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Review Article

An Analysis on Statutory and Customary Land Ownership in Cameroon: Two Parallel Ways

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Abstract

Land is essential for every human activity on earth as it is the source of all material wealth. In order to regulate the ownership, use and development of land and land resources, nations over the world have instituted land ownership systems aimed at consistent balancing of the interests of the government, the land owning class and the landless class. This paper examines the parallel nature of statutory and customary land ownership in Cameroon, how it has evolved over the years until 1974 when a single land law, otherwise known as the 1974 Land Ordinance, which were established to harmonize and regulate land ownership in the country. The paper further contends that the present land ownership system in Cameroon as found in the ordinance is advocating inclinations with excessive state control of land ownership, use and development. In connection with our above objectives, we adopted an in-depth content analysis, which is based on primary and secondary sources of data collection imperative to the study. The paper concludes that such land system cannot effectively support the indigenes and development initiatives as it creates too much bureaucracy in land transactions, land registration and land titling. It recommends an urgent balance between the statutory and customary land ownership to facilitate access to land with ease for various purposes.

Keywords: Land; Land ownership; statutory and customary land; 1974 Land Ordinance; Two Parallel ways.

INTRODUCTION

In order to regulate the ownership, use and development of land and land resources, nations all over the world have instituted land ownership systems aimed at consistent balancing of the interests of the government, the land owning class and the landless class. This paper examines the parallel nature of statutory and customary land ownership in Cameroon. The paper argues that land ownership Structure in Cameroon has evolved over the years until 1974 when a single land policy document, otherwise known as the 1974 Land Ordinance was establish to harmonize and regulates land ownership in the country shortly after unification in 1972.

Land from time immemorial has been a necessity in which man cannot do without. Land is use as a source of lively hood, for living as a home [1], as a farm for food, rivers, ocean lakes for water and navigation, road for movement and the space above for flight. Man activities are carried out on a piece of land and the creation of a family equally begins with land. Land is so important to man that no activity in the life of a man can move swiftly without land call into play.

During creation, after God has commanded light to exist, the next thing that was so eminent and important was land. On the second day, God commanded the waters to gather unto one place for land to exist [2]. Thus, man without land is likening to a living being without a soul. Prior to the arriver of the European powers along the coast of Cameroon, Cameroon already had well defined rules and generally accepted norms which where enforce by the Fons, Chiefs, the Imams, Emirs, family head, and so on [3]. These rules became laws that were binding on the indigenes [4]. This paper seeks to examine the parallel nature of customary land ownership and statutory land ownership, which have existed in Cameroon as created by the 1974 Land Ordinance, which brings us to the question are indigenes owners of land under customary law or they are just renters from the state? In addition, what is the position of the law?

Customary Land Ownership in Cameroon

The situation of land right in Cameroon like elsewhere is directly link to the historical evolution of the country. Land tenure system where shaped by historical, economic and especially political development. Land right have therefore evolve from the pre-colonial era to the present day or post-colonial. When the Europeans arrived in Africa, the imported their own foreign laws and impose it on the people of Africa as a whole and Cameroon in particular. The customs and long usages that have existed in Africa before their arrival soon became repugnant and ineffective to the advantage of colonial laws.

Individual ownership of land was introduced in Cameroon during the colonial period. This period in Cameroon brought about German, British and French rule in which each of this colonial powers carved out land tenure for occupied territory according to its own interest. When Cameroon gain it independent in 1960, they follow suit with inheriting even the laws that were introduce by their masters completely sight lining customary laws.

Pre-Colonial Customary Land Law

In our context, indigenous African customary law refers to the unwritten customary rules that are considered as binding upon members of various African communities in pre-colonial, colonial, and post-colonial times [5], which Elias argued that it "forms part and parcel of law in general" [6]. Likewise, Robert Smith demonstrated that although there is some diversity in African customary law across the continent, such differences do not outweigh the similarities [7]. Anthony Allott [8], identifies and examines the common features of African customary laws as: the unwritten and customary nature of the law [9], some similarities in judicial processes [10], which could be in an indigenous courts presided over by chiefs or in the arbitral tribunal in the villages [11], households, families and even clans [12], the significance of the supernatural [13], forms of government founded upon consent of the community as well as the function and role of the community in the application, interpretation and enforcement of the law [14], Jacqu Bine [15], appears to agree with this characterization of African law as he also argued that across Africa there had emerged rules of customary law that were similar [16]. Similarly, Smith reported that such customary laws were widespread in Africa and European visitors to Africa noticed them prior to colonialism [17]. Customary law evolved with the various pre-colonial African societies. This implies that indigenous African customary laws were by no means static or uniform across pre-colonial African societies.

Indeed, pre-colonial *customary* laws and societies in Africa existed harmoniously with each other, such that a study of the history of African customary law in any African society is akin to a study of the history of such societies [18]. Similarly, Omoniyi Adewoye observed, in relation to Southern Nigeria, that customary law in this area was '…latent in the breasts of the community's ruling elite or of the court of remembrance, and was given expression only when…called for…'[19]. However, it remained as much 'a functional element' or 'a means of practical action as law in literate society.' [20].

From the above historical analyses, three points are obvious in terms of the nature of customary law on the eve of formal colonialism. Firstly, indigenous African customary law was largely unwritten and founded upon oral traditions, which emerged simultaneously with the evolution of various African societies [21]. Secondly, although there were certain similarities in the indigenous African laws practiced amongst various pre-colonial African societies as demonstrated by Allott and Elias [22], there were some differences because of language, ideology, legal rules and social institutions [23]. Thirdly, due to the polyethnic and heterogeneous nature of some pre-colonial African States as well as the introduction of new forms of law by dominant groups or because of the prolonged interactions between Africans and Europeans, there was already a situation of legal pluralism [24], evolving within pre-colonial African States.

It is of interest to note that prior to the nineteenth century, the balance of power in African and European legal interactions has greatly favoured the Africans [25]. Therefore, although the 'semi-autonomous social fields' [26], of pre- colonial African societies may have been invaded, African customary law appears to have held its own turf, on its own terms whilst sometimes changing in accordance with prevailing social, economic and political circumstances of the times. African customary laws did not depend on the recognition of any external sovereign entity, institution, law or person for recognition and validity [27]. The validity of customary laws was dependent on their acceptance by members of a community as binding upon them [28]. In this context, a community in the words of Bromley and Cernea:

Means any group which may *'... vary in nature, size and internal structure across a broad spectrum, but they are social units with definite membership and boundaries, with certain common interests, with at least some interaction among members, with some common cultural norms, and often their own endogenous authority systems [29]*.

However, the balance of power in the legal interactions between Africans and Europeans shifted from one that favoured African customary law to one that favoured European law with the formalization of colonialism in the mid- nineteenth century to the present day.

Customary ownership during colonial rule in Cameroon

The land ownership structure in Cameroon under colonial rule was designed to suit the motives of the European imperialists. Historians and scholars including Victor Ngoh and Harry R. Rudin, [30]. have argued that European conquest and occupation of West Africa and Cameroon in particular were based on two main motives. These were initially economic interest and later governance. As a major factor of production, land was required by the colonial authorities to achieve their economic, social, and political objectives [31]. The British merchants who came to the country purely on economic motive required land to establish their merchandise. The colonial governors also required land for public purposes. Because land ownership in pre-colonial Africa and Cameroon in particular was communal, the colonial authorities initiated laws and regulations governing land ownership, land use and development among others to enable them acquire and convey titles to land for the purposes of commerce and governance.

Principal among these legislations were, Land and Native Rights Act. [32], the legislation disregarded the principles of native law and custom and provided that title to land can only be acquired through the High Commissioner. The Land Proclamation Ordinance was enacted to kill the institution of family and communal land ownership, which existed in Africa before their arriver by facilitating the acquisition of title to land through the High Commissioner. The Land and Native Rights Act were enacted in 1916 to vest in the colonial Governor all rights over all native lands in Nigeria and southern Cameroon. Sections 3 and 4 of the Act provided that;

(3) All native lands and right over the same are hereby declared to be under the control and subject to the disposition of the Governor, and shall be held and administered for the use and common benefit of the natives of Northern Nigeria and no title to the occupation and use of any such lands shall be valid without the consent of the Governor .(4) The Governor, in exercise of the powers conferred upon him by his Proclamation with respect to any land ,shall have regard to the native laws and customs existing in the district' in which such land is situated.

As presented by Elias, [33], later sections of the Act further provided, inter-alia, for the Governor's power:- (a) To grant rights of occupancy to "natives" as well as to "non- natives", (b) To demand and revise rent for such grants;(c) To render null and void any attempted alienation by an occupier of his right of occupancy without the Governor's consent. (d) To revoke the grants to occupiers for "good cause."

So far, the only Nigerian statute that has been repealed by local legislation is the Land and Native Rights Ordinance of 1 January 1948, repealed by article 22 of Ordinance No. 74/1 of 6 July 1974, on Land Tenure. Land in Cameroon before the arriver of the European powers knew no individual ownership [34]. However, when the Europeans arrived Africa, they introduce their foreign laws, which gradually transform the African customary laws to their test. For similar reasons, most independent governments and Cameroon in particular, sustained the colonial norms, in practice cementing the State's role as property owner [35]. At the same time, national law extended opportunities for individuals to convert their customary interest into the private property system originally introduced to serve white settlers [36]. UN and especially World Bank guidance reassured governments in the 1960s and 1970s that they were on the right track [37], modernization could only be achieve by doing away with what they saw as the unsatisfactory communal foundation of African land holding.

Land Ownership in Cameroon since Independence

Cameroon gained independence from colonial rule in 1960 and 1961 respectively [38], and became a Unitary state in 1972. After independence, private ownership of land by individuals, families and communities was the predominant land tenure system in Southern and East Cameroon while all lands in the territory comprising the formal Southern Cameroon and East were regarded as owned by the state, based on the provisions of the 1962 federal law. Legislations have been put in place to regulate land ownership in Cameroon since independence. We will examine a few them.

Southern Cameroon High Court Law

In Anglophone Cameroon, one of the most influential pieces of legislation enacted by the British was the Southern Cameroons High Court Law, 1955. It governed the administration of justice by the colonial High Court of Southern Cameroon. Despite being colonial legislation its impact within the administration of justice is still felt in contemporary Cameroon. Indeed, it is one of the most authoritative pieces of legislation in the administration of justice in Anglophone Cameroon. The legislation establishes the competence of the High Court and legitimizes the reception and continuous application of received English laws in the territory; the provisions of Sections 10, 11, 12, and 15 are illustrative. These provisions legitimized the application of substantive English law, practices, and procedures in Anglophone Cameroon. While Section 11 provides for the application of pre 1900 English statutes and doctrines of equity, Section 15 calls for the application of post 1900 English law in respect to issues dealing with probate, divorce, and matrimonial causes. Whenever customary law is to be enforced by the court, the impact of Section 27(1) usually becomes apparent. Section 27(1) of the southern Cameroon High Court Law states that:

- The High Court shall observe, and enforce the observance of every native law and custom,

which is not repugnant to natural justice, equity and good conscience, nor incompatible with any law for the time shall being in force and nothing in this law deprive any person of the benefit of any such native law and custom.

- Inasmuch as the provision recognizes customary law, it also establishes the criteria for its enforceability in the legal system: it must neither be repugnant to natural justice, equity, and good conscience nor be incompatible with any written law. That is, the custom must pass the repugnancy and incompatibility tests. Thus, in Cameroon, legislation, which is the primary source of law, establishes the modalities for the application of customary law. The statutory courts have often relied on this provision to invalidate discriminatory rules in customary law [39]. Thus, prior to recognition, a customary norm is subjected to duality tests: the repugnancy and incompatibility tests. This colonial innovation has been endorsed by the local legislations.
- Customary law in Francophone Cameroon is governed by article 51(1) of the Decree of 31 July 1927 organizing the traditional justice system in that part of the country. That article enjoins the courts to apply only the customary law that is not contrary to the public order in all civil and commercial matters between natives [40]. Hence, customary law may, in Cameroon be excluded on the grounds of, (a) repugnancy, (b) public policy, (c) public order or "*ordre public*," [41] and (d) incompatibility with written law.

The predominant land tenure system in Cameroon during the pre-colonial period was the customary land tenancy where villages, towns, communities and families owned land holdings. Land was deemed not owned by individuals but by communities and families in trust for all the family members [42]. The legal estate under customary land tenancy is vested in the family or community as a unit. During this period, land belonged to the community or a vast family of which many are dead, few are living and countless members yet unborn [43]. Thus, individuals had no such interest as the fee simple absolute in possession as the actual ownership of land or absolute interest was vested in the community itself. Interests or rights of individuals in community land were derivative interests.

National Laws

Cameroon enacted national legislation governing land and other natural resources, with an eye toward encouraging commercial investment in its land, the laws support private property rights [44], but require privately owned land to be titled and registered [45]. All untitled, unregistered land that is not designated as public land (that is managed by the state on behalf of the public) is considered national land [46]. Most of the land in Cameroon is classified as national land, including farmland and communal land held under customary law [47]. The government can convert national land into state land and allocate use rights to it (for example forest concessions) [48], or convert it to private ownership for instance for urban development [49].

Cameroonian law fails to acknowledge customary land holding as amounting to real property interests, and therefore according the protection of private property, [50], including paying customary owners the market value for lands which government appropriates for public purpose.

1974 Land Ordinances in Cameroon

Under this ordinance are Laws governing different areas of land in Cameroon, for instance we have the Constitution which is the ground norms of the land, law on tenure and state land, registration and many more.

1974 Land Tenure and State Land

Ordinance No.74/1 of 6 July 1974, to establish Rules Governing Land Tenure, including amendment of 1977 Law No.19 of 26 November 1983 to Amend the Provision of certain Articles of Ordinance No 74/1.The core of land legislation in force is found in two simple provisions: *first that* the State shall be the guardian of all lands', and *second*, that only two categories of land tenure exist: private and public land [51]. The founding land law recognize the customary communities and members thereof but guarantees them only, "*peaceful occupation and use"* of lands. Even the guarantee of peaceful occupancy and use is limited to those parts of their lands where 'human presence and development is evident'.

The 1974 Land Ordinance laws fail to address customary land rights directly. This is despite the fact that at least half of the populations are customary land-holders. No special chapter on the subject is provided. Where the law does consider customary interests, this is in a manner, which truncates their scope and substance as shortly to be outlined.

Only four sections in the land laws mention customary interests. Each raises hope of positive treatment but is followed by extreme limitations:

a. Section 17 of Ordinance No.1 of 1974 (the founding land law) refers to 'customary communities and members thereof ' but guarantees them only *peaceful occupation and use* of lands. Even the guarantee of peaceful occupancy and use is limited to those parts of their lands where 'human presence and development is evident'.
b. Section 7 of Ordinance No.2 of 1974 declares that 'bona fide owners and occupants of public

property may not be dispossessed thereof unless the public interest so requires, and subject to compensation'. However, this too is heavily proscribed as shown below.

c. Law No.76/25 of 1976 requires 'landowners, customary land holders, farmers and other holders of property interests' to be present at adjudication, 'to declare every property that they hold'.[52] Adjudication turns out to be interested only in farm and house lands and particularly only those, which are held to be property due to their registration.
d. Section 15 reiterates the inclusion of customary holders in its requirement that 'landowners, possessors, usufructaries, farmers and other holders of real property rights' comply with summonses from survey officials. This does not mean however, that other than housing and farming rights will be acknowledged or registered.

As noted above, even if communities or customary landholders seek to register their lands, the procedure automatically converts these into a different, imported and non-customary form of ownership, extinguishing customary attributes. That is, the procedure is not simply a matter of recordation or certification of rights, but transformation. Private property and customary property are made mutually exclusive categories

Constitutional Law on land

Worldwide, there have been more than 40 new national constitutions enacted in agrarian States since 1990. Most have found it necessary to be more specific than in the past as to the land rights status of majority rural populations, including as relevant customary landholders [53]. Nigeria, Namibia, South Africa, Liberia, Malawi, Zambia, Uganda, Rwanda, Burundi, Eritrea, Ghana, Angola and Sudan are among those countries in Africa, which have done so. In contrast, Cameroon's 1996 Constitution [54], shied away from laying down clear land rights principles, beyond reiteration of conventional generalities as to the freedom of settlement guarantee of the right to use, enjoy and dispose of property and protection against deprivation of property, save for public purpose and subject to payment of compensation [55], again under limiting conditions to be determined by law for [56]. The constitution does not mention customary land interests. It does pledge to protect the rights of indigenous populations but does so only in the preamble. Moreover, the context is ambiguous, implying narrow responsibility to minorities and 'indigenous peoples raising questions as to who is included in such protection.

CONCLUSION

The non-intersecting nature of statutory and customary land ownership has left many Cameroon to remain squatters on their own land. They stay on this land, use but on unable to dispose because of no title to land [57]. Land law is silent on the practice of customary land law, the norms and procedures through which African rural communities regulate their land relations among themselves and with outsiders. With no legal position on this, it may be argued that customary law permissively exists, neither halted, regulated, nor made illegal. However, neither is it given statutory support to operate. This means that its decisions may or may not be upheld, depending upon the will of the State.

Ordinance No.74/1 of 1974 [58], provides for traditional authorities to be members of the consultative boards established in respective of National Lands to ensure their rational use and development, or more specifically where and to whom grants of National Lands may be made [59]. However, the chief and two leading members of the village or the community whose land is being discussed account for only three members of the eight member consultative boards [60]. In any event, these boards are only advisory bodies to the prefect.

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30. Harry R. R. "Gennans in the Cameroons 1884-1914", p.402.
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32. 1916 which became applicable in southern Cameroon after the First World War, when Britain and France divided Cameroon into two unequal parts.
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43. This was the decision held by Viscount Haldene, in the case of AmadouTijani v. Southern Nigeria (1908)1 NLR 97.
44. Section 2 of Ordinance No. 74/1 supra.
45. Ibid, section 4.
46. Ibid, section 14.
47. Section 17(2) supra.
48. Section 4 (1) of Decree No. 76/166 of 27 April 1976 to establish the Terms and Conditions of Management of National lands.
49. Ibid, section 17(1).
50. See section 22 of 74/1 of 1974 Land Ordinance that harmonized all the previous existing laws that existed before independence.
51. Ordinance No.74/1 of 1974, Sections 1(b) and 14), see also Section 17.
52. Section 9(1) of Decree No 76/165 of 1976 establishing the condition for obtaining land certificate.
53. See Alden, W. (2009a). for a review of land provisions in contemporary constitutional law.
54. Since independence, the country has three Constitutions and a number of amendments. The first Constitution marked the independence of French Cameroun on 1st January 1960. The unification of British and French administered Cameroun provided a Federal Republic with a new

Constitution on 2nd June 1972 and which became simply the Republic of Cameroon in 1984. Significant amendment to the 1972 Constitution 30 new articles marked what is referred to as the third Constitution in 1996, but which came into force only in 2001.

55. The Preamble of the 1996 Cameroon Constitution.
56. Expropriation (the taking of acknowledged private property for public purpose) and appropriation (the taking of land acknowledged as subject to interests, even if less than the law's definition of private property) is a routine right of national governments, but one always proclaimed as to be used judiciously, and always for described public purpose. See also Law No 85/09 of 1985 that governs expropriation. The law says that where land is designated public property, bona fide owners and occupants are eligible for compensation as if the land were private property (Ordinance N° 74/2 of 1974, Section 7 (1) read with Law No 85/09 of 1985, Section 2). See also (Ordinance No 74/2 of 1974, Section 7 establishing rules governing national land.
57. In section 1(1) of Decree No 76/165 Provide, the land certificate shall be the official certification of real property right.
58. Section 16 of Ordinance No74/1.
59. Decree No 76/165 of April 1976.
60. Section 12 of Decree No 76/166 of 27 April 1976.