

# The Decentralization Paradigm: Pathway For Communities' Rights To Land In Cameroon

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## Abstract

The devolution of power and resources by the State to local authorities much en vogue today in Cameroon and other areas of the world is fast becoming a governance model which could be relied upon for the assertion and articulation of communities based land management and ownership rights. This is so given that the advantages of bringing local communities to the decision-making centres to determine the fate of local lands and resource ownership and control can hardly be exhaustive in any single legal debate. Besides, it might be key to determining communities' rights, while enhancing the dignity of its members. After all, communities' lands are not only owned by a single generation, but by those considered as ancestors, the living and those yet to be born. To this effect, an attempt to weave the pieces of national land legislations within the decentralization paradigm arguably remains ideal in articulating efficient land governance. Thus, if Cameroonian government is embracing decentralization as governance option, then she must beside other things be ready and prepared to relinquish her high-handed and overwhelming powers and control over land and land resources to local stake holders especially local collectivities which could be construed to reflect the aspirations of the local communities they are supposed to represent.

**Keywords:** *Communities lands; decentralization; communities rights; land ownership and land management*

## Introduction

Land<sup>13</sup> plays significant roles to nature and humans alike. While it harnesses the ability to host varied Earth's ecosystems, it offers different opportunities for human livelihoods, cultural heritage, development, identity, well-being and dignity - characteristics of modern society. Because of the benefits humans enjoy from land, they have and are imperatively becoming *stewards* over land and over land resources, most especially those in the local communities generally considered *untitled*, yet collectively owned.<sup>14</sup> It is from this prism most importantly, that humans have through different international legal platforms engaged to respect and secure nature including land and its essential processes especially in the planning and implementation of their social and eco-

nomical developmental activities.<sup>15</sup> But how will this not be so, when development especially in developing countries usually entails the forceful eviction or displacement of peoples especially those at the local communities to make way for large-scale business projects such as dams, mines, oil and gas installations or ports. In many countries, Cameroon inclusive, a considerable portion of this displacements are carried out in manners deemed to be inconsistent with basic human rights of host communities,<sup>16</sup> thus, further aggravating their already precarious land rights curtailment especially through State's complaisance.<sup>17</sup>

From the above, the word land might be hardly understood from a single-shot definition. While English Law might have given a wide and broad view of what constitute land, it circumferences ownership over the same to include land of any tenure, mines and minerals whether or not the division

<sup>13</sup> In *Black's Law Dictionary*, (1968), 4<sup>th</sup> Edition, pp. 1020-1022, 'Land' has been considered to go beyond the soil or earth. It include things of a permanent nature affixed thereto or found therein, whether by nature, as water, trees, grass, herbage, other natural or perennial products growing crops or trees, mineral under the surface or by hand of man, as buildings, fixtures, fences, bridges, as well as works constructed for use. From this explanation, land include the soil and things found on its surface as well as those found below the surface, where occurring naturally or otherwise.

<sup>14</sup> Rosset, P. et al. (2006), *Promises Land: Competing Visions of Agrarian Reform. Institute for Food and Development Policy. Food First, Oakland, CA, USA*; Borrás, S. (2007), *Pro-Poor Land Reform: A Critique. The University of Ottawa, ON, USA*.

<sup>15</sup> According to Principle 10(b), *World Charter for Nature*, (1982), "...the productivity of the soils shall be maintained or enhanced through measures which safeguard their long-term fertility and the process of organic decomposition, and prevent erosion and all other forms of degradation..."

<sup>16</sup> In 2009 for instance, the Cameroonian Minister of Economy signed a convention with SG Sustainable Oils Cameroon (SGSOC), a subsidiary of the US-owned Heracles Farms to occupy 180, 599 acres of land in the South West Region of Cameroon with palm oil plantation. This was done at the behest of over 14,000 peoples who inhabited the area, and without their consent. This however led to a stiff resistance from the local peoples.

<sup>17</sup> Article 1(2), Ordinance No. 74-1 of 6<sup>th</sup> July 1974 to Establish Rules Governing Land Tenure is to the effect that, "...State shall be the guardian of all lands..."

is horizontal, vertical or other way.<sup>18</sup> In this regard, rights over land could be perceived through the doctrines of *superficies solo cedit* – whatever is attached to land forms part of it, or *quicquid plantatur solo, solo cedit* – whatever is affixed to the soil belongs to the soil.<sup>19</sup> The access therefore, use of, and control over land directly affect the enjoyment of a wide range of human rights. Arguably, it is the human rights dimension of land management that enhances the link between land and development, peace and disaster prevention.

In Cameroon, rights over land are a reflection of different tenure systems as was the orientation before, during and after colonialism. Under customary law for instance, the ownership of land would not necessarily include the ownership of fixtures. Thus, ownership of crops might not signify ownership of land.<sup>20</sup> It is this disparity in customary ownership and rights over land that might have inspired the Yoruba King, *Gboteyei* to consider land to be owned by a kind of *vast family* in which many are dead, with few living and countless yet to be born.

<sup>21</sup> This position was and is still being exploited by colonial powers, post and neo-colonial governments at the detriment of such local communities when it comes to land use and management especially for large investment and infrastructural projects. However, while the claim over land ownership in Cameroon appears to be problematic, the greater issue further lies on the exercise of usufruct rights over the little areas that have been textually apportioned to other interests apart from that of the State. No doubt, this worry seems to be further laddened by the legislative disposition to the effect that, it is the State which retains overwhelming powers over land as sole guarantor and determinant of the types and forms of rights other stakeholders should exercise over land.<sup>22</sup>

18 See Section 205(1), (ix), *English Property Act, (1925)*.

19 Following article 9 of the British Mandate to on behalf of the League of Nations administer Southern Cameroons, she was accorded full power to administer Southern Cameroons and adopt legislations there upon in accordance with her laws and as integral part of her territory. While this applies same to French Cameroon, there was the exportation of the English Common Law and French civil law to Cameroon. The quantum of English applicable laws in the Southern Cameroons was sanctioned by section 11 of the Southern Cameroons High Court Law (SCHCL), of 1955, which provided for the application of English Common Law, the doctrines of equity and statutes of general application, which were in force in England on January 1<sup>st</sup> 1900. By virtue of this, British and Nigerian laws were applicable in the former Southern Cameroons including traditional customary practices, given that the latter was not repugnant to natural justice and good conscience.

20 This has been variously illustrated in court decisions including: *Enjema Liote V. Hanna Forty, (1984), CASWP/CC/15/83, (unreported)* and *Mallam Bello V. The People, (1983), Suit No. BCA/9MS/83, (unreported)* among many others. Also see Bongba, E. and Tanto, R. (2019), *Land Disputes and Family Ties in Cameroon: Debating the Possibilities of Reconciliation*. In: Green MC (ed.), *Law, Religion and Human Flourishing in Africa*. Stellenbosch, African Sun Media.

21 See Kaspak, N. (2019), *Gender, Decision-Making on Land Ownership and Indigenous Rights in Cameroon: Searching for a Balance in Law*. *International Journal of Science and Research, (IJSR)*, volume 9, issue, 12. ISSN: 2319-7064, p. 683. Cited from: Namso, B. et al. (2014), *Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations*. *Journal of Environment and Earth Science*. Volume 4, no. 21, pp. 182-188.

22 See articles 1(1) and (2); 12; 13 and 18 Ordinance No. 74-1 of 6<sup>th</sup> July, 1974, to Establish Rules Governing Land Tenure. Also see article 4(1); (2) and (3) of Ordinance No. 74-3 of 6<sup>th</sup> July 1974 Concerning the Procedure Governing Expropriation for Public Purpose and the Terms and Conditions of

However, the stark and delicate nature of the above situation seems to be a reminder to the State of the dormant and highhanded nature with which land issues seemed to have been handled ever since the adoption of the 1974 land laws in Cameroon. The time seems to have come when the central authority needs to relinquish some of the overwhelming powers exerted over land management to other entities especially at the local level. Time seem to have come when the narratives given to national lands, that is lands over which local communities exercise rights needs to be revisited. The time when local communities should no longer be made *squatters* over their own lands or *mere spectators* over the management of their own lands seems to have come.

With the adoption of the decentralization paradigm in Cameroon,<sup>23</sup> there is much hope that local communities shall hence become part and parcel of the land expropriation committee for instance, which as of date excludes them only to be comprised of the Prefect of the Division concerned as secretary, Divisional Representatives of Lands Department as members; a Surveyor from the Surveys Department, and Technical Expert in construction, and Technical Expert from Ministry of Agriculture.<sup>24</sup> While this is so, local populations become *mere spectators* in the sense that, they are merely invited to participate without any defined duties or role to play. Thus,

*The populations concerned who shall be informed no less than fifteen days in advance by the Prefect of the expropriation must be invited to participate in all the stages of the investigation.*<sup>25</sup>

Decentralization which is the devolution by the State of special powers and appropriate resources to local authorities remains the hopeful driving force for the promotion of development, democracy and good governance especially concerning land interests at the local level. In this regard, for the State to implement a project on the 'territory' of a Council, the opinions of the Council concerned needs to be sought. This is so given that national lands can be registered in the name of Councils for the implementation of projects for the interest of the people. Thus, "*grassroots civil society associations and organizations as well as neighbourhood and village committees shall contribute to achieving the objectives of local authorities.*"<sup>26</sup> However, while the nature of such contribution remains undetermined, it gives glimpse of hope since the law aspires for the inclusion of local communities in the helm and management of their own affairs especially concerning land.

### Determining Rights Enjoyed by Local Communities over Land

To enhance the enjoyment of rights over land in Cameroon,

*Compensation.*

23 Law No. 2019/024 of 24 December, 2019 to Institute Bill on the General Code of Regional and Local Authorities.

24 Article 4(2), of Ordinance No. 74-3 of 6<sup>th</sup> July 1974 Concerning the Procedure Governing Expropriation for Public Purpose and the Terms and Conditions of Compensation.

25 Article 5 *ibid*.

26 See section 41, Law No. 2019/024 of 24 December, 2019 to Institute Bill on the General Code of Regional and Local Authorities.

land has been classified into three broad categories.<sup>27</sup> From here it is understood that, local communities have their rights inserted upon national lands given that, these are portions of land that have not been titled neither under State ownership nor under private domain. As such they remain at the disposition of local communities which can exercise right either by way of construction of houses or by practicing cultivation of crops, plantations, grazing or in any other manner that can proof human presence and development.<sup>28</sup> While this is so, it is regrettable that local communities' rights might be sapped away over lands considered to be free of any effective occupation. These lands are administered not by its occupants but by the State which can grant such parcels through lease or assignment to other users, mostly without or limited consultation of concerned communities. But then, which are the various rights that communities enjoy on lands under their control?

## The Right of Occupancy

Before State-control over land became a model, local communities' rights over land were asserted through their ability to collectively capture and defend parcels of lands against outsiders. These rights were enjoyed through inherited group membership.<sup>29</sup> With the introduction of the French and British Administrations, such occupiers in Cameroon were to transform such occupancy through the obtention of *livrets fonciers* and *certificates of occupancy* respectively.<sup>30</sup> Nevertheless, under the land legislations, communities' occupancy could only be effective, if members of such communities can show proof of buildings, farms, plantations, grazing, and the manifestation of other aspects of human presence.<sup>31</sup>

However, the view that local communities are mere occupiers of the lands they inhabit and have inhabited from time immemorial may just be a way of depriving them of their ownership right. Thus, they might occupy with buildings but permanent rights over sub-soil belong to the State through the public property regime.<sup>32</sup> It is not therefore for fancy that occupancy is likened to *use* only.

## Hunting and Fruit picking Right

Hunting and fruit picking has been recognized as a *granted right* to local communities over lands considered being free of any effective occupation.<sup>33</sup> This right has been given fur-

27 The different categories include: State lands, private lands and national lands.

28 Article 15(1), Ordinance No. 74-1 of July 6<sup>th</sup>, 1974 to Establish Rules Governing Land Tenure.

29 Alden, W. (2018), *Collective Land Ownership in the 21<sup>st</sup> Century: Overview of Global Trends*. Land, vol. 7, Iss. 68. Van Vollenhoven Institute, Leiden Law School, P.O. Box 9520, 2300 RA Leiden, The Netherlands. Pp. 1-26. Also available at: <http://www.mdpi.com/journal/land> (consulted on the 15<sup>th</sup> of August, 2022).

30 Anne-Gaëlle, J. (2013), *Land registration in Cameroon*. In: *Focus on Land in Africa: Placing Land Rights at the Heart of Development*. Brief – Cameroon. Pp. 1-7.

31 Article 15(1), Ordinance No. 74-1 of July 6<sup>th</sup>, 1974 to Establish Rules Governing Land Tenure, *op cit*.

32 Article 3(1), Ordinance No. 74-2 of 6<sup>th</sup> July 1974 to Establish Rules Governing State Lands.

33 Egbe, S. (1997), *Forest Tenure and Access to Forest Resources in Cameroon*. Forest Participation Series No.6. International Institute for

ther recognition in the 1994 Forestry Law. In this regard, customary right has been taken to mean the 'right which is recognized as being that of the local population to harvest all forest, wildlife and fisheries products freely for their personal use.'<sup>34</sup> While the recognition of this right by the State is significant for local communities, it should be underscored that local communities' needs goes far beyond mere hunting<sup>35</sup> and picking.<sup>36</sup>

Local communities share a common attachment not only to their land but also to their forests of which they often have thorough knowledge and which they most importantly consider to be common property to be accessed and used without restriction.<sup>37</sup> They consider their land as the foundation of their existence. Its incarnation to them is their *foster mother*, the very source of their food and pharmacopoeia and the setting for their cultural and spiritual recreation and celebration. While this is so, the State has considered among the domain of public lands, communities' marsh lands, lakes, ponds, lagoons, and even non-navigable water ways,<sup>38</sup> and the question lingers on if by such inclusion within public lands the State is not in a way depriving local communities of their rights over these properties found on their lands or further a confirmation to the opinion that local communities are mere squatters on their own lands.

## Ownership Right or Titling

Since 1974, the Cameroonian legislator has conditioned land ownership to the acquisition of land certificates.<sup>39</sup> In this regard, local communities as well as members thereof may apply for land certificates for their parcel.<sup>40</sup> Without such certificate, it is considered that they are mere occupants or simply users of such lands for the time being as such lands can be subject to lease or assigned to other users as the State deems necessary. This may especially be considered so given that, land resources such as forests and forest products owned by local communities are considered to be found on national lands which according to the Forestry Law constitute non-permanent or unclassified forests.<sup>41</sup>

With ownership or titling right, local communities can actu-

*Environment and Development (IIED)*, London. Available at: <http://www.iied.org/pubs/pdfs/7521IIED.pdf> (accessed 19 September 2022).

34 Section 8(1), Law No. 94/01 of 20<sup>th</sup> January, 1994 to Lay Down Forestry, Wildlife and Fisheries Regulations.

35 Traditional hunting exercised by local communities is authorized by law in Cameroon. See to this effect, Section 86(1), *ibid*.

36 Bongba, E. and Tanto, R. (2019), *Land Disputes and Family Ties in Cameroon: Debating the Possibilities of Reconciliation*. In: Green, MC. (ed). *Law, Religion, and Human Flourishing in Africa*. Stellenbosch Conference-RAP. Pp. 277-293.

37 Nguiffo, S. et al. (2009), *The Influence of Historical and Contemporary Land Laws on Indigenous Peoples' Land Rights in Cameroon*. In: *Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives*. Forest Peoples Programmes, Stratford Road, United Kingdom. Pp. 1-24.

38 Article 3, Ordinance No. 74-2 of July 6, 1974, To Establish Rules Governing State Lands.

39 See articles 6 and 7, Ordinance No. 74-1 of 6 July 1974 on Rules Governing Land Tenure; article 1, Decree No. 76-165 of 27<sup>th</sup> April 1976 to Establish the Conditions for Obtaining Land Certificates.

40 Article 17(1), (2) and (3), *ibid*; also see article 9(a), Decree No. 76-165 of 27<sup>th</sup> April 1976 to Establish the Conditions for Obtaining Land Certificates.

41 Section 37(1) – (8), Law No. 94/01 of 20<sup>th</sup> January, 1994 to Lay down Forestry, Wildlife and Fisheries Regulations, *op cit*.

ally play key role in the lease of their own lands.<sup>42</sup> To this effect, they enjoy the right of preemption in the event of alienation of products found in their forests for instance.<sup>43</sup>

## Consultative and Compensatory Rights

National land over which local communities' rights can be exercised, their effective utilization and administration is guaranteed by the State.<sup>44</sup> With such powers the State can therefore give her consent for the expropriation of such lands for instance especially for public purposes. In this regard, local communities inhabiting such lands may be consulted. Consultation may be carried out at different levels and for different reasons.<sup>45</sup> While the Land Consultative Board ensures on behalf of the State proper administration of national lands, community leaders are generally members of the board.<sup>46</sup> Such leaders or traditional authorities may include: village chiefs and two leading members of the village or community where the land is situated.<sup>47</sup> Also, the population where lands need to be expropriated (local population) might be invited, not only to be consulted but also to participate in the stages of investigation of portion of lands earmarked for expropriation.<sup>48</sup> However, it is regrettable that the law fails to define the meaning and extent of consultation.

## Asserting Communities' Land Rights within the Decentralization Paradigm

Generally, community land can be considered to be the piece of land upon which local communities exercise ownership and management rights with some form of legal authority to do so, primarily driven by community benefits, sometimes directly or indirectly with the goals of sustainability.<sup>49</sup> With-

42 Tamasang, C. (2007), *Community Forest Management Entities as Effective Tools for Local-Level Participation under Cameroonian Law: A Case Study of Kilum/Ijim Mountain Forest. A Thesis Defended for the Partial Fulfilment of Requirements for Obtaining Ph.D. in Law. Faculty of Laws and Political Science, University of Yaoundé II-Soa.*

43 Minang, P. et al. (2019), *Evolution of Community Forestry in Cameroon: An Innovation Ecosystems Perspective. Ecology and Society*, vol. 24, Iss. 1.

44 Article 16(1), Ordinance No. 74-1 of July 6<sup>th</sup>, 1974 to Establish Rules Governing Land Tenure, op cit.

45 *Reasons for consultation may vary to include: investigation for valuation, compensation upon expropriation, negotiation and for the settlement of disputes between parties.*

46 According to article 14 of Decree No. 76-166 of 27th April 1976, the duties of the Land Consultative Board shall include among other things: making recommendations to the Prefectoral Authority on the allocation of rural areas to agriculture and grazing according to the needs of the local inhabitants; make reasonable recommendation on applications for grants; examine and if necessary settle dispute submitted to it under the procedure for allocation of land certificates on occupied or exploitation of national lands; select the land which are indispensable for village communities; note all observation and all information concerning the management of national lands and transmit its recommendations to the Minister in charge of lands; examine and if necessary settle all landed property disputes referred to it by the court

47 See article 12, Decree No. 76-166 of 27th April 1976 to Establish Conditions and Terms of Management of National lands.

48 Article 5, Ordinance No. 74-3 of 6<sup>th</sup> July 1974 Concerning the Procedure Governing Expropriation for Public Purpose and the Terms and Conditions of Compensation.

49 Manor, J. (1999), *The Political Economy of decentralization. World Bank, Washington DC; also see, Melo, M. and Rezende, F. (2004), Decentralization and Governance in Brazil. In: Tulchin, J. and Selee, A. (ed.), Decentralization and Democratic Governance in Latin America. Woodrow Wilson Center Report on the Americas No. 12, pp. 37-66.*

in the Cameroonian land law, this is the area generally considered as national lands which are those not classed into the public or private property of the State and or the public bodies.<sup>50</sup> But then, how best are national lands managed for the communities' interest especially through the decentralization system opted for by Cameroon. In this regard, the Constitution traces the decentralization system, thus, considering the State as 'a decentralized and unitary State which recognizes and protect traditional values that conform to democratic principles, human right and the law'.<sup>51</sup> Article 55 on its part further captures the regional and local authorities as organs apt in exercising such competences.<sup>52</sup>

## Enhancing Communities' Lands Rights through Local Councils

Given that rural Cameroonians are not secured on their lands, with national legislations seemingly unreliable, there is a need to tend to the decentralization law in other to assess if these communities and their members have avers through which their plights could better be channeled. However, given that, the national land legislations provide glimpses of right of occupancy for unregistered lands (national domain) especially those with houses and farms notably to the extent that some form of compensation is payable for loss of crops or infrastructure when the government requires the land for other purposes, it is an opportunity upon which the decentralization law could appropriate for the security of local communities. This is possible given that, the overall objective of the local authority or council is to ensure local development and improve the living environment and conditions of its inhabitants especially the communities under their jurisdiction.<sup>53</sup>

Furthermore, the same decentralization law accords local councils the powers to promote agriculture, pastoral, artisanal, fish farming activities, exploitation of mineral substances that cannot be given out as concession.<sup>54</sup> With these competences the local councils can play great roles especially in the mobilization and orientation of local communities towards assessing landed properties for full compensation during expropriation of their lands. This can be more convenient and formal than for the members of the communities to claim in disperse ranks.<sup>55</sup> After all, the State has the right to grant unregistered lands in absolute title, lease or exclusive occupancy license to loggers, miners, ranchers, biofuel or food entrepreneurs or better still, to itself.<sup>56</sup> Granting

50 See article 14(1), Ordinance No. 74-1 of 6<sup>th</sup> July 1974 to Establish Rules Governing Land Tenure; also see Melone, S. (1972), *La Parente et la Terre dans la Strategie du Developpement. Klincksieck, Yaoundé and Paris.*

51 Article 1 (2), Law No. 2008-1 of 14 April 2008 to Amend and Supplement some Provisions of Law No. 96/6 of 18 January 1996 to Amend the Constitution of 2<sup>nd</sup> June 1972.

52 Articles 55, 56, 57, 58, 59, 60, 61 and 62 of the Constitution, *ibid.*

53 See Section 147 of Law No. 2019/024 of 24 December, 2019 to Institute Bill on the General Code of Regional and Local Authorities, *op cit.*

54 Section 156, *ibid.*

55 Diaw, M. and Njomkap, J. (1998), *La Terre et le Droit: Une Anthropologie Institutionnelle de la Tenure Coutumière, de la Jurisprudence et du Droit Fonciers chez les Peuples Bantous et Pygmées du Cameroun Méridional Forestier. Inades-Formation, Yaoundé.*

56 According to article 16(1) of Ordinance No. 74-1 of 6 July 1974, national lands are administered by the State in such a way as to ensure rational use and development. In this light, article 1(1), Ordinance No. 74-3 of 6 July 1974 which involve the procedure for land expropriation stipulates that expropriation will

competences to local authorities in land management might be a great step towards the transfer of responsibilities, adequate finances as well as the expectation of better service delivery on the part of local elected representatives.<sup>57</sup>

### Harnessing Communities' Rights to Land through Traditional Entities

Pathetically, Cameroonian land laws of 1974 do not offer appropriate protection to local communities vis-à-vis their lands. This is so given that the laws appear to be passive when it comes to the recognition, protection and enforcement of communities' rights to their ancestral lands. The rather passive nature of the legislation can simply be interpreted to mean that, customary land holding does not amount to real property interests. This might be the reason why attention is rather being given in favour of private property ownership by individuals, enterprises, with the State having absolute right to evict, expropriate and lease out parcels of land in the domain of national lands. While this is so, local communities can only be compensated the 'just value' of properties found on the surface of their lands and not the total value of the land and properties found both upon and underneath, including the imperceptible aspects such as customary beliefs and practices.

Moreover, customary communities and members thereof are required by the law to apply for land certificates, but this is couched upon the condition that the occupation of such land predates 1974.<sup>58</sup> While this is not enough, the procedure for acquiring the said land certificate is rather complicated and costly, especially given that most of these communities are poor or lack the basic means for such acquisition.<sup>59</sup>

From the above, it is worth mentioning that local communities could therefore rely on various consultation avenues for the articulation of their rights over land. For the administration of national lands, it has been ascribed within the land legislation that, a Consultative board will be set up at the local level.<sup>60</sup> In this regard, the Board shall though appointed by the Sub Divisional Officer, be made up of the Sub Divisional Officer as Chairman of the Board, with a Secretary being the representative of land service of the Sub Division, a representative of the Surveys Service, a representative of Town Planning, a representative from the Ministry as well as the Chief and two leading members of the village community where the land is situated.<sup>61</sup> The village representatives

*be for public purpose, a concept which is rather broad and loosely articulated to a very broad meaning.*

57 World Bank Document, (2012), *Cameroon, the Path to Fiscal Decentralization: Opportunities and Challenges. The Poverty Reduction and Economic Management Report for Africa. Report No. 63369-CM*; Matovu, G. (2008), *Issues Relating to Developing Capacities for Effectively Implementing Decentralization Policies in Africa. Paper Presented at the Ministerial Conference on Leadership Capacity Building for Decentralized Governance and Poverty Reduction in Africa. Palais des Congrès, Yaoundé, Cameroon.*

58 Article 9(a), Decree No. 76-165 of 27<sup>th</sup> April 1976 on Conditions for Obtaining Land certificates, *op cit.*

59 Alden, W. (2011), *Whose Land, Is It? The Status of Customary Land Tenure in Cameroon. Center for Environment and Development, Etoa-Meki, Yaoundé, Cameroon, in collaboration with FERN Office UK. P. 11.*

60 Article 16(2), Ordinance No. 74-1 of 6 July, 1974 Establishing Rules Governing Land Tenure, *op cit.*

61 Article 12, Decree No. 76-166 of 27 April, 1976 Establishing the Terms and Conditions of Management of National lands.

accentuates the views and aspirations of village community members vis-à-vis their lands.<sup>62</sup> From this perspective, decentralized local authorities convey the interest of local communities given that they are a reflection of the communities they represent. Here, local communities' representatives might not constitute the necessary gravitational force to argue on equal stand with State's representatives. Thus, rather than being treated as alternatives to State institutions, Communities institutions are rather being relegated to a 'ridiculous consultative body,' which point of view might not necessarily be taken into consideration when important decisions are being taken over the lands they occupy. Moreover, local councils or communities' institutions, dispose of the right to income coming from the allocation of national lands to the share of: local councils 40% and communities or village communities obtain 20%.<sup>63</sup> For all these to be possible, the populations must have been consulted and invited to take part in the procedure for investigating and assessing the value of their lands.<sup>64</sup>

### Virtues of Decentralization as Possible Avenues for Mainstreaming Communities' Land Rights

To Ribot, J.<sup>65</sup> decentralization is usually referred to as the transfer of powers from central government to lower levels in a political-administrative and territorial hierarchy. The main advantage of this system of power transfer is the fact that, it can be considered as a vehicle through which other competences could be transferred especially land management which stands as key determinant in local-level development. More so, the official power transfer can take two forms which include, administrative decentralization, also known as *deconcentration*, is transfer to lower-level central government authorities or to other local-level authorities generally within local communities who are however, upwardly accountable to the central government. Nevertheless, there is political or democratic decentralization where-in authority is transferred to the representatives of local communities who are downwardly accountable actors who might be elected or not.<sup>66</sup>

From the above, decentralization has been considered as basic driving force for promotion of development, democracy and good governance at the local-level.<sup>67</sup> Hence, one could expect from this perspective, possibilities to fit within possible avenues communities land ownership and management agenda as a right notwithstanding.

*62 Among other things, the Land Consultative Board shall make recommendations for the allocation of rural areas to agriculture and grazing according to the needs of local inhabitants, especially members of the local communities.*

63 See section 17, Decree No. 76-166 of 27 April, 1976 Establishing the Terms and Conditions of Management of National lands.

64 Tamasang, C. (2007), *Community Forest Management Entities as Effective Tools for Local-Level Participation under Cameroonian Law: A Case Study of Kilum/Ijim Mountain Forest. A Thesis Defended for the Partial Fulfilment of Requirements for Obtaining Ph.D. in Law. Faculty of Laws and Political Science, University of Yaoundé II-Soa. Op cit.*

65 Ribot, J. (2002), *Democratic Decentralization of Natural Resources: Institutionalizing Popular Participation. World Resources Institute, Washington, DC.*

66 Larson, A. (1998), *Democratic Decentralization in the Forestry Sector: Lessons Learned from Africa, Asia and Latin America. Cambridge University Press. Cambridge.*

67 See Section 5(2), Law No. 2019/024 of 24 December, 2019 to Institute Bill on the General Code of Regional and Local Authorities, *op cit.*

## Decentralization Articulate the Needs and Priorities of the People

Generally, the peoples wish in Cameroon would have been for them to have ownership over their lands, especially at the community level. To this effect, decentralization, though might not be a panacea, could just be a start to a long wished procedure to recognizing and enforcing communities rights over their lands. After all, it has been enshrined within the Cameroonian decentralization law that the State shall devolve to local authorities the powers necessary for their economic, social, health, education, cultural and sports development and that local authorities shall exclusively exercise these rights.<sup>68</sup>

Unlike in the land legislation where the use of national lands for public purpose goes with the consultation of the Land Consultative Board which members are appointed or already known, the local authorities are in other words voted into office and given particular mandates to fulfill the peoples aspirations, among which include land ownership. Through decentralization, a broad-base for consultation might be established. To this effect, for projects or operations to be initiated by the State on the territory of a Council, the opinion of such a council would need to be sought.<sup>69</sup> Such notification might not only be to acquire information, but also to bring a larger part of the community on board the decision-making process, given that such institutions are headed by elected representatives of the people or the community.

## Establishes Framework for the Engagement of Civil Societies

In Cameroon, Civil Societies including Non- Governmental Organizations plays active roles especially at the basic or local level for the enhancement of Communities well-being.<sup>70</sup> While these organizations operate most often at grass-root levels, their objectives which generally include the articulation of activities in the legal, economic, social, health, education, culture, humanitarian, sports, environment and human rights are found to coincide with the aims of decentralization which include that of devolving powers necessary for local economic, social, health, education, cultural and sports development. From such links, Civil Society Organizations can become more efficient in identifying and supporting the land rights of local communities if they synergize their efforts with, and channel initiatives through the decentralization pathway already engaged in the country. In this light, the government seems willing to incorporate civil societies, the private sector and other development partners in the formulation the country's long-term development vision, found to be largely hinged upon the sustainable utilization of the nation's natural resources including lands.<sup>71</sup>

68 Sections 17-19, Law No. 2019/024 of 24 December, 2019 to Institute Bill on the General Code of Regional and Local Authorities, *op cit*.

69 Section 36(1) – (4), *ibid*.

70 The establishment and functioning of these Organizations derive legitimacy from Law No. 99/014 of 22 December 1999, Governing NGOs and Law No. 90/053 of 19 December 1990 on the Freedom of Associations which is a general; law governing all forms of associations.

71 Ministry of the Economy, Planning and Regional Development, (2009), *Cameroon Vision 2035. Working Paper*.

## Land and Communities' Rights to Culture, Customs and Belief

Before the intervention of the State in determining how land could be managed at different levels, local communities are generally the very first occupiers. This explains why they often tend to view themselves as owners of the naturally collective resources such as forests, rangelands, marshlands and other uncultivated lands. On her part, the State will regard such lands as unowned or State property, needing proof of human existence by way of dwellings, farming, grazing or hunting to be pre-conditions for the recognition of local communities' rights over such lands even when in their generally poor state, local communities might depend even more on off-farm resources for survival. As such, when the exercise of such rights is curtailed by the State, communities' members might not have access to farmlands to compensate for the loss of their collective lands.

Beside food, communities might depend on off-farm collective resources for cultural, customs, health and belief. While this might not be advocated for to imply only strict community based management of land, it may also be a call to include majority communities members considered to be the worst-hit by poverty in the determination of land ownership since beside the State, they can equally suffer from the inequitable class structurization in local communities with the risk of concentrated land-holding.<sup>72</sup> Decentralization therefore might put an end to this, while fostering local institutions with merited communities' members manning decentralized institutions at local-levels, where they will be in direct control and supervision of local developmental affairs including land.<sup>73</sup>

## Provides Opportunities for Conflict Resolution

Certainly, local or communities' land tenure and decentralization as independent concepts might have their distinct challenges.<sup>74</sup> In spite of this, decentralization could if effectively implemented be a sort of panacea to local land conflicts which often end up in the relegation to a second position of customary communities' practices and belief in terms of land ownership and distribution. This aspect of conflict resolution can be effective if decentralization is legitimately considered not only to be a political market which bring together both the State and citizens as buyers and sellers of services and a means of improving service delivery, but also as a condition for local democracy and creative politics.<sup>75</sup>

72 Alden, W. (2012), *Customary Land Tenure in the Modern World, Right to Resources in Crisis: Reviewing the Fate of Customary Land Tenure in Africa. Brief 1 of 5*.

73 Nyongkaa, K. (2020), *Decentralization of Biodiversity Management under Cameroonian law: Searching for a Conservation Paradigm. American Research Journal of Humanities and Social Science. Vol. 3, Iss. 12, pp. 66-83*.

74 *Decentralization might be having challenges such as: lack of distinct practical limitations of the powers of the central government agencies in the control of spheres over which local communities interests prevail especially at the local level; elite capture and the over wielding of State authorities over decentralized local entities.*

75 Agrawal, A. and Ribot, J. (1999), 'Accountability in Decentralization: A framework with South Asian and West African Cases'. *Journal of Developing Areas*, vol. 33, Summer: Pp. 473-502; Manor, J. (2005), *User Committees: A Potentially Damaging Second Wave of Decentralization? In: Ribot, J. and Larson, M. (Eds) Democratic Decentralization through a Natural Resource Lens. Routledge, London and New York. Pp. 192-213*.

## Decentralization, Harnesses Community Based Natural Resources Management (CBNRM)

The human induced catastrophes manifested through the Himalayan devastated floods, as well as the Sahelian droughts of the 70s for example helped to exposed some of the limits of the 'all sufficient' State command- and-control over land policies. While this might have helped to show the important central role of people in land sustainability, in Cameroon, it is still considered to some extent that all lands belong to the State.<sup>76</sup> Even so, the categorization of national lands attributing a portion to communities' occupancy can just be a first step into the recognition of the important role local communities could play as far as land management is concerned over 'unoccupied lands', though arguably superficially limited to hunting and fruits picking.<sup>77</sup> With these, hardly could there be a way through which land can be effectively managed without taking into considerations the role, local communities can play. The decentralization option adopted by the Cameroonian government could just be another way to democratically enforce their role.<sup>78</sup>

### Some Challenges and Difficulties Encountered in Weaving Communities' Land Rights within the Decentralization Paradigm

Through decentralization, the State is determined to devolve special powers and resources to local authorities as major driving force for promotion of development, democracy and good governance at the local level.<sup>79</sup> However, the content of the special powers has not been defined in the law, making one to wonder if there exist set of *unspecial powers* therein.

### Difficulties in Harnessing Communities' Land Rights through Registration

Generally, with the adoption of decentralization, the management and ownership of land would have been simplified. Arguably, this seems not to be the case given that, very modest results have been achieved to this effect so far as the government still needs to effectively support the credibility and implementation of the procedure for accessing national lands. This is so given that, the land laws in Cameroon have tended to maintain land title at the center of the land tenure regime. To this effect, land titles and land leases, considered to be land concessions are the legal means for the enhancement of land holding and control as right.<sup>80</sup>

Even with the adoption of the decentralization law, it is still considered in the Land Ordinance No. 74-1 that the State is the guardian of all lands. With this, one wonders whether the decentralized entities will be able to respond to the land

76 Article 1(1)(2) and (3), Ordinance No. 74-1 of 6<sup>th</sup> July 1974 on Rules Governing Land Tenure in Cameroon.

77 Article 17 (3), *ibid*.

78 Section 5 (1) and (2) of Law No. 2019/024 of 24<sup>th</sup> December, 2019 on Decentralization consider that, Decentralization shall consist of devolution by the State of special powers and appropriate resources to local authorities.

(2) Decentralization shall constitute the basic driving force for promotion of development, democracy and good governance at the local level.

79 See Section 5(1) and (2), *ibid*.

80 See common article 4, Ordinance No. 74-1, July 6<sup>th</sup>, (1974) To Establish Rules Governing Land Tenure and Ordinance No 74-2, July 6<sup>th</sup>, (1974), To Establish Rules Governing State Lands; as well as article 1, Decree No. 76-167, of April 27<sup>th</sup> (1976), To Establish the Terms and Conditions of Management of the Private Property of the State.

needs of the populations under their different jurisdictions. As if to further encumber and render difficult the possibilities for the local communities to obtain land documents on the lands called theirs, they will need to apply for land titles by drafting development projects as a sign of human presence in other to obtain a provisional concession (*concession temporaire*). This aspect usually limits the rights communities' members may enjoy or desires to enjoy as far as unoccupied lands are concerned.<sup>81</sup>

### Ill-adaptive Nature of Decentralized Institutions in Anchoring Devolved Land Management Powers

Decentralization may be considered to mean different things in different context and to question if decentralization can be a panacea for Communities' land issues or whether Communities land issues can be adequately addressed by decentralization may be responded to by first of all recognizing that decentralization is layered with its own challenges. Arguably, decentralization might have been put into place in Cameroon in an attempt to resolving protracted political conflicts between central elites and those at the base.<sup>82</sup> And if so, one wonders if the major question of Communities land rights could adequately be resolved through this mechanism.

Developmental questions over national lands are addressed solely by the State through the Land Consultative Board presided over by the Civil Administrators (Divisional or Sub-Divisional Officers) in collaboration with traditional authorities.<sup>83</sup> The remarkable absence of decentralized local institutions put across the ineffectiveness of locally decentralized institutions in deciding land issues. Thus how therefore will such institutions articulate Communities land rights if they fail to be represented as members of the land Consultative Board where key decisions are taken on Communities' lands – 'national lands.'

### The Receptive versus Proactive Perception of Decentralization

In Cameroon, Decentralized Local Authorities are perceived as receivers and not proactive when it comes to issues of land management; talk less of Communities' lands. In this regard, while article 16(1) of Ordinance No. 74-1 of Rules Governing Land Tenure shies away from articulating in an express manner Local Communities' land interests, it entrusts the administration of national lands to the State – central authorities. This is further confirmed in article 1(2) of the same Ordinance where the state is placed as "guardian of all lands." While these and other pieces of national legislations seem to sap away Local Communities' rights over land, the Decentralization law seems no better. Firstly, while one may perceive decentralization as means of empowering and patronizing local initiatives, it arguably leaves one with the impression that it is limited in Cameroon to exercising 'only'

81 Fosting, J. (1995), *Compétition Foncière et Stratégies d'Occupation des Terres en pays Bamiléké*. In: Blanc-Pamard C. (ed.). *Dynamique des Systèmes Agraires : Terre, Terroir, Territoire : Les Tensions Foncières*. Paris : ORSTOM, p. 131-148.

82 Diaw, M. (2009), *Elusive Meanings: Decentralization, Conservation and Local democracy*. Chapter 3, QXD, Pp. 56-67.

83 Article 16, Ordinance No. 74-1 of 6<sup>th</sup> July 1974 to Establish Rules Governing Land Tenure.

the powers devolved to it by the central authorities.<sup>84</sup> Secondly, Section 28 of the Decentralization Code further reads:

1. *The powers devolved on local authorities in matters concerning public land shall be exercised in accordance with the laws in force and which is not repugnant to the provisions of this law.*
2. *The State may transfer to local authorities the ...property referred to in subsection (1) above, at their request, or on the initiative of the State, in order: to enable them to carry out their missions...*

From the above posture, decentralization could be mistaken for command and control mechanism through which local authorities could be instructed by the central administration. In this situation the hopes mustered around decentralization as means of liberating and empowering Local Communities to beside other things articulate their land rights might take longer than expected to be a reality in Cameroon.

### **Decentralized Authorities, Ready and/or Prepared towards Land Management for Communities' Interest**

Although the Decentralization Law in Cameroon has set the stage – the readiness for effective devolution of powers to local authorities, there still exist doubts as to whether such readiness is accompanied with the actual preparedness to hand over powers to these institutions. This can be illustrated in the land management sector as decentralized entities are yet to be granted the authority over national lands. Even if such was to be attained one wonders aloud if the interests of local Communities will actually be a major preoccupation. This might be so given that the central authority determines on which sector competence would be transferred, when and to what extent. Even so, the State still remain a major competitor among the stakeholders clamoring over national lands. In this regard, it tends to declare all lands without distinction as lands over which the government shall have management rights, especially national lands. Thus, "...national lands shall be administered by the State..."<sup>85</sup> This has casted doubts as to whether the State is actually ready to give-up this management position over lands to decentralized local authorities and whether the latter is actually prepared to take up this responsibility for the interest of local Communities they seemingly claim to represent. In Cameroon, the decentralization law is still relatively new<sup>86</sup> and the axes for its full implementation, especially land management for Communities interests is yet to pick up with the necessary steam.

## **Conclusion, Recommendations and Way Forward**

Building grassroots democracy arguably remains the major goal of decentralization. Such democracy when applied in land management seem however incomplete given that, local communities' interests are largely insufficiently articulated in a direct manner. Nevertheless, the full implementa-

tion of decentralization will require qualitative and quantitative trained human resources. Thus, local authorities need specialists to, beside other things, design development plans and projects for their areas, monitor implementation of developmental activities, and ensure that the daily needs of the peoples are met especially when it comes to land management and ownership. Unfortunately, it seems the National Decentralization law<sup>87</sup> has skipped the opportunity to articulate Communities' land interests.<sup>88</sup> Even so, all hope is not lost given that, in its Section 3, the law seeks to accord a 'special status' to North West and South West Regions due to among other things, their specific legal background "...Anglo-Saxon legal background based on Common Law", though still awaiting a Decree of application. Thus, whether local Communities' land interests would be taken on board, is a matter to wait and see.

The devolution of power and resources to local authorities generally entails accountability. Yet, under decentralization, the State selectively determines the areas of competences to be devolved and to what extent. While this is so, the question lingers on as to whom are the members of such local authorities accountable to, especially when it comes to communities' land ownership. Do they owe accountability duties to the local interests they represent or the State through government agents such as the Divisional Officers and Governors found to be appointed by the State with repressive powers to alter decisions taken within decentralized bodies. Thus, if this issue is not well addressed, then the effectiveness of decentralization especially in land management at the local level particularly laying emphasis upon communities wellbeing remain far-fetch.

<sup>87</sup> Law No. 2019/024 of 24 December 2019 on the Code to Institute the General Code of regional and Local Authorities, op cit.

<sup>88</sup> In its General Provision, Section 1 (2) is to the effect that the Law sets out: "...the common provisions applicable to local authorities; the status of local elected officials; the rules governing the organization and functioning of local authorities; the financial regime of local authorities; and special regulations applicable to certain local authorities."

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<sup>84</sup> See Sections 19 – 20 of the Decentralization law.

<sup>85</sup> See article 16(1) Ordinance No. 74-1 of 6<sup>th</sup> July (1974), op cit.

<sup>86</sup> Barely adopted in 2019. (Law No. 2019/024 of 24<sup>th</sup> December, 2019 on Decentralization).



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