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Briefing: Transparency of land-based investments in Cameroon

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March 2021

This briefing examines the state of transparency with regard to agribusiness and other land-based investment in Cameroon.¹ “Land investment transparency” is public *disclosure* of relevant land investment-related information, as well as *access to, comprehension of, and use of* that information by project-affected communities and the government, among other actors, to influence decisions concerning investment and to hold powerful actors to their obligations, among other legitimate objectives.

Despite some governmental participation in initiatives that publish investment-related information, land investment governance in Cameroon cannot be said to operate in a meaningfully transparent manner. Cameroon’s legal and policy framework concerning land governance and investment is out of date and not fit for purpose. Cameroon’s government (hereinafter, “the Government”) may think it can use its role as guardian of National Land to strengthen its control over lands and resources; but a top-down approach to concession allocation and a reluctance to recognize all legitimate tenure rights will threaten the Government’s legitimacy as the grievances of citizens and investors alike continue to grow and lead to the barring of roads by communities and investor withdrawals.

“Everything happens in response to grievances, not because of [communities’] rights”

— *Community representative*

Community members interviewed were frustrated with being excluded from decisions concerning their lands and resources and unable to easily access, understand, and use relevant information to influence such decisions. These sentiments were echoed by many within the Government, with one representative decrying, for instance, that investment project approvals “are decided on in Yaoundé before even speaking to community members.”²

“We do not take the existence of communities into account ... Projects are decided on in Yaoundé before even speaking to community members”

— *Government representative*

The private sector also regards Cameroon’s laws as needing reform. The operator of one of the three sites we visited told us that its development “will not continue” due to “difficulties encountered in the land allocation process.”³ Cameroon is accordingly perceived internationally as a location that is “growing more difficult” for private sector investment.⁴ Land investment transparency in Cameroon appears to have inadequately advanced since 2013 when a report on a similar topic made similar findings.⁵

² Interview with Government representative, Nov, 2019. See also statements from Government representative, Nov, 2019. “After the contract is signed, local people are accounted for”; “When the company met the *sous-préfet*, with their contract already established, they explained what the contract says about where they can work. A schedule for meeting each village was then set.”

³ Email to CCSI, Sep. 15, 2020.

⁴ U.S. Department of State, *2019 Investment Climate Statements: Cameroon*. (2019), <https://bit.ly/3906Bnd>.

⁵ Centre pour l’environnement et le développement (CED), *La transparence dans le secteur foncier au Cameroun: Etude de cas préliminaire de la cohabitation entre agro-industries et communautés locales et autochtones*. (2013), <https://bit.ly/3jQRhOH>.

¹ This briefing draws from a longer report entitled *Transparency of land-based investments: Cameroon country snapshot*. It was funded by UKaid from the UK government; however, the views expressed do not necessarily reflect the UK government’s official policies.

“[T]he current legal framework related to land tenure needs to be adapted to better correspond to today’s life and the aspirations of communities, private companies and the State”

—Agribusiness executive

Recommendations for a New Land Law

Our findings reveal worrying dynamics concerning both the substance of Cameroon’s legal standards and the Government’s implementation of those standards. The apparent impasse regarding land governance reform risks further damaging Cameroon’s investment environment, limiting the Government’s ability to facilitate appropriate and responsible investment.⁶ We recommend that a new law concerning the governance of land and land-based investment be developed in close consultation and collaboration with citizens, Indigenous groups, civil society, other stakeholders, and experts. A reformed, human rights-compliant law that recognizes legitimate tenure rights should be paired with a renewed governmental commitment—and concrete strategies—to monitor and regulate investment, and implement and enforce applicable legal frameworks. These recommended elements can help enable Cameroon’s people to pursue sustainable development, create increased certainty for investors, and encourage more informed and coordinated governmental decision-making that can provide for present and future prosperity and responsible environmental stewardship.

Given the grave transparency challenges—for communities, citizens, the Government, and investors, among others—highlighted in this report, it would introduce an unacceptable amount of risk of social conflict if the Government were to approve any additional large-scale land-based investment projects under the current legal framework. We therefore recommend that the Government temporarily cease making any new approvals for large-scale

agribusiness and other land-based investment projects until the legal and policy landscape in Cameroon has been reformed in line with the following recommendations.

In order for a new law to adequately address transparency and meaningful community participation in decision-making regarding the governance of land and land-based investment, we recommend it include the following features.

1. Information needs of affected communities. The Government and investor companies should provide all communities, and all community members—including women, youth, Indigenous people, and people with disabilities, among others—whose lands, resources, or human rights were, are, or stand to be affected by a land or resource investment project with information about the project that is:
 - o **Pertinent**, including how the project and its operations will affect them, both positively and negatively;
 - o **Empowering**, including information about community members’ rights, the actual or likely rights and obligations of the company and the Government, and the avenues through which communities may participate in and influence decision-making about the project;
 - o In a form that is **understandable** and provides an appropriate level of detail, enabling communities to make informed decisions without being overwhelmed by too much detail or overly complex or technical language;
 - o Delivered via **accessible processes and formats** including meetings, images and video, document summaries, and site visits, among others;
 - o Delivered in a **timely** manner, including before any authorizations are granted and before decisions are made throughout the life of the investment;
 - o Shared **continuously**;
 - o Delivered and shared in the **language(s) most commonly** spoken by each community group; and
 - o Provided to community members **as a right** with the objective of fostering community members’ understanding and empowerment.

⁶ Investors aspiring to certification and responsible practices have reportedly left Cameroon because of profitability and operational challenges, and have been replaced by less desirable candidates: Arounsavath, F., “Undercutting Rights: Human rights and environmental due diligence in the tropical forestry sector: A case study from Cameroon,” *Swedwatch*, (2019): 14. This downward trend is echoed by U.S. State Department assessments of Cameroon’s business climate as “growing more difficult” because, among other factors, there are “significant obstacles” to “securing land rights.” U.S. Department of State, *2019 Investment Climate Statements: Cameroon*. (2019)

2. Information needs of the Government and the public. To improve the performance of, and coordination between, all relevant Government entities and offices,⁷ the Government should publicly disclose, and, where relevant, require other information holders to publicly disclose:
- All information concerning the **rights and obligations** of companies, the Government, and other actors relating to all past, current, and future land or resource investment projects, and information about the actual people who directly or indirectly own, control, or benefit from the companies (often called the “beneficial owners”);
 - **Documents** including, among others, investor-state contracts and all letters and instruments amending such contracts (in line with the 2018 Transparency Code), community-investor contracts, decrees, permits, authorizations, and maps;
 - Such information in a **consolidated form** at a centralized location, and/or through forms of communication like online databases (such as the Cameroon Forest Atlas), that are **publicly available** and reasonably accessible;
 - Such information in a **timely manner**, and as soon as practicable after such instruments and information are executed or otherwise created or updated; and
 - Such information in a manner that, consistent with the constitutional freedom to receive and impart information,⁸ is reasonably **accessible by citizens**, civil society organizations, and the media, among others.
3. Community needs, in order to understand and use information. To fulfill the human rights of all community members—and not only their formal leaders—to be informed and to meaningfully participate in decision-making concerning their rights, lands, and resources, the Government should facilitate and establish, and/or cause others to facilitate and establish:
- Programs and processes to **empower** all community members to know and uphold their, and other actors’, rights and responsibilities;
 - Processes that allow for all community members to use all relevant information to further their understandings, deliberate internally, and **influence decision-making**, such as timely consultations, impact assessment, pre-authorization and iterative consent processes; and community-led or participatory monitoring efforts. Such processes should also provide for “a transparent and participatory debate on the opportunity costs of granting land to investors that plan to develop agro-industrial plantations, when strengthening small local farmers’ access to land, by means of adequate State support, could do more to improve local food security and reduce rural poverty;”⁹
 - Multi-stakeholder **dialogue processes** that: include representatives from communities other than chiefs, such as representatives of Indigenous communities, women, youth, and other less dominant groups; follow robust governance practices to minimize the ability of powerful actors to dominate and coopt the process; have clear objectives; are sustainably financed; and are facilitated by trusted and independent actors who are familiar with the local context, experienced in facilitating multi-stakeholder dialogue, and sensitized on the human rights of community members to informedly participate in and influence decision-making; and
 - **Grievance redress**, dispute resolution, and formal justice processes that, consistent with the UN Guiding Principles on Business and Human Rights, are legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and designed in close consultation with the community members for whose use they are intended.¹⁰

7 This includes all public entities who facilitate, adapt legal frameworks for, monitor, regulate, and develop development plans in the context of, land and resource investments, including at the national, regional (*régional*), departmental (*départemental et préfectoral*), and district (*arrondissement et sous-préfecture*) levels.

8 Constitution of Cameroon, Law No. 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972, Art. 19.

9 *Report of the Special Rapporteur on the right to food*, Olivier De Schutter, Addendum: Mission to Cameroon. (Dec. 18, 2012), UN Doc. A/HRC/22/50/Add.2, paras. 48, 73(i). See also Food and Agriculture Organization of the United Nations, “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT),” *Report of the 38th (Special) Session of the Committee on World Food Security*. (May 11, 2012), Art. 12.6, <https://bit.ly/2ZqvcdCD>, which states that “States should consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors, and should encourage partnerships with local tenure right holders.”

10 *United Nations Guiding Principles on Business and Human Rights*, UN Doc. HR/PUB/11/04 (2011), Principle 31.

4. Funding for technical support to communities. Enabling all community members to access, understand, generate, and use relevant information to meaningfully participate in decision-making and pursue other legitimate objectives will often require legal empowerment, independent technical support, and other resources, all of which may increase demands for funding. The Government should make, and require companies to make, adequate financial contributions to trusted, independent initiatives that **finance such community support** without introducing the risk of such payments creating a lever of undue influence over communities.¹¹
5. Indigenous communities. In line with its obligations under international law, the Government should respect, protect, and fulfill Indigenous people's international human rights. The Government and companies should:
 - o Take **Indigenous people's rights under international law**, and their often precarious and marginalized position within Cameroonian society, into account when designing and implementing investment-related decision-making processes; make sure that such processes are inclusive and proactively allow for Indigenous people to meaningfully participate; and respect their decisions to give or withhold their free, prior and informed consent;
 - o Make sure that Indigenous communities can meaningfully access the independent **financing initiatives** described in recommendation 4, above; and
 - o Arrange for all processes in which communities participate to take place in, or be simultaneously translated into, relevant local **Indigenous languages**.
6. Women and girls. In order to understand and adequately plan for women's uses of land and natural resources and mitigate any negative impacts of investment on women, the Government and companies should take gender-sensitive approaches when implementing investment-related decision-making processes.¹² Such approaches should seek to:
 - o Understand and navigate the **gender dimensions of communication with communities**, including gender discrepancies relating to literacy and control of radio and mobile phones;
 - o Take steps to make sure all groups within the community, including women, can access information and influence relevant decisions. Such steps may include **adjusting meeting times, locations, and attendees**, reserving opportunities for women to speak and respond to other participants, addressing cultural barriers to obtaining information from women and existing gender biases in land governance frameworks, more generally; and
 - o Facilitating **technical support** for women community members specifically.
7. Benefit sharing. In order to enable affected communities to secure promised benefits from investments and achieve mutually beneficial outcomes for companies, the Government and/or companies should:
 - o Proactively **include communities** in the design of benefit-sharing arrangements, which should be recorded in legally enforceable contracts to which the community is a party;
 - o Regularly **report to communities on all payments** made to central and local government agencies in a form that that is understandable by communities; and
 - o Facilitate **ongoing opportunities** for information exchange and for communities to influence decisions regarding benefit-sharing arrangements.

11 Such initiatives may include independently operated basket funds or other financing initiatives highlighted in Szoke-Burke, S and Cordes, K. Y., *Innovative Financing Solutions for Community Support in the Context of Land Investments* (2019), Columbia Center on Sustainable Investment, <https://bit.ly/3eLiKxX>.

12 Such an approach is also consistent with the Government's obligations under the Convention on the Elimination of All Forms of

Discrimination Against Women (CEDAW) to take measures to eliminate discrimination, including to address social and cultural patterns of discriminatory customs and "eliminate discrimination against women in rural areas [so that they] participate in and benefit from rural development" (Arts. 5, 14.2).



8. Recognition of customary land rights. The Government should **recognize and protect all legitimate tenure rights**—including undocumented, communally-held customary land rights—in line with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT), which were endorsed by Cameroon through its membership of the Committee on World Food Security.¹³ Communities as a whole, and not only collectivities of expressly named individuals, should be able to legally hold such rights, as should women, even when their occupation and uses of land are less visible than those of men. Any legal reforms should be accompanied by plans and resources to raise awareness about the laws, and to develop the Government’s skills and strategies for implementation, monitoring, and enforcement of the reforms.

9. Recognition of community-generated data. Acknowledging the Government’s previous participation in the development of methodologies for community-led land use mapping, the Government should continue to recognize and support such efforts and be required to factor community-generated data into its investment approval processes and land use planning more generally.

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This report forms part of a broader portfolio of research conducted by CCSI on a demand-driven approach to the transparency of land-based investment, focusing on the transparency needs of project-affected communities and host governments. The author deeply thanks the representatives from communities, Government, civil society, and the private sector who were willing to share their perspectives.

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¹³ VGGT, above note 9, Art. 3.1.



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