CHAPTER 11:
ENVIRONMENTAL IMPACT ASSESSMENT UNDER CAMEROONIAN LAW

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1 Introduction

Environmental concerns have been at the centre of economic, social and political considerations both at the national and international levels since the last half of the 20th century. This is because of increased awareness and recognition of the fact that the protection and improvement of the environment is a major issue which affects the wellbeing of peoples and economic development throughout the world,[1] which is a necessity for the survival and continuous existence of humans on the planet. This global recognition comes against a background of direct and indirect unprecedented deleterious effects of man's developmental activities on the environment especially since the industrial revolution, which has resulted into unmeasurable environmental degradation and the depletion of natural resources. These concerns made the need for information on the potential effects (environmental, social, economic, etc.) of developmental initiatives imperative. The most effective solution to this need is the development of environmental impact assessment (EIA) which has not only been prescribed by most soft law and hard law instruments of a global character, but has been domesticated into the local legislations of most countries in the world including Cameroon. EIA has become a major environmental management tool/technique in almost all national legal jurisdictions. EIA has also become a condition for funding by international finance donors. For instance, funding from the World Bank is subject to EIA since 1989, especially for 'category A' projects.[2]

Environmental and social impact assessment is also used as conditionality for the African Development Bank's 'category 1' projects, i.e. operations likely to cause

1 This was recognised in para. 2 of the Preamble to the Declaration of the United Nations Conference on the Human Environment held in Stockholm in1972.

2 A proposed project is classified as 'category A' if it is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works; Stuart & McGillirray (2008:434).

significant environmental and social impacts, to ensure compliance with the Bank's environmental and social policies.[3] At the national level, banks have set up departments that implement the banks' loan policy by making EIA a condition for granting loans for projects that impact on the environment. They term it 'loans for green environment'.[4] EIA is the process of predicting the likely deleterious effects of a proposed project, policy, plan or programme on the environment prior to a decision being made about whether or not the promoter of the project should proceed. It is a technique that presents in a systematic manner a technical assessment of impacts on the environment that the project is likely to cause and explains the significance of predicted impacts and as a result, it indicates the scope for modification or mitigation.[5] EIA describes a process that produces a written statement to be used to guide decision-making, with several functions. First, it should provide decision-makers with information on environmental consequences of proposed activities and in some cases, programmes and policies, and their alternatives. Second, it requires decisions to be influenced by that information. And thirdly, it provides a mechanism for the participation of potentially affected persons in the decision making process.[6]

The objective of this chapter is to examine how in theory and practice, EIA is regulated under Cameroonian law. This will necessitate a conceptual clarification of EIA, establishment of the legal basis for its application at the international and national levels, a critical analysis of EIA procedure and practice in Cameroon and finally, the assessment of the effectiveness of IEA practice in Cameroon

1.1 Conceptual clarification of EIA

Before we arrive at what environmental impact is, it will be expedient to have an understanding of the various words that make up the expression EIA:

'Impact assessment' (IA) simply defined is the process of identifying the future consequences of a current or proposed action. The 'impact' is the difference between what would happen with the action and what would happen without it.[7]

The concept of 'environment' in impact assessment evolved from an initial focus on the biophysical components to a wider definition, including the physical-chemical, biological, visual, cultural and socio-economic components of the total en-

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3 AfDB (2001:10); AfDB (2015:37).
4 One would for example find in this category at Afrikland First Bank, Union Bank of Africa, United Bank of Cameroon SCB- Credit Lyonnais, National Financial Credit Bank, etc.
5 Japanese Environmental Agency (1999:1).
6 Sands (2012:601).
7 International Association for Impact Assessment (IAIA), see www.iaia.org/resources accessed on 28 January 2018.

vironment. The Cameroonian legislator seems to have wholeheartedly adopted this evolution of defining environment in a holistic manner. The framework law on environmental management[8] (hereinafter referred to as the Framework Law on Environmental Management) defines the environment as[9]

> all the natural or artificial elements and biogeochemical 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.

The International Association for Impact Assessment (IAIA) defines EIA as[10]

> the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.

Increasing concerns in developed economies about the impact of human activities on human health and on the biophysical environment led to the development of the concept of EIA in the 1960s, and to its adoption as a legally-based decision-support instrument later in that decade to assess the environmental implications of proposed development. The National Environmental Policy Act (NEPA) in the USA, which became effective on 1st of January 1970, was the first of many EIA laws and procedures in countries around the world. The NEPA required federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. NEPA defines EIA as a[11]

> systematic interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have impact on man's environment.

The European Union approved a Directive on EIA in 1985.[12] Currently, EIA is a requirement in most countries of the world including Cameroon.

Some EIA systems or jurisdictions constrain EIA to the analysis of impacts on the biophysical environment while others include the social and economic impacts of development proposals. Some financial institutions (e.g. the African Development Bank) use the expression 'environmental and social impact assessment' (ESIA) to emphasise the inclusion (and the importance) of the social impacts.[13] This is also the case in Cameroon since 2013.

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8 Law No. 96/12 of 5 August 1996 relating to Environmental Management in Cameroon.
9 Article 4 of Law No. 96/12 of 5 August 1996 relating to Environmental Management.
10 IAIA (2009:1).
11 Section 102 (A) of the National Environmental Policy Act (NEPA) of 1969.
12 Council Directive 58/337/EEC on Assessment of the effects on certain public and private projects on the environment.
13 Economic Commission for Africa (2005).

The need to apply IA to strategic levels of decision-making (e.g., policies, legislation, plans, and programs) led to the development of strategic environmental assessment (SEA). SEA is generally understood as an impact assessment process that aims to mainstream environmental, social, economic, and health issues and ensure the sustainability of strategic decisions. Legal provisions for SEA are emerging, in many cases associated with EIA institutions and legislation. The European Union approved a directive on the environmental assessment of plans and programs in 2001. The SEA is gaining increasing acceptance as a tool that is used early in decision-making to help inform decisions at the sectoral and regional level and to set the parameters for alternatives analysis. In Cameroon, the current decree laying down procedures for carrying out EIA in Cameroon[14] recognises three types of impact assessments including the SEA.

In Cameroon, EIA was first echoed in 1996 in the Framework Law on Environmental Management, Article 17, whose 2005 enabling Decree defined EIA as "…a systematic study in view of determining whether or not a project has negative effects on the environment".[15] This Decree was later replaced in 2013 to extend EIA to include three different studies including ESIA, SEA and environmental impact statement (EIS) which will be seen subsequently.

1.2 The legal bases for EIA in international environmental law

The importance of EIA can never be undermined for it has been recommended and prescribed by many soft law as well as hard law international environmental instruments:

As early as 1972, Principles 13 and 14 of the Stockholm Declaration 1972 identify the adoption of an integrated and coordinated approach by States to their development planning as a means of achieving rational management of resources, which constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment. This was EIA in its embryonic stage.

IEA was fully recognised in 1992 at the United Nations Conference on Environment and Development, held in Rio de Janeiro. Principle 17 of the Final Declaration is dedicated to EIA:

14 Decree No. 2013/0171/PM of 14 February 2013 laying down rules for conducting environmental and social impact studies.

15 Section 2 of Decree No. 2005/0577/PM of 23 February 2005 on the procedures for carrying out EIA.

> Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

In Chapter 37 (Capacity Building) of Agenda 21,[16] capacity building (both public and private) to evaluate the environmental impact of all development projects is underscored. Furthermore, Chapter 8 of Agenda 21 articulates the requirement for integrating environment and development at policy, planning and management levels for improved decision-making. These include conducting national reviews of economic, sectoral and environmental policies, strategies and plans; strengthening institutional structures; developing or improving mechanisms to facilitate the involvement of all concerned; and establishing domestically determined procedures.

Five years after United Nations Conference on Environment and Development (UNCED) (Rio+5), the Programme for Further Implementation of Agenda 21, an outcome of the review of progress achieved in implementing UNCED agreements, identified yet again, environmental and social impact analysis based on participatory principles, as an important policy instrument for integrating the economic, social and environmental objectives of sustainable development.

The Millennium Development Goals, adopted by 189 nations and signed by 147 heads of state and governments during the UN Millennium Summit in 2000, provide a framework for the integration of the principles of sustainable development into country policies and programs, which is one of the aims of SEA.

Ten years after UNCED, at the World Summit on Sustainable Development in 2002, the Johannesburg Declaration on Sustainable Development was adopted. An important element contained in this declaration is the collective responsibility to advance and strengthen the interdependent and mutually-reinforcing pillars of sustainable development – economic, social and environment at all levels. In addressing the challenges of unsustainable patterns of consumption and production, the Johannesburg Plan of Implementation identifies the use of EIA procedures as a key action to be undertaken.[17]

There are other international conventions that contain specific provisions relating EIA. In the domain of conservation and sustainable use of biological diversity, the Convention on Biological Diversity (CBD) urges member countries[18]

> to introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to

16 Agenda 21 is an action plan and outome of the Earth Summit (UN Conference on Environment and Development) held in Rio de Janeiro, Brazil, in 1992.
17 UN (2003).
18 Article 14 of the CBD.

> avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures.

The United Nations Convention on the Law of the Sea (UNCLOS), Article 206 provides as follows:

> when states have reasonable ground for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable assess the potential effects of such activities on the marine environment.

1.3 Legal bases for the application of environmental impact assessment in Cameroon

Cameroon has been actively involved in international environmental action since the birth of environmental law especial in terms of participating in international meetings on the subject, and in signing and ratifying multilateral environmental agreements (MEAs).[19] It is therefore not surprising that Cameroon has domesticated the spirit and prescriptions of these international instruments into national legal frameworks on environment and environment related sectors like the forestry, wildlife and mining. The Cameroonian Constitution facilitates this task by giving the possibility and setting out modalities for adopted and ratified treaties to be applicable in Cameroon as national law. It provides that that duly approved or ratified treaties and international agreements, shall following their publication override national laws, provided the other parties implement the said treaty or agreement.[20]

EIA origin in Cameroon can be traced back to the enactment of Law No. 94/001 of 20 January 1994 that lays down the requirements for the management of forestry, wildlife and fisheries. It was however limited to projects that may affect the equilibrium of the forest only. This law provides 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".[21]

EIA was introduced fully into the local law through Law No. 96/12 of 5 August 1996 relating to environmental management which was the first national legislation on environmental management. Section 17 of this law provides as follows:

> (1) The promoter or owner of any development, project, labour or equipment, which is likely to endanger the environment, owing to its dimension, nature or the impact of its activities on the

19 As early as 1972, she was a participant to the Stockholm Conference on the Human Environment.
20 Article 45.
21 Section 16 (2).

> natural environment shall carry out an environmental impact assessment. 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 and quality of life of populations and the impact on the environment in general.
> (2) The environment impact assessment shall be included in the file submitted for public investigation where such a procedure is provided for.
> (3) The impact assessment shall be carried out at the expense of the promoter.

The above law equally provides that the conditions for the implementation of the EIA provisions will be laid down by another instrument.[22] It was not until February 2005, that is, nine years later, that a Prime Ministerial Decree No. 2005/0577/PM to lay down the procedure for carrying out EIA formally launched the EIA procedure. According to Alemagi et al.[23] the Decree is monumental because it represents the first attempt made by the Government of Cameroon to incorporate the legal and procedural framework governing EIA into a comprehensive legal document. This was consolidated by the publication and enactment of Order No. 0070/MINEP of March 2005 by MINEP (as then it was) prescribing the different categories of projects that would necessitate an EIA.[24]

Later on, Decree No. 2013/0171/PM to lay down rules for conducting environmental and social impact assessment (hereinafter referred to as the 2013 Decree) will amend and replace Decree No. 2005/0577. The 2013 decree explicitly mentions the social aspect of the impact study, as it is refers to environmental and social impact assessment (ESIA) rather than to environmental impacts assessment (EIA). This caused a change in appellation from EIA to ESIA. This appellation has officially been recognised and became a peculiarity of Cameroon. The 2013 decree also introduced strategic environmental and social assessment (SEA) and the environmental impact statement (EIS) as tools for environmental assessment.

The latest improvement on ESIA was carried out in February 2016 with two Ministerial Orders; one to elaborate on the categories of operations subject to ESIA and SEA, and the other to define the content for a modelled terms of reference (ToR).

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22 Section 17(4).

23 Alemagi et al. (2007:1).

24 This was to implement the provisions of Section 19 of the Environmental Management Law which provided that "the list of 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".

2 The procedure and practice of environmental impact assessment in Cameroon

From the foregoing, it becomes clear that the current legislation for EIA in Cameroon is the Framework Law on Environmental Management, the application of which is enabled by Decree No. 2013/0171/PM. These legislations provide for three types of EIA that must be conducted under Cameroonian law by the promoter or owner of any development, project, labour or equipment, which is likely to endanger the environment, owing to its dimension, nature or the impact of its activities on the natural environment. These include ESIA, the SEA and the EIS. This is in conformity with the trend in international legal practice which has evolved to lay emphasis on the social aspect of the impact study and also the development of strategic environmental impact assessment. In fact, Article 7 of the 2013 Decree provides that the promoter or owner of any development project, establishment, programme or policy, must carry out an ESIA, SEA or EIS under pain of sanctions envisaged in the law inforce. The 2013 Decree also provides that the list of activities subject to ESIA and SEA and the content of the ToR will be provided by an Order of the minister in charge of environment[25] while the list of activities subject to EIS shall be provided by local councils in consultation with the decentralised services of the ministry in charge of the environment.[26]

It will be pertinent to examine the procedure for carrying out each type of impact assessment and most importantly, analyse the extent to which the provisions of the laws in inforce are complied with. A distinction can be made between the ESIA and the SEA process on the one hand that have similar procedures, and the EIS procedure on the other.

2.1 Environmental and social impact assessment (ESIA)

Section 2 (1) of the 2013 Decree defines ESIA as an study that is aimed at determining the negative and positive effects of a project on the environment. This definition has not changed much from that contained in the 2005 Decree for even though 'social' has been added to the new appellation, the definition does not expressly make mention of the social aspect of the assessment. But environment here must be interpreted broadly as defined by Article 4 of the Framework Law on Environmental Management to include social, economic and cultural dimensions.

25 Section 8 (1).
26 Section 8 (2).

Ministerial Order No. 00001/MINEPDED of 9 February 2016 fixes different categories of operations whose realisation is subject to ESIA and SEA. This Order amends and replaces the 2005 Order that defines activities subject to EIA.

The Order classifies projects requiring an ESIA into two categories. Category 1 projects are those projects requiring a simple ESIA while Category 2 projects are those projects requiring a detailed ESIA study. Articles 9 and 10 of the 2013 Decree prescribe the requisite contents for reports emanating from a simple and a detailed EIA study. According to Article 9, a report originating from a 'simple EIA study' must comprise: the summary of the study in a simple language and in English and French, the description of the current environment where the project is envisaged, a description of the project, a review of the legal and institutional provisions and requirements relevant to the activity, a report of the field work, an inventory and the description of the impacts of the project on the environment including envisaged mitigating measures together with an estimate of the corresponding cost, the approved terms of reference of the study, environmental and social management plan and the bibliographic references.

The contents of a report emanating from a 'detailed ESIA study' as prescribed by Article 10 of the 2013 Decree must include: the summary of the study in a simple language, and in English and French: a description and analysis of the initial state of the site and its physical, biological, human, and socio-economic environment; a description and analysis of all the components as well as natural and socio-cultural resources likely to be affected by the project, including reasons for choosing the site; a description of the project; the presentation and analysis of the different alternatives; the reason for choosing the project amongst other possible solution; the identification and evaluation of the possible effects of implementing the project on the natural and human environment; an indication of the envisaged measures for avoiding, reducing, eliminating or compensating the detrimental effects of the project on the environment together with an estimate of the corresponding cost; a program for the sensitization and information including minutes of meetings held with the public, NGOs, syndicates and other organized groups affected by the project; an environmental management plan comprising surveillance mechanisms and the environmental follow up of the project and, where necessary, a compensation plan; and the terms of reference of the study including the bibliographic references.

To go about the ESIA, the promoter shall submit to the competent administration and MINEPDED in addition to the general project file his application for the conduct of the ESIA with the ToR of the study and a receipt of payment of examination fees amounting to FCFA 1,500,000 for the ToR for a summary ESIA and FCFA

3,000,000 for a summary ESIA and FCFA 2,000,000 for the ToR for a comprehensive ESIA and FCFA 5,000,000 for a comprehensive ESIA.[27]

> The general project file shall contain the following information:
>
> (i) a general description of the project or activity,
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> (ii) a request for completion of the ESIA mentioning the social relevance of the project, social capital, the respective sector of the activity and the number of jobs provided through the project,
>
> (iii) the ToRs of ESIA accompanied by a descriptive checklist describing and supporting the project, with the emphasis on preservation of the environment and the reasons for choosing the site,
>
> (iv) the receipt of payment of examination fees as provided for in Article 17 of the 2013 Decree. Article 8 (3) of the Decree prescribes that the MINEPDED shall provide a standard model of Terms of Reference (ToR) for the EIS, the ESIA and SESA depending on the activities. This Order was promulgated in 2016.[28]

Upon receipt of the application, the competent authority has a maximum of ten days to transmit same together with its reasoned comments in relation to the ToRs to MINEPDED. The MINEPDED has 20 days from the date of receipt of the application with reasoned opinion of the competent authority, to take its decision regarding the approval of the ToRs, failure of which the terms of reference shall be considered approved. This decision comprises of a checklist of the content of the ESIA study to be carried in relation to the type of project, the type of analysis required and the responsibilities and obligations of the proponent.[29] This approval gives the proponent the go-ahead to do a full-scale environmental impact study based on the set of specifications of the ToRs and any other indications contained in the approval.

The conduct of summary and comprehensive ESIA is to be entrusted, at the choice of the proponent, to a consultant, a consulting firm, a non-governmental organisation or an association approved by the MINEPDED with a priority given to nationals in the case of equal qualifications.[30] This is unlike the case of EIS where the proponent can recruit any expert by reason of his competence to conduct it. The law lays gives the ministry the authority to approve experts for ESIA because of the gravity to the potential risks the project poses on the environment. This prevents the possibility of having incompetent persons or structure carrying out assessments which may result to inaccurate reports thereby defeating the very purpose of the study.

The law makes public consultations an integral part of the assessment process after the approval of the ToR. These consultations consist of meetings between the

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27 Article 13 (1) of the 2013 Decree.

28 Through Order No. 00002/MINEPDED of 8 February 2016 to define modelled types and content of the term of reference.

29 Art 13 (4) of the 2013 Decree.

30 Article 14 of the 2013 Decree.

promoter and/or his consultants and the population affected by the project in the locality within which the project is executed. These consultations are aimed at informing the population about the study, registering any eventual opposition to the project and permitting the opinion of the population to be expressed in the conclusions of the study.[31] The 2013 Decree guarantees a high involvement and effective participation of the population by providing that the proponent must transmit to the representative of the population 30 days before the first meeting, a programme of the public consultation which must be approved by the administration in charge of the environment comprising; the dates and places of meetings, a descriptive and explicit essay of the project and the purpose of the consultation.[32] Minutes of every consultation meeting are produced and signed by the representatives of the population and appended to the report of the ESIA study. The law does however not make provisions or defines who is considered 'population' and 'representative of the population' respectively. We propose that persons who make up these consultation meetings should be those whose stakes can be hampered by the implementation of a project and representatives should be local chiefs who should hire the services of experts in case they lack the competence to understand the issues at stake. The law therefore leaves a loophole by not defining who should be present in such meetings, giving the promoter or consultancy firm the liberty to select who shall take part in the meeting. Often the persons who attend these meetings barely understand the purpose for which they are called. This makes the public consultations baseless and futile.

After the ESIA study, two copies of the environmental and social impact report are submitted to the competent administration (CA) and twenty to the administration in charge of the environment. As soon as the CA receives the Report, it evaluates and forms an opinion which is transmitted to Ministry for Environment, Nature Conservation and Sustainable Development (MINEPDED). It is at this stage that the MINEPDED puts in place a mixed team (MINEPDED and CA) to conduct field trips for the purpose of checking or verifying qualitatively as well as quantitatively, information contained in the report and collecting the views of the population concerned in a public meeting. This public meeting enables the team to correlate the information in the report with the views of the public. The mixed team has 15 days within which to forward its findings to the Inter-Ministerial Committee for the Environment (CIE) for simple ESIA studies and 20 days for detailed studies.

MINEPDED forwards to CIE the report of the ESIA, the report of the assessment of the EIA made by the MINEPDED, and the report of the assessment of records of public consultations and public hearings for consideration. When the CIE is summoned to examine an EIA report, it analyses the report in terms of form and content.

31 Article 20 (3) of the 2013 Decree.
32 Article 21 of the 2013 Decree.

CIE concludes its review with an advice report, which summarises the major findings or observations that captured the attention of members at the end of the evaluation of the report. The opinion of the CIE is essential prior to the approval of an EIA by the Minister for the environment. MINEPDED then decides on the admissibility of the ESIA and notifies the promoter 20 days upon receipt of the mixed committee report. The Minister in charge of the environment informs the proponent of the admissibility of the report and have it published in the press, radio, etc. or they formulate comments for making the ESIA admissible.[33] The approval of the EIA report is a prerequisite for the decision to carry on the project. In practice, the approval of the EIA report means the granting of environmental compliance certificate.

The decision is based on the following documents: the EIA report, the evaluation report of the mixed team as an outcome of the review process, the public participation documents and the recommendations of the CIE.

The Minister decides on the impact study. Three possible decisions can be arrived at:

- a favourable decision: an environmental compliance certificate is issued. This is the document that authorises the promoter to execute his project and serves as prima facie proof that he has complied with the regulations inforce;
- a conditional decision: the minister tells by writing the promoter what to do to comply and get the environmental compliance certificate; or
- a non-favourable decision: it implies the prohibition of the implementation of the project.

The ESIA procedure is quite complex and this is a guarantee for proper screening to ensure greater efficacy in the impact assessment study.

2.2 Strategic environmental assessment (SEA)

This is a formal and exhaustive systematic process which permits the evaluation of the environmental effects of a policy, plan or programme that has multiple components.[34] Proponents of the above type of policies, plans or programs which can have effects on the environment can carry out SEA, but during execution or extension of the project, each project phase can be subject to a separate ESIA. The type of activity subject to SEA is determined by the Ministerial Order No. 00001/MINEPDED of 9 February 2016 fixing different categories of operations whose realisation is subject to

33 Article 18 of the 2013 Decree.
34 Article 2 (3) of the 2013 Decree.

ESIA and SEA. The procedure for the carrying out SEA is not different from that of ESIA.

2.3 Environment impact statement (EIS)

EIS is made for small-scale projects or business / facilities that are not subject to an audit or ESIA but are likely to have significant effects on the environment. It can be carried out either before the establishment of the project, during its establishment and installation or in the course of its execution. The list of activities subject to EIS is defined by the local council in consultation with the decentralised department of MINEPDED.[35] The involvement of communal units in EIA is a commendable novelty for it permits for effective monitoring and a sense of participation in regulating activities that affect them.

Before starting an EIS, the promoter must have the related draft ToRs approved. In this regards, a file containing the following contents has to be submited to the municipality of the locality where the project would be implemented:

- the general dossier with information on the project or activity;
- a request for completion of the EIS mentioning the social relevance of the project, social capital, the respective sector of the activity and the number of jobs provided through the project;
- the ToRs of EIS accompanied by a descriptive checklist describing and supporting the project, with the emphasis on preservation of the environment and the reasons for choosing the site; and
- the receipt of payment of examination fees to be determined by the municipalities.

Two copies of the file are sent to decentralised services of MINEPDED.[36] The decentralised services of MINEPDED have 15 days to give its opinion on the ToRs. If the municipality does not react within 30 days after the deposit of the draft ToRs, the latter shall be deemed approved[37] permitting the proponent to carry out the study.

The realisation of the EIS is under the responsibility of the promoter of the project or activity which is to be undertaken. An EIS can be conducted by anyone with the required expertise and who may be hired by the proponent for it.

Once the EIS is finalised, the proponent shall submit the report to the municipality (number of copies not specified) and pay the fees for the report review whose

35 Article 8 (2) of the 2013 Decree.
36 Article 15 of the 2013 Decree.
37 (ibid.).

amounts and methods of collection would be determined and specified by relevant municipalities.[38]

The municipality has 30 days from the date of receipt of the EIS to give an answer to the proponent after receiving the advice of the local responsible services of the MINEPDED. Three answers are possible after the impact statement was examined:

- a favourable decision: the attestation of conformity is issued by the municipality to the promoter;
- a conditional decision: the municipality tells to the promoter by writing which measures have to be taken to comply and receive the attestation of conformity; or
- a non-favourable decision: prohibition of implementation of the project or suspension of activities concerned.[39]

3 Adjudication mechanisms in environmental impact assessment in Cameroon

Enforcement is indispensable to the effectiveness of any law or regulation. Cameroonian EIA Law provides a number of guarantees and safeguards to ensure compliance with EIA provisions. These measures which are both administrative and judicial are available to various stakeholders involved in the process to redress violations of the law and resolve conflicts.

3.1 Administrative mechanisms

These are mechanisms that are used by the central authority in charge of EIA, that is the ministry in charge of the environment to ensure compliance with the environmental and social management plan (ESMP) approved in the EIA study. These mechanisms are available only after the issuance of the certificate of environmental conformity (CEC).

3.1.1 Routine checks and surveillance

Article 27 of the 2013 Decree gives MINEPDED the responsibility to ensure administrative and technical surveillance of the implementation of the ESMP after the issu-

38 Article 19 (2) of the 2013 Decree.
39 Article 19 (3) of the 2013 Decree.

ance of the CEC to ensure compliance. There are three scenarios that can be envisaged at the end of the said surveillance.

3.1.2 Reporting obligation

According to Article 27 (3), the promoter is required to produce quarterly reports of the implementation of the environmental and social management plan addressed to the ministry in charge of the environment. The law is rather silent on what happens where the promoter fails to produce such a report.

3.1.3 Adoption of corrective or additional measures

The ministry in charge of the environment is empowered to adopt corrective or additional measure where upon submission of the quarterly report of implementation of the ESMP, it is realised that some effects where initially insufficiently considered. In such a case, the administration in charge of the environment may also hire the services of private experts following public contract rules to carryout studies on the aspects of the assessment that were initially not sufficiently considered.

Where in the course of surveillance the administration detects cases of non-compliance with the ESMP or the promoter fails to comply with reporting obligations, the law does not make any specific provisions on measures to be taken to ensure regularity. However it is discernible from previous dispositions of the law that the following administrative measures may be taken by the ministry in charge of environment:

- warnings;
- suspention of CEC; or
- withdrawal of CEC.

The question that becomes obvious is whether there are any administrative recourse mechanisms available to communities that are directly affected by the activities requiring EIA, where the promoter fails to comply with the provisions of the law by for instance, non-execution of the project in conformity with the ESMP. Even though the law is silent on this question, members of such a community can address a complaint to the minister in charge of the environment, who may, if the complaint is founded, adopt any of the administrative measures mentioned above.

Another case worth addressing is that of blatant disregard of EIA procedures by a project proponent or where after carrying out ESIA and SEA, a negative response is given by the competent authority but the promoter goes ahead to execute the project. Again the promoter may start executing his project before a final decision is made on

his application file. Once again, even though the law is silent on this question, practice shows that the promoter may either be suspended definitely or indefinitely without prejudice to penalties under the Law on Environmental Management. Where the suspension is indefinite, the project owner may be required to carry out an environment audit in compliance with Decree No. 2013/0172 on environmental audit, for the suspension to be uplifted.

3.2 Judicial mechanisms

Besides the administrative measures envisaged above, there are also judicial mechanisms that can be adopted by different stakeholders of the EIA. The following stakeholders may have *locus standi* in an EIA related judicial action:

3.2.1 The administration in charge of the environment

As indicated above, the law gives the administration in charge of the environment the competence to oversee the EIA process. The said administration may bring an action against a promoter to whom CEC has been issued in an administrative court where administrative actions prove to be abortive.

More so, where a promoter implements a project needing impact assessment, without carrying out such assessment, the administration may, besides taking suspension measures, also sue in ordinary law courts to have the promoter pay damages for causing harm on the environment through its activities which ought to have been guided by EIA processes if one was undertaken. This can happen where the promoter causes harm on the environment through his/her own fault, through no fault of his or through others under his authority and control. Still within ordinary courts of law, the criminal judge is competent and has been trying criminal violations of environmental prescriptions especially involving violations of EMP. Such competence is conferred on the criminal judge by the Penal Code[40] but also the Framework Law on Environmental Management in Cameroon.[41]

40 Law No. 2016/007 of 12 July 2016.
41 Article 79.

3.2.2 Local communities

Local communities can bring an action in an administrative court against the administration in charge of the environment. Such action will premised on the ground that local communities are involved in the assessment process through public consultations[42] which is one of the conditions for the grant of the CEC. Where the administration is bias, corrupt and produces inaccurate reports in the course of validation of the EIA report, against the interest of the community or in disregard of their observations, the latter can bring an action in an administrative court against the administration in charge of the environment and join the promoter of the project as a co-defender. This can also be done on behalf of the communities by a civil society organisation and recognised under existing laws (associations, non-governmental organisations) working in the field of environmental protection. This then justifies not only their *locus standi* but also public interest in the prejudice that has been caused on the environment by violating the EMP. This can result in the suspension/withdrawal of the CEC by the administration in charge of the environment by a decision of the court without prejudice to criminal/civil sanctions.

Another basis for local community action is the principle of participation through which *locus standi* is extended to local communities that can bring an action on a public as a whole interest basis or through representatives in the interest of the community at large as per Article 8 (2) of the Law of Environmental Management. Such an action can be brought against the promoter who is acting in irregularity. Civil society organisations may also act as plaintiff on behalf of the local communities against violators of EIA regulations.[43]

3.2.3 Action by the promoter of the project

The promoter can bring an action in an administrative court against the competent administration. Considering the fact that the CEC on the basis of which the project is executed is an administrative act, the promoter has valid ground to bring an action against the administration before an administrative judge. This action can arise where the administration is bias or makes false appreciation of the ESIA application leading to inaccurate results.

42 Tamasang (2008).
43 Article 8 of the Law on Environmental Management.

3.3 Alternative dispute resolution mechanisms

A range of other mechanism exist regarding disputes between the administration in charge of the environment and promoters of projects as well as other stakeholders in the environment sector. Such alternative dispute resolution (ADR) mechanisms include compromise and arbitration.

3.3.1 Compromise

The Framework law provides that the administration in charge of the environment[44] has full rights to effect a compromise but this must be done only at the behest of the defaulter. This is what is called a compromise. In fact, the objective of the law is actually to reconcile the interest of business operators with that of protecting the environment so that business can prosper and at the same time services are paid to the environment and its resources. In any event, this seems to be the spirit that guided the 1996 legislator in crafting the compromise provisions. This may be legitimate thinking because of the advantages that a compromise may bring to the promoter of the project in terms of saving the costs of proceedings. However, considering the difficulties involved and time constraints, one may equally see it as a provision for the administration in charge of the environment to fill its coffers while sacrificing court action. However, it must be stated that the amount to be paid in relation to the compromise must not be lower than the minimum of the corresponding sanction provided for by the law.[45] Although compromise is encouraged, it must be effected before any court procedures are engaged, otherwise such a compromise may be challenged and rendered null and void.

3.3.2 Arbitration

Arbitration has been held to be the most common ADR mechanism. It is a formal measure where parties to an environmental dispute may settle their differences through a joint agreement before an arbitrator, in this case not usually named in advance because of the nature of the dispute. This is a provision of the Framework law.[46] One may equally highlight the fact although the parties to the dispute have chosen arbitration, the outcome of it may not prejudiced a subsequent court action at

44 Article 91 (1).
45 Article 91 (2).
46 Article 92.

the initiative of either of the parties intended to challenge the arbitral award, the competence of the arbitrator.

4 Challenges to the effective implementation of environmental and social impact assessment in Cameroon

4.1 Inadequate scientific and baseline data

The EIA law of Cameroon fully dictates the administrative procedures that need to be followed in order to obtain planning permission. The use of baseline information ensures that identified and evaluated impacts are traced within the EIA process, thus providing an efficient method of predicting the significance of impacts through existing environmental conditions. Insufficient or inadequate scientific and baseline data on the environment in most sectors in Cameroon undermine the efficiency and quality of ESIA and the whole EIA process.

4.2 Incompetent personnel and over-centralisation

A Prime Ministerial Decree[47] designating the Inter-Ministerial Advisory Committee for Environmental Impact Study was found to be inappropriate. In fact, in a series of personal communications with a senior specialist in the environmental management of highway projects in the Ministry of Public Works, a senior policy officer with a local NGO and a Director at the MINEP, it was revealed that the committee is composed of persons who lack the necessary expertise. A committee of this sort is supposed to include scientists and a multidisciplinary technical staff with the requisite knowledge of ESIA and its applicability in their respective sectors. The problem probably stems from the fact that the ESIA review and approval is centralised in Yaoundé and the officials lack a robust mastery of the ecological, physical, chemical, socio-economic and cultural environment of communities where EIA projects are envisaged. This will often lead to judgements and opinions that are flawed and baseless.

47 See Article 15 (2) of Decree No. 2005/0577/PM.

4.3 Ineffective public participation in ESIA processes

Indeed, public participation is a fundamental component of the ESIA process. As Wood[48] explains, EIA is not EIA without consultation and participation. The European Commission strongly advocates public participation arguing that it increases the accountability and transparency of the decision – making process. The role and importance of public participation in environmental decision-making cannot be overlooked. The European Commission further established that effective public participation in the taking of decisions enables the public to express their views, and the decision maker has to take account of options and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. However, looking at the current legal and procedural disposition regulating EIA in Cameroon, it is glaring that public participation is not statutorily protected. Indeed, it is poorly represented in terms of timing and communicational hurdles. Even though Article 17 of the 2005 Decree states that the promoter or proponent shall send to the representatives of the population concerned at least thirty days before the date of the first meeting the program of public consultations comprising the date and venue of meetings, the descriptive and an explanatory report of the project and the purpose of consultations. But looking at the legal provision, it is not clear when this first meeting should be scheduled during the EIA process and under what circumstances these consultations should be made. In fact, it would even seem that the first public participation is at the discretion of the proponent. This epitomises the fact that the public is treated with disdain in the current legal disposition. Indeed, the public should know exactly when the law mandates them to take part in public consultation within the framework of the EIA procedure in Cameroon. Although Article 20 (1) of the 2013 Decree states that

> the environmental impact study shall be carried out with the participation of the population concerned, through consultations and public meetings, for the purpose of sampling the opinion of the population on the project.

Paragraph 2 of the same Article further stipulates that "public consultation shall refer to meetings held during the study in the locality concerned by the project". As for public audience, it shall aim at advertising the study, recording possible oppositions to the project and enabling the population to give their say on the findings of the study. What impedes effective public participation with regard to the aforementioned provision is ineffective communication. Although Pidgin English and French are used to transmit fundamental knowledge about proposed EIA projects to the illiterate

48 Wood (2002).

Cameroon populace during public consultation, available information to enable the public to participate effectively during public meetings is difficultly grasped by the lay person. The problem is accentuated by the lack of public knowledge on legal issues and the fact that most legal documents in Cameroon are in French, presenting a constraint to the English speaking population.

4.4 Problem of specialisation of judicial personnel

Most judges in Cameroon today were trained in an era in which environmental law was not a component of their training. They therefore have inadequate competence in environmental issues and so fail to fully appreciate EIA matters brought before them. This leads to decisions that at times do not adequately reflect the law in force.

4.5 Inadequate human resources

One of the factors that impede effective EIA implementation in Cameroon is the inadequacy of scientists and technical staff or personnel. It would seem that so far only one institution[49] offers a post-graduate program in EIA in Cameroon.

4.6 Corruption within the EIA Processes

Corruption is a canker-worm that has eaten deep into the fabrics of the Cameroonian society affecting every area and sector, not leaving out EIA enforcement institutions. Corruption in the form of bribes, preferential treatment, nepotism, cronyism and even state capture can be observed in every stage of the law enforcement process in Cameroon.

5 Conclusions and recommendations

The provisions of the Framework Law on Environmental Management addressing Environmental and Social Impact Assessment and its numerous enabling instruments which are undergoing amendments to suit the emerging society, constitutes a milestone in the management of environment in Cameroon for it takes EIA to another level to cover dimensions that are yet to be covered by the environmental laws of

49 *CRESA-Forêt-Bois* – a regional centre affiliated to the University of Dschang.

most African countries. But as it is the general phenomenon in Cameroon, like in many African countries, implementation of these legal instruments lags behind. There is a need to improve on the implementation of this law in order to dwindle the gap between theory and practice. We therefore recommend the following:

- community and public participation should be heightened in the public consultation process by ensuring that parties concerned are educated on the importance of participating in such consultations and also on real effects of such projects on their environment;
- decentralisation of ESIA and SEA processes by amending the law to give decentralised organs more role in the process;
- eradication of corruption in EIA processes and inclusion of environmental education in the training of personnel of the judiciary; and
- increase the involvement of experts in different commissions and bodies in charge of validating and monitoring EIA processes.

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