

Translating Policies on the Rights of Indigenous Communities Into Concrete Practice to Mitigate Conflicts Over Natural Resource Exploitation in Central Africa: Case Study of the Baka People in Eastern Cameroon

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Abstract

Although the exploitation of natural resources has been presented as an impetus to economic growth, it is often associated with dispossession and deprivation of indigenous/local communities with respect to their land rights, control of resources, human rights, self-determination, cultural integrity and the right to development. This constitutes a key threat to the social, economic and cultural rights of indigenous communities. In their struggle to exercise these rights, conflicts are bound to emerge, emanating from the gap between the way the government and companies conceptualize the value of environmental resources and its connection to the livelihood and cultural significance of indigenous populations. Although the legal frameworks governing land tenure and natural resources guarantee the rights of indigenous communities to an extent, these rights exist only on papers and are not being translated into concrete practice that may create positive impacts for indigenous communities. We assume that the blame is shared by companies who are indifferent to sustaining indigenous communities and addressing the negative impact of their operations; and by national governments who do not commit themselves to ensuring that regulations on the protection of the rights of indigenous communities are translated into practice. An empirical approach to data collection and doctrinal analysis of primary and secondary data with a particular focus on the Baka People in Eastern Cameroon would reveal how the rights guaranteed under these legal instruments are not being translated into practice to benefit local communities—constituting

the root cause of conflicts. The article recommends the timely and adequate guarantee and protection of the rights of indigenous communities as well as some possible ways and procedures through which these rights may be adequately guaranteed and translated into practice.

Key words: Policies; Rights; Indigenous Communities; Conflicts; Natural resources; Central Africa; Baka; Eastern Cameroon

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INTRODUCTION

Natural resources have been shown to be linked to the conflicts that have plagued a number of Central African countries over the last decades, both motivating and fueling armed conflicts (Halleon, 2009). Natural resource revenues allocated to catchment communities are mismanaged, compromising peace as armed groups buys over the legitimate claims of indigenous peoples who are discriminated against in natural resource management. Even when conflict gives way to a fragile peace, control over natural resources and their revenues often stays in the hands of a small elite and is not used for broader development (United Nations Expert Group, 2006, p.7). In consequence, both national and international measures to avoid the detrimental impact of resource endowments have increasingly been discussed and implemented (Mähler, Shabafrouz, & Strüver, 2015, p.3) however with little achievements.

Despite being endowed with some of the most demanded natural resources in the world, Africa has, failed to transform its enormous natural wealth into

tangible benefits. Instead, the abundance of natural resources has become what some analysts describe as a “curse” or a “peace liability” (United Nations Expert Group, 2006, p.62), fueling violent conflicts over access to, and control of, natural resource wealth (Mähler, Shabafrouz, & Strüver, 2015, p.3; Ganesan & Vines, 2015, p.1). Recent experiences from resource - endowed countries such as the Democratic Republic of Congo and Central Africa Republic have demonstrated the critical linkage between the exploitation of natural resources and violent conflict (Network of Global Agenda Councils, 2013, pp.6-7). Natural resources promote conflicts through three mechanisms: First, resources can motivate conflict, as violence results from disputes over the benefits or the costs (e.g., ecological damages, and socio-economic stress) of resource extraction. Second, natural resources provide opportunities for violence by financing warfare. Third, resources can cause conflict through indirect mechanisms: resources may weaken political institutions and impair the effectiveness of public bureaucracy, as they increase the incentives for corrupt behavior (Mähler, Shabafrouz, & Strüver, 2015, p.5).

In the United Nations Secretary General’s seminar report to the General Assembly and the Security Council in 1998 on the causes of conflict and the promotion of durable peace and sustainable development in Africa, among the key factors identified as fueling conflict was the illegal exploitation of natural resources (United Nations Expert Group, 2006, p.62). In 2005, in the Secretary-General’s progress report to the 60th session of the General Assembly on the

Implementation of the recommendations contained in the above report, the Secretary-General reiterated that illegal exploitation of natural resources in conflict-prone and conflict-ridden countries continued to be one of the contributory causes of conflict and of its recurrence and cited the example of Angola, the Democratic Republic of the Congo, Sierra Leone and Liberia, where natural resources had provided major funding for the perpetuation of wars. (Ibid.)

Moreover, the Security Council in a resolution¹, recognized the link between the illegal exploitation of natural resources, the illicit trade in such resources as one of the factors fueling and exacerbating conflicts in Africa, and in particular in the Democratic Republic of the Congo (DRC). The international community has indicated its support of efforts to address this critical issue. The Group of Eight (G8) countries stated their intention to support Africa’s effort to build a peaceful and stable Africa and in particular to prevent conflicts and ensure that previous

¹ S/RES/1635 (2005) on strengthening the effectiveness of the Security Council and the role of civil society in the prevention and resolution of armed conflict, particularly in Africa. In 2000, the Security Council authorized the creation of a Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo which issued several periodic reports.

conflicts do not emerge by “acting effectively in the UN and in other fora to combat the role played by ‘conflict resources’ such as oil, diamonds and timber, and other scarce natural resources, in starting and fueling conflicts” (United Nations Expert Group, 2006, p.8).

Although natural resource exploitation has been presented as an impetus to economic growth, the consequences on catchment communities have been alarming. Often, the blame has been laid on governments and companies perceived as indifferent to sustain communities and addressing the enormous negative impact of their operations. This view is well presented in the media, civil society and international organizations (Mensah & Okyere, 2014). Cameroon, like some other Central Africa countries has been beset by a number of conflicting claims regarding rights over the management of natural resources, leading at times, to loss of ancestral lands, inter-ethnic conflicts, damages and loss of property, lives, and the aggravation of the poverty situation in rural areas (Amungwa, 2011).

It has been asserted that insurgent groups are more likely motivated by control over resources (Halleon, 2009, p.48; Ganesan & Vines, 2015, p.1). The civil wars in Angola, Colombia, DRC, Liberia, and Sierra Leone are often cited as examples of this dynamic. In Angola, the National Union for the Total Independence of Angola (União Nacional Paraa Independência Total de Angola, UNITA) financed its war largely through illicit trade in diamonds from the mid-1990s until the war ended in 2002, while the Revolutionary United Front (RUF) in Sierra Leone also financed itself by trading in illicit diamonds. In the DRC, control of diamonds and timber has been a powerful incentive to prolong the country’s vicious civil war (Ganesan & Vines, 2015, p.2) likewise Liberia.

Communities are demanding recognition of their rights, entitlements and their livelihood. There are indeed tensions, conflicts and/or disputes on the risks, impacts and distribution of benefits (Mensah & Okyere, 2014, p.70). The tensions result from an individualistic pursuance of self-interest which leads to compromise the interest of others. The divergent of interests and perceptions widens the “cleavages” (Ibid). Failure by governments to translate policies on the rights of indigenous and local communities into concrete practice has seen the emergence of rebel groups by those who have legitimate claims but lack the means of enforcing them, fueling conflict and human rights abuses.

Peoples identified as indigenous are often the most discriminated and marginalized; their entire culture and identity can be put at risk when their lands and resources are lost. Discussions on the rights of indigenous peoples in Central Africa are contentious, with some African states denying indigenous peoples exist at all, or claiming that all Africans are indigenous. In either case, the reality on the ground is that these communities’ culture and their physical survival is at stake and policy and law reforms

must therefore take special measures to address the discrimination they face (Pritchard et al., 2013).

Since the research does not seek to present statistical analysis, a qualitative dimension was preferred. Data was collected from primary and secondary sources. Qualitative method was adopted for the collection of data from selected indigenes of the case study area and NGOs. Semi-structured informal interviews were conducted to obtain information for the study. In addition, the research involved theoretical discussion and analysis of existing secondary sources which were reviewed to provide a theoretical and conceptual understanding and to aid the discussions.

1. POLICIES ON NATURAL RESOURCES IN CAMEROON AND CONCEPTUALISING NATURAL RESOURCE CONFLICTS

This section examines policies on natural resources in Cameroon, whether they recognize and guarantee the rights of indigenous peoples. It also attempts to show how natural resource-driven conflicts emanate from the inequality existing in the relationship between governments and companies on the one hand and indigenous communities on the other.

1.1 Policies on Natural Resource and Indigenous Communities' Rights in Cameroon

Cameroon has national legislation governing land and other natural resources, with an aim toward encouraging commercial investment in its land and natural resource sectors. These laws recognize and guarantee very limited protection to the rights of indigenous peoples.

1.1.1 Forestry and Wildlife Law

Cameroon's current forest legislation includes opportunities for forest communities to register rights to community forests and enter into agreements regarding their management (Oyono, 2005, p.1)². The forestry legislation outlines the transfer of management responsibilities and powers to the local communities, which were perceived by the local communities as a response to the environmental injustice and to their historical frustrations (León et al., 2012, p.195; Mogoi et al., 2012, p.182; Monterroso & Barry, 2012, p.136; Larson & Pulhin, 2012, p.103; Larson & Dahal, 2012, p.77)³. The legislation includes several benefit-sharing provisions intended to ensure that forest communities and local governments benefit from forest resources. The 1994 *Forest Law* introduced annual forestry royalty (AFR) 40% council, 10% local community, 50% state treasury. But the intended benefits are not reaching communities, in part because community management committees have often been hijacked by special interests and communities

do not have sufficient decision making roles⁴ or the power to enforce their rights.

Also, in Cameroon, forests are state-owned and forest communities retain only user rights in forests (though these can be restricted by the government) and can acquire forest management rights if they are able to navigate the complex procedures for establishing a community forest (Pritchard et al., 2013). Hence, the law on forest concessions discriminates against indigenous peoples⁵.

1.1.2 Mining Law

Under the mining code, the population affected by any mining operation has the right to compensation whose amount is deducted from the ad valorem tax and tax on the extraction of quarry materials⁶. Revenue obtained from ad valorem tax and tax from extraction of quarry materials is divided and assigned as follows: 25% for the population affected, 10% for local population and 15% for the local council⁷. However, the modalities for the allocation of the share for local population and councils will be defined by a joint order of the minister in charge of mines and minister in charge of finance⁸. However, in July 2014, a prime ministerial decree⁹ amended certain provisions of Decree No. 2002/648 / PM of 26 March 2002. According to the amendment, the share of ad valorem or extraction tax destined for councils and local communities will be henceforth transferred to the account of the municipal treasurer according to the new provision. Despite the efforts made in modifying the law, there are still unanswered questions since there is no clarity on how the share allocated to local communities will be handled once the transfer of the revenues has been made to the account of the municipal treasurer. The lack of an operational regulatory framework raises difficulties of effectively monitoring sub national transfers and use in Cameroon. It is imperative to harmonize the approach and modalities for payment and management of sub national Revenue transfers in Cameroon.

⁴ USAID, Cameroon - Property Rights and Resource Governance, USAID Country Profile, 2011, p. 2.

⁵ Centre for Environment and Development (CED), Okani, Réseau Recherche Actions Concertées Pygmées (RACOPY), [Research Network for Planned Pygmy Actions], Association pour le développement social et culturel des Mbororo (MBOSCUDA), [Association for the social and cultural development of the Mbororo], International Working Group for Indigenous Affairs (IWGIA) and Forest Peoples Programme (FPP), "The rights of indigenous peoples in Cameroon: Supplementary report submitted further to Cameroon's third periodic report", 54th ordinary session, Presented to the African Commission on Human and Peoples' Rights, October 2013, Banjul, Gambia, p.5.

⁶ Art 89 of Law no. 001-2001 of 16 April 2001 on the Mining Code.

⁷ Art 137 of law no. 2002/846 PM of 26 March 2002 on the application of the 2001 Mining Code.

⁸ Art 137 (2), Ibid.

⁹ No. 2014/1882 / PM of 4 July 2014. Following this decree, Article 137 (2) which hitherto provided for a joint ministerial order to clarify modalities for the transfer and use of mining royalties was modified, completely dropping the requirement for a joint ministerial order to regulate mining royalty transfer and use.

² See Articles 37, 38, 54, 67 and 68 of the 1994 Forestry Law.

³ Ibid., p.2.

1.1.3 Land Tenure Law

Cameroon's primary land law¹⁰ established land tenure rules. A companion law¹¹, addressed the governance of state land. These laws created a tenure system based on land registration according to which all privately-owned land must be registered and titled to retain its character as private land. All unregistered land is deemed to be either public land, which is held by the state on behalf of the public, or national land, which includes unoccupied land or land held under customary law. The government can convert national land into state land and allocate use rights to it (e.g., forest, mining and agriculture concessions) or convert it to private ownership (e.g., for urban development). Land tenure for most people in Cameroon is therefore insecure¹².

The laws were intended to encourage foreign investment in Cameroon as they effectively clarified private property rights and made all unregistered land available for investment. Article 16 of Ordinance No. 74-1 established Divisional-level Land Consultation Boards, and Decree No. 78/263 1978 established prefect-level Commissions for Resolving Agro-Pastoral Conflicts. Decree No. 2005/481 governs land titling and registration.

Land is the key natural resource that communities possess and exploit to earn a living but when the land is privatized it passes into the hands of people whose priority is to make money (Amungwa, 2011, p.55). Cameroon's land tenure system makes indigenous populations groups vulnerable to land grabs (Wily, 2011, p.5). Land legislation enacted after independence did not only retain various European ideas and concepts of property, but also diluted them with certain notions which have been at variance with the indigenous land tenure principles because due consideration was never given to the indigenous system (Ibid., p.55).

Cameroonian law or practice does not also make it easy for customary land-owners to formally register their holdings to secure their property. Registration in Cameroon is a remote, complex and expensive process and limited to lands which have been cleared or cultivated or physically settled with houses (Ibid.). The United Nations Expert Group urged Cameroon to speed up the process of land reform, to guarantee the right of indigenous populations groups and small-scale producers to ancestral and community lands and to ensure that obstacles to land ownership, in particular those faced by women, are removed (United Nations Expert Group, 2006, p.13). By securing community land tenure rights, countries can: reduce conflict and the risk of conflict;

¹⁰ Ordinance No. 74-1 of 6 July 1974 fixing land regulation in Cameroon.

¹¹ Ordinance No. 74-2 of 6 July 1974 fixing state lands regulation in Cameroon.

¹² USAID, op. cit., p.3.

improve resource security; secure and maintain natural resource wealth and biodiversity for future generations through sustainable resource management; etc. (Pritchard et al., 2013, p.11).

1.2 Conceptualising Natural Resource Conflicts: A Governments/Companies-Indigenous Communities Interface

In Central Africa, It has become difficult for companies to coexist with indigenous communities whose livelihoods are intrinsically connected to the land they live on as they refute and demand abrogation of large-scale projects on their land (Mensah & Okyere, 2014, p.64). This seeming incompatible coexistence has generated differences/conflicts between the companies and local communities. Companies are therefore accused of exacerbating conflicts through their operations and activating latent disputes. These conflicts concern livelihood security, access to the resources, ownership, environmental effects, impact on social cohesion, cultural beliefs, human rights violations and distribution of risks and benefits (Ibid., p.66).

Predatory extraction of natural resources by foreign companies in exchange for short-term gain for a narrow segment of the country's elite raises questions as to whether policies address the social and environmental impact of resource extraction¹³. Poor, indigenous, and marginalised, communities are usually excluded from decision-making (Paudel, Monterroso, & Cronkleton, 2012) and property right in the great wealth being drawn from their lands, yet they are nevertheless subject to its destructive economic, cultural and environmental impacts (Szabłowski, 2007, p.18). The granting and exercise of new community rights, namely, management rights and market rights, are not synonymous with improved livelihoods, despite initial predictions and expectations (Oyono, Biyong, & Samba, 2012).

Companies and communities are placed on unequal scales. Companies wield considerable resources (legal, financial) both in size and potency while communities are poor and weak causing them to oppose natural resource operations. In certain instances, companies have insisted these suggestions from local groups are misguided and instigated by environmentalists who blind their eyes to what natural resource exploitation present to these communities (Mensah & Okyere, 2014, p.66)¹⁴. Yet some sources assert that these conflicts are intensified by companies. For instance, a campaign group Global Witness alleges in a new report and reiterated by BBC

¹³ Network of Global Agenda Councils, op. cit., p.7.

¹⁴ See also R. Wilson, "The Global Mining Initiative" (2000) 8:3 ICME Newsletter. Cited by D. Szabłowski, op. cit., p.77. When he said: There is a feeling within the mining industry that it is losing an important battle for public opinion. One senior industry figure argues that mining has fallen "into increasing public disfavour", that it is seen at best as "a necessary evil" and as "incompatible with sustainable development".

that European timber companies have helped fund the war in Central African Republic through lucrative deals with militia groups (BBC, (2015). Global Witness accuses the EU of failing to stop imports of illegal timber to Europe. It is also said that timber companies from France, Lebanon and China paid more than \$4m (£2.5m) to rebels in 2013, mainly for protection services (Ibid.).

The relationship between natural resource and conflict was triggered by the conception of the “resource curse”¹⁵ in the early 21st century which gained momentum in many developing countries where research undertaken revealed that natural resources such as gold, oil, diamond and other minerals have contributed to instability, war and degradation (Mensah & Okyere, 2014, p.68). Conflicts occur because both companies and communities place different socio-economic values on land (Ibid.) and monetary contribution makes an insignificant contribution to the loss of land (Ibid., p.59). In effect, natural resource driven conflicts stem from the big gap between the way governments and companies conceptualize the value of natural resources and its connection to the land, livelihood and cultural significance of community members who have emotional and historical links to the land. The following sub-sections further examine the cost of natural resource exploitation on indigenous catchment communities.

1.2.1 Dispossession and Deprivation of Land Rights and Loss of Control of Resources

Ownership and use of land and natural resources are defined and regulated by land and resource tenure systems. Land tenure systems are based on written policies and laws, unwritten customs and practices or a mixture of both (Pritchard et al., 2013, p.8). Tenure security provides guarantee against arbitrarily deprivation of rights over lands and resources (Ibid.). Indigenous land-tenure systems have evolved over the centuries and are often “communal” (Manger, 2005; Gausset & Whyte, 2005, p.141). The local populations are regarded as the legitimate owners of the forest according to customary law (Mbarga, 2005, p.116). This is why the 1994 forestry law of Cameroon recognizes their role in the management of forest resources by making provision for community forest¹⁶ and their right to use forestry products such as firewood, Non Timber products, medicine and food (Ibid., p.117).

Protected area initiatives have led to fundamental changes in local livelihood, displacing community participation in natural resource management, culminating in to conflicts with indigenous peoples who depend on forests for their livelihoods (Eliás, 2012). Indigenous peoples and other local communities have gained little

from state territorialisation of forest control, except sometimes temporary employment as skilled or unskilled labourers on lands they have once controlled (Larson & Pulhin, 2012, p.105).

Insecure community tenure rights over land and resources can lead to conflict when competing users fight for control over these resources. Conversely, clear and secure tenure rights, and the responsible governance of tenure rights, promote development that can help to eradicate poverty and protect biodiversity (Pritchard et al., 2013, p.8). The growing demand for land and natural resources makes the need to strengthen indigenous communities’ tenure rights over forest lands and natural resources even more urgent (Ibid.). The African Commission on Human and Peoples’ Rights in 2010 issued a landmark decision in the case of the *Endorois people* against Kenya, demonstrating a clear understanding that denying community land tenure security violates human and indigenous peoples’ rights¹⁷. The African Commission found in the Endorois’ favour that there had been a violation of Articles 14 (right to property), 21 (right to free disposition of natural resources, and restitution and compensation for dispossessed peoples) of the African Charter on Human and Peoples’ Rights (Ibid., p.9, 11).

The ruling in the Endorois case¹⁸ underscores the importance of securing community land tenure rights as the foundation of a more promising, sustainable and rights-based approach to development (Ibid., p.11). The African Commission on Human and Peoples’ Rights (which implements the African Charter on Human and Peoples’ Rights) emphasised that communities should not be viewed as passive beneficiaries of development processes, but rather as active stakeholders in development policies (Ibid., p.10).

1.2.2 Self-Determination and “Free, Prior and Informed Consent” (FPIC)

Conflict is also deeply rooted in struggles for indigenous people’s rights to self-determination and the demand for FPIC from indigenous peoples before natural resource exploitation projects can proceed on their lands (Mensah & Okyere, 2014, p.71). There is the emergence of the international indigenous movement and its support of local claims for self-determination in the face of government attempts to appropriate land and resources (Szabłowski, 2007, p.38).

¹⁵ The “resource curse” argues that countries endowed with abundant mineral and natural resources, expected to witness immense economic and social progress, sadly, have only experienced economic troubles, social instability and authoritarian and conflict ridden issues.

¹⁶ See articles 37 and 38 of the 1994 Forestry and Wildlife Law.

¹⁷ The decision is available at http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_276_03_eng.pdf

¹⁸ In 1973, the Endorois community was dispossessed of its ancestral lands—Lake Bogoria, located in the heart of Kenya’s Rift Valley, was to become a wildlife reserve. Severing the Endorois’ ties with their ancestral land not only threatened their socio-economic well-being, but also their spiritual and cultural survival as an indigenous people. The failure to consult the community or involve them or to compensate the community with adequate grazing land following their eviction severely depleted the livestock of the herding community.

1.2.3 Cultural Integrity and the Right to a Healthy Environment

The takeover of lands belonging to indigenous peoples has led to the loss and destruction of their sacred shrines and other cultural values. In the Endorois case, the African Commission also found in the Endorois' favour that there had been a violation of Article 17 (right to culture), of the African Charter on Human and Peoples' Rights (Pritchard et al., 2013, p.9, 11). Also, natural resource exploitation is destructive and causing irreversible damages. The environmental effects of natural resource exploitation such as mining consist of the removal of large tract of forest cover and productive top soil, leaching in water bodies (Mensah & Okyere, 2014, p.67), uncontrolled logging causes climate change, etc..

1.2.4 The Right to Development

African states are bedeviled with corruption, the oppression of minorities and indigenous peoples, and unequal development (Szablowski, 2007, p.37). In the Endorois case, the African Commission found in the Endorois' favour that there had been a violation of Article 22 (right to development) of the African Charter on Human and Peoples' Rights (Pritchard et al., 2013, p.9, 11). The Baka people in Eastern Cameroon have the same plight. The natural resource industry has taken the "devil may care" attitude to the impacts of its operations (Ibid., p.11, 67-68). Factors such as poor communication, broken promises and lack of working agreements between governments/companies and communities intensify conflicts. In the Endorois' case, the community did not want to close the existing wildlife reserve. Instead, it sought a greater stake in its management as well as the opportunity to improve the caretaking of Lake Bogoria's ecosystems in accordance with the community's traditional knowledge. Meeting ecosystem conservation objectives and maintaining an associated tourism industry that is dependent on the reserve is therefore perfectly compatible with this legal victory and securing the land rights of the Endorois (Ibid., p.10).

2. PECULIARITIES OF THE PROBLEMS FACED BY THE BAKA PEOPLES AND MAJOR DIFFICULTIES TO BE OVERCOME IN CENTRAL AFRICA

In the face of natural resource exploitation, the Baka faces particular problems. This part of the contribution looks at these problems and the major difficulties responsible for the natural resource "curse" that need to be overcome.

2.1 Case Study of the Baka People in Eastern Cameroon: A Diagnose of Natural Resource-Related Problems

Natural resource exploitation has been clearly understood as damaging and affecting the livelihoods of catchment

communities. This is quite apparent with the Baka peoples in East Cameroon. This case study has been chosen because it provides a context for understanding the relationship between natural resource exploitation and its impacts on the indigenous communities in Cameroon. It directly responds to the question of how natural resource exploitation affects indigenous communities and how they respond in the complex system of natural resource management has yielded little or nothing. Taking the Baka peoples as a case study, it shows that there is no specific national legislation on the rights of these peoples and that the limited protection granted them under natural resource legislations are not given effect to or are not translated into concrete practice, thereby leaving these people at the mercy of predatory resource exploitation.

2.1.1 Brief Presentation of the Baka Peoples

The Bakas¹⁹ are located in the Equatorial rainforest of South-East Cameroon. Like other catchment communities²⁰, the Baka are natural resource catchment people, and find themselves in precarious situations, facing numerous problems in the face of natural resource exploitation by virtue of their way of life, geographical situation and cultural characteristics. The Baka previously was hunting, farming, fishing and foraging based community, using local and primitive methods for home consumption and subsistence farming; and the people's daily life circulating around the use of land and natural resources (Nodem, Bamenjo, & Schwartz, 2012, p.11)²¹. The land in which they undertake their hunting and agricultural activities remains the most important resource for them as they perceive it as being critical to their cultural, social and economic survival.

2.1.2 Peculiarity of Their Problems

Like other indigenous communities in Central Africa, the Baka in Eastern Cameroon are grappling with problems that are peculiar to them.

2.1.2.1 Absence of Social Amenities: Schools, Hospitals and Development Projects

Basic social amenities and other projects are not accessible to the Baka. Investigation shows that schools and hospitals are not closer to the Baka. There is generally the absence of sustainable development projects. The

¹⁹ The Baka people, known in the Congo as Bayaka (Bebayaka, Bebayaga, Bibaya), are an ethnic group inhabiting the southeastern rain forests of Cameroon, northern Republic of Congo, northern Gabon, and southwestern Central African Republic. They are sometimes called a subgroup of the Twa, but the two peoples are not closely related. Likewise, the name "Baka" is sometimes mistakenly applied to other peoples of the area who, like the Baka and Twa, have been historically called pygmies, a term that is no longer considered respectful. They are mainly concentrated in Cameroon and represents roughly 30,000 individuals. Wikipedia, the free encyclopedia https://en.wikipedia.org/wiki/Main_Page.

²⁰ The Bagyéli, Bakola and Bedzang peoples. The Mbororo peoples also refers to as they are pastoralists, also belong to the indigenous communities.

²¹ See also USAID, op. cit., p.6.

chief of the village and their representative in the Annual Forest Royalty management committee explained that although they had asked for the construction of a village school and a health center, neither of the projects had been funded²². When Capam paid a mandatory visit to the Baka Chief, they were distributed hats, but their request for a school was ignored. In their own words, “*Nous sommes abandonnés à nous-mêmes*” (we are abandoned to ourselves)²³. Paved roads, improved healthcare facilities, schools, electricity and communication services, agriculture and husbandry education and potable water which are lacking need to be brought to these people. Nicolas YANA an indigene of Baka in a video cried out that:

schools are far from us. Our children move for about 2 to 3 km to molundo where schools are located. We need to go to moloundou for treatment, sometime because of the distance; our children and wife die on the way before reaching the hospital.

2.1.2.2 Absence of Development Institutions (Rural Council and Chefferrie)

The Baka people also expressed concerns about the creation of councils and “chefferrie” that could bring development to them. Nicolas— a Baka indigene cried and painted a gloomy picture of their marginalization when he said: “*The Bantu always underestimates us; we do not have chiefdoms; no municipal councils. Since the Bantus have all these they look down at us; we need all these development institutions*”.

2.1.2.3 Dispossession and Deprivation of Land Rights (Ownership Over Land and Natural Resources in the Baka Community) and Loss of Control of Resources

Findings show that there is the continued denial of the rights of the Baka to own, control and enjoy their lands and natural resources. The government does not provide adequate protection to these vulnerable indigenous peoples nor recognize their rights, which are linked to their status as indigenous peoples under international law. The land ownership legislation in force does not take into account the traditions, customs and land tenure systems of indigenous peoples, or their way of life. The Baka – the original natives of the region, since the introduction of reserves, timber and mining companies to the region, have felt their access to their traditional forest shrinking. The Baka’s original ability to freely roam the forest in search of food has evaporated. They have a muddled perception of the mining occurring around them (Steven, 2015, p.22).

The creation of reserves and parks and the allocation of timber and mining concession simply a huge takeover of hunting and agricultural land previously cultivated for domestic purposes, affecting the livelihoods of the Baka community. As per agreements and contractual issues leading to the commencement of natural resource

exploitation by companies, all the lands in the area are under concession and companies possess the legal right to demarcate it for any natural resource exploitation related activity. Based on this concession, companies hold the right to acquire any previously occupied land and to resettle or compensate the affected group under already documented rules and guidelines satisfying to all parties and interest groups but which are never well implemented.

What has generated agitations and conflict is the fact that companies have taken over large portions of land, installed equipment and fenced the explorative areas to prevent any encroachment on the area. By implication, most of the lands belong to these companies. The effect has been the loss of productive agricultural and hunting, fishing and foraging land for indigenous peoples, limited expansion of the community and impoverishment resulting from the loss of their livelihood. For instance, Diamond mining at Mobilong in South-Eastern Cameroon has created a lifestyle change for local peoples as the company has been making great use of the fauna as nutrition for their workers, taking away from the Baka’s food sources (Ibid., p.40).

Today, the Baka have been restricted by zoning and are no longer allowed to wander freely into their former hunting grounds which are now the logging and mining companies’ domains (Ibid., p.36). Under the United Nations Declaration on the Rights of Indigenous Peoples, the current situation the Baka face seems to be contradictory. Under Article 26, indigenous peoples have the right to land, territory and resources which they have traditionally possessed and resided in. Article 29 declares that indigenous peoples have the right to preservation and protection of their environment as it is used for production of resources.

At this point, the Baka have had none of these rights met. They are not invited to meetings to discuss their involvement and rights in regards to the reserves, mining and logging activities occurring on their territory. Failure to implement this declaration which has been approved by the head of state reemphasizes the lack of communication by the government and the indifference and inability to implement laws (Ibid., p.37). Even under the United Nations Convention on Biological Diversity, States are called upon to protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements²⁴.

2.1.2.4 Lack of Employment

There are concerns about the inability of the government in addressing rising youth unemployment in their community. They attribute the rising unemployment issues to the loss of their lands which have been taken. With no

²² Ibid., p.54.

²³ Reunion mboy II.

²⁴ See Article 10 (c) and (d).

alternative livelihood avenues, they are left jobless with nothing to support their families. They have accused the government and companies of contributing to the current social and economic deprivation and doing nothing “meaningful” about it. Displacement and resettlement without alternative jobs greatly compromise their means of livelihood. It is important to enable displaced people obtain job opportunities, stimulation packages and incentives to encourage business toward alternative livelihood schemes and enhancing skills acquisition. Efforts should be made to ascertain the peculiarities and the implementation of such schemes to ensure that they are responsive to local conditions and self-sustainable (Mensah & Okyere, 2014, p.95).

2.1.2.5 Financial Compensation Problems

Conflict also results from the fact that compensation concerning the loss of lands and revenues from resource exploitation are never given the much needed due consideration. Provision for sub national revenue allocation in the mining and forestry sectors raises hope as such royalty payments constitute the best way local communities can benefit from natural resource exploitation. The 1994 law on forestry²⁵, wildlife and fisheries introduced AFR payments to local communities. But studies conclude that the outcome from revenue allocated to local communities is mediocre (Bamenjo, 2011, p.2). For instance, the modalities for the allocation of the share of mining royalty for local population discussed above are bleak.

There is opaque management of revenue: local revenue management committees are ineffective, minorities are sidelined, and there is limited capacity in local communities and lack of control and sanctions (Ibid., p.14). The prospects remain bleak until major governance challenges are overcome. The Baka of Ampaya village, near the Mobilong diamond site, expressed dissatisfaction with their representation in the local AFR management committee. Based upon interviews, each village expressed the desire to have their own revenue management committee with a separate bank account (as opposed to creating one committee to manage royalties for all seven). The Baka indigenous community was particularly insistent that they have their own committee since they have not benefited from AFR payments (Nodem, Bamenjo, & Schwartz, 2012, p.59).

Highlighting discrimination in the benefit sharing arrangements under the existing 1994 Forest Law and associated legislation under which indigenous peoples are overlooked and excluded in favour of dominant Bantu communities, the Special Rapporteur on the right to food has for example noted the following:

As for the distribution of forest royalties, it must be borne in mind that the sedentary Bantu communities do not represent the

²⁵ Law no. 94/01 of 20 January 1994 on forestry, wildlife and fisheries.

interests of all the local communities that may be affected by exploitation activities. The interests of the Pygmies deserve and require specific representation. (United Nations Expert Group, 2006, p.18)

Financial compensation is often less adequate and can hardly sustain a family for a week. The questions which need clarification are: what is the appropriate level of compensation? Is it arrived at through negotiations and agreement by all concerned parties or is it singly determined by one party? The question whether the legal framework in the natural resource sector is appropriate to convert natural resource royalties to benefits for local communities is timely and begs for an answer.

2.1.2.6 Resettlement Problems

There is the need to create resettlement plans and packages which details out the procedures and mechanisms for tackling the complexities. Apparently, the resettled areas do not have the same conditions and facilities as previously inhabited areas. This necessitates the need to provide all relevant social services and facilities to support their wellbeing in the newly inhabited places. Each concerned stakeholder must fulfill all its obligations in the resettlement plans. NGOs should work as advocate and mouthpiece of indigenous peoples in bringing the issue to the forefront of political and social discussions across national, regional and international fora.

In this complication of lack of transparency, the Baka are too frightened to venture into their hunting territory. The foreigners and the government either completely ignore them or arrest them for killing and eating animals they have been eating for centuries (Steven, 2015, p.22). When posed the question of potential problems with effects of mining on the Baka, a high-level administrator in the mining sector responded,

There is no problem. People want to create problems. People want to shout and do not give any help to those pygmies, they just shout. There is no problem. They want development, they want like everyone else. Bring development, doesn't talk, and don't talk too much. There is no problem.²⁶

Perhaps the most important aspect of mitigating conflicts over natural resource exploitation in Central Africa is ensuring that it takes place regardless of whether a country is at peace, preparing for war, or engaged in conflict. The misuse of natural resource revenue means that the indigenous population is not experiencing the full benefits of its country's natural wealth. The Baka People in Eastern Cameroon may not be at conflict or war in the technical sense of those words; it is nonetheless anarchic and riddled with claims that stem from the fact that natural resource revenue has not benefited them.

2.2 What Major Difficulties Need to Be Overcome in Central Africa?

²⁶ Interview, Confidential, Yaoundé, 22/10/09, cited by F. Steven, op. cit., p.22.

2.2.1 Power Inequality, Transparency, Accountability and Governance Challenges

The arena within which indigenous communities on the one hand and governments/companies on the other hand interrelate is not a level playing field. There exists an enormous power inequality as governments and companies wield economic, legal and political powers as compared to indigenous communities who normally are considered peripheral in the process and often have to resort to advocacy groups and civil society. It is necessary to ensure that there is an adequate community representation at all levels of political and administrative decision-making within the natural resource sector (Mensah & Okyere, 2014, p.93).

Governments' control of important resources and the revenues that flow from those resources goes hand-in-hand with endemic corruption, a culture of impunity, weak rule of law, and inequitable distribution of resources (Ganesan & Vines, 2015, p.3). These factors often lead to governments with unaccountable power that routinely commit human rights abuses; prolonging armed conflicts (Ibid.). Researchers sometimes refer to these governments as "Predatory Autocracies," where: state power faces few constraints and the exploitation of resources for the gain of elite interests is institutionalized (Ibid.).

There is the need for transparency in collection, allocation and spending of royalties; the need to respond to the specific needs of indigenous people and reinforcing the capacity of the local management committees (Bamenjo, 2011, p.16). Companies have a role to play. They should voluntarily endeavour to publish their payments to governments²⁷. Royal Dutch/Shell has begun to do this in Nigeria, but many companies resist voluntary disclosure out of fear of antagonizing host governments. Although corporate disclosure without government disclosure may not yield full transparency, it would definitely enhance transparency. At a minimum, disclosure would allow interested parties to determine different sources of revenue in order to begin to determine how it is spent (Ganesan & Vines, 2015, p.13).

2.2.2 Political Will for Responsible Resource Extraction

There is the weakness of political and corporate governance. The major theatres of conflict coincidentally are countries that have poor administrative capacity to regulate the natural resource sector (United Nations Expert Group, 2006, p.12). In practice, responsibilities for social impacts are often regarded rather loosely by both enterprises and governments (Szablowski, 2007, p.51). Closely related to the above is the nature of

²⁷ EITI obliges them to do this. In May 2013, the EITI board adopted a new EITI standard in order to move from the process that only encourages publishing company payments and government receipts from extractive industries to a process that encourages improved governance of the extractive industry sector.

ownership rights in Africa. Owing to the dysfunctional nature of political systems in many African countries, many private actors, including the private citizenry and ethnic groups who inhabit regions with natural resource deposits, often engage in conflict on the strength of their perceived ownership of such resources. This brings to light the centrality of property rights issues in natural resource politics (United Nations Expert Group, 2006, p.12). Although arm conflict may not have occurred in Cameroon, the continuous violation of the rights of indigenous peoples such as the Baka peoples would eventually lead to conflict if the necessary policies on the protection of their rights are not crafted and implemented.

What makes resource exploitation responsible is that it sets out to avoid risk factors. A "do-no-harm code" for resource extraction prioritizes the following: it avoids feeding corruption and uneven development – because that will weaken institutions, deepen inequalities and undermine social well-being; it respects the rights of catchment communities (Network of Global Agenda Councils, 2013, p.51). What drives this process forward is a national consensus, among political, business, indigenous communities and civic society leaders that the country's interests are best served by responsibility, regulation and respect for human rights. It involves widespread consultation as a social process, discussing options and choices, shaping policies and actions in ways that meet the widest range of interests. This helps decrease the likelihood of deepening inequalities, and helps keep expectations realistic. It also involves an emphasis on sharing benefits between social groups; with strategic social investment and job creation (Ibid.).

Admittedly, establishing the policy, legal and institutional framework to effectively manage natural resources and to ensure that, indigenous people rip benefits all take time and political will. Knowing what these are and making the right choices are among the first steps to avoid natural resource driven conflict.

From the above discussions, the following recommendations have been made. They are aimed at strengthening greater community-governments/companies interaction, improving natural resource governance, mitigating conflicts and making policies more responsive to the needs of natural resource catchment communities.

MAIN RECOMMENDATION

Establish a Commission of Experts—"Commission on the Rights of Indigenous Peoples over Natural Resource Exploitation" herein referred to as the Commission to undertake a comprehensive review of conflicts relating to natural resource governance in Africa. Members of the Commission should consist of officials of Africa regional institutions and organizations such as the African Commission on Human Rights, the African Court of

Human Rights, and representatives of indigenous peoples, etc., comprising of persons of high moral standing, impartial and competent with recognized professional reputes.

The mandate of the Commission should be to undertake a field trip to these communities to pursue the dialogue on the theme, identify the claims of the peoples, and to find lasting solutions for the effective implementation of the rights of these populations. This, the Commission will do by visiting and organizing meetings during which the Commission gets abreast with the problems of the peoples. At the end of the exercise, the Commission will draw up a report to be submitted to the African Commission on Human Rights which should be empowered to coordinate the work of the former. Upon reviewing the report, the African Commission on Human Rights will again empower the Commission to concert with the indigenous peoples on the projects they would like to receive in return for the exploitation of natural resources on their ancestral lands. The projects shall be agreed upon in order of importance. The Commission shall present the projects to the African Commission on Human Rights which shall forward same together with the first report to the respective governments who upon receiving and concerting with the African Commission on Human Rights disburse royalties allocated to indigenous peoples to the Commission. The latter will oversee and supervise the execution of these projects.

OTHER RECOMMENDATIONS

- Adopt appropriate policies and legislation for the protection of the indigenous populations' rights, in particular their rights relating to landownership, control of natural resources, and their economic, social and cultural rights;
- Curb rebel financing by timber and mineral exploiting companies, promote economic growth and social infrastructures in natural resource catchment communities;
- The international community should step up its role in demanding that governments manage their resources soundly, and insist on compliance with the performance of corporate social responsibility to be supervised by a joint commission of the African Human Rights Commission and UN so as to ensure that indigenous populations actually enjoys such benefits;
- International financial institutions and the UN Security Council can refuse to enter into programmes with governments until more transparency is evidenced. They can insist that greater transparency in the use of natural resource revenues will be a key component of any future cooperation with the government;
- The use of investigative panels to monitor mismanagement of resources and related revenues;
- Periodic evaluation of the progress made and the challenges which still remain, possibly by representatives of a network of civil society organizations of high moral integrity and proven competence and devotion;
- Guarantee protection to civil society organizations in the exercise of their mandates as defenders of the rights of indigenous peoples in conformity with the United Nations Declaration on Human Rights Defenders and with the Principles prescribed by the African Charter;
- Ratify the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights, and to make the Declaration stipulated in Article 34(6) of the said Protocol;
- A review of the land tenure system with a view to guaranteeing the rights of indigenous groups. In particular, due account should be taken of the requirement that shifts in land use (concessions) must take place with the free, prior and informed consent of communities;
- There is the need to create resettlement plans and packages which details out the procedures and mechanisms for tackling the complexities of resettlement. Obviously, the resettled areas do not have the same conditions and facilities as previously inhabited areas, necessitating the need to provide all relevant facilities to support their wellbeing in the newly inhabited places;
- The communities should appoint their own consultants to deal with issues that affect their interest;
- Alternative Livelihoods, Employment, Skills Development and the need to strengthen Companies-Communities Interaction.

CONCLUSION

When unaccountable, resource-rich governments and companies ignore the rights of catchment communities and prefer to go to war with arm groups who often seek control over the same resources because they believe they have legitimate claims, pervasive and systematic rights abuse of indigenous people is inevitable; fueling continued conflicts (Ganesan & Vines, 2015, p.14). Owing to this, political will to translate policies on the rights of indigenous people into concrete practice is inevitable for the mitigation of natural resource-driven conflicts. This can be supplemented and given more force by the international communities. This can motivate unaccountable and corrupt governments to be more responsible and transparent. Where such pressure is lacking, continued conflict and extreme rights abuses of indigenous people are the result.

There are also the need to reform land tenure and natural resource laws to give more protection, clarify and secure community land and resource rights and the corresponding implementation of such reforms. Reforming land tenure and natural resource laws; and ensuring their effective implementation and enforcement is a continuing process that requires the necessary political will, sustainable commitments by all concerned stakeholders. It should be different from the sad experience of the present unjust status quo which exists only on paper and are not being translated into concrete practice so as to create positive impacts for indigenous peoples.

The Government of Cameroon has commenced reform of Cameroon's land tenure law as well as the legal framework on mining, the environment and forestry. These reform processes present real opportunities to address the discriminatory effects of Cameroon's natural resource laws towards indigenous peoples. Participatory legal reforms of Cameroon's land and natural resource-related laws, where indigenous peoples' voices and interests are represented and fully addressed and implementing processes of new reforms, are essential for the urgent task of eliminating the discrimination faced by indigenous catchment communities²⁸. Also, proper management of revenues from natural resources requires greater transparency and attention for the benefit of catchment communities. We hope this contribution provides some useful information required for the pressing change in the status quo of natural resource governance in Central Africa.

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