binding document signed between the Māori and the British Crown in 1840, the treaty recognises and protects everything that was previously owned by the Māori people before colonisation including the proper protection of their health.¹⁷⁷⁷ This treaty is discussed below in detail.

Over the years most provisions of the Treaty of Waitangi have been breached and a policy of assimilation emerged.¹⁷⁷⁸ This policy met with resistance from the Māori population as they insisted that they could tolerate assimilation only on grounds that Māori cultures, including social and political institutions, were respected.¹⁷⁷⁹ This struggle led to the outbreak of violence and consequently the

¹⁷⁷⁰ Anon date unknown <http://www.nzhistorynetnz/culture/history-of-new-zealand-1769-1914>.

¹⁷⁷¹ Bess 2011 *Marine Policy* 87.

¹⁷⁷² Bess 2011 *Marine Policy* 87.

¹⁷⁷³ Hill 2016 *Ethnopolitics* 146.

¹⁷⁷⁴ Hill 2016 *Ethnopolitics* 146.

¹⁷⁷⁵ Hill 2016 *Ethnopolitics* 146.

¹⁷⁷⁶ Bess 2011 *Marine Policy* 87.

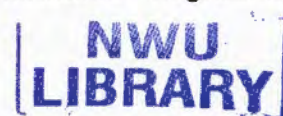
¹⁷⁷⁷ Bess 2011 *Marine Policy* 87-88.

¹⁷⁷⁸ Hill 2016 *Ethnohistory* 150; Anaya 2011 Report of the Special Rapporteur on the rights of indigenous peoples on the situation of Maori people in New Zealand 5.

¹⁷⁷⁹ Hill 2016 *Ethnopolitics* 151.

"Māori Renaissance".¹⁷⁸⁰ It is significant to note that through the Treaty of Waitangi, the Māori are guaranteed political representation in the New Zealand government through electoral processes, particularly in Parliament,¹⁷⁸¹ although related studies suggest that the reserved seats in Parliament aimed at appeasing the Māori's majority and domination.¹⁷⁸² It is also worth noting that there exists a Māori political party established in 2004 and 5 of the 20 seats in Parliament are held by members of this political party.¹⁷⁸³ Māori representatives in the government of New Zealand have greatly influenced decision-making processes in the country.¹⁷⁸⁴ In spite of that fact, previously the British law had discriminatory provisions that limited voting rights strictly to men with land titles. However, this provision has long been abolished to include women without titles.¹⁷⁸⁵ That notwithstanding, the Māori population still faces numerous socio-economic challenges. For instance, it is estimated that they are more vulnerable to high blood pressure, as 26% live on medication compared to the non-Māori population, abuse of alcohol and cigarettes is relatively higher than amongst non-Māori population.¹⁷⁸⁶ Low levels of unemployment, inequality, poverty, illiteracy, poor health care, obesity, high suicidal rates are common socio-economic challenges that the Māori community is faced with in New Zealand.¹⁷⁸⁷

The Māori people also encounter several environmental, societal and socio-cultural problems such as extreme poverty, inadequate housing as well as drug addiction.¹⁷⁸⁸ In addition, the effects of colonialism still live with the Māori community. They were evicted from traditional lands and natural resources, resulting in difficulty in accessing traditional food, increased migration,



¹⁷⁸⁰ Hill 2016 *Ethnopolitics* 149.

¹⁷⁸¹ Anaya 2011 Report of the Special Rapporteur on the rights of indigenous peoples on the situation of Maori people in New Zealand 6.

¹⁷⁸² Anon 2014 Sub_038_Supplementarypdf.

¹⁷⁸³ Anaya 2011 Report of the Special Rapporteur on the rights of indigenous peoples on the situation of Maori people in New Zealand 6

¹⁷⁸⁴ Anaya 2011 Report of the Special Rapporteur on the rights of indigenous peoples on the situation of Maori people in New Zealand 6

¹⁷⁸⁵ Anon 2014 Sub_038_Supplementarypdf.

¹⁷⁸⁶ Lucero *et al* 2014 *Advances in Preventive Medicine* 5.

¹⁷⁸⁷ Marriott and Sim 2014 *Working Papers in Public Finance* 7-15.

¹⁷⁸⁸ Habib, Densmore-James and Macfarlane 2013 *Preventing School Failure: Alternative ducation for Children and Youth* 172.

destruction of traditional languages and cultural values.¹⁷⁸⁹ According to the Māori people, language is a vital aspect of their culture and existence and must be respected, protected and promoted by the New Zealand government. This notion is replicated in the whakataukī (proverb) as follows:

Ko te reo te tuakiri o te tangata. Kā ngaro te reo, kā ngaro te iwi.^{1790, 1791}

Recent legislation enacted in the 19th Century prohibiting the use of Māori language and practice of Māori cultures has left negative impact on their identity as a distinct Māori group.¹⁷⁹²

7.6.1 Legislative framework recognising the rights of the Māori People of New Zealand

7.6.1.1 Constitution of New Zealand

Like most countries examined above, New Zealand is unique in that it does not have a written and codified document called “the Constitution”. Similar to the United Kingdom,¹⁷⁹³ New Zealand has inherited the same system of government, as well as adopted the “privileges”, “immunities” and “powers” enforced by the imperial parliament as of 1st January 1865 into the New Zealand Parliament.¹⁷⁹⁴ It is submitted that the former Westminster’s New Zealand Constitution Act of 1852¹⁷⁹⁵ established a General Assembly that restored peace, order and good governance for the colony of New Zealand thereby granting complete sovereignty to Parliament.¹⁷⁹⁶

¹⁷⁸⁹ Habib, Densmore-James and Macfarlane 2013 *Preventing School Failure: Alternative Education for Children and Youth* 172.

¹⁷⁹⁰ Habib, Densmore-James and Macfarlane 2013 *Preventing School Failure: Alternative Education for Children and Youth* 173.

¹⁷⁹¹ This is translated as: language is the identity of the people. If the language dies, so too does its people.

¹⁷⁹² Habib, Densmore-James and Macfarlane 2013 *Preventing School Failure: Alternative Education for Children and Youth* 173.

¹⁷⁹³ United Kingdom hereinafter UK.

¹⁷⁹⁴ Allan 1998 *Agenda: A Journal of Policy Analysis and Reform* 487.

¹⁷⁹⁵ *New Zealand's Constitution of 1852 with Amendments through 2014* (1852).

¹⁷⁹⁶ Allan 1998 *Agenda: A Journal of Policy Analysis and Reform* 487.

There had been a general criticism on the status of the New Zealand's Constitution and a proposed incorporation of the Bill of Rights into the New Zealand's Constitution that was eventually adopted in 1990.¹⁷⁹⁷ The New Zealand Bill of Rights Act¹⁷⁹⁸ has the status of an Act of Parliament and can be repealed by a simple majority in Parliament. The Bill of Rights Act protects and promotes civil and political rights, economic, social, cultural, property and environmental rights of all New Zealanders.¹⁷⁹⁹ It sets out fundamental rights and freedoms that must be respected by the New Zealand government. The Bill of Rights prohibits all forms of discrimination against marginalised groups based on certain grounds.¹⁸⁰⁰ Also, a special provision was included to protect the culture, religion and language of minority groups in New Zealand.¹⁸⁰¹ However, much still needs to be done to bring the Maori community to the same level as the rest of the dominant society.

7.6.1.2 Treaty of Waitangi 1840

The Treaty of Waitangi is globally known as the founding document that defined the relationship amongst the people of Aotearoa/New Zealand. It was an agreement signed on the 6 of February 1840 between the British Crown and about 540 Māori chiefs (rangatira). The aim of this Treaty was to protect and promote the property and rights of the Māori people, maintain peace as well as promote good governance between the Crown and the Māori people.¹⁸⁰² The Treaty is a significant document for the Māori particularly as the English version was translated into Māori language, thus easing their understanding of the content and enabling them to be part of the decision-making processes on matters that affect them directly. Article 1 of the Waitangi Treaty granted the Crown absolute right to develop laws and rules that would govern the state as well as establish a government in New Zealand. Article 2 on the other hand, gave

¹⁷⁹⁷ *New Zealand Bill of Rights Act* (1990).

¹⁷⁹⁸ *New Zealand Bill of Rights Act* hereinafter NZBRA.

¹⁷⁹⁹ Art 8-18 of the *New Zealand Bill of Rights Act* (1990).

¹⁸⁰⁰ Art 19 of the *New Zealand Bill of Rights Act* (1990).

¹⁸⁰¹ See Section 20 of the *New Zealand Bill of Rights Act* (1990).

¹⁸⁰² See Preamble of the Treaty of Waitangi 1840.

the Māori people exclusive authority and sovereignty over everything they owned including land, forest and fisheries. It equally gave them the opportunity to retain their cultures, languages and customs. Article 3 guarantees equal rights to everyone residing in New Zealand.

It is therefore believed that the Treaty of Waitangi has improved the socio-economic and cultural rights of the Māori people. Adopting Reeves and Zomboei's words, "the relationship that the indigenous Māori have with the British Crown through the Treaty of Waitangi, Te Tiriti Waitangi, forms the basis of Aotearoa /New Zealand".¹⁸⁰³ There were some controversies recorded with regards irregularities in the English and Māori versions of the Treaty, resulting in breaches of some provisions of the Treaty.¹⁸⁰⁴ Unfortunately, the English version is what is commonly implemented in the country, which permits the Crown to disregard Māori institutions and appropriate their lands.¹⁸⁰⁵

Despite the many challenges the Māori communities encounter as an indigenous group, it is worth noting that there are some good practices for other countries like Cameroon to adopt. For example, the Māori people have political representation in the government of New Zealand as well as in Parliament with special seats reserved for them.¹⁸⁰⁶ In addition, they can exercise their civic rights through voting during election processes. This activity is essential as it enables them to effectively be part of the decision-making processes on issues concerning their well-being.

Furthermore, section 20 of the NZBRA specifically grants legal recognition and protection to the cultures, religion and languages of minority groups in New Zealand. Added to the above, the Treaty of Waitangi protects and promotes the property and rights of the Māori people.¹⁸⁰⁷ Through this Treaty the Māori people

¹⁸⁰³ Reeves and Zombori 2016 *Town Planning Review* 574.

¹⁸⁰⁴ Tankersley ML 2004 <http://www.volcanorgnz/wp-content/uploads/2015/05/Treaty-of-Waitangi-and-Community-Developmentpdf>.

¹⁸⁰⁵ Tankersley ML 2004 <http://www.volcanorgnz/wp-content/uploads/2015/05/Treaty-of-Waitangi-and-Community-Developmentpdf>.

¹⁸⁰⁶ Anon 2014 Sub_038_Supplementarypdf.

¹⁸⁰⁷ Preamble to the Treaty of Waitangi of 1840.

were granted exclusive right and sovereignty over their land, forests and fisheries and could retain their cultures, languages and customs, causing a significant improvement in their political, social, economic and cultural conditions.

7.7 Botswana

For several decades, Botswana has had a well-structured democratic system compared to other African states, with the highest economic growth rate, following the discovery of diamonds in the Southern part of the country (Kalahari Desert).¹⁸⁰⁸ Botswana's good record of economic and political governance has earned the country the credit of having one of the best political governance systems with a stable economy in Africa after its independence in 1966.¹⁸⁰⁹ The great economic boom and its associated urbanisation has resulted in sustained environmental, social, and cultural changes from the poorest to one of the richest countries in the African continent.¹⁸¹⁰ Despite the above, income inequalities amongst different groups in the country remain prevalent.¹⁸¹¹ For instance, a significant proportion of the population, particularly the San communities, live in abject poverty, entirely below poverty line in relation to the mainstream society.¹⁸¹² It is estimated that 47% of the population live below the average poverty line, with over 97% of them residing in rural areas under dreadful conditions.¹⁸¹³ Botswana, like other African countries, has a good number of people who self-identify as indigenous peoples, practicing a nomadic way of life revolving around hunting and gathering.¹⁸¹⁴ Relative to the indigenous peoples worldwide, indigenous communities in Botswana are identified as the earliest inhabitants in the country and their "peoples, habits and manners" are different from those of the dominant society.¹⁸¹⁵ In other words, they retain the status of

¹⁸⁰⁸ Hitchcock, Johnson and Haney "Indigenous Women in Botswana: Changing Gender Roles in the Face of Dispossession and Modernisation" 166.

¹⁸⁰⁹ Mbaio and Komboni 2008 *Law, Democracy and Development* 49.

¹⁸¹⁰ Taylor "The Past and Future of San Land Rights in Botswana" 153; Kalabamu 2000 *Land Use Policy* 308.

¹⁸¹¹ Kalabamu 2000 *Land Use Policy* 308-309.

¹⁸¹² Hitchcock 2002 *Journal of Southern African Studies* 797-798.

¹⁸¹³ Kalabamu 2000 *Land Use Policy* 38.

¹⁸¹⁴ Nthomang 1999 *Journal of Social Development in Africa* 54.

¹⁸¹⁵ Chebanne 2010 *Journal of Multicultural Discourses* 88.

“first nations” or “aboriginal peoples” whose socio-economic, political and cultural rights are constantly threatened by the other segment of the population.¹⁸¹⁶ Nthomang outlined the socio-economic conditions of the indigenous people of Botswana as constituting to the following:

- a) low and scattered populations
- b) great distances from social services and facilities
- c) heavy dependence on government hand-outs
- d) under-development, and
- e) widespread relative poverty.¹⁸¹⁷

Equally relevant is that they are the earliest occupants to settle in the Southern region of the Kalahari Desert in Africa.¹⁸¹⁸

That notwithstanding, Botswana is amongst the many African countries that refuses to recognise the existence of indigenous peoples within its territory.¹⁸¹⁹ Government continues to sustain the view that all its population are indigenous in Botswana.¹⁸²⁰ However, those that self-identify as indigenous in Botswana constitute a distinct minority, totalling about 3.3% of the entire Botswana population.¹⁸²¹ Amongst them are the San (also known as the Basarwa) composed of 61,000 people.¹⁸²² Additionally, there are the Balala settled in the Southern part of the country and these number 1,700 people while the Nama represent the Khoekhoe-speaking peoples and make up a population of 2,100 people in Botswana.¹⁸²³ Indigenous communities in Botswana are commonly

¹⁸¹⁶ Hitchcock 2002 *Journal of Southern African Studies* 797; Saugestad *The Inconvenient Indigenous: Remote Area Development in Botswana* 29-56.

¹⁸¹⁷ Nthomang 1999 *Journal of Social Development in Africa* 56.

¹⁸¹⁸ Hitchcock *Kalahari Communities* 46.

¹⁸¹⁹ Hitchcock and Vinding *Indigenous Peoples' Rights in Southern Africa: An Introduction* 8.

¹⁸²⁰ Mikkelsen *et al The Indigenous World* 2015 446.

¹⁸²¹ Mikkelsen *et al The Indigenous World* 2015 446-447.

¹⁸²² Mikkelsen *et al The Indigenous World* 2015 446.

¹⁸²³ Mikkelsen *et al The Indigenous World* 2015 446.

referred to as the San, Basarwa or “Bushmen”; although the San reject the appellation “Bushmen” because of its negative connotation on their dignity as human-beings.¹⁸²⁴

Similar to several other indigenous communities worldwide, the San in Botswana consist of hunter-gatherers practising different cultures, representing small family units with diverse languages.¹⁸²⁵ Recently, most of them have become engaged in small-scale agro-pastoral activities, cattle-post workers and practise mixed economies in urban and rural areas.¹⁸²⁶ Other groups such as the San, Nama and Balala found in the Kalahari Desert region live in misery and represent the poorest communities in the country with severe socio-economic challenges.¹⁸²⁷ The San of Botswana have a historical attachment to land and natural resources such as berries, small animals and water essential for daily subsistence.¹⁸²⁸ A major feature of the San community is their collective lifestyle, usually residing in clans of twenty to fifty individuals. This practice is very common with the Ju’hoansi, Bugakhwe, Khwe-IlAni, Ts’ixa, #X’ao-Il’aen, Xóǀ, #Hoan, ‡Khomani, Naro, G/ui, G//ana, Tsasi, Deti, Shua, Tshwa, Dansi and /Xaise clans.¹⁸²⁹

The San practise a nomadic lifestyle in search of boreholes for their water supply. Equality and collectivity is an essential characteristic of the San community.¹⁸³⁰ This means that despite the lack of an organised legal system governing their community, the San have long lived in harmony and held everything they owned in community from generation to generation. Hence, the little they could afford was enough to satisfy the entire population, although women are the bread winners of these communities through their plant gathering skills.¹⁸³¹

¹⁸²⁴ Campbell 2004 *Ethnicities* 15.

¹⁸²⁵ Hays and Bieseke 2011 *The International Journal of Human Rights* 8

¹⁸²⁶ Mikkelsen *et al* *The Indigenous World* 2015 446.

¹⁸²⁷ Saugestad 2011 *The International Journal of Human Rights* 54.

¹⁸²⁸ Song 2008 *Comparative Sociology* 29.

¹⁸²⁹ Mikkelsen *et al* *The Indigenous World* 2015 446-447.

¹⁸³⁰ Song 2008 *Comparative Sociology* 32.

¹⁸³¹ Song 2008 *Comparative Sociology* 33-34

Things eventually changed during colonisation, as the San's way of life was considered backward and primitive by European colonisers.¹⁸³² The British subsequently introduced a system of indirect rule using local chiefs to have complete control over lands and natural resources.¹⁸³³ The British colonial powers partitioned the lands into "Native Reserves" and "Crown lands", excluding the San communities and subjecting them to mere tenants under imperial rule.¹⁸³⁴ In order to "civilise" the San, they were forced to adopt new lifestyles, contrary to their ancestral beliefs and cultural practices. This resulted in intense ethnic conflicts between the indigenous groups and colonial settlers.¹⁸³⁵ After independence in 1966, the post-colonial government of Botswana continued with the European system of administration by failing to design specific measures that could enhance the socio-economic situation of the San population.¹⁸³⁶ Apart from the above, the post-colonial government denied the San as a distinct group any legal recognition in the Constitution. They also witnessed widespread discrimination, seclusion, forced assimilation, dispossession, and no political representation in government affairs.¹⁸³⁷ As seen in *Kamanakao and Others v Attorney-General and Another*¹⁸³⁸ the applicants in this case are the Paramount Chief of Wayeyi village, including other Wayeyi community members, who have been active in the struggle for the promotion of Wayeyi culture and language as well as their freedom. The applicants in this case instituted a claim in the High Court of Botswana challenging section 2 of the Chieftainship Act¹⁸³⁹ (Cap 41:01) as it failed to grant recognition to their Paramount Chief. They maintain that these provisions contravene sections 3-15 of the Botswana Constitution which guarantees respect for the fundamental rights and freedoms of every person in

¹⁸³² Hitchcock, Sapignoli and Babchuk 2011 *The International Journal of Human Rights* 72.

¹⁸³³ Fearon and Laitin 2005 <https://webstanfordedu/group/ethnic/Random%20Narratives/BotswanaRN11pdf>.

¹⁸³⁴ Fearon and Laitin 2005 <https://webstanfordedu/group/ethnic/Random%20Narratives/BotswanaRN11pdf>.

¹⁸³⁵ Fearon and Laitin 2005 <https://webstanfordedu/group/ethnic/Random%20Narratives/BotswanaRN11pdf>.

¹⁸³⁶ Nthomang 1999 *Journal of Social Development in Africa* 53-54.

¹⁸³⁷ Taylor "The Past and Future of San Land Rights in Botswana" 157.

¹⁸³⁸ *Kamanakao v Attorney-General* 2002 (1) BLR 110 (HC).

¹⁸³⁹ Chieftainship Act hereinafter CA.

Botswana. To this effect, the applicants demand for recognition under section 2 of the CA and the Tribal Territories Act Cap 32:03, as they are discriminatory against their tribes in the current legislation.

The facts of the case concern the Wayeyi people (a tribe in Botswana) who reside in the North-West region of the country. The area that they occupy makes up a part of the Batawana Tribal Territory and governed by the Chief of Batawana. As a distinct group, they retain a separate ethnic language and culture from the rest of the society. This group of people has, for decades, been demanding for the formal recognition of their tribe, cultures, leaders and structures. This request has constantly been denied and ignored. In the midst of this frustration, members of the Wayeyi community decided to appoint and installed a Paramount Chief to rule and manage their affairs. Unfortunately, section 2 of the CA (Cap 41:01) definition of "tribe" and "chief" have expressly excluded the Wayeyi tribe and other ethnic groups. Thus, members of the Wayeyi community sought a claim demanding for the amendment of section 2 of the CA. The Court found in favour of the applicants, demanding for the amendment of section 2 of the CA, including other laws which discriminate against the Wayeyi and other tribes and preventing them for enjoying equal rights and protection as elucidated in section 3(a) of the Constitution.



Despite repeated efforts to redress the situation of indigenous peoples of Botswana, regrettably little success has been achieved in this regard. Similar to their predecessors, the Government of Botswana's main objective has been to suppress the San and exercise complete control over their lands and territories as was the case in the 19th Century.¹⁸⁴⁰ The San and other minority groups were excluded from the land distribution process as well as the Tribal Land Act of 1969.¹⁸⁴¹ The distribution was done as follows: 71% land became tribal land, 23% was named Crown land (now state land), while the remainder 6% was freehold land placed under the control of European colonisers.¹⁸⁴² Ultimately, in 1961

¹⁸⁴⁰ Taylor "The Past and Future of San Land Rights in Botswana" 157.

¹⁸⁴¹ Taylor "The Past and Future of San Land Rights in Botswana" 157.

¹⁸⁴² Taylor "The Past and Future of San Land Rights in Botswana" 157.

internal and external pressure, coupled with the winds of change in Africa, and the subsequent struggle for independence and the establishment of human rights instruments to safeguard the human rights and fundamental freedoms of everyone, there was a need for a new Constitution in 1966 aimed at governing the people of Botswana.¹⁸⁴³

Thus, in spite of its international recognition as the most stable and successful democratic and the least corrupt of countries in Africa and the world, one might be tempted to conclude that the country is at the bottom of the list when it comes to protecting the basic human rights and fundamental freedoms of its population.¹⁸⁴⁴ The Constitution offers no legal protection to socio-economic rights and these rights are not awarded the same protection as civil and political rights.¹⁸⁴⁵ It is submitted that Botswana government since independence has embarked on adopting laws and policies that discriminate against its indigenous peoples and other minority groups.¹⁸⁴⁶ For instance, in *Unity Dow v The Attorney General*,¹⁸⁴⁷ where the applicant, a Tswana woman married to a foreigner challenged the constitutionality of the Citizenship Act as being discriminatory against women married to foreigners. Mrs Dow invoked sections 3 and 4 of the Botswana's Citizenship Act which denied nationality and citizenship to children born and raised in Botswana on grounds that one of their parents (father in this case) is a foreigner. The Court held that Dow's children had a right to nationality and citizenship, and further demanded for the amendment of sections 3 and 4 of the Botswana's Citizenship Act.

In fact, the Constitution as the supreme law of the land has failed to grant legal and official recognition to this group of people. This explains why the San communities in Botswana continue to encounter problems in all domains of life ranging from political, social, economic and cultural spheres. For example, they

¹⁸⁴³ Hitchcock and Holme 2008 *Development and Change* 311.

¹⁸⁴⁴ Anon 2008 http://www.transparencyorg/research/cpi/cpi_2008 where Botswana was rated 36th out of 180 countries (5.8%) as the least corrupt country in the Africa.

¹⁸⁴⁵ Dinokopila 2013 *Journal of African Law* 113.

¹⁸⁴⁶ Dinokopila 2013 *Journal of African Law* 114.

¹⁸⁴⁷ *Unity Dow v The Attorney General* (1992) BLR 112.

record the lowest level of education in the country, irrespective of the fact that the country has a good record of having the best and most successful educational system in Africa, offering 10 years of compulsory education since independence.¹⁸⁴⁸ Indigenous people complain that the educational curricula does not consider their mother tongue and these schools and hostels are not accommodating; there are frequent reports of abuse by hostel staff, isolation, and stigmatisation.¹⁸⁴⁹ These factors increase drop-out rates for indigenous communities thereby reducing the number of educated indigenous peoples in Botswana.

In addition, despite the country's international, regional and domestic obligation in respecting the human rights of its minorities groups, as expressly articulated in section 3 of the Constitution, the actual implementation process reveals a bleak picture. Thus, in *Roy Sesana and Others v The Attorney General*,¹⁸⁵⁰ an application was filed by 242 San community members living in the Central Kalahari Game Reserve¹⁸⁵¹ who were forcefully evicted from their ancestral lands following government's policies of economic development and integrating the San communities into the mainstream society. The government in this case had earlier on demanded for the resettlement of the San community members who reside in the CKGR area to a new settlement, after a study conducted on their livelihood revealed that their living conditions were horrifying. This resulted in the re-location of over 2000 people in a new settlement. Those indigenes who refused to move to the new settlement were severely ill-treated by the government which immediately stopped supplying basic and essential social services to the indigenous people living in the CKGR, including water. They also sealed boreholes within the CKGR, thus preventing them from accessing water, a major source of life. The applicants subsequently brought a claim to the High Court of Botswana challenging the unlawfulness and unconstitutionality of the activities of the government and demanded for the immediate reinstatement of

¹⁸⁴⁸ Hays 2011 *The International Journal of Human Rights* 130.

¹⁸⁴⁹ Hays 2011 *The International Journal of Human Rights* 130.

¹⁸⁵⁰ *Roy Sesana v The Attorney General* 2002 (1) BLR 452 (HC).

¹⁸⁵¹ Central Kalahari Game Reserve hereinafter CKGR.

the social services, including the return of those forcefully dispossessed from the CKGR.

The High Court ruled in favour of the respondent by maintaining that the applicants' claim lacked substantial facts and failed to comply with the basic rules of Court, thus, the case was dismissed in the High Court. On appeal, the Court of Appeal demanded that the Botswana government reinstate the boreholes, ensure water supply, provide basic services to the people living in the CKGR as well as provide game licences for these people to access the Reserve. The prolonged CKGR case as it is well known raised international concern. However, despite the High Court's judgment, the government of Botswana is unwilling to comply, thus the San community in Botswana continue to face severe challenges after 14 years of the aforesaid Court's judgement. Some of the challenges they encounter include denial of access into the reserves by former residents, most often their food and water is repossessed, denial of accessing medical services, particularly the distribution of antiretroviral drugs for HIV infected patients in the reserves, including brutal attacks at the reserve gates.¹⁸⁵² To date, the government is unwilling to permit previously displaced residents into the reserve, except the approved 243 applicants in the first CKGR case.¹⁸⁵³ The same situation was demonstrated in the case of *Unity Dow v The Attorney General*,¹⁸⁵⁴ where the Court held that Dow's children had a right to nationality and citizenship and further demanded for the amendment of sections 3 and 4 of the Botswana's Citizenship Act.

It is worth mentioning that during the 2014 national elections in Botswana, the San community in the CKGR and Ghanzi mobilised and voted for the opposition party Umbrella of Democratic Change.¹⁸⁵⁵ Through this defiant act of the San community, one member of the San community, Jumanda Gakelebene, was

¹⁸⁵² Mikkelsen *et al* *The Indigenous World* 2015 450.

¹⁸⁵³ Mikkelsen *et al* *The Indigenous World* 2015 450.

¹⁸⁵⁴ *Unity Dow v The Attorney General* (1992) BLR 112.

¹⁸⁵⁵ Umbrella of Democratic Change hereinafter UDC.

voted a district councillor for the New Xade community.¹⁸⁵⁶ Although, this seems a good beginning for the San community members of the Ghanzi District, no attention is given to indigenous issues in Botswana, especially after President Ian Khama's State of the Nation Address on 14th of November 2014 to Parliament failed to address and acknowledge indigenous peoples and minority groups.¹⁸⁵⁷ Unfortunately, their situation has been worsened by the recent hunting ban restrictions, although the ban excluded private lands, San communities members are constantly abused when caught hunting on these areas.¹⁸⁵⁸

7.7.1 *Legislative framework recognising the rights of San in Botswana*

7.7.1.1 The Constitution of Botswana

As earlier mentioned in para 7.6 above, the Botswana government holds that no specific group exists as indigenous, thus, no constitutional protection is granted to them. However, sections 3-15 of the Constitution provide for the protection and promotion of the fundamental rights and freedoms of all its population.¹⁸⁵⁹ In spite of this, the San community are still not granted any constitutional protection by the government of Botswana. Nyati-Ramahobo remarks that the Constitution only favours the dominant Tswana-speaking population.¹⁸⁶⁰ More importantly is the fact that section 15(3) prohibits different treatment to different people on grounds of race, tribe, origin, political opinion, creed or colour. This provision makes specific mention of persons with disabilities. On the contrary, no mention is made with regards to the recognition and protection of indigenous peoples' rights in Botswana.¹⁸⁶¹ This was the position in the case of *Roy Sesana and Others v The Attorney General*.¹⁸⁶²

¹⁸⁵⁶ Mikkelsen *et al The Indigenous World* 2015 447.

¹⁸⁵⁷ Mikkelsen *et al The Indigenous World* 2015 448.

¹⁸⁵⁸ Mikkelsen *et al The Indigenous World* 2015 448.

¹⁸⁵⁹ Constitution of Botswana 30 September 1966.

¹⁸⁶⁰ Nyati-Ramahobo 2008 <http://www.refworld.org/pdfid/496dc0c82pdf>.

¹⁸⁶¹ Matlho 2012 *The Protection and Promotion of the Rights of Indigenous People in Africa: A Case Study of the Basarwa in Botswana* 2-3.

¹⁸⁶² *Roy Sesana and Others v The Attorney General* 2002 (1) BLR 452 (HC).

In addition, their rights to land, natural resources and human dignity are violated by the state and other segments of the national population.¹⁸⁶³ Section 3 of the Botswana Constitution upholds the fundamental rights and freedoms of all its population, thus implying that the government is under obligation not to discriminate against any segment of the population on grounds outlined in section 3 and 15 of the Botswana Constitution. Section 3 reads as follows:

Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely:-

- a) life, liberty, security of the person and the protection of the law;
- b) freedom of conscience, of expression and of assembly and association; and
- c) protection for the privacy of his home and other property and from deprivation of property without compensation, the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.¹⁸⁶⁴

Additionally, Section 8 prohibits the arbitrary deprivation of property. Section 8(1) further states that no property of any description shall be compulsorily taken possession of, and no interest in any right over property of any description shall be compulsorily acquired without compensation. Section 8(1)(a)(i) also states that the acquisition might only be necessary or expedient, in the interest of defence, public safety, public order, public health or for development purposes specifically that which will benefit the community or a provision ordered by law. However, the Botswana government is currently contravening these sections of

¹⁸⁶³ Hitchcock 2002 *Journal of Southern African Studies* 797.

¹⁸⁶⁴ See section 3 of the Constitution of Botswana.

the Constitution, Acts, national legislation as well as international instruments which they are signatory to. As illustrated in *Kamanakao and Others v Attorney-General and Another*,¹⁸⁶⁵ the Court requested for the amendment of section 2 of the CA (Cap 41:01) to provide equal treatment to the Wayeyi and other tribes that have been discriminated by the CA and other laws. This demonstrates that any law enacted in Botswana must be in accordance with sections 3-15 of the Constitution of Botswana.

Furthermore, section 14 of the Constitution provides for protection of freedom of movement. This portion of the Constitution further suggests that no person should be deprived of their right to freely move and reside in any part of the country, right to enter Botswana and immunity from expulsion from the country. However, the government of Botswana continues to undermine the rights of the San people and this has caused them to suffer from repeated forced evictions from their natural habitats.¹⁸⁶⁶ An example is the landmark case of *Roy Sesana and Others v the Attorney General* discussed above.¹⁸⁶⁷

Given that Botswana voted in support of UNDRIP, signed and ratified CEDAW, CRC, CERD but has failed to ratify ILO Convention No. 169, it is inconsistent that the Botswana government is still hesitant to adhere to its international obligations of not domesticating these treaties. As a result, the Botswana government is not only violating its domestic laws, but acting in contravention to international standards. This is due to the absence of specific laws that address indigenous issues in the country as well as the government's failure to make provisions for indigenous peoples in the country's Constitution. Most importantly, after the Court's judgment in 2006 over the Roy Sesana case, the government of Botswana is still unwilling to conform with the Court's verdicts. This has prompted

¹⁸⁶⁵ *Kamanakao v Attorney-General* 2002 (1) BLR 110 (HC).

¹⁸⁶⁶ These evictions have taken place in three shifts namely: 1997, 2002 and 2005 respectively.

¹⁸⁶⁷ *Roy Sesana v The Attorney General* 2002 (1) BLR 452 (HC).

scholars to conclude that Botswana, the so-called Africa's success story is not protecting the rights of its minority and indigenous groups.¹⁸⁶⁸

7.7.1.2 Tribal Land Act, 1968 and enforced in 1970

The Tribal Land Act¹⁸⁶⁹ enacted in 1968 shortly after Botswana's independence was not only aimed at resolving disputes over land rights, it was also aiming at facilitating economic development, empowering citizens and increasing job opportunities in the rural areas. To ensure the effective functioning of the Act, Land Boards were established to regulate, allocate and control the way land is being used and manage in Botswana. It should be noted that from time of inception the TLA have been amended 26 times. Despite that the needs of San of Botswana are still to be addressed.

7.7.1.3 Tribal Grazing Lands Policy of 1975

Tribal Grazing Lands Policy¹⁸⁷⁰ was enacted in 1975, when the government of Botswana saw the need for a land reform scheme and livestock programmes. The main objective of this policy was to, (a) it seeks to promote active participation in the modern industry as well as prevent further degradation and over grazing (b) reduce income disparities between the rich and the poor as well as expedite the commercialisation and growth of the livestock industry.¹⁸⁷¹ To this end, grazing land was classified into three groups namely: commercial, communal and reserved lands.¹⁸⁷² To this effect all tribal land was to be rented to tenants on long-term basis.

Even though the government's White Paper of 1975, recommended the need to regulate the issue of land for indigenous peoples, however, the San people still have not benefited from the land tenure reforms, apart from the well-known

¹⁸⁶⁸ Mbao and Komboni 2008 *Law, Democracy and Development* 61.

¹⁸⁶⁹ Tribal Land Act hereinafter TLA.

¹⁸⁷⁰ Tribal Grazing Lands Policy hereinafter TGLP.

¹⁸⁷¹ Hitchcock and Holm 2008 *Development and Change* 162.

¹⁸⁷² National Policy on Tribal Grazing Land, (1975) Government Paper No. 1 of 1975 Gaborone, Botswana: Government Printer 6-7.

“Reserved Areas”.¹⁸⁷³ It worth noting that after the zoning process, no area was mapped as reserved land, simply because the San had long been evicted from the ranches created under the TGLP without any form of financial or alternative land compensation.¹⁸⁷⁴ To date, the San communities continue to suffer from the effects of dispossession. According to Minority Rights Group International, the consequences are glaring in the high rate of unemployment, alcohol and drug abuse and exposure to HIV and other related infections diseases.¹⁸⁷⁵

A lesson to learn from Botswana is that, despite the lack of constitutional protection granted to indigenous communities in Botswana, it is submitted that the San in the CKGR can exercise their voting rights. They participate in the 2014 national elections, which resulted to the nomination of a San community member as District Councillor representing the New Xade community in the Ghanzi District.¹⁸⁷⁶

Another best practice for Cameroon and other countries with indigenous peoples is that, despite the lack of official recognition, the San have through the Court of Appeal won a landmark case that secured their fundamental rights and freedoms. Through this case their voices have been heard at the international level and the world is able to understand the current situation of the San communities in Botswana, unlike Cameroon where there has not been any decided case, despite the dreadful circumstances under which indigenous peoples live, including the recurrent violation of their human rights and fundamental freedoms.

7.8 South Africa

The discourse of indigenous peoples also form part of the rich and dynamic history of South Africa. Like many countries where indigenous peoples are found, the existence of indigenous communities of South Africa have since been

¹⁸⁷³ Anon 2008 <http://www.refworld.org/docid/49749d4e3c.html>.

¹⁸⁷⁴ Hitchcock and Holme 2008 *Development and Change* 163.

¹⁸⁷⁵ Anon 2008 <http://www.refworld.org/docid/49749d4e3c.html>.

¹⁸⁷⁶ Mikkelsen *et al* *The Indigenous World* 2015 448.

acknowledged during the close of apartheid (1994), and have been categorised by scholars as “vulnerable marginalised population” or “Indigenous First Nations” (San and Khoikhoi).¹⁸⁷⁷ The 2011 population census of South Africa revealed that the country’s population was 51.8 million people,¹⁸⁷⁸ included are the indigenous community consisting 1% of the total population.¹⁸⁷⁹ Although no official data exists on indigenous peoples of South Africa, some sources disclose that the San number 7,500 peoples, while the Khoikhoi and Griqua count 396, 000 people in South Africa.¹⁸⁸⁰ The San communities of South Africa comprised of the ǀKhomani San, Khwe and !Xun residing around the Kalahari and Kimberly areas, however, it is submitted that some 500 new San groups have been identified living in small families outside KwaZulu-Natal.¹⁸⁸¹ They are physically different from other San groups and are often referred to as the “Abatwa” or “small people” a name considered humiliating to indigenous communities in South Africa.¹⁸⁸² In addition, the Khoikhoi group consisting of the Nama-speaking people, Griqua and Koranna are found in Northern Cape, Western Cape, Eastern Cape, Free State and KwaZulu-Natal Provinces.¹⁸⁸³

Similar to the San communities, these groups of people also live in small groups and practice a socio-economic and cultural lifestyle as farm labourers.¹⁸⁸⁴ Land and natural resources are fundamental to their cultural identity and serves as the only source of subsistence.¹⁸⁸⁵ Hunting and gathering are their main activities, although scarcity in land including government strict policies on hunting rights, the San and Khoi communities have turned to alternative subsistence economic activities.¹⁸⁸⁶

¹⁸⁷⁷ Sapi gnoli and Hitchcock 2013 *The Round Table* 357.

¹⁸⁷⁸ Anon 2011 Census 201110.

¹⁸⁷⁹ Mikkelsen *et al* *The Indigenous World* 2015 454.

¹⁸⁸⁰ Mikkelsen *et al* *The Indigenous World* 2015 454.

¹⁸⁸¹ Chennells and Du Toit “The Rights of Indigenous Peoples in South Africa” 110-111.

¹⁸⁸² Mikkelsen *et al* *The Indigenous World* 2015 98-99.

¹⁸⁸³ Mikkelsen *et al* *The Indigenous World* 2015 454.

¹⁸⁸⁴ Mikkelsen *et al* *The Indigenous World* 2015 454.

¹⁸⁸⁵ Griffin “Indigenous Peoples in Rangelands” 31.

¹⁸⁸⁶ ILO and ACHPR *South Africa: Constitutional, Legislative and Administrative Provisions* 4.

The Constitution of South Africa, like other African Constitutions does not extend official recognition to the Khoe-san and "First Nation people".¹⁸⁸⁷ This controversy has generated lots of conflicts between the groups that self-identify as indigenous peoples and the government of South Africa, especially as the apartheid government classified the San and Khoi groups as "coloured".¹⁸⁸⁸ The San and Khoi continue to stress that they are not "coloured" and must be identified as indigenous communities or "First Nations peoples" with special rights.¹⁸⁸⁹ However, persistent struggles from the Khoe-San communities over the full recognition of their traditional leaders including land rights in the South African legislation, resulted to the adopted of a memorandum in 2004 with the intention of developing an official policy that aim at recognising "vulnerable and indigenous communities".¹⁸⁹⁰ Despite the above, indigenous peoples still do not have official recognition in South Africa.¹⁸⁹¹ Indigenous communities in South Africa also face some challenges in the area of social, economic and cultural domains. For instance, inequality, discrimination, loss of language and cultural identity, frequent dispossession from ancestral lands and natural resources following racially discriminatory laws during the period of apartheid.¹⁸⁹² These problems are linked to the historic injustices that existed in the apartheid era.

It is worth mentioning that the South African government has made significant progress as far the protection of indigenous peoples' rights are concerned including legislative, policy and judicial domains. The country is viewed as having good practices for other countries to copy.

¹⁸⁸⁷ Hitchcock and Vinding "Indigenous Peoples' Rights in Southern Africa: An Introduction" 8; Sapiñoli and Hitchcock 2013 *The Round Table* 359.

¹⁸⁸⁸ Chennells and Du Toit "The Rights of Indigenous Peoples in South Africa" 100.

¹⁸⁸⁹ Chennells and Du Toit "The Rights of Indigenous Peoples in South Africa" 100.

¹⁸⁹⁰ Sapiñoli and Hitchcock 2013 *The Round Table* 359.

¹⁸⁹¹ Hitchcock and Vinding "Indigenous Peoples' Rights in Southern Africa: An Introduction" 8.

¹⁸⁹² ILO and ACHPR *South Africa: Constitutional, Legislative and Administrative Provisions* 4-15.

7.8.1 Legislative recognition of the rights of indigenous peoples in South Africa

7.8.1.1 The Constitution of South Africa

After the apartheid regime, the new government of South Africa in 1994 enacted legislative measures that would help to correct the injustices of the past. Thus, the Interim Constitution of 1994 was adopted.¹⁸⁹³ The new dispensation ushered significant changes to indigenous peoples' lives in that it granted recognition to minority and indigenous peoples including the historically disadvantaged groups during the apartheid regime.¹⁸⁹⁴ The focus was to legally recognise the culture of the San and Khoi communities to enable them proclaim their identity. The reassurance was proclaimed by the Late President Nelson Mandela during the Khoisan Identities and Cultural Heritage Conference in which he stated that:

...by challenging current perceptions and enriching our understanding of Khoisan cultural heritage, this Conference will contribute to the renewal of our nation, our religion and our continent.¹⁸⁹⁵

The Conference amongst others was aimed at promoting the cultural identity of the Khoisan and other indigenous communities in South Africa. In addition, Iseke and Ndimande commented that indigenous languages in South Africa are marginalised and threatened, they argue that effects of colonisation still persist in present day democratic South Africa.¹⁸⁹⁶ For example, the educational system in South Africa does not recognise the Khoi-San languages as compared to other native languages, thus, discriminating against indigenous children.¹⁸⁹⁷ Even though the "Equality Clause" in the Constitution does not specifically relate to indigenous peoples, however, some provisions can be interpreted to give recognition to indigenous peoples' rights. For instance, Section 9(2) provides for the full and equal enjoyment of all rights and freedoms. This provision further

¹⁸⁹³ The Interim Constitution was adopted in 1994. It was replaced by the Constitution of the Republic of South Africa, 1996, which came into force on 27 April 1996.

¹⁸⁹⁴ ILO and ACHPR *South Africa: Constitutional, Legislative and Administrative Provisions* 4-15.

¹⁸⁹⁵ Chennells and Du Toit "The Rights of Indigenous Peoples in South Africa" 100.

¹⁸⁹⁶ Iseke and Ndimande 2014 *International Multilingual Research Journal* 144.

¹⁸⁹⁷ Iseke and Ndimande 2014 *International Multilingual Research Journal* 144.

provides that for equality to be achieved, legislative and other measures must be designed to protect and promote persons or category of persons, disadvantaged by unfair discrimination.¹⁸⁹⁸ The state and private individuals are therefore under an obligation to refrain from policies and practices that discriminate directly or indirectly against its population (indigenous peoples inclusive) on the following grounds; race, gender, sex, ethnic or social origin, religion, culture, belief, language etc.¹⁸⁹⁹ Given that indigenous peoples are amongst those category of peoples who had suffered historically from past discrimination, this provision of the Constitution thus applies to them. This implies that although this provision does not specifically apply to indigenous peoples, they can seek remedies in cases of violation of their rights on one or more grounds listed above.

Furthermore, section 10 of the Constitution on human dignity is also essential to indigenous peoples. The provision states that “everyone has inherent dignity and the right to have their dignity respected and protected”. The phrase “everyone” when interpreted also extend to indigenous communities; hence their rights as human beings must be respected and promoted by both the state and private individuals. Thus, in the event of an alleged violation of their right to human dignity, indigenous peoples can have a remedy under section 10 of the South African Constitution.



However, it is worth noting that a few provisions in the Constitution that directly address indigenous peoples' rights have been emphasised below. For instance, section 6(5)(ii) of the Constitution makes provision for the recognition of indigenous peoples' languages. To promote indigenous peoples rights to languages the Constitution has established a Pan South African Language Board.¹⁹⁰⁰ The main objective of the Language Board is to ensure that the state implement policies that facilitate and promote the development and use of the Khoi, Nama and San languages.¹⁹⁰¹ This provision obliges the state to implement

¹⁸⁹⁸ Section 9(2) of the Constitution of the Republic of South Africa, 1996.

¹⁸⁹⁹ Section 9(3)(4) of the Constitution of the Republic of South Africa, 1996.

¹⁹⁰⁰ Section 6(5) of the Constitution of the Republic of South Africa, 1996.

¹⁹⁰¹ Section 6(5) (a) (ii) of the Constitution, Act 108 1996.

policies that advance the use of indigenous languages in all areas of life.¹⁹⁰² Thus, indigenous peoples in South Africa can through this provisions have remedy if their right to language is been violated.

However, it worth noting that even though, chapter 12 of the same Constitution makes provision for the recognition and role of traditional leaders, no mention is made of indigenous traditional leaders. To this end, continuous pressure from indigenous communities has led to the final adoption of the Traditional Leadership Bill of 2015.¹⁹⁰³ The significance of this Bill is that it aim at recognising the Khoi and San traditional leaders, their communities as well as the rights of the Khoi and San population. It further defines the specific roles and functions of the Khoi and San traditional leaders and the abolition of separate houses of traditional leadership that had existed between the Khoisan traditional leaders and other traditional leaders of the wider society. This means that statutory recognised traditional Khoisan leaders have been merged into the present houses of traditional leadership in South Africa.¹⁹⁰⁴

Additionally, the National Khoi-San Council and the Khoi-San Legacy Project established in 2000 under the National Department of Arts and Culture¹⁹⁰⁵ are all attempts at improving indigenous peoples' well-being, although no statutory recognition has been granted to the council and no achievements has been recorded from the DAC.¹⁹⁰⁶

However, the government is concerned about granting the many rights demanded by indigenous peoples, particularly that of declaring them as "First Nations" for fear of secession. The Deputy Minister Obed Bapela during his address to MPs, just few hours before the official public hearing on the Traditional and Khoi-San Leadership Bill, cautioned the National Assembly's portfolio committee on

¹⁹⁰² Section 6(2) of the Constitution, Act 108 1996.

¹⁹⁰³ See *Traditional and Khoi-San Leadership Bill* (2015).

¹⁹⁰⁴ Makinana 2016 *City Press* 1, 23.

¹⁹⁰⁵ National Department of Arts and Culture hereinafter DAC.

¹⁹⁰⁶ Sapignoli and Hitchcock 2013 *The Round Table* 359.

Cooperative Governance and Traditional Affairs specifically about adhering to the many demands made by the Khoisan people. He states as follows:

Let's not go into the temptation of giving them the first nation status. If we go that route, its unsustainable...becuase they would then want their own government within the government system that we have.¹⁹⁰⁷

He argued further that the UN definition of first nation is more relevant in Latin America and Canada where indigenous peoples were completely dispossessed of their lands to strangers, he stated that in South Africa the Khoisans and other indigenous groups in Africa are still in possession of their land.¹⁹⁰⁸ To this regard, the issue of first nation does not apply in South Africa "because we do not know who arrived at which point, when and where, and that history is not easy to trace".¹⁹⁰⁹ In support, Charles Nwaila, Director General for traditional affairs added that the idea of first-nations as decided at the UN imposes specific rights, including the right to their own government, schools, economic systems and structure.¹⁹¹⁰

7.8.1.2 Restitution of Land Act, 1994

The Restitution of Land Act¹⁹¹¹ was enacted to assist communities and individuals forcibly dispossessed of their lands during the apartheid regime to regain access and control over their lands. In this regard, a Commission and a Land Claims Court were established to facilitate this process.¹⁹¹² The Act stipulated a cut of date for claims as of 31 December 1998, specifically to those whose lands were forcibly appropriated after 19 June 1913.¹⁹¹³ Concerns were raised as to those whose lands were appropriated prior to 1913.¹⁹¹⁴ This led to the Amendment Bill

¹⁹⁰⁷ Makinana 2016 *City Press* 1.

¹⁹⁰⁸ Makinana 2016 *City Press* 23.

¹⁹⁰⁹ Makinana 2016 *City Press* 23.

¹⁹¹⁰ Makinana 2016 *City Press* 8.

¹⁹¹¹ *Restitution of Land Rights Act, 22 of 1994* (1994) as amended.

¹⁹¹² See para 1 of the *Restitution of Land Rights Act, 22 of 1994* (1994).

¹⁹¹³ See para 3 of the *Restitution of Land Rights Act, 22 of 1994* (1994). See specifically Government Gazette Republic of South Africa vol. 575, Pretoria 23 May 2013, No. 36477 in Section 2(e) of the Restitution of Land Rights Amendment Bill.

¹⁹¹⁴ Mikkelsen *et al The Indigenous World* 2015 456.

of 2013 enacted and enforced by National Assembly on June 2014.¹⁹¹⁵ It is also referred to as the Restitution of Land Rights Amendment Act, 2014.¹⁹¹⁶

The amendment Bill made some adjustments by establishing new cut-off dates for introducing claims for the restitution of land in South Africa. For example, a five year period was added to the initial dates, thus, the official date set for the restitution of new claims was July 1 2014.¹⁹¹⁷ This amendment Act led to a significant development to the San and Khoi communities as it urges government to investigate indigenous historic land claims that occurred before 1913.¹⁹¹⁸ The period for submission of claims was extended to June 2019 and restitution rights were re-opened to accommodate late comers, especially, those who lost their lands after 1913.¹⁹¹⁹ To prevent irregularities, government has promised to conduct serious investigations with regards to the historical land dispossession of the Khoi and San populations.¹⁹²⁰

To this effect, a working group consisting of 900 Khoi and San representatives was established to assist government develop a framework to safeguard the restitution process.¹⁹²¹ It is worth mentioning that the legislation on land restitution has benefited the Khoi and San in many ways. The !Khomani San communities have reclaimed 65,000 hectares of land lost during apartheid between early 2000 and August 2002.¹⁹²² In addition to the successful land claims, the !Khomani community have also managed to secure full rights to use, exercise cultural, symbolic and commercial rights within the Kgalagadi Transfrontier Park.^{1923, 1924} In addition, the San communities were granted access to their ancestral lands, in

¹⁹¹⁵ *Restitution of Land Rights Amendment Bill* (2013) (As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 36826 of 13 September 2013) (The English text is the official text of the Bill).

¹⁹¹⁶ Mikkelsen *et al* *The Indigenous World* 2015 456.

¹⁹¹⁷ Mikkelsen *et al* *The Indigenous World* 2015 456.

¹⁹¹⁸ Mikkelsen *et al* *The Indigenous World* 2015 456-457.

¹⁹¹⁹ Mikkelsen *et al* *The Indigenous World* 2015 456.

¹⁹²⁰ Mikkelsen *et al* *The Indigenous World* 2015 456.

¹⁹²¹ Mikkelsen *et al* *The Indigenous World* 2015 457-458.

¹⁹²² Chennells and Du Toit "The Rights of Indigenous Peoples in South Africa" 104.

¹⁹²³ This agreement was signed between the government of South Africa (Minister of Land Affairs) and the !Khomani under the name !Ae!Hai Kalahari Heritage Park Agreement.

¹⁹²⁴ Kgalagadi Transfrontier Park hereinafter KTP.

the same vein, six titled deeds were approved to the community property association over six Kalahari farms.¹⁹²⁵ The Griquas communities in the Free State have equally benefited from the restitution programmes reclaiming land and compensations.¹⁹²⁶ An example is the case of *Alexkor Ltd and Another v Richtersveld Community and Others*,¹⁹²⁷ where the Richtersveld community members (plaintiffs) instituted a law suit before the Land Claims Court alleging the forceful dispossession from their ancestral lands including the exploitation of its resources, following the discovery of diamond. The government of South Africa in this case had granted mining rights to Alexkor Ltd, a state-owned diamond and mining company to exploit the newly discovered diamond around the Western Coast of Northern Cape in Richtersveld. The plaintiffs therefore filed for the restitution of this piece of land in terms of the Restitution of Land Act, the case was however dismissed on grounds of separation of issues. The plaintiffs referred the matter to the Supreme Court of Appeal, where the supreme Court held in favour of the plaintiffs maintaining that members of the Richtersveld community have a customary law interest over the said land including the mineral resources therein. As a result, the Supreme Court of Appeal ordered the state to make compensations regarding environmental damages done to the land due to the exploitation. This requires the state to restore the land in the same position as it was prior to exploitation.

Even though, the Restitution of Land Act has assisted some indigenous peoples of South Africa to regain their lands, the San communities have raised concerns with government as to their inability to manage the reclaimed lands. In response to this concern, The South African government have intervened by placing the supervision and control of this land under the Department of Land Affairs, thus,

¹⁹²⁵ Mikkelsen *et al* *The Indigenous World* 2015 456-457.

¹⁹²⁶ Chennells and Du Toit "The Rights of Indigenous Peoples in South Africa" 104-108.

¹⁹²⁷ *Alexkor Ltd and Another v Richtersveld Community and Others* (CCT19/03) [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003).

enabling the ǀKhomani San leaders to manage these lands through the benign curatorship of the Department within unspecified period.¹⁹²⁸

It is worth mentioning that the South African government has made significant progress as far the protection and recognition of indigenous peoples' rights are concerned including legislative, policy and judicial domains. The country is viewed as having best practices for other countries to copy. For instance, the enactment of a Traditional Leadership Bill that grants recognition to the Khoi and San communities and their Traditional Leaders. Also, the constitutional recognition and promotion of the Khoi and San languages as well as the Restitution of Land Act which has reclaimed land that was previously loss due to historically injustices.

7.9 Similarities and differences regarding policies in comparable jurisdictions

7.9.1 Similarities

Indigenous peoples in the U.S.A Canada, Australia, New Zealand, Cameroon, Botswana and South Africa face the same challenges, albeit in different contexts. There is a controversy in these jurisdictions with regards to their existence and demand for special rights and protection. This controversy has for over the years remained problematic and lies at the heart of the widespread systemic marginalisation of indigenous communities around the globe.

Another major similarity is that all these countries have gone through colonial epochs, under which indigenous communities have suffered historical injustices ranging from systemic discrimination, exclusion, stigmatisation to segregation. The post-colonial governments have all inherited the colonial systems of governance by continuously neglecting and undermining indigenous communities by forcefully assimilating them into the mainstream of society.

¹⁹²⁸ Mikkelsen *et al* *The Indigenous World* 2015 457; Chennells and Du Toit "The Rights of Indigenous Peoples in South Africa" 104-108.

Further, indigenous peoples in all these countries have a common claim, struggle for the legal recognition of their rights in the national Constitutions, including their rights to land and natural resources. These group of people have been forcefully evicted, displaced, dispossessed and deprived of the right to use, own, manage and control their ancestral lands and the resources therein. Land and resources within indigenous territories are symbolic to their identity and livelihood, since they depend on them for survival. It is a sign of spirituality, where they perform traditional rituals and other cultural activities. Thus, depriving them of this ancestral land is threatening their continued existence as a distinct group.

Also in all these countries, indigenous cultures are endangered and almost moving towards extinction. Government policies of granting licences to MNCs and logging companies to exploit resources on indigenous territories have tremendously destroyed their natural habitats, burial sites and other places used to perform traditional rituals. Their cultures are disappearing as they have been forcefully relocated to urban centres where they tend to adopt a sedentary lifestyle, thus, they can no longer access their natural habitats which reflect their cultural identity. As a result, indigenous peoples express the feeling that their entire generation will soon disappear in the face of the earth.

In addition, indigenous peoples' languages are also under serious threats. Their languages have been destroyed by colonial policies including the post-colonial governments that took over. Most governments have made English, French and Spanish official languages in the countries, used in schools and other administrative offices, thus, denigrating, disregarding and suppressing indigenous languages.¹⁹²⁹ This has had a negative impact on indigenous communities who are only conversant with their native languages (mother tongue). For instance, in these communities, failures by government to promote indigenous languages has led to high illiteracy rates amongst indigenous communities, exclusion of indigenous peoples from political, economic and social

¹⁹²⁹ De Varennes 2010 *Language, Rights and Opportunities* 1,4.

spheres.¹⁹³⁰ Thus, limiting their interaction with the rest of the dominant society and reducing them to subordinate and marginalised positions.

A common thread amongst indigenous communities in these countries is the lack of access and denial of basic social and economic services. This includes access to education, health, housing, social security just to mention a few. Studies from these countries examined above reveal that indigenous peoples have the lowest education rates compared to non-indigenous counterparts.¹⁹³¹ This explain why they are considered as the community with the highest illiteracy rate and the termed poorest of the poor in the society.¹⁹³² Government's unwillingness to grant them access to free and compulsory education has limited their ability to effectively integrate with the mainstream society. Additionally, with regards to health, indigenous peoples lack access to adequate and efficient health care services, as most health care centres are concentrated in urban cities several kilometres away from indigenous settlements. Also, the health care facilities are relatively expensive coupled with the fact that identification documents are required for consultation, which most indigenous peoples still do not have. As a result, they tend to experience very high morbidity and mortality rates, including other infectious diseases.¹⁹³³ More so, indigenous peoples in these countries lack access to adequate housing, majority of them live in overcrowded and dilapidated houses with no amenities and security of tenure. This is common with those who have relocated to urban cities where houses are quite expensive.¹⁹³⁴ In addition, a sizable number of them live in slums, on the streets and are exposed to multiple forms of abuses, including, drug, alcohol, substance and other forms of

¹⁹³⁰ De Varennes 2010 Language, Rights and Opportunities 3.

¹⁹³¹ Hall and Patrinos 2010 http://siteresourcesworldbankorg/EXTINDPEOPLE/Resources/407801-1271860301656/full_reportpdf.

¹⁹³² Bank W date unknown http://siteresourcesworldbankorg/EXTINDPEOPLE/Resources/407801-1271860301656/HDNEN_indigenous_clean_0421pdf.

¹⁹³³ Pulver et al 2010 *Indigenous Health - Australia, Canada, Aotearoa New Zealand and the United States, Laying Claim to a Future that Embraces Health for Us All: World Health Report* 6-7.

¹⁹³⁴ Christensen 2016 *Health & Place* 83-90.

violence.¹⁹³⁵ Above all, indigenous peoples also lack a well-established social security system that protects them.

Worthy of note is the fact that USA, Canada, Australia, New Zealand, Botswana, South African and Cameroon are all signatories to the UNDRIP and the ILO Convention No. 169, the only legal international instruments that specifically addresses the rights of indigenous peoples. Even though the UNDRIP lacks a binding status, it is submitted that the Declaration has "legal relevance" with regards to indigenous peoples' rights.¹⁹³⁶ Although, United States, Canada, Australia and New Zealand had initially voted against the Declaration in 2007, all four countries have endorsed the UNDRIP. It is also important to mention that these countries are still to ratify the ILO Convention No.169.

Additionally, indigenous peoples in these countries lack legal recognition at domestic level. In the event where they are granted constitutional recognition at the national level, the implementation process becomes problematic. An example is the Constitution of Cameroon and that of Canada where despite the fact that indigenous peoples are legally recognised, their governments have failed to clearly and expressly state the nature of protection granted them.¹⁹³⁷ The Canadian government has expressly stated that, the country is not going to adhere to the provisions of the UNDRIP, and that their policies against indigenous populations will not change.¹⁹³⁸ Turpel has explained that given the history of indigenous peoples' sufferings, no state or Monarch has sincerely granted the special recognition and protection indigenous peoples are requesting as a distinct group.¹⁹³⁹ This reluctance in offering special protection to indigenous peoples have almost rendered international instruments protecting indigenous peoples' rights inefficient and useless, particularly, because they lack a binding status.

¹⁹³⁵ UN-HABITAT and OHCHR 2005 *Indigenous Peoples' Right to Adequate Housing: A Global Overview United Nations Housing Rights Programme Report No. 7* 3.

¹⁹³⁶ Anon date unknown http://www.iilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100792.pdf.

¹⁹³⁷ Pelican 2013 *Anthropology Today* 13.

¹⁹³⁸ Mikkelsen *et al* *The Indigenous World* 2015 456.

¹⁹³⁹ Turpel 1989 *Canadian Woman Studies* 150.

Huge inequalities exist between indigenous and non-indigenous peoples in the various countries despite constitutional and legislative enactments regarding the protection and promotion of their rights. Indigenous peoples are under-represented in the government and other political spheres in these countries. They are equally excluded from all decision-making processes, particularly those that affect them directly and indirectly. The argument is that they are too “backward” and “uncivilised” to understand what is best for them, hence, there is a need to integrate them in the mainstream of society to improve their socio-economic conditions.¹⁹⁴⁰ Studies have revealed that even where indigenous peoples are represented in Parliament the ratio is exceedingly wider than that of the broader society. For instance, in New Zealand where seats are reserved in Parliament for the Māori people, the number is still minimal as compared to the “ordinary” or mainstream New Zealanders.¹⁹⁴¹

Indigenous women are generally victims of multiple forms of violence, such as rape, kidnapping, sexual abuse, prostitution and sex slavery. They are more vulnerable than their male counterparts.

7.9.2 Differences

Apart from the similarities outlined above, some differences exist in these countries. In all the countries examined above with the exception of Cameroon, the Courts have managed to re-instate the property rights of indigenous peoples. Cameroon has not had any official decided case granting recognition and protecting the land rights of indigenous peoples. In Botswana, the famous CKGR case of *Roy Sesana and Others v the Attorney General*,¹⁹⁴² set the stage for the San as it granted the San community property rights as well as demanded the government of Botswana to re-instate water supplies within the Kalahari game reserve, although the Botswana government is still reluctant to comply. In

¹⁹⁴⁰ Aiken and Leigh 2015 *Geografiska Annaler: Series B, Human Geography* 69.

¹⁹⁴¹ Anaya 2011 Report of the Special Rapporteur on the rights of indigenous peoples on the situation of Maori people in New Zealand 6

¹⁹⁴² *Roy Sesana and Others v The Attorney General* 2002 (1) BLR 452 (HC).

Australia, the Supreme Court decision in the *Mabo v Queensland (No 2)* has abolished the concept of “*terra nullius*”, land that belong to no one in Australia and ordered the recognition of Aboriginal traditional land rights. Given this example, it is essential the judicial system in Cameroon be geared at granting justice to indigenous peoples lands in the event of any violations.

Another significant difference identified is given that land is the most fundamental right for indigenous peoples demands, the recognition of their right to land warrants plenty attention. It is submitted that land is a common characteristic that defines indigenous communities worldwide, it reflects the spiritual connection they share with culture and identity as indigenous peoples. However, South Africa is the only country that has made substantial progress in restoring or restuting land to their indigenous communities. Through the land restitution programme some, if not all indigenous communities, such as the ‡Khomani San community have manage to reclaim about 65,000 hectares of lands they were historically dispossessed of.¹⁹⁴³ The Griquas on the other hand have also reclaimed some of their family lands, including the right to use, manage, control and sell their ancestral lands.¹⁹⁴⁴ This is a good example for other countries especially Cameroon to emulate. See for example the case of *Alexkor Limited v The Richtersveld Community and Others* in which the Court held that members of the Richtersveld community have a customary law interest over their land and the mineral resources therein, see para 7.6.1.2 above.¹⁹⁴⁵

Furthermore, to ensure the effective protection of indigenous peoples’ rights in South Africa, government has recently adopted a Traditional Leadership Bill of 2015, specifically aimed at recognising the Khoi-San communities and their Leaders. This Bill has changed the political, socio-economic and cultural situations of the indigenous peoples of South Africa. In addition, New Zealand is globally celebrated for adopting the Treaty of Waitangi, including a New Zealand

¹⁹⁴³ Mikkelsen *et al* *The Indigenous World* 2015 475.

¹⁹⁴⁴ Chennells and Du Toit “The Rights of Indigenous Peoples in South Africa” 104-108.

¹⁹⁴⁵ *Alexkor Limited v The Richtersveld Community and Others* (CCT19/03) [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003).

Bill of Rights which specifically protect the property rights of the Māori people. The government of Cameroon had also proposed a specific Bill for the recognition of its indigenous peoples; although, this Bill is still at an infancy stage. The government is urged to facilitate the process of enacting this Bill, just like South Africa has done, such that indigenous peoples will have a specific legislation to hold on to in the event of any violation of their rights.

In addition, while countries like Canada, USA, Australia, SA, Botswana and Cameroon have written Constitutions, New Zealand stands out as a country without a codified Constitution. More so, government have reserved seats for the Māori community in the Parliament, to ensure that the Māori effectively participate in the political affairs of the country. Their representation in government has greatly improved their political, socio-economic and cultural well-being, since through this framework they are able to table their challenges and ensure that their needs are properly addressed. Apart from political representation, the Māori people are also able to exercise their civic and political rights through voting and retaining their seats in Parliament. Although studies confirm that lately their seats in Parliament and other political spheres have reduced considerably, it remains a good lesson for other countries like Cameroon to emulate, as no indigenous community is represented in the Parliament of Cameroon. This explains why their socio-economic, cultural and political situations remain unchanged despite numerous efforts to ameliorate their conditions.



7.10 Comparative Lessons

It is common cause that there exist some important lessons to be learnt from these jurisdictions. New Zealand has been celebrated globally as a role model for all other countries with indigenous peoples to adopt and implement, as it manages to preserve to preserve Māori's national identity.¹⁹⁴⁶ Its policies on recognition and reconciliation particularly the Treaty of Waitangi united the previously hostile nations and had endeavoured to restored peace and good governance in the

¹⁹⁴⁶ Morris 2014/2015 AILR 80.

country.¹⁹⁴⁷ This is a good lesson for Cameroon and other countries mentioned above to adopt. Morris maintain that New Zealand's experience has shown that several strategies can be employed to redress past injustices against indigenous peoples to prevent future occurrence.¹⁹⁴⁸

In Cameroon, for instance, the Constitution has no specific provision protecting indigenous peoples, apart from the passive provision in the preamble to the Constitution.¹⁹⁴⁹ However, it is submitted that Cameroon has an outstanding reputation especially within that African states for incorporating some regional instruments into its Constitution and referring to some international instruments she is party to.¹⁹⁵⁰ An example is the UN, UDHR and Banjul Charter. This in effect is to inform the world and other African states of its regional and international obligations and commitments in respecting, protecting and promoting the right of its indigenous peoples. This example should be adopted by other countries.

Another important lesson that Cameroon can borrow from the above countries is that even though South African, Botswana, Australian, United States, New Zealand and Canada's have discriminatory policies against indigenous communities, the Courts are assisting in several cases to uphold the rights of indigenous peoples to access land, resources and property rights. For examples, the Mabo case in Australia, the CKGR case in Botswana as well as the Tsilhqot'in Nation case in Canada and many others. These landmark cases have attempted to re-instated indigenous peoples' rights and access to land and resources. However, Cameroon is still to provide justice to its indigenous communities with regards to customary land rights. Most of the claims for land and resource disputes end up disappearing without trace in Law Courts. Thus, the indigenous communities in Cameroon continue to live in misery, want and need of the fundamental human rights and freedoms they rightly deserve.

¹⁹⁴⁷ Morris 2014/2015 *AILR* 71.

¹⁹⁴⁸ Morris 2014/2015 *AILR* 75.

¹⁹⁴⁹ See Para 5(2) of the Preamble to the Constitution of Cameroon.

¹⁹⁵⁰ Viljoen *International Human Rights Law in Africa* 237; Viljoen "Reflections on the Legal Protection of Indigenous Peoples' Rights in Africa" 91.

Additionally, a major lesson for Cameroon government is to adopt a Bill of rights into its Constitution, comparable to that of New Zealand which outrightly and protect and promote the cultural, religion and language rights of its indigenous peoples.

7.11 Summary

This chapter has examined situations of indigenous peoples in various jurisdictions. It focused on the constitutional as well as other pieces of legislation put in place at national level to give recognition to the rights of indigenous peoples. From the discussion above, it is obvious that most Constitutions have failed to make provisions for the protection and promotion of indigenous peoples' rights. Other Constitutions such as Australia have incorporated discriminatory provisions against indigenous peoples. These provisions were later revised under pressure from indigenous communities and their representatives.

This chapter also observed some glaring similarities as well as differences that exist in terms of policy implementation in these countries. In addition, this chapter has evaluated the emerging trends both countries are under-taking to advance indigenous peoples rights. From the similarities and differences illustrated, important lessons have been drawn from both countries for each to learn; copy and implement in their various countries. The aim of this analysis is to ensure that indigenous peoples receive official recognition in their national Constitutions as well as safeguard the effective protection of their property rights including rights to land and resources. Cameroon is urged to therefore adopt specific measures that will assist in protecting and promoting the rights of indigenous peoples at national level. It is also important that the country should legislatively endorse effective principles that can assist in managing the future relationship between indigenous peoples and government.¹⁹⁵¹

¹⁹⁵¹ Morris 2014/2015 AILR 67.

The next chapter of this thesis will proceed with conclusions and recommendations for policy and law reform.

Chapter 8 Conclusions and Recommendations

8.1 *Introduction*

This study focused on the legislative and institutional framework governing selected political, social, economic and cultural rights of indigenous peoples in Cameroon. Indigenous peoples around the world are victims of endemic forms of discrimination, exclusion, marginalisation, oppression and exploitation.¹⁹⁵² This thesis traced the long struggle for the legal recognition of indigenous peoples' special rights as far back as the colonial era when the colonisers undermined the dignity of indigenous peoples, destroyed their cultures and languages, expropriated their lands and evicted them from the only place they called and considered a safe and secure home. This chapter discusses the major findings of the study and proposes recommendations for several stakeholders in the protection and promotion of the rights of indigenous peoples. Given the length of this study, this chapter commences with a summary of the study for purposes of refreshing the memory of the reader.

8.2 *Summary of the study*

This study analyses the legislative and institutional frameworks governing the various domains of the rights of indigenous peoples in Cameroon. It investigates the reasons behind the continuous violation of the political, social, economic and cultural rights of indigenous peoples. The study traces the historical socio-economic development of Cameroon in an effort to put the evolution of indigenous peoples and the impact of colonialism on their communities into perspective. It examines the excessive exploitation of natural resources such as timber in the rich forested areas of Cameroon and interrogates how the resources derived from indigenous territories are managed. The study further evaluates several international, regional and national legislative and institutional

¹⁹⁵² Dersso "Introduction" 3.

mechanisms enacted to grant effective recognition and protection of the special rights of indigenous peoples.

In addition, the study interrogates selected civil and political rights of indigenous peoples of Cameroon. It specifically investigates the indigenous peoples' right to political participation, particularly the rights to vote and to be elected to political positions of the country. It zooms in on the right of indigenous peoples to actively participate in decision-making processes. The study examines selected social, economic and cultural rights of indigenous peoples. To this end, it focuses on the rights to education, housing, health, social security and culture. The study also discusses the right of indigenous peoples to sustainable development and the need for environmental protection.

The study ultimately investigates the emerging trends of serious human rights violations in other jurisdictions against indigenous peoples, their lack of legal recognition and entitlement to land and resources and the denial of access to basic social services and participation into public life. To this end, the study draws examples from New Zealand, Canada, Australia, USA, Botswana and South Africa.

8.2.1 Major findings of the study

The demand for the proper recognition of the special rights of indigenous peoples climaxed between 1960s and 1970s when post-colonial African governments inherited colonial policies.¹⁹⁵³ Independence from colonial rule instigated the mobilisation of several indigenous movements and international conferences which resulted in the subsequent adoption of several international instruments to address the issues and rights of indigenous peoples.¹⁹⁵⁴ The most pressing issues at the international conferences were the need to ensure the survival of indigenous peoples through respect for their distinct cultures and traditional identities, political participating and protection of their land and natural resources

¹⁹⁵³ Pulitano 2014 *UN Chronicle* 2-3; Anaya and Williams Jr 2001 *Harv. Hum. Rts. J.* 34.

¹⁹⁵⁴ UDHR, ICCPR, ICESCR, ILO Convention No. 169, UNDRIP and the Banjul Charter.

within their communities.¹⁹⁵⁵ These instruments led to the adoption of national laws and policies that recognise, protect and promote the rights of indigenous peoples. However, the study reveals that despite international and regional efforts, the recognition and protection of indigenous peoples' rights at domestic levels, particularly in Cameroon, is still lacking.

The study finds that Cameroon is one of the first African countries to grant its indigenous peoples constitutional recognition. However, Cameroon does not grant the special protection due to indigenous peoples, given the fact that its Constitution does not give clarity on the nature of protection and various rights that require specific protection. The study finds that this omission is the main reason behind the persistent problems facing indigenous communities in Cameroon. Some of the challenges encountered by indigenous peoples in Cameroon include inequality, extreme poverty, systemic discrimination, political marginalisation, exclusion, rejection and mass displacement, denial of access basic social services, forced assimilation and stereotype attitudes from members of the dominant society.

The study establishes that the areas occupied by indigenous peoples are rich in natural resources have subsequently become a fertile ground for resource extraction and economic development. The new trend to increase economic growth, including internal and external pressure to boost economic development, has instigated the Cameroonian government to focus on natural resource development in collaboration with MNCs for export.¹⁹⁵⁶ These projects have negatively affected indigenous peoples who are the host communities. Human beings and biodiversity, *fauna* and *flora* inclusive, have been affected by pollution of water sources and the rest of the environment.

The study finds that indigenous peoples continue to experience systematic forms of discrimination and persistent exclusion from public governance structures of

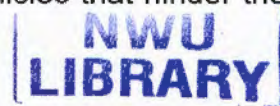
¹⁹⁵⁵ Anaya and Williams Jr 2001 *Harv. Hum. Rts. J.* 34.

¹⁹⁵⁶ Lennox "Natural Resource Development and the Rights of Minorities and Indigenous Peoples: Events of 2011" 11.

the country as they are constantly excluded from decision-making processes concerning their well-being.¹⁹⁵⁷ The inability to take part in public affairs puts a barrier on the recognition and realisation of the specific rights of indigenous peoples which the indigenous communities are advocating for. Their voices and opinions are never heard, known or considered. Thus, the social and economic prospects of indigenous peoples as well as their culture remain threatened. This has led to frequent tribal conflicts and discontent as stated by Ndahinda thus: "the numerous conflicts in post-colonial African states are violent expressions of the identity-based grievances".¹⁹⁵⁸

This study concludes that despite the constitutional and legislative promises to protect and preserve the rights of indigenous peoples, coupled with the fact that the Cameroonian government is a signatory to several international and regional human rights instruments specifically aimed at addressing the rights of indigenous peoples, the indigenous peoples of Cameroon still encounter overwhelming challenges due to the lack of the formal recognition they desire; lack of access to basic social services; little or no political representation and lack of access to land which is their major source of livelihood.

Given the myriad of challenges, the indigenous peoples of Cameroon have a high level of disappointment and distrust in the government. They are particularly discontented with the Cameroonian government's failure to address their concerns and its failure to legally recognise their specific rights as a vulnerable group in need of special state protection; government's failure to redress their socio-economic conditions and to respect and protect their unique cultures and distinct identities. Of particular concern to the indigenous peoples in Cameroon is the government's failure to safeguard the environment against MNCs and to ensure sustainable development. To address the concerns of indigenous peoples, this study calls for immediate transformation of policies that hinder the



¹⁹⁵⁷ Richmond 2016 <http://minorityrights.org/wp-content/uploads/2016/07/MRG-SWM-2016pdf>.

¹⁹⁵⁸ Ndahinda 2011 *International Journal on Minority and Group and Rights* 480.

full realisation, recognition, protection and promotion of indigenous peoples' rights. As such, the following recommendations are presented.

8.3 Recommendations

It is hoped that the recommendations presented in herein are implemented with speed in Cameroon in the form of policy and law reform to ameliorate the distressing socio-economic, cultural and political needs of indigenous peoples of Cameroon. It is recommended that Cameroon, should, given its status as a country advocating for democracy, put in place measures to ensure that all segments of its population are equally represented in the political arena in which government policies are formulated and implemented. This requires an abolishment of all policies and laws which impede the full, active and equal participation and representation of indigenous peoples in government. To do so, government is implored to recognise indigenous peoples' local institutions and traditional leaders. Further strategies should be implemented to build what Anaya terms "indigenous governance capacity".¹⁹⁵⁹ This will enable indigenous peoples to contest harmful developmental projects, including discriminatory government policies that have adverse effects on their lands and natural resources.¹⁹⁶⁰

This study recommends that the Cameroonian government should embark on effective transformation policies regarding the active participation of indigenous peoples in decision-making processes in the country, particularly in the formulation of government policies and promulgation of legislation, especially educational programmes. To achieve this, inclusivity through active participation of all stakeholders is recommended. The government is implored to establish measures that enhance the full participation of indigenous peoples in decision-making processes of state institutions at all levels. This should include the

¹⁹⁵⁹ Anaya and Williams Jr 2001 *Harv. Hum. Rts. J.* 35.

¹⁹⁶⁰ Lennox "Natural Resource Development and the Rights of Minorities and Indigenous Peoples: Events of 2011" 11-12.

recognition and promotion of indigenous peoples' own local decision-making institutions.¹⁹⁶¹

It is submitted that the political participation of indigenous peoples in all aspects and stages of decision-making processes is essential for the realisation of their right to self-determination. It will also enable them to gain control of their lives and to be able to decide their own future like the wider society does.¹⁹⁶² This recommendation could be effected by bringing indigenous peoples to the table and inquire from them their needs and possible ways to empower them so they can actively participate in making decisions in matters that affect them directly.

The study recommends that Cameroon should adopt special legislation specifically aimed at granting legal recognition and protection to indigenous peoples. This legislation must be drafted in consultation with indigenous peoples so that their specific needs and priorities are addressed in the legislation. The legislation must place a clear and unambiguous obligation on the state to respect, protect and promote the special rights of indigenous peoples. The proposed statute must be supported with a penalty for violators.

The Constitution of Cameroon and other national legislation on the rights of indigenous peoples must be revised to give full protection to the special rights of indigenous peoples. There is a need for the Constitution to clearly define indigenous peoples in Cameroon and not categorised them as marginal populations like they are currently categorised. Having defined indigenous peoples, the Constitution of Cameroon must accord special protection to indigenous peoples as vulnerable group deserving and in need of special protection. The criteria for the classification of indigenous peoples as a vulnerable group in need of special protection must be drawn by several international and regional instruments.

¹⁹⁶¹ Anaya 2015 *Ariz. J. Int'l & Comp. L.* 146.

¹⁹⁶² Anaya 2015 *Ariz. J. Int'l & Comp. L.* 156-157.

Global trends in economic growth and resource development have led to excessive resource exploitation, tribal conflicts and struggle over ownership, use, control and management of natural resources in Cameroon. To address these problems, the study recommends that the government of Cameroon should develop indigenous people-oriented policies focusing on the protection of the environment in order to ensure sustainable development. To achieve this, EIA strategies must be given top priority. Locally affected populations must be informed of the impact and benefits of development projects within their communities prior to the actual exploitation of natural resources. These developmental projects must aim at improving the living standards of host communities. In fact, policies should be developed where indigenous peoples benefit more from the resource extraction activities with less or no environmental impacts.

The Cameroonian government is implored to implement rigorous measures to provide special funding to cater for social services within indigenous communities. This need arises in health care, education and housing. When implemented, this recommendation will improve the living conditions of indigenous communities and bring them in the mainstream society.

The government should dedicate its resources into building schools closer to indigenous communities. Given the overwhelming odds in educating indigenous communities, it is recommended that the said schools should be well-furnished and equipped with well-trained and paid staff. All this should be done with meaningful participation of the representatives of indigenous peoples and their relevant institutions. Educational systems for indigenous communities should respect their cultures, meet their substantial needs and be in line with their traditional ways of life.

With regards health, the government should increase the allocation of financial resources towards health care for indigenous communities. Ohenjo *et al* has urged government of Cameroon thus:

To protect and improve Pygmy peoples' health, governments, development agencies, missionaries, and non-government organisations must work to secure Pygmy peoples' rights to their customary lands and resources, and develop policies and programmes that ensure equitable access to health care, on the basis of consultations with Pygmy communities about their concept of well-being and good health.¹⁹⁶³

Additionally, immediate action should be taken by the government to fix the severe housing problems for indigenous peoples. This study found that indigenous peoples live in dilapidated and overcrowded houses which spread numerous communicable diseases. An adequate house is one that passes the test of habitability, affordability, accessibility, legal security of tenure and location and cultural adequacy. Poor housing conditions lead to poor respiratory conditions that might result to deaths, low level of mental growth, chronic diseases and other pertinent health issues.¹⁹⁶⁴ It is recommended that the government should do all it can to redress the housing problems within indigenous communities. Of course, the participation of indigenous communities should be sought and maximised to safeguard their cultures. The houses must be affordable, sustainable and adequate. They should be fabricated in such a manner as to match the environment and cultures of indigenous peoples.¹⁹⁶⁵

8.4 Suggestions for further research

It is evident that a study of this nature is meant to generate further scholarly work in this field of study as the researcher identified during the study, some areas which need immediate investigation and recommendations for law and policy reforms to help address the problems of indigenous peoples.

First, indigenous peoples in Cameroon are more involved in the informal-sector employment. The majority of them depend on menial jobs working as labourers in extractive industries, with very low wages, no social security systems, no defined and binding contracts, and work under horrific and abusive conditions.

¹⁹⁶³ Ohenjo *et al* 2006 *Series* 1941.

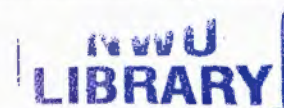
¹⁹⁶⁴ Hood 2005 *Environmental Health Perspectives* A315.

¹⁹⁶⁵ Anaya 2015 *Ariz. J. Int'l & Comp. L.* 150-152.

Most often they suffer from the challenge of unfair dismissals, including unequal or no pay for work done. It is submitted that their labour is exploited, since they are unskilled with no access to the labour market.¹⁹⁶⁶ It is suggested therefore that further research on the rights of indigenous peoples to work (formal-sector employment) as reiterated in several international human rights instruments might be a starting point to remove indigenous peoples from stereotype attitudes, stigmatisation from the wider society and extreme poverty.

Another area that require further scholarly work is the persistent discrimination against indigenous women in Cameroon. Related studies reveal that indigenous women experience multiple discriminatory practices, first because of their gender and the fact that they are "indigenous".¹⁹⁶⁷ The domains where indigenous women encounter severe marginalisation are lack of political representation in government and decision-making structures, victims of multiple abuses, like rape, prostitution, sex slavery, forced and early marriages. For example, in Mbororo communities, women and girls are not allowed to enrol and attend school. They are in return forced into early and abusive marriages to older men against their will.¹⁹⁶⁸ Indigenous women in Cameroon are worried that their rights are been ignored and the state is unwilling to afford them special protection as outlined in CEDAW, Protocol to the African Charter on the Rights of Women in Africa including other related instruments directed to grant special protection to women and girls.¹⁹⁶⁹

Access to justice is another area of concern requiring further empirical research with regards indigenous peoples of Cameroon. The right to justice is a fundamental right guaranteed to everyone and defined in international, regional



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- ¹⁹⁶⁶ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf.
- ¹⁹⁶⁷ ILO 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf.
- ¹⁹⁶⁸ Personal communication by way of unstructured interview with some Mbororo women in the Sabga region of the North-West Province, Bamenda, Cameroon on the 4-6 of February 2016.
- ¹⁹⁶⁹ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 25-26.

and national instruments. For indigenous peoples of Cameroon, access to justice is hindered by language barriers and the unwillingness by the judicial system to make provision for qualified assessors to assist them during court proceedings and who are conversant with the customs and traditions of indigenous peoples as outlined in section 10(2) of Decree No. 69/DF/544 of 19 December 1969 as amended by Decree No.71/DF/607 of 3 December 1971 which set up judicial organisation and procedures in traditional courts.¹⁹⁷⁰ Also, the fact that no decided case concerning indigenous peoples has been recorded in Cameroon, despite the widespread violations of their rights is evident that their right to access justice is denied and undermined. An example is the famous case of the Mbororo Community versus the CATUC represented by the Archbishop is still pending after many years. The Court of First Instance in Bamenda declined jurisdiction to try the case and the matter have been referred to the Administrative Court.

More academic work is needed in promoting indigenous peoples' knowledge of traditional medicines. Indigenous communities in Cameroon express some concerns over the increased expropriation of natural resources and forced eviction from their lands, holding that this activity have adversely destroyed their traditional knowledge, since they relied on these plants for the treatment of diseases and other related illnesses. They are worried that they are forced to depend on hospitals and foreign medications which have no effect on them, far too expensive, require regular checks-up and added to that they are ineffective.¹⁹⁷¹ They complain that since the appropriation of their lands so many deaths have been recorded, their people no-longer have resistance to illness and diseases. It is hoped that this study has contributed to the limited body of legal knowledge concerning the human rights situations of the indigenous peoples of Cameroon.

¹⁹⁷⁰ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 19.

¹⁹⁷¹ CED, RACOPY and FPP 2010 *Indigenous Peoples Rights in Cameroon: Supplementary Report Submitted in Connection with Cameroon's Second Periodic Report* 24.

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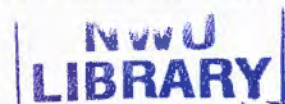
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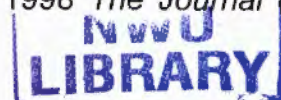
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ANNEXURE “A”

LIST OF OFFICIALS/GROUPS INTERVIEWED FOR THIS STUDY

1. Personal communication by way of an unstructured interview with the 1st National Vice President of Mbororo Social and Cultural Development (MBOSCUDA), an NGO working to promote the rights of indigenous peoples' Bamenda, Cameroon on the 15 December 2015.
2. Personal Communication by way of an unstructured interview with the Deputy Secretary of Mbororo Youth Association of Cameroon (MBOYASCAM), an NGO fighting for the protection and promotion of indigenous peoples' rights, Yaoundé, Cameroon 04 January 2016.
3. Personal communication by way of an unstructured interview with Plan Cameroon International (PCI) an NGO working on indigenous peoples' rights Bertoua, Cameroon 07 and 08 of January 2016.
4. Personal communication by way of an unstructured interviewed with some top officials in the Ministry of Justice, Yaoundé, Cameroon 11 of January 2016.
5. Personal communication by way of an unstructured interview with two senior staff members of Cameroon Oil Transportation Company, (COTCO) Douala, Cameroon on 12 January 2016.
6. Personal Communication by way of an unstructured interview with Director, Division of Planning, Projects and Cooperation (DPPC), Ministry of Basic Education (MINEDUB), Yaoundé, Cameroon on 25 January 2016.
7. Personal communication by way of an unstructured interview with some human rights advocates, Yaoundé, Cameroon on 26 January 2016.
8. Personal communication by way of an unstructured interview with the Director Green Development Advocates (GDA), Yaoundé, Cameroon on 20 January 2016.

9. Personal communication by way of an unstructured interview with some senior staff at the Ministry of Social Affairs (MINAS), Yaoundé, Cameroon 14 of January 2016.
11. Personal communication by way of an unstructured interview with the Protection officer at the National Commission for Human Rights and Freedoms (NCHRF), Yaoundé, Cameroon 22 January 2016.
12. Personal communication by way of an unstructured interview with the Director of Judicial Affairs, Ministry of Environment, Yaoundé, Cameroon on 26 January 2016.
13. Personal Communication by way of an unstructured interview with Ministry of Territorial Administration, Yaoundé, Cameroon on 21 January 2016.
14. Personal Communication by way of an unstructured interview with the Director in charge of Ministry of Forestry and Wildlife, Yaoundé, Cameroon on 27 January 2016.

ANNEXURE “B”

LIST OF AIDE-MEMOIRS INTERVIEW QUESTIONS

Aide-memoir for 1st National President MBOSCUDA

1. What is your name and position held in this organisation?
2. What is the main objective of your Organisation?
3. What is your understanding of the recognition and protection of indigenous peoples' rights in Cameroon?
4. What measures is your organisation putting in place to ensure that indigenous peoples of Cameroon get the special recognition and protection they deserve?
5. There is a perception that government is either unable or reluctant to put in place measures that effectively protect and promote the rights of indigenous peoples in Cameroon. Do you share the same view? What then in your opinion are the factors that influence this behavior?
6. Is it true that government is not willing to ensure that indigenous communities or their representatives actively take part in decision-making processes or are consulted prior to the execution of development projects in their territories?
7. Are indigenous peoples actively represented in government? If yes, how many Mbororo's are in government? Is their representation equal to that of the dominant society?
8. It is true to state that a major concern for indigenous peoples is the struggle for the recognition of their rights to land, culture and natural resources? In your opinion, how can this challenge be addressed?

Aide-memoir for MBOYASCAM

1. What is the main aim of this Organisation?
3. What is your understanding of the recognition and protection of indigenous peoples' rights in Cameroon?
4. As a youth organisation tasked with the mandate of ensuring the proper recognition and protection of indigenous peoples' rights. Given that indigenous peoples and children in particular are the least educated people in the society. What steps is your organisation taking to ensure that indigenous children get enrolled and stay in school?
5. There is a perception that indigenous communities do not have basic social services such as good health care facilities, sanitation and clean drinking water, adequate housing etc which permits them live a dignified life. Do you share the same view? What then in your opinion are the factors that influence this behavior? What is your organisation doing to ensure that government provide basic socio-economic services to indigenous communities?
6. Do you think that government is intentionally undermining indigenous communities as a means to marginalised and keep them in a more destitute state?
7. In your opinion what can be done to remove indigenous peoples from the poverty-stricken condition?



Aide memoir for Plan International Cameroon

1. What is the name of your organisation?
2. What is the main objective of your Organisation? In other words what is the main function of your organisation?
3. What is your understanding of the recognition and protection of indigenous peoples' rights?
4. What measures is your organisation putting in place to ensure that indigenous peoples in Cameroon get the recognition and protection they are advocating for?
5. It is my understanding that your organisation has been very active in developing projects that help address some of the burning issues indigenous peoples are facing such as citizenship, education, health and nutrition. Have these projects successfully be of help to indigenous communities? Why is their situation still unchanged, despite all efforts?
6. In terms of decision-making processes, do you think indigenous peoples are usually invited and consulted when decisions concerning their well-fair and environment are being taken?
7. Given that your organisation work in close collaboration with indigenous communities, what are some of the concerns and challenges they always raise? If they do, how does you organisation intend to address them?

Aide-Memoir for Ministry of Basic Education

1. What is the function of your Ministry?
2. Is basic education free of charge and compulsory in Cameroon? If yes why are indigenous children not attending school?
3. What measures has the Ministry of Basic Education taken to ensure that indigenous children enroll, attend and stay in school, so as to at least complete primary education and reduce illiteracy and drop-outs rates in these communities?
4. There are reports that indigenous children are constantly discriminated, stigmatised and humiliated by their peers and even teachers at school which results to their dropping out from school. What is your take on this? And what is the Ministry of Basic Education doing to eradicate this practice?
5. A major challenge for indigenous children is that the school curriculum does not address their special needs and cultural aspirations. In other words, the language adopted in the teaching curriculum (French and English) does not accommodate indigenous peoples (children). What plans is the Ministry of Basic Education adopting to incorporate indigenous languages in to the new curriculum?
6. Do you have any data on the percentage of indigenous peoples enrolled in primary schools?

Aide-Memoir for Ministry of Forestry and Wildlife

1. What is your name and role in government?
2. What is your understanding of indigenous peoples' rights in the Cameroonian context?
3. What in your opinion is the cause of the tensions between indigenous communities, government and extractive industries?
4. There is a perception that the Forestry and Wildlife laws adopted in Cameroon have a negative impact on indigenous peoples' wellbeing and environment, is this true? What is your view on that?
5. There is a perception that forest guards are ruthlessly rough handling indigenous peoples in their own lands and territories, what is your opinion on this?
6. Can you comment on how the proceeds from timber exploitation is used? Who benefits more from these activities? Do indigenous peoples benefit from the proceeds of these activities?
7. What changes would you suggests to the government in terms of amending the laws/regulations guiding forestry and wildlife, as well as amend the effects of environmental degradation and other human rights violations indigenous peoples encounter on daily basis?

Aide-memoir for National Commission for Human Rights and Freedoms

1. What is your name and function?
2. What is your understanding of indigenous peoples in the Cameroonian context?
3. It is common knowledge that indigenous peoples in Cameroon are discriminated, marginalised and secluded. Do you agree?
4. What factors are accountable for government's continuous neglect on indigenous communities that has resulted to a violation of their fundamental human rights?
5. As the only human rights institution in Cameroon, responsible for protecting and promoting the human rights of all population and indigenous peoples in particular. What efforts is your organisation making to address these issues and ensure that indigenous peoples get the protecting due to them?
6. There is a perception that indigenous peoples suffer from constant dispossession from ancestral land and deprived access to natural resources which is a means of survival? What in your opinion is the reason behind this?
7. As a human rights organisation what changes would you suggest to the government to help solve the long-lasting problems of gross human rights violations against indigenous peoples?

**Aide-memoir for Centre pour l'Environnement et le Développement
Yaoundé, Cameroon**

1. What is the name of your organisation?
2. What is the main objective of your Organisation? In other words what is the main function of your organisation?
3. What is your understanding of the recognition and protection of indigenous peoples' rights in the Cameroonian?
4. Is it true that government policies on resource extraction have caused MNC and other extractive industries have left negative impacts on indigenous peoples' territories and environment? What measures is your organisation taking to ensure environment protection and promote sustainable development.
5. Do you think there are effective measures to safeguard the social, economic and security of indigenous peoples' livelihood in Cameroon?
6. Is it true that government does not include indigenous peoples or their representatives in decision-making processes, consulted or sought their informed consent before the implementation of any development projects in their territories?
7. As an organisation working on environmental and developmental issues, what policies would you propose to the government that will help advance their right to land, territories and resources.

