

# Briefing

**Law, Land acquisitions and rights**

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## Policy pointers

**Cameroon's land law reform** is an opportunity to secure indigenous peoples' rights to land and resources, as part of a wider effort to secure the land rights of local communities.

**Specifically, securing these rights** requires: widespread participatory resource mapping; imaginative legislative solutions for effective protection; free, prior and informed consent for initiatives affecting indigenous peoples' rights; and developing compensation that recognises the social and cultural value of indigenous resources.

**Action in other policy areas** can also help to secure indigenous peoples' land and resource rights; for example, lifting the moratorium on the creation of villages can enable better recognition of indigenous villages and authorities.

**There is a strong case** for developing a national strategy and establishing an observatory to support and monitor the implementation in Cameroon of the United Nations Declaration on the Rights of Indigenous Peoples.

## Indigenous peoples' land rights in Cameroon: progress to date and possible futures

In Cameroon, commercial and infrastructural developments are exerting increasing pressure on land and natural resources, which is in turn exacerbating the risks to the rights of indigenous peoples. Against this backdrop, the ongoing process of revising Cameroon's land legislation provides an opportunity to secure aspects of indigenous peoples' rights, as part of a wider effort to secure the land rights of local communities. To harness this, ten years after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous representatives and key stakeholders came together in Yaoundé, Cameroon, to assess the advances made in securing indigenous land and resource rights to date and to discuss ways to safeguard them further. The meeting outcomes point both to past achievements in policy and practice and to concrete options for the land law reform process.

In Cameroon, land sustains the livelihoods of rural people. Yet for many, land rights are insecure, particularly where commercial activities raise the economic stakes and increase pressures on natural resources. In response to these challenges, the government of Cameroon has initiated an ongoing process to reform land and natural resource legislation.

Indigenous peoples face specific challenges to their land rights. While international legal instruments do not provide a universally agreed definition of 'indigenous peoples', commonly used criteria include a distinctive culture and a special connection to ancestral lands (see Box 1). But the most important criterion is typically a subjective one — that is, whether a group identifies itself as an indigenous people.

In Cameroon, diverse groups are deemed to meet these international criteria, particularly the Baka, Bakola, Bagyeli and Bedzan hunter-gatherers living in the forested areas, and the Mbororo pastoralists spread throughout the country — with higher densities in the northern regions, the east, the west and the northwest (Figure 1).

These groups tend to have a unique cultural and spiritual relationship with the land and natural resources. They also often have weaker land rights due to: the absence of visible evidence of their presence on the land they claim; the unbalanced nature of their relationship with farming communities that have often claimed more far-reaching resource rights; and the historical legacy of laws, policies and practices that marginalised indigenous peoples in resource governance and use.<sup>1</sup>

## *Land and resource rights of indigenous peoples are often excluded from full legal protection*

2017 marked the tenth anniversary of the adoption of a key international instrument: the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>2</sup> The anniversary

provided the occasion for Cameroon's government, civil society, experts and indigenous representatives to take stock of advances made in relation to the land and resource rights of

indigenous peoples, and to discover insights that can inform the ongoing land law reform.

The participants came together in a series of national workshops, held in Yaoundé, Cameroon, in August and September 2017. The events were organised by the Centre for Environment and Development (CED) and the Centre pour l'Éducation, la Formation et l'Appui aux Initiatives de Développement au Cameroun (CEFAID), in collaboration with the EU-funded project 'LandCam: Securing Land and Resource Rights and Improving Governance in Cameroon'.<sup>3</sup>

The main event in the series was a national multistakeholder workshop that brought together government officials, civil society, experts and indigenous representatives.<sup>4</sup> This workshop was preceded by preparatory sessions with indigenous representatives and civil society, so they could participate in discussions on a more equitable basis, and by

information-gathering visits in selected indigenous villages in Southern Cameroon. Indigenous representatives came from the Baka, Bagyeli and Mbororo communities.

After exploring the international and national policy context that framed the whole process, this briefing summarises the main outcomes of the workshops, as expressed by indigenous representatives and other participants.

### **International context: UNDRIP at 10**

In 2007, the United Nations General Assembly (UNGA) adopted UNDRIP. This was the culmination of a long-term process of reflection, consultation and negotiation within the United Nations that started back in the 1980s. Many indigenous peoples' organisations worldwide contributed to this process and the government of Cameroon voted in favour of the declaration.<sup>7</sup>

The declaration covers wide-ranging issues affecting indigenous peoples' rights — land and resource rights feature prominently. UNDRIP calls on states to recognise and protect indigenous peoples' rights to the land, territories and resources that they own, occupy, use or possess, with due respect to the customs, traditions and land tenure systems of the specific peoples concerned.<sup>8</sup>

The declaration also envisages reparation and compensation for historical dispossession, and recognises the central role of indigenous institutions in political organisation. It calls on states to consult indigenous peoples "in good faith" and "in order to obtain their free, prior and informed consent" (FPIC) before adopting measures or approving projects that may affect those peoples or their lands, territories or resources. More stringent FPIC requirements apply to situations that would involve relocating indigenous peoples.<sup>9</sup>

As a declaration, UNDRIP does not create legal obligations. But some of its provisions can be deemed to reflect customary international law, which *is* legally binding.<sup>10</sup> In addition, UNDRIP translates, in relation to the specific circumstances of indigenous peoples, the norms of binding international human rights law. Further, international human rights courts have referred to UNDRIP when interpreting binding human rights norms.<sup>11</sup>

### **Local context: land legislation and indigenous peoples in Cameroon**

Cameroon's land legislation does not formally discriminate against indigenous peoples. However, several features tend to marginalise

#### **Box 1. The notion of indigenous peoples in Africa**

In Africa, questions of indigeneity — that is, which peoples should be considered indigenous — often involve gaps between anthropological conceptions, political positions and international norms. Some governments have claimed that all Africans should be considered indigenous. However, this position is not in line with international law: human rights institutions have long applied the notion of 'indigenous peoples' to marginalised minority groups that have a strong cultural relationship with land and resources, and they have held that such groups are entitled to special protections.

For example, the African Court of Human and Peoples' Rights recently decided a case concerning the Ogiek of Kenya — a people claiming to have been evicted from forestlands that they felt a special connection with. The Court noted the deep relationship that the Ogiek had with their traditional land and resources, their cultural distinctiveness and their continued marginalisation. It concluded that the Ogiek are "an indigenous population [...] having a particular status and deserving special protection".<sup>5</sup>

The Court went on to find that the Kenyan government had violated several provisions of the African Charter on Human and Peoples' Rights. In recognising the Ogiek as an indigenous people — a minority group displaying particular characteristics — the Court's ruling followed the approach developed over the years by the Working Group on Indigenous Populations/Communities established by the African Commission on Human and Peoples' Rights.<sup>6</sup>

indigenous peoples. A key example is the Land Ordinances of 1974, which identify land registration as the sole mechanism for accessing land ownership; unregistered lands are held by the state, though 'use rights' are recognised.<sup>12,13,14</sup>

Registration is subject to certain requirements being met, including evidence of productive land use. This is usually defined as involving permanent, visible developments, such as buildings or farms. These requirements are particularly difficult to meet for indigenous peoples, as their primary livelihood activities (hunting and gathering or livestock grazing) do not necessarily involve the kind of structures that are accepted as evidence.

As a result, the land and resource rights of indigenous peoples are often excluded from full legal protection. Practical constraints are also at play. Despite recent simplification, land registration procedures remain complex and cumbersome for indigenous peoples with limited means, and accessing legal recognition and protection is simply too difficult to achieve. Important safeguards, for example against expropriation, only apply to registered land ownership, which tends to exclude indigenous peoples.

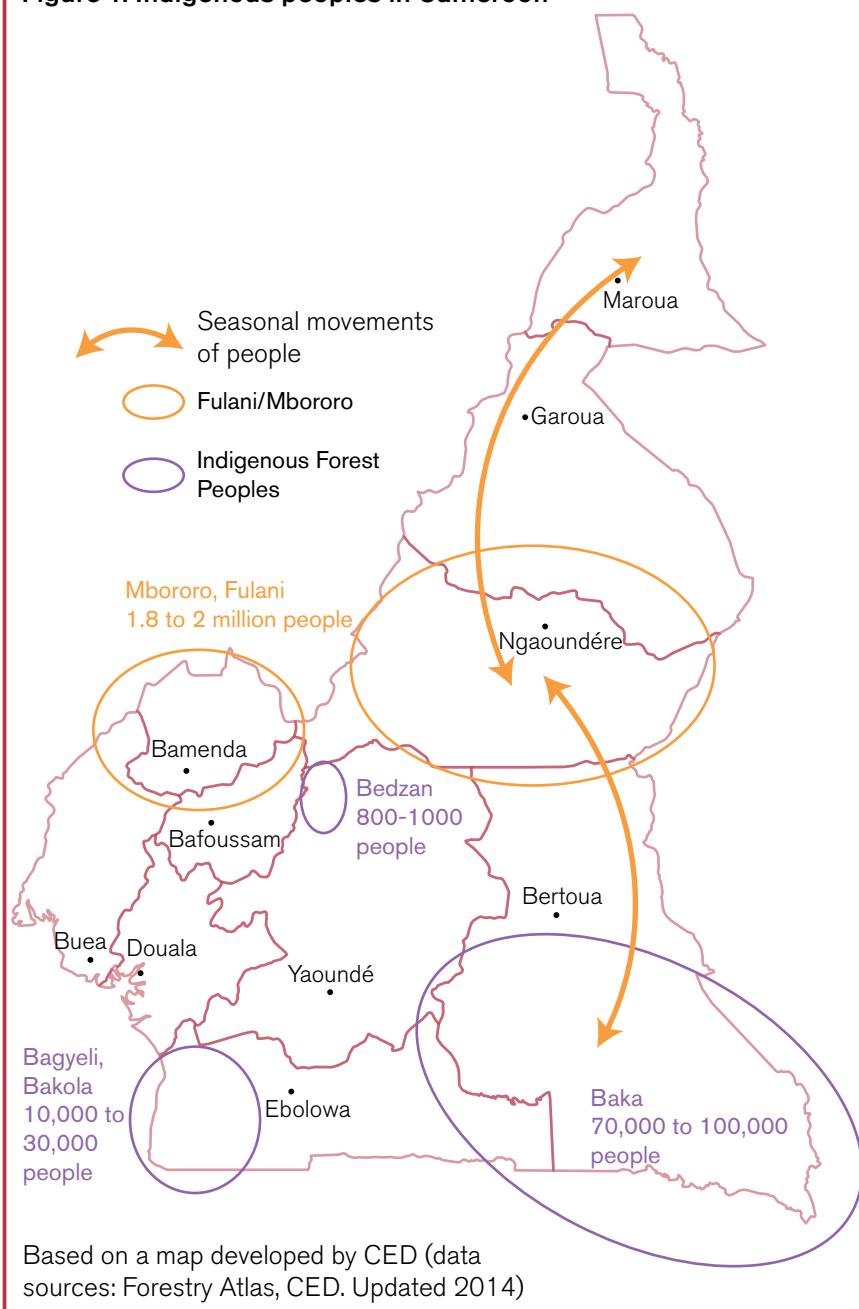
Fully addressing these challenges would require reconsidering core features of national legislation. The Cameroonian government's support for UNDRIP provides a good basis for identifying pragmatic options for reform, and the ongoing revision of the land legislation offers a concrete opportunity to secure indigenous peoples' land and resource rights. The reform could build on the advances made over the past ten years and focus on a few priority challenges.

### Implementing UNDRIP in Cameroon: progress to date

Participants at the national workshop in Yaoundé considered the situation of indigenous peoples' land and resource rights in Cameroon in the light of UNDRIP provisions. While noting the challenges that affect rural land rights, and specifically those disadvantaging indigenous peoples, participants also acknowledged the advances made in implementing UNDRIP. For example, although land legislation affecting indigenous peoples has not changed substantially over the past ten years, there is an ongoing process to develop a new pastoral law that, if adopted, could set an important milestone in securing indigenous pastoralists' resource rights.

Other advances included the development of national guidelines for applying FPIC in REDD+ processes, and the inclusion of indigenous representation in national REDD+ institutions.

Figure 1. Indigenous peoples in Cameroon



Cameroon with Regions by FreeVectorMaps.com

Participation of indigenous individuals in local governance seems to be improving and currently includes 65 local councillors and one mayor. While there is a way to go before full inclusion, it is encouraging that indigenous representatives have actively participated in ongoing debates about the land law reform.

Advances were also seen on the ground, including the recognition of the land and resource rights of five Baka villages and communities in the East Region, and the participatory mapping of indigenous peoples' resources, encompassing protected areas and logging concessions. Building on such field experiences, a recent initiative<sup>15</sup> brought together representatives of relevant ministries, the parliament, traditional

authorities, civil society and indigenous leaders to develop a harmonised methodology for participatory mapping, which considers the specificities of indigenous peoples' rights.

Workshop participants also noted that, in some cases, a portion of forest and wildlife revenues have been used to fund social infrastructure for indigenous communities, and that indigenous people have slowly started to be considered by government and/or businesses as recipients for compensation for the adverse impacts of large infrastructure projects.

## A fairer future: options for land law reform

Having established — ten years on from UNDRIP — which elements of public policy are evolving in the right direction for Cameroon's indigenous peoples, workshop participants moved on to identify actions for the ongoing land law reform. The discussions highlighted that securing indigenous peoples' rights requires:

- Wider use of participatory resource mapping to document indigenous peoples' land and resource rights, and developing imaginative legislative solutions to ensure effective and accessible protection of these rights
- Legally requiring and fully operationalising FPIC for all initiatives that could affect the land and resource rights of indigenous peoples, including commercial and development projects
- Where government-led initiatives in the public interest involve adverse impacts on indigenous peoples' lands and resources, developing

effective compensation arrangements that recognise the strong cultural and spiritual values and attachment involved.

Besides the land law reform, workshop participants discussed public action in other policy areas that can also help to secure the land and resource rights of indigenous peoples. This would include, for example, lifting the moratorium imposed on the creation of villages in Cameroon, to facilitate the recognition of indigenous villages and authorities and enable their representation in public decision making.

Finally, to promote more systematic progress towards translating the UNDRIP into real change, workshop participants called for a national strategy and an observatory to support and monitor the implementation of the declaration in Cameroon.

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*LandCam: Securing land and resource rights and improving governance in Cameroon*

This project pilots approaches to secure rights to land and natural resources in selected sites, and supports inclusive national-level debate about workable reforms of the law. The project is funded by the European Union and coordinated by the International Institute for Environment and Development (IIED), the Center for Environment and Development (CED) and the Réseau de lutte contre la faim (RELUFa). [www.iied.org/landcam-securing-land-resource-rights-improving-governance-cameroon](http://www.iied.org/landcam-securing-land-resource-rights-improving-governance-cameroon)

## Notes

<sup>1</sup> Nguiffo, S, Kenfack, P-É and Mballa, N (2009) *L'incidence des lois foncières historiques et modernes sur les droits fonciers des communautés locales et autochtones du Cameroun*. Forest Peoples Programme. [www.forestpeoples.org/sites/fpp/files/publication/2010/05/cameroonlandrightsstudy09fr.pdf](http://www.forestpeoples.org/sites/fpp/files/publication/2010/05/cameroonlandrightsstudy09fr.pdf) / <sup>2</sup> [www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html](http://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html) / <sup>3</sup> IIED, LandCam. [www.iied.org/landcam-securing-land-resource-rights-improving-governance-cameroon](http://www.iied.org/landcam-securing-land-resource-rights-improving-governance-cameroon). LandCam is led by CED, RELUFa and IIED. / <sup>4</sup> *Atelier d'évaluation de la mise en œuvre des dispositions de la Déclaration des Nations Unies sur les Droits des Peuples Autochtones en prélude à la célébration du 10ème anniversaire*. Yaoundé, Cameroon, 4–5 September 2017. / <sup>5</sup> *African Commission on Human and Peoples' Rights v. Republic of Kenya*. African Court on Human and Peoples' Rights, Judgment (26 May 2017), paragraphs 105–112. / <sup>6</sup> *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities submitted in accordance with 'Resolution on the Rights of Indigenous Populations/Communities in Africa, adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session (2005), DOC/OS(XXXIV)/345*. [www.achpr.org/files/special-mechanisms/indigenous-populations/expert\\_report\\_on\\_indigenous\\_communities.pdf](http://www.achpr.org/files/special-mechanisms/indigenous-populations/expert_report_on_indigenous_communities.pdf) / <sup>7</sup> See voting results at: [www.un.org/press/en/2007/ga10612.doc.htm](http://www.un.org/press/en/2007/ga10612.doc.htm) / <sup>8</sup> Article 26. / <sup>9</sup> Articles 10, 19 and 32(2). / <sup>10</sup> Rombouts, SJ (2017) *The Evolution of Indigenous Peoples' Consultation Rights under the ILO and U.N. Regimes*. *Stanford Journal of International Law* 53(2):169–224. / <sup>11</sup> For example, *Kichwa Indigenous People of Sarayaku v. Ecuador*. Inter-American Court of Human Rights, Judgment (27 June 2012), footnotes 178, 217, 218, 237, 242, 248, 264, 265, 288 and 301, and paragraph 215. / <sup>12</sup> This section is based on Nguiffo *et al.* (note 1). / <sup>13</sup> Alden Wily, L (2011) *Whose Land Is It? The Status of Customary Land Tenure in Cameroon*. CED/FERN/Rainforest Foundation UK. [www.fern.org/sites/fern.org/files/cameroon\\_eng\\_internet.pdf](http://www.fern.org/sites/fern.org/files/cameroon_eng_internet.pdf) / <sup>14</sup> Kenfack, P-É, Nguiffo, S, Nkuintchua, T (2016) *Land Investments, Accountability and the Law: lessons from Cameroon*. IIED, London. <http://pubs.iied.org/12588IIED> / <sup>15</sup> <https://thetenurefacility.org/projects/cameroon/>



## Knowledge Products

The International Institute for Environment and Development (IIED) promotes sustainable development, linking local priorities to global challenges.

The Centre pour l'Environnement et le Développement (CED) protects the rights, culture and aspirations of local communities in Central Africa.

The Réseau de Lutte contre la Faim (RELUFa) works to address poverty, hunger, and economic, social and environmental injustices in Cameroon.

The Centre pour l'Éducation, la Formation et l'Appui aux Initiatives de Développement au Cameroun (CEFAID) promotes community self-development among disadvantaged people in Cameroon.

Cameroon's National Engagement Strategy (NES) is led by a national civil society platform and involves multi-stakeholder dialogue to promote land policy reform and implementation.

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