

# An Appraisal on the Protection of the Right to a Healthy Environment by the State of Cameroon in the Oil and Gas Industry

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## ABSTRACT

With the political ambition to see Cameroon become an emerging economy by 2035, natural resource exploration and exploitation are a key developmental strategy. But these same activities have serious negative effects to both the human and physical environment. One may ponder whether the environment should continuously be sacrificed for the swelling of the state treasury? In view of this some critical questions come to mind: what are the environmental commitments of the oil and gas industry, what are the mechanisms put in place by the state to curb environmental hazards caused by this industry. To achieve this, the paper sets out the following objectives: to examine their relationship with the state, as well as to evaluate the level of control the state has over the operations of the petroleum industry in Cameroon. This was done using both the doctrinal and empirical research methods. The paper reveals that, though there are efforts made by the companies to curb environmental damage especially in their operational policies, there is still much to be done in order to match theory into practice. For the better protection of the right to a healthy environment of Cameroonians, this paper recommends that all the relevant stakeholders must be actively involved in the operations of the oil and gas industry in Cameroon.

**Keywords:** Right to a healthy environment, oil and gas industry

## INTRODUCTION

The main stakeholders in the oil and gas business in Cameroon are: the industry, the civil society, the host government and the local people. They all have different, but complementary roles to play in order to minimize or avoid ecological impacts. Cameroon being an oil producing country is not free from the 'oil curse'. The benefits that go with the exploitation of oil do not accrue to Cameroonians in the same way as Norwegians benefit from its exploitation. Local communities hosting oil production facilities have nothing to show for this. For example, Ndian Division from which about 95% of oil produced by Cameroon comes, does not have a single kilometer of tarred road or even a single filling station.<sup>2</sup> The roads are near impassable during rainy seasons. Social amenities which permit people to lead dignified lives are absent or where they exist, they are in a rudimentary state.

Also, Cameroonians living along the Chad-Cameroon pipeline project suffer the adverse environmental effects of the project.<sup>3</sup> Even at the terminal in Kribi, inhabitants have lost

<sup>2</sup> Colbert A.N, *The Rights of Indigenous People over Natural Resources: The Case of the Ndian Division of Cameroon*, supra, p.5.

<sup>3</sup> The Washington based NGO – the Environmental Defence Fund (EDF), a fierce critic of the project predicted: "The 600

**How to cite this paper:** Abilabi Colbert Nicko "An Appraisal on the Protection of the Right to a Healthy Environment by the State of Cameroon in the Oil and Gas Industry" Published in International Journal of Trend in Scientific Research and Development (ijtsrd), ISSN: 2456-6470, Volume-5 | Issue-1, December 2020, pp.198-205, URL: www.ijtsrd.com/papers/ijtsrd35806.pdf



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their means of livelihood as a result of the pipeline. Deep-water horizon drilling in the Gulf of Guinea is a potential danger to aquatic life and coastal inhabitants. This notwithstanding, some measure of legal control of the industry exists. The government and oil companies are engaged in a wide range of initiatives aimed at enhancing both the quality of life and environment. But Cameroon still remains a country with poor social indicators.

This paper argues therefore that the problem lies in the monitoring of compliance with, and the implementation of the regulations. Cameroon is a country with a predominant executive with swift and all encompassing powers over and above the other arms of government. There exists a weak and unreliable judiciary. Also, the legislature is largely

mile underground pipeline through Cameroon will pass through ecologically fragile rainforest areas . . . As a result, deforestation, wildlife poaching and the loss of farmland of the local villages to the construction activities will create a destructive environmental legacy. The pipeline itself even with state of the art technology, poses the danger of groundwater contamination and pollution of important regional water systems as crude oil containing heavy metals leaks into the environment" see [http://www.edf.org/pubs/reports/c\\_chadcam](http://www.edf.org/pubs/reports/c_chadcam).

captured by the executive, rendering it incapable of performing its roles which consists of representing constituent interests, making or shaping public policy and overseeing policy implementation by the executive branch and its agencies.<sup>4</sup> The inability of the legislature to legislate appropriately and to oversee effectively is at the root of the mismatch between oil industry activities and their inability to enhance the human right to development and the right to a healthy environment. This mismatch is at the base of the disparity between normative expectations and observed outcomes. This paper therefore examines the roles of the state via its three arms in overseeing the industry's activity.

### The Executive Arm of Government

The host government has a role in establishing a regulatory and institutional framework with effective enforcement mechanisms to ensure compliance. For this purpose therefore, the government needs to have a solid understanding of exploration and production operations and how they may adversely affect the environment. To avoid duplication of functions, a single government ministry or agency such as the ministry of environment and Nature Protection should be responsible for overseeing and approving a company's environmental strategy and work plan.

In Cameroon, the executive is so powerful that the other arms of government have little or nothing to say when it comes to deciding on the style and rate of enforcement and implementation of rules and regulations in Cameroon let alone talk of norms relating with the right to healthy environment of the denizens of Cameroon. The executive have coerced the state powers so much so that the legislator and judicial powers have become stooges before the executive arm. The executive in Cameroon rule the country via decrees, ministerial orders, decision, etc. There are plethora of instances where the presidential decrees supersede the law, where the president as head of the executive rules the country by presidential decrees.

The fact that he is the head of the judiciary and the constitution gives him the power to delegate his power, the delegation of his powers to his ministers have been styled that, the ministers can also sub-delegate their delegated powers to their subordinates. Hence, going against the legal maxim: *Delegatus non protest delegare*. Presidential power even extends to judicial powers and such decrees can even oust the jurisdiction of the court to question the legality of such rule. For better understanding of the level of usurpation of the executive powers in Cameroon, we have dealt in detail with the performance of the other two arms of government in Cameroon that is the legislator and judiciary.

### The Role of the Legislator

The legislature faces constraints in fulfilling their roles and responsibilities, including weak individual and institutional capacity, little independence from the more powerful executive and ruling political party, and limited political will.<sup>5</sup> Decades today, natural resources have been a source of power and wealth for the country's ruling elites and for

multinational corporations, and less often for ordinary Cameroonians. Competition for control of revenues from natural resources has fueled cycles of corruption and poverty, forestalling opportunities to spur economic growth and social development.

Today, resource-rich African nations like Cameroon are earning rising profits from their natural wealth as a result of the decline of global mineral and petroleum resources in other countries and continents the world over. If these resources are to be used effectively and harnessed for development, more accountable and transparent mechanisms must be developed and supported by the government, multinational corporations, the legislature, political parties, civic organizations and the media.

Democratic governance requires legislatures to serve three purposes: represent citizen interests; make or shape laws and policies; and oversee the executive.<sup>6</sup> In the management and control of the activities of the oil industry, legislators bear responsibility for ensuring that policy and regulatory frameworks support their sustainable use and exploitation, and that government agencies appropriately allocate and account for revenues.<sup>7</sup> Here, we shall discuss role of elected political officials in the legislative branch of government-in serving as constructive leaders in improving the oversight and management of the country's oil resources so as to achieve economic development. This section identifies the challenges that Cameroonian legislators face in overseeing the country's oil industry.

A weak legislature cannot serve as a counterweight to a more powerful executive branch of government. In Cameroon, the concept of party loyalty is so strong that the legislature is marginalized from the decision-making process and dissuaded from conducting oversight activities. The ruling party control is pervasive, and the legislature is often used to rubber-stamp executive policy after little or no debate.<sup>8</sup> Constitutions, legislation and other rules of procedure often vest significant legal authority in the executive, thereby diminishing the ability of legislatures to oversee the oil sector.<sup>9</sup> The complex environment, in which oil exploitation frequently occurs, makes it particularly difficult for legislators to exercise effective oversight. Cameroonian law does not grant the National Assembly the power to investigate state-owned companies.<sup>10</sup> Legislators are often under pressure to pass budgets within timeframes that do not allow for diligent review.<sup>11</sup>

<sup>6</sup>Ibid., at p. 10.

<sup>7</sup>The National Democratic Institute for International Affairs (NDI) believes that African legislatures could play more robust roles in creating viable oversight mechanisms to monitor the collection and use of revenues from extractive industry revenues, and in ensuring that the interests of civil society and citizens are taken into account, from community-level environmental concerns to the allocation and disbursement of revenues collected by central governments.

<sup>8</sup>Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> See Part III, Chapter I of the Constitution of Cameroon.

<sup>11</sup>MbahKenaston, "Parliament Brushes Finance Bill With the Speed of Light", The Post, No. 0267, March 8<sup>th</sup> 2002.

<sup>4</sup> Shari B, & Barrie H, Transparency and Accountability in Africa's Extractive Industry: The Role of the Legislature, NDI, 2007.

<sup>5</sup>[www.globalreporting.org](http://www.globalreporting.org) (last visited July 15, 2017).

In a large number of the countries surveyed by the National Democratic Institute for International Affairs,<sup>12</sup> legislators are sidelined by more powerful executives, and often lack the information and skills to fulfill their core functions. When the role of the legislative branch as a counterbalance to executive power is not fully developed, customary practice frequently gives the executive disproportionate power and authority.<sup>13</sup>

Regulation and oversight of the extractive industries requires an understanding of complex technical and financial issues. In Cameroon, the ability of individual legislators to understand and contribute to extractive sector management and oversight is worryingly weak. The lack of formal education among certain legislators accounts for the lack of understanding.<sup>14</sup> Equally, high turnover in the legislature makes it difficult for legislators to build up specific areas of expertise over time.<sup>15</sup>

While current efforts to increase transparency and accountability in the management of oil resources emphasize the roles and responsibilities of a broad range of actors, relatively little attention has been paid to the potential contribution of elected legislators. Yet, the three core functions of the legislative body—representing constituent interests, making or shaping public policy, and overseeing policy implementation by executive branch agencies—are central to any effort in this area.

The recognition of the need to improve the management of the extractive industry in Cameroon presents a unique opening for legislators to establish themselves as relevant and credible actors in the movement towards greater transparency, accountability and responsiveness in government. Initiatives like the Extractive Industries Transparency Initiative (EITI) and Publish What You Pay (PWYP) Coalition have drawn worldwide attention to the need for increased transparency and accountability in the management of extractive industries. The result is unprecedented international political will, information and tools for reforming the management of the extractive industries. Similarly, the window of opportunity for legislators to prove themselves as relevant and capable actors in the debate over extractive industry management closed firmly in a country like Cameroon where the legislature has limited credibility in the eyes of citizens.

Oversight of the extractive industries is further complicated by a common perception held by many legislators themselves that the industry's technical complexity is beyond their comprehension.<sup>16</sup> Shari and Barrie<sup>17</sup> do not

<sup>12</sup> Shari, B & Barrie H., "Transparency and Accountability in Africa's Extractive Industries" *National Democratic Institute for International Affairs (NDI) 2007*

<sup>13</sup> Ibid.

<sup>14</sup> Some MPs do not have above the First School Leaving Certificate, and so deliberations do not interest them. See VeneghoFon, "MPs sleeping during deliberations in the Hemicircle at Ngoa-ekelle", *The Post News Paper*, No. 0356, February 2003.

<sup>15</sup> [http://en.wikipedia.org/cameroonian\\_parliamentary\\_elections\\_2002](http://en.wikipedia.org/cameroonian_parliamentary_elections_2002), (Last visited 24/12/2019).

<sup>16</sup> The National Democratic Institute for International Affairs (NDI) believes that African legislatures could play more

make particular reference to Cameroon. However, the study was carried out in Africa not excluding Cameroon. Therefore, the results hold true for Cameroon. Faced with proposals from well-informed or connected executive branch agencies or officials, legislators often lack both the information and the confidence to influence legislation, policy or the management of the extractive industry.

The ultimate responsibility for the management of a country's oil resource wealth lies with that country's elected government. The principal means of ensuring a sound management at all stages of oil resource exploitation – from extraction to the collection and expenditure of revenues – is through the adoption of practices that adhere to and reinforce agreed-upon standards of accountability and transparency. Countries that have successfully used proceeds from the extractive industries for national development purposes, like Australia, Canada and Norway, have such practices in common.<sup>18</sup> According to a study commissioned by the World Bank,

Our findings stress the importance of strong (or at least strengthened) institutions in the wake of natural resource discoveries as a way to curb the negative growth effects of corruption. This is especially true in less developed countries where natural resource discoveries have a much higher relative impact on both the capital stock and the extent of corruption, and are confronted with generally weaker and less adaptable institutions.<sup>19</sup>

Accountable governments face two principal challenges in determining the policy framework for the exploitation of oil and minerals in their countries. First, they must create a business climate that attracts private investment, a necessary precondition for the development of the extractive industries. Second, they must address relevant domestic policy issues, such as the environmental impact on communities affected by extractive activities, and ensure the equitable distribution of profits from the industry. Policy or regulatory frameworks and laws governing the exploitation and management of natural resources are often spread

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robust roles in creating viable oversight mechanisms to monitor the collection and use of revenues from extractive industry revenues, and in ensuring that the interests of civil society and citizens are taken into account, from community-level environmental concerns to the allocation and disbursement of revenues collected by central governments.<sup>17</sup> Ibid.

<sup>18</sup> These include, among others, British Petroleum (BP)(U.K.), Chevron/Texaco (U.S.), Cosmo Oil (Japan), Marathon Oil (U.S.), Petro-Canada (Canada), Premier Oil (U.K.), Shell International (Netherlands), Statoil (Norway), Suncor Energy (Canada), Total (France), and Bowleven (U.K.) Global Reporting Initiative, GRI Reporters per Sector, at [http://www.globalreporting.org/guidelines/rep\\_sector.asp?sector=47&SeaCou2=Search](http://www.globalreporting.org/guidelines/rep_sector.asp?sector=47&SeaCou2=Search) (last visited May 1, 2018).

<sup>19</sup> Leite and Weidman, quoted in Marshall, Ian, *A Survey of Corruption Issues in the Mining & Mineral Sector*. England: International Institute for Environment and Development, 2001. Available online at: [http://www.ied.org/mmsd/mmsd\\_pdfs/marshall\\_corruption.pdf](http://www.ied.org/mmsd/mmsd_pdfs/marshall_corruption.pdf), ( Last visited 26/4/2018).

across different pieces of legislation and other government instruments.

In most cases, constitutions vest natural resources in the people but grant the government the authority to manage those resources on their behalf. In some cases, constitutions specify formulae for revenue sharing between national and state or regional levels of government. Mining or oil codes specify procedures and parameters for the granting of concessions and other rights of access, general conditions for exploitation, royalties, taxes, and other incentives specific to the extractive industries. Corporate tax structures and laws governing employment, the environment, and occupational health and safety also have implications for extractive industry management. Through their lawmaking functions, legislators can support the passage of laws or other instruments that create an enabling environment for sustainable and accountable management of oil and minerals.

Recommendations made by the Norwegian Parliament helped determine the appropriate management systems when large offshore oil and gas deposits were discovered in the late 1960s. The Norwegian legislature continues to play a central role in overseeing the management of the extractive industries. Regrettably, legislators from a number of African countries described situations in which they were under pressure to move legislation forward quickly, often without amendment, because funding from international development partners depended on the passage of legislation.<sup>20</sup> Confidentiality clauses are also often used to prevent public scrutiny of contract details.<sup>21</sup>

In the most successful economies, the state's role as facilitator of investment is balanced by its role, for example, as regulator – establishing laws and policies that provide for regional land use planning, ameliorate environment and social impacts, or take advantage of the opportunity to develop roads, schools, and better health care.<sup>22</sup>

The Cameroon legislator's inability to monitor and oversee the activities of the oil industry so as to guarantee the rights to development and a healthy environment is clearly portrayed in the Chad-Cameroon pipeline project.

### The Role of the Judiciary

One of the maxims of equity is that, where there is a right, there is a remedy. This means that Cameroonians should be capable of enforcing the rights to a healthy environment. For this to be possible, the credibility, predictability and reliability of Cameroon's judiciary system must be detained for questioning. This section argues that the judiciary does not enhance the enjoyment of this right.

<sup>20</sup> [www.globalreporting.org/about/faq.asp](http://www.globalreporting.org/about/faq.asp) (last visited July 15, 2018).

<sup>21</sup> [www.globalreporting.org](http://www.globalreporting.org) (last visited July 15, 2017), p. 11.

<sup>22</sup> The Mining, Minerals and Sustainable Development Project: *Breaking New Ground: Mining Minerals and Sustainable Development*. (London: Earthscan Publications Ltd, 2002). Report for the International Institute for Environment and Development and the World Business Council for Sustainable Development.

The United Nations Human Rights Committee had earlier in 1994 observed that Cameroon's judiciary fails to meet internationally accepted norms of independence. After reviewing Cameroon's 1994 periodic report on the state of human rights in the country, the United Nations Human Rights Committee questioned "the independence of the judiciary. In particular, the composition of the Higher Judicial Council is not such as to guarantee respect for this principle."<sup>23</sup> Five years later in 1999, when considering Cameroon's third periodic report, the United Nations Human Rights Committee again observed that Respondent still had not addressed all the concerns it had previously expressed in its concluding observations on the second report of 1994.<sup>24</sup>

The lack of an independent or impartial judiciary severely compromises the competence of any domestic court in handling a case before it. It is therefore very unlikely that any action brought before a court in Cameroon to vindicate the right to a healthy environment will succeed. Perhaps the better option may be to seize an international tribunal for example the African Commission on Human and Peoples Rights.<sup>25</sup>

It is trite law that before resorting to an international tribunal to redress a grievance against a state for injury on its national(s), that person(s) must first exhaust all available domestic remedies, unless, of course, such remedies are inadequate or their application is unreasonably prolonged.<sup>26</sup> Support for this rule was provided by the Permanent Court of International Justice in the *Switzerland v. United States*,<sup>27</sup> where the Court noted that the "rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law."

This rule is also recognized by the Banjul Charter and the jurisprudence of the African Commission. Article 56(5) of the Banjul Charter requires the pursuit and exhaustion of domestic remedies before instituting any proceedings before the African Commission.<sup>28</sup> The African Commission recognizes the fact that the requirement to exhaust domestic remedies is a necessary first step before the institution of

<sup>23</sup> U.N. H.R. Comm., Concluding Observations of the Human Rights Committee: Cameroon. 18/04/94, U.N. Doc. CCPR/C/79/Add.33, at 14 (Apr. 18, 1994).

<sup>24</sup> U.N. H.R. Comm., Concluding Observations of the Human Rights Committee: Cameroon. 04/11/99., U.N. Doc. CCPR.C.79.Add.116, at 2 (Nov. 4, 1999).

<sup>25</sup> However, the African Commission will require the exhaustion of local remedies by the claimant before accepting to entertain the matter.

<sup>26</sup> Generally Restatement, Comment and Reporters' Notes (1987).

<sup>27</sup> *Interhandel (Switz. v. U.S.)*, 1959 I.C.J. Rep. 6, 26-27 (March 21). For a recent discussion by the World Court of the local remedies rule, see *Elettronica Sicula, S.p.A (ELSI) (United States v. Italy)*, 1989 I.C.J. 15, 28 I.L.M. 1111 (July 20).

<sup>28</sup> African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev.5, reprinted at 21 I.L.M. 58 (1982). The Charter was adopted by the Organization of African Unity on June 27, 1981 and entered into force October 21, 1986. See precisely art. 56(5).

international proceedings. In this connection, it has advanced three practical reasons.<sup>29</sup>

The first of these is the need to “give domestic courts an opportunity to decide upon cases before they are brought to an international forum, thus avoiding contradictory judgments of law at the national and international level.”<sup>30</sup> Secondly, that a government against whom a complaint has been brought “should have notice of a human rights violation in order to have an opportunity to remedy such violation, before being called to account by an international tribunal ... The exhaustion of domestic remedies requirement should be properly understood as ensuring that the State concerned has ample opportunity to remedy the situation of which applicants complain.”<sup>31</sup> Finally, the requirement of prior exhaustion of domestic remedies before knocking at the door of the African Commission is intended to ensure that the African Commission does not become a “tribunal of first instance for cases which an effective domestic remedy exists.”<sup>32</sup>

The International Law Commission's Draft Articles on Diplomatic Protection,<sup>33</sup> which deals with the exceptions to the local remedies rule in its Article 15, outlines five different situations in which local courts offer no prospect of redress. Article 15(a) provides that “local remedies do not need to be exhausted where (a) there are no reasonably available local remedies to provide effective redress, or the local remedies provide no reasonable possibility of such remedies.”<sup>34</sup> In Commenting on this article, the drafter suggests instances when the requirement of exhaustion of local remedies may be dispensed with: (i) local courts are notoriously lacking in independence; (ii) there is consistent and well-established line of precedents adverse to the claimant; and (iii) the respondent State does not have an adequate system of judicial protection.<sup>35</sup>

This draftsman could be focusing on the Cameroon judiciary system in making the comments. This is because the three points highlighted in the comment vividly capture the situation of Cameroon's judiciary system. The Cameroonian courts are notorious of being dependent on the executive as there is no real separation of power between the executive and judicial branches of government. In addition, the system of judicial protection is inadequate, given that the courts are over-burdened and corrupt.<sup>36</sup>

In Cameroon, the President is the Supreme Judge and is entrusted with superfluous powers at the expense of the

<sup>29</sup> The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples' Rights, Communication No. 155/96, 37-39.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> I.L.C., Draft Articles On Diplomatic Protection, Report Of The I.L.C., 55<sup>th</sup> Sess. GAOR, 58<sup>th</sup> Sess., Supp. 10, U.N. Doc. A/58/10, at 76 (May 5-9, 2003).

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> NdivaKofele-Kale, “Asserting Permanent Sovereignty Over Ancestral Lands: The Bakweri Land Litigation Against Cameroon”, *Annual Survey of International and Comparative Law*.

Judiciary. In promulgating the basic law of the land, the constitutional drafters set out to create an “imperial presidency”<sup>37</sup> by making this institution the font of a vast array of judicial and non-judicial powers.<sup>38</sup> Under this kind of system, the final say on domestic remedies, whether of an administrative or legal nature, in the Cameroonian context, is in the hands of the President of the Republic. Although the Constitution provides for a separation of powers among the three branches of government, in reality the Executive overshadows the other two branches. The U.S. State Department describes Executive power in Cameroon as follows:

...the president is empowered to name and dismiss cabinet members, judges, generals, provincial governors, prefects, sub-prefects, and heads of Cameroon's para-statal firms, obligate or disburse expenditures, approve or veto regulations, declare states of emergency, and appropriate and spend profits of parastatal firms. The president is not required to consult the National Assembly. The judiciary is subordinate to the executive branch's Ministry of Justice. The Supreme Court may review the constitutionality of a law only at the president's request.<sup>39</sup>

Presidential decisions therefore carry a kind of *res judicata* effect on other state institutions and organs.<sup>40</sup> This scenario epitomizes the fact that Cameroon's judiciary lacks independence, since it is largely captured by the President of the Republic. In its 1999 Human Rights Report on Cameroon, the United States Department of State described Cameroon's judiciary as one that “cannot act independently and impartially, since all judges and magistrates are directly nominated by the President.” The Report goes on to observe that “politically sensitive cases are never heard.”<sup>41</sup> Judicial officers owe their appointments to the President (Article 37(3))<sup>42</sup> and serve at his pleasure.

<sup>37</sup> MbuEtonga, *An Imperial Presidency: A Study of Presidential Power in Cameroon, in An African Experiment in Nation Building: The Bilingual Cameroon Republic Since Reunification*, 133-158 (NdivaKofele-Kale, ed., 1980).

<sup>38</sup> NdivaKofele-Kale, “Asserting Permanent Sovereignty Over Ancestral Lands: The Bakweri Land Litigation Against Cameroon”, (2007), *supra*.

<sup>39</sup> U.S. Dep't of State, *Background Notes: Cameroon* (Oct. 2006), available at <http://www.state.gov/r/pa/ei/bgn/26431.htm>.

<sup>40</sup> The doctrine of *res judicata* holds that a matter which has received a final judgment by a court of final jurisdiction, such as the Supreme Court, cannot be opened again for hearing on its merits.

<sup>41</sup> U.S. State Department, 1999 Country Reports on Human Rights: Cameroon (Feb. 23, 2000), available at <http://www.state.gov/g/drl/rls/hrrpt/1999/231.htm>.

<sup>42</sup> “The President of the Republic shall guarantee the independence of judicial power. He shall appoint members of the bench and of the legal department. He shall be assisted in this task by the Higher Judicial Council which shall give him its opinion on all nominations for the bench and on disciplinary action against judicial and legal officers ....” See Law No. 65 of 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972, Article 37(3).

This power of appointment and removal is like a sword of Damocles dangling over the heads of judges, ready to descend the moment one of them steps out of line. In theory though, the President is assisted by the Higher Judicial Council in the appointment of members of the bench and officials of the legal department.<sup>43</sup> It is this body, sitting in council that decides the fate of all judicial officers from judges, magistrates, prosecutors of the Republic, down to senior court registrars. However, this organ, which is responsible for all appointments, promotions and dismissals in the judiciary, is completely under the control of the President, who appoints the majority of its members and presides over all its meetings.<sup>44</sup>

The Bakweri Land Litigation against Cameroon,<sup>45</sup> provide an insight on the issue of the supremacy of the Presidency and its dominance over the judiciary in Cameroon.<sup>46</sup> It argued that this supremacy and dominance has given rise to a peculiar form of *de facto* Executive 'preemption' of decision-making by subordinate state organs, regardless of whether there is an actual conflict between them or not. This *de facto* preemptive authority is peculiar for two reasons. First, it is *implied* since the Constitution is noticeably silent on the exercise of such authority. Second, because the underlying constitutional objective of the preemption doctrine is to avoid conflicting regulation of conduct by various official bodies that might have some authority over the same subject matter.

In the Cameroon scheme, however, presidential 'occupation' of the judiciary and the legislature has nothing to do with jurisdictional conflicts. Rather, it reflects the wide range of powers, legislative as well as judicial, that the Constitution confers on the President.<sup>47</sup> Presidential 'preemption' of decision-making at all levels and in all areas, judicial as well as non-judicial, operates in much the same way as an ouster clause which bars "the ordinary courts from taking up cases placed before the special tribunals or entertaining any appeals from the decisions of the special tribunals."<sup>48</sup>

<sup>43</sup>NdivaKofele-Kale, *supra*.

<sup>44</sup> *Ibid*.

<sup>45</sup> It should be noted that complainants were seeking a declaration from the Government of Cameroon that lands registered in the Imperial German land registers (*Grundbuch*), occupied by CDC since 1947, and defined as Private Property under Cameroon's 1974 Land Law belong to the Bakweri. However, such an acknowledgment that would bind Respondent State could only come from the authority that issued the 1994 CDC Privatization Decree in the first place, or given on its instructions. That authority being none other than the President and Head of State. Although the President chose not to make such a declaration between 1994 and the filing of the complaint before the Commission, he could have, in theory, been compelled by court order to do so. But such an order, BLCC submitted, was not likely to come from a court system that is under the President's total control and whose judges are personally appointed, promoted or removed, by him. See NdivaKofele-Kale, *supra*, note 603.

<sup>46</sup>NdivaKofele-Kale, note 603, *supra*.

<sup>47</sup> *Ibid*

<sup>48</sup> International Pen, Constitutional Rights Project Interights on behalf of *Ken Saro-Wiwa Jr. and Civil Liberties Organization v. Nigeria*. African Commission on Human and

An examination of the legal effect of "ouster" decrees as was the case in Nigeria's *Ken Saro-Wiwa et al.*, indicate that they tend to "render local remedies non-existent, ineffective or illusory" because they create a "legal situation in which the judiciary can provide no check on the executive branch of government."<sup>49</sup> In practice, presidential preemption ousts the jurisdiction of the ordinary courts thus depriving complainants of effective domestic relief. The involvement of Executive branch officials in *Ken Saro-Wiwa*, illustrates what can happen in Cameroon, where the judiciary has been reduced to impotence, incapable of playing its traditional role of providing a check on the executive branch.

Just like other African countries, Cameroon does not have an independent judiciary. On the contrary, there is an implied power of discretion built into the judicial system. Justice, under this discretionary regime is exercised by non-judicial power in a discretionary manner through a process of *de facto* ousting of the jurisdiction of courts. This procedure manifests itself through legal decisions made by ministers and law enforcement officials completely by-passing the courts.<sup>50</sup> In theory as in practice, the President is the Supreme Magistrate with the power to delegate some of his powers, and by extension, his judicial powers to subordinate officials who act in his name.<sup>51</sup>

Peoples' Rights, Communication No. 137/94, 139/94, 154/96 and 161/97.

<sup>49</sup> *Ibid*.

<sup>50</sup> Hardly a week goes by that the popular press fails to report on this "annoying interference." In an article entitled *Criminal Law: A conflict of systems*, AsongNdifor, senior editor of *The Herald*, offers these examples: "During the trial of SCNC activists in Bamenda in 2001 the legal department wrote to magistrate Abenego Bea instructing him on how to handle the case. He repudiated the instruction and passed his judgement according to the evidence he had. He was later given a punitive transfer to the legal department in Buea. There is also the recent case where a Buea high court ruled that John NibaNgu should be reinstated as general manager of the Cameroon Tea Estate but the South West legal department rejected the ruling and refused to order execution of the judgement." AsongNdifor, *Criminal Law: A Conflict of Systems*, THE HERALD, June 16-17 2003, at 8 (Cameroon). In the Monday, August 11, 2003 edition of *The Post* newspaper, the Minister of Justice and Keeper of the Seals is reported to have "ordered that all pending matters concerning Beneficial Life Insurance Company be withdrawn from court. This order is contained in a submission filed by the Southwest Attorney General .... The Attorney-General stated in his submission that 'we have instructions from the Hon. Minister of State in Charge of Justice and Keeper of the Seals, that all pending matters in court, whether criminal or civil, touching and concerning the parties in this case be withdrawn from court.'" See *Minister Orders Withdrawal of All Beneficial Life Cases*, THE POST, No. 0495, Aug. 11, 2003, at p. 2 (Cameroon).

<sup>51</sup> Article 10(2) of the 1996 Constitution provides: "The President of the Republic may delegate some of his powers to the Prime Minister, other members of Government and any senior administrative officials of the State, within the framework of their respective duties." See Law No. 65 of 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972, Article 10(2).

For instance, sometime in February 2002, the Minister of External Relations represented before another international body that the Government was favourably disposed towards a friendly settlement of the Bakweri matter. This undertaking was clearly meant to signal the Government's preference for a non-judicial resolution. Complainants in good faith relied on this stated preference for a resolution through dialogue to their own detriment. The Minister of External Relations, an official with no independent authority and whose authority is merely delegated, could not have taken such a binding obligation without explicit directives from the presidency.

However, the effect of this executive branch official's decision was to preempt other organs of government, including the courts, from looking into the Bakweri land question.<sup>52</sup> The African Commission had the opportunity to pronounce on the discretionary nature of justice, when it described a Governor's power as a "discretionary extraordinary remedy of a non-judicial nature" and ruled that "it would be improper to insist on the complainants seeking remedies from sources which do not operate impartially and have no obligation to decide according to legal principles."<sup>53</sup> It goes without saying that any remedy provided through this source is likely to be neither adequate nor effective.

In Cameroon, courts are overburdened with cases that will take years to clear. For instance, in 1996 the World Bank reported that the number of cases pending before the Cameroon Supreme Court stood at 3,000.<sup>54</sup> Unofficial sources however put the number at 4,343 as of June 2003.<sup>55</sup> For example, in October 1996, a representative of Cameroon appeared before the African Commission, at its 20<sup>th</sup> Session, urging the Commission to overturn its decision on admissibility in the case of *Annette Pagnouille (on behalf of Abdoulaye Mazou) v. Cameroon*<sup>56</sup> on the ground that Mazou had not exhausted his domestic remedies, whereas the case had been pending in Cameroon's Supreme Court for four years. Also, before petitioning the African Commission, the case of the *Victims of Post-Electoral Violence in the North West Province v. Cameroon* had languished in the Supreme Court for five years with no relief in sight.<sup>57</sup>

<sup>52</sup> See note 599, supra.

<sup>53</sup> See *Constitutional Rights Project v. Nigeria*, African Commission on Human and Peoples' Rights, Communication No. 60/91

<sup>54</sup> See World Bank, Technical Annex To The Memorandum And Recommendation (Report No. P-6928-CM) On A Proposed Credit In The Amount Equivalent To Sdr 8.8 Million To The Republic Of Cameroon For A Privatization And Private Sector Technical Assistance Project, World Bank Rpt No. T-6928-CM, at 6, 25 (May 22, 1996) (commenting on the slowness of the judicial process and observed that in 1996 3000 cases were pending at the Supreme Court).

<sup>55</sup> Ibid..

<sup>56</sup> See *Annette Pagnouille (on behalf of Abdoulaye Mazou) v. Cameroon*, African Commission on Human and Peoples' Rights, Communication No. 39/90.

<sup>57</sup> *Victims of Post-Electoral Violence in the North West Province v. Cameroon*, African Commission on Human and Peoples' Rights, Communication No. 272/2003.

Corruption also contributes to the inadequacy and unpredictability of judicial protection offered by Cameroonian courts. Cameroonian courts have been routinely dismissed by expert observers as well as the general public as corrupt; they are institutions where justice is for sale,<sup>58</sup> usually to the highest bidder or to barons of the regime. These observations have been made by the highest ranking state official responsible for the judiciary.<sup>59</sup> Even the President of the Republic has acknowledged that corruption exists in the judiciary system. In his 1999 New Year's Address to the Nation, after lamenting the scourge of corruption which has now spread to all sectors of Cameroonian society, he turned his attention next to "judicial and legal officers whose task is precisely to ensure respect for the rules governing our society." As regards this branch of government, the President observed that:

There are still many cases where justice is not rendered as it should. That is to say with dispatch and impartiality, in strict conformity with the laws and procedures in force. This should not be tolerated. Even though I would want to believe so, the majority of our judicial and legal officers are upright, the deviant practices observed may lay the institution open to suspicion....<sup>60</sup>

<sup>58</sup> For instance, three out of ten Cameroonians polled by Gallup International for Transparency International's 2003 Global Corruption Barometer, singled out the judiciary as the institution from which they would like to eliminate corruption if they were given the opportunity. The July 2002 Gallup survey polled 30,487 people in 44 countries on the following question: "If you had a magic wand and could eliminate corruption from one of the following institutions, what would your first choice be?" The institutions enumerated including among others, the courts, the customs, educational system, medical services, police, etc. Thirty-one percent of the Cameroonian respondents picked out the courts as their first choice with the police coming in a distant second being singled out by only 13.7 per cent of the respondents. The Transparency International Global Corruption Barometer: A 2002 Pilot Survey of International Attitudes, Expectations and Priorities on Corruption, at 29 (July 2003), available at <http://www.transparency.org/content/download/1566/8095/file/barometer2003.en.pdf>, (Last visited 9/3/2015).

<sup>59</sup> While admitting that the Cameroon judiciary is corrupt, Justice Minister Amadou Ali tries to place the blame elsewhere: "la corruption existe parce qu'elle est entretenue par des corrupteurs, dont beaucoup se recrutent, malheureusement, dans le monde de l'entreprise ... Parce qu'ils veulent a tout prix gagner leurs procès, des chefs d'entreprises approchent des magistrats et leur font des offres alléchantes, les amenant ainsi a rendre des décisions qui, si elles arrangent leurs commanditaires, donnent de la justice camerounaise, l'image d'une justice inapte a soutenir le développement de l'entreprise et insécurisante pour les investissements." LE MESSAGER, no. 1519/vendredi, 06 juin 2003, at 5

<sup>60</sup> Address by President Paul Biya, The Head of State's New Year Message to the Nation, (Dec. 31, 1999)

### Conclusion

Conclusively, the picture of the judiciary in Cameroon painted herein above suggests that an action, whether collective or individual, to enforce the rights to a healthy environment will yield little or no fruits. Perhaps an action may be brought against oil MNC for violating the human right to a healthy environment in a U.S. court under the Alien Tort Claims Act (ATCA), which provides an opening for prosecution of behavior that violates international law. However, the practical and legal limits of applying the ATCA to MNCs, casts doubts on the viability of this option. This notwithstanding, the justiciability of economic and social rights is problematic.<sup>61</sup>The examination of the role of the legislature in assisting Cameroonians to enjoy the rights to a healthy environment indicates that Cameroonians cannot rely on the legislature. Equally, the Cameroonian judiciary system has been shown to be unreliable.



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<sup>61</sup>Deval Desai, "Courting Legitimacy: Democratic Agency and the Justiciability of Economic and Social Rights", (2010), *Interdisciplinary Journal of Human Rights Law*.