



BEHIND THE VEIL: TRANSPARENCY, ACCESS TO INFORMATION AND COMMUNITY RIGHTS IN CAMEROON'S FORESTRY SECTOR

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Design and Layout: Raygun Design

Cover photo: Bagyeli and Bantu women at a consultation meeting in Bella Bas, August 2015 (Anouska Perram)

ISBN: 978-0-9935190-1-7

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This publication has been made possible through the assistance of the European Union, and in particular through the support of the project "Congo Basin Voluntary Partnership Agreement Implementation - Championing Forest Peoples' Rights and Participation". The fieldwork referred to in it has been made possible by funding from both the European Union and the UK Department for International Development, to whom FPP extends its thanks. The contents of this publication are the sole responsibility of the author and can in no way be taken to reflect the views of the European Union or the UK.



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Notes on maps

This publication contains maps indicating customary land use by the villages of Moungué, Gwap, Nkollo and Bella. Those maps are based on data gathered using participatory mapping with those communities, the process of which is ongoing. The maps are not and do not purport to be definitive maps of the customary lands owned or used by those communities, and

should not be used or construed as such, or in any way seen as a limitation on the customary rights of those communities. Data obtained during the participatory mapping process remains the exclusive property of those communities, and it (and the maps produced from it) may not be used or reproduced without their free, prior and informed consent.

Acknowledgments

The author would like to thank Stephen Nounah, Tom Lomax and Camilla Capasso for their helpful comments on the draft of this publication. Any errors remain the responsibility of the author. Fieldwork underlying this report has primarily been conducted by Jean-Baptiste Romulus Mabaya of Okani, together with Anouska Perram and Stephen Nounah of FPP, with animateurs Charles Madjoka and Marceline Louanga

of BACUDA, and with the assistance of Valentina Favero of FPP, Venant Messe of Okani, and Victorien Mba of APED. Thanks also to Joel Missoka, originally from Bella, who acted voluntarily as a translator (into local languages) during several of the missions during this fieldwork. Last but not least, the author would like to thank the communities of Bella, Gwap, Nkollo and Moungué, for the time and commitment they have shown in their continued engagement with FPP and Okani.

In 2010, Cameroon and the European Union signed a Voluntary Partnership Agreement (VPA) on forest law enforcement, governance and trade in timber and derived products.¹ One apparently positive element highlighted by the European Union and civil society organisations has been the inclusion of a “transparency annex” in the document, which aimed to “make information available for public scrutiny to improve transparency and accountability”.²

The push for transparency in the VPA is undoubtedly a positive step. Under the VPA rules, the Cameroonian government undertakes to publish a range of information about timber production, allocation of titles, management, and taxation and financial transactions, among others.³ How far, however, has transparency moved in practice?

This report describes work undertaken by FPP, together with Association Okani, in the department of Océan in the southern region of Cameroon, principally over a period of 18 months between October 2014 and April 2016. As this account illustrates, transparency and access to information remain key challenges for communities in Cameroon. Our experience has been that in practice transparency remains limited in scope, and bureaucratic in approach. Moreover, the concept of transparency appears to be understood in a very restrictive sense by the government, which has only published a list of the titles granted, without providing information on the processes by which they were granted. This has not allowed independent verification of (and challenge of, where appropriate) those processes. A wider, more citizen - and community - focused approach to transparency will be necessary if the VPA is to bring accountable forest governance to Cameroon. The new approach would give direct rights to access to information to individuals and communities, oversight into the process of attribution of permits and titles, and real opportunities for communities and others to challenge deficiencies in these processes.

¹ The Agreement was ratified by Cameroon on 1 December 2011.

² European Forest Institute, EU FLEGT Facility Website, 2014, “Transparency commitments”, available at: <http://www.euflegt.efi.int/transparency-commitments>, accessed 23 October 2015.

³ Cameroon-EU VPA, Annex VII.

BACKGROUND

FPP, together with Association Okani, has been working with eight communities (three Bassa'a, one Bakoko and four Bagyeli communities⁴) living in the arrondissements of Bipindi and Lokoundjé, in the department of Océan, southern Cameroon.

The eight communities are divided into four administrative villages – Bella, Gwap, Nkollo and MOUNGUÉ – each headed by a Bantu chief, and comprising both a Bantu and Bagyeli community. Bella is the largest village of the four, and has two districts – Bella Haut (where the chefferie is located, and which is predominantly Bantu) and Bella Bas. As is almost always the case in Cameroon, the Bagyeli (indigenous) communities do not have a separate administrative identity nor their own direct administrative representation, and are considered to form part of the Bantu village.⁵ The lands used by Bantu and Bagyeli communities within each village (and indeed between villages) overlap and communities interact regularly. There are broad

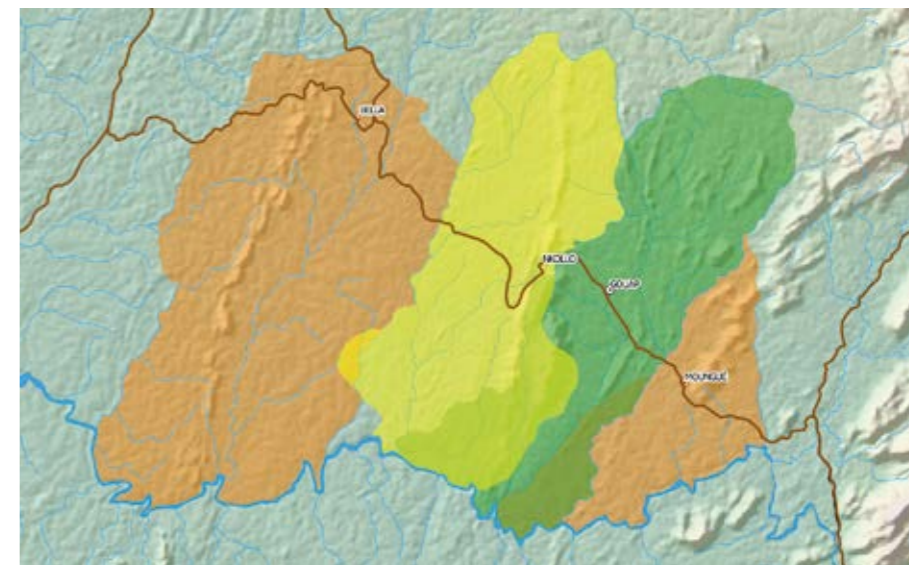
differences, however, in the way in which the Bantu and their Bagyeli neighbours use their lands: notably, the Bagyeli rely significantly more on gathering and hunting activities and less on agricultural cultivation. The Bagyeli are therefore more reliant on forested areas, whereas the Bantu communities are more focused on agricultural activities.

Social and economic relationships are common between the Bantu and Bagyeli communities. The Bagyeli, for instance, are frequently employed as labour force for Bantu agricultural work, they often sell forest products and buy agricultural goods from Bantu members of the community. Bagyeli singers and dancers also perform at important social events such as funerals. In general, however, the Bagyeli remain marginalised in cross-community discussions, and have much higher poverty indicators across the spectrum. Certain social problems, including alcoholism, are more prevalent in Bagyeli communities. Bagyeli community members are sometimes mistreated or exploited by their Bantu neighbours, and although this is far from universally practiced it is widely tolerated.

As they form a minority in each village, the Bagyeli are in a weak position to assert themselves in relation

to community decision-making in cases where their interests diverge from the Bantu. They are also often excluded from access to relevant information, because they are not directly notified by state actors or Bantu members of the community. The low levels of literacy and lack of French language skills are also additional barriers. Access to information, however, is not a problem exclusive to Bagyeli communities – there is a lack of dissemination of official (or other) information in both Bantu and Bagyeli communities.

In recent years, the customary territories of these eight communities – which have not been mapped by the government, and the limits of which are not registered in official records⁶ – have been subject to the award of a confusing and overlapping maze of third party titles, granted without any genuine, prior consultation of the affected communities. According to the most recent data available from the World Resources Institute (WRI) Interactive Forest Atlas of Cameroon,⁷ almost the entirety of the customary lands of the four villages are subject to some kind of concession or permit. The titles burdening the territories include:



Map 2: Map showing customary lands used by communities of MOUNGUÉ, Gwap, Nkollo and Bella. This does not show Bantu territorial use, generally the Bagyeli usage is more wide-ranging, and is often treated locally as the basis for delineating territories between the communities. As can be seen, there are several areas in use by members of more than one village.

DISCLAIMER: This map is a draft which remains under development. It does not purport to be, and should not be used or construed as, a definitive map showing the formal limits of the villages or the limits of customary lands used by those villages.

- Forest Management Unit⁸ (Unité Forestière d'Aménagement) (hereafter "UFA") No. 00-003, owned by MMG Sarl;
 - Sales of standing timber⁹ (vente de coupe) (hereafter "VC") nos. 0903344 and 093345, allocated to forestry company SBAC, and nos. 0903340, 0903341, 0903342, allocated to forestry company Boducam;
 - A reported agro-industrial concession to Biopalm Energy Ltd ("Biopalm"), for the creation of a palm oil plantation;
 - Agro-industrial concessions granted to Hévécam for the creation of rubber plantations; and
 - A mining exploration permit granted to G-Stones Resources Limited.
- As discussed below, there are many unanswered questions about compliance with national and international laws surrounding the grant of all these permits. Even more critical, however, are the effects – particularly when taken cumulatively – that these third party activities are having or will have on the rights and livelihoods of the communities living in the area.



Océan is located in the southern region of Cameroon, adjoining the coast.

4 The Bassa'a and Bakoko communities are the dominant groups in the area, known collectively as "Bantu" communities. The Bagyeli are a distinct community, recognised as an "indigenous people" within the legal sense of that term in Africa (they are more commonly known as "pygmies", although this is considered pejorative and FPP does not use this term).

5 The Bagyeli have some representation in village affairs – the Bagyeli "chief" is a "notable", one of the village "seniors" who in theory acts as an advisor to the chief. Although in theory this allows the Bagyeli some opportunity to participate in village-level decision-making, in practice Bagyeli notables are frequently excluded from discussions between the chief and notables (although we have observed better inclusion in the four villages the subject of this report). Even when they are included in discussions, with only one representative they are always in the minority – which means that it may be difficult or impossible for a Bagyeli notable to prevail in decisions which have a disproportionate impact on their community, or to raise issues about marginalisation of their community within the broader village.

6 This is not an unusual position in Cameroon. Although the government recognises the existence of administrative villages based on customary ownership, there is almost no mapping of these customary boundaries, and the official limits thus remain unknown (although there is a procedure for resolving boundary disputes, namely Décret no. 78/263 du 3 septembre 1978 fixant les modalités de règlement des litiges agro-pastoraux).

7 WRI, Interactive Forest Atlas of Cameroon, <http://cmr.forest-atlas.org/map/#v=atlas&f=en&x=10.2088&y=3.2244&z=14>, accessed most recently on 10 December 2015.

8 This refers to a large scale, long-term forestry concession which is intended to be exploited sustainably, over the long term, and remain part of the permanent forest estate.

9 The English term, "sale of standing timber", is not commonly used and we will use the term vente de coupe, or VC, throughout this document. A VC is a small, short term concession which is used to supply timber needs. Unlike a UFA, VCs frequently involve clear-felling over a small area and are not intended to be used in forests that form part of the permanent forest estate.

THE STORY SO FAR... OUR WORK IN THE COMMUNITIES

In October 2014, FPP and Okani were approached for help by concerned members of Bagyeli communities from MOUNGUÈ, GWAP, NKOLLO and BELLA. After a two year hiatus, employees of Biopalm had visited the communities and had commenced demarcating the territory of their oil palm concession. Some of the marker stones were located in the middle of fields and yet the community members had no idea of the size of the concession and were unaware of what was going on.

FPP had already done some preliminary investigations into the Biopalm concession, the results of which were published in a report in 2013.¹⁰ In the months after that initial fieldwork, the company's activities in the area ceased for several years. When these activities recommenced in 2014 and community members sought assistance, Okani and FPP's legal and human rights programme (LHRP) team became involved in the area. We began to look into the Biopalm concession (and subsequently, at the request of the communities, into other concessions as well) and to share the results of our investigations with community members.

It is worth setting out that, as a matter of principle, FPP and Okani do not of their own accord take a position in support of or against any particular project proposed by the government or a company. Rather, our role is to make communities aware of their legal rights at national and international level and to facilitate informed community decision-making. This has included seeking out information about projects which communities are concerned with, consulting with

communities about their legal and non-legal options, and supporting communities in respect of their decisions.

Why do FPP and Okani focus on seeking out and providing this information to the communities? Primarily because information is critical to the exercise of various human rights held by indigenous peoples and traditional communities in Africa. Under international human rights laws that have been ratified by and are binding upon Cameroon, indigenous peoples and other traditional communities have protected property rights to their customary lands.¹¹ Unfortunately, in Cameroon as in many other countries, these rights are generally not respected under national laws, which have largely continued the colonial terra nullius principle, under which lands owned by local peoples were appropriated for the state, and local ownership not recognised. This is not only in violation of Cameroon's international obligations, it also creates problems within Cameroon's national legal system since, under Article 45 of the Constitution, international instruments

ratified by Cameroon are incorporated within the national legal system and have an authority superior to national law.

Under those principles of international law, indigenous peoples and traditional communities have the obligation to be consulted about any project that may affect their customary lands and, at least in some circumstances, the government must obtain their free, prior and informed consent before proceeding with the project. Such consultations are not mere 'information and notification' meetings, but must involve genuine good faith dialogue and negotiation. Communities must be able to participate freely (without intimidation, coercion, or misleading enticements) and should be given full information prior to the meetings. If this does not happen, no proper consultation process can take place - let alone any free, prior and informed consent by the communities - and thus any project on customary lands involves a violation of their property rights. Providing information about specific projects, as well as about legal rights and options, is a way of supporting

the communities' exercise of their internationally-protected customary property rights.

Following the resurrection of the Biopalm project, members of FPP and Okani visited communities in November 2014. Since then Okani together with members of FPP's LHRP team have returned for numerous (extended) consultation visits¹² in the communities: in February-March 2015, June 2015, August 2015, November-December 2015, and March 2016; and shorter visits in July and late September 2015. In between times, an Okani staff member based nearby has been in regular contact with the communities both following up and carrying out other project activities. The details set out below are based upon the work carried out during these various visits.

¹⁰ E Freudenthal et al, "The BioPalm oil palm project: a case study in the Department of Ocean, Cameroon", in M Colchester and S Chao, 2013, *Conflict or consent: The oil palm sector at a crossroads*, FPP, ForestWatch and TUK Indonesia, pp 337-354, available at: <http://www.forestpeoples.org/tags/conflict-or-consent-fpic-palm-oil-sector-case-study-series> (accessed 26 April 2016).

¹¹ Such obligations arise under a number of conventions signed by Cameroon, including directly under Article 14 of the African Charter of Human and Peoples' Rights, which guarantees the right to property, and which the African Commission on Human and Peoples' Rights has held protects the rights, interests and benefits of traditional communities in their traditional lands, in respect of which a special protection may be warranted: see Centre for Minority Rights (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya, ACHPR Case No. 276/2003, paragraph 187. Protections for the rights of indigenous peoples and/or local communities may also arise under, inter alia, the International Covenant on Civil and Political Rights (article 27); International Covenant on Economic, Social and Cultural Rights (article 11); International Convention on the Elimination of All Forms of Racial Discrimination (article 5); International Convention on the Elimination of All Forms of Discrimination Against Women (article 14) among other international treaties and standards.

¹² The consultation visits have lasted between two and three weeks, and generally involve multiple meetings in each of the 4 villages, followed by a joint meeting (held in a different village each time) with representatives from all four villages, in which key decisions are taken and next steps planned. The last two joint meetings (in December 2015 and March 2016) have attracted more than 100 members from the communities, many of whom attend despite no finance being available for their transportation (as limited resources mean that FPP can only finance transportation for a smaller number of participants).

NOVEMBER 2014

As noted, FPP and Okani were approached in 2014 by community members concerned by the return of Biopalm. Community members had been told that there would be meetings organised in the communities on 29 and 30 October 2014, which representatives of the company and the administration would attend.

The history of Biopalm, as best we have been able to discover to date, is as follows. On 28 March 2012, Biopalm, a Singaporean palm oil company, was granted a provisional concession of 3,348 hectares in the vicinity of Bella for the purpose of creating an oil palm plantation.¹³ The boundaries of the concession, which was for a duration of three years, were not clearly defined by the decree which awarded it, and have always been the subject of uncertainty for the communities involved. As noted in FPP's 2013 report, the project had been launched in 2011, and was reportedly part of a proposal to grant a much larger area (200,000 hectares) to the Siva Group, the ultimate owner of Biopalm.¹⁴ Despite the decree granting only 3,348 hectares (which would have covered an area within the village of Bella only, consistent with the wording of the March 2012 decree), there was immediate uncertainty over the location and actual size of the project, with Biopalm and government officials in 2012 visiting not only Bella, but also Nkollo, Gwap and Moungué, giving the impression that a much larger area was involved.

FPP visited the communities in November 2014, together with representatives of NGOs BACUDA¹⁵ and APED,¹⁶ shortly after the renewed meetings with the company and government officials (which were also attended by an Okani staff member) had taken place. FPP and Okani, with inputs from the communities, drafted a summary of the discussion that had taken place during the meetings with company and government officials. According to those notes, government officials gave a figure of approximately 21,700 hectares for the Biopalm concession.¹⁷ It appears that this figure approximates the area "rezoned" from logging concession UFA 00-003 (see further below), although we were unaware of this at the time.

During the course of that visit, Okani also distributed copies of the decree dated 28 March 2012, following which Biopalm had been granted its provisional concession. This had never been provided to the community and caused some consternation.

The decree only mentioned the village of Bella, creating confusion and anger among villagers from the other three villages. Faced with this situation, the four villages decided to write a letter to Biopalm asking for more information about the proposed activities. The letter did not state any objections to the project, but rather asked for more information about it, specifically details of its exact location, its size, and the proposed calendar of works. The communities also asked Biopalm to confirm that it was a member of (and therefore bound by the principles and criteria of) the Roundtable of Sustainable Palm Oil (RSPO), the international oil palm certification body, which requires members to comply with environmental and social standards, including the respect for customary lands.¹⁸

The letter was delivered by representatives from APED to Biopalm's offices in Kribi on 17 November 2014. The employee at the office, however, refused to accept it. On the same day, a hard copy was also delivered to the prefect who accepted it. A few weeks later, a copy of the letter was sent by email to Biopalm, the lawyer acting for the company in Cameroon, and to representatives of Siva. Receipt was acknowledged by Siva and Biopalm's legal advisors; but no other response has ever been received.

¹³ See Decree No. 2012/168 of 28 March 2012. FPP and Okani only obtained a copy of this decree in 2014.

¹⁴ E Freudenthal et al, 2013, p 351.

¹⁵ BACUDA is a Bagyeli NGO working in Océan.

¹⁶ APED, the Association pour l'Environnement et le Développement, is a local NGO headquartered in Kribi.

¹⁷ This figure was reported to us by community members following meetings held in the villages organised by Biopalm and officials from the prefecture on 29 and 30 October 2014 (a note recording the contents of the meetings was drawn up together with community members in the days following the meetings, and is held internally by FPP). Community members were told at the meetings that they did not have the right to be consulted about the rezoning because the area was part of the state's private estate.

¹⁸ Letter to Biopalm Energy Limited, dated 11 November 2011, written jointly with the communities of Moungué, Gwap, Nkollo and Bella.

MARCH 2015

In February-March 2015, FPP and Okani held a first series of consultation meetings, which focused on explaining to community members the nature of their legal rights to their customary lands under national and international law, as well as updating them on the situation with Biopalm.

Biopalm had not returned to the communities since the October 2014 meetings, and communities were unsure of what was happening. FPP explained that the provisional decree expired (on its terms) on 28 March 2015 (shortly after our visit), and discussed what might happen next as well as options for how the communities might respond, depending on their views on the project.

There were in fact several options in particular we considered possible following the expiry of the provisional concession. The first was that Biopalm would abandon the project – this seemed unlikely given its recent return to the area. The second, assuming that Biopalm wished to continue with the project, was that it would seek a definitive concession (of up to 99 years). It did not appear, however, that it would qualify for this, given that it had not commenced any substantive work on any part of the provisional concession only a few weeks out from its expiry¹⁹. The third option was that Biopalm would seek an extension of its provisional concession for a further two years (the maximum duration for a provisional concession being five years²⁰), or a new provisional concession.

Any one of these options would have required a further decree. For that reason, since February 2015 FPP has monitored national newspapers (where notice of decrees is generally published).²¹ To the best of our knowledge, no new decree has been issued since that time. To this day we remain unaware of any extension to the provisional concession either before or after that time (and have made numerous attempts to obtain that information, as we describe below).

During these visits, it became evident from community comments that the members of the villages of Moungué, Gwap and Nkollo were opposed to the Biopalm plantation. In contrast, there were substantial divisions in the community of Bella. The chief, most of his family members, and some other members of the community supported the project. In contrast, the Bagyeli, and a large number of youth from the village, were opposed.

JUNE 2015

Our next visit to the communities was in June 2015. We had anticipated, at the time of our previous visit, that a new decree would have been issued by this time, but in fact our monitoring had revealed nothing. When we arrived the problem of Biopalm, quiet since October 2014, had been overshadowed by a new issue which had arisen in Bella and Nkollo: the arrival of forestry company SBAC.

SBAC's activities were causing a great deal of community consternation. We received several calls from community members the week before our planned arrival in June (when SBAC commenced work), advising us that SBAC was clear-felling areas of forest. During consultations, community members made complaints about the speed at which the work was taking place, the fact that areas were being clear-felled, and the resulting destruction of several field and crops. The "cubage" rate (a fee paid per cubic metre of wood taken by the company) was also less than the community believed was due.

According to statements by the notables involved during the course of our visit, the chiefs of Nkollo and Bella had been summoned, together with two notables, to the office of the sous-prefet a couple of months before the arrival of the company. They were then told that a forestry company would be arriving shortly to fell trees in their villages and that there was nothing

they could do to prevent it. They were also asked to sign documents (the nature of which we do not know), and to deliver (on spot, without having the opportunity to discuss with their communities) a list of social benefits that they would like to receive. No documentation was provided to the chiefs, nor was any further explanation given.²² This information had not been disseminated in the communities prior to our arrival, which added to community members' agitation, and highlights the difficult issues with intra-community sharing of information.

¹⁹ Pursuant to article 10 of Decree No. 76-166 of 27 April 1976 laying down the rules for management of the national estate ("National Estate Decree 1976"), the prefect can only propose the attribution of a definitive concession if the land has been developed in accordance with the conditions imposed by the terms of the concession. Given that nothing was done on the site between 2012 and 2015 (save some minor and partial demarcation), it seems difficult to see how this could have been complied with by the company.

²⁰ Article 3, National Estate Decree 1976.

²¹ In a normal operational system any new decree or administrative decision would be published in the *Journal Officiel*, the French law equivalent of the English law gazette, which would be a publication of the administration. This is the system by which new laws and decisions are formally promulgated, a principle of the rule of law (it is in fact common practice for laws not to take effect until they are gazetted in English law, for this very reason). In practice, the *Journal Officiel* was rarely regularly published nor readily publicly available in Cameroon, highlighting a key issue in the lack of legal transparency in the country. Formal legal and judicial announcements had also been available for publication to the public newspaper, the *Cameroon Tribune*. Recently, the government has designated 42 private newspapers as "*Journaux Officiels*" where official legal and judicial announcements may be (but are not obliged to be) made (see <http://www.journalducameroun.com/article.php?aid=19804> and *Arrêté conjoint n°078/Minjustice/Mincom du 24 mars 2015*). This is likely to have increased access to some laws (and particularly those of news interest). However, there is still no guarantee that all laws and decisions will in fact be published in an accessible way.

²² This report was confirmed to us by more than one notable who was present in the meeting, during community meetings in June 2015.



Shortly after our visit, the chief's representative in Bella²³ visited the sous-prefet seeking copies of the documents authorising the activities. He was reportedly told that they were confidential and was not given a copy.

Armed with a VC number (VC0903344)²⁴ which had been seen by members of the community stamped on logs cut by the company, FPP and Okani investigated further. Our first port of call was the APV-FLEGT website, where details of all exploitation licences are supposed to be published. In fact, the website is rarely up to date and there is quite a lot of information which has not been added. When we checked in June and July 2015, the most recent

list of exploitation titles showed only those granted on or before 31 March 2015.²⁵ The VC in question did not figure on the list available at the time.²⁶

Our next port of call was the MINFOF national office in Yaoundé. With both the VC number and the company name, we sought confirmation from MINFOF that VC0903344 was a valid VC. MINFOF could confirm that there was a UFA (UFA 00-003) in the area, but did not have any information about a VC which was apparently being exploited, and could not provide any details on it.

Faced with the continuing lack of information on both Biopalm and SBAC, we considered it was time to make requests in writing. On 22 July

2015, FPP sent formal written requests seeking information on the status of the Biopalm project. The requests were delivered by hand to the local offices of MINFOF²⁷, MINADER²⁸ and MINEPAT²⁹ in Kribi, and to the sous-prefet of Lokoundjé (the arrondissement in which Bella, Nkollo and Gwap are located). The letters to MINFOF and the sous-prefet also sought information about the forestry activities of SBAC.

No response to those letters was ever received from any of the recipients. However, while at the MINFOF office delivering the letter, FPP spoke to the Forests Section Chief. He said that the days of titles being granted without communities being informed had passed, and that



Planks of wood being stored out of view, witnessed during the field visit to observe SBAC's activities in July 2015. © 2015, Stephen Nounah

MINFOF provided information to any community members that asked for it, but that they were more reluctant to provide information to non-community members or NGOs.³⁰

meaning it would not have been a legitimate basis for a permit, if that was indeed the basis for it having been granted.³¹)

During the same week, FPP visited the site where clear-felling was taking place. By dint of discreet enquiries of employees, FPP was told that the VC was in fact a coupe de sauvetage (salvage permit) – i.e. cutting timber to make way for another land use, such as a plantation, also known as “conversion timber” – apparently not for Biopalm, but for Cameroonian rubber company Hévécam. (In late 2015, we discovered that one of the VCs (VC0903345), located at Bella Bas, adjoins but does not overlap a concession granted to Hévécam,

23 *Often times, the appointed chief does not live in the village of which he is chief, but rather in a local town or the capital city. In these circumstances, he appoints a representative (usually a family member) to act in his stead during his absence (the representative is also the main point of contact for the chief with the village, and notifies the chief of any matters which require his attention).*

24 *This is the reference number for the particular vente de coupe / sale of standing timber permit that has been granted by the authorities. It is required to be stamped on all timber that is removed pursuant to that permit.*

25 *We note that when we checked this again on 16 March 2016, the website now has available information up to 18 October 2015.*

26 *There was a VC0903343 – one number different – shown on the March 2015 list. However, this provided little satisfaction, particularly as we were informed by contacts at a national NGO that a common tactic of companies engaged in illegal exploitation is to amend one letter or number in the name of VC number of a valid title, in order to confound investigation into the legitimacy of the documentation. The close resemblance to a genuine title lends itself to operators stating that the difference is merely a small typographical error, and makes it difficult for investigators to state with certainty that the documentation is false (particularly when governmental actors are not forthcoming with details of titles issued, as is usually the case).*

27 *The Ministry of Forest and Fauna.*

28 *The Ministry of Agriculture and Rural Development.*

29 *The Ministry of Territorial Administration.*

30 *This is a response that FPP has had on many occasions, and appears deliberately intended to stymie communities from obtaining support from organisations with the means and technical expertise to be able to advise them effectively. There are costs involved for community members visiting government offices, both opportunity costs but also financial costs for transport, which can mount up when delegates are not guaranteed to be at their post, so that multiple return visits may be required. Community members are also often discriminated against or treated badly; may not have the knowledge of what documents to seek / questions to ask, and, in the case of Bagyeli community members in particular, may not have the language skills needed to make their request. Attempting to address some of these factors, as well as the desire to overcome the stated reticence to give information to NGOs or individuals who are not from the community, are some of the reasons we proceeded with a visit to MINFOF with community members in August, which was similarly unproductive in terms of providing concrete information, but was nonetheless a useful exercise for the women who participated from the four communities.*

31 *This is apparent from information added to the WRI website, apparently in September 2015, of which we became aware in November-December 2015.*

AUGUST 2015

We returned for further consultation meetings with the communities in August 2015. Once again, there was no firm news to report on Biopalm nor any further firm information provided on SBAC or the VCs which had apparently been granted.

FPP gave the community updates on the steps taken to elicit information, and shared copies of the list of VCs valid to March 2015 that we had located on the MINFOF website. In addition, in response to requests made during our June visits, we discussed with communities some of the advantages and disadvantages of a community forest.³²

During this two week period, we also organised an accompanied visit by community members to the various government ministries in Kribi, to follow up on the letters which had been sent in July. Four women (one from each village), accompanied by a FPP lawyer, visited MINFOF, MINADER, MINEPAT and the survey service, seeking information about the Biopalm project and SBAC's activities. One reason for this visit was to counter any concerns the administration may have about giving information to non-community members, as expressed by the MINFOF employee in July. The community delegation did not receive any written or official information in any of these visits. One ministry representative did, however, tell the delegation that it was too late to "lawyer up" because the Biopalm dossier was already extremely advanced in the administration and could not be stopped. In the

survey service, the representative had a file related to Biopalm, and seemed initially willing to discuss it. However, when asked for a copy of the document he was referring to in the file (apparently the Biopalm workplan, a document dating from late 2012), he suddenly retreated and refused to provide any further information.³³ In one of the offices, the delegation was told (in respect of Biopalm) "the chief of Bella has all this information – ask him".

In the period between the June and August consultations, another natural resources-linked issue had emerged. On 5 August 2015, Moungué, Gwap and Nkollo had received a letter from a forestry company, the Compagnie Forestière de Kribi (CFK), informing them of proposed "inventory" activities which the company would be undertaking from 17 August, lasting five months.³⁴ Under Cameroonian forestry law, an "inventory" of timber products, which involves an exhaustive enumeration of all the species capable of being exploited in the area and their size, must precede the exploitation of an area.³⁵ The letter stated that the activities were linked to UFA 00-003. The communities were not familiar with CFK (the well-known owner of UFA 00-003 being MMG – see below). They were concerned that



Women at a consultation meeting in Moungué

the activities were taking place at all, and also thought they may be illegal.

At the end of the August consultation meetings, we held a joint meeting with representatives (men, women and youth, both Bantu and Bagyeli) from each of the four villages. At this meeting, the communities decided on several actions. Each community resolved that it wished to apply for a community forest. A letter of request was drafted from each community and signed by the attending community representatives. These letters (save one from Bella) were subsequently lodged with MINFOF at Kribi. The letter from Bella was held up because the community wanted authorisation from their chief, who was not in attendance. That authorisation has never been forthcoming, despite multiple attempts

to obtain it.³⁶ No response from MINFOF has been received to any of the requests made by the communities to create community forests.³⁷ The second item that was discussed was whether to send to the presidency a letter expressing opposition to the Biopalm plantation. Moungué, Gwap and Nkollo unanimously supported the move, and all the delegates from these villages signed a mandate to send a letter of opposition to the presidency. The village of Bella remained divided on the issue. They resolved not to sign on to a letter at this time, wanting to have further discussions in the community before deciding (the Bagyeli community from Bella nonetheless also chose to sign the mandate). A letter was drafted and lodged with the presidency on 7 September 2015. No response has

yet been received, although the letter has apparently not been entirely without result.³⁸

Moungué, Gwap and Nkollo also decided to send to MINFOF a letter denouncing CFK and requesting further information. In that letter, each village noted that the company CFK was unknown to them; that it had produced no official documentation which showed the basis for and extent of its rights to conduct forestry activities in the area; and that the letter made reference to UFA 00-003, which had apparently been the subject of declassification procedures and which was known to belong to MMG.

32 Under Cameroonian law, a community forest is an area of up to 5,000 hectares, from within the customary lands of a community, which is demarcated and reserved for community management, for a period of up to 25 years. A community forest does not give the community title to the land, but gives them exclusive management of the land (in accordance with an agreed management plan) for the duration of the community forest agreement.

33 This is eerily reminiscent of Cerutti et al's description of administrative fear of repercussions from more powerful members of the hierarchy where they seek to enforce the law: "The second building block of the strategy to perpetuate the collection of bribes while evading the serious implementation of governance reforms involves the mechanisms set in motion where a state official tries to halt a forest operation that has already been 'approved' by powerful individuals. In this case, stalwart officials usually have to choose between allowing an illegal operation to continue or being threatened – usually by telephone – with personal or professional retaliation ... it is not worth risking one's career in a system where only two options seem to be available: 'with us' or 'against us.'": see Cerutti P.O et al, 2013, "Cameroon's hidden harvest: commercial chainsaw logging, corruption, and livelihoods", *Society and Natural Resources* 26(5): 539-553, p 546.

34 Despite this date being indicated, during our visits to the zone in August and September 2015, no inventory activities had in fact commenced, nor had any been commenced in November 2015.

35 Decree No 95-531-PM of 23 August 1995 fixing the modalities of implementation of the forestry regime ("Forestry Decree 1995"), article 43.

36 During the August meeting, held at Moungué, the chief of Moungué (but of none of the other villages) was in attendance, and signed all of the letters from Moungué. Representatives from the other three villages asked that we obtain consent from their chiefs before proceeding to lodge any letters. We obtained the consent of the chiefs of Gwap and Nkollo within days of the meetings taking place (in fact, when confirming his agreement with submitting such a letter, the chief of Gwap said he would be very happy if we managed to obtain a community forest for Gwap; that he had asked the local authorities around two years prior about creating a community forest, and had been told there were no further community forests being accepted: personal communication to the author from the chief of Gwap, September 2015); however the chief of Bella insisted that we meet him in person. An FPP lawyer accordingly met with him in late September 2015 to update him on the meetings and asked for his permission to lodge the letter of request from Bella; the chief then insisted on being provided with a written summary of the meeting, so that he could consider it. This was accordingly sent to him at some point in October. No response has been received from him, despite us having sent further reminders by email.

37 In fact, as a joint report by Milieudéfensie and Les Amis de la Terre points out, contrary to the legal requirement of pre-emptive community rights, "in practice ... the dossiers of requests for community forest creation are often blocked by MINFOF where ventes de coupe are planned": *Milieudéfensie and Les Amis de la Terre, Legal imports into Europe of Illegal Timber from Cameroon, May 2008*, available at <https://milieudéfensie.nl/publicaties/rapporten/logfile-legal-imports-into-europe-of-illegal-timber-from-cameroon> (accessed 31 March 2016).

38 During our visit to the community in March 2016, we were informed by the chief de Moungué that he had been contacted by a national consultant working with the government on the regional zoning plan for the South region, which is currently under development. He was invited to explain the reasons why the community at Moungué did not want Biopalm (knowledge of which could only have come from the letter). He was subsequently invited to participate in a meeting in relation to the plan, at which (inter alia) he contested a number of alleged "facts" about the status of villages set out by the municipality of Bipindi (to give an example, one such "fact", according to the Chief's report, was that there was a public tap with running water in each of the villages, which FPP can confirm is false). We note that the regional zoning process is largely non-participatory, and in FPP's view poses a significant risk to community control of lands, as it purports to make decisions about land use on a regional scale, without consulting with or seeking the consent of affected communities.

SEPTEMBER 2015

Three weeks after the letters were lodged with MINFOF, FPP accompanied members from the village on a visit to MINFOF in Kribi. The MINFOF delegate at the departmental office, presented with stamped copies of the letters which proved they had been received, stated that they had not yet arrived on his desk, but that he would nevertheless endeavour to provide responses orally.

In response to the letter of denunciation, the MINFOF delegate stated that CFK had a contract with MMG, the title holder of UFA 00-003, in order to exploit that part of the UFA which had not been *desaffectée* (deallocated) – a telling choice of words since it appears that the declassification procedure has never been followed. He did not provide a copy of these contracts, stating these were confidential commercial documents. He also did not provide a map or any other information on what portion of the UFA had been “deallocated” (but promised to do so subsequently), and confirmed that this had been done to permit Biopalm to pursue its oil palm operations. He stated that an area of equal size had been classified in the South region (without specifying where that had occurred). A community member living at Kribi has visited MINFOF several times seeking the promised map: he reported during meetings in March 2016 that the MINFOF delegate simply laughs each time he mentions creating a community forest.

FPP also accompanied community members to the council headquarters (the *mairie*) for Lokoundjé (for Bella, Gwap and Nkollo) and Bipindi (for Moungué), where community members asked about the level of forestry royalties (redevances forestières) available for their communities. They were told the amounts given to them for the two previous years, which was slightly less than 4 million CFCA (a little over 6,000 Euros). These amounts reflected a proportion (10 per cent) of the taxes paid by a company on logging in a particular village area, which are reserved for the community whose lands are affected³⁹ (since 2015, this 10 per cent for communities has been abolished and funds now go to the municipality alone,⁴⁰ but amounts accrued before that time should remain available to villages). Villages access these funds by preparing development projects. The projects are submitted to and approved by the council, which then releases the funds for their completion. All the four villages have expressed interest in these projects.

DECEMBER 2015

By the time of our next consultation in December 2015, there was little new information to report. Communities reported visits from a forestry company called Wijma, but had few further details.

No responses had been received to any of the letters sent. Gwap, Nkollo and Bella had been able to obtain information about the amount of forestry royalties held for their villages, and were preparing community projects for submission to the municipality.

The chief of Moungué, who attended the joint meeting (along with the chiefs of Gwap and Nkollo), produced a newspaper article which asserted that Biopalm had taken the government to court. The communities, however, remained without any information as to the fate of the project.



A news report appearing in the national newspapers about Biopalm, discussed with communities during the December 2015 meetings.

³⁹ Under article 68 of Law No. 94-1 of 20 January 1994 to lay down forestry, wildlife and fishing regulations (“Forestry Law 1994”), part of the revenues derived from forest products must be reserved for the neighbouring communities. Prior to 2015, this requirement was fulfilled by the allocation of 10 per cent of the forestry tax revenues for affected communities.

⁴⁰ Loi No. 2014/026 du 23 décembre 2014 portant loi de finances de la République de Cameroun pour l'exercice 2015. A campaign led by local civil society to have the 10% restored in 2016 was unsuccessful, but continues: see e.g. C Kouetcha, “Un revenu pour compenser les dégâts de l'exploitation forestière” and W Tchango, “Une loi de finances sur les RFA adoptée pour exclure”, in Ressources : Bulletin d'information destiné à la promotion de la gestion durable de ressources naturelles, FODER, Issue 1, February 2016, available at : http://www.forest4dev.org/images/documents_pdf/bulletin.pdf. See also L Kingue, “Redevances forestière annuelle”, Kribi-online, 27 February 2016, available at, <http://www.kribi-online.net/fr/actualite/144-gouvernance-forestiere#.Vv1HXHomP0>.

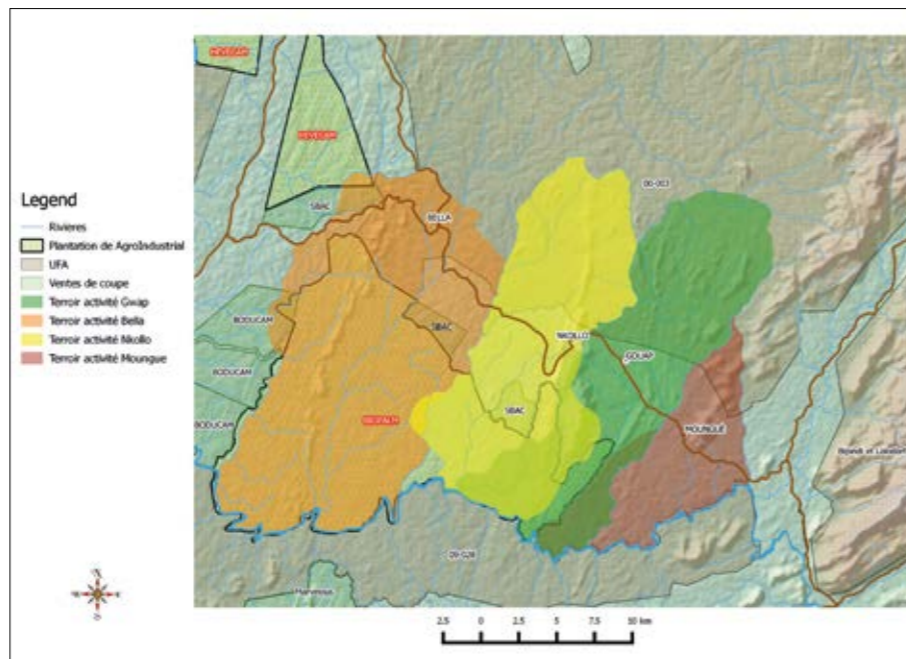
MARCH 2016

During meetings in March 2016, communities reported that they had been visited again by CFK and Wijma. FPP had looked up Wijma after hearing the name in December 2015, and found that it was, according to its website,⁴¹ a Forest Stewardship Council (FSC)-regulated company contracted by MMG to undertake forestry activities in UFA 00-003.

The aim is, apparently, to integrate this UFA into the certified portfolio of Wijma, from which it exports certified wood.

FPP also brought copies of the maps shown on the WRI website, showing the (apparent⁴²) extent of the Biopalm plantation. The communities, and particularly the community of Bella, were greatly concerned when they saw the location and size of the proposed plantation for the first time.

It was clear during these meetings that no one in the communities continued to support the project. By the end of the intercommunity meeting, the village representatives had unanimously decided that they wished to send a further letter of opposition to the presidency in respect of the Biopalm project, which will be sent in the coming months.



Map 3: This map overlays the draft village areas (collected using participatory mapping procedures) with projects shown on the WRI Interactive Forest Atlas of Cameroon. The Biopalm concession as shown here covers a significant amount of the territory of Bella, as well as affecting portions of Nkollo and Gwap.

41 See <http://www.wijmadouala.com/CFKSA-29012011005513.asp>, last accessed 7 April 2016.

42 As noted below, FPP is not aware of any decree which currently authorises the concession, the original provisional concession having expired in March 2015.

ACCESS TO OBFUSCATION

The history above highlights one of the particular difficulties facing the communities we are working with (and many communities across the country): the continued inability to obtain reliable (if any) information from the administration on projects affecting their customary lands.

This issue creates numerous barriers to the exercise by communities over their rights to their customary land, and the maintenance and improvement of their livelihoods. It also presents challenges for verifying the legality of forestry activities under the VPA, and within existing national laws.

FPP and Okani, together with the communities, sought information about both forestry activities and the proposed oil palm conversion project through multiple means, including:

- Visits to the national offices of MINFOF and MINEPAT in Yaoundé
- Multiple visits (both with and without community members) to the departmental offices of various ministries in Kribi.
- Formal letters to MINFOF, MINEPAT and the sous-prefet of the Lokoundjé arrondissement
- Internet searches of the MINFOF-operated VPA website.

Despite these efforts spanning more than a year, and with the assistance of lawyers and an international organisation, the community has still no information about the proposed scope or the fate of the Biopalm project, or details of the declassification of the UFA which apparently permitted this reallocation to take place. Similarly, although FPP was able (several months after the

logging took place) to locate the VCs on a MINFOF list granted to SBAC, these details were not available to the communities at the time and no documents or details of the procedure that followed have been made available. There is a similar dearth of information in the communities about the proposed activities of Wijma and CFK at this point in time, although there have not been attempts to obtain information about these companies' activities at this stage.

The examples from our work in Océan demonstrate that the problem is not confined to one ministry or region, and that it has a real effect on community participation. If French-speaking communities assisted by lawyers and an international organisation, located within 50 km from a major town (Kribi), cannot obtain access to information, what hope is there for remote non-French-speaking communities⁴³ with no external assistance to obtain information?

These problems of transparency are not new: access to information has been a continuing focus of discussion in governance questions in Africa (and elsewhere). There are legal bases for a right to access information in African countries, and there have been a number of initiatives from the African Commission on Human and Peoples' Rights (the African Commission) aimed at increasing public and citizen access to information. Article 9(1) of the African Charter on Human and

43 This is particularly a problem for indigenous peoples in Cameroon; it disproportionately affects the Bagyeli in our area of work, but is also a major barrier for Baka communities in the East.

Peoples' Rights (which was ratified by Cameroon in June 1989) provides that "every individual shall have the right to receive information". The African Commission on Human and Peoples' Rights has sponsored a number of initiatives aimed at increasing access to information in Africa. In 2002 the Commission adopted the Declaration of Principles on Freedom of Expression in Africa, which provides *inter alia* that "everyone has a right to access information held by public bodies" and that "everyone has the right to access information held by private bodies ... necessary for the exercise or protection of any right", and moreover obliges public bodies actively to publish information which is in the public interest.⁴⁴ In 2013, it launched the Model Law on Access to Information for Africa, which provides model legislation for countries in the region.

Access to information is also a principle set out in the African Union Convention on Preventing and Combating Corruption.⁴⁵ Article 9 requires States parties to "adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences".

Despite these initiatives, the record in Africa in general on access to information laws remains poor. Only 13 of the 54 states forming part of the African Union have adopted access to information legislation,⁴⁶ and no Congo Basin country has done so. While one of the participatory principles set out in the Cameroonian Framework Environmental Management Law of 1996 is access to environmental information,⁴⁷ this has never been the subject of specific implementation

measures. Environmental and social impact statements must be made publicly available, but only during a limited consultation phase (after which the obligation to make them public ceases).⁴⁸ Community access to information about projects that affect them remains limited both in principle and in practice, as has been regularly documented by local civil society actors such as the Centre pour l'Environnement et le Développement (CED) and Forêts et Développement Rurale (FODER);⁴⁹ and moreover, according to the FLEGT auditor's report, information is systematically missing from MINFOF's records.⁵⁰

There is a further problem highlighted by FPP and Okani's experiences, namely, the lack of circulation of information within the community. While forestry laws require in certain circumstances that communities are notified,⁵¹ these rights of notification are regularly confined to the chief, who is officially responsible for informing his population. There are many instances when chiefs are not properly informed as required by the legislation. They are also in some cases coerced by administrative officials (who are in fact their hierarchical superiors in some respects) into signing documents without being given full information. However, there are also instances where chiefs are in possession of information, but for reasons of disinterest, personal interest, lack of time or resources, or lack of cultural practice of sharing information, do not share it with their communities (or share it only with selected elite members). This can be a particular

problem for marginalised groups (particularly women, youth and indigenous peoples), who do not traditionally form part of the decision-making circle and who are often not given access to information even where it is partially disseminated.

Community members faced with a chief who does not share information, even on request, are in a particularly difficult bind. Legally, the community is deemed to have been "notified" through the provision of information to their chief; practically, they have no means of obtaining access to this information. Their exclusion is made complete when the administration is not prepared to provide the same information to individual members of the community, telling them to "ask their chief". This practice does nothing to resolve these difficulties for community members, and only supports chiefs who withhold information from members of their communities.

44 Declaration, Article IV(2).

45 This Convention has been signed but not yet ratified by Cameroon.

46 AfricaCheck, "Factsheet: Freedom of Information in Africa", available at <https://africacheck.org/factsheets/factsheet-freedom-of-information-laws-on-the-african-continent/>, accessed 9 December 2015.

47 Loi No. 96/12 du 5 août 1996 portant loi-cadre relative à la gestion de l'environnement.

48 Nguiffo, S and Sonkoué Watio, M, (2015), *Agro-industrial investments in Cameroon: Large scale land acquisitions since 2005*, IIED, London, p 48.

49 See e.g. CED, 2013, *La transparence dans le secteur forestier au Cameroun : Etude de cas préliminaire de la cohabitation entre agro-industries et communautés locales et autochtones*, Yaoundé; FODER, 2014, *Suivi des indicateurs de gouvernance forestière : Rapport d'Etude de Référence*, available at http://www.forest4dev.org/images/documents_pdf/rapports/rapport%20tude%20de%20refrence_vp.pdf (accessed 14 April 2016), p 12.

50 C Duhesme, 2014, *supra*, see e.g. page 25 where the report notes that 2/3 of the documents were retrieved from the titleholders rather than government records, even though the majority of these documents had been issued by the administration; see also pp 43ff, where the report recommends a "reconstitution" of forestry dossiers. Cerutti et al, *supra*, note that "mistrust results in state officials choosing to either not collect or not retain information as a way of maintaining their vested interests", highlighting the link between the lack of documentation retention and corrupt practices by State officials: see p 549.

51 For example, chiefs must receive notice of any areas proposed to be granted as VCs, as part of the procedure by which communities are given pre-emptive rights to create a community forest where VCs are proposed.

FROM LACK OF TRANSPARENCY TO ILLEGALITY AND VIOLATIONS OF HUMAN RIGHTS

Lack of access to information prevents communities from exercising their rights and acting to protect their customary territories from encroachments from third parties, which is happening with increasing regularity. It also however supports a wider, systematic lack of transparency which is often linked to illegality and corruption. The lack of publicly available information undermines the rule of law, prevents evaluation and improvement of practices and procedures, and feeds into a culture of state and administrative unaccountability.

To give just one small example of this link, consider the importance of information in the functioning of the legal system, and in particular the mechanism of judicial review. Judicial review, a fundamental feature of both common law and romano-civil legal systems (and which exists in Cameroonian law), is the legal mechanism by which affected citizens (such as communities) hold the state accountable for unlawful decisions. However, where information is unavailable, any challenge of government decisions becomes extremely difficult or impossible. In order to challenge an administrative decision, a complainant must lodge with the relevant authority, within three months of a decision been "published or notified",⁵² a written complaint, known as a *recours gracieux préalable* (RGP), detailing all aspects of their complaint about the decision. Failure to do so prevents recourse to an administrative court, and any recourse is confined to the matters set out in the complaint.

When information is drip-fed to communities, orally and without confirmation, when no documents are provided and when decisions are not published at the time that they are made (and sometimes not until after activities have already begun), it is very difficult or impossible for communities (or other affected parties) to challenge a decision effectively.

Moreover, when there is no clear date of notification or publication of decision (and further information only leaks out some time after decisions are made),⁵³ there are significant risks of missing the (unclear) timeframe in which a decision may be challenged. Even if, in principle, citizens have access to this legal mechanism, a lack of effective access to information renders judicial review of government actions in the sphere of land and forest governance entirely illusory. Thus the lack of information has implications across the board for accountability and the rule of law.

This is merely one example, not necessarily the most important one, of a link between access to information and accountability. The reality is, of course, that there are powerful interests who have no desire to become accountable towards citizens: in some circumstances because of a paternalist conviction that "the administration knows best", but often also because of corrupt personal interests in the existing system that would be threatened if there was genuine accountability.

The problems of transparency and corruption in the forestry sector are not new. Transparency International's 2003 Global Corruption Report noted that 2002 had "witnessed a steady flow of reports of corruption in Cameroon's logging industry".⁵⁴

According to the report, the Centre for Environment and Development (CED), a Cameroonian NGO, estimated that 45 per cent of timber production in 2000 was illegal.⁵⁵ These concerns are not limited to the forestry sector – a recent investigative report on mining raised similar concerns in relation to the mining sector.⁵⁶

The situation does not appear to have greatly improved – although perhaps its dynamics have changed – since that time. A report published by FODER in 2014 noted some improvement in the perception of corruption index within the forestry sector, but highlighted that:

"... this step forward remains particularly fragile to the extent where it is an expression of actions carried out at the periphery, which is at the level of those implementing decisions and those who do not have power.

In order to support these achievements and make them sustainable, it is necessary to take up complementary measures such as the extension of anti-corruption initiatives towards the centre of decisions..."⁵⁷

This reflects a practice of disciplining (or scapegoating) low-level and minor players for minor infractions, giving an appearance of fighting corruption, while failing to tackle the much larger corruption at higher levels of the government. The US State Department's 2015 Human Rights report on Cameroon states that "many powerful or political or business interests had virtual immunity from prosecution, and politically sensitive cases were occasionally settled through bribery".⁵⁸ In fact, even those sanctions for corrupt behaviour which are applied are often minimal. The 2013 Report of CONAC,⁵⁹ Cameroon's anti-corruption body,

noted nine "sanctions" imposed by MINFOF during the year (five of which were against staff located in the south region). Of those nine, three were merely asked to give a written explanation; four had a written warning placed on their file; four were transferred (as a "precautionary measure").⁶⁰

The FLEGT independent auditor's report, finalised in 2014 but not published for more than 12 months, and only when it was leaked to the French press, made highly problematic findings. Not only did it find that there was a significant amount of information not available at MINFOF; it also considered compliance of permits granted, determining that not one UFA or *vente de coupe* could be considered in conformity with the VPA legality matrices.⁶¹ The study did not even address the more significant question of whether official documentation purporting to

⁵⁵ *Ibid*, p 230.

⁵⁶ E Freudenthal, "Virtual mining in Cameroon: How to make a fortune by failing", 14 March 2016, African Arguments, available at: <http://africanarguments.org/2016/03/14/virtual-mining-in-cameroon-how-to-make-a-fortune-by-failing/> (accessed 18 April 2016).

⁵⁷ FODER, 2015, *Improvement of the Perception Index of Corruption in the Forestry and Wildlife Sector: Glimmer of Hope or Illusion?*, FODER, Yaoundé, p 14.

⁵⁸ US State Department, 2016, *Cameroon 2015 Human Rights Report*, available at <http://www.state.gov/documents/organization/252873.pdf>, p 27.

⁵⁹ The acronym from French Commission Nationale Anti-Corruption.

⁶⁰ CONAC, 2013, *Rapport sur l'Etat de la lutte contre la corruption au Cameroun en 2013*, Yaoundé, p 94.

⁶¹ C Duhesme, *Evaluation de la conformité des documents associés au processus d'attribution de chaque titre foncier en vigueur au Cameroun*, 2 August 2014, *Audit Indépendant du système FLEGT au Cameroun*, pp 24, 29.

⁵² Law No. 2006/022 of 29 December 2006, governing the organisation and functioning of administrative tribunals. Similar time limits apply in most other Francophone and indeed Anglophone legal systems for administrative challenges.

⁵³ In theory, decisions, decrees and other legal instruments should be published in the *Journal Officiel*, the equivalent of the gazette in an English law system. In fact, the *Journal Officiel* is not easy to obtain in Cameroon: it is not clear that it is always in fact published, there is no designated place where it is available for public reference or purchase, and it is certainly not available online. This undermines one of the fundamental principles of the rule of law, namely that laws should be promulgated to the public before they take effect.

⁵⁴ Transparency International, *Global Corruption Report 2003 (Special Focus: Access to Information)*, Transparency International, 2003, available at https://www.transparency.org/whatwedo/publication/global_corruption_report_2003_access_to_information, accessed 9 December 2015, p 229.

authorise activities had in fact been properly provided⁶². Falsification of documentation, irregularities and corruption remain, therefore, a feature of forestry governance⁶³

Issues of the nature described in the FLEGT auditor's report have plagued the department of Ocean in which our work has been carried out. A report prepared by Cameroon Ecology in 2012 analysed the respect for fiscal and social obligations by three forestry concessionaires, including MMG under UFA 00-003, the forestry concession which affects all four villages and is now being exploited again.⁶⁴ That report highlighted serious deficiencies in information both held by local authorities, and made available to communities. Critical documents such as the cahier de charges (the company-community agreement in which the social commitments of the

company are recorded) had never been (and were not on request) made available to the communities in question, nor were they available in the local offices of MINFOF. The company, when requested, said it had a copy but that it had "not been made public". Similarly, minutes of the (obligatory) consultation and restitution meetings for the environmental and social impact assessment prior to the concession being granted were not held by local authorities. Communities denied that any such meetings had taken place, and authorities expressed uncertainty. The report of the socio-economic study itself had equally never been made available to the communities, nor was it held in the local government offices.⁶⁵

62 C Duhesme, *supra*, p 18.

63 Cerutti et al's 2013 report describes some of the methods by which false documentation may come into existence: Cerutti P.O et al, 2013, "Cameroon's hidden harvest: commercial chainsaw logging, corruption, and livelihoods", *Society and Natural Resources* 26(5): 539-553. Transparency International's 2015 Africa Survey reported that 57% of respondents in Cameroon thought the government was doing "badly" at fighting corruption, and was considered to have one of the highest rates of bribery (48% of respondents had paid a bribe in the last 12 months): C Pring, *People and Corruption: Africa Survey 2015*, 2015, Transparency International, pp 11, 12-13. Perceptions of corruption were particularly high in relation to police, tax officials, judges and magistrates, business executives and governmental officials: see p 35. The 2013 report (the most recent) of the official Cameroonian anti-corruption institution, CONAC (Commission nationale anti-corruption) reported various denunciations that were linked to the falsification of documents, including the issue and use of false documents, the counterfeiting of administrative or judicial acts (there were 173 instances of those 3 categories alone reported in 2013), and many other categories which may have also involved falsification of documents (such as fraud, complaints about forestry royalties, customs fraud, etc): see CONAC, *Rapport sur l'Etat de la lutte contre la corruption au Cameroun en 2013*, nd, available at http://www.conac.cm/fr/index_fr.php?pg=rapportetud&link=rapportetud (accessed 31 March 2016), pp 196-199.

64 Cameroon Ecologie, *Rapport de mission de collecte des informations sur les illégalités forestières sur la base de la grille de légalité de l'APV FLEGT Cameroun*, Edéa, mai 2012, available at http://www.observation-congo.info/documents/OE_CamEco-CAMEROUN.pdf, accessed 7 December 2015.

65 *Ibid*, section 5.1.

IMPERFECT INFORMATION OR IMPERFECT TITLE?

How far is this just an information problem, and how far does it reflect underlying non-compliance? As part of our work with the communities, we have investigated several of the permits and concessions that have been authorised in the zone.

On the basis of the information we have been able to obtain (which is obviously not complete, in part because of the lack of information), there are some serious questions about whether procedures were followed, and some instances which, in FPP's view, show *prima facie* illegality.

UFA 00-003

UFA 00-003 is a classified forestry concession area that is owned by Mba Mba Grégoire SARL (MMG). MMG is owned by the previous mayor of Kribi, now RDPC Senator, Grégoire Mba Mba.⁶⁶ MMG also owns a sawmill in Kribi, where the timber from UFA 00-003 (among other sources) is processed.⁶⁷

UFA 00-003 was created from the Lokoundjé-Nyong reserved forest, an area of 125 568 hectares located in the south, littoral and central regions.⁶⁸ It was one of the first forest concessions to have a management

plan, the development of which was supported by Canadian international aid.⁶⁹ Despite its auspicious start, some reports and investigations have suggested MMG has been involved in illegal forestry activities both in the area of UFA 00-003 and elsewhere.⁷⁰

UFA 00-003 is a classified production forest (a forest where sustainable forestry activities may take place). It was first included in the indicative forest land zoning in the meridian forest zone, created in December 1995, as part of the permanent forest domain.⁷¹ Forest areas which were shown as part of the permanent forest domain were intended to be individually classified (as being part of it) after being divided up following consultation with local populations.⁷² Despite this, many of the areas shown on the indicative zoning have never been formally classified.⁷³ However, the Lokoundjé-Nyong forest (where UFA 00-003 is located) was classified, and thereby incorporated

66 D van Oijen and S Angerand, *June 2007, Illegally logged wood from Cameroon on the Dutch market: An investigation into illegal logging practices by Fipcam and MMG, and related trade to the Netherlands*, Miliueudensie and Les Amis de la Terre, Amsterdam, 2007, p 3.

67 I Amsellem et al, *Sustainable management of tropical forests in Central Africa: In search of Excellence*, FAO Forestry Paper 143, available at: <https://books.google.co.uk/books?id=W5kvocSreYIC&pg=PA16&pg=PA16&dq=Mba+mba+georges+sarl&source=bl&ots=q3oyH1X-1l&sig=bv3-00St-r6pLU5pgbXL2NlrK7A&hl=en&sa=X&ved=0ahUKewj087S5-dPJAhVDfRoKHd-PC11Q6AEIIDA#v=onepage&q=Mba%20mba%20georges%20sarl&f=false>, last accessed 11 December 2015, p 16; see also van Oijen and Angerand, 2007, *supra*, p 3.

68 *Ibid*, p 15.

69 *Ibid*, p 16.

70 See e.g. "Greenpeace exposes Danzer Group's involvement in bribery and illegal logging: investigation reveals more evidence of forest crime in Africa", Greenpeace press release, 29 June 2004, available at <http://www.greenpeace.org/international/en/press/releases/greenpeace-exposes-danzer-grou/> (accessed 1 March 2016); van Oijen and Angerand, 2007, *supra*. MMG's sawmilling operations were also the subject of an independent observation mission by Global Witness (the report of which was approved by MINFOF) in 2003 which, although it did not make any findings of contraventions of existing laws, recommended amendments to the law because the provenance of a number of logs held in the timberyard, asserted not to be destined for processing there (and therefore not required to be recorded), were effectively unverifiable: see Global Witness, *Report of the Independent Observer No. 059En*, Global Witness, 2003.

71 Decree No. 95-678-PM of 18 December 1995 creating an indicative framework for land use in the meridian forest zone.

72 Article 6, Decree No. 95-678-PM of 18 December 1995.

73 A glance at the WRI Interactive Forest Atlas, available at <http://cmr.forest-atlas.org/map/#v=atlas&l=en>, shows a large number of production forests which are "not classified" in the Meridian Zone. FPP understands that there are many cases where the indicative zoning of an area as a permanent forest estate was completed, and a concession issued, but the acte de classement was not completed. Strictly, this would make any forestry agreement/forestry concession (i.e. the UFA) unlawful, as in the absence of classification the land would remain in the national estate, in which only ventes de coupes and other smaller forestry permits are allowed; however, we are not aware of whether the non-classified UFAs are the subject of any such agreements, or are still awaiting classification.

into the private domain of the state, as the "pilot forest of Lokoundjé-Nyong",⁷⁴ in 1997. As discussed below, since that time it appears that the state has sought to declassify part of the UFA for the purposes of granting this portion to Biopalm, and (as we recently discovered) has joined part of another UFA 09-028A as compensation for the loss of the declassified area. As noted below, the 2012 declassification of part of 00-003 appears highly questionable.

MMG has been a long-time player involved in the zone. However, the level of its respect for obligations has been called into question on occasion. As noted in the Cameco report referred to above, there are multiple documents pertinent to MMG's creation which remain unavailable. An audit of MMG by Rainforest Alliance conducted in 2012 recommended that MMG should not be accepted as compliant with the Rainforest Alliance's certification standards.⁷⁵ Among other non-conformities, the audit noted that the management plan, due for updating since 2009, had not been revised,

and that the sawmill operations at Kribi were not formally declared to the Ministry of Industries.⁷⁶ Despite that recommendation, it appears that MMG obtained Rainforest Alliance Verification of Legal Compliance (VLC).⁷⁷ FPP has also been informed that a community member employed by MMG died in a workplace accident during MMG's previous exploitation (several years ago), although we have no further details of this.⁷⁸

As noted above, MMG has now entered into an agreement with Wijma and CFK for the exploitation of further areas of the UFA, and intends to seek FSC certification. Membership to the FSC is voluntary, but certification allows companies to sell timber products as "FSC-certified". In return, to obtain FSC certification, companies are required to comply with the FSC's principles and criteria, which include both national legal requirements, environmental sustainability and social rights criteria. There is a set of international principles and criteria, and individual countries can then develop national standards.

Cameroon has a national standard which was adopted in 2012.⁷⁹

Communities reported to us in March that they had received visits from an NGO called ONED in January. It appears that ONED has been engaged by Wijma to facilitate its compliance with principles 2 and 3 of the Cameroon national standard,⁸⁰ which relate to local communities and indigenous peoples. Although, as Colchester points out, a significant omission from the FSC P&C is that they do not require free, prior and informed consent in advance of issuing concessions over indigenous peoples' lands,⁸¹ there are nonetheless some protections for both local communities' and indigenous peoples' customary land rights under the national standard, including:

- A requirement to document (including by maps) any customary rights applicable to the forest under evaluation (indicator 2.1.4), and an obligation to ensure that communities are aware of and understand the use of these documents, acknowledge having prepared them with the forest

manager, and understand their rights and duties in respect of the resources identified (indicator 2.1.5);

- A requirement that local communities with legal or customary tenure retain control, to the extent necessary to protect their rights and resources, over forest management operations unless they delegate control on the basis of FPIC (criterion 2.2);⁸²
- Legal and customary rights of indigenous peoples to own, use and manage their lands, territories and resources shall be recognised and respected (principle 3), which includes a variety of more stringent requirements (indicators 3.1.1 to 3.1.14).

A preliminary measure, therefore, in obtaining FSC certification should involve the documentation (including mapping) of customary rights of both Bantu and Bagyeli communities in the area. It does not appear, however, that this has taken place (or certainly not in a participatory manner, as no communities have been involved in mapping with the company at

this time). Despite this, it has been reported to us that Wijma and CFK are already marking trees for felling.⁸³

Indeed, rather than mapping of customary lands and ensuring that communities retain control of forestry activities in these areas, it appears from reports that ONED's principle activity is the (re)constitution of comités paysan-forêt (literally "peasant-forest committees", or CPFs) in the four communities. CPFs are bodies which are described in a ministerial decision on the procedures for classification of forests.⁸⁴ They are anticipated to be elected bodies of eight members,⁸⁵ which must compulsorily include representatives of different social groups, and which, when constituted, become "privileged interlocutors" with the administration and the forestry company in relation to the UFA.

The ministerial decision regarding CPFs states that their members should be elected by the whole village. This does not however appear to have been the approach adopted in the creation of CPFs by ONED. At the time of our visit villagers reported that one CPF, at

Bella, had already been constituted. One member of this CPF said that he had volunteered when ONED had asked for members; that he had no idea what the role entailed, but that ONED had said they would provide training in due course. It is obviously problematic that the CPF was formed without community members knowing its role or purpose. Moreover, members of the CPF were selected from those in attendance at Bella Haut during ONED's one brief visit; most community members (even at Bella Haut) had not attended the meeting, and the population at Bella Bas had no knowledge of the meeting or of ONED.

These reports are concerning, and raise questions about the degree of compliance by Wijma, CFK and ONED with the obligations under national law (in relation to the CPFs) and under principles 2 and 3 of the FSC Standard.

74 Decree No. 97/073/PM of 5 February 1997 incorporating into the private domain of the State a portion of the forest of 125 568 ha, called the « Pilot Forest of Lokoundjé-Nyong ». FPP has not yet been able to obtain a copy of this decree.

75 J Nkoulou et al, *Vérification de l'Origine légale : Audit report sur MMG Sarl située à Kribi, Cameroun, 21 December 2012*, Rainforest Alliance, available at <http://www.rainforest-alliance.org/business/sites/default/files/uploads/3/mmg-vlc-assess-12-fre-public-summary.pdf> (accessed 31 March 2016). At p 4 the auditors recommend that verification is not approved.

76 J Nkoulou et al, *Vérification de l'Origine légale : Audit report sur MMG Sarl située à Kribi, Cameroun, 21 December 2012*, Rainforest Alliance, available at <http://www.rainforest-alliance.org/business/sites/default/files/uploads/3/mmg-vlc-assess-12-fre-public-summary.pdf> (accessed 31 March 2016).

77 Rainforest Alliance website, "Verification of Legal Compliance – Verified Clients", available at <http://www.rainforest-alliance.org/business/forestry/verification/transparency/verification-clients>, accessed 10 April 2016. It is unclear why the company was certified when the assessment and audited recommended that certification was not approved.

78 Personal communication from community member (name confidential), March 2016.

79 The current Cameroon national standard is available from the FSC website: <https://ic.fsc.org/en/certification/national-standards>.

80 The existing national standard is in fact less exacting in respect of local communities and indigenous peoples than the new international standard (v5) adopted in 2012. A new Cameroon national standard which complies with the updated international standard must be adopted by the end of this year, failing which the national standard will lapse and the international standard will apply directly.

81 Colchester, M, "Do commodity certification systems uphold indigenous peoples' rights? Lessons from the Roundtable on Sustainable Palm Oil and Forest Stewardship Council", 2016, forthcoming.

82 The indicators on this in the national standard are, however, very weak, requiring only that the legal provisions of management plans and access to natural resources are "defined and made known and respected by all stakeholders" and that communities monitor the impact of forestry operations on their rights (indicators 2.2.1 and 2.2.2). There is no clarity or clear requirement that communities exercise control in this process. This becomes even more concerning when it is noted that the means of verification is the minutes of an "information meeting" signed by all stakeholders – which is clearly insufficient to demonstrate community control of resources. It is equally problematic that disputes over tenure rights (covered by criterion 2.3) require only a procedure for dealing with potential conflict relating to tenure and use rights "on the basis of the legal framework of the country" (indicator 2.3.1), which is highly problematic given the lack of sufficient recognition of customary ownership in national legal frameworks.

83 This was reported to us by several communities during the course of visits in March 2016. It was even reported that, in order to avoid having to deal with the communities, the companies were entering the forest discreetly and only alerting the chiefs to their presence on completion of their marking activities.

84 Décision No. 1354/D/MINEF/CAB du 26 novembre 1999 – fixant les procédures de classement des forêts du domaine forestier permanent de la République du Cameroun : see the Annex.

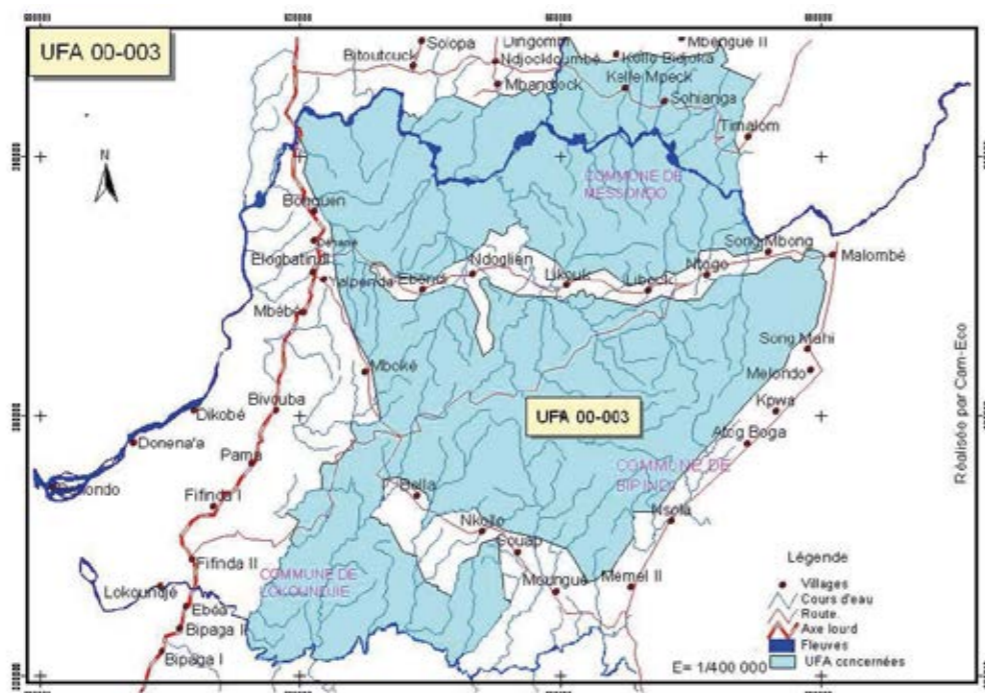
85 A CPF is composed of the following members: the chief of the village; a member of the village development committee; one representative of the internal elites; one representative of external elites (those living outside the village); two representatives of women's associations; one representative of cultivators; one representative of youth. Notably, and problematically for villages of mixed Bantu-Bagyeli ethnicity as exist in the zone, there is no obligation to include any representative of indigenous peoples in the CPF.

BIOPALM

The project of greatest concern to the communities remains the proposed palm oil concession to Biopalm, which has the potential to influence much more significantly the livelihoods of community members. As Colchester notes:

“Natural forest logging, at least in many tropical forests and where done in accordance with forestry laws, only results in the selective extraction of timbers from forests. Although seriously disruptive of local livelihoods and welfare, some indigenous peoples find they can accommodate these impacts without major adjustments to their ways of life. By contrast, oil palm estates, like timber plantations, require large-scale conversion of lands and forests to industrial monocrops and accord long term tenures or permanent ownership to the operators. Such dramatic transformations of land use require major changes in communities’ ways of making a living and imply permanent cultural changes.”⁸⁶

Maps 4 and 5: The map on the left was taken from a report completed by Cameroon Ecologie in May 2012, and shows the extent of UFA 00-003 at that date. The map on the right shows (in brown, at the top of the map), the current southern boundaries of the UFA, as shown on the WRI Interactive Forest Atlas of Cameroon (the data for which is provided by MINFOF). The yellow portion on the map above, all or most of which formed part of the UFA as shown in 2012, is shown on the WRI data-base as the Biopalm agro-industrial plantation. It remains on the website (updated in September 2015) as an allocated concession despite the fact that, as far as FPP is aware, the original provision concession expired in March 2015 and no further concession has been granted.

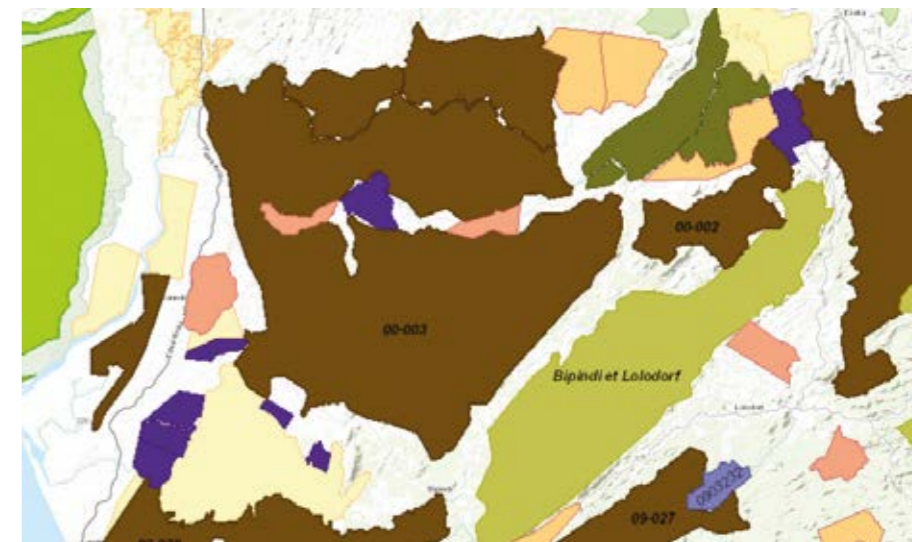


86 Colchester, 2016, supra.

As mentioned, Biopalm was first granted a provisional concession for 3,348 ha by a decree issued on 28 March 2012. As far as FPP is aware – and as documented above we have made numerous attempts to obtain this information from state authorities – that is the only decree which has ever authorised any concession to Biopalm. Pursuant to that decree the provisional concession expired after three years, on 28 March 2015, and therefore the current position appears to be that the concession no longer exists.

Despite this, sometime around September 2015 a concession to Biopalm, which affected the lands of

Bella, Nkollo and Gwap, appeared on the WRI Interactive Forest Atlas (see map 3). The concession shown on the map is substantially greater than the 3,348 hectares included in the 2012 decree, and approximates rather the figure of 21,700 hectares mentioned by officials during meetings in October 2014. There is, however, no information on the WRI website about the date on which that concession was granted or its duration,⁸⁷ and there is still no clarity over the basis on which this concession has been authorised.



In fact, there are a number of other questions about the project. As mentioned, the area granted by the decree in March 2012 created a provisional concession on land which overlapped with UFA 00-003 (a classified forest and part of the state’s private estate). Under the law, concessions may only be granted in the national estate, land that is considered unallocated, and moreover only on land within the national estate which is not occupied and not under exploitation.⁸⁸ Outside the national estate, it is possible for concessions to be granted on unallocated state private land.⁸⁹ Given that the land within UFA 00-003 was classified as a state forest, the grant of a concession would have been possible only after the declassification of the forest. In March 2012, no such declassification had taken place.

It is therefore FPP’s view that the grant of the March 2012 concession was unlawful.

In a report published in 2013 (based on fieldwork completed in 2012), FPP raised precisely these questions about the legality of the concession to Biopalm on the classified forest land within UFA 00-003.⁹⁰ Having made further enquiries about the process and having sought any declassification decree, we were, provided with a November 2012 decree (dated several months after the provisional concession to Biopalm) which purported to rezone a 21,552 hectares portion of the UFA for agricultural production.⁹¹ Even if it were lawful, such a rezoning could not retrospectively validate an unlawful concession granted in March 2012.

Beyond that, however, our view is that this rezoning is not compliant with the legal requirements for declassification of a state forest, for the reasons which follow.

There are several conditions for declassification. Firstly, classification indicates that the area is supposed to be retained permanently as a forest (30 per cent of Cameroon’s total surface area is legislated to remain permanently forested⁹²), and accordingly for each area declassified an area of equal size and category, in the same ecological zone, must be classified elsewhere.⁹³ We have not seen details of an alternative classification, although the most recent information is that an area of UFA 09-028A was joined to UFA 00-003 to compensate for the loss of

87 This can be viewed on the WRI Interactive Forest Atlas site at <http://cmr.forest-atlas.org/map/#v=atlas&l=en>. This was accessed most recently on 30 March 2016.

88 Section 1, National Estate Decree 1976.

89 Article 5, Décret No. 76-167 du 27 avril 1976 fixant les modalités de gestion du domaine privé de l’Etat (“State Private Property Decree 1976”)

90 E Freudenthal et al, 2013, supra, pp 337-354.

91 Décret No. 2012/3509/PM du 1 Novembre 2012 portant désaffectation d’une parcelle de forêt de 21 552 ha relevant du domaine privé de l’Etat.

92 Section 22, Forestry Law 1994.

93 Section 28, Forestry Law 1994 ; Article 22, Forestry Decree 1995.

the declassified area.⁹⁴ Whether and when this has been classified, and whether it is equal in size and quality to the area declassified as required by the law, remains unknown.

There are other requirements that must also be complied with for declassification. While a forest remains classified, clearing (as opposed to sustainable forestry activities) within the forest is prohibited.⁹⁵ Where an area is proposed to be declassified to enable clearing (*défrichement*) to take place, such declassification may only take place after an environmental and social impact study takes place, and cannot take place if clearing would harm the ability of local populations to satisfy their needs for forest products, compromise the survival of forest populations whose way of life is linked to the forest involved, or jeopardise the ecological equilibrium.⁹⁶ Moreover, if an area is proposed to be declassified out of the state private property estate, a declaration of public purpose (*déclaration d'utilité publique*) and an environmental impact assessment are required.⁹⁷

In the present case, the state alleges that a part of the UFA has been declassified, apparently for the purposes of the Biopalm concession. Declassification for the purposes of a palm oil concession involves (at least⁹⁸) clearing of the land, which under article 9 of the 1995 Forestry Decree, can only proceed if there is a favourable environmental and social impact assessment, and if clearing will not negatively affect the subsistence use of local populations.

It does not seem that any (certainly not a compliant) environmental and social impact study was undertaken before the declassification took place. Moreover, in our view, any argument that the clearing, which would affect a very large proportion of customary lands used by both Bantu and Bagyeli communities in Bella, would not have significant negative effects upon them is simply untenable. Given that, we consider that any decision to declassify this zone is likely to be unlawful.

Indications are that the administration may be seeking to resort to legal sophistry and smokescreens in their attempts to “declassify” and “deallocate” this portion of the state’s private property estate in order to (seek to) permit it to be allocated under concession.

It is difficult to determine precisely what the state has done (or sought to do) in order to permit a concession of lands in the state private property estate. As noted above, concessions may also be granted in the state private property estate from “unallocated State private lands”.⁹⁹ However, for the portion of the UFA to be declassified but remain within the state’s private property estate – which seems to be what the state alleges has happened, and failing which a declaration of public purpose would also have been required on declassification – another state entity (such as the Ministry for Agriculture, MINADER) would have needed to request the allocation of that portion of land for a particular purpose.¹⁰⁰

However, if only unallocated land may be granted in concession to private bodies, then for a ministry to request the allocation of land to them simply in order for it to be treated as “unallocated” so that it can be concessioned to a private entity – if that is indeed how the administration has proceeded – would in FPP’s view arguably be an ultra vires misuse of the states powers to request transfer of land to a ministry.

In another meeting, a representative from MINFOF suggested that the rezoned portion of UFA 00-003 granted to Biopalm for an oil palm plantation was now an “agricultural production forest”.¹⁰¹ Nonsensical descriptions of this type, which mask the real legal mechanisms behind what has occurred or explain the rights to which communities were entitled in such processes, do not inspire confidence that the correct procedures have been followed.

94 Personal communication from the Chief of Moungué, based on information he received during a meeting held on 23 March 2016 concerning the new environmental and social impact statement for UFA 00-003.

95 Article 9, Forestry Decree 1995.

96 Article 9, Forestry Decree 1995.

97 Article 22, Forestry Decree 1995. Legally speaking, it is not entirely clear whether it is possible to declassify the forest from the permanent forest estate without also removing it from the state’s private property estate (and returning it to the national estate). FPP’s view is that upon declassification, the area should automatically return to the national estate (and therefore that all declassifications remove land from the private property estate and invoke the provisions of Article 22). However it also appears arguable that incorporation to the state private property estate survives declassification, such that upon declassification the land remains as state private property, unless and until allocated to another category (in accordance with the rules governing the state private estate, set out primarily in Ordonnance No. 74-2 du 6 juillet 1974 fixant le régime domaniale and the State Private Property Decree 1976). That would suggest that a declaration d'utilité publique and an environmental impact statement would not be required where land was not being removed from the state’s private estate (although classification of alternative lands would always still be required (Article 22(1), Forestry Decree 1995), and an environmental impact statement and lack of harm to local communities would be required for any declassification for the purposes of clearing (under Article 9, Forestry Decree 1995).

98 There is also an argument that declassification of a state forest necessarily requires classification “out of the private property of the state”, although FPP considers this is legally unclear.

99 Article 5, State Private Property Decree 1976.

100 Under article 3 of the State Private Property Decree 1976, any ministry who wishes to have a portion of the State private property estate allocated to it may submit a request to the prefect of the relevant department.

101 Minutes of community meetings regarding the Biopalm project, October 2014.

VENTES DE COUPE

FPP's investigations into the ventes de coupe were based upon community concerns raised with us before and during our field visits in June 2015, and were therefore focussed on SBAC. However, during the course of our researches, it became apparent (from the WRI site) that additional VCs had also been granted in Bella to a company called Boducam.

In fact, the community of Bella at large became aware of this exploitation on 30 January 2015, when community members discovered that several members of local authorities based in Kribi (including both judicial and administrative authorities), unbeknownst to them and allegedly with the agreement of their chief, had been granted lands within the forested areas of Bella. Moreover, the community found out that several additional VCs (for which the chief had allegedly received payment) had commenced work in some more distant areas of the community's forest lands.¹⁰²

We understand that the community of Bella has now commenced a procedure to depose its chief.¹⁰³ In March, the communities' discoveries were confirmed by maps provided to communities by FPP (based on new information available on the WRI Interactive Web Atlas, added around September 2015), which showed VCs granted to Boducam in border areas of the communities' forests. However, because the communities only became aware of Boducam's activities relatively recently, our requests for information and researches to date have focused primarily on SBAC.

According to the data on the website, SBAC's VCs, 0903344 and 0903345, were granted on 27 and 29 April 2015 respectively. Boducam's three VCs, 0903340, 0903341 and 0903342, were granted on 24 October 2014 (very shortly before FPP and Okani visited the area, and around the time of the Biopalm meetings in the communities). Given these recent grants, there are obvious questions about the lack of information known to the communities; and broader concerns about the manner in which all of these VCs were granted.

Under national law, a VC may be granted either within the permanent forest estate¹⁰⁴ or within the national estate.¹⁰⁵ The key constraining factors are the surface area over which a VC may be granted (2500 hectares¹⁰⁶) and the period of time for which they may be granted (up to three years¹⁰⁷).

The process for the grant of VC in Cameroon requires a number of stages. A VC must obligatorily be the subject of a tender process which specifies their limits, the surface area and the proposed local social benefits (agreed with the local communities concerned¹⁰⁸).

Moreover, pursuant to section 37 of the Forestry Law 1994, and in accordance with Arrêté No. 518 on the right of pre-emption,¹⁰⁹ communities must be given the opportunity to apply for a community forest in any of the areas proposed to be the subject of VCs in the national estate (non-permanent forest). In practice, this requires that:

- MINFOF draws up a list of proposed VCs in areas eligible for community forests;¹¹⁰
- It publishes the list in various locations, and specifically it ensures that such a list is provided to the chiefs of affected villages (who must sign to indicate they have received it);¹¹¹
- An affected community has three months from the date of receipt of that list to write a letter to MINFOF stating its intention to create a community forest in the area;¹¹²
- Any forest which is sought by a community must be withdrawn from the list of VCs to be opened for tender by MINFOF;¹¹³
- Communities then have a period of three years to introduce a completed application dossier for a community forest (which requires a number of documents / steps in order to complete).¹¹⁴

CONAC's 2011 report considered the process of attribution of VCs, and found (inter alia) that the inter-ministerial commission responsible tasked with determining the companies

to which VCs would be attributed was riddled with "numerous and serious irregularities",¹¹⁵ including widespread lack of respect of communities' right to pre-emption in respect of proposed VCs. It appears similarly highly unlikely that the pre-emption procedure was followed in this case. Based on the accounts (corroborated by several attendees) given during the meetings,¹¹⁶ the communities were not given notice of the grant of the SBAC VCs, but rather the chiefs and two notables were made aware of them after (or possibly immediately before) they were granted.¹¹⁷ In the case of the Boducam VCs, because the forest area was not directly adjoining the village, activities were underway for some time before the communities (save for a few individuals) became aware even that the company was there. The failure to notify communities was not insignificant. As became clear during the consultation visits in June and August, the communities were very interested in creating community forests and would certainly have taken advantage of the opportunity to do so had they been aware of it.

There are further questions about VC0903345, reportedly granted as a *coupe de sauvetage* (salvage VC) on land adjoining a concession granted to Hévécam. VCs were originally conceived with in mind selective logging in production forests.¹¹⁸ They are being increasingly adopted, however, in cases involving (or alleged to involve) conversion timber – that is, where the land has been allocated for another purpose which will require it to be cleared.¹¹⁹ In these cases, the procedures required for the attribution of VCs appear appear to have been ignored; and there is a legal lacuna around the appropriate procedure.¹²⁰ If true that such VCs have been granted on land merely adjoining concessions, this is an even greater stretch (we note that the remaining VCs granted to SBAC and Boducam adjoin the alleged Biopalm concession, raising similar questions).

¹⁰² This information has been relayed to us by members of the community and has not been independently investigated or verified by FPP or Okani; we understand however it was covered by the television media on or around 30 January 2016.

¹⁰³ Personal communications from community members (sources confidential). The latest information we had at the time of writing was that the chief had been summoned for questioning by his superior, the second degree chief, at a community meeting on Saturday 9 April 2016, during which he refused to answer questions. The meeting was subsequently adjourned until Friday 15 April.

¹⁰⁴ Sections 44 and 52, Forestry Law 1994.

¹⁰⁵ Section 53, Forestry Law 1994. Under section 54, a community forest may also be the subject of a *vente de coupe*, where this is in conformity with the management plan for the community forest.

¹⁰⁶ Section 55(1), Forestry Law 1994.

¹⁰⁷ Section 55(2), Forestry Law 1994. VCs may be (and are) granted also for shorter periods of time. A VC is not renewable.

¹⁰⁸ Sections 57 and 79 of the Forestry Decree 1995 require that VCs in the permanent forest estate are the subject of a public tender in accordance with Section 51, which sets out the requirements of such a public tender. Section 81 similarly requires that VCs in the non-permanent forest estate are the subject of a public tender in accordance with section 51.

¹⁰⁹ Arrêté No. 518/MINEF/CAB fixant les modalités d'attribution en priorités aux communautés villageoises riveraines de toute forêt susceptible d'être érigée en forêt communautaire of 21 December 2001 ("Pre-emption Arrêté 2001").

¹¹⁰ Article 5, Pre-emption Arrêté 2001.

¹¹¹ Article 6(1), Pre-emption Arrêté 2001.

¹¹² Article 6(3), Pre-emption Arrêté 2001.

¹¹³ Article 7, Pre-emption Arrêté 2001.

¹¹⁴ Article 8, Pre-emption Arrêté 2001.

¹¹⁵ CONAC, 2012, *Rapport sur l'Etat de la Lutte contre la Corruption au Cameroun* on 2011, Yaoundé, p 133.

¹¹⁶ This history was recounted by several members of the community who attended the meeting with the chief, during FPP's visit to the community in June 2015. It was reiterated during meetings in August and September 2015.

¹¹⁷ This appears to have been confirmed by subsequent information, obtained in late 2015, indicating that the VCs in question were issued in April 2015.

¹¹⁸ Greenpeace, 2014, *Licence to Launder: How Herakles Farms' illegal timber trade threatens Cameroon's forests and VPA*, Greenpeace, Netherlands, p 4.

¹¹⁹ See, inter alia, Greenpeace, *CCT's Timber Trade from Cameroon to Europe: A test case for EUTR's due diligence requirement*, 2015, Greenpeace, Amsterdam, available at: <http://www.greenpeace.nl/Global/nederland/2015/documenten/Bossen/Greenpeace%20Nederland%202015%20-%20CCT%20timber%20trade%20from%20Cameroon%20to%20Europe.pdf> (accessed 31 March 2016), e.g. at p 6.

¹²⁰ This view was expressed to the author by a staff member from a Cameroonian NGO during a meeting in June 2015.

MINING EXPLORATION PERMIT NO. 222

Superimposed across all the villages, and dwarfing all the other concessions, is a mining exploration permit (*permis de recherche*) No. 222, known as the “Bipindi” permit, allocated to G-Stones Resources SA (G-Stones).

G-Stones is a Cameroonian mining company, 70 per cent ultimately owned by Canadian company Mississauga Mining and Exploration Inc (MME).¹²¹ MME has a local partnership with the Cameroonian Groupe BOCOM, which is heavily involved in the exploration activities on the ground.¹²²

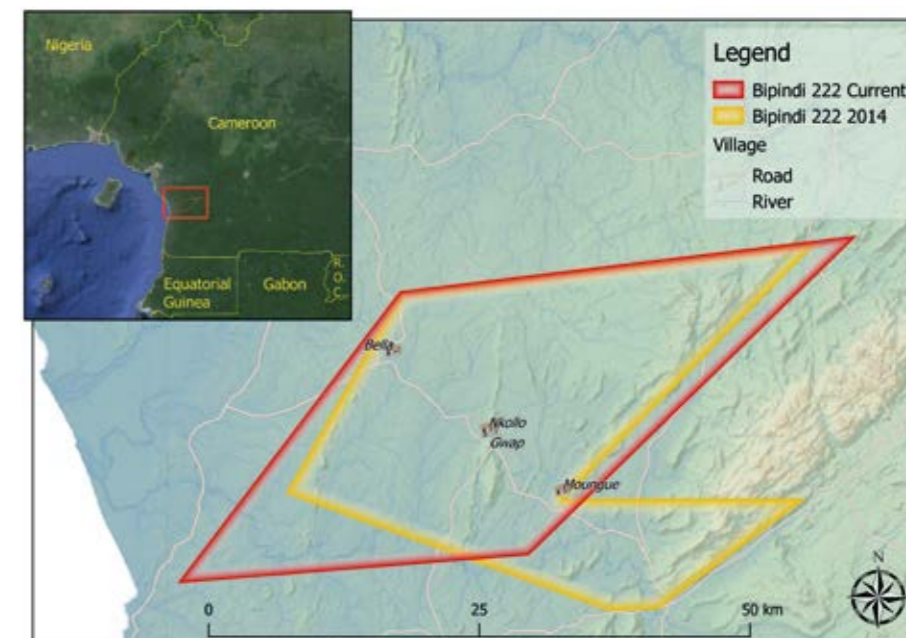
We have not conducted extensive investigations into G-Stones, but the preliminary research we have completed has exposed what appears to be *prima facie* illegality in relation to the size of the exploratory concession (we have not however at this stage asked either the government or the company for its response on this point). That conclusion is based on article 39 of the Mining Code, which provides that (a) an exploratory mining permit must not exceed 1000 km²; and (b) where a permit holder seeks renewal of an exploratory permit, the surface area of the permit must be reduced by at least 50 per cent for each renewal (except where the total surface area is less than 62km²). By consequence, a permit renewed once can be no greater than 500km²; twice no greater than 250km², and so on.

FPP obtained a copy of the current exploration permit of G-Stones, which was renewed (a first renewal) in 2014 by Arrêté No. 004145/MINMIDT/SG/DM/SDCM of 26 June 2014. The total surface area of this permit is 960km², i.e. a surface area greater than the total permitted area for a renewed permit. We also compared the current boundary coordinates for the permit shown on the WRI Interactive Forest Atlas of Cameroon in 2013 (see Map 6), and it appears that the renewal has not only not reduced, but has in fact expanded the total surface area of the permit.

There seems to be some sensitivity around discussing this permit. During FPP's visit to the communities in March 2016, we discussed the rights and obligations of G-Stones and BOCOM (and mining companies in general), at the request of communities affected by exploration activities. During the course of a meeting in Gwap, we were interrupted by the site manager from BOCOM asking to speak to FPP. The site manager then insisted on being informed about what was being discussed, stating that FPP was obliged to inform BOCOM before

discussing anything which touched upon their mining permit. When we refused to disclose details of the discussions and requested the basis for any such obligation, the site manager resorted to intimidatory tactics, stating with menace that the BOCOM, as the State, had a right to know what was being discussed (BOCOM is partly State-owned), that any Cameroonian person had the right to demand this information from a foreigner. The meeting nonetheless continued after community members intervened, but the site manager's parting shot was that would “inform his superiors in Douala”. We recount this episode solely to give an example of the resistance to communities obtaining access to information.¹²³

Earlier this year, it was announced that G-Stones and BOCOM would be seeking an exploitation permit to extract iron from Akom II (a village in the same vicinity).¹²⁴ BOCOM is now planning to construct a steel factory at Fifinda.¹²⁵ During our most recent visit in March, part of the 200 hectares factory site (which adjoins the main road from Edea to Kribi) had already been cleared and levelled.



Map 6: Comparison of existing and former mining permit (map created by FPP with data from World Resources Institute).

¹²¹ Mississauga Mining and Exploration website, <http://mississaugamining.com/mission-and-values/> (accessed 9 December 2015).

¹²² According to MME's website, MME has partnered with BOCOM in respect of mining permits held by a company MMEC (which are different from those owned by G-Stones). It is not clear what direct link or ownership BOCOM has in relation to the G-Stones permits; however, community members in the area (including some who are employed by the company) refer to the company active in the area as BOCOM, so it is clear that BOCOM has at least an operational role in relation to the exploration activities being carried out.

¹²³ In fact, the attempt at intimidation went beyond simply FPP. Most of the youths present in the meeting were employed, without formal contracts, by BOCOM at the site (mostly in relatively menial positions). In an area where underemployment is rampant, the company is one of the few sources of (short-term) employment for young men, many of whom have been forced to return to the village and farming despite education in other fields, because of a lack of other employment opportunities. The monopsony power exercised by BOCOM means that young men are obliged, against their wishes, to accept work without a written contract of employment, with the consequence that they can be dismissed at any time. When the BOCOM representative wished to interrupt the meeting to speak to me, I asked the attendees whether it was okay for me to do this. Several of the young men replied: “He’s our boss – what can we do?”.

¹²⁴ G Ivada, “Cameroun - Investissement: Un complexe sidérurgique près de Kribi”, Cameroon-info.net, 5 January 2016, available at <http://www.cameroon-info.net/stories/0,70215,@cameroun-investissement-un-complexe-siderurgique-pres-de-kribi.html> (accessed 31 March 2016).

¹²⁵ B R Modiam, “Cameroun: le groupe BOCOM va construire un complexe sidérurgique dans la localité de Fifinda”, Investir au Cameroun, Monday 11 January 2016, available at: <http://www.investiraucameroun.com/mines/1101-7033-cameroun-le-groupe-bocom-va-construire-un-complexe-siderurgique-dans-la-localite-de-fifinda> (accessed 31 March 2016).

CONCLUSIONS

Pressure on land resources, and openings for both legitimate and shadier projects, are increasing at a particularly rapid pace in the South region because of the construction of the new deep sea port at Kribi.

A glance at the region on the WRI Interactive Atlas shows the extent of land allocations already made, and the paucity of vacant land remaining. To date, the consequences of these land allocations for local populations have not been fully felt, because most are still only in their early stages.¹²⁶ However, the cumulative consequences will potentially be significant and may lead not only to impoverishment but also risk generating civil unrest, as communities' capacity to survive is increasingly squeezed by external parties who profit from their resources with little or no benefit to the community. A recent report by Samuel Nguiffo and Michelle Sonkoue Watio of CED on agro-industrial concessions – but equally valid for other types of concession – states:

“Land allocations are theoretically positive in terms of local development, as they create jobs and improve food security, infrastructure and the national balance of payments. In reality, however, cohabitation between agro-industrial enterprises and local communities has proved problematic, and it is debatable whether local people derive any real benefit from it. While contracts state that agro-industrial projects should take account of the environment and respect environmental standards, experience has shown that agro-industries have many negative effects on the environment, including loss of biodiversity, soil degradation and multiple forms of pollution. And because these land allocation contracts make very little mention of the companies' social responsibilities, local expectations in this respect are rarely fulfilled.”¹²⁷

The history that we have set out above reflects some of the continuing difficulties with transparency and community access to information, but also shows how this is related to real underlying problems of legality and accountability in relation to forest governance and land use more broadly. While there have been some improvements in transparency (the mere existence of the MINFOF APV site is a significant gain), there are still immense challenges to bring real accountability to the system. Part of the difficulty is in the conception of transparency itself, which seems to be viewed by some in government as simply a matter of making public those decisions that have already been made by the government. Real transparency, however, involves not only post-facto publication of decisions, but provision of timely information to stakeholders before decisions are made, capacity for stakeholders to influence those decisions, public oversight of the procedures by which they are made, and an effective capacity to challenge state decisions which are unlawful or bad.

The lack of transparency both contributes to and is maintained by the lack of community rights. Communities are deprived of even their limited rights under national law by unaccountable officials; and at the same time, the lack of any real and protected community interest in good land management – because of the lack of recognised rights – prevents them from becoming an ally in good land management and anti-corruption. Communities who see no benefit even from “legal” forest governance, which deprives them of their lands and rights, have little incentive to report or take any interest in illegality by third parties. Indeed, when they see so many third parties profiting from their own natural resources with little or no benefit to themselves, the lack of community rights give communities every incentive to be involved in illegality themselves. To paraphrase the comments of one participant at the recent Forest Governance Forum in Yaoundé¹²⁸: when it comes to conservation of forest resources and combatting illegality, it is everyone's responsibility; but when it comes to benefits from forest resources, it is only the state and the companies who have rights.

The VPA has helped to start a process towards transparency in Cameroon; an achievement which should not be undervalued. Forest governance reform is a long term process, and we cannot and should not expect too much too soon. Nonetheless, if the tripartite goals of sustainable forest governance – economic, social and environmental – are to be achieved, transparency will need to extend much further, and community rights brought squarely into the debate. Let us hope that this is where the next stages of the FLEGT Action Plan, and other global efforts to improve forest governance, will lead.

¹²⁶ That said, there have been very serious consequences for some groups already affected, including Bagyeli citizens who were dispossessed of their land to make way for the deep sea port, and who have struggled to get any, and certainly not adequate, compensation: see e.g. “Cameroun: Kribi: Expropriation à problèmes”, Camer.be, nd, at <http://www.camer.be/48628/11:1/cameroun-kribi-expropriation-a-problemes-cameroun.html> (accessed 31 March 2016). On several occasions, members of the community of Akom II in particular, which is the location of the proposed G-Stones iron ore mine as well as various other projects, have also told FPP that they are in dire straits because of the combined effects of various projects in their village.

¹²⁷ Nguiffo and Sonkoue, 2015, *supra*, p 2.

¹²⁸ Forest Governance Forum, Hotel Falaise, Yaoundé, Cameroon, 16-18 March 2016. This comment was noted by the author of this report, who was in attendance.

