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A LEGISLATIVE COMMENT ON CAMEROON'S EIA REGULATORY REGIME

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Comment

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1 INTRODUCTION

Environmental Impact Assessment (EIA) is a planning and management tool employed to ensure that all critical information, to anticipate the future impact on the environment, are considered in the decision-making process in order to avoid the implementation of any activity that may have significant negative impacts on the environment as well as enhance positive impacts. Thus, the implementation of an EIA is pivotal to achieving sustainable development.

The foundation stone of EIA was laid in the United States National Environmental Policy Act of 1969 that included requirements for assessing the environmental impacts of a wide range of Federal 'actions', covering projects, policies, plans, and programmes; the aim was to protect the environment.[1] Subsequently, many other countries started introducing EIA, including Canada and Australia in 1973 and 1974 respectively. In Europe, the European Union (EU) Directive 85/EC/337 made EIA for projects, a requirement in all EU member states.[2]

While EIA legislation in the above-mentioned countries was endogenous, the same cannot be said of developing countries.[3] EIA was initially foisted on developing countries by Multilateral Development Banks,[4] such as the World Bank[5] and the African Development Bank, which have EIA requirements in their eligibility criteria.[6] As time rolled on, the attitude of developing countries, in general, and Sub-Saharan Africa, in particular, towards EIA metamorphosed.[7]

In view of the merits associated with EIA, the government of Cameroon has deployed a panoply of regulations with the aim of safeguarding the environment. This commentary seeks to explore the

1 National Environmental Policy Act 1969, ss 4321-4370(f).

2 Thomas B Fischer and Obaidullah Nadeem, 'Environmental Impact Assessment Course Curriculum for Tertiary Level Institutions in Pakistan' (2013) National Impact Assessment Programme Pakistan 18 <www.iaia.org/pdf/FullEIAcurriculumFischer-NadeemSeptember2013-with%20corrections.pdf>.

3 United Nations Environment Programme, Assessing Environmental Impacts – A Global Review of Legislation (UNEP 2018) <https://wedocs.unep.org/bitstream/handle/20.500.11822/22691/Environmental_Impacts_Legislation.pdf?sequence=1&isAllowed=y>; In developing countries there was resistance to EIA on grounds of economic and technological development. First, developers resisted and argued that it was anti-development because laws and policies supporting it dictated that lands developments causing negative impacts should be discontinued. Second, EIA was considered as a means by which industrialized nations intend to keep developing countries from breaking the vicious cycle of poverty. Third, the experts in the developing countries were foreigners who were viewed as agents of colonization. see Mohammad A Bekhechi and Jean-Roger Mercier, 'The Legal and Regulatory Framework for Environmental Impact Assessments: A Study of Selected Countries in Sub-Saharan Africa' (2002) The World Bank: Law, Justice and, Development Series <http://documents1.world-bank.org/curated/en/573451468002164226/pdf/multi0page.pdf>.

4 ibid, United Nations Environment Programme 17.

5 The World Bank, Environmental and Social Framework (The World Bank 2017) 18.

6 African Development Bank, Environmental and Social Assessment Procedure: Basics for public sector operations (ADB Compliance & Safeguards Division) <www.afdb.org/fileadmin/uploads/afdb/Documents-/Generic-Documents/ESAP%20Basics%20Guide%-20%28En%29.pdf>.

7 This volte-face was influenced by the following factors: (a) increasingly onerous costs of environmental problems that could have been prevented at low cost; (b) a general increase in awareness of environmental problems and issues; (c) the autochthon development of important environmental legislation, including EIA regulations, without the involvement of donor agencies; and (d) the inclusion of environmental legislation reform as part of an overall legal reform agenda, see Bekhechi and Mercier (n 3) 6.

extent to which these regulations may facilitate the actualisation of the benefits that consort with EIA. The commentary flags off with an introduction. Next, it lays down the regulatory framework for EIA in Cameroon. The focus then shifts to the types of impact assessment and culminates with a conclusion.

2 REGULATORY FRAMEWORK IN CAMEROON

After the Rio Summit of 1992, the Government of Cameroon undertook a number of regulatory and institutional reforms to incorporate developments in international environmental law into domestic legislation, in particular, the provisions of international conventions and conference decisions echoing environmental management and sustainable development without importing foreign legislation.[8] Cameroon's organic law, the 1996 Constitution provides the point of departure on environmental protection. The preamble to the Constitution provides that 'Every person shall have a right to a healthy environment. The protection of the environment shall be the duty of every citizen. The State shall ensure the protection and improvement of the environment'.[9]

EIA in Cameroon is regulated by a combination of laws,[10] decrees[11] and orders.[12] Although the Environmental Management Law (EML)[13] is the fundamental law on the EIA process the head start to EIA was the forestry law that prescribed EIA for projects that posed a danger to the environment.[14] For its part, the EML provides:

> The promoter or owner of any development, labour, equipment or project which may endanger the environment owing to its dimension, nature or the impact of its activities on the natural environment shall carry out an impact assessment pursuant to the prescription of the specifications. This assessment shall determine the direct or indirect incidence of the said project on the ecological balance of the zone where the plant is located or any other region, the physical environment or quality of life of populations and the impact on the environment in general.[15]

8 For instance, Cameroon has ratified the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change together with its Protocol. These Conventions enjoin Parties to require EIAs of proposed projects that are likely to have significant adverse effects on the environment with a view to avoiding or mitigating such effects. Similarly, Principle 15, 17 and part of 10 of the Rio Declaration and Agenda 21 are reflected in Cameroon's EIA regulatory regime.

9 Constitution of the Republic of Cameroon 1996, art 65.

10 Laws are prepared by the different Ministries and sent to the National Assembly for adoption and are promulgated thereafter by the Head of State.

11 To be applied, a law needs regulatory instruments which are known as implementing decrees. The Ministries that have prepared the law also prepare the decrees, which are then signed by the Prime Minister.

12 Decrees sometimes require details which are known as implementing orders. The orders are drafted by the Ministry that prepared the decree and signed by the Minister.

13 Environmental Management Law 1996.

14 Wildlife and Fisheries Regulations 1994, s16 (2). It states that 'The initiation of any development project that is likely to perturb a forest or aquatic environment shall be subject to a prior study of the environmental hazard'; Other sectoral laws prescribe the conduct of EIA in the face of the likelihood of a danger to the environment. See Mining Code 2016, s135(2). It states that 'Apart from non-industrial mining license, the exploration permit and the license for non-industrial quarry mining for domestic purposes, the granting of mining titles, quarry licenses and permits shall be subject to the prior conduct of an environmental and social impact assessment... as provided for by the laws and regulations in force in matters relating to the protection and sustainable management of the environment'; Petroleum Code 2019, s92(1). It requires the conduct of ESIA.

15 Environmental Management Law 1996, s17(1).

The EML was complemented by the now-repealed 2005 Decree.[16] The annulled Decree[17] mandated the Minister in charge of the environment (the Minister) to determine the various categories of activities subjected to an EIA and to specify the Terms of Reference (ToR) of an EIA. As a consequence, two Orders were adopted: the 2005 Order[18] and the 2007 Order.[19] Given that the implementing regulations of the EML were completed eleven years after the latter was enacted, one may conclude that the EIA regime became complete in 2007.

EIA legislation did not remain static; modifications were mainstreamed to mirror developments in global environmental assessments. As a consequence, the 2013 Decree was adopted.[20] This Impact Assessment Decree (IAD) changed the nomenclature hitherto employed by its predecessor from EIA to Environmental and Social Impact Assessment (ESIA). Other innovations introduced were the assessment tools of the Strategic Environmental Assessment (SEA) and Environmental Impact Statement (EIS). The IAD directed the Minister to establish a list of activities subject to ESIA and SEA.[21] Armed with this mandate, the Minister passed an Order determining the activities that required an ESIA and SEA.[22] Furthermore, the IAD obligated the Minister to fix the standard outline for the ToR for ESIA, SEA, and EIS.[23] As a result, the Minister issued an Order giving partial effect to the IAD.[24] The Minister's Order applied to EIS but excluded ESIA and SEA, thus maintaining the ToR Order of 2007.[25]

A cursory look at Section 17 (1) of the EML together with the Operational Categories Order[26] indicates that the activities subject to ESIA and SEA are defined on the basis of the type and scale of the activities concerned. The Operational Categories Order is laudable as it gives foreknowledge to a project proponent that the activity under contemplation is subject to ESIA or SEA. The regulation is on all four with Principle 2 of UNEP's recommendation which states:

> The criteria and procedures for determining whether an activity is likely to significantly affect the environment and is therefore subject to an EIA, should be defined clearly by legislation, regulation and other means, so that subject activities can be quickly and surely identified, and EIA can be applied as the activity is being planned.[27]

A problem associated with the Operational Categories Order is its legality. This preoccupation is premised on the general rule of law that a delegate cannot sub-delegate his functions, expressed by the Latin maxim 'delegatus non potest delegare' unless he is otherwise authorised.[28] Our discomfort hinges on the EML which provides:

16 Environmental Impact Assessment Decree No. 2005/0577/PM (23 February 2005). It Lays Down the Terms and Conditions for Conducting Environmental Impact Assessment.

17 ibid arts 6 (1) & (2).

18 Order No.0070/MINEP (22 April 2005). It establishes the Different Operational Categories whose Conduct is Subject to an EIA.

19 Order No. 0001/MINEP (3 February 2007). It specifies the Terms of Reference of Environmental Impact Assessment (ToR Order).

20 Environmental Impact Assessment Decree No. 2013/0171/PM (14 February 2013). It lay down the terms and conditions for Conducting Environmental and Social Impact Assessment (Environmental Impact Assessment Decree). Art. 31 of this Decree repealed its predecessor.

21 ibid art 8 (1).

22 Order No. 00001/MINEPDED (08 February 2016). It establishes the different Operational Categories whose Conduct is Subject to a SEA or an ESIA (Operational Categories Order). Art. 7 of this order repealed its predecessor.

23 Environmental Impact Assessment Decree (n 20) art 8(3).

24 Order No. 00002/MINEPDED (9 February 2016). It lays down the model format for the Terms of Reference and Content of an Environmental Impact Notice. EIS and Environmental Impact Notice are used interchangeably (Impact Notice Order).

25 Environmental Impact Assessment Decree (n 20) art 8(3).

26 Operational Categories Order (n 22) arts 3-5.

27 United Nations Environment Programme, The Goals and Principles of Environmental Impact Assessment (UNEP/GC.14/L.37-B 1987) Principle 2.

28 For an examination of the rule against sub-delegation, see Ese Malemi, Administrative Law: Cases and Materials (1edn, Grace Publishers Inc 2004) 98.

> The list of the various categories of operations whose implementation is subject to an impact assessment as well as the conditions under which the impact assessment is published shall be laid down by an enabling decree of this law.[29]

The Parliament, that adopted the EML, conferred the power to determine the list of subject activities on the Authority competent – the Prime Minister – to so act by way of a decree. Thus, it is only the Prime Minister who is competent to legislate pursuant to Section 19(1) on behalf of the Parliament. A reading of Section 19(1) indicates that there is no express or implied authority to sub-delegate the power to the Minister to determine the list of subject activities, given that this section expressly states that 'The list … shall be laid down by an enabling decree of this law'. The employment of the word 'shall' render this duty mandatory and not permissive. The Prime Minister elected to further delegate his functions to the Minister.[30] In the case of Allingham v Minister of Agriculture and Fisheries, Lord Goddard CJ while reviewing the principle of delegatus non potest delegare said:

> In other words, they delegated to the executive officer the task of deciding the land which was to be served. I can find no provision, any order having statutory effect or any regulation which gives the executive committee power to delegate that which the Minister has to decide and which he has power to delegate to the committee to decide for him. If he has delegated as he has, his power of making decisions to the executive committee, it is the executive committee that must make the decision, and, on the ordinary principle of delegatus non potest delegare, they cannot delegate their powers to some other person or body.[31]

Therefore, it is submitted that the Operational Categories Order is ineffective in law.

The legal framework recognises three types of impact assessments: ESIA, SEA, and EIS. The proponent whose activity is subjected to an EIA is required to carry out an impact study in order to determine the direct and indirect incidence of the said project on the environment.[32] The conduct of an ESIA or SEA is mandatory for projects requiring impact assessment.[33] In The Struggle to Economise Future Environment (SEFE) v S.G. Sustainable Oils Cameroon Ltd,[34] the Plaintiffs brought an action to restrain the respondents from exploiting the forest resources of the area in their vast oil palm project without an environmental impact assessment of the project. The High Court per Forbang J stated that:

> …The conduct of the environmental impact assessment is a pre-condition for carrying out any project of the magnitude of that which is envisaged by the applicants who are defendants in the substantive action.

2.1 Environmental and Social Impact Assessment

ESIA is defined as 'a systematic approach to determine the potential for and adverse effects of a project on the environment…'.[35] This definition does not capture the word 'social' and mirrors the 2005 definition of

29 Environmental Management Law 1996, s 19(1).

30 Environmental Impact Assessment Decree (n 20) art 18. It provides that 'The list of activities subject to the environmental and social impact assessment, to the strategic environmental assessment shall be drawn up by order (sic) Minister in charge of environment'.

31 Allingham v Minister of Agriculture and Fisheries (1948) All ER 780 A.G. Ex parte; McWhirter v IBA (1973) QB 629. (Emphasis added).

32 Environmental Management Law 1996, s17(1).

33 Environmental Impact Assessment Decree (n 20) arts 3(3), 25(1). Penal sanction is reserved for transgressors, see Environmental Impact Assessment Decree (n 20) art 79; Environmental Impact Assessment Decree (n 20) art 7.

34 Struggle to Economise Future Environment (SEFE) v S.G. Sustainable Oils Cameroon Ltd (2013)1 CCLR 1-126 80.

35 Environmental Impact Assessment Decree (n 20) art 2 para 1.

an EIA. The definition should be read together with the EML.[36]

ESIA may be either in the form of a summary or detailed.[37] ESIA is carried out only once in the duration of a venture and applies to the entire project. However, in case a project is executed in phases or is being expanded or renovated, each phase, expansion, or renovation shall be subject to another ESIA.[38]

2.1.1 Procedure for Obtaining Approval

The proponent seeking approval of his project is required to submit the general project file[39] and pay the prescribed fees[40] to the line ministry and the Ministry of Environment, Protection of Nature and Sustainable Development (MINEP).

The assessment of the file is to be undertaken within prescribe deadlines, absent which the ToR will be deemed to be admissible.[41] Next is for the proponent to develop an ESIA study. This can be done with the help of a consultant approved by the Minister. In case of equal competence between national and foreign consultants, national consultants shall take precedence over foreigners.[42] The involvement of the Minister in the approval of consultants underscores the importance of the impact assessment. One would favour a situation where if the consultant is a foreigner, there should be an obligation for the consultant to make use of a quotient of competent local expertise as a way of capacity building.

ESIA is carried out with the participation of the population through stakeholder engagement (public consultations), in order to elicit the views of the population on the subject.[43] Stakeholder engagements consist of meetings during the study in the area where the project is to be located.[44] However, not all projects requiring ESIA are subject to stakeholder engagements; projects relating to security or national defence are exempted from this process.[45] The exoneration accorded projects relating to national defence is understandable as it seeks to shield defence secrets.[46]

Before embarking on the study, the proponent is compelled to send the approved programme of the stakeholder engagement to the representatives of the population at least 30 days before the date fixed for the first meeting.[47] Each meeting shall be given adequate publicity and is evidenced by the minutes of the meeting which shall be co-signed by the project proponent/representatives, and representatives of the population.[48]

36 Environmental Management Law 1996, s 4 para 11. It defines environment as '…the natural or artificial elements and bio geological balances they participate in, as well as the economic, social and cultural factors which are conducive to the existence, transformation and development of the environment, living organisms and human activities'; Environmental Management Law 1996, s 17 (1); ToR Order (n 19) art 2. It defines environment in terms of the physical environment, biological environment and socio-economic and human environment.

37 Environmental Impact Assessment Decree (n 20) art 3(1).

38 ibid art 3 (2).

39 Environmental Impact Assessment Decree (n 20) art 13(1). The general project file shall include the following documents: an application for carrying out an ESIA indicating company name, capital, sector of activity and the number of proposed employees, ToR of the study accompanied by a description of the proposed project and justification of the project, with emphasis on preservation and reasons for choosing the site, and proof of payment of the cost of assessment into the accounts of the National Environmental and Sustainable Development Fund (NESDF); ToR Order (n 19) art 2.

40 Environmental Impact Assessment Decree (n 20) art 17(1). The sums are CFA F 1.5 million ($ 3 000) and CFA F 2 million ($ 4 000) for a summary and detailed ESIA respectively.

41 ibid art 13(5). The MINEP has 30 days to respond.

42 Environmental Impact Assessment Decree (n 20) arts 14(1)-(2). Pursuant to art 14 (1) of this Decree those who can undertake the study are consultants, consulting firm, a non-governmental organisation or an association.

43 ibid art 20 (1).

44 ibid art 20 (2).

45 ibid art 23.

46 Environmental Management Law 1996, s 17(1) para 2. However, where the project is undertaken on behalf of national defence services, the Minister in charge of defence is empowered to 'disseminate the impact assessment under conditions compatible with national defence secrets'.

47 Environmental Impact Assessment Decree (n 20) art 21(1). The programme consists of the dates and place of the meetings, the specifications, project brief and objectives of the consultations.

48 ibid art 21(2). The minutes shall be annexed to the ESIA report.

When the ESIA study is complete, the proponent is enjoined to submit 2 copies of the report to the line ministry and 20 copies to the MINEP[49] together with proof of payment of examination fees to the NFESD.[50] Upon receipt of the ESIA report, a joint team comprising of officials from the MINEP and the competent Administration shall be established and entrusted with the twin responsibility of descending to the project site 'to substantially support the information contained in the said assessment and to gather the opinion of the people concerned'; and prepare an evaluation report.[51] This report enables the MINEP to rule on the admissibility of the ESIA report.[52] If the report is adjudged to be inadmissible, the reasons for rejection shall be communicated to the proponent within 20 days of its non-admissibility. In case of default, the assessment shall be considered admissible.[53]

Following the approval or deemed approval of the report, a broad public hearing shall be held under the auspices of the MINEP.[54] This meeting is meant to publicize the assessment, record any opposition, and allow the public to comment on the conclusions of the assessment.[55] An ad hoc committee will be established to draw up an evaluation report of the public hearings, which shall be annexed to the ESIA report within 30 days for transmission to the Minister and the ICE.[56] Public hearings are organized only for projects that require a detailed ESIA.[57]

The ICE has 20 days to review the EISA report considered admissible and advise the Minister accordingly. Beyond this period the said statement shall be deemed favourable.[58] Meanwhile the Minister has 20 days following the opinion of the ICE to give a reasoned decision on the ESIA.[59] The Minister's decision may take one of the three forms: (a) in case the response is favourable, a CEC shall be issued to the proponent; (b) if the decision is conditional, the Minister shall recommend to the promoter measures to be adopted to ensure conformity so as to obtain the CEC; and (c) a negative response means the promoter is prohibited from embarking on the project.[60]

The foregoing discussion portrays the stages through which an ESIA goes. I shall now undertake a synthesis of the regulations.

First, we stated that an ESIA study is undertaken by a consultant. The law is silent on the penal responsibility of consultants entrusted with the responsibility of conducting the study. The threat of criminal sanctions is vital, for it serves as a deterrent to consultants who may paint a positive outlook in order to have the study approved.[61]

Second, during the stakeholder engagement, ESIA is carried out with the participation of the public. 'Public', as employed in the regulation, means the population in the locality concerned by the project.[62] It is submitted that stakeholder engagement should not be limited to the affected communities; participation should be expanded to accommodate interested parties

49 ibid art 18(1).
50 ibid art 17(1). The sums are CFA F 3 million ($ 6 000) and CFA F 5 million ($ 10 000) for a summary and detailed ESIA respectively.
51 ibid art 18(2).
52 ibid art 18(4)(a) para 1. If the assessment is admissible MINEP shall publicise it in the press, radio, television or any other means.
53 ibid art 18(4)(b).
54 Ministry of Environment, Nature Protection and Sustainable Development, Manual for the General Procedure of Environmental Impact Assessments and Audits (MINEP 2010).
55 Environmental Impact Assessment Decree (n 20) art 20(3). During these hearings (a) the report of the impact assessment is made available to the public for consultation in reading rooms set up for this purpose; (b) it gives the public the opportunity to learn more about the impact assessment and mitigating measures proposed; and (c) observations and other public memoirs are collected from the registers in the reading rooms; Manual for the General Procedure of Environmental Impact Assessments and Audits (n 54).
56 Environmental Impact Assessment Decree (n 20) art 22.
57 Manual for the General Procedure of Environmental Impact Assessments and Audits (n 54).
58 Environmental Impact Assessment Decree (n 20) art 24 (2).
59 ibid art 26(1).
60 ibid art 26(2) – (4).
61 However, the Penal Code criminalises 'False Expert Report'. See Cameroon Penal Code, s 165.
62 Environmental Impact Assessment Decree (n 20) art 20(2).

such as civil society and environmental NGOs that are more knowledgeable in environmental matters than the affected population. Their presence and inputs could enrich the quality of the decisions that are made and, therefore, be beneficial for environmental governance. The presence of civil society and NGOs are crucial, given that the presence of the affected population in these meetings is usually minuscule.

Third, the law refers to 'meetings' with the population during stakeholder engagement but it is usually a single meeting that is held with the affected community[63] before submission of the report (for a summary study), which does not afford the affected population the opportunity to know whether their inputs have been reflected in the report or not. This concern is aggravated by the fact that there is no legal requirement prescribing publication of the report.

Fourth, upon receipt of the ESIA report, a joint team comprising officials from the MINEP and the line ministry are expected to visit the project site for validation of the report and to ensure that the report captures the thoughts of the affected population. Visits of this nature are not frequent owing to financial constraints[64] and this does not augur well for environmental management and sustainable development.

Fifth, we stated that subsequent to the submission of the ESIA report a public hearing is organised for projects that require a detailed study under the auspices of the MINEP. This is a policy decision, given that it is not supported by any legal provision. Two categories of meetings are prescribed: (a) stakeholder engagement, whose rationale is to inform the affected population about the positive and negative aspects of the project and 'to know the opinion of the latter on the project'; and (b) public hearings, whose aim is to 'publicize the assessment, record any opposition and allow the public to comment on the assessment's conclusion'.[65] The Decree does not provide anywhere that the public hearing is for a detailed study only. The MINEP's practice of not having a public hearing for projects, subject to a summary study, is in flagrant violation of the law and does not augur well for environmental management and sustainable development.

Sixth, the public hearings organized for projects requiring a detailed study is commendable, for it includes the people, NGO's, trade unions, opinion leaders and other organised groups involved in the project among the participants.[66] This has the potential of enhancing the quality of the proposal emanating from the hearing. However, the outcome of the hearing could be further strengthened if an executive summary of the assessment could be sent to the participants at least a month before the hearing to enable them to prepare for the event. The present method whereby participants acquaint themselves with the assessment during the hearing (although it lasts one week) is not good enough.

Seventh, while the IAD empowers the Minister to issue the CEC,[67] the EML asserts the contrary. The law vests the authority to issue a CEC on the competent Administration. It provides: 'Any impact assessment shall give rise to a reasoned decision by the competent Administration, after approval by the Inter-ministerial Committee provided for by this law under pain of the absolute nullity of the said decision'.[68] In short, any CEC that is not issued by the competent Administration following approval by ICE is a nullity.[69]

63 Interview with two persons who have taken part in EIA process-a former company employee in charge of EIA and a worker with MINEP (April 6 & 9 respectively). The reason for having a single meeting is to reduce cost given that the bills are bankrolled by the proponent; Environmental Management Law 1996, s 17(3); Environmental Impact Assessment Decree (n 20) art 6.

64 ibid. In some instances the officials take part in stakeholder engagements.

65 Environmental Impact Assessment Decree (n 20) arts 20(1) – (3).

66 ibid art 10 para 8.

67 Environmental Impact Assessment Decree (n 20) arts 20(1) – (3).

68 Environmental Management Law 1996, s 20(1).

69 In the hierarchy of legal norms, a law pre-empts a decree. See Mohammed v FRN (2013) LPELR – 21384 (CA) 14 paras B-G (Nigeria); Ugboji v State (2017) LPER – 43427 (SC) 23 paras B-D (Nigeria).

Eighth, the maximum deadline for a decision to be made on EIA is 4 months from the date of notification of the impact assessment. Beyond this timeline and in the event of silence from the administration, the promoter may begin his activities.[70] This is commendable as government officials cannot employ bureaucratic delays to frustrate the proponent. Further, the requirement of a reasoned decision rejecting the impact assessment provides the proponent with ammunition to challenge the decision.

2.2 Strategic Environmental Assessment

A SEA is a systematic, formal, and comprehensive process for assessing the environmental effects of a multi-component policy, plan, programme, or project.[71] The procedure for carrying out a SEA is analogous to an ESIA and the fees are akin to a detailed ESIA[72] but the content of the SEA report is different.[73]

70 Environmental Management Law 1996, s 20(1).

71 Environmental Impact Assessment Decree (n 20) art 2 para 3. The EML enjoins MINEP to ensure the inclusion of environmental concerns in all economic, energy, land and other plans and programmes and that urban development plans should take into consideration environmental protection while choosing locations for economic activity and residential and leisure zones. See Environmental Management Law 1996, ss 14 (1) & 40; A SEA has been prescribed for the following: (a) policies; (b) plans; (c) programmes; (d) multi-component projects to wit: creation and management of industrial zones, creation of projects to be executed in phases, creation of industrial-ports complex, creation of new towns, projects comprising several individual components subject to ESIA and spread in several Regions of the country; and (e) setting up of several projects within the same zone. See Operational Categories Order (n 22) art 3.

72 Environmental Impact Assessment Decree (n 20) art 17(1).

73 The SEA report includes: the summary of the report in English and French, the ToR of the policy, plan, programme and its alternatives, a description of the institutional and legal framework related to the policy, plan and programme, identification of key stakeholders and their concerns, evaluation of possible environmental impacts, and a prescription of the relevant environmental management recommendations and measures in an Environmental and Social Management Plan (ESMP). See Environmental Impact Assessment Decree (n 20) art 11.

2.3 Environmental Impact Statement

As stated here before, activities subjected to an EIA are determined by the type and scale of the activities concerned. Activities that fall below the threshold values for ESIA or an environmental audit but which may have significant adverse impacts on the environment are subject to EIS.[74] The EIS may be undertaken either before the commencement of the project, establishment, or facility or during its operation.[75] The proponent thus has a binary decision to make: to carry out impact assessment either before establishing the project or to embark on the study subsequent to the commencement of his activities.

The visa accorded to the proponent to commence his activities before carrying out an EIS runs counter to the raison d'être of impact assessment, viz. to anticipate and mitigate environmental damage. Although the competent Council may, after scrutinizing the impact statement submitted by the proponent, suspend the activities of the establishment where the project is adjudged to be dangerous,[76] the damage resulting from such activity could have been consummated. The possibility of a danger to the environment is aggravated by the fact that there is no prescribed deadline for the proponent to carry out the study after the commencement of the activity. The subsequent suspension of the activity may be belated without being able to reverse the harm done to the environment.

Articles 5[77] and 19 (1) of the AID are at variance. Article 19 (1) states that 'Any proponent of a project or establishment doing an EIS shall obtain from the competent Council…an Attestation of Environmental Compliance (AEC) of his project or establishment before the start of works or for the operation of his establishment'. Given that Article 19

74 ibid art 2 para 2. The list of activities subject to EIS is to be established by the Council on the advice of the Divisional Head of decentralized services of MINEP; ibid art 8(2).

75 Environmental Impact Assessment Decree (n 20) art 5.

76 ibid art 19(3) para 3.

77 Environmental Impact Assessment Decree (n 20) art 5.

(1) is a subsequent provision, it supersedes Article 5. The proponent is obligated to obtain an AEC before commencing his activity.[78]

2.3.1 Procedure for the Conduct of EIS

The proponent or establishment, whose activity is subject to an EIS, is required to submit six copies of the general project file to the Council of his locality.[79] Following the approval or deemed approval of the ToR, the proponent shall engage the services of any person (natural or legal) competent to carry out the study.[80] This approach contrasts sharply with the position required for ESIA or SEA, where the consultant must be approved by the Minister. It would be judicious if the head of the Council (Mayor) could approve the consultant in order to ensure that the consultant is qualified to do the assessment.

The study is carried out with the participation of the local population through stakeholder engagement.[81] However, the modus operandi of the engagement is not prescribed. The Council's decision is reminiscent of the Minister's for ESIA or SEA.[82]

Public participation during ESIA, SEA, or EIS commences after the proponent has submitted the ToR; it is recommended during the screening stage.[83]

2.4 Follow-up Measures

The EIA process does not stop with an EIA approval decision granted by the competent authority. Whereas the pre-decision phase (prior to the issuance of a CEC) focuses on predicting environmental impacts with the aim of mitigating for significant impacts, the follow-up phase aims to ensure that the actual impacts of the project – whether predicted or not – are mitigated where negative, and enhanced where positive and that the mitigation measures that are prerequisites for approving the EIA are complied with.[84]

Any project that requires an ESIA, SEA, or EIS shall be subjected to administrative and technical follow-up by the competent administrative department.[85] The administrative and technical surveillance is based on the ESMP included in the ESIA, SEA, and EIS report. It shall be the subject of a joint report by officials of the MINEP and the competent ministry in order to ascertain whether the ESMP is being effectively implemented.[86]

The proponent is bound to submit biannual compliance reports to the Minister for review in accordance with the ESMP.[87] However, the content of the report has not been prescribed by the legislation, which renders the review problematic and varied because of the absence of guidelines. The review of the compliance report is undertaken by the Divisional Committee.[88] The Divisional Committee is required to meet and carry out site visits to verify whether the

78 This viewpoint finds support in the golden rule of interpretation which will consider the object of the statute. See The State v Governor of OSUN State & Ors (2006) LPELR-ca/1/161/98 (Nigeria).

79 The general project file shall include the following documents: an application to conduct the EIS that should state the name, registered capital, sectors of activity and number of jobs to be created; the ToR of the EIS attached to a description and justification of the project with emphasis on the preservation of the environment and the reasons for choosing the site; and proof of payment of the file examination fees to the Council Revenue Collector; Environmental Impact Assessment Decree (n 20) art 15(1)-(2). The file examination fees cannot be superior to CFA F 50000 ($ 100); Impact Notice Order (n 24), art 6.

80 Environmental Impact Assessment Decree (n 20) art16.

81 ibid art 12(6).

82 Environmental Impact Assessment Decree (n 20) arts 19(3) & 20(1)-(3).

83 UNEP (2018) (n 3) 52.

84 ibid 72.

85 Environmental Impact Assessment Decree (n 20) art 27(1). Administrative and Technical Surveillance Committees have been established in each Division; Order Nº 0010/MINEP (3 April 2003) art 1. It concerns the Organization and Functioning of Divisional Committees for Monitoring the Implementation of Environmental and Social Management Plans (Divisional Implementation Committee Order).

86 Environmental Impact Assessment Decree (n 20) art 27(2).

87 ibid art 27(3).

88 Divisional Implementation Committee Order (n 85) art 2. Membership of the Divisional Committee includes 2 representatives of the communities and 1 representative of non-governmental organisations; Divisional Implementation Committee Order (n 85) art 3(1).

ESMP is being implemented and reports to the Ministry on a quarterly basis.[89] Based on the biannual and quarterly reports from the proponent and the Divisional Committee respectively, corrective or additional measures may be adopted by the MINEP following the approval of the ICE to reflect effects not initially or insufficiently appreciated in the ESIA, SEA, or EIS.[90]

The costs incurred in compliance inspection, including the convening of the review committee, site inspection, and transport expenses are underwritten by the budget of the MINEP.[91] Monitoring the proponent's compliance with the ESMP may be undermined, given that the government is under-resourced.

An implementation challenge, that may dilute the efficient discharge of the follow-up functions of the Divisional Committee, is mostly related to the lack of capacity. However, this seeming deficiency appears to have been cured by the IAD,[92] which empowers the Divisional Committee to hire an independent person with the relevant expertise to follow-up the proponent's implementation of ESMP. As referenced above, the financial obligations may hamper the hiring of consultants.

A problem associated with the follow-up stage is the phoney public involvement, for the representatives of the communities and non-governmental organizations on the Divisional Committee are government appointees;[93] they lack legitimacy to represent their constituencies. Further, the monitoring report submitted by the project owner and the Divisional Committee is not made public, thus it is difficult to vouch for its veracity.

The effectiveness of the EIA process hinges on two pillars: good governance and enforcement measures. Regarding good governance, Cameroon's scorecard is not impressive[94] and this casts a shadow over the effectiveness of the EIA. For its part, enforcement measures require that the validity of environmental approvals ceases in case of non-compliance with permit conditions as well as a penalty regime.[95] Cessation of activities and penalties is, therefore, coterminous and a sine qua non for an effective and efficient EIA enforcement regime. Cameroon law is inadequate in this regard. When the proponent defaults in the reporting obligations or fails to comply with the ESMP, the MINEP is helpless in suspending or cancelling the EIA, if approval has not been provided for in the legislation.[96] The failure to prescribe suspension or cancellation of a CEC or AEC for non-compliance strikes at the heart of the rationale behind EIA, which is to mitigate the impact of the project and to comply with the mitigation measures that were prerequisites for the approval of the EIA.

3 SETTLEMENT OF ENVIRONMENTAL DISPUTES RELATING TO EIA

Environmental law has special procedures that differ from the ordinary dispute settlement procedures applicable in civil and penal matters. The following

89 ibid art 5(1) & 6(4).

90 Environmental Impact Assessment Decree (n 20) art 28.

91 Divisional Implementation Committee Order (n 85) art 9.

92 ibid art 29.

93 Divisional Implementation Committee Order (n 85) art 3 (2).

94 The World Bank, Country Policy and Institutional Assessment (2018) <http://datatopics.worldbank.org/cpia/country/cameroon> Cameroon's ranking for Transparency, Accountability and Corruption in the Public Sector was 2.5; Transparency International, Corruption Perception Index (2019) <https://www.transparency.org/country/CMR> Cameroon ranked 153 out of 180 countries with a score of 25/100.

95 UNEP (2018) (n 3) 74.

96 Environmental Management Law 1996, s 79. Penalties are prescribed for: (a) those who implement subject activities without carrying out impact assessment (b) those who implement a project that does not conform to the criteria, norms and measures spelled out for the impact assessment; and (c) those who obstruct checks and analyses provided by the EML or its implementing regulation.

dispute settlement mechanisms are recognised: settlement, arbitration, and litigation.

3.1 Locus Standi

The EML has broadened the common law doctrine of locus standi in environmental law matters. It provides:[97]

> Authorized grassroots communities and associations contributing to all actions of public and semi-public institutions working for environmental protection may exercise the rights of plaintiff with regard to facts constituting a breach to the provisions of this law and causing direct and indirect harm to the common good they are intended.

Tempting as this may sound, the drawback with this provision is that that it tends to bar individuals from bringing lawsuits to protect the environment. However, the Constitutional edict states that '… The protection of the environment shall be the duty of every citizen…',[98] giving individual standing in environmental disputes. Those having the legal stand to sue to protect the environment are authorised grassroots communities, associations, and individuals.[99]

3.2 Administrative Proceedings

The decision to not issue a CEC or to issue a CEC in breach of the law, for instance, may be appealed to the Administrative Court on the ground of the administrative act being ultra vires.[100]

A precondition for the admissibility of a petition by the Administrative Court is that the proponent must first submit a pre-litigation complaint to the authority that issued the challenged act or to the authority empowered by a statutory instrument to represent the public body or the concerned public establishment.[101] In Foretia Justine Mancha v The State of Cameroon (Rep. by the Divisional Officer Buea),[102] the Administrative Court of the South-West Region-Buea declared the action instituted by the petitioner inadmissible due to the lack of a pre-litigation complaint. The pre-litigation complaint merely slows the wheel of justice for the complaint is frequently ignored.

Following the rejection of the complaint,[103] the petitioner must seize the court within the prescribed timeline, otherwise, the action shall be foreclosed by default.[104] The time limits are a matter of public policy and must scrupulously be respected, failing which the action shall become inadmissible. This principle was affirmed by the Supreme Court of Cameroon in Doh

97 ibid s 8 (2).

98 Constitution of the Republic of Cameroon 1996, Preamble.

99 For an examination of standing to sue in environmental disputes, see Geetanjoy Sahu, 'Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence' (2008) 4(1) Law, Environment and Development Journal 1; Tumai Murombo, 'Strengthening Locus Standi in Public Interest Environmental Litigation: Has Leadership Moved from the United States to South Africa?' (2010) 6(2) Law, Environment and Development Journal 163.

100 Ultra vires acts are acts that are invalid for the following reasons: they are bad in form, they were made without jurisdiction, they infringe a legal provision or regulation and they constitute an abuse of authority; Organisation and Functioning of Administrative Courts 2006, s 2(3)(a).

101 ibid s 17(1).

102 Foretia Justine Mancha v The State of Cameroon (Rep. by the Divisional Officer Buea) Judgment No 012/2018 (Cameroon).

103 The rejection of a pre-litigation complaint may be express or implied. It is express if the authority informs the petitioner in writing that the complaint has been rejected. It is implied if no response is received within 3 months from the date the complaint or claim was lodged, see Organisation and Functioning of Administrative Courts 2006, (n 100) s 17(2).

104 The time limits applicable to a pre-litigation complaint are as follows: (a) three (3) months from the date of publication or service of the challenged decision; (b) six (6) months from the date of cognizance of the loss in respect of which damages are claimed; and (c) four (4) years from the date when the authority that was legally bound to act failed to act, see Organisation and Functioning of Administrative Courts 2006, (n 100) s 17(3)(a)-(c) respectively.

Francis v Sama Tita Fomunung.[105] In Stephen Ashu Tanyimbi v The State of Cameroon and anr,[106] the Administrative Court of the South-West Region-Buea declared the action inadmissible for filing the pre-litigation complaint out of time. The Court unanimously held, per Mbu P, that:

> … it is clearly borne out in the petition that it was on 23/12/2009 that petitioner went to his farm to harvest crops for Christmas and discovered that heavy equipment had levelled his entire farm destroying everything. Why he waited up to 26/08/2013 before filing a pre-litigation complaint is only known to him. This is clearly an incurable defect on the procedure …

A major drawback of the pre-litigation complaint is that it considerably abridges the time limits for the commencement of court action,[107] thus amounting to a denial of justice.

An appeal against the decision of the Administrative Court lies in the hands of the Administrative Bench of the Supreme Court.[108]

105 Doh Francis v Sama Tita Fomunung Judgment No 10 of 9 November 1978, Supreme Court Report No 40 1979, 6135.

106 Stephen Ashu Tanyimbi v The State of Cameroon and anr. Judgment No 009/2017.

107 Environmental Management Law 1996, s 92. In English speaking Cameroon (common law jurisdiction) actions for contractual and non-contractual claims are time barred after six years; in French speaking Cameroon (civil law jurisdiction) the limitation period is thirty years while commercial claims in Cameroon irrespective of the legal tradition are statute barred after five years. See English Statute of Limitations 1623 applicable by virtue of Southern Cameroons High Court Law 1955, s 11; Relating to General Commercial Law, see Cameroon Civil Code, art 2622. OHADA Uniform Act on General Commercial Law, art 18. The limitation period contrasts sharply with time limits applicable to administrative dispute.

108 Organisation and Functioning of Administrative Courts 2006, (n 100) s 116; Organisation and Functioning of the Supreme Court 2008, ss 78 – 81.

3.3 Settlement

Settlement (compromise) is a non-litigious regulatory process provided by law to offer violators of environmental legislation an opportunity for an out-of-court settlement. The MINEP is empowered to bring about a settlement. Settlement, as a means of dispute resolution, is laudable as it encourages a pacific settlement of disputes, minimizes cost, and accelerates dispute resolution.

3.4 Arbitration

The law also prescribes arbitration as an alternative dispute settlement mechanism.[109] Parties resort to arbitration when they wish to settle the dispute out of court.

3.5 Litigation

Failure to settle the dispute through settlement triggers litigation; settlement is a precondition to the commencement of court action under the pain of nullity.[110] The offender's act or omission may lead to the institution of criminal proceedings and to a civil action if the MINEP has suffered loss resulting from the commission of an offence.

Environmental offences are mostly misdemeanours and, in some cases, felonies.[111] The Court of First

109 Environmental Management Law 1996, s 92.

110 Environmental Management Law 1996, s 91(3).

111 The Cameroon Penal Code 1931, s 21. Misdemeanour is defined as 'an offence punishable with loss of liberty or with fine, where the loss of liberty may be for more than ten days but for not more than ten years, and a fine of more than twenty-five thousand francs'. For its part a felony is 'an offence punishable with death or loss of liberty for a maximum of more than ten years and a fine where the law so provides'.

Instance and the High Court are competent to hear and determine environmental disputes.[112]

With respect to procedure, the EML[113] provides that the offence report prepared by the MINEP officials, for any matter relating to environmental impact, is to be considered correct unless proved otherwise. Thus, the offence report shifts the burden of proof onto the accused (proponent).

4 CONCLUSION

The foregoing discussion indicates that the EIA regulatory regime in Cameroon is not fundamentally flawed. There is no shortage of regulations in Cameroon, however, major challenges remain. Compliance with legislative stipulations by public authorities remains a challenge and this must be intertwined with good governance.[114] Another challenge is the shortage of human resources needed to monitor compliance with ESMP. The Government needs to build capacity to remedy this deficiency. There is a need to return to legality. The Prime Minister is the competent authority to adopt regulations listing activities subject to impact assessment. Similarly, the competent Administration is the authority responsible for issuing a CEC. Addressing these weaknesses can go a long way in protecting the environment.

112 The CFI is invested with jurisdiction to try simple offences and misdemeanours while felonies and related misdemeanours and simple offences come within the province of the High Court. In civil matters the CFI has the legal authority to hear and determine matters where the amount of damages claimed does not exceed CFA F 10 million ($ 5 000) while the High Court is competent to hear matters where the amount claimed is superior to CFA F 10 million ($ 5 000). See Cameroon Criminal Procedure Code, ss 289 & 407; On Judicial Organisation, see Law No. 2006/015 (29 Dec 2006), ss15(1)(b) &18(1)(b).

113 Environmental Management Law 1996, s 89.

114 SEFE v. S.G. Sustainable Oils (n 34), there were no prosecutions although the law was overtly violated and penalties are prescribed for transgressors; Organisation and Functioning of Administrative Courts 2006, (n 100) s 17(1).

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