



**Green
Development
Advocates**

For a Green Congo Basin

Qualifying illegalities in the Degazetting Process of 60,000 hectares of a forest and the attribution of a Concession for an agro-industrial project in Campo and Nyete of the Ocean Division, South Region – Cameroon

Briefing note

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EXECUTIVE SUMMARY

The declassification and attribution of 60,000 hectares of the FMU 09 025 to the CAMVERT Company has raised some key issues of irregularities from the perspective of form and substance which puts into question both the legality and credibility of the process. For any forest to be degazetted or declassified i.e. taken out of the Permanent forest domain, there are two conditions that must be fulfilled: an order of the Minister in charge of land declaring the land is for public interest and on the other hand, an environmental impact assessment (EIA) whose conclusions are in favour of forest clearance. Though the Prime Ministerial decree of 11 November 2019 has already degazetted the 60,000 hectares of the FMU 09 025, the Declaration of Public Interest is imperceptible and the EIA was made public only after the Degazetting decree of 11 November 2019 was passed. The question therefore is on what basis was this decree passed?

With regard to the attribution of the land to CAMVERT, we noticed that the decision concerning the management of the land was taken based on the following: a letter from the Minister in charge of lands of 09 April 2020 addressed to CAMVERT instructing the Senior Divisional Officer for the Ocean Division to authorize CAMVERT to exploit 2500 hectares of the 60,000 hectares; a tender notice for the auctioning of standing timber on the 2500 hectares' portion of the declassified 60,000 hectares attributing the land to CAMVERT. It can be concluded therefore that the decisions with regard to the management of this process are clearly illegal.

In addition, there are activities ongoing on the ground in total violation to the right to food and health of the local and indigenous populations as well as their opinions and interests. On the other hand, the declassification and attribution of 60,000 hectares of forest puts into question Cameroon's international commitments in the fight against climate change and biodiversity protection.

It is therefore important and urgent that this process for the conversion of land be stopped before it produces irreversible impacts.

INTRODUCTION

On November 11, 2019, the Prime Minister, Joseph DION issued Decree No. 2019/4562 declassifying 60,000 hectares of a forest under the private domain of the State for agricultural production, located in the Ocean Division of the South Region and spanning the, Campo and Nyete Sub-Divisions. The Prime Ministerial Decree only comes to put into effect the procedure for the declassification of FMU 09 025 initiated by Notice N° 0082/AP/MINFOF/DF/SDIAF/SC of 15 May 2019 of the Minister in charge of Forests and Wildlife degazetting 60,000 hectares of this FMU for agricultural purpose.

The declassification process prompted the Cameroon's civil society organizations (CSOs) to undertake a number of actions including a public declaration as well other advocacy actions to denounce the negative impacts of such decision on the local population, biodiversity as well as Cameroon's climate change objectives. These actions unfortunately did not halt the Government's decision to declassify and degazetted the 60,000 hectares of forest land.

A company named CAMVERT introduced an application requesting for the attribution of the 60,000 hectares of the degazetted forest. Against all expectations and without the decision ceding land to this company as required by law, and despite the reservations of civil society organizations and local and indigenous populations on the relevance of such a project, a number of activities (setting up of nurseries, signing of cahiers de charges with stakeholders, etc.) are been carried out in the field by this company. These actions by the company evident the fact that it considers itself as the beneficiary of this land.

The Minister of State Property and Land Tenure on 9th April 2020 signed a letter in which he notifies the Senior Divisional Officer for the Ocean Division of the authorization to CAMVERT to begin the exploitation of 2500 hectares of the 60,000 hectares of land requested. The Minister of Forests and Wildlife equally issued a tender

notice N° 0021 / AAO / MINFOF / SETAT / SG / DF relating to auctioning of standing timber on the initial 2500 hectares' portion of the declassified FMU 09 025 attributed to CAMVERT in the Campo sub – division and the selection of a logging company for the removal of any such timber.

This situation therefore poses a number of legal problems such as: the compliance of actions and procedures for degazetting 60,000 hectares of FMU 09 025 and the attribution of a concession with the regulation in force in Cameroon. Particularly, these procedures pose the problem of considering the rights and views of indigenous and local communities around the area and challenges Cameroon's international commitments in terms of biodiversity protection and the fight against climate change. The objective of this analytical note is to analyse the different legal problems identified in the process for the declassification and attribution of the forest of 60,000 hectares of FMU 09 025.

I- THE LEGALITY OF PROCEDURES FOR DEGAZZETEMENT AND OF CONCESSION

A- The ambiguity of the decree of degazettement

Article 28 (1) of the Forestry, Wildlife and Fisheries Law (of Law n° 94/01 of 20th January 1994), a state forest can only be subjected to a Degazetting procedure according to conditions fixed by decree. The decree declassifying part of FMU 09 025 could be interpreted in different ways,

but it is important to evoke the declassification procedure as specified by Decree N° 95/531 / PM OF 23 AUGUST 1995 fixing the modalities of application of the forest regime.

1- The procedure for degazetting a State forest

According to Article 9 (1) of Decree N° 95/531 / PM OF 23 AUGUST 1995 fixing the modalities of application of the forest regime: "the clearing of a state forest can only be authorized after the said forest has been declassified for public utility, and presentation of an environmental impact study carried out by the applicant, in accordance with the standards set by the administration in charge of the environment".

At the end of this provision and in article 22 (2) of the same decree, two conditions must be met to declassify a state forest: A declaration of

public utility and the presentation of an environmental impact study carried out by the applicant seeking the area as provided for in Article 9 (2). Beyond other strictly procedural conditions, it should be inquired whether these two substantial conditions, known as: The Declaration of public interest and the carrying out of an environmental impact study which are conditions necessary for clearing, were fulfilled during the partial declassification procedure of FMU 09 025.

2- Partial degazettement of FMU 09 025: degazettement or attribution

Article 1 of Decree No. 2019/4562 of 11th November 2019 declassifying of 60,000 hectares of forest area in the private domain of the State: "Is declassifying, from the date of signature of this decree, to be attributed for agricultural production, the forest portion with a surface area of 60,000 hectares, situated in the Campo and

Nyete Sub-Divisions, in the Ocean Division, South Region of Cameroon, and which constitute part of the larger 88,147.84 hectares, incorporated into the private domain of the State as production forest by decree n° 2005/052 / PM of 14 February, 2005".

Reading this provision, it is not clear whether the decree of the Prime Minister declassifies or attributes FMU 09 025. According to Articles 9 (1) and 22 (2) declassification of a forest from the permanent forest domain will entail its withdrawal from the private domain of the State and its allocation to any use other than being used as forest while attribution will comprise a change in land use. The Prime Ministerial Decree No. 2019/4562 is ambiguous on this especially as the declassification of the 60,000 hectares of the FMU 09 025 falls within the private domain of the State. Article of the Decree states “declassified from the date of signature of the present decree, attributed for agricultural production...” This provision reveals confusion between the two processes: declassification implies the change of status with the transfer from the private domain of the State to the national domain, and attribution which is just a change in the land use pattern. In the case of the FMU 09 025, the change in land use is from forestry to agricultural production, with the land remaining in the private domain of the state. Whatever the case may be, the two substantive conditions mentioned above must be met to declassify a forest, i.e. declaration of public interest and an environmental impact assessment study with conclusion that favours for clearing.

With regard to the declaration of public interest, Article 3(2) of Decree No. 87/1872 of December 16, 1987 implementing Law No. 85/9 of July 4, 1985 governing expropriation for public purposes and conditions for compensation, “he feels that the project is for public purpose, [the Minister in charge of Domains], shall sign an order declaring the proposed work as being for public interest...” Apparently no such Order was issued by the Minister in charge of Lands declaring the project of the CAMVERT to be of public interest.

With regards to the environmental impact assessment (EIA), there is noticeable anomaly; it is the conclusions of the impact study that must justify the clearing and therefore the declassification of a forest. The declassification decree is issued on November 11, 2019 while the EIA report is dated January 2020. The EIA report

itself confirms this anomaly by stating in its non-technical summary that “the project site sits on the severely degraded part of FMU 09 025, which has been the subject of declassification in accordance with Decree No. 2019/4562 of 11 November 2019 on the declassification of a 60,000-ha forest plot in the private domain of the State”. Consequently, the failure to comply with these two substantive conditions could call into the legality of Decree No. 2019/4562. Even when the forest is declassified, it still has to be attributed for it to be qualified for exploitation.



Decree degazetting 60 000 ha.

B- When management acts precede the attribution act

With the complexity of the Prime Ministerial Decree No. 2019/4562 of November 11, 2019 degazetting the 60, 000 hectares of forest coupled with the lack of information and clarity on the procedure that attributed the land to CAMVERT,

it becomes imperative to consider the different options under the Cameroonian law for the attribution of land and what that will entail in terms of legal consequences for the CAMVERT project.

1- The procedure for allocating land for agro-industrial purposes

The attribution of land by the State for agro-industrial project differs depending on whether the request takes place on land considered to be within the national domain of the second category or on land considered to be within the private domain of the State.

According to article 17 of Decree n° 76/167 of April 27, 1976 to Establish the Terms and Conditions of Management of the Private Property of the State, the attribution of land that is considered as the private property of the state can be either through an ordinary lease i.e. does not exceed 18 years or an emphyteutic lease i.e. between 18 – 99 years.

It also carries the obligation to develop the attributed land. In addition, article 19 (new) of Decree n° 95/146 of August 04, 1995 amending and supplementing certain provisions of Decree n° 76/167 of April 27, 1976 establishing the terms and conditions of management of the private property of the State, provides that the attribution of more than 50 ha in rural areas to a natural or legal person by the Minister in charge of domains can only be done after a special derogation granted by decree of the President of the Republic depending on the importance of the investment program.

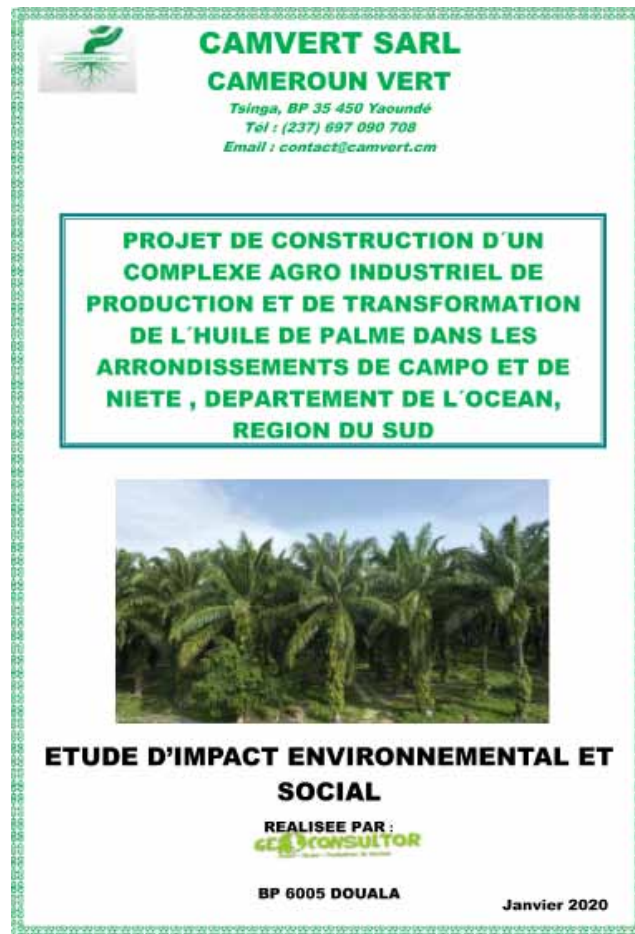
In accordance with article 17 of Ordinance n° 74-1 of 6 July 1974 establishing rules governing land tenure, the lands in the state domain are attributed by way of concession, lease or allocation under conditions determined by Decree No. 76/166 of 27 April, 1976 establishing the terms and conditions of management of national lands. In accordance with its article 1, the

unoccupied and unexploited lands of the national domain are attributed by way of provisional concession. Depending on the situation, this can be transformed into a lease or final concession. Thus, any natural or legal person wishing to develop unoccupied and unexploited land in the national domain must make a request (article 4) to the service of the state of the location of the building (article 6). Concessions of less than 50 ha are attributed by decree of the Minister in charge of domains and those of more than 50 ha, are attributed by Presidential Decree (article 7). Based on these legal precisions, what then is the case with the CAMVERT Project?



Letter from MINDCAF to Camvert.

2- The case of CAMVERT project



Environmental and social impact study of the Camvert project.

Apparently, the partial declassification of 60,000 ha of FMU 09 025 was initiated at the request of the CAMVERT project which according to this company (the company it should be noted has no experience in this sector and less capital) would be the largest agro industrial project in the palm oil sector in Central Africa. Whatever the ambiguity of the Decree mentioned above, which does not specify whether this land remains in the private domain of the State while being now assigned for agricultural activities or is it declassified from the private domain of the State to be transferred to the national domain, it remains true that within the framework of the CAMVERT project, the management acts (letter by the Minister on April 9, 2020 addressed to CAMVERT instructing the Divisional Officer to authorise the company, the tender notice for the auctioning of standing timber) preceded the

attribution acts (provisional concession decree or attribution order) which is in flagrant violation of the relevant provisions on land and forest management in Cameroon. In addition, the EIA report from January 2020 confirms this position by declaring that the said EIA constituted a fundamental step in the procedure for acquiring the provisional concession from the competent administrations.

Based on this analysis, what then could have motivated the Minister in charge of Lands to make available the 2500 ha of land to CAMVERT through a correspondence on April 09, 2020 to the Senior Divisional Officer asking him to notify the company to start exploiting, when the Presidential Decree which is supposed to be granting the provisional concession to the said company has not yet been signed.

The letter of the Minister in charge of Lands to the Divisional Officer clearly mentions the 60,000 hectares to be granted by the State, a question that needs to be considered especially as the letterhead made reference to the fact that it the letter was prepared by the Management Service of the Private Property of the State lodged in the sub-directorate of the Private Property of the State within the Directorate of Lands. According to the Decree No 2012/390 of 18 September organizing the Ministry of Lands, State Property and Survey, the procedure for the attribution of concessions is within the competence of the Service in charge of Concessions (article 46) of the sub-directorate of National lands under the directorate of Land Tenure .

There are two possible interpretations that can be made on this finding. It can be on one hand it could be the organization of administration procedures or CAMVERT's request was for an application for the attribution of land in the private property of the State through lease as this Service has the competence of treating and following up requests from individuals to obtain ownership or possession of lands in the private property of the State (Article 32). In this last hypothesis, the Minister in charge of domains can, according to article 19 (new) of Decree n ° 95/146 of August 04, 1995, grant 60,000 ha in the private domain of the State only after a special derogation granted by decree of the President of the Republic according to the importance of the investment program. The existence of such a decree remains to be demonstrated. This may lead to questioning the legality of the letter sent to the Senior Divisional Officer notifying the company through the Minister on April 09, 2020 making 2500 ha available to CAMVERT.

Besides, even if in the event of an attribution of land in the private domain of the State or a land concession in the national domain, in the absence of the decision attributing the land, the letter by the Minister in charge of Domains on April 9, 2020 addressed to the Senior Divisional officer and notifying the company is apparently illegal.

In addition to these findings, the MINFOF Tender Notice N° 0021 / AAO / MINFOF / SETAT / SG / DF of March 02, 2020 on the auction sale

of standing timber in the 2500 hectare portion of the degazetted 60,000 hectares of FMU 09 025 for the benefit of the CAMVERT project also raise the question as to what moment in the project especially in the agro-industrial sector can be considered as a development project within the meaning of the both the 1994 Forestry Law (law n° 94 / 01) and its 1995 implementing decree (n° 95/531). This disposition should intervene only after the State has attributed the land for the benefit of the applicant especially as this disposition equally sanctions the relevance and feasibility of the project including the legal implications.

REPUBLIQUE DU CAMEROUN
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ET DE LA FAUNE

SECRETARIAT D'ETAT
SECRETARIAT GENERAL

DIRECTION DES FORETS

REPUBLIC OF CAMEROON
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MINISTRY OF FORESTRY
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SECRETARIAT OF STATE
SECRETARIAT GENERAL

DEPARTMENT OF
FORESTRY

AVIS AU PUBLIC
N° 0082 / AP/MIN/DF/DF/SD/AF/SG
15 MAI 2020

Portant déclassement d'une partie de l'UFA 09-025 devant être affectée à la production agricole, située dans la Région du Sud, Département de l'Océan, Arrondissements de Campo et Nye'ete.

Le Ministre des Forêts et de la Faune porte à la connaissance du public que l'Administration chargée des Forêts procédera au déclassement dans l'UFA 09-025, d'une partie de forêt de 60 000 (soixante mille) hectares.

La zone à déclasser de l'UFA 09-025 est délimitée ainsi qu'il suit:

Bloc 1 40 000 ha

Le point A de ce Bloc se trouve sur le cours d'eau Bitandé. Ses coordonnées UTM sont les suivantes:
X (m) = 615004, Y (m) = 267166.

Le périmètre de cette assiette de coupe est déterminé par les points A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V et W dont les coordonnées UTM sur carte INC géo référencés au WGS 84 sont les suivantes:

Name	A	B	C	D	E	F	G	H	I
POINT_X	615004	609 335	600 994	599 173	596 085	597 176	595 461	597 842	601 777
POINT_Y	267166	265 786	264 158	265 638	269 886	270 079	278 129	284 472	285 150

Name	J	K	L	M	N	O	P	Q	R	S
POINT_X	604 250	605 831	605 490	602 420	602 217	604 672	605 378	606 154	607 549	609 38
POINT_Y	287 833	287 851	285 678	282 202	277 082	276 431	280 144	281 974	286 452	288 46

Name	T	U	V	W
POINT_X	610 742	612 595	614 113	621079
POINT_Y	288 440	289 281	284 429	288797

Ses limites sont:

Au Sud:

- Du point A suivre ce cours d'eau Bitandé en aval sur 6 737 m pour atteindre le point B, situé sur la confluence de deux cours d'eau non dénommés.
- Du point B suivre la droite BC = 8 497 m et de gisement 259 degrés pour atteindre le point C.

Public notice from MINFOF concerning the degazetting of part of the FMU 09 025.

¹ The Sub-Directorate of National Domain is responsible for ensuring the regularity of the procedures for awarding concessions and leases initiated by the decentralized services.

² This Directorate is responsible, among other things, for the administration of the national domain (article 37 of Decree No. 2012/390).

II- THE RESPECT OF RIGHTS OF LOCAL AND INDIGENOUS POPULATIONS AROUND FMU 09 025

A combined reading of the provisions of Articles 9 (3), 19 and 20 of Decree No. 95/531 / PM of 23 August 1995 establishing the modalities of application of the forest law, reveals certain anomalies liable to hinder the collective rights of indigenous (Bagyeli) and local (Bantu) populations living near FMU 09 025.

First of all, the provision of Article 9 (3) provide that: «Declassification may not occur when the clearing is likely to: a) challenge the satisfaction of the needs of local populations for forest products; b) compromise the survival of the riparian populations whose livelihood is linked to the forest concerned: c) to compromise ecological balances”.

Evidently the conversion of FMU 09 025 for the establishment of palm oil monoculture plantation will hinder both the needs of the riparian populations in the collection of non-timber forest products (food, medicinal and aesthetic), access to agricultural land, thus compromising their livelihoods and destroying the socio-ecological balance of the area.

Secondly, according to Article 19 (1) of the 1995 Decree of Application of the Forestry Law, “a committee” is created in each division to examine and deliver an opinion on any reservations or claims entered by local people or by any interested person when a forest classification or declassification procedure is under way; assess any property due to be expropriated and to draw up a report to that effect”.

With regard to the declassification of FMU 09 025, it is important to note that despite all actions taken by the different administrations involved in the process, there has been no mention by any

of such administrations on the establishment of such as Committee in the Ocean Division. Failure to establish this Committee constitute yet another violation of the rights of the local population.

Thirdly, Article 20 (1) provides that: «the committee as stated in Article 19 above is composed of the following – the mayors of the concerned local councils or their representatives; local traditional authorities”

The absence of any Act establishing any such Committee violates the rights of the local and indigenous communities to be represented through their local traditional authorities in the declassification process of this forest. Based on the above, it can be concluded that the collective responsibilities of the different ministries (MIN-FOF, MINDCAF and MINEPDED) involved (duty bearer) in the present land conversion process in terms of respect, protection and promotion of the rights of local and indigenous populations seem to have been lacking (violated).



Uses of forests by indigenous forest people.

III- COMPLIANCE WITH INTERNATIONAL COMMITMENTS BY CAMEROON

The State of Cameroon is committed, engaged and taking national measures and enacting regulations compatible with its obligations and duties arising from some international treaties and conventions. To this effect, the State of Cameroon has taken resolutions through the ratification of binding instruments and signing of declarations of (non-binding) principles protecting the rights of local communities and indigenous populations. A state like Cameroon, which has become a Party to international treaties (conventions, agreements and others) has the obligation and the duty to respect, protect and restore the rights of its vulnerable social categories.

In a concrete and non-exhaustive manner, the actions taken in the context of the forest conversion of FMU 09 025, for oil palm monoculture production, are contrary to the international commitments made by Cameroon.

On the one hand, Cameroon's commitments can be challenged considering it has ratified the Paris Agreement on Climate Change in 2015 and

commit in its Nationally Determined Contribution (NDC) to reduce its greenhouse gas emissions by 32% by 2035 as compared to 2010. Clearing 60,000 hectares of forest, clearly contradicts these commitments.

Equally, with regards to biodiversity protection, Cameroon is a Party to the United Nations Convention on Biological Diversity, and thus has obligations regarding the promotion and protection of the rights of local communities and indigenous populations in relation with the management of genetic resources. Similarly, Cameroon recently adhered to the Paris Agreement of October 26, 2007 on the conservation of gorillas and their habitats through the presidential decree N° 2020/397 of July 27, 2020, yet the Campo-Ma'an National Park and its buffer zones very rich in biodiversity are being threatened by the conversion of 60,000 hectares of forests.

Apart from those global mechanisms mentioned above, Cameroon is equally committed to protecting its rural populations through the following international legal instruments:

Binding international instruments	Non-binding international instruments
International Agreement on Civil and Political Rights	Universal Declaration of Human Rights
International Agreement on Economic, Social and Cultural Rights	COMIFAC Guidelines on the Participation of Local Communities and Indigenous Peoples and NGOs in the Conservation and Sustainable Management of Central African Forest Ecosystems
African Charter on Human and Fulani Rights	Declaration of the Heads of State and Government of the African Union on land issues and the challenges in Africa
International Convention on the Elimination of All Acts of Discrimination	United Nations Declaration on the Rights of Indigenous Peoples



Silverback mountain gorilla.

CONCLUSION

There is no doubt based on the analysis carried out in this brief that the process and procedure in the declassification of FMU 09 025 and the attribution of land to CAMVERT is overwhelmed with numerous irregularities. Even worse, is the fact that the procedures negatively impact on the rights and interests of the local and indigenous communities living within the forest area. The conversion of this forest for the development of a palm oil plantation definitely undermines the needs of the local communities with regard to the collection of non-timber forest products (NTFPs), food, medicine and land for agricultural purposes. This will definitely compromise their livelihoods and the socio-ecological balance of the area. These different rights mentioned and infringed or violated in the process of the declassification of the forest and attribution of the land are provided for in the Decree No. 95/531 / PM of 23 August 1995. In addition, the declassification and land attribution processes question a number of Cameroon's international commitments in terms of the fight against climate change and biodiversity protection. Categorically, it is important and urgent that the process to convert this land i.e. the 60,000 hectares of FMU 09 025 be STOPPED now before its impacts become irreversible.



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Green Development Advocates (GDA) is a Cameroonian civil society organization, created in 2009 and legalized on the 30th June 2011. It works spans from development that respects social and environmental requirements. Its mission is to contribute to the sustainable development of African tropical forests while respecting the culture, rights, interests and needs of African peoples. A particular attention is paid to situation of indigenous forest peoples also known as "pygmies".