

Land Rights and the Forest Peoples of Africa



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Historical, legal and anthropological perspectives

No 2 Historical and contemporary land laws and their impact on indigenous peoples' land rights in Cameroon

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**The influence of historical and contemporary land laws on
indigenous peoples' land rights in Cameroon**

Samuel Nguiffo, Pierre Étienne Kenfack and Nadine Mballa

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Introduction

The notion of land tenure relates to more than the land itself; it relates to the way the land is used and to the resources and produce it provides a habitat for.¹ Land tenure is central to the development strategies of the communities and to the organisational structures of political societies. The stability and prosperity of political societies depend on how well land issues are regulated. Each of the traditional societies in pre-colonial Cameroon had a framework of customary norms to govern the relationships between humans, the land and its resources. Despite the rich



cultural diversity of Cameroon, common traits were clearly visible, such as the importance of collective rights in customary land laws.

With a view to unifying the law, the German protectorate attempted to abolish customary rights and replace them with various solutions based on imperial law, which applied to the country as a whole. Colonial land law was fundamentally different from traditional customary laws in that it involved a system based on individual rights, and ownership guaranteed by the state. Intense opposition from the country's populations led to the coexistence of written and customary laws, and while this hybrid system set up by the successive colonial administrations continued until independence it was heavily imbalanced in favour of the written law.

Land scarcity, due to demographic growth and the multiplicity of non-traditional uses of the land, serves to highlight the precarious nature of the rights of local and indigenous communities* over the land and its resources. The rising levels of poverty amongst local communities and indigenous peoples, which can be explained, at least in part, by the

¹ See Alain Rochegude, « *Foncier et décentralisation : Réconcilier la légalité et la légitimité des pouvoirs domaniaux et fonciers* », Bulletin de Liaison du Laboratoire d'Anthropologie Juridique de Paris, n° 26, Sept. 2001, p. 13-32.

* Indigenous communities refer to groups complying with the four criteria set by the UN Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1982. The criteria are: (1) the occupation and use of a specific territory; (2) the voluntary perpetuation of the cultural distinctiveness; (3) self-identification, as well as recognition by other groups, as a distinct collectivity; (4) an experience of subjugation, marginalization, dispossession, exclusion or discrimination. See African Commission on Human and People's Rights (ACHPR) and IWGIA, Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, 2005.pp. 86-104.

weakness of their land security, is a call for designing a new and more legitimate land law, more in line with government priorities of reducing poverty.

In Cameroon, two groups meet the criteria for being called 'indigenous' as defined by the World Bank and the International Labour Organization. They are the Mbororo communities, nomadic cattle herders scattered throughout the country, and the groups of hunters, gatherers and collectors commonly known as 'Pygmies' or indigenous forest peoples, who are the subject of this report. Depicted by historians as the first occupants of the forested areas of the Congo Basin, they are semi-nomadic and live in the eastern, central and southern regions of Cameroon. They comprise the Baka, who live in three central African countries (Congo, Gabon and Cameroon), the Bakola or Bagyéli, and the Bedzang. The estimated total population of the indigenous communities in Cameroon is around 70,000.

The Baka are the largest group. Estimates put their number at around 40,000. They live in the eastern and southern regions of Cameroon. The Bakola, also known as Bagyéli, live in an area of around 12,000 km sq and are confined to Southern Cameroon (the *arrondissements* of Akom II, Bipindi, Kribi and Lolodorf). The Bedzang live in the central region to the north-west of Mbam in the region of Ngambè-Tikar.

These groups share a common attachment to the forest of which they have a thorough knowledge and which they consider to be common property to be accessed and used without restriction. For them it is the foundation of their existence. They regard it as their foster mother, the source of their food and pharmacopoeia and the setting for their cultural and spiritual recreation and celebration. They have a strong culture of sharing, and live mainly from the immediate consumption of products from the forest (game, yams and wild fruit, honey, and various types of leaves and bark). Their dwellings are made mainly of branches and leaves of trees, the precariousness of which reflect their nomadic lifestyle. Nowadays in many cases they are partially sedentary.

The indigenous forest peoples of Cameroon originally lived in peace with their Bantu neighbours with whom they maintained friendly relations. Their relationship was based on bartering, in particular exchanging the products of hunting and gathering for farm products supplied by the Bantu.

The purpose of this study is to assess the influence of the land legislation process on the land rights of the indigenous communities. On examination, it is apparent that the communities have gone from a situation of having full and complete rights to the land and its resources, by virtue of their customary rights, to a gradual dispossession, which has culminated in the independent State. Both pre- and post-colonial land laws in Cameroon have seriously damaged the land rights of local communities and indigenous peoples, because even if these populations consolidate their usage and enjoyment rights (see section II), it is at the cost of their right to ownership (see section I).

I Land Laws and the erosion of indigenous peoples' right to land tenure

Colonisation in Cameroon completely disrupted the way of life and the way that relationships were regulated between the people and the land and resources. The Douala kings on the coast of Cameroon were aware of the importance of land in terms of maintaining social cohesion and their authority. It is almost certainly in an attempt to prevent the impact of this disruption to the land that they attempted to retain their control of the land and resources of the territory by signing the German administration's Germano-Douala Treaty in 1884. According to paragraph 3: 'the land in the towns and villages of the Cameroon Towns remains the private property of the indigenous peoples'.² However, once the agreement was ratified by the German monarchy it was used as a justification for the process of annexing the hinterland in accordance with the Treaty of Berlin in 1885.³

Perceived by Germany as a productive and exploitable colony that could accommodate a large number of settlers, Cameroon could not avoid its legislation and laws governing access to and usage of land and natural resources being completely overhauled. The new colonial administration thus very rapidly introduced legislation on land issues.

The result of this was a significant reduction in communities' rights over land and resources (see section A), which only got worse following independence (see section B).

1 The erosion of local communities' rights prior to independence

It was only at the end of the 19th century that land issues were included in formal written laws⁴. In fact it was in 1896 that an imperial decree legalised all 'non-occupied' land as a possession of the German monarchy. This decree marked the beginning of what would be a long-lasting conflict between traditional law and colonial state law, and later post-colonial law. It also symbolised the German Empire's break from its commitments under the Germano-Douala Treaty.

While the introduction of written law in Cameroon did not entirely annihilate existing customary laws, it established new legal categories which coexisted with the existing ones but also weakened them. The new laws were thus created by virtue of dramatically reducing the extent of the peoples' rights (See section 1). Furthermore, the rights to customary ownership that had heretofore been recognised were now submitted to completely new and restrictive conditions (see section 2).

² See paragraph 3 of the Germano-Douala Treaty of July 1884.

³ The Berlin Treaty of 1885, on which work began in 1884, was a tool to prevent conflict between the European colonial powers in their attempts for colonial conquest. It gave the colonial powers occupying the coastal area the right to add the hinterland up to the borders with other colonial powers. This document marked the beginning of the colonial conquest intensifying.

⁴ Although the Germano-Douala Treaty was technically the first document under written law which made reference to land issues in Cameroon, its aim was not to legislate on the issue and was limited to reaffirming the capacity of customary law within the national land structure. See Article 3 of the Germano-Douala Treaty of 1884.

1.1 Curbing the extent of peoples' land rights

With the introduction of colonial law we saw a severe reduction in the geographical (see section a) and material (section b) extent of the rights of the people over the land.

a) Reducing the geographical scope of peoples' customary rights

Prior to the German protectorate, the various lands which together were to become Kamerun were regulated by the customary land laws of the different peoples living on these lands. The lands and resources were regulated by the different customary laws operating within each community. Colonial law created two new categories of land rights which restricted the populations' right to customary ownership: private land and state-controlled land.

Colonisation introduced the notion of property ownership to Cameroon by introducing the *Grundbuch* registration process⁵. Private lands were registered either through the formal recognition of customary rights in the case of the 'native' peoples or by land cessions carried out in accordance with customary law.

Very rapidly the German government decided to grant Cameroon an entitlement to national land, which for the most part went far beyond the limits determined by the sovereign power of Cameroon Towns. This national heritage was set up using two techniques: appropriation of '*terra nullius*' (land belonging to no one) and expropriation.

Appropriation means taking possession of something that has no owner. It was accomplished by means of the imperial decree of 15 June 1896, Article 1 of which states:

*All land in Cameroon, with the exception of land over which private individuals or corporate bodies, chiefs or indigenous communities may be able to prove ownership rights or other real rights, or land on which third parties have acquired occupancy rights on through previous contracts with the imperial government, is considered 'vacante et sans maître' [vacant and ownerless] and becomes Crown domain. Ownership belongs to the Empire*⁶. [Unofficial translation]

This document introduced for the first time the notion of land '*vacante et sans maître*' (*terra nullius*). In fact it denies all ownership if not all control over land to individuals or corporate bodies whose link to the land cannot be established in accordance with the canons of law recognized by the German administration. It also established the potential for the German empire to have ownership of land under a common land law system, thereby reducing customary ownership. The only land tenure system in existence thus far was for residual property, which was subject to rigid conditions.

Expropriation, the second legal method for establishing state ownership of land, was tried out in Cameroon in January 1913 but only on land in the town of Douala⁷.

⁵ Land register under the German colonial administration.

⁶ Emphasis added.

⁷ This was land that came under the ownership of the kings or Douala communities, which was going to be expropriated by the German colonial administration. Douala King, Manga Bell, contested this and was hanged by the Germans. See Julius Ngoh, title? 1996, p. 107.

Under this structure, the new state land remained the property of the German Empire and the Treasury of the Protectorate until the Germans were defeated in the First World War (1916). The mandate, and then the Franco-British trusteeship over Cameroon, required that the country be administered on behalf and under the control of the international community as a whole, which centred on the League of Nations,⁸ and later the United Nations.⁹ Consequently, two distinct categories of land were maintained under state control: land privately owned by the state, and public land.

Thus, by transferring a very large part of the territory into state-owned property, colonial law, be it German, French or English, greatly reduced the land rights (in particular customary rights) of the various peoples living in Cameroon.

b) Reducing the substance of the communities' rights

The material extent of the communities' rights was also affected by the colonial land-tenure system. What this did was to ascribe undue importance to agriculture in determining the peoples' rights, and to marginalise, if not outright ignore, other local forms of land and resource use.

The notion of '*terres vacantes et sans maître*', which was the cornerstone of the process of dispossessing communities of their land rights, demonstrates a particularly simplistic perception of the peoples' relationship with the land and its resources. This view was reinforced in Article 3 of the June 1896 decree which allowed for the reservation of land on which '**cultivation** is vital to the existence of the natives.'¹⁰

This decree appeared to assume that the main, if not exclusive, uses of land were agricultural, which demonstrates a complete misunderstanding of the local cultivation and production methods in Cameroon, which are not dependent on farming at all. The criteria for subsistence farming, therefore, formed the basis for determining how much land should be allocated for future community use.

The colonial legislation also demonstrated ignorance of two critical cultural aspects of the peoples of Cameroon in the context of land rights. First, the intangible rights associated with cultural use of the land and its resources, which are often of a sacred nature. Second, the rights over the natural resources, which represent a significant part of the local communities' activities on the land. The local production systems place a high level of importance on hunting, gathering and collecting which literally have no role in agriculture, and can lead to the conclusion that the land is unused.

⁸ From the Versailles Conference in 1919 until the Second World War.

⁹ From when the UN was created in 1945 up until Cameroon gained independence in 1960 (for Cameroon under French trusteeship) and in 1961 (for Cameroon under British trusteeship). In this way it is interesting to note France's reticence towards this system. In this way, the French colonies minister, M.Simon, stated that as Cameroon had been won in battle it could not become a mandated country and must be 'purely and simply annexed', See Victor T LeVine, 'The Cameroons from Mandate to Independence', University of California Press, 1964, p. 34.

¹⁰ See Article 3 of the June 1896 decree. Emphasis added.

It would appear that the German legislator devised the system principally by transposing land tenure systems inspired by Germany's legal environment. The creation of land ownership by an administrative act which was binding on all persons was, effectively, the cornerstone of the colonial system. Allied to this was the recognition, in the communities' favour, of rights over land in use (for housing or agriculture) as well as land reserved for future agricultural needs. However, the recognition of these rights remained subject to conditions that were incompatible with the traditional practices of the local peoples.

1.2 The terms of customary land ownership

One of the advantages of the 1896 decree, as far as the communities were concerned, was that it introduced the principle of recognition of customary land rights, even if their geographical extent and their substance were to be severely restricted. However, although the peoples' customary rights were recognised (see section a), they could not be taken for granted (see section b).

a) Recognition of customary land ownership

The recognition of customary ownership appeared under Article 1 of the 1896 decree, which under the land category '*vacante et sans maître*' excluded land which 'private individuals or corporate bodies, chiefs or indigenous communities may be able to prove ownership rights or other real rights over...'

While taking possession of land reputed to be '*vacante et sans maître*', Article 1 also established recognition of customary land ownership by 'chiefs or indigenous communities'. The rights thus recognised could really only exist anyway in accordance with customary rights, since there had been no written legal document with the authority to govern land across the whole of the country prior to the 1896 decree. Also, the inclusion of non-indigenous entities ('corporate bodies', generally traders and missionaries) on the list of potential beneficiaries of such customary lands rights prior to the decree simply confirmed the existence of land transactions between foreigners and indigenous peoples before 1896¹¹. Finally, the substance of the rights in question was clearly specified: they were the rights to land ownership and other real rights.

A further proof of the recognition of customary land rights was provided by the expropriation act adopted by the German colonial administration in January 1913. In fact, the expropriation only applied to land owners, and in the case of Douala land, to land under customary ownership.

This recognition of customary land rights remained a constant of colonial law in Cameroon and was confirmed under the law of 17 June 1959, governing the organisation of state property and of land ownership, Article 3 of which specifies:

¹¹ Victor LeVine states that land transactions took place in Cameroon under the German protectorate and even led to a land speculation in the town of Douala. See 'The Cameroons from Mandate to Independence', *op. cit.*, pp. 29-30.

The customary rights exercised collectively or individually on all land are confirmed, apart from land which forms part of the public and private domains* (. . .) and land which has been appropriated according to the regulations of the civil code or the registration system (. . .). No collective group or individual can be forced to cede their rights unless for a state-approved purpose and for which they receive fair compensation

Although customary land rights were recognised, the owners had to provide evidence of such customary rights to be able to take advantages of all the benefits linked to such ownership.

b) High burden of proof for customary ownership

Despite a real willingness on the part of the legislator to ensure that customary land rights were recognised and protected, identification of these rights were subject to strict prior conditions before they could be recognised.

The German and French colonial laws contained specific clauses on identification of these rights. The colonial administration shared the initiative to recognise customary land rights with the recipients and the criteria for determining the existence of these customary rights were based on the location of the houses and areas under cultivation.

The decree of June 1896 had established land commissions with the purpose of identifying customary land rights in the hinterland. The objective was to compile a register of '*terres vacantes et sans maître*' in order to demarcate the Crown domain in Cameroon. It was a complex process and, ultimately, imposed the responsibility for proving customary land rights on the beneficiaries.¹²

Strangely, the requirements relating to land development were far more flexible for holders of concessions than for the communities. In fact, recipients of land concessions had only to justify development of 30% of the area requested areas.¹³ This process had every likelihood of culminating in the issue of a registration document.

Although proving customary ownership of areas used for agricultural or residential purposes may have appeared relatively straightforward (assuming the the barrier of being able to write had been overcome) this was not the case for other traditional uses of the land and its resources.

The criteria for identifying land ownership were unattainable for the indigenous communities; in fact the written nature of the process excluded them entirely. The outcome was that successive colonial administrations had no knowledge of of the indigenous communities' traditional land rights. This fundamental failing on the part of the German colonial administration meant that the identification of communities' traditional rights of communities was not at all comprehensive. This erroneous assessment then became set in

* The private domain is formed of land belonging to the state, while the public domain is made up of land falling under the property of nobody. The public domain is under the control of the state.

¹² See Article 1 of the 3 June 1896 decree.

¹³ See Arrêté of April 7th 1949, J.O.C. 1949, p.530.

written law and was transmitted through subsequent transfers of sovereignty after the First World War.¹⁴

The local populations' customary rights having already been reduced from those pre-dating the German protectorate, they were to be further reduced after independence.

2 Negation of the rights of local and indigenous communities in post-independence land laws

When Cameroon gained independence the country's leaders planned to change the land-tenure system in place, which combined traditional law with modern law, in order to adopt a new system which incorporated the nation building and development goals.

As the country comprised two federated states, this issue was crucial only in the Francophone part, known as 'Eastern Cameroon', because in the English-speaking part, the 'Land Native Right Ordinance', in force in Nigeria and which had been extended to Cameroon under the British administration, did not run counter to the authorities' plans. It considered local communities and indigenous peoples as merely usufructuaries of the land they farmed.¹⁵

The reunification of the state in 1972 provided an opportunity for leaders of the unitary state to adopt one national land-tenure system for the whole country. This was achieved by means of three substantial ordinances passed on 6 July 1974,¹⁶ which were added to in later legislation.

No doubt the reformists' intentions were to establish a modern land reform favouring national integration and development of the country.¹⁷ In the event, the results proved disastrous for local communities and indigenous peoples, whose land rights were virtually negated as post-independence legislation included the eradication of customary land rights (section 1), and facilitated the expropriation of local communities and indigenous peoples who had achieved the feat of becoming land-owners (section 2).

2.1 Withdrawal of customary land rights

The law of 17 June 1959 governing the organisation of state property and of land ownership had strengthened the rights of local communities and indigenous peoples over their land by abolishing the notion of '*terres vacantes et sans maître*' and creating the notion of customary

¹⁴ See Samuel Nguiffo, '*La succession d'États au Cameroun*', Yaoundé, IRIC, 1991.

¹⁵ This order granted possession and occupation rights on land, which was known as 'right of occupancy', which was separate to the Land Certificate. Following this, the governor of Nigeria became the owner of all land, to the detriment of the customary chiefs. *C.f.* B Puepi, '*Cameroun : deux siècles de pratiques foncières*', unedited. Also see Amodju Tijani Vs The Secretary, Southern Provinces, decided by the privy council in 1921 (<http://www.nigeria-law.org/Amodu%20Tijani%20V%20The%20Secretary,%20Southern%20Provinces.htm>).

¹⁶ *C.f.* order n° 74/1 of 6 July 1974, which set the land-tenure system, order n° 74/2 of 6 July 1974, which set the area of national land and order n° 74/3 of 6 July 1974 relating to expropriation for public use. The latter was replaced by law n° 85/09 of 4 July 1985 relating to expropriation for public use.

¹⁷ Authors are unanimous on this issue : *c.f.* P G Pougoue, '*La place de la terre dans la stratégie de développement économique du Cameroun*', *op. cit.* J M Nyama, *op. cit.* p. 23 and s. ; A D Tjouen, '*Droits domaniaux et régimes fonciers au Cameroun*'.

ownership of land. This gave every Cameroonian by birth who for a minimum of five consecutive years had occupied in their region of origin, a concession, a plantation or a plot of land, which had been permanently allocated to them in return for payment or free of charge by the customary owners (or by the customary owners jointly in a family council in regions where local collectives were recognised as land distributors) the right to the enjoyment and use of it.¹⁸

This customary ownership, which operated alongside 'modern' ownership granted under the registration system, and which allowed local populations and indigenous peoples to manage and to gain all benefits from their land, even in disposing of it, was abolished after independence by a state intent on using the land as a tool for political and development purposes.¹⁹

Customary ownership rights were abolished under Ordinance No. 74/1 of 6 July 1974 governing land tenure, which made registration the only means of acquiring land ownership and which placed all non-registered land under state control.

a) Registration – the sole means of acquiring land ownership

Registration is the act of recording in a numbered register, the name of a person or an object, to identify it for various purposes.²⁰ Any registration procedure for real estate culminates in the issue of a land title, 'official certification of ownership'.²¹ Since 1974, the Cameroonian legislator has made this procedure the sole means of acquiring land ownership and has declared 'assignments and leases of urban or rural lands which are not registered in the name of the seller or lessor shall be null and void'²².

To avoid any misunderstanding about the application of this legislation by local populations and indigenous peoples, and consequently the abolishment of customary land ownership, Article 17 invited customary communities, their members and any person of Cameroonian nationality who on the date on which the ordinance entered into force were occupying or exploiting non-registered land, to apply to register the land, since this was an essential condition to gaining the deeds of settlement.

The registration process provided the advantage of facilitating the identification of land and proof of land ownership. Land owners were supposed to be glad that this process had been put in place. Quite simply, the establishment of this as the sole method of accessing land ownership revealed the legislators' inclination to negate the ownership rights of local populations, by imposing conditions and registration procedures that they had difficulty fulfilling.

¹⁸ This customary ownership of land should have been recorded through the transcription of the official records of land registers.

¹⁹ C.f. St. Melone, 'La parenté et la terre dans la stratégie de développement du Cameroun'; P. G. Pougoue.

²⁰ 'Vocabulaire juridique de l'Association Henri Capitant', by G. Cornu, Quadrigue, Paris, PUF, 2004, p. 455.

²¹ See Article 1 of decree n° 75/165 of 27 April 1976, which set the conditions for obtaining land titles.

²² See Article 8 of order n° 74/1 of 6 July 1974.

b) Restrictive registration requirements for local and indigenous populations

Conditions were imposed both on the applicant and on the land to be registered. Those relating to the applicant did not affect the local and indigenous populations' rights of ownership to their land since the legislation in force authorised customary collectives, their members or any person of Cameroonian nationality to seek registration of the land they occupied or exploited.²³

On the other hand, the conditions relating to the land itself were difficult if not impossible for the relevant communities to fulfil. The fact is that although they had formerly been recognised as customary owners, the local and indigenous populations could only acquire registration of their land if they had developed it.²⁴ Development entailed either occupying the land – through construction of houses and outhouses, sheds or other buildings - or exploiting it: through growing crops, plantations or animal rearing and grazing.

This condition enabled the state to reclaim the bulk of the communities' land as it forbade registration of unexploited land which was under customary ownership.

In the specific case of indigenous populations, this condition removed all right of registration and consequently all right to land ownership on the pretext that the indigenous peoples had a primarily nomadic lifestyle, just as their means of production were based on hunting and gathering, which did not fulfil the development requirements in the sense applicable to the legislation in force.

It could be concluded, therefore, that although the registration process may have appeared neutral, it did nevertheless constitute flagrant discrimination against indigenous peoples.

c) A complex registration process for local and indigenous populations

The land registration process in Cameroon, set out under decree no.76/165 of 27 April 1976, establishing the conditions for obtaining title to land, was modified by decree no.2005/481 of 16 December 2005. According to these two sets of legislation, all local or indigenous collectives (or any member of which) seeking to convert their former customary ownership to state-recognised ownership must compile a file comprising information relating to their civil status, their registered address, their profession, a description of the land (area, type of occupation or usage, estimated value, etc.).

The file is lodged with the local administrative authority, who forward it to the departmental land affairs officials. The process is expensive and, in addition to the costs of compiling the file, the applicant has to pay for field visits to allow the development status to be confirmed, as well as the boundary demarcation costs.

²³ See Article 9 of decree n° 76/165 of 27 April 1976 setting the conditions for obtaining land title.

²⁴ L'article 11 alinéa 3 du décret n° 2005/481 du 16 décembre 2005 portant modification et complément de certaines dispositions du décret n° 75/165 du 27 avril 1976 fixant les conditions d'obtention du titre foncier, pose fermement que les demandes d'immatriculation portant sur les terres libres de toute occupation ou de toute exploitation sont irrecevables et relèvent de la procédure de concession.

This process potentially invalidates any application by local and indigenous populations since their lifestyle excludes them from gaining registration because of their non-development of the land, a prerequisite for all land title requests.

2.2 Simplifying the process of expropriating registered land

In legal terms, expropriation is the process of removing property from a land owner against their will.²⁵ Expropriation is inapplicable between private individuals due to the strength of ownership law; it is only allowed for the purpose of public use and involves the forced transfer of all or part of lands or real rights. The doctrine defines expropriation of land for public use as a unilateral process of public law by which a public entity takes ownership of a building or a real [land] right and in exceptional cases, an incorporeal right, for the purpose of public use²⁶.

The potential for expropriating from peoples for the purpose of public use is set out in international and domestic laws. For example, the Universal Declaration of Human Rights²⁷ or the African Charter on Human and Peoples' Rights, Article 14 of which states:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

The preamble to the Constitution of Cameroon of 18 January 1996 incorporates this principal and a payment of compensation following expropriation, the terms of which are set by the law.

Legislative and regulatory documentation specify the conditions of expropriation.²⁸ Article 1 of the 14 July 1985 law relating to expropriation for public use states:

In order to undertake objectives of general interest the state can appeal to the process of expropriating for public use. This process is either undertaken directly when it is for the purpose of undertakings in the public interest, either at the request of local communities, public institutions, service providers or state-owned enterprises.

Expropriation for public use can only be carried out on registered land, as stated in Article 2 of the 1985 law, which states that: 'expropriation relates only to private property as it is recognised by laws and regulations'. It is carried out by decree. In accordance with Article 4 of the document, the decree involves the immediate transfer of ownership and can transfer the existing titles or register without consultation free land in the name of the state.

²⁵ Vocabulaire juridique de l'association Henri Capitant, par Gérard Cornu, 6th edition. Quadrige, PUF, 2004, p. 386.

²⁶ For the Cameroonian doctrine, *c.f.* J Owona, '*Droit administratif spécial de la république du Cameroun*', Paris, EDICEF, 1985, p. 98; read also J M Nyama, '*Régime fonciers et domaniaité publique au Cameroun*', Yaoundé, PUCAC, 2001, p. 87.

²⁷ Especially in its article 17.

²⁸ See law n° 85/9 of July 4th 1985 relating to expropriation for public use, and order n° 87/1872 of December 16th 1987.

Expropriation contributes to making the right of local populations who have managed to overcome the registration process even less attainable. The expropriation process is dominated by the administration, which determines the nature of a specific public utility. Where the criteria of the public utility are not defined, its purpose can sometimes appear subjective. In addition, as highlighted by Owona the term public utility can be a potentially variable notion allowing the state to carry out dispossession without violating constitutional ownership protection.²⁹ For example, the construction of an oil pipeline between Chad and Cameroon was agreed to be for public use, even though the operation had many foreseeable social and environmental impacts³⁰. The trends in the public administration seem to be using the public utility concept as mechanism for ignoring human rights. Expropriation often does not follow all the procedures requested by international and domestic laws, including the payment of a fair and prior compensation.

Finally, the terms for compensation encouraged the administration to resort to the expropriation process. The amount of compensation granted is in fact much less than the expropriated land is worth and does not allow that they are replaced with goods of equal value³¹. The victims who are most exposed to this form of loss of rights to ownership are the local populations who were formerly customary owners of vast areas of land, which, once they have braved the constraints of the registration process, can still lose their land in return for a very small amount of compensation.

The process of weakening the land rights of local and indigenous populations and making them more precarious has paradoxically been accompanied by an attempt to strengthen usage and enjoyment rights for land and resources.

²⁹ See J. Owona, *Special administrative law of the Republic of Cameroon, op. cit.*, p. 103.

³⁰ See the Centre for Environment and Development, 'Broken Promises', Yaoundé, 2001 ; 'Traversing Peoples' Lives', Yaoundé, 2002. See also Jobin, William, 'Health and equity impacts of a large oil project in Africa', *Bull World Health Organ.* [online], 2003, vol. 81, n° 6 [quoted 29.10.2008], pp. 420-426 ; S Pegg, 'Can policy intervention beat the resource curse? Evidence from the Chad-Cameroon pipeline project', *African Affairs*, London, January 2006 ; 105 (418):1-25.

³¹ When it relates to land resulting from customary ownership, which then became a land title, compensation cannot go above the minimum official level for non-developed national land in the specific town of the land title: if it relates to land resulting from a standard transaction under general law or an acquisition of national land, the compensation due is equal to the purchase price plus various fees.

II Strengthening indigenous peoples' right to use and enjoy land and resources

Property rights are composed of ownership but also the rights to use and enjoy something, often referred to as usufructuary rights. Since, traditionally usufructuary rights are not part of local and indigenous communities customs, land laws both pre and post independence have reinforced their control over such usufructuary rights to reinforce their control over all lands where ownership rights could not be proven.

In order to strengthen the usage and enjoyment rights of local communities and indigenous peoples in lands now situated in the national domain, land laws have specifically mentioned and recognised such usufructuary rights. Prior to the decree of the 6th of July 1974, local and indigenous communities enjoyed the recognition of their usufructuary rights under customary land ownership, including the right to dispose of them. The legislator was careful to give the illusion of recognising ownership to the populations by specifically granting them usage and enjoyment rights over land in the national domain.

Studying the legislation does reveal a process to strengthen these rights, despite the limitations stopping them from being able to fully exercise these rights (1) and ways of improving the land rights could be suggested next (2), based on observing written law and customary rights.

1 Recognising usage rights

User rights are an element of possession; a de facto situation that is legally protected³². The right of usage can be taken positively and negatively. Positively, it means the right of the user is to help oneself (right of user) to this thing for their amenity or for financial exploitation. When applied to land, it means a right to farm, inhabit, and undertake hunting and gathering for examples. Usage rights also sometimes include the power to undertake measures of preservation and conservation over such land. The negative side relates to limitations to the user rights in terms of the right not to use something or in terms of limitations to such use of the land³³.

Once the legislator took back the land from the local populations, they were granted user rights, which relate to the land itself and to certain resources.

Land usage rights are set out under Article 17 of Ordinance No. 74 /1 of 6 July 1974, which defines land assignment over lands in the public national domain. The ordinance recognised that customary communities who, at the time when the decree came into force, occupied or exploited 'category 1' areas of land in the national domain (land for housing, farms, plantations, and grazing) would continue to occupy or exploit it³⁴. It is by applying this regulatory clause that rural populations construct their huts and camps on national land,

³² In terms of possession, read F Terre and Ph. Simler, '*Droit des biens*', *op. cit.* ; n° 138 and s.

³³ F Terre and Ph. Simler, '*Droit civil, les biens*', Paris Dalloz, n° 108 ; C. Larroumet, '*Droit civil, les biens, droits réels principaux*', Paris, Economica.

³⁴ See Article 17(1) of order n° 74/1 of 6 July 1974.

where they practice subsistence or production farming. In terms of inhabitation, the exercise of usage rights is sometimes regulated by the government, who grants the right to build on non-registered land in some of the towns, which contributes to legalise usage rights on these lands.

Aside from the land, the legislator also extended usage rights to certain resources that are found on the land, often legally referred to as the *fruits* (meaning the products from the land). The *fruit* of the land is what is periodically produced by a certain plant, without the substance of the land being altered³⁵.

The original document granting usage rights over the *fruit* is Article 17, paragraph 2 of decree no.74/1 of 6 July 1974. This decree states that in respect to the regulations already in place, the right to hunt and gather is recognised to local communities and indigenous peoples on unoccupied land (category two areas of national land), although the government did not give them an exact allocation. This right allows populations to feed themselves on things produced by the land, without altering its substance. This related to products from trees, foraging natural meadows, the young of animals. It is this law that allows local communities and indigenous peoples to use all natural forest products (fruits, leaves, bark, roots, etc.), without having to justify their ownership of the land.

By means of two complementary pieces of legislation, Law No .94/01 of 20 January 1994 (concerning forestry, wildlife and fisheries) and Decree No. 95/531/PM of 23 August 1995 (which set the implementation terms for the forest regime), the legislator extended usage rights to other products without fixed frequency and by allowing alteration to the substance of the land. The 1994 law gives an extensive definition of the term usage right. According to Article 8,

usage or customary rights are, in accordance with the present law, those which are recognised to resident populations to exploit all fauna and fish products in the forest, apart from protected species for their own *personal use*³⁶.

This law limits the exercise of usage rights to home consumption. It was a quid pro quo of the fact that the levy was free. However, such restriction is unrealistic since selling the many different forest products (flora and fauna) represents one of the main sources of revenue for indigenous populations.

The concerned fauna is set out in Article 78 of the 1994 forestry law which classes animals in terms of their degree of protection, by categories A, B and C. The decree of application³⁷ lists the species in the different categories, this decree puts forward the principal of the right to hunt being recognised for all³⁸. However it limits the practice. Firstly, to specific species

³⁵ For a definition of fruit *c.f.* Ch. Larroumet, '*Droit civil, les biens*', Paris, Economica, n° 225.

³⁶ Article 9 of the 1994 law indicates the products that are depleted in these terms: 'certain forest products, such as ebony, ivory, the heads of wild animals, as well as certain species of animals and plants for medicinal purposes or special interest, are known as special products'. They do not come under usage, but specific exploitation terms set by decree. This is highlighted by us.

³⁷ Order n° 0565/a/MINEF/DFAP/SDF/SRC set the list of animals classed as A, B and C.

³⁸ See Article 78 of the 1994 law.

(category C species) which are not endangered species. Secondly, to specific periods, known as hunting seasons, so as not to harm the species' natural reproduction cycles³⁹. In addition, to act legally, communities can only exercise their usage rights in terms of hunting if they use traditional tools⁴⁰. Finally, in certain areas, which are classified to protect fauna, hunting may be strictly regulated or even prohibited, according to the time of year, the species or the method⁴¹.

Since vegetation resources do not fall into the legal category of *fruit* are defined under a specific decree. The decree of 23 August 1995, Article 26(1) which states that:

In forests that come under the national domain resident populations retain their usage rights, which involves carrying out their traditional activities within these forests, such as collecting secondary forest produce, like raffia, palm products, bamboo, rattin or food products and firewood.

They are products whose use does not cause any significant degradation to the forest. However, under certain conditions, to allow populations to be able to fulfil certain domestic needs the decree includes the use of certain products whose use can potentially cause damage to the forest. For example, this includes the use of certain species of tree for which a reasonable amount is authorised to be used for the need for firewood and construction⁴². The concerned populations are not allowed to, under any circumstances, use the wood for commercial purposes or exchange the wood from these trees, and they will have to justify the use fo such products during forest monitoring.

It is true to say that usage rights are subject to a strict legal framework, which restricts activities undertaken in terms of the area, the time and the methods.

Usage rights are based on non-permanent forestry areas.⁴³ Formally the law of 20 January 1994 maintains usage rights for resident populations in both permanent forest areas⁴⁴ and non permanent forest areas⁴⁵. Also, in each of these domains, whether or not a forest is being exploited is of little importance. It is in fact prohibited under penalty for beneficiaries of forestry exploitation titles to create barriers to products being exploited which are not covered in their titles⁴⁶. But in permanent forest areas⁴⁷ usage rights which are likely to be exercised

³⁹ See Article 79 of the 1994 law.

⁴⁰ See Article 80 of the 1994 law.

⁴¹ See Article 81 of the 1994 law

⁴² See Article 26(2), decree of 23 August 1995, which set the implementation terms for the forest regime.

⁴³ As a result of the zoning plan, the forested area of Cameroon has been divided into non-permanent forest domain (land that can be turned to agricultural use) and permanent forest domain (forests to be left unchanged and which can be given over to industrial use and conservation - the ancestral lands of the indigenous peoples).

⁴⁴ See Articles 26(1) and 30(2).

⁴⁵ See Articles 36 and 38(2).

⁴⁶ See Articles 62 and 155.

⁴⁷ In particular this includes forestry concessions and protected areas, in which development plans must include terms to take into account the rights of the populations. See Article 29 paragraph 1 of the January 1994 law.

by the populations are not defined by either the aforementioned law nor by any application decrees.

In one sense, the law of 20 January 1994 settled on the possibility of limiting these rights in return for compensation in accordance with the terms set by decree, if they go against the objectives assigned to national forest land⁴⁸.

As for the laws governing the rules for both forest and fauna⁴⁹, they are limited to classifying the types of permanent forests in which no usage rights can be enjoyed (entire nature reserves, protected forest, national parks, zoological gardens, game reserves), or where certain usage rights are prohibited (in recreational forests, training and research forests in terms of cutting down trees and hunting) and those where usage rights will be regulated (in commercial forests for hunting, fishing and gathering and areas for reforestation in terms of grazing, hunting, fishing and gathering).

As a result there is legal question mark over the usage rights that local populations can legally exercise in terms of permanent forests, which adds to the already strict restrictions that these rights are limited to under the regulations.

In non-permanent forest areas, the legal framework for usage rights is both more complete and less restrictive. The law of 20 January 1994 and its application decrees in fact led to a non-exhaustive list of traditional activities that are still carried out in forests in the national domain⁵⁰ and in community forests⁵¹. This includes felling trees to use for heating or construction, lopping, chopping protected species, gathering dead wood, collecting secondary forest products (raffia, rattin, palm products, bamboo, food products, etc), gathering, hunting, fishing, grazing, farming, etc.

Although these terms are much more favourable for local populations than their usage rights of permanent forest areas, their scope is considerably reduced due to the lack of resources that the populations need on a daily basis in most of the non-permanent forest areas.

2 Recognition of enjoyment rights

This came into operation under the 1994 law, which brought about the forest regime by introducing (a) community forest areas and (b) decentralised taxation.

2.1 Community forests

The notion of 'community forest' corresponds to the system of management for forest areas and resources that was put in place by the 1994 law for the benefit of the populations. Under this law, provision was made for community hunting land and community forests.

⁴⁸ See Article 26(2).

⁴⁹ In Articles 3 and 4 respectively.

⁵⁰ See Article 36(2); Article 26, paragraphs 1 and 2 of the implementing decree for the forest regime and Article 4(1) of the implementing decree for the fauna regime.

⁵¹ See Article 32(1) of the implementing decree for the forest regime.

Community forests

A community forest is 'a forest in the non-permanent forest domain, which is part of an agreement between a village community and the forestry administration'⁵² who oversee the management, within the framework of a simple management plan prepared by the community beneficiary. The community beneficiary has ownership of the products of the community forest and has the right to farm the land for commercial purposes⁵³, even if the land is part of the national domain. In an attempt to encourage local communities and indigenous peoples to create community forests, decree no.0518/MINEF/CAB, gives priority to village communities which are resident to forest areas susceptible to be established as community forest land, it also establishes a right of pre-emption on forests for the benefit of village communities.

Community forests have become very popular in Cameroon. In just over a decade of existence there are now more than one and half million hectares of community forest under this system.

Community hunting lands

Community hunting land is an area where there is an agreement between the resident village communities and the administrative powers in charge of the fauna⁵⁴ in which the communities have exclusive exploitation rights over the wildlife resources. It essentially adds fauna to the community forests regime. The beneficiary communities neither have ownership of the land nor exclusive usage rights over non-fauna resources.

Although the establishment of community forests and community hunting lands are probably the most progressive developments regarding the land rights of the local and indigenous communities, they are subject to several restrictions. They are restricted: in terms of the location as they have to be established in non-permanent forest areas, and in terms of size as they cannot be over 5,000 hectares. The customary rights of these populations generally stretch much further than these boundaries and certainly are not limited to the very artificial borders of the permanent forest areas. The gap between the legislation and the scope of traditional rights is even greater in terms of indigenous populations, for whom the route they follow to collect food is generally within permanent forest areas (forestry concession and protected areas).

2.2 Decentralised taxation

One specific method of enjoying the use of something belonging to another was set out under law of 20 January 1994 relating to forest structure and joint Order no. 000122/MINEFI/MINAT of 29 April 1998, which set the terms of use for logging revenue destined for resident village communities.

These documents stated that a proportion of the taxation and the social obligations of the beneficiary companies of concessions and small logging titles should be transferred to

⁵² See Article 3(11) of the 1995 decree setting the implementation terms for the forest regime.

⁵³ See Article 37 para. 3 & 4, law of 1994.

⁵⁴ See Article 2(20) of the 1995 decree setting the implementation terms for the fauna regime.

resident communities in areas of forestry exploitation work. They also define their exact destination and the terms of their use. In this way, resident communities receive 10% of the annual charges from tree felling sales or forestry concessions, which they must allocate to local development.

III Recommendations: proposed methods of improving the security of communities' rights

From previous solutions drawn up in the past, or from contemporary laws of other countries with similar land-related challenges, it seemed to us it would be useful to put together adapted solutions for the Cameroonian context. This involved putting forward a fair solution, which takes into account the rights of local communities and indigenous peoples, without denying to the state the right to define and implement a coherent land policy, with due respect to human rights, and manage the land's natural resources. This solution could consist of making areas of land available to local communities and indigenous peoples, where their rights to resources could be equally spread, either by recognising private land for the benefit of the communities or by improving levels of security for the communities in question, even if there is not formal acknowledgement of their ownership.

1 Formal recognition of the land rights of local and indigenous communities

There seem to be two possible routes to take in order for increased land rights of local communities and indigenous peoples to be formally recognised: through restitution or through a land reform that reconciles state laws and customary rights.

1.1 Recognition of the right to restitution

According to Cornu's 'Legal vocabulary', restitution consists of 'the act of returning to an owner something that was unfairly or involuntarily taken from them'. Regarding land rights for indigenous peoples, it can be considered that it was undue dispossession on at least two levels. Firstly because the Germano-Douala agreements recognised the exclusivity and legality of customary land rights and excluded all possibilities of external regulations in this sensitive area. In addition, the imperial order of June 1896, which created colonial state land by removing land from customary ownership, can be seen as blatantly unlawful. The former land owners had not transferred the land to the colonial state and had not received any compensation. In many cases there were moreover met with fierce resistance⁵⁵. Through the transfer of the land of the colonial German state to the successive states, the irregular nature of the original act of taking land and resources was also transferred. In this situation, restitution would involve a return to the *statu quo ante*. It is not merely a childish or academic hypothesis. The Bakweri communities have in fact already made this appeal⁵⁶. There is a risk, however, that it will bring about great disruption to social peace, particularly in cases where land was transferred to a bona fide purchaser.

⁵⁵ For example, this was the case for Douala populations under the management of the Douala king, Manga Bell, and the Bakweris populations of south-east Cameroon.

⁵⁶ See Bakweri Land Committee/Cameroon (decision made by the African Commission on Human and Peoples' Rights)

1.2 Recognising customary land ownership in state law⁵⁷

Land reform appears to be the second form of recognizing land ownership rights communities. The constraints due to the overlap over time of various different laws over the same land and resources should be taken into consideration. Land reform would conform more to the requirements of the social context, which is characterised by a strong dependency of the communities in terms of land and resources. It would attempt, finally, by conserving the central role of the state in defining the management policy for land and resources, with due recognition of existing human rights, including indigenous peoples' rights to self-determination, to protect international engagements with the state, by finding a way of merging the new land law and the regulations for sustainable management of land and resources.⁵⁸

The law resulting from such a reform should recognise the customary methods of land and resources acquisition as ways of accessing land ownership, in particular when they are not likely to lead to solutions that go against public policy, or violate the previously acquired rights of private persons. This formula is not revolutionary. It was used under the German protectorate and under the trusteeship of the French mandate in Cameroon. During these periods customary land ownership was recognised by colonial law and granted owners the same rights as to owners of land titles. We must note in fact that the imperial decree of 15 June 1896 put forward the merits of the principle of recognising customary land rights in Cameroon. The recognition of customary ownership appeared under Article 1 in fact, it considered 'vacant and ownerless' land to be land which 'private individuals or moral persons, chiefs or indigenous communities could not prove ownership or other property rights over...'. This article shows the scope of the original recognition of previous land rights. We must firstly acknowledge that in the absence of any previous written law that these rights only existed as part of the customary law in operation in the communities in question.

This recognition of customary land rights remained a constant under colonial law in Cameroon and was confirmed under the law of 17 June 1959, which brought about national and land-related structure, Article 3 of which specified:

Customary rights exercised collectively or individually on all land, with the exception of those which form part of the national or private domain (...) and those which are appropriated according to civil code regulations or the registration structure are confirmed here (...)

Ironically, it was at the time of independence that the communities lost their customary rights and had them replaced with possessor rights, which increased the gap between written law and traditional practices.

2 Joint structure of written law and customary rights relating to land issues

The state could take a chance and return to the historical basis of land law by developing a new structure for customary land ownership based around traditional foundations. In this

⁵⁷ This section is inspired by a study to be published in 2008 (Samuel Nguiffo, '*De la légalité à la légitimité foncière. Pistes pour une meilleure protection de l'environnement*', in Olivier Barrière, Alain Rohegude, Geneviève Vernicou, (Dir.), *Cahiers d'Anthropologie du Droit*, Paris, Karthala, 2008).

⁵⁸ Voir Déclaration sur le Droits des Peuples Autochtones

context traditional chiefdoms could play a central role. Traditional chiefdoms in Cameroon⁵⁹ were recognized and structured legally under decree no.77/249 of 15 July 1977. Traditional chiefdoms are made up of 'traditional communities'⁶⁰, 'structured by territory'⁶¹, and they see local tradition as central to their structure and internal operations⁶². This document provides two important issues to reflect on: recognition at state and national level, where communities are living and where prescriptive customary power is recognised on their land. Here, Indigenous communities could be recognized as chiefdoms, organized according to their traditional rules. There could be cohabitation between Bantou and indigenous communities' chiefdoms in the forest area, with distinct territories.

Community land defined in this way could actually be granted to the communities within the framework of a collective ownership structure brought about through a land title for the community as a whole⁶³. Community land titles would have the same attributes as any other, with two differences:

- Applying traditional law in terms of managing resources and land on chiefdom land. Here the regulation on conflict resolution between legislative law and customary law would have to be reversed, apart from in cases where it would threaten public order⁶⁴. The communities would therefore have ownership, collectively, of land and of the ways it is used by members of the community who obey traditional law in all its complexity, following the shared resources structure. This system is not perfect and has already been applied to land issues in Ghana, where customary law governs the management of land in rural areas. The uncertainties surrounding the boundaries of customary law are defined by returning to traditional forms of authority⁶⁵.
- Transferring all or part of the areas of land covered by land titles would only be possible under two conditions: a community consensus on both the decision to transfer the rights and on the scope of these rights, and agreement from the land administration, which would retain a pre-emptive right where non-exploited land and resources were sold.

⁵⁹ Modified and completed under decree n° 82/241 of 24 June 1982.

⁶⁰ See Article 1 of the 1977 decree.

⁶¹ See Article 2 of the 1977 decree.

⁶² See Article 6 of the 1977 decree.

⁶³ This option would copy the Cambodian model. See chapter 3 of the 2001 Cambodian land law. Article 26 of this law specifies: 'Collective ownership includes all of the rights and protections of ownership as are enjoyed by private owners. But the community does not have the right to dispose of any collective ownership that is state public property to any person or group'. See Susie Brown, Katrin Seidel and Todd Sigaty, 'Legal Issues Related to Registration of Lands of indigenous Communities in Cambodia', GTZ Cambodia, 2005, p. 76.

⁶⁴ Currently in Cameroon written law prevails on issues conflicting with customary practices. See for example the Supreme Court decree in the Bessala Awona/Bidzogo Geneviève affair, Cor. A n° 445 of 3 April 1962.

⁶⁵ On this issue, see Janine M Ubink, 'In the Hands of the Chiefs. Customary Laws, Land Conflicts and the Role of the Chiefs in Peri-Urban Ghana', Leiden University Press, 2008. It must be noted, however, that the author points out an inaccuracy of this system: certain corrupt chiefs took advantage of their privileged position and appropriated land using a particularly generous interpretation of the terms of customary law. This weakness could be overcome by involving important figures, elders, heads of family, in the process of determining the content of traditional law.

In this way, in chiefdoms there would be two types of land, in accordance with their structure under traditional law:

- Land related to customary private ownership by individuals or families. Initial ownership is acquired in forest areas by clearing a section of land within the village's communal area and making it the private assets of individuals, who can then pass it on to another person by either selling, giving or through inheritance.
- Land falling under communal ownership, which constitutes a traditional land reserve, comes under the communal resources regime⁶⁶.

The remaining issue to be resolved will then be specific to indigenous forest communities, as they do not always have, in their traditional laws, the notion of private individual ownership of land or natural resources⁶⁷, and their relationship to the land and to the forest would be hard to link to the structure for communal resources, in the sense they do not anticipate the exclusion of non-indigenous populations using the forest. According to the existing domestic laws, the construction of the legal relationship to the land will have to be built in a creative way, in order to grant indigenous communities with an appropriate recognition of their rights, and protecting from predatory external actors.

In this way we could reasonably envisage carrying out the identification of their rights over the land by looking at the boundaries of the route they use to collect food and fuel, by granting them, at the same time, usage rights on national land and localised rights on specific areas of land, following the traditional chiefdom model, in the section relating to community land.

Land in the national domain would, therefore, be split into two categories:

- Customary land areas, which will be made up of land in traditional chiefdoms. It will bring together land classed as private property under traditional law and land that comes under community land reserves. The state will be obliged to pay compensation (either in money or in kind) if land that comes under the traditional domain is expropriated and this will contribute to rationalising the administration's land uses.
- National land will be a residual fraction of the national land as it stands currently. It will continue to come under the current regime, in accordance with the legislated law.

Securing land rights for communities will therefore not weaken the state, as they will retain the right to monitor management of the land transferred in this way and will control the eventual transfer process.

⁶⁶ These are resources that do not come under private individual ownership but belong to a group whose members are identifiable according to the recognised regulations. The regulations for resource management are recognised and non-members of the group can be excluded from using a resource. The notion of property being communally owned ('commons') gave rise to a great deal of literature. On this subject area, see the University of Indiana's online library, which is dedicated to it:
<http://dlc.dlib.indiana.edu/archive/00001320/>

⁶⁷ See Chimère Diaw and Jean-Claude Djomkap, *'La terre et le droit. Une anthropologie institutionnelle de la tenure coutumière, de la jurisprudence et du droit foncier chez les peuples bantous et pygmées du Cameroun méridional forestier'*, Yaoundé, 1998.

Conclusion

The gradual dispossession of land rights for local and indigenous communities, which began in the first few years of colonial domination, was set by the 1974 land reform, which left rural populations without any ownership rights over the land or its resources. The creation of national land has, however, allowed the cohabitation of written law and customary rights in all their diversity. Yet, precariousness remains a central characteristic of land rights for rural populations in Cameroon. Within this context, indigenous peoples are the most precarious, as there is no recognition of their customary rights within current laws.

The development of industrial plantations and extensive farming and the fact that nearly all of the forests in Cameroon are under concession has led to increased frustration amongst the populations due to the lack of land. It seems, therefore, it is particularly urgent that indigenous communities are given back of their development through an in-depth reform of the land law.

A land reform is urgently needed, which will bring about the synthesis between traditional rights and written law, in order to give rural populations control over their development.

Timeline of historical and legal developments pertaining to land law in Cameroon

1884	Germano-Douala Treaties – two treaties signed with the chiefs in the Wouri estuary (the ‘Cameroon River’). The first, of 12 July 1884, marks the international birth of the modern Cameroon. Technically, the first written legal texts making specific reference to land tenure in Cameroon. However, they do no more than reaffirm the role of customary law within the national land structure
1885	Berlin Treaty – gives the colonial powers occupying the coast the ‘right’ to annex the hinterland as far as the border with another colonial power. The Treaty marks the beginning of intensified colonial conquest
1896	Imperial Decree establishes the land ownership rights of the colonial state. Although all ‘unoccupied’ lands become the possession of the German Crown, customary ownership is also recognised (though only under very strict conditions)
1916	The Germans are defeated and the Franco-British trusteeship over Cameroon, administered on behalf of and under the control of the League of Nations, begins; broadly speaking, the colonial land tenure system remains in place
1959	Law of 17 June 1959 on the organisation of state property and land ownership reinforces the rights of local and indigenous populations over their lands by replacing the notion of <i>‘terres vacantes et sans maître’</i> with that of customary land ownership
1960	Independence of the Republic of Cameroon
1974	Following the reunification of the state in 1972, several ordinances set in place a single system of land tenure and state-owned land for the whole country: <ul style="list-style-type: none">• Ordinance No 74/1 of 6 July 1974 to establish rules governing land tenure – registration becomes the sole means of accessing land ownership and all unregistered land comes under state control• Ordinance No 74/2 of 6 July 1974 to establish rules governing state land• Ordinance No 74/3 of 6 July 1974 concerning expropriation for a public purpose

1976	Decree No 76/165 of 27 April 1976 to establish the conditions for obtaining land certificates, and determining the procedure for registering land
1977	Decree No 77/249 of 15 July 1977 ascribing a structure to traditional chiefdoms
1985	Law No 85/09 of 4 July 1985 concerning expropriation for a public purpose, determines that this can only be applied in the case of registered land
1994	Law No 94/01 of 20 January 1994 concerning forestry, wildlife and fisheries recognises usage rights for local communities but only for personal consumption. It also recognises enjoyment rights through the recognition of community forests and community hunting land
1995	Decree No 95/531/PM of 23 August 1995 to lay down the conditions for the implementation of the forestry scheme recognises limited usage rights for local communities over specific types of vegetation
1996	Constitution of 18 January 1996 – expropriation for a public purpose is subject to the payment of compensation, under legally stipulated terms
1998	Joint Order No 000122/MINEFI/MINAT of 29 April 1998 sets the terms of use of logging revenue intended for local village communities from companies benefitting from concessions and small-scale logging titles
2005	Decree No 2005/481 of 16 December 2005 amends the regulations for obtaining land certificates and the procedure for registering land



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