

REASON WHY

THE 10% OF ANNUAL FOREST ROYALTY
(AFR) EARMARKED FOR COMMUNITIES
SHOULD BE REINTRODUCED IN THE
FINANCE ACT



Foder

Forêts et Développement Rural
Pour un Monde meilleur

Here are the reasons why the 10% of the Annual Forestry Royalty (RFA), earmarked for communities in Cameroon, should be reintroduced in the next Finance Law.

REVIEW OF THE FACTS

For two decades now, local communities as well as the State, and the local and regional authorities have been involved in the policy for the fight against poverty and for development, which is promoted by the President of the Republic, His Excellency Paul Biya. In the forest sector, this was materialized by the formalization of the decentralized management of forests and logging revenues which intends to perpetuate and develop the economic, ecological and social functions of forests with a view to «attaining the general objectives of the forestry, wildlife and fisheries policy, within the framework of an integrated management ensuring sustainable conservation and use of the said resources and of the various ecosystems». The Annual Forestry Royalty (RFA) stands in good position among logging revenues managed in a decentralised way. This is why from 2007 to 2014, the General Tax Code provided in its section 243 provided that: « (...). The proceeds of annual forestry royalties shall be allocated as follows: - State : 50%, Councils : 40%, Village communities : 10% (...)».

But in December 2014, the 2015 Finance Law was adopted, with adverse impacts on communities. In effect, section **243 of Law No. 2014/026** of 23 December 2014 on the Finance Law of the Republic of Cameroon for the 2015 financial year brings into question the purposes of the decentralized management of the RFA while suppressing the 10% of this royalty, earmarked for communities. It introduces a new key for the allocation of annual forestry royalties, which excludes communities. It provides that: «The proceeds of annual forestry royalties shall be allocated as follows:

State : 50 %

Councils : 50 %

The rest shall remain unchanged.»

On 31 December 2014, the Director General of Taxation issues Circular No. 004/MINFI/DGI of 26 January 2015 setting out the modalities for the application of the tax provisions contained in the 2015 Finance Law and allocate the councils' RFA as follows: 22.5% for councils; 22.5% for FEICOM and 5% for the tax administration. This circular definitely denies neighbouring populations the right to annual forestry royalties



At first sight, the share of communities would have been partly transferred to councils. But forestry councils represented in the Cameroon forestry councils association stand against this measure which they consider counterproductive for councils and communities². MPs who are members of the MPs network for the sustainable management of ecosystems have opposed this. It is likely that the issue had not been properly reviewed and discussed during the session when the said Finance Law was adopted. Despite these claims, the 2016 Finance Law is still excluding neighbouring communities from the AFR benefits. Section 243 of this Law provides that:

“...The proceeds of annual forestry royalties shall be allocated as follows:

State : 50 %

Councils : 50 %, including:

Support to recovery: 10 % of the 50 %, which represents 5 %;

Centralisation to FEICOM: 36 % of the 50 %, which represents 18 %

Councils of the logging licence location: the remaining 54 % of the 50 %, which represents 27 %”

On the eve of the opening of the parliamentary session which is to adopt the 2016 Finance Law, this document is issued in order to support the reintroduction of the RFA share meant for communities.

¹ Section 1 of Law No. 94/01 of 20 January 1994 to lay down forestry, wildlife and fisheries regulations

² Joint Statement of REPAR and ACFCAM on the modalities for the allocation of annual forestry royalty following the workshop of the elected representatives and traditional authorities concerning the assessment of the impacts of the 2015 Finance Law, and the implementing provisions thereof, on councils and village forest management communities, held at the Commission Room, on the 3rd floor of the National Assembly building in Yaounde.

EIGHT GOOD REASONS TO REINTRODUCE THE AFR SHARE EARMARKED FOR COMMUNITIES



1. Safeguarding the achievements of forestry decentralisation

Since 1994, Cameroon has adopted a new forestry law which focuses not only on the sustainable management of resources, but also on a greater participation of local communities in forest management. In order to operationalize participative management, provisions on behalf of communities have been introduced, notably regarding community forests, community participation in the classification and monitoring of forests, and benefit sharing³ from logging. This participation of communities in the management of forests aimed also at fighting against poverty and exclusion in rural areas. It is in this line that **section 68 par. 2** of Law No. 94/01 of 20 January 1994 to lay down forestry, wildlife and fisheries regulations provides that «**for the development of neighbouring village communities, of certain communal forests under exploitation, part of the proceeds from the sales of forest products shall be reserved for the said communities under conditions laid down by decree**».

³ This concerns benefits in kind, such as the achievement of social and economic works, as well as financial benefits, including a RFA share earmarked for communities.

The 1994 Forest Law and **Law No. 2000/08 of 30 June 2000 to lay down the Finance Law of the Republic of Cameroon for the financial year 2000/2001** involves the responsibility for RFA decentralized management to Local and Regional Authorities (LRA) and local communities. There are three purposes for RFA decentralized management (political, social and economic, and ecological), which should be recalled here.

On the political plan, it aims at promoting local democracy by devolving more powers to communities in decision-making and allowing more popular participation, and by enabling debates, discussions and dialogues around the management of forestry revenues at the local level.

On the social and economic plan, it aims not only at restoring justice, equity and social peace by compensating the loss of environmental goods and services for communities living on forests, due to the allocation of logging licences; but also it focuses on local development by providing communities with the means necessary for achieving works which contribute to improve their living environment and conditions.

Finally, the decentralization of the RFA management intends to encourage communities to contribute to an efficient conservation and a sustainable management of forest resources. In fact, because communities get some benefits from legal logging, they ensure that forest resources are exploited in a legal and sustainable way for them to continue getting benefits in terms of development and improvement of their welfare. This means that allocating the RFA to communities is important because it enables to learn how to practice democracy, but also how to manage collectively the goods and resources at their disposal.

2. Ensure consistency in the legal framework applicable to the RFA

One should note that the Ministry of Finance maintains that the new share of benefits from annual forestry royalty builds on Decree No. 2011/1731/PM of 18 July mentioned above. But it should also be noted that allocation key set by the 2011 Decree keeps the 10 % of RFA meant for neighbouring communities. In effect, section 8 paragraph 1 of this text provides that:

The proceeds of annual forestry royalties shall be allocated as follows:

State : 50 %

Neighbouring village communities: 10 %

Support to recovery : 10 % of the 40 %, which represents 4 % ;

Centralisation to FEICOM: 45 % of the 40 %, which represents 18 %

Council of the logging licence location: 45 % of the remaining 40 %, which represents 18 %”

⁴Antang Yamo, *Représentation locale compromise dans la gestion de la rente forestière communautaire du sud-est Cameroun*, Document de travail du RGFI N°12

⁵NGOUMOU MBARGA, *Étude empirique de la fiscalité forestière décentralisée au Cameroun : un levier de développement local ?* Hubert Montpellier, décembre 2005. p7

This decree is compliant to Law N° 2009/019 of 15 December 2009 on local fiscal system, which provides in its section 52 that : “A share (40%) of proceeds from annual forestry taxes shall be paid to councils in accordance with the provisions of the General Tax Code.” Therefore, 2015 and 2016 Finance Laws are



inconsistent with Law No. 2009/019 which is not yet abrogated. They are also contrary to section 8 of Decree No. 2011/1731/PM of 18 July 2011 laying down the modalities for the centralization, sharing and transfer of proceeds from community taxes subject to equalization, on the one hand, and also to Joint Order No. 0076MINFI/MINATD/MINFOF of 26 June 2012 on the other hand.

3 . The issue of communities' legal capacity cannot provide grounds for the suppression of the 10 %

The argument that the suppression of the community share is due to the fact that communities do not have legal capacity is not relevant given that these communities do not manage RFA funds intended for neighbouring communities. The community share is managed by the council of the logging license location. Councils have legal capacity and are structured. So, they can manage RFA funds earmarked to communities and be hold accountable for this. According to the 2012 Joint Order, communities make proposals for and monitor the good management of these funds through the riparian committee which is made up of members from different social background and from different communities. The said committee is recognized by an order signed by the Sub-divisional Officer of the locality; that gives the committee the legal capacity to act on behalf of local communities.

4. The suppression of the 10 % of RFA in the Finance Law gives rise, at the local level, to conflicting interpretations of the right of neighbouring communities to a share of RFA

Since the 10 % of RFA was suppressed from the 2015 and 2016 Finance Law, there is general confusion at councils on how to apply the 2012 joint order. Some mayors think that neighbouring communities have no more share in the RFA while others do not know which of the modalities to apply to the mana-

gement of the increased share of RFA meant for councils. This situation causes tension between local elected representatives and communities. The Finance Law should therefore clarify the rights of neighbouring communities to the 10 % of RFA.

5 . Perpetuating the valuable contributions of those 10% of the RFA to the improvement of the living conditions of neighbouring communities

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Perpetuating the valuable contributions of those 10% of the RFA to the improvement of the living conditions of neighbouring communities

Studies carried out by the civil society and research institutions show that the RFA funds meant for communities are notably used for education, health, access to water and electricity, and the improvement of the habitat

a. Improvement of education

The contribution of the RFA share intended for communities to education is materialized by the construction of classrooms and/or rehabilitation works of damaged buildings, the purchase of desks, the recruitment and payment of temporary teachers.



Thus, in Lomié Sub-division, Haut-Nyong Division, East Region, a public primary school closed for two years due to the lack of teachers and resources that would have enabled parents to take care of temporary teachers was reopened in September 2015 thanks to the 10% of the RFA of the 2014 financial year.

It must therefore be feared that this school and perhaps many others that are operational thanks to the RFA share earmarked for communities may be closed if the suspension of this share is maintained.

b. Access to potable water

If access to potable water is a main concern in urban areas throughout the national territory, it is even more acute in rural areas. In communities benefiting from the RFA, their share has often enabled them to construct equipped wells and boreholes and to maintain them.



So, if the forest communities characterized by the pollution of the rivers they depend on for drinking and cooking water were definitely deprived from the possibility to get the funds enabling them to construct equipped wells and boreholes, they will surely experience an upsurge of waterborne diseases.

c. Access to electricity

In some localities like the communities of the Ngwei Sub-division, Sanaga Mari time Division, Littoral Region, projects of rural electrification were undertaken thanks to the RFA share earmarked for communities. These projects may be interrupted if this RFA share is suspended. Yet, access to electricity contributes not only to the improvement of the living conditions, but also to the quality of school results, and it is also a driving force for development. Therefore, communities must be given the means to get resources to reach these goals, and the 10% of the RFA are one of those means.



d. Construction of community homes and equipment of health centres



In almost all communities in forest areas, the RFA share meant for communities helped to construct community homes commonly called “guard houses” or “palaver huts”. Also, these funds are often used to provide health centres with first-aid products, as in the case of Eschiembor village in Lomié Sub-Division.

6. Eviter une augmentation de l'exploitation forestière illégale



Sharing revenues from the RFA with communities is not only a compensation for the loss of the services and goods they got from the logged forests, but also an incentive for these communities to fight against illegal forest activities. The lack of benefits from logging may discourage them from denouncing infringements to forest legislation committed by other stakeholders and make them become accomplices of illegal logging.

In the present context characterized by the implementation of the Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade of timber and derived products (VPA FLEGT), which intends to fight against illegal logging and related trade, one may fear that the efforts of the Government of Cameroon in this domain would be challenged. This would seriously tarnish the image of Cameroon timber and would also cause huge economic and ecological losses for the State and the whole nation. In addition, the upsurge of illegal logging would adversely impact the commitments taken by Cameroon to fight against climate change, including reducing greenhouse gas emissions from forest deforestation and degradation.

7 Avoiding the increase of the RFA misappropriation at local level and the impoverishment of communities living on forests

Revenues from logging are the main if not the sole source of funds available for local populations depending on forests to achieve local redevelopment. It is likely that the suppression of the 10% of the RFA share intended for communities will maintain these communities in a state of poverty and vulnerability that is contrary to the national policy for the fight against poverty and for development.

It may be inferred that funds managed by the Council are a priori destined to local development. But on the field, the reality is something else. Actually, between the priorities for development concerning the whole territory of the council, and governance issues, it is generally the RFA share designed for communities that is used for the achievement of development projects in the neighbouring communities concerned. The RFA being the main source of revenue of forest councils, a

significant percentage, or even the totality of these funds is used for operating expenses. The poor transparency and accountability in the management of local affairs result in the fact that communities finally have the right or prerogatives for monitoring only on the share that is allocated to them⁶.

Also, many communities who benefited from the 10 % of RFAs during the years preceding the suppression have no information on the use of those funds, yet received by councils. Many of these councils are using the suppression of the RFA in the 2015 and 2016 Finance Law as an excuse to retain the funds or deny to communities any right to the funds which yet are not referred to in those laws which are not retroactive.

8. Avoiding to question the specifications of forestry companies

In almost all the special provisions contained in the books of specifications of forest companies, it is provided that “the concession holder is deemed to financially participate to the achievement of socio-economic infrastructure through the RFA percentage annually set by the Finance Law and paid for the benefit of communities”. Therefore, one may wonder what would be the legality of timber produced by companies which regularly paid the RFA but of which the 10 % are no more paid to communities. Should all the specifications including this provision be revised in order to be adapted to the new context?

If the specifications of forestry companies are not revised, these companies would be exposed to a denial of the certificates of legality under the VPA FLEGT, and then, to difficulties to export timber to European Union markets⁷.



⁶ See Joint Order 076 MINADT/MINFI/MINFOF of 26 June 2012 laying down procedures for planning, use and monitoring of the management of revenues from the exploitation of forest and wildlife resources for municipalities and neighbouring village communities.

⁷ Respecting the provisions of the specifications is one of the means of verification of VPA FLEGT for the issuing of certificates of legality.

CONCLUSION

The fact of suppressing the RFA revenues share meant for communities, in the 2015 Finance Law and Circular No. 00000683/C/MINFI of 31 December 2014 setting out the instructions relating to the enforcement of finance laws and the 2015 budget, whether temporary or permanent, is a form of denial of the right to a fair and equitable compensation, and a questioning of the principle of participation and equity in the management of environment, especially forests. This jeopardizes the efforts to fight poverty and develop rural areas in a context marked by the quest for emergence. Maintaining the suppression of the 10% of the RFA, earmarked for communities, might seriously impede the efforts of Cameroon to fight against illegal logging and to improve the integrity of the forest sector.

It is therefore necessary that the RFA share designed for communities (10%) be reintroduced, so as to give these communities the opportunity to achieve local development and be encouraged to contribute in the fight against illegal logging. The civil society, the Members of Parliament and the relevant administrations should therefore work not only for this reintroduction, but also for the obstacles to the full and effective participation of communities to be removed, and for a monitoring system to be established, which will facilitate the accountability of local representatives to communities.

A concrete and realistic solution is possible:

To address all the challenges related to the suppression of the 10 % of the RFA meant for communities, the most realistic solution is to apply Decree No. 2011/1731/PM of 18 July 2011 to set up the modalities for the centralization, sharing and transfer of proceeds from community taxes subject to equalization, while specifying that the funds earmarked to communities are managed by councils. These funds cannot be confused with the share of RFA intended to councils, and then included while applying the percentage allocated to support recovery.

Building on section 239 of the General Tax Code, section 243 of the Finance Law could be redrafted as follows:

« ...The proceeds of annual forestry royalties shall be allocated as follows::

- **State : 50 %**
- **Councils : 40 %, including:**
- **Support to recovery : 10 % of the 40 % ,which represents 4 % ;**
 - **Centralisation to FEICOM: 45 % of the 40 %, which represents 18 %**
 - **Councils of the logging licence location: 45 % of the 40 %, which represents 18 %**
 - **Neighbouring communities: 10 % managed by the council of the location ».**

ANNUAL FOREST ROYALTY TO RESTORE THE 10 % OF COMMUNITIES

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