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**Land Ownership in Cameroon: An Overview**

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## Abstract

**Purpose:** The purpose of this study is to thoroughly examine land ownership in Cameroon, focusing on the legal classification of land, the legal and institutional framework governing land registration, and the procedures for obtaining a land certificate.

**Methodology:** This study adopts a qualitative research approach, emphasizing content analysis of relevant data. It involves a detailed examination of legal documents, policies, and case studies related to land ownership in Cameroon.

**Findings:** The findings reveal a diverse array of land forms in Cameroon, highlighting a comprehensive legal framework for land acquisition. However, discrepancies exist in the implementation of these laws, leading to conflicts and uncertainties in land ownership. The study identifies a significant gap in land title formalization, with many landowners relying on informal agreements or deeds of conveyance as proof of ownership. Furthermore, the findings suggest the need for further research into the intersection of ethnicity, land ownership, and the role of private corporations in land disputes.

**Unique Contribution to Theory, Practice, and Policy:** This study contributes to the theoretical understanding of land ownership in a post-colonial African context, specifically examining the complexities in Cameroon. It offers practical insights for policymakers, legal practitioners, and landowners on the challenges and potential solutions in the land registration process. The study strongly recommends a revision of the existing land laws in Cameroon to align with contemporary realities and address the identified challenges.

**Keywords:** *Land, Land Ownership, Land Rights, Land Registration*

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## INTRODUCTION

From long time past, land has always been a source of economic and political power; it has equally been at the center of many ethnic conflicts as well as the one of the reasons behind tensions between the natives and their colonial masters during the era of colonization<sup>1</sup>. The prime advantage of land registration over unregistered landed property is security of title to wit; land registration clearly accords full and final title to the land owner<sup>2</sup>. This means that, a land certificate is a full guarantee to title over land.

The territory Cameroon did not exist till the arrival of the Portuguese in the early 19<sup>th</sup> Century, who named the country *rio dos cameroes* (River of Prawns) from which the country had its name. However, the territory only became a colony upon the signatory of the Germano-Duala Treaty in 1884 and since then, the territory has had a triple colonial experience<sup>3</sup>. In this light, the historical evolution of land<sup>4</sup> tenure in Cameroon is not very different from the changes in colonial masters and policies. The historical origin and evolution of land tenure in Cameroon can be sub divided into three parts to wit; land tenure prior to colonization, during (German, British and French rule) and post-colonial era.

Generally, before colonialism touched Africa, the notion of individual land tenure or land registration was alien. Africans held land to be scared and did not attach much value to land. They regarded land air and water which they could use freely without restriction or alienation, land belonged to community, a family, a village and never to an individual; per the purports of Viscount Haldane's dictum in the case of *Amodu Tijani v. Secretary of Southern Nigeria*<sup>5</sup>. These lands were held on behalf of the people by the chief or family head who for the lack of a better word acted as some form of a trustee over the lands<sup>6</sup>. The chief or family head was a mere custodian of the land and not owner as the case *Omagbemi v. Numa*<sup>7</sup> suggests. In essence, though some form of customary land tenure exist prior to colonization, the notion of individual land tenure is a complete novelty to the traditional African context. Notwithstanding, despite the fact that there was no defined form of land tenure in Cameroon before colonization, obtaining land through wars and by first settlement were the earliest forms of obtaining land. The evolution of land tenure in Cameroon during colonial era revolved around 3 countries; Germany, Britain and France.

To begin, the Germans were the first to colonize the territory<sup>8</sup>. After colonization they were in no hurry to establish an immediate system of land tenure, rather they focused on first acquiring

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<sup>1</sup>Sone Patience Munge, *The Concept of Equality and Access To Land: The Case of the Anglophone Regions of Cameroon*, 2011 available online at <https://www.codesria-library.com> accessed on 23/02/2022.

<sup>2</sup> According to section 1(2) of Decree No 76-165 of 27 April 1976, land certificate shall be unassailable, inviolable, and final. The same shall apply to documents certifying other real property rights.

<sup>3</sup> The territory was first colonized by the Germans in 1884 and after the First and Second World Wars, it was partitioned and placed under British and French mandate and later Trusteeship respectively.

<sup>4</sup>C.F. Fishy, *Power and Privilege in the Administration of Law: Land Law Reforms and Social Differentiation in Cameroon*, African Studies Centre(1992) p.1

<sup>5</sup> (1921) JELR 59845 (PC)

<sup>6</sup> Irene Sama-Lang, *Lecture Notes on Land Law, Faculty of Laws and Political Science* (Buea: University of Buea, 2019) Handout 1, unpublished

<sup>7</sup> (1923) NLR, p.17-44

<sup>8</sup> The Germans were ushered into the administration of Cameroon on July 12 1884 when the Germano-Duala Treaty was signed between the Douala Chiefs represented by King Bell and Akwa and German Traders

as much land as they could get from the natives for little or nothing as price.<sup>9</sup> Once they had acquired enough land for settlement and trade, they needed even more for plantation agriculture<sup>10</sup>; at that juncture, they saw a need to enact a comprehensive land law in Cameroon. Land tenure under German reign was governed by the Kronland Act of 1896. The primary aim of this act was to transfer land controlled by the indigenes through their chiefs to the German government, to wit, German rule<sup>11</sup>. This was a mild way of expropriating native land with little resistance. In a bid to further legitimize the expropriation of native land, the Germans came up with the concept of “herrenloss lands” stated in Article 1 of the Kronland Act.

This concept was to the effect that, all lands apart of those occupied by the chiefs or the communities or those which formed property were declared *terra nullus or herrenloss* (Land without masters) and as such lands belonged to the crown (German Government). The German land tenure in Cameroon was guided by 2 main aims. First to dispose the indigenes from the native land and expropriate same for plantation agriculture and to resettle them in reserves called *reservats* to obtain get cheap labor for their plantations.

Further to the already existing land regulations under German rule, they introduced the first form of land registration in Cameroon, all land were registered in the ‘Grundbuch’ which was some form of a land register. Despite the developments made, the German colonial policy generated numerous land conflicts between themselves and the indigenes. A clear example is the Bakweri people who have succeeded in a claim against the state for the restoration of the native land expropriated by the Germans during colonial rule for plantation agriculture. The government has responded to this claim by granting re-allocating land to this communities in the form of new lay outs.

In another development, the evolution of land tenure in Cameroon continued under British reign<sup>12</sup>. The British administered her part of Cameroon as an integral part of Nigeria, thus the system of land tenure in British Southern Cameroon followed that which was applied in Nigeria to wit; the Land and Native Right Ordinance No. 1, 1916 and Ordinance No.1 of 1927. Even though that, the Trusteeship Agreement required that all laws on the transfer of land and natural resources take into consideration native laws and customs and should only be transferred with the consent of the consent of competent authority<sup>13</sup>, The British used indirect rule to control ownership of land without any resistance by ruling the indigenes through their chiefs.

The British declared that all lands as native lands and placed them under the control of the Governor who administered the land for the common interest of the natives, who in real fact were reduced to mere users of the land. The Governor was to be notified for all transactions in land either between indigenes or between them and foreigners. Upon notification, the Governor issued a certificate of occupancy which was treated as some form of title to land. Thus no

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represented by Carl Woerman and Johanness Voss under the supervision of Gustav Nachtighal and Emile Schultze the German Consul from Gabon.

<sup>9</sup> Irene Sama-Lang *supra*

<sup>10</sup> E. Ardener. et al, *Plantation Agriculture and Village in the Cameroons: Some Economic and Social Studies* (New York: Oxford University Press, 1960) p. 317

<sup>11</sup> The Buea Archives, File No 145/38, Qf/a1938/2b: Acquisition of Land by Native Administrator 1938.

<sup>12</sup> The British took effective control over Cameroon in after the Versailles Treaty of 1919 as a mandate territory per Article 22 of the League of Nations and later as a Trust territory under the United Nations Organization.

<sup>13</sup>See Article 8 of the Trusteeship Agreement 1947



occupation and use of land was valid without the consent of the Governor<sup>14</sup>. In 1922 the British enacted the land registration ordinance to consolidate and amend laws related to the land registration. In all, though the British made a significant contribution in the development and evolution of land tenure in Cameroon by introducing a system of individual ownership of land and a land registration system, their policies greatly altered customary land law and hindered the indigenes from owning and having access to their land freely<sup>15</sup>.

Cameroon's land policy under French Cameroon (1916-1960)<sup>16</sup> The French unlike the British applied a system of direct rule which gave them the leeway to directly export and apply their legislation in Cameroon.<sup>17</sup> They generally differentiated between laws that applied to the indigenes known as '*droit indigenat*' and those that applied to the educated and assimilated Cameroonians referred to as '*droit assimile*'. However, when it came to matters of land, such distinction did not exist with the French applying a uniform system of land tenure.

The French adopted a system of granting land by concession where upon an application for grant of such land, the government will grant the land to an individual for a particular purpose stated in the '*cahier de charge*' which literally translates to a record book. The individual was obliged to adhere to the purpose of the land as stated in the '*cahier de charges*' and once the purpose was fulfilled, the grantee could apply for the conversion of the land to freehold. In 1932, the French enacted two decrees, the first being for the collective recording of land rights by corporate bodies with no document of title and the second pertaining to the registration of individual land rights. These rights were registered in '*livre foncier*' issued 3 months after a meeting with the '*prefer*' (District Officer). Though the '*livre foncier*' gave some form of insurance and security of title over land, holders of such land rights could only sell with the consent of the administration.<sup>18</sup> Further, in 1938, the French administration divided all lands into 3 holdings: native lands, lands under German titles and '*terre vaccante*' (vacant land). All lands which were not occupied under German title were considered as vacant lands. The French aptly described these lands in the following words; '*terre vaccante et sans maître appartiennent au territoire*' which translates to, vacant lands without masters/owners belong the territory. The territory referred to in this statement did not refer to the indigenous territory but rather, the greater French territory since the French considered their overseas territories as an integral part of France usually referred to as '*franced'utre mere*'. The concept of '*terre vaccante*' was more or less a reincarnation of the German concept of '*herrenloss land*'. This policy was not greeted with much euphoria by the indigenes who considered it unjust and unacceptable,<sup>19</sup> and as independence drew nearer, land became highly political<sup>20</sup>. In an attempt to swing support in their favor, the French enacted the decree of 1959 to re-establish customary land tenure.<sup>21</sup> Article 3 of that decree placed all lands except private property under customary land tenure.

<sup>14</sup> See Section 4 of the Lands and Native Right Ordinance, 1948 of the Laws of the Federation of Nigeria.

<sup>15</sup> C. K Meek, *Land Tenure and Land Administration in Nigeria and the Cameroon*, Her Majesty's Stationary Office (1957), p.355.

<sup>16</sup> The French administered their own portion of Cameroon as a separate entity, first as a mandate territory under the League of Nations and later as a Trust territory under the United Nations.

<sup>17</sup> Irene Sama-Lang supra, Handout 1.

<sup>18</sup> Ibid

<sup>19</sup> Tijouen, A.D, *Droits Domaniaux et Techniques Foncières en Droits Camerounias*, Edition Economica (1981) p.93.

<sup>20</sup> Fishy supra, p.36

<sup>21</sup> Law No. 59-47 of 17<sup>th</sup> June, 1959

During the post-colonial era, land tenure in Cameroon still followed the blueprints of some aspects of colonial land registration, The British system of land tenure was applied in West Cameroon as it then was while the French system continued to apply in East Cameroon. However, with the emergence of a new state,<sup>22</sup> there was an urgent need to control land that had been placed under customary care by the colonialist before their departure. In a bid for the government to consolidate all lands, they introduced to the concept '*la patrimoine collective nationale*' or better still national law under the 1963 decree.<sup>23</sup> This was more or less a continuous reflection of the concept of '*terre vaccante*' under the French reign and '*herrenloss land*' under German rule. The 1963 law identified 4 major types of land to wit; national land,<sup>24</sup> state land, land under customary tenancy and land covered by land certificate. In addition, another decree was passed in 1966<sup>25</sup> in East Cameroon stressing the need for '*la mise en valeur des terres*' (evaluation of land) before anyone could obtain a land certificate. Notwithstanding, land tenure in both parts of the territory were eventually harmonized in 1974 with the enactment of 1974 Land Ordinance.<sup>26</sup> Other subsequent ordinances, decrees, orders and circulars were passed between 1972 and 2011 to form a compendium of laws governing land tenure, registration, state land, national land, state property *et cetera*.

### **Statement of the Problem**

Land today is key asset in every strata of our society. However, despite the fact that many people own land today, very few have title to those lands or have embarked on any form of registration. A vast majority of those who own or purchase land usually brandish sale/transfer agreements or Deeds of Conveyance as proof of title. But even these are not conclusive titles of ownership because while they might suffice to justify an interest in land, they are inadequate to justify absolute ownership. The lack of a conclusive and final title to land is usually at the center of many land disputes among Cameroonians. Hence the importance of land registration cannot be overemphasized nor can the problems caused by its absence underestimated.

Further, despite the presence of the 1974 ordinance on land tenure in Cameroon and more specifically the 1976 decree<sup>27</sup> establishing the condition for obtaining land certificates, the procedure for land registration remains complex and unnecessarily lengthy in some cases and not many are familiar with the procedure. The complex nature of the procedure coupled with lack of mastery probably accounts for the disproportionate rate of lack registration to land acquisition in the country which is in itself problematic.

### **Definition of Key Terms**

The key terms used in this research shall include, Land, Land Registration, Challenges and Prospects. These terms will be defined seriatim.

### **Land**

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<sup>22</sup> The Federal Republic of Cameroon upon reunification in 1961 and later the United Republic of Cameroon and The Republic of Cameroon after referendum in 1972 and the amended of the 1996 constitution respectively.

<sup>23</sup> Law No. 63-2 of 9<sup>th</sup> January 1963.

<sup>24</sup> By virtue of Article 26 referred to all lands except those held under customary law or land certificates

<sup>25</sup> Decree No. 66-307 of September 1966.

<sup>26</sup> Ordinance No. 74-1 of 6 July 1974, to establish rules governing land tenure in Cameroon.

<sup>27</sup> Decree No. 76-165 of 27 April 1976 to establish conditions for obtaining land certificates.

Land in a broad sense can be defined as the soil, the subsoil and things permanently and temporarily attached to it<sup>28</sup>. In a narrow sense land refers to tangible and intangible property which may be conveyed by deed.<sup>29</sup> However, though the definition of land extends to the subsoil and to the space above it, certain precious minerals like gold, diamond and bauxite below a certain depth are belong to the state. Similarly, the land owner is entitled to use land above their land which is convenient for the enjoyment of the land.

Further, land under customary law is seem like just another form of nature like water and air to which individual land ownership is alien. It is for this reason that land is considered to form part of the cultural heritage of mankind.<sup>30</sup> The customary nature of land tenure was reflected in the case *Lucas Awah v. Ndenge*<sup>31</sup> before the Mankon Customary Court.

### Forms of Land in Cameroon

This section shall examine the various forms of land in Cameroon.

#### National Lands

In Cameroon, the State is the custodian of national land. Accordingly, it may dispose of it as and when necessary according to prescribed procedures. This constitutes dominant power because it acts as judge and defendant<sup>32</sup>. In other words, it does not simply administer the land on behalf of the Nation; it can also dispose of national land ‘as and when necessary’ on its own account. To understand this privileged position, it is necessary to turn to the theory of the patrimonial State<sup>33</sup>.<sup>4</sup> The main responsibility assigned to newly independent States by liberal or socialist ideologies is the promotion of development<sup>34</sup> given the absence of a genuine endogenous entrepreneur likely to promote national development. The emerging State was expected by the founders to be responsible for everything. In the specific case of Cameroon, the priority of the post-colonial State was the establishment of agro-industrial complexes, which turned out to be to the detriment of peasant production<sup>35</sup>. Political leaders put forward the myth of development and Nation-building as a cause or reason to legitimize their power<sup>36</sup>. Certainly, it is this conception of the State that led to the development of the land law in force in Cameroon. The patrimonialism of the State of Cameroon in matters of land is based on ‘legalized’ practices and administrative behaviors which consist of ignoring the distinction between public and national lands, although the legal provisions themselves make a distinction between the two main types of ownership

The advent of Structural Adjustment, consisting in the implementation of State reforms based on the liberal theories of the Bretton Woods institutions, did not automatically lead to the

<sup>28</sup>J.A Mackenzie & M. Philips, *Land Law*, Blackstone Press Limited (2000)

<sup>29</sup>Ibid

<sup>30</sup>Sone Patience supra p. 33

<sup>31</sup>Suit No. 70/64 unreported

<sup>32</sup>Tchapmegni, R. 2008. *Le Contentieux de la Propriété Foncière au Cameroun*. Doctoral Dissertation, Université de Nante, France. 532 p.

<sup>33</sup>Medard, J-F. 1990. “L’Etat patrimonialisé.” *Politique Africaine* 39 (3): 25–36.

<sup>34</sup>Bratton, M., and N. Van de Walle. 1994. “Neopatrimonial Regimes and Political Transitions in Africa.” *World Politics* 46 (4): 453–489.

<sup>35</sup>Konings, P. 1986. “L’Etat, l’agro-industrie et la Paysannerie au Cameroun.” *Politique Africaine* 22 (2): 120–137

<sup>36</sup>Pigeaud, F. 2011. *Au Cameroun de Paul Biya*. Karthala, France: Paris. 266 p.

promised and expected economic development<sup>37</sup>. Paradoxically, the State continues to consider national lands as a means to attract foreign investments. Although the management of national land by the State is legal, it induces assumptions like the ones examined in this paper. While national land refers to land that is occupied, it has no real owner in severalty because, as pointed out earlier, the Nation is a political or ideological construction shared by the population in a given territory. The State, which exercises supervisory authority over national land, has enormous power in terms of control, which may lead to abuse. This situation poses a threat to the rights of indigenous and local communities, which also make up the Nation. The State, which is the legal custodian of national land, should manage this asset as a prudent administrator (*bonus pater familias*), that is, judiciously and diligently as if it were its own. Its management, which is rather contrary to *bonus pater familias*, is decried by both local and indigenous communities<sup>38</sup>. The lack of congruence between government management policies and realities on the ground has led to the broader tendency to conflict public and national lands. The patrimonial management of land by the State of Cameroon should henceforth address a dual constraint. On the one hand, citizens and local communities aspire to have access to land ownership<sup>39</sup> and, on the other, external stakeholders comprising donors, investors and international NGOs exert pressure on the State to liberalize and privatize land<sup>40</sup>. Thus, public authorities play an ambivalent role in Cameroon. On the one hand, they seek to mobilize the population, which constitutes their electoral base, by meeting their demands in a vote catching logic and, on the other hand, they want to maintain good relationships of trust with external donors in order to obtain financial assistance needed for the implementation of planned investments and, thus, probably reduce domestic social unrest<sup>42</sup>.

The capacity of the Cameroonian People to confront the State is relatively limited. First, the People who make the sovereign Nation can theoretically use the constitutional right of a referendum vote to challenge the State and its harmful practices. However, in the Constitution of Cameroon, this option presupposes that those authorized to act on behalf of the State accept such a referendum Agenda. Thus, taking corrective measures against the State through a referendum seems to be impossible because State authorities would not accept any challenge to the institutions they run. Then, the Nation could resort to natural law or revolt to confront the State and its autocratic practices. These means have already been used to stop the greedy

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<sup>37</sup> Campbell, B. 1996. "Débats Actuels sur la Reconceptualisation de l'Etat par les Organismes de Financements Multilatéraux et l'USAID." *Politique Africaine* 61 (1): 18–28

<sup>38</sup> Kofele-Kale, N. 2007. "Asserting Permanent Sovereignty over Ancestral Lands: The Bakweri Land Litigations against Cameroon." *Annual Survey of International & Comparative Law* 13 (1): 103–156

<sup>39</sup> Oyono, P. R. 2005. "The Foundations of the Conflit de Langage Over Land and Forests in Southern Cameroon." *African Study Monographs* 26 (3): 115–144: See also Gerber, J-F. 2008. *Resistances Contre deux Géants Industriels en Forêts Tropicales: Populations Locales Versus Plantations Commerciales d'hévéas et de Palmiers à Huile dans le sudCameroun*. Montevideo, Uruguay: Mouvement Mondial pour les Forêts Tropicales/Oxfam. 44 p

<sup>40</sup> Deininger, K. 2011. "The Challenges Posed by the New Wave of Farmland Investment." *The Journal of Peasant Studies* 38 (2): 217–247.

<sup>41</sup> Liversage, H. 2010. *Réagir à L'accaparement des terres et Favoriser les Investissements Agricoles Responsables*. Rome: FIDA. 18 p

<sup>42</sup> Liversage, H. 2010. *Réagir à L'accaparement des terres et Favoriser les Investissements Agricoles Responsables*. Rome: FIDA. 18 p



practices of the State and political authorities elsewhere<sup>43</sup>. This is confirmed to some extent by popular movements worldwide or the social contestations and claims observed in Cameroon in the early 1990s<sup>44</sup>

### **Communal Holding**

The word “Communal holding” refers to a community which means a group of people. In Africa, a whole village or tribe can be a community and the number of people that make up a community is unlimited. They do not need to belong to the same tribe or religion, but in some cases, there could be a relating factor of language, culture or geographical factor unifying them. For instance, the TIKAR<sup>45</sup> of the North-West Region of Cameroon share many things in common because of their tribal origin.

Communal land holding is characterised with what could best be referred to as the “Corporate title”. This means that the entire title of the community land is vested on the given community. A member of the community is therefore entitled to a grant of it according to his needs subject to the availability of such vacant land. Lands which were allocated to members were usually for farming or for occupation. Once a grant was made to a member, he has full and exclusive possessory rights over the land which do not include the right of alienation. His rights subsist in the land and could not be taken away from him unless he commits a breach of his term.<sup>46</sup> Bentsi-Enchill<sup>47</sup> refers to the members’ rights as rights of common user which are shared by the member’s inter-se

In communal landholding, the exercise of management and control of communal land is vested in the chief, headman or whoever is the controlling unit of the particular area. The most popular attribute of a Chief is that of trusteeship. Thus, he is variously described as trustee, guardian, Custodian, headman or caretaker. Whatever name is given to him, the position of the law in Cameroon as held by courts is that;

“The village head is only a Caretaker and not land lord”<sup>48</sup>.

Speed C.J.<sup>49</sup>, in describing the position of the Chief in managing Communal land said;

...But in every case the chief has charge of the land. He is to some extent in a position of a trustee and as such holds the land for the use of the community. He has control of it and any member who wants a piece of it to cultivate or build a house upon, goes to him for it. He cannot make any important disposition of the property without consulting the elders of the Community and their consent must in all cases be given before a grant can be made to a stranger.

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<sup>43</sup> Cronkleton, P., P. L. Taylor, D. Barry, S. Stone-Jovich, and M. Schmink. 2008. Environmental Governance and the Emergence of Forest – Based Social Movements. CIFOR Occasional Paper No. 49. Bogor, Indonesia: CIFOR. 36 p.

<sup>44</sup> Hibou, B. 2011. “Introduction au thème Tunisie: Economie Politique et Morale d’un Mouvement Social.” *Politique Africaine* 121: 5–22

<sup>45</sup> A tribe in the North West Region of Cameroon generally called the ‘Upper Ngembas’

<sup>46</sup> *Oshodiv. Dakolo* (1930) A.C., 672.

<sup>47</sup> Bentsi-Enchill (1964) *Ghana Land Law*. Sweet & Maxwell, p. 91

<sup>48</sup> *Mancho Tanto of Ku v. Micheal Forkwa of Ku* (1957) B.C.A/500/30/75 (Unreported)

<sup>49</sup> *Amodu Tijani v.S.S. Nigeria* (1921) 2 AC 404

It is crystal clear from the above judicial exposition that the Chief is the main agent through whom all negotiations over or concerning land are made particularly the allocation of the land to members of the community who are in need of and even to strangers. However, the Chief cannot allocate any piece of land already occupied and developed by any of his subjects to some other person. Such was the case in, *Presbyterian Church Moderator v. D. C. Johny*.<sup>50</sup> Here, the Fon of Mankon purported to allocate a piece of land situated in Mankon to the appellants. The respondent claimed title to the land under customary law through inheritance from his father. The Fon maintained in court that all the land in Mankon belonged to him. In dismissing the appeal, the court held that the Fon held the land of Mankon not in his own name, but in the name of the people of Mankon. The court's ruling in this case illustrates two principles of customary law. First, the principle that the Fon cannot allocate a piece of land already occupied by a member, secondly, the fact that title to the land is vested in the group not in the Fon.

Apart from the allocation of land the Chief is also the political or religious leader of the community. In that capacity, and as a religious leader, the sacred places of worship, the shrines of the community are directly under his supervision and control. In the North- West Region of Cameroon the main traditional religious organ is variously known as 'KWIFOR', 'NGUMBA', and 'NGWERON'.

Community land can be created when a new settlement is founded and the founders hold tenaciously to it on the basis that it belongs to the entire community. The founder can prove settlement by building on the land, cultivating and hunting on the land in question.<sup>51</sup>

It could also be created by conquest. Thus in *Mora and Ors v. Nwalusi & Ors*<sup>52</sup>, the respondent brought an action claiming a declaration of title to land. There were no buildings on it which was used solely for cultivation but which was agreed that the land in ancient times belonged to a tribe which had been evicted there-from in war, and that the victors and their successors had since occupied, claiming title by conquest. It was held that possession of land by conquest suffices to establish ownership. It could also be created by out-spread and expansion, gift, and loans.

### **Family Holding**

Family is a sociological word and the number may be greatly or small. The size and membership of a family varies greatly and is, more often than not, seriously influenced by the given locality. "Family holding" implies that title is vested in the family as a corporate entity. It represents the main form of land holding in Cameroon. The nature of family holding was described in *Amodu Tijani v. Secretary, Southern Nigeria*<sup>53</sup> as follows, "... Land belongs to the Community, the village or the family, never to an individual"

The family property which is the subject matter of this type of holding means the landed property left by the founder of the family is to be used or shared equally among his heirs. The composition of the group(s) that may make up a family varies from place to place. In the strict English sense, a family could comprise the husband, the wife and children. In traditional

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<sup>50</sup> B.C.A. 127/74/Nov. 30th 1974(Unreported)

<sup>51</sup> *Amachre v. Kallie* (1914) 2 N.L.R., 105

<sup>52</sup> (1962), A.N.L.R. 681.

<sup>53</sup> *Supra*

Cameroonian society, this composition is extended to include other persons from a common ancestor. However, the definition of family property must be restricted to those heirs who are entitled traditionally to inherit the property. Thus, in *Coker v. Coker*<sup>54</sup> Edward Foster died leaving by will his dwelling house to his family or blood relatives and their children, and that it cannot be sold for any debt. The dwelling house was subsequently sold by order of court and a summons was brought to determine who were entitled to share in the proceeds of the Sale. It was held that the intention of the testator was to make his dwelling house a family house, following the Yoruba custom and that consequently those entitled to share in the proceeds of its sale were those of his descendants entitled under the custom to reside in the premises at the time of sale.

Title to family property which is the subject of family holding is vested in the family as a corporate entity. This principle was stated in *Ogunmefu v. Ogunmefu*<sup>55</sup>, where the grandfather of the parties to the action died intestate leaving real property to which he was seized in fee-simple. He left two children, a boy and a girl, surviving him. When the girl died, she made a will giving her relatives her share in the property of X. It was held that upon the intestate death of Thomas Williams Davies, the founder of the family, the property devolved on his children as family property. The court held that the devise was invalid because: "Title to the family land vests in the members of the family as a corporate group. It is joint and indivisible, no part capable of being alienated absolutely by an individual member even if it has been allocated to him without the consent of the members of the family."

As a matter of fact, the head and members of the family may come and go but the title perpetually remains vested in the family. The entire members of the family hold the family property jointly and for this reason, no single member can alienate any part of it unilaterally. Thus, *Jibowu. A.G. F.C.J.* as he then was delivering the judgment of the Supreme Court observed that<sup>56</sup>;

"Although pieces of lands may be allotted to members of the family, the allottees have only the right to occupy and use the lands which they cannot alienate or part with-out the consent of the family".

For the same reason, a member's interest in family property cannot be attached for his private debt. Thus, in *Miller Bros v. Ayeni*<sup>57</sup>, the appellants were judgement creditors. The respondent was their judgement debtor, and claimants were his brothers. The appellants sought to attach the interest of the respondent in certain family property in satisfaction of their judgement debt. It was held that the appellants cannot attach the judgement debtor's interest in a family property in respect of which there has been no partition of interest between the members. The respondent had no right to alienate family property without the consent of the family.

The power of management and control of family property is vested in the head of the family under customary land tenure. This is illustrated by C.J. Memeondes as follows:

The idea underlying land tenure in Africa is that land is the property of the family and that the head of the family is the trustee of the family. And that every free man in the community is

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<sup>54</sup> (1938) 14 NLR., 58

<sup>55</sup> (1931) 10 NLR., 60

<sup>56</sup> *Shelle v. Asajon* (1957) 2 FSC. 65

<sup>57</sup> (1924) J. NLR., 42

entitled to as much land as he can reasonably acquire to support himself and his family. He is entitled to keep that land as long as he cultivates it, as long as he behaves himself or as far as circumstances permit.<sup>58</sup>

The head as a trustee and in the exercise of his power of management derives certain rights and duties. He has, like other members of the family equal rights to family property. He has the right to make grants to family members and even to strangers. He can also revoke these grants and eject such persons from the occupation of the land where their action so justifies.<sup>59</sup> He has the right to sue and be sued in respect of all actions affecting the family property as the legal representative of the family. *Kwan v. Nyien*,<sup>60</sup> a Ghanaian decision, throws light on this point.

“As a general rule the head of the family is the proper person to institute all suits for the recovery of family property.” Although this is not a Cameroonian case, yet the rules of customary law propounded or recognised in it apply in Cameroon *mutatis-mutandis*.

It is the duty of the family head to manage the family property for the benefits of all members of the family. In this regard, he has the duty to keep accounts and up-to-date information about the family property and to make them available to all the members. The issue of accountability was emphasized in *Archibong v. Archibong*<sup>61</sup> that, the action of the head must be capable of sound explanation, at any time, to the reasonable satisfaction of the members of the family. To facilitate work on some rules, either laid down by himself or preferably after consulting the heads of the house.

Apart from the rights of the family head, the family members also have the right to a portion of the land for its use and enjoyment. Furthermore, they have a right to income derived from the family property. Thus, all the family members will share the usual income that come to the land when the family land is sold or the government pays compensation for acquisition of the land.<sup>62</sup>

Every member of the family has the right to participate in the management of the group property. Some members take part directly while others participate indirectly. Those who manage the property directly are elders, headmen or representatives of family who were specifically appointed to manage the family property. Others may take part indirectly because they don't actually take part in the day to day management of the group property and they are only consulted on major issues affecting the property.<sup>63</sup>

Family property may be created by intestate succession. This arises where the head of a family dies without leaving a will with regard to sharing of the land among his children. The unshared land remains family property. Thus, in *Cole v. Cole*<sup>64</sup>, Alfred Cole contracted a marriage with

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<sup>58</sup> Meneondes C.J. before the Northern Nigerian Land Committee 1906, 66

<sup>59</sup> *Adagun v. Fagbola* (1932) 11 NLR; 110

<sup>60</sup> (1959) G.L.R., 67

<sup>61</sup> (1947) 18 N.L.R; 117

<sup>62</sup> *Archibong supra*

<sup>63</sup> *Thomas v. Thomas* (1932) 16 NLR; 5

<sup>64</sup> *Cole v. Cole* (1898), 1 NLR 15



a lady in Sierra Leone. They returned to Lagos with a son who was a lunatic. On the death of Alfred Cole intestate, his brother A.B. Cole declared himself trustee for Alfred Cole and his customary heir. Mary Cole, the deceased's wife appealed against the decision of the trial court and the appeal was allowed.

Family property may also be created by will that is when the testator makes a will and provides specifically that his property should be jointly owned and used by members of his family. It could also be created by purchase<sup>65</sup> or gift.

### **Development of Individual Holding**

There has been considerable controversy over the issue whether under African customary land law there was anything as individual holding of property. This issue arose in the celebrated Nigerian case of *Amodu Tijani v. Secretary of Southern Nigeria*. In that case under the Public Lands Acquisition Act of 1903, the colonial Government acquired certain pieces of land situated at Apapa within the formal colony of Lagos. The plaintiff, the head chief of the Oluwa family and one of the land owning white-cap chiefs of Lagos, claimed compensation for these lands, first as absolute owner thereof but later as representative of his family. Analysing the indigenous system of land tenure in Africa, Viscount Haldane, delivering the judgement of the Privy Council said:

The next fact which it is important to bear in mind in order to understand the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual . . . This is pure native custom along the whole length of this coast and wherever we find, as in Lagos, individual owners, this is again due to the introduction of English ideas. . .

The bone of contention in the court was, under what capacity did the chief claim the compensation? The Privy Council finally held that Amodu was not claiming compensation on his own capacity as a family member but on a representative capacity as a family head. That, on a representative capacity, he would distribute the money to all members of his family.

The decision in this case established that individual property holding never existed under African customary land tenure systems. This assertion can only be true of the pre-colonial era because in the ancient times, individual ownership of property was rare. In the course of this research work, two family heads in Tonga in the West region of Cameroon, Papa Nyonse and Chief Ngamou, maintained that in the pre-colonial era title to land was vested either in the community or the family and that the notion of individual ownership was a recent development. They explained that, in pre-colonial era, groups of family members will work on the farm jointly under the supervision of the head of the family. The head was responsible for all matters affecting the family members, for instance, he paid taxes for the male members, marry wives for them, cater for them and their children. The land which they cultivated belonged to them all as members of the same family jointly and indivisibly. There was no idea of working or farming individually because they believed in the saying that "many hands do light work". Furthermore, they could not imagine the idea of alienating the family or community land either by sale or otherwise. First, there was abundance of land where everybody could have as much as he needed, secondly, sale of land was regarded as a taboo under customary land law.

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<sup>65</sup> *Amodu Tijani v. Secretary of Southern Nigeria supra*

But during and after the colonial era, this system started changing its form gradually due to the introduction of individual property holding by the colonialists. A practice evolved under the customary land law whereby each member cultivated land for himself and his immediate family, that is himself, his wife and children, though still living in the family house and farming on the family land. He reaps the fruits of his labour alone and decides on how to use it alone. He stores his produce from the farm in his own separate barn to the exclusion of other members of the family. The two family heads made me to understand that even though individuals could farm individually, title to the land was still vested either in the family or community. They only have possessory rights on the land. They have no proprietary rights and so could not alienate the land without the consent of the family or community. This system is individual farming and not individual ownership of land. The indigenous members of the family have the erroneous believe that when they farm individually or build on the family land allotted to them, it means that they own the land there-of. When we talk of individual ownership of land the first thing that comes to mind is the fact that the owner alone has the right over such property. But this is not the situation in the above case.

Recently, there has been serious debates on the issue that the use of the term “ownership” of land to describe an interest in land under native law and custom is unsuitable and undesirable and above all, it is said that this terminology is aimed at equating ownership of land under the English Law with that of native law and custom. This confusion surrounding the use of this term was judicially recognised in the case of *Kwesi Enimil v. Kwesi Tuakyi*<sup>66</sup> by the Privy Council thus:

The term “owner” is loosely used in West Africa. Sometimes it denotes what is in effect absolute ownership, at other times it is used in a context which indicates that the reference is only to rights of occupancy. . . In these circumstances it is not surprising that it is difficult to be sure what is meant in any particular case of the expression “owner”.

From the above it can be said that Customary Land Law does not consider “ownership” in the strict English sense and it is submitted that a terminology be found to describe an individual’s interest in family property. Considering the nature of such individual interest or holding in such circumstances, it was held that:<sup>67</sup>

Each individual member of the family has in addition vested in him or her what may perhaps be described as a right of user during his or her life time. That individual right of user is purely and simply a life time interest. On the death of the individual that interest reverts to the whole family.

It can be observed from the above judicial opinion that the interest of an individual in his own portion of land allotted to him by the head of the family or chief is a life interest only. After death the title to the land reverts to the family or community if he has no heirs.

The individual also have possessory interest besides the interest of user because he is in possession of the portion of the family property as such he has the right to exclude all other persons from trespassing into the land.

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<sup>66</sup> (1952) 13 WACA, 10 at 14

<sup>67</sup> *Ogunmefu v. Ogunmefun* (1931) NLR ; 67

Meanwhile as the individual has possessory right, the ultimate title to the land is vested in the family or community.

It was held<sup>68</sup> that the nature of customary landholding is in the form of usufructuary interest. This means that the occupier is entitled to reap the fruits of the trees growing on the land, if any or if he tills the land, he is entitled to the benefits or income of his labour.

From the foregoing one can conclude that individual holding of property was unknown in the West African sub-region and where they occur should be regarded as an exception to the general rule of land holding under native law and custom. This view has been expressed by Yakubu<sup>69</sup>.

About 70 years ago, according to responsible oral opinion, it was an exception to the general rule of landholding under the native law and custom to find a person holding land in an individual capacity. This view is of customary land holding in Cameroon.

Despite the advantage derived from group ownership of property, there was a need to accept a change in the traditional system. This need arose from the fact that an individual's responsibilities have increased tremendously. Thus an individual has to provide medical care for his family, educate himself, and live a more decent and at least comfortable or average if not magnificent life. These cannot be achieved under the ancient system of communal and family holdings. The arrival of Europeans in Africa did sow the seeds of the on-going drift from communalism towards greater individualism in land holding. What then were the reasons for the drift? This is the question to be determined.

### **Reasons for Individual Land Holding**

Even though individual ownership of land was rare in olden days, in modern days, however, it has gained tremendous prevalence. Presently, it is prevalent in the more sophisticated urban centres that it appears to predominate communal and family holdings. The explanation for this prevalence can be found in socio-economic changes resulting from the introduction of peaceful government as contrasted with the era of intertribal wars. The growth of education and the consequent reception of capitalist philosophy of individualism. The introduction of money economy and the modernisation of living standards also had their own roles to play. Land is now being commercialised and the unit of holding is gradually shifting away from the community to the individual.

### **The Introduction of Money Economy**

Initially the African system was predominantly subsistence. There was no need to grow cash crops, no need to build houses to rent out to others. The introduction of money economy meant that individual's had to work very hard to satisfy their needs and those of others. There was the economic emancipation of the individual as a result of new patterns of economic activities. The trade contact with the Europeans which was based on the exchange of goods for money led to the acquisition by the individuals engaged in it. The idea of personal acquisition was bound to affect the traditional system of land tenure which was found to be incompatible with changes. Progressive or hardworking members of the family could not sell the land or use it to secure loans. Long term crops could not be cultivated because of insecurity of title. The courts

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<sup>68</sup> *Kuma v. Kuma (1940) J. WACA, 4*

<sup>69</sup> G. Yakubu- *op – Cit* p. 66

condemned traditional system declaring it incompatible with socio-economic development. In the case of Lewis V. Bankole<sup>70</sup>,

Speed C.J. Said: There was much that was admirable and much that I hope will be retained for many years in the family system which they evolved, but it can hardly be denied that their ideas of ownership of property were utterly unsuited to modern requirements; that those ideas have been dying a more or less natural death.

The erosion of traditional system of property holding is unavoidable in our modern society for hardworking individuals would not like to share their rewards with others simply because they are members of the same family or community. There is therefore a change from traditional subsistence to a market economy. The individual began to acquire land as a personal possession. There was also need to look for money which led to the production of cash crops like cocoa, tea, rubber, plantains, cotton and building of houses to rent out for money and also dwelling houses of permanent nature.

### **The Legal and Institutional Framework for Land Acquisition in Cameroon**

The independence and subsequent reunification of Cameroon in the 1960's brought about a huge change in the application of existing norms and practices, in this regard the country made a gradual shift colonial land tenure legislations to formulating its own laws to accommodate its particular realities; this shift in stance included amongst others the framing of an adequate legal and institutional framework for the registration of land. This section therefore presents the various laws and institutions governing the registration of land in Cameroon by exploring the different forms of land tenure under the relevant legislation.

### **The Legal Framework for the Registration of Land in Cameroon**

The year 1974 is usually associated with an era of change in land reform in Cameroon, not only did the year bring about a very first compendium of land laws in the Country, it introduced 3 ordinances which were enacted to harmonize the system of land tenure in Cameroon to wit; the ordinances of 6<sup>th</sup> July 1974 on rules governing land tenure<sup>71</sup>, state land<sup>72</sup> and procedures governing the exploitation for a public purpose and terms and conditions of compensation<sup>73</sup>. These ordinances were subsequently followed 3 decrees in April 1976 to establish conditions for obtaining land certificates<sup>74</sup>, terms and conditions<sup>75</sup> for the management of national land<sup>75</sup> and private property of the state<sup>76</sup>. Other decrees, circulars and administrative instructions have subsequently been passed to either repeal or modify certain provisions of the 1976 decree.

In addition, the land ordinance identifies private property, national and state land as the main forms of land tenure in Cameroon, these different forms of land tenure are governed by specific legislations which defines them and provides their characteristics, to this the researcher now turns.

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<sup>70</sup> (1908) 1 N.L.R : 81

<sup>71</sup> Ordinance No 74/1 of 06 July 1974 to establish rules governing land tenure.

<sup>72</sup> Ordinance No 74/02 of 06 July 1974 to establish rules governing state lands.

<sup>73</sup> Ordinance No 74/03 of 06 July 1974 concerning the procedures governing the exploitation for a public purpose and terms and conditions of compensation

<sup>74</sup> Decree No 76/165 of 27 April 1976 to establish conditions for obtaining land certificates.

<sup>75</sup> Decree No 76/166 of 27 April 1976 to establish terms and conditions for the management of national land.

<sup>76</sup> Decree No 76/167 of 27 April 1976 to establish terms and conditions for the management of private property of the state.



## Legal Framework on National Land

In principle all land in Cameroon is national land given that the state is the guardian of all lands and has the capacity to intervene to ensure its rational use<sup>77</sup>, this is initially gives the concept of national land a very wide and unrestricted scope. However, Section 14(1) of the 1974 ordinance defines national land as all lands except those which have been classed as private property and public property of the state or expressly registered as private property. Notwithstanding, private property may be automatically be converted to national land if the owners of such properties fail to convert their land register books and certificates occupancy to land certificates within a period of 10 years in urban areas and 15 years in rural areas from the date of the 5<sup>th</sup> of August 1974<sup>78</sup>. This is the same with holders of court judgments according them ownership in land who fail to convert such judgment into title deeds/land certificate<sup>79</sup>.

The conversion of private property to national land for failure to register the former within the specified time does not mean lands peacefully occupied and used by Cameroonian or traditional communities shall at once become national land, section 17(2) the first 1974 ordinance provides that such person shall continue to occupy and use the said land and may apply for land certificates according to the relevant laws in force. The use of the word 'May' which is not mandatory in the wordings of the law here suggests that the requirement to eventually apply for land certificates is not crucial to these set of person who already in occupation of the land for a lengthy period of time.

Further, the attribution of all initially all land in Cameroon as national land is clearly a continuation of colonial land tenure which has been adopted by the state in the administration of its lands. The concept of national land under the 1974 ordinance is more or less a mirror image of the concepts of *herrenloss* lands and *terre vacante* under German and French administration respectively.

It is worth remarking here that, though the aforementioned 1974 to establish rules governing land tenure defines national land, the procedure and means of registering occupied or exploited national lands is set out by the decree No 76/165 of 27<sup>th</sup> April 1976

## Legal Framework on State Land

Cameroonian land law equally mentions state lands as a form of land tenure, the rules governing state land are enshrined in Ordinance No 74/02 of 06 July 1974. Despite the fact that the ordinance does not expressly define what state land is but rather divides it into public and private property of the state and other bodies, state land can be ordinarily taken to mean; lands which have been specifically mapped out by the state for a particular public purpose or which by nature is intended for public use.

The public property of the state comprises of all personal and real property which, by nature or intended purpose is set apart either for the direct use of the public property or for public services<sup>80</sup>. As a general rule, such properties cannot be sold; mortgaged or pledged neither can they by prescription become the land of another<sup>81</sup>. Conversely, a public property of the

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<sup>77</sup> Section 2(1) Ordinance No 74/1 of 06 July 1974 to establish rules governing land tenure.

<sup>78</sup> Ibid Section 4(1)

<sup>79</sup> Section 5(1) ) Ordinance No 77/01 of 10<sup>th</sup> January 1977

<sup>80</sup> Section 2(1) Ordinance No 74/02 of 06 July 1974 to establish rules governing state lands.

<sup>81</sup> *Ibid section 2(2)*.

state which is of no use considering the purpose for which it was originally kept for may eventually be reclassified as private property of the state and may be then be subject to sale<sup>82</sup>

The public property of the state is further sub-divided into natural and artificial public property, while the natural property comprises of coastlines, waterways, sub-soil, and air space<sup>83</sup>, the artificial property of the state includes; motorways and lands extending 100m on either side of the center line of the highway, national and provincial highways and landing extending 40m on either side of the center line of the highway, divisional roads and land extending 25m on either side of the center line of the road, local tracks passable for vehicles and land extending 10m on either side of the center line of the track, public monuments and buildings, commercial sea and river ports<sup>84</sup> amongst others.

The private property of the state on its part includes personal and real property of the state acquired without consideration or for a valuable consideration according to the rules of ordinary law per section 10(1) of Ordinance No 74/02 of 06 July 1974, this is to say in terms of land, any property acquired by the state from private individuals forms part of its property, Also lands which support buildings, structures and installations, maintained by the state, properties being struck off the list of public property and others also fall within the ambit of private property of the state.

The registration procedures for state lands are quite different from that of national lands. The registration entails a transfer of the title to land from the state to either an individual or body for a reasonable consideration. The registration of state land is regulated by Decree No 76/167 of 27 April 1976 to establish terms and conditions for the management of private property of the state read together with Ordinance No 74/02 of 06 July 1974 to establish rules governing state lands.

### **The Institutional Framework for Land Registration in Cameroon**

Land registration is not an affair entirely dependent on laws, the laws may be there but it is the institution which applies these laws which brings the land registration process to its conclusion. These institutions play a key role not only in apply the available land laws but also ensure compliance with procedures and formalities. In this study, the researcher is going to make particular reference to two principal institutions which are at the center of land registration in Cameroon to wit; the land consultative board and the site board commission. Further, this study shall highlight other institutions like the Land Registry and Survey's Department which are also key actors in the land registration process

### **The Land Consultative Board**

The Land Consultative Board is charged with the responsibility of managing all national land that is, lands which are unoccupied and unexploited. The board is headed by Divisional Officer (D.O) as chairman along with, a representative of the Lands Service as secretary, a representative of the survey service, a representative of town planning service, in case of an urban project, a representative of the ministry concerned with the project and the chief and two notables of the village or community<sup>85</sup>. The presence of the chief and two notables in the board

<sup>82</sup> Section 5(3) Ordinance No 77/02 of 10<sup>th</sup> January 1977

<sup>83</sup> Supra 48 section 3(1).

<sup>84</sup> Supra 50 sections 4

<sup>85</sup> Section 12 Decree No. 76/166 of 27 April 1976 to establish the terms and conditions of management of national lands.

is of considerable importance as it indicates that the customary notion of land tenure still commands strong in contemporary times despite the importation of foreign concepts of land tenure.

The land consultative board shall meet at least once every three months when convened by the chairman<sup>86</sup> who as a requirement shall notify other members of the board on the date and furnish them with the agenda of the meeting at least 10 days before the date of the meeting<sup>87</sup>. The agenda shall be posted on the notice boards at the offices of the D.O or S.D.O where the land is situated. Such notice shall indicate the situation of the land, its approximate area and the project planned<sup>88</sup>. These are all pre-registration formalities which the board is charged with to ensure that the land to be registered is properly identified.

The land consultative board shall make reasoned recommendations on application for grants, examine and if necessary settle disputes submitted to it under the procedure for allocation of land certificates on occupied or exploited national lands, select lands which are indispensable for village communities, examine and settle all landed property disputes and assess the development of lands for the issue of land certificates<sup>89</sup> amongst other things. The board is usually the starting point for the registration of land after the establishment of the site plan at surveys services. Article 5 of Ordinance No. 74/1 of 6<sup>th</sup> July 1974 gives the board the jurisdiction over matters relating to land disputes and taking disputes emanating from land registration off the courts.

### **The Site Board Commission**

The site board commission is another key institution in the registration of land in Cameroon, the commission is specifically charged with the registration of state land. Despite the fact the public property of the can be alienated, once same has been struck off the list public property of the state or is initially part of the private property of the state, it presents a possibility to alienating such property<sup>90</sup>.

The site board commission is headed by the SDO as chairman and performs similar functions like the land consultative board itself, the difference been that the former regulates the application and acquisition of land certificates or registration for state land while the latter is concerned with the registration of national land.

### **The Land Registry**

The role of the land registry in the land registration process cannot be over emphasized. The land registry more or less plays the role of a land secretariat, it transmits documents from one service to another and makes an assessment of taxes to be paid for the registration the land and in some cases places the price of the land with regard to state land. The land registry occupies an enviable place in the registration process, once all procedures have been concluded at the level of the land consultative board or the site board committee as the case may be, an entire

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<sup>86</sup> *Ibid.* section 13(1)

<sup>87</sup> *Ibid.* section 13(2)

<sup>88</sup> *Ibid.* section 13(3)

<sup>89</sup> *Ibid.* section 14

<sup>90</sup> <https://www.researchkey.net/land-registration-in-cameroon-prospects-and-challenges/> accessed on June 9, 2022

file is forwarded to the registry for perusal before been forwarded same to the minister for verification and approval,

Similarly, in case a land certificate is destroyed and cannot be found, the land registry has the possibility of issuing a duplicate (duplicate of the land certificate), however this can only be done by an order from the President of the High Court where the land is situate directing the land registrar to issue a duplicate of the missing land title

### **The Survey's Service/Department**

This department is principally charged with the technical side of work in the registration process. They are obliged to initially draw up a site plan for the land in question after which they proceed to the erecting boundary pillars and setting boundary marks. The role of surveyors are crucial to the land registration process, they ensure that the measurement and demarcation of the land on paper actually reflects that on ground. This prevents future conflicts that might arise with regards to the dimension and demarcation of the property<sup>91</sup>

### **The Procedure for Land Registration and Land Disputes in Cameroon**

Cameroon is a bi-jural country, which means that two different legal systems operate in different parts of the country. French-oriented civil law applies in eight eastern provinces, and English common law applies in the remaining two western provinces. The 1996 Constitution and 1974 Land Law apply nationally. The legal systems also recognize customary law, which, given the country's ethnic diversity, encompasses multiple and evolving traditional rules and norms. In Muslim regions, which are primarily in the north, principles of Islamic law have been incorporated into customary law, although separate Sharia law is also recognized<sup>92</sup> No one can be deprived of property unless it is taken in the public interest, in accordance with applicable law, and subject to payment of compensation as required by law<sup>93</sup>. Cameroon's primary land law, Ordinance No. 74-1 of 6 July 1974, established land tenure rules following the 1972 unification of the country.

Land transactions cannot be completed without the signing of a land transfer agreement, Deed of Conveyance and eventually the issuance of a land certificate. Generally an individual or a corporation desirous to purchase land in Cameroon have a duty to consult a property attorney to conduct due diligence and investigate the title of the land at the property land registry so as to ensure the said land is free from all encumbrances like bank mortgages, chieftaincy dispute , court cases and double sales. A Notary public is statutorily commission to draft and sign all Deed of Conveyance in Cameroon, however he must have sighted a copy of the letter of allocation from the chief ( in case of new layout ) , survey site plan of the said parcel of land to ascertain the meters square area of the land or documents evidencing initial sale. The Cameroon penal code sanctions any vendor who does not make full disclosure at the negotiation stage before selling the piece of land as per *section 318* of The Cameroon Penal Code

### **Land Certificate Procedure**

The law regulating the grant of a land certificate in Cameroon is **decree No 76/165 of 27th April 1976** which has been modified by **decree No 2005 /481 of 16th December 2005**.

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<sup>91</sup> *Ibid*

<sup>92</sup> GOC Constitution 1996; Fombad 2009

<sup>93</sup> GOC Constitution 1996



Land owners mistakenly consider their notarized Deed of Conveyance to be a land certificate. The procedure to obtain land certificate is strict and detailed. A summary of the procedure comprises of an application attached to wit a survey plan describing the land, payment of processing fee, visit to the locus for boundary demarcation & cadastral mapping, publication and the eventual issuance of a land certificate.

In case of conflicting claims over a parcel of land, ownership is ascribing to the person that can proof a better title to the land. If there is no title document, it is sufficient to show that you have been in possession of the land. Evidence of land possession includes but not limited to; cultivation on the piece of land, erection of building or fence and demarcation of the land with pegs or beacons. The purpose of a survey plan in a land cases is to identify the land in dispute because who so ever cannot identify a piece of land will hardly convince the court to be the rightful owner. Traditional evidence can also be adduced to proof ownership of land but the court must be convinced as to who founded the land, how the founder founded the land and the names of intervening owners<sup>94</sup>.

### **How to Obtain a Land Title in Six Months in Cameroon**

The ministry of state property and land tenure, guide for users provide the following procedure to acquire a land certificate in Cameroon

- a) Deposit the application at the Sub divisional or the District office. Wait until three (3) days before you ask for a receipt. Do keep your receipt very well, because the authority will forward your application file to the divisional land tenure services within a period of eight (8) days.
- b) The divisional Delegate for Land Tenure shall publish within the fifteen (15) days which follow, an excerpt of your application. Then in collaboration with the Divisional officer, he convenes the date for the assessment of the occupancy or exploitation by the Consultative board. After demarcation you'll have to pay the demarcation fees at the Divisional Land Revenue service and get a receipt. c) Within the thirty (30) days following the meeting of the Consultative board, the Divisional Delegate of MINDAF forwards your file to the Provincial Delegate to the attention of the Provincial service Head of Land Tenure who registers the application in the provincial follow-up Record book, gives it a number, makes sure the file is regular, 10 countersigns and draws up a notice of final demarcation which is published in the Provincial Bulletin of Land notices. Your file is therefore transmitted to the Land Registrar of location of the estate) Within the thirty (30) days following the publication of the notice of final demarcation of your parcel, and if any opposition or litigation is not recorded, the divisional Land Registrar registers your land in the Divisional Land Register and you are given a copy (duplicatum) of this land title, provided you have paid the land registration fees and stamps at the divisional Land Revenue service.<sup>95</sup>
- c) Is the Consultative commission a compulsory step?

Absolutely Only this commission comprising a swooned surveyor can ascertain the occupation or the development of the land.

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<sup>94</sup> Ibid 61

<sup>95</sup> Republic of Cameroon Ministry of State property and land tenure, Guide for Users

The survey demarcate the land as soon as the commission ascertains that the occupation or the development at land is effective. The survey cannot demarcate a land alone Definitely; He must always work within the Commission, and in presence of the neighbours. He cannot either demarcate lands on Saturdays and Sundays, by night or on public holidays.

It is not necessary to be running after your file to ensure that the deadline could be respected. This is because by doing so; you put a lot pressure on the State employees in charge of the process. And this often generates a lot of trafficking and swindling which may harm you. But make sure that you provide all necessary documents, stamps and regular fees you are requested at stage of the process. At the end of the process, the land Register should give you a copy (duplicatum) of the land title. In case where you lose your duplicatum, you can have another one, but you must through the Court with a file composed of a certificate of ownership and a certificate of loss of your land certificate. The Court will deliver you on ordinance which authorizes the Land Register to issue another copy of the land title. When you have this ordinance, report to the Land Registrar

Ignorance they say is not an excuse to the law. This procedure is aimed at creating awareness and thus to reduce the alarming rate of land cases in our courts

## **Disputes That Arise in the Course of Establishing a Land Certificate in Cameroon**

### **Dispute during Securing Land Rights**

Dispute arise in acquiring land certificate in Cameroon because most land in Cameroon has been obtained through purchase, leasing, borrowing, inheritance, or allocation by traditional leaders. Farmers, and particularly migrants, cultivate forest areas in order to gain rights to land under customary law. Under formal law, Cameroonians occupying or using land as of August 5, 1974 (30 days after the 1974 land laws were passed) could apply for formal ownership rights to the land.

However, nationwide only about 125,000 certificates of title had been registered by 2008. Only approximately 3% of rural land is registered, mostly in the names of owners of large commercial farms<sup>96</sup>. The process of obtaining a land certificate includes a very long and complicated administrative phase relating to the assessment of land occupation and development, a technical phase relating to the physical description of the land, and a legal phase that analyzes the conditions of access to property right.

The main actors are the Department of Surveys for the technical phase, the Department of State Property and the Department of Land Tenure for the legal phase and the Ministry of Territorial Administration for assessments. The formal procedure for registering land transactions in Cameroon takes 93 days and costs 18% of property value, compared to the average of 81 days and 10% of property value across sub-Saharan Africa as a whole. The registration process requires obtaining a copy of the property deed at the Land Registry, having various drafts and final versions notarized, and registering with the tax authorities and Land Registry.

### **Dispute during the Registration Process**

The registration process is generally considered cumbersome, expensive and time consuming. This is because of the number of months required to wait before your land certificate comes out. This The authority for registration was decentralized to local levels in 2005, with the

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<sup>96</sup> Larson, Anne M., and Fernanda Soto. "Decentralization of natural resource governance regimes." Annual review of environment and resources 33 (2008): 213-239.)

prefect-level Land Consultation Boards assuming responsibility for demarcating land and adjudicating rights. The Land Consultation Boards and local government offices have lacked systems, equipment, financial support and training. The government recognizes the need for institutional development and capacity building at all levels and coordination of government offices in order for the process to function as intended.

### **The Resolution of Land Disputes and Conflict That Arise during the Acquisition of Land**

Conflicts over access to, use of and control over land are as old as humankind and frequently occur everywhere – at the intra-personal level (e.g. between siblings or neighbours), at the intra-societal level (e.g. between different ethnic groups or between the state and local population) and at the inter-societal level

#### **Customary Land Dispute Resolution**

In many parts of the world, indigenous peoples and other autochthonous groups have a very special relation to their land. For them, land is more than an economic or productive asset. It represents home, binds together past, present and future and constitutes their spiritual base. Disputes of land having such a broad range of functions must be settled in a more comprehensive manner. Customary conflict resolution is therefore especially appropriate for dealing with these land disputes, as long as the conflicts are within its jurisdiction. Customary conflict resolution is a form of arbitration with a strong conciliatory character. Hence, the usual distinction between non-consensual and consensual approaches does not apply. In other words, it includes elements of both: There is both a binding third party decision at the end typical for non-consensual approaches and there is a strong focus on the re-establishment of harmony as in consensual approaches of conflict resolution. As opposed to modern arbitration, the arbitrator in these cases cannot be chosen by the parties but is defined by his position.

The conflict is resolved when the conflicting parties are once again reintegrated into the community. Much attention is therefore given to spiritual and psychological measures such as purification, pacification and reparations, all of which are considered to have healing effects facilitating the mental and spiritual rehabilitation of victims as well as perpetrators.

#### **Advocacy**

Advocacy in the context of land conflict prevention seeks to ensure that people, particularly those who are most vulnerable, are able to have their voice heard on issues concerning access to land and use of land (e.g. tenure security, protection from eviction etc.), defend and safeguard their tenure and human rights, and have their views and desires genuinely considered when decision are being made that concern their land tenure rights. Advocacy can include many activities by individuals as well as groups, including media campaigns (including the use of social media), public speaking, commissioning and publishing research and lobbying, which is a direct approach to legislators aiming to influence their decisions. Advocacy can be done at the national as well as the international level. Many civil society organizations dispose of tremendous experience in land rights advocacy

#### **Land Dispute Resolution Bodies**

In most countries, a number of formal and informal channels exist through which the litigants can pursue their interests, such as: Judiciary, Civil courts, Administration, Political institutions Party system, customary institutions, religious institutions, civil society based institutions, Private sector mediators

Many of these channels can be addressed or accessed at different levels; others are restricted to only one or two levels. Some channels are more formal and regulated, while others are rather informal and unregulated. The major institution that resolves land dispute in Cameroon is the courts, customary institutions and the administration

Looking at all the procedures of resolving a land conflict, we would conclude that it is easier to prevent a conflict than to cure it. In resolving a conflict, we cannot do much about the harm that has already been done. It is therefore a more worthwhile investment for every government to invest in land conflict prevention measures by putting the right policies in place and ensuring implementation of what the policies require

## **CONCLUSION AND RECOMMENDATIONS**

### **Conclusion**

In summary, the main objective of this research was to explore land acquisition in Cameroon. The study went further to look at the historical and legal framework of land tenure system in Cameroon, we also examine the dispute that arises during the acquisition of a land certificate and possible solutions to some of the challenges encountered in the process of land registration in Cameroon

In short, land governance in Cameroon is a complex system characterized by tensions between various competing normative orders. Use of the competing legal regimes governing land tends to interact with socioeconomic and ethnic divisions, inevitably leading to the marginalization of the majority from a major resource. Moreover, as we have argued throughout this work, these competing legal regimes serve to undermine the legitimacy of the state in the eyes of its citizens due to the lack of citizen participation in land processes and to competing meanings and uses surrounding land between and within the local, national and international levels. In the Littoral region specifically, poor land governance is reflected in:

The lack of community representation and accountability in land negotiations;

- The lack of disclosure surrounding land deals;
- Diverging ideologies of land use in production and development;
- A disconnect between local and state uses and meanings surrounding land.

### **Recommendation**

We recommend that the land governance system in Cameroon be reformed with particular attention paid to the democratization of the process of land acquisition as it relates to transfers of land between private companies and village community lands.

Furthermore, more attempts should be made to understand and incorporate local farming practices that are at odds with state law into regulatory processes. In so doing, the legitimacy of the state in the eyes of the region's citizens will also be strengthened. On a national level, we recommend that vehicles for public debate and discussion over land deals be strengthened and promoted. This could be a potentially valuable issue around which civil society organizations with similar aims can coalesce and work towards a common agenda. Moreover, we further believe that stricter enforcement of labor rights and a reduction in the amount of resources needed to acquire land in Cameroon will not only help improve land governance, but will also raise overall levels of livelihood and improve community, company and state relations. As for the limitations of our study, we note that interviews with a greater number of stakeholders would have helped substantiate our findings even further. It would also have

helped us attain a wider view of the nature of conflicts over land. The latter are a major window into the tensions between customary and statutory law, individual versus communal uses of land and international versus national norms regarding land use, access and ownership as experienced on a daily basis. We suggest that more research be done on the experience of local farmers in the Littoral region as we are aware that they are not a uniform group.

It is recommended that the land governance system in Cameroon be reformed with particular attention paid to the democratization of the process of land acquisition as it relates to transfers of land between private companies and village community lands.

Furthermore, more attempts should be made to understand and incorporate local farming practices that are at odds with state law into regulatory processes. In so doing, the legitimacy of the state in the eyes of the region's citizens will also be strengthened. On a national level, we recommend that vehicles for public debate and discussion over land deals be strengthened and promoted. This could be a potentially valuable issue around which civil society organizations with similar aims can coalesce and work towards a common agenda.

Moreover, it is believed that stricter enforcement of labor rights and a reduction in the amount of resources needed to acquire land in Cameroon will not only help improve land governance, but will also raise overall levels of livelihood and improve community, company and state relations. As for the limitations of our study, we note that interviews with a greater number of stakeholders would have helped substantiate our findings even further. It would also have helped us attain a wider view of the nature of conflicts over land.

I also suggest that further research be conducted only on the challenges in acquiring a land certificate in Cameroon, land ownership and private companies. The indigene-settler divide is a major contributing factor in deciding one's ease of access to land, and believe substantial research is lacking in assessing how this divide plays out in rural contexts in which private companies are a major landowner.



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