Indigenous Peoples Face Difficulties Accessing Justice on Land Matters in Cameroon

Indigenous peoples in Cameroon are not only seeing their lands threatened due to strong pressure from corporate and state investors, but they also face a discriminatory justice system that blames and criminalizes them.

Access to justice—a basic element of the rule of law, enshrined in international texts—has a central place in the modern State. It enables management of disputes between the State and those governed, and between governed people themselves. It rests on the principle that every person has a right to have their case fairly and publicly heard by a competent, independent and impartial court, as established by law. Access to justice is therefore understood and as an individual's recognized right to be able to appeal to judicial authorities and other recourses guaranteed by law. An individual benefits from all the guarantees that protect them (reasonable term, right of recourse, independent and impartial judge, etc.), in the event that they believe themselves to be a victim of rights violations. This principle is equally valid with regard to land management.

Land occupies a central place in Cameroon's "development" strategy. Land is one of the pillars of the successful emergence of development. Hence, there are many investments throughout the country in land, both by public authorities and individuals. **In this context of strong territorial pressure, conflicts over land are inevitable.** Control of, and access to land are the cause of numerous disputes. Resolving these disputes is an important guarantee for social stability and peace. To that effect, the State must guaranteed the possibility for plaintiffs to have access to swift, effective and affordable ways to resolve disputes related to territorial rights—through impartial and competent judicial and administrative bodies (1). But while the law should be based on the principle of equality, **land dispute resolution mechanisms in Cameroon offer fewer guarantees to indigenous peoples—whose territories are most coveted in the race for land.**

How Land Laws in Cameroon Led to Indigenous Peoples' Ignorance about Their Territorial Rights

All litigation is based on the loss or violation of a right. However, as plaintiffs, **indigenous peoples in Cameroon have very precarious land rights.** Their way of life, and especially their link to the land, were not recognized by the major agrarian reform of 1974. These texts made development the main proof of land ownership, **and they based the land tenure system on individual rights through the registry of lands.**

The 1974 Ordinances thus led to **a legal appropriation of the lands where indigenous peoples live**, essentially through the denial of their customary land rights—since the way they use spaces is not accepted as proof of development. This reform led to **a series of evictions of indigenous peoples, which made way for large investments (in protected areas, agribusiness, logging companies, mining, etc.)**. The evicted peoples were forced to settle on the fallow lands of the dominant ethnic groups (Bantus), where they now live in constant insecurity. In order to adapt to these new conditions, they have changed their way of life with great difficulty, and the most daring

have undertaken agricultural activities—with varying success. Being squatters, they constantly have problems with their Bantu neighbors, who do not hesitate to appropriate their fields and other investments that they have made in these lands. In theory, this double injustice should be resolved through the territorial dispute resolution mechanisms.

Discriminatory Resolution Mechanisms for Land Conflicts

The right to a court hearing is understood as a concrete and effective right (2). However, this is not the case for the indigenous peoples of Cameroon. In fact, for these peoples, **the existing mechanisms are discriminatory—both in terms of the proceedings and the composition of the court.** The right of every person to due process includes the right to bring any act that violates their basic rights—recognized and guaranteed by international conventions, laws, regulations and current customs—before the competent national courts (3). This article highlights the need to respect the rights of all peoples with customary rights to land—recognized by international conventions and customs—before the courts. In Cameroon, **the fact that the existing appeal mechanisms do not recognize disputes involving a violation of customary rights constitutes a fundamental obstacle to accessing justice**. Indeed, both the right to access justice and the recognition and protection of customary territorial rights are international obligations of the State, which must take all necessary measures to implement them (4).

Moreover, equitable access to justice requires that certain principles be respected—such as equality before the judge, and non-discrimination in the languages used in proceedings. The courts that are responsible for resolving land conflicts must be impartial to ensure proper administration of justice (5). In Cameroon, the composition of some organizations that are responsible for resolving land disputes raises suspicion about their partiality.

For example, the advisory commission in charge of settling territorial disputes regarding lands in the national domain (unregistered lands) does not offer any guarantee of impartiality with respect to indigenous peoples (6). It is made up of the sub-prefect, representatives of certain local administrations and the chief and two prominent figures from the village or community where the disputed land is located (7). The nature of this composition, therefore, is not reassuring to indigenous claimants. Indeed, **indigenous people’s way of life, and the complexity of their customs, make the requirement for representation problematic.** In most villages where these conflicts take place, those called to be on the commission are not chiefs, much less prominent figures. **In this way, indigenous peoples face discrimination with regards to participation, as it is almost impossible for them to sit on the advisory commission.**

The United Nations Declaration on the Rights of Indigenous Peoples specifies that in any court decision, the customs, traditions, norms and legal systems of the indigenous people concerned will be duly taken into account, as well as international human rights standards (8). However, in light of the composition of these commissions, it is difficult to see how indigenous people’s customs can service as a legal basis in an organization whose members are ignorant of them.

Beyond the procedure,—which is complex—the language used in the conflict resolution process is also critical, given that all claimants have the right to be assisted by an interpreter throughout the whole process (9). **The languages used by the organizations responsible for resolving territorial conflicts are English and French, and in some cases, the dominant language in the locality** where the court is located. So in many cases, indigenous peoples decide not to appeal to these organizations.

A Bad Relationship with the Justice System

Indigenous peoples have a bad relationship with the administration, and in particular with the justice system. **The many violations that they have suffered—at the hands of both administration officials and dominant ethnic groups—have intimidated them from demanding their rights**. Also, for years, some administration officials carried out arbitrary arrests of members of indigenous groups, who were never given the benefit of the doubt against the Bantus, who are considered to be their “masters.” These two factors have created the perception that going to court is a direct ticket to prison.

Over the years, **indigenous peoples have been presumed guilty, because—unable to prove their innocence—they were convicted and sent to prison in most cases in which they were implicated.** This feeling has increased their fear and distrust of administrative and judicial authorities, and above all, law enforcement (military and police). This creates a situation wherein numerous violations of indigenous communities’ territorial rights go unpunished, because they are not denounced.

The Need for Inclusive Territorial Reform

The loss of faith in the justice system is the product of an imbalance of power between the richest and the poorest. **The system tends to privilege investors and other economic operators to the detriment of indigenous communities.** The marginalization of indigenous peoples tends to be a structural problem. This is mainly due to the absence of a legal framework that protects them, ignorance about their territorial rights and their weak representation in decision-making circles. Emphasis should be placed on recognition of their customary land rights, through inclusive reform. **Strong, recognized territorial rights will *ipso facto* imply the modification of territorial dispute resolution mechanisms.** These mechanisms must be local and must take into account the rights of indigenous peoples—both in their composition and in their procedures.

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(1) Voluntary directives for responsible governance on land tenure, fisheries and forests, in the context of national food security.
(2) *Airey v Ireland,* European Court of Human Rights (ECHR), Court (Chamber), 9 October 1979, No. 6289/73.
(3) Article 7 of the African Charter on Human and People’s Rights.
(4) There is an interdependence between the right to land and the exercise of other basic rights, such as the right to the administration of justice, to health, to a healthy environment. Read Lorenzo Cotula et al, *Le droit à l’alimentation et l’accès aux ressources naturelles : utilisation des arguments et des mécanismes des droits de l’homme pour améliorer l’accès aux ressources des populations rurales pauvres*, FAO, 2009.
(5) Article 7 of the African Charter on Human and People’s Rights.
(6) Law No. 19 from 26 November 1983, which amends the provisions of Article 5 of Ordinance No. 74-1 from 6 July 1974, which establishes the territorial regime.
(7) Article 12 of Decree 76-166 from 27 April 1976, which establishes the modalities and management of the national domain.
(8) Article 40.

(9) ECHR, *Luedicke, Belkacem and Koç v Federal Republic of Germany*, No. 6210/73; 6877/75; 7132/75.