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**OPINION ON THE OPERATIONALITY OF THE LEGAL FRAMEWORK FOR THE IMPLEMENTATION OF VOLUNTARY CARBON CREDITS IN CAMEROON**

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## **INTRODUCTION: BACKGROUND TO THIS NOTICE**

Greenhouse gas (GHG) emission reduction or sequestration projects (particularly afforestation/reforestation projects) – implemented in developing countries that have signed the Kyoto Protocol and following the process defined by the Clean Development Mechanism – can generate tradable emission credits that demonstrate real GHG emission reductions. additional and sustainable. Within the framework of the implementation of the relevant GHG reduction instruments, the project aims to carry out in Cameroon the conservation activities of classified or unclassified communal forests, planting of thousands of trees, certification of the project according to the Plan Vivo standard, which is a standard on the voluntary carbon market, to reinvest 60% of carbon revenue in socio-ecological projects within communities.

It is therefore necessary to have answers to the following questions, in particular:

1) Is there already a law on the issuance of voluntary carbon credits? If so, what roadmap should we follow? If not, how can we still set up a carbon credit project in Cameroon?

2) Do communal forests need to be classified, or is it not necessary to issue carbon credits?

3) Are there any applicable taxes (VAT, operating tax, carbon tax, etc.)?

4) Are there any other concerns or incentives to encourage carbon projects?

As we can see, this questionnaire addresses, in a general way, two issues whose solutions will make it possible to propose the desired answers, which revolve on the one hand around the problem of the bases of the legal framework for voluntary carbon credits in Cameroon, and the roadmap indicated for its operationality, on the other hand.

## THE BASIS OF THE LEGAL FRAMEWORK FOR VOLUNTARY CARBON CREDITS IN CAMEROON

* 1. THE ABSENCE OF A SPECIFIC LEGAL FRAMEWORK OR REFERENCE FRAMEWORK

The State of Cameroon has acceded to the United Nations Framework Convention on Climate Change (UNFCCC). It also signed *the Kyoto Protocol*, concluded in 1997 and ratified by 184 countries, which entered into force on 16 February 2005. It sets legally binding targets for reducing greenhouse gas (GHG) emissions for 30 industrialised countries.

For Cameroon, which has regularly participated in international climate negotiations since the Bali COP in 2007, it is established that in the face of climate change, it must get involved alongside other States in reducing greenhouse gas emissions to contain the rate of global warming.

However, although Cameroon is committed in several respects to international environmental and sustainable development law, unlike some countries, does not yet have [[1]](#footnote-1)specific regulations in this area at the domestic level.

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| However**, we cannot speak of a legal vacuum since the general legal framework offers many avenues, even if these may seem insufficient or even incomplete** in the light of the guidelines provided by the relevant International Conventions. |

* 1. POSSIBLE REFERENCE TO THE EXISTING GENERAL LEGAL FRAMEWORK

1. **International standards of reference**

In relation to the general legal framework, it is worth recalling how the legal framework at the level of Cameroon's international commitments from which carbon credit operations are based could contribute to their implementation.

Indeed, it is Cameroon's accession to the United Nations Framework Convention on Climate Change and the Kyoto Protocol that demonstrate the importance that Cameroon attaches to the fight against climate change, which serves as a reference for carbon credit operations. In this respect, it is precisely these instruments, ratified by Cameroon, that provide it with an international legal framework, which is the starting point for the implementation of the CDM. The resulting 'Clean Development Mechanism – CDM' is an instrument for countries or industrial entities in the North to invest in carbon emission reduction or sequestration projects in the Global South and to receive 'carbon credits'.

Although created by the Kyoto Protocol, the Clean Development Mechanism has its basis in the United Nations Framework Convention on Climate Change, a framework treaty, in the sense that it is "a treaty instrument that sets out the principles that should serve as a basis for cooperation between States Parties in a given field, while leaving it to them to define, by separate agreements, providing, where appropriate, for one or more institutions adequate for that purpose'.

It can therefore be stated unequivocally that the legal framework is primarily based on these two main conventions, since they are binding on Cameroon and can be usefully mobilized for CDM-related implementation.

Are these texts sufficient in themselves? CDM projects must comply with general conditions. To this end, for example, the project proponent (public or private company, rural or urban municipality, NGO, etc.) can only submit its project to the CDM if its country has ratified the Kyoto Protocol and established a Designated National CDM Authority (DNA). This national body is the Authority which, after examining the project, issues a "letter of authorization and approval" in which it is stated that the project is proposed voluntarily by the promoter and that it contributes to the sustainable development of the country. **While the first condition appears to be met from the outset, the fact remains that national measures for the implementation of international law have not yet been adopted in connection with the eligibility rules and the procedural rules[[2]](#footnote-2)**.

1. **National Reference Standards**

At this level, there is a juxtaposition of sectoral norms around a norm specifically designed for the national implementation of the above-mentioned international law.

* *With regard to the norm specifically designed for the national implementation of international law*

Ministerial Decision No. 0009/MINEP/CAB of 16 January 2006 on the establishment, organization and functioning of the National Committee for the Implementation of the CDM in Cameroon is the main internal standard for the CDM. This decision establishes the institution, in accordance with the provisions of the Kyoto Protocol and the Marrakesh Accords, to carry out the functions of the designated National Authority, and develops the criteria and procedure for the evaluation and approval of CDM projects by the National CDM Committee. But the mechanism remains incomplete in terms of expectations.

* *With regard to industry standards*

Worth mentioning:

* **ARTICLE 150 of the law on the General Code of Local**  Authorities, which sets out the attributions, powers and competences of municipalities***:***  *(1) The Municipality may, in addition to its own resources, request the assistance of the State, the population, civil society organisations, other Local Authorities and international partners, in accordance with the laws and regulations in force. (2) The use of competitions mentioned in paragraph 1 above is decided by deliberation of the Municipal Council concerned, taken in the light of the draft agreement relating thereto.*

* **Law No. 94/01 of 20 January 1994 on the forest, wildlife and fisheries regime,**  Article *7 of which* recalls the attributes of municipalities over their forests: *"*The State, municipalities, village communities and individuals shall exercise over their forests and aquaculture establishments all rights resulting from ownership, subject to the restrictions provided for by land and state legislation and by this law".

**And with regard to the regime of the COMMUNAL FORESTS**

***"Article 30:***

*(1) For the purposes of this Law, a communal forest shall be considered to be any forest which has been the subject of an act of classification on behalf of the municipality concerned or which has been planted by it.*

* *(2) The act of classification shall lay down the boundaries and management objectives of the said forest, which may be the same as those of a State forest, as well as the exercise of the right of use of the indigenous peoples. It gives the right to the establishment of a land title in the name of the municipality concerned.*
* *(3) Communal forests are the private property of the municipality concerned.*
* *(4) The procedure for classifying communal forests shall be laid down by decree.*

***Article 31:***

*(1) Communal forests shall have a management plan approved by the forestry authority. This development plan shall be drawn up at the discretion of the heads of the municipalities, in accordance with the requirements of Article 30 below.*

*(2) Every activity in a communal forest must, in all cases, comply with its management plan.*

***Article 32:***

*(1) The implementation of the management plan for a communal forest shall be the responsibility of the municipality concerned, under the supervision of the forestry authority, which may, without prejudice to the provisions of the Law on municipal organisation, suspend the execution of acts contrary to the indications of the management plan.*

*(2) In the event of default or negligence on the part of the municipality, the forestry authority may take the place of the municipality in carrying out, at the expense of the municipality, certain operations provided for in the management plan."*

* **Law No. 96/12 of 5 August 1996 on the Framework Law on Environmental Management on the** subject of INCENTIVES

**"*Article 75:***

*Any operation contributing to halting erosion or effectively combating desertification, or any afforestation or reforestation operation, or any operation contributing to the promotion of the rational use of renewable resources, particularly in savannah areas and the northern part of the country, shall receive support from the Fund provided for in this Act.*

***Article 76:***

*(1) Industrial undertakings which import equipment enabling them to eliminate greenhouse gases, in particular carbon dioxide, chlorofluorocarbon, from their manufacturing process or in their products, or to reduce any form of pollution, shall benefit from a reduction in the customs tariff on such equipment in such proportions and for a specified period of time, as necessary, by the Finance Act.*

*(2) Natural or legal persons who undertake actions to promote the environment shall be entitled to a deduction from taxable profits in accordance with the procedures laid down by the Finance Act*."

All these norms form the relevant domestic legal framework if they are well articulated with the international legal framework at the outset. This framework is recognized by the Public Authorities, such as the Minister of Finance, who, chairing on October 25, 2022 in Yaoundé, the capital of Cameroon, a workshop to raise awareness among administrative actors on the carbon market, in order to make it a more important source of financing for the State budget, from the year 2023, stressed that "it is a question of *taking stock of the situation, to question the situation to date*  ***and to propose palliatives or therapies, to stem the shortcomings and other shortcomings observed in the process of joining our country to the carbon market***".

These shortcomings, which are partly legal, are not disingenuous, and were at the heart of the concerns  *of the "Seminar on CDM projects in Cameroon" Carbon monitoring, initial investments and types of contractualization of the purchase/sale of carbon credits* from 28 to 30 October 2009 in Yaoundé. On the need to create a specific legal framework for carbon credits in Cameroon, after recalling that such a framework does not exist in Cameroon, it was unanimously noted that legal constructions would make it possible to overcome it, pending the more elaborate framework projected by the International Conventions.

The legal analysis carried out in the context of Cameroon would thus make it possible to assimilate a carbon credit to an intangible movable asset that can in fact be traded and marketed on CDM or voluntary markets. Hence it follows that this lack of a specific legal framework in Cameroon does not in itself constitute an obstacle to the development of carbon projects. The legal system does not distinguish between trees and the elements such as carbon stored in them. Focusing on forest land, Part I of the 1994 Forestry Act provides that *"the State, municipal councils, village communities and individuals may exercise all property rights over their forest*".

From this point of view, for example, there is no possible distinction between the owner of the carbon and the owner of the resource (the tree that stores the carbon) and that the owner of the land owns the resources, and therefore the owner of the land can therefore be the owner of the carbon.

**However, how do you determine who owns carbon credits?** Any project leader to reduce or sequester GHG emissions can receive "carbon credits" provided they meet certain conditions. A carbon credit works like a certificate attesting that the project has avoided or sequestered one tonne of CO2 (carbon dioxide equivalent (tCO2e). This idea of carbon ownership (who owns the carbon?) is still under discussion at the national level. Cameroon does not yet have legislation on carbon credits, either.

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| **All in all, the development of carbon projects is legally possible in Cameroon subject to the mobilization of contract and property law. But details on the procedure, responsibilities and competencies to do so and to evaluate the various processes are required. In the meantime, a roadmap to achieve this can be suggested based on the lessons learned from the REDD+ strategy.** |

# FOR A ROADMAP BASED ON LESSONS LEARNED FROM THE REDD+ EXPERIENCE IN CAMEROON

2. 1. WHAT ARE THE MAIN LESSONS LEARNED FROM REDD+ IN CAMEROON?

According to the national REDD+ strategy, pending the advent of a specific law on carbon rights, the following options have been retained:

* In the case of a state-owned forest, carbon rights will belong to the State;
* In the case of a community forest, carbon rights will belong to the community;
* In the case of a communal forest, the carbon rights will belong to the Commune;
* In the case of a private forest, the carbon rights will belong to the owner.

On the basis of this analysis, two legal possibilities for the allocation of carbon rights are conceivable:

* Carbon rights and profit rights will, in principle, belong to the person who has the right to occupy a piece of land on which the trees that store the carbon are located.
* In the case of a REDD+ project, carbon rights and profit rights will de facto belong to those who have contributed to the reduce/sequestration activity or those who have given up their livelihoods to enable the activity to take place.  The combination of the two previous legal possibilities indicates that carbon rights and benefits rights would not necessarily be based on permanence, but could also include Aboriginal rights, exploitation rights, rights of use or capital investments. If the carbon credit is categorized as an intangible asset and takes the form of a monetary asset representing the outcome of an action, ownership of the carbon credits would be granted to actors who prove that they are behind the action. This claim would not necessarily be based on land tenure, but could also include Aboriginal rights, exploitation rights, rights of use or capital investments. Taking into account the current legal framework in Cameroon, this means that the state, as the owner or manager of most forest land, is the main beneficiary of any carbon rent obtained under future international REDD+ benefit-sharing mechanisms.

It must therefore be taken into account that promoters of REDD+ projects may be the main beneficiaries of a potential carbon rent. Based on the experiences of current policy and practice of forest royalty redistribution, other stakeholders such as municipal councils and local communities and indigenous peoples would be eligible beneficiaries. Despite the legal complexity and the fact that the Land and Forests Act recognizes the state as the main beneficiary, other stakeholders such as local communities, indigenous peoples and vulnerable groups are expected to benefit from the national REDD+ process.

* 1. HOW TO CAPITALIZE ON KEY LESSONS LEARNED REDD+ IN CAMEROON?

It will suffice to follow the national submission procedure which are based on known principles.

1. **Basic Principles and Precautions for Submission**

* Availability: Availability of the targeted drills
* Responsibility: that of the Actors and partners by verifying their skills, for example.
* Compatibility: with the Law (Transversal approach to accompaniment)
* Tax Authorities, CTDs, Forestry, Environment, Gender, Riparian Rights and Indigenous Peoples, etc.)

1. **The national procedure for the submission and validation of REDD+ projects**

To have their REDD+ projects validated, project leaders must follow the procedure described below.

1- The project leader writes the Project Identification Note (PIN) which includes the context, location, the issue of deforestation and forest degradation, the presentation of the hypotheses of the strategic option, the plan for prior consultation of the populations, the project financing plan and the schedule;

2- The project leader submits his/her Project Idea Note (PIN) and administrative file to the National REDD+ Coordination (REDD+ NC) based at MINEPDED for study and opinion;

3- The project leader carries out the feasibility study according to the jointly validated ToR;

4- The project leader returns the results of the feasibility study to the stakeholders and transmits the final report of the study to the REDD+ NC for archiving;

5- The project leader develops the project document on the basis of the feasibility study report and transmits it to the REDD+ NC for analysis and submission to the Steering Committee;

6- The project leader and the REDD+ NC jointly develop the memorandum of understanding which they transmit to the legal unit of MINEPDED;

7- The project leader sends the memorandum of understanding to the Steering Committee at the same time as the project document (DDP);

8- The project leader implements the project in accordance with the memorandum of understanding and the project document validated by the Steering Committee.  The Steering Committee reserves the right to terminate a project if it has not complied with the various commitments made to the stakeholders.

Of course, we remain available for support.

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| **FREQUENTLY ASKED QUESTIONS**   1. **Is there already a law on the issuance of voluntary carbon credits?**   NO. For the time being, the legal framework consists only of international norms which, although having supra-legal force, remain insufficient.   1. **If so, what roadmap should we follow? If not, how can we still set up a carbon credit project in Cameroon?**   Bidding on a transitional basis for a REDD+ project   1. **Do communal forests need to be classified, or is it not necessary to issue carbon credits?**   No, not necessary according to the law which states: "**Article 30:** (1) For the purposes of this law, a communal forest is considered to be any forest that has been the subject of a classification act on behalf of the municipality concerned **or which has been planted by it**". *Law No. 94/01 of 20 January 1994 on the Forest, Wildlife and Fisheries Regime*   1. **Are there any applicable taxes (VAT, operating tax, carbon tax, etc.)?**   Yes, you should always refer to the Finance Act, which may vary from one year to another.   1. **Are there any other concerns or incentives to encourage carbon projects?**   Yes, in accordance with Law *No. 96/12 of August 5, 1996 on the Framework Law on Environmental Management, the* following "INCENTIVES" are provided for  ***"Article 75:***  *Any operation contributing to halting erosion or effectively combating desertification, or any afforestation or reforestation operation, or any operation contributing to the promotion of the rational use of renewable resources, particularly in savannah areas and the northern part of the country, shall receive support from the Fund provided for in this Act.*  ***Article 76:***  *(1) Industrial undertakings which import equipment enabling them to eliminate greenhouse gases, in particular carbon dioxide, chlorofluorocarbon, from their manufacturing process or in their products, or to reduce any form of pollution, shall benefit from a reduction in the customs tariff on such equipment in such proportions and for a specified period of time, as necessary, by the Finance Act.*  *(2) Natural or legal persons who undertake actions to promote the environment shall be entitled to a deduction from taxable profits in accordance with the procedures laid down by the Finance Act."* |

1. Case of Congo: Order No. 113/MEF of 08 January 2019 determining the principles on the process of reducing greenhouse gas emissions related to deforestation, forest degradation with the inclusion of sustainable forest management, biodiversity conservation and the increase of sustainable carbon stocks. Order No. 113/MEF of 08 January 2019 determining the principles on the process of reducing greenhouse gas emissions related to deforestation, forest degradation with the inclusion of sustainable forest management, biodiversity conservation and the increase of sustainable carbon stocks. [↑](#footnote-ref-1)
2. The implementation of a CDM project must follow specific steps and procedures, designed to ensure that the overall goal of reducing GHG emissions, which cause global warming, is achieved in a real, measurable, verifiable and cost-effective manner. Indeed, a CDM project must go through different stages: first, the development of a Project Specification Document. The Project Document, the template of which is prepared by the Executive Board of the CDM, is prepared by the proponent. This document is structured into chapters and annexes to technically describe the project, present the methodology and results of the calculation of emission reductions, demonstrate additionality and provide a number of information about the project and the project participants. Then the approval of the project by the National Designated Authority (DNA), the validation of the project by a Designated Operational Entity, the registration of the project, among others... [↑](#footnote-ref-2)