

No. 6

Forest Participation Series

Forest Tenure and Access to Forest Resources in Cameroon

An Overview

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Preface

Negotiating roles for forest management: constraints and opportunities

An analysis of the evolution of approaches to forest management in Africa over recent decades shows that we have passed through two main phases and are now entering a third:

The technocratic era: management for the forest and against the people

Up to the early seventies, priority was given to the trees at the expense of the people who use them. It was thought that enhanced technical capacity in forest management would be sufficient to guarantee their renewal for the good of the nation. Programmes aimed at developing capacity primarily concerned technical matters and were intended for government staff.

However, over the years, significant failures of "top-down" initiatives, driven solely by technical considerations and from the top led to the realisation that bad forest management was not due to lack of technical skills alone.

The participation era: forest management for and by the people

The flaws of the technocratic approach have led to the pursuit of the concept and practice of *participation*, as a means to ensure that local people's interests and needs are taken into account in the decisions concerning the fate of forests. Participation gradually became a *sine qua non* condition for success of forestry initiatives in rural areas. It has been

politically incorrect to criticise the concept and it invariably constitutes a requirement for securing donor support.

However, in recent years, "participation" has proven difficult to implement when it means going beyond mere consultation and achieving active involvement of forest users in decision making. Reasons for this include:

- active participation implies a process of social transformation. As such, it requires commitment and flexibility over long periods and does not always fit target-oriented agendas; be they by governments alone or with the support of donors;
- participation is often seen as an increase of responsibility given to local people, but without a corresponding increase in their rights and access to benefits. As such, participation actually becomes a burden and is usually refused or passively accepted;
- somewhat paradoxically, the pressure for participation (from donors and NGOs) has led to attempts to applying it mechanistically, a little like blueprints. This contradicts one of the original aims of participation, i.e. that it should be adapted to local contexts;
- participation also requires logistical means for advisors (technicians, NGO staff) to be in close contact with rural

dwellers. Such means are often lacking in rural areas.

Even when successful participation is achieved, the sustainability of the new framework for decision-making is often doubtful, for several reasons:

- "success stories" often appear with donor-support but without the need for commitment on the part of government authorities;
- "participation" has tended to focus on the use of resources by people. It has more seldom dealt with institutional participation, i.e. collaboration between all the interest groups.

As a result, participation has been mostly accepted so long as it does not disturb existing power structures. Often this means its restriction to project frameworks; which have a limited lifespan; and where less powerful are called upon to share decision-making.

The emergence of political negotiation: forest management with the people and other actors

It is increasingly apparent that participation is often limited in scope and faces extreme difficulties in scaling up beyond local level.

What has been missing in both the technocratic and the participatory "eras" is the recognition of the *highly political character* of forest management, even at local level. The need for a *social definition* of forest management has been proven by the experience with participation. But this requires negotiations between institutions which represent all existing interest groups,

and especially the weaker ones. Hence, the implementation of participatory forest management needs to be *politically negotiated*. Thus, participation should be accompanied by the development of mechanisms which allow for the negotiation of stakeholders' roles. This implies changes in existing power structures.

To achieve a constructive negotiation process, capacity needs are more institutional than technical. They can be divided into two categories:

- capacity for *negotiation* itself, such as empowerment of the weakest stakeholder(s), which may involve literacy, provision of information, and other activities related to the concept of training for transformation;
- at a later stage, capacities for *sustaining roles*, such as accountability and representativeness of local governance, leadership, and economic resilience.

The highly political nature of these issues explains why they have been poorly dealt with in the development arena, despite the fact that they often constitute the major constraints to sustainable forest management.

Another difficulty concerns the vagueness associated to the term "roles". One can try to overcome this weakness by defining stakeholders' roles via their respective *rights, responsibilities, returns from forest resources and relationships* (i.e. their "4Rs"). Stakeholders' "4Rs" are often unbalanced, a situation which often impairs adequate negotiation and leads to forest decline.

Papers 6,7,8,9 and 10 in this Forest Participation Series illustrate different constraints created by imbalances in stakeholders' roles; but also how these can evolve towards forms of collaboration which are conducive to more sustainable management of the forest.

Samuel Egbe (paper No. 6) provides an overview of the historical evolution of forest tenure and access to forest resources in Cameroon.

Natural resource tenure and access policies in Cameroon have, since the colonial period, generally ignored the existence of local populations, done little to strengthen the ability of peasants and their institutions to cope with the blunt nationalisation of the resources upon which their lives are inextricably linked. This unilateral usurpation and top-down approach not only undermined traditional institutions, but demotivated many rural people whose energies could have been mobilised in the management effort.

The author argues that state control and ownership of natural resources has not ensured rational management nor brought about rapid social and economic development. Lack of social legitimacy of forest regulations and policies is considered to be a main reason for such failures.

The thrust of this paper is therefore to examine past experience, and identify constraints and opportunities, in an attempt to engender a more indigenous resource tenure system in Cameroon.

The paper by **Jonas Ibo and Eric Léonard** (No. 7) presents a historical

analysis of developments in policy and social practice relating to forest management and conservation, against the economic and social transformations undergone by the Ivory Coast since the beginning of the century. In particular, it seeks to assess the most recent experiments aimed at involving small farmers in the implementation of rehabilitation programmes, based on two examples. This a rare example in sub-Saharan Africa, where the state officially tackles the issue of encroachment of the forest by farmers, in contrast to the usual "*laissez-faire*" attitude in other African countries. Yet, it does so by means of a strategy aimed at actually excluding farmers from commercial use of the forest resources, however in a "participatory" manner. The last part of the paper discusses possible means to improve this strategy.

In paper No 8, **Alain Pénelon** discusses a study carried out in two forest communities in Eastern-Cameroon. The study had two-fold objectives: to analyse how roles in land and forest resource allocation are defined at village level, and to what extent the provisions on community forestry of the 1994 Forestry Law are applicable at local level.

The author describes nine steps used in the completion of the study. It concerns land differentiation in terms of use and access according to the distance from the village and major problems in the implementation of the New Forestry Law concerning community forestry, i.e. costs, tedious character of the procedure, etc.

The paper finishes with some proposals to improve the existing Law and other

regulations which affect local communities' involvement in forest management.

Liz Wily's paper (No. 9) illustrates how a facilitating role by government has allowed interesting community-based initiatives to take place in the miombo forest of Tanzania. It describes how, in a situation of severe degradation of the forest cover, two communities have met the challenge of achieving sustained, effective control of the use of the forest resource in a very cost-effective way. This was made possible because they were given appropriate rights and access to benefits to effectively assume their responsibilities as forest managers. In her discussion, the author points to some very interesting generic lessons that may be drawn out from these examples.

Finally, Olivier Dubois' paper (No. 10) attempts to provide a synthesis of recent literature - both Anglophone and Francophone - about rights to land and forests in sub-Saharan Africa. These are at the heart of the debate on sustainable land use in this Region, because the dualistic situation where formal and customary rules co-exist creates often confusion and tensions, which result in quasi open access to forest resources.

Policies aimed at improving tenure security have generally failed and reinforced existing power structures, as they only look at the spatial dimension of security, contrasting with the more social aspects of rights built into customary rules. Initiatives such as formal titling of land on the one hand; and codification and formalisation of customary rules on the other hand, have so far not lived up to their expectations. The author discusses more recent experiments and proposals aimed at bridging the gap between customary and formal rules. These concern adaptive legislation, enabling institutional frameworks and ways to convey information to stakeholders. Such actions are just in their infancy and are likely to be difficult to implement, as they threaten to destabilise power structures. Hence the need to allow for experimentation, continuous learning, and building confidence for these attempts to materialise in efficient policies.

Olivier Dubois,
Forestry & Land Use Programme,
International Institute for Environment
and Development

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Other titles in this series are:**No. 1***The Leaf Gatherers of Kwapanin, Ghana*

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Liz Wily

No. 10*Rights and Wrongs of Rights to Land and Forest Resources in sub-Saharan Africa:
bridging the gap between customary and formal rules*

Olivier Dubois

Introduction

The Republic of Cameroon, a bilingual and bilingual country, covers a total area of 475,000km², out of which 22 million hectares is covered by forests. Located on the western central part of Africa, it is bounded by Nigeria and Chad in the north; Central African Republic in the east; Congo, Gabon and Equatorial Guinea in the south; and the Atlantic Ocean in the west. Administratively, the forest zone comprises five of the country's ten provinces, viz, South West, East, Centre, South and Littoral, which represents a surface area of about 269,970 km², or over 50% of the national territory. It is essentially a dense humid forest characterised by an equatorial climate. In 1990, population estimates show that this area has about 6,102,700 inhabitants, about half of the total population of 12 million. The annual population growth rate is about 2.9% and population density has high variation from one province to another, with an average of 25 inhabitants per square kilometre.¹ The population comprises about 234 different ethnic groups. The main ethnic groups are Bamileke, Bamoun, Duala, Bassa, Fudani, Fang, Tikars and Maka.

The forest zone is very rich in species diversity and genetic variety. Apart from

the forest of Zaire, the Korup forest in the South West Province, for example, is said to be the richest in Africa, in terms of species diversity and genetic variety.² The country's biodiversity of fauna and flora includes some 300 species of mammals, 900 species of birds, and 9,000 species of plants; one such, *Ancistrocladus Korupensis*, with properties to cure AIDS, was recently discovered in the Korup National Park by Dr. Duncan Thomas.³

The contribution of the forest sector to the national economy is very significant and has been accentuated in recent years because of the slump in world oil prices in the 1980s and the attendant severe economic malaise of the 1990s. In macro-economic terms, the forest sector represents the third foreign currency earner for Cameroon, after oil and agriculture (cocoa, coffee, etc.). In 1991, the timber sector represented 4% of GNP, generated 32 billion FCFA worth of exports, and 20,000 jobs. Forest industries represent 9% of total industrial production and Cameroon is the sixth largest exporter of tropical wood in the world. Revenues from the exploitation of wildlife resources amount to about 200 million FCFA. The forests supply food, energy, building

¹ Jean Authé, *Cameroon Forestry Sector Overview*, (Yaounde: USAID-Cameroon, 1993), p.10, MINEF, *Environment and Sustainable Development for Cameroon*, (Yaounde, 1992), p.5. It must be noted at the outset that these statistics generally differ because of the varying definitions accorded the word 'forest'. Population estimates are based on the 1987 Census Results.

² WWF, *The KORUP Project: Cameroon*, publication No. 3206/7 June, 1987, pp.162.

³ Sharpiro, et. al., *Cameroon Program for Environmental Reform*, (Yaounde: USAID, 1993), and *Le Messager*, Vol. III NO.7, March 16, 1993, p.5.

materials, medicinal products, and constitute an important source of income to the rural population.⁴

In recent years, it is estimated that deforestation activities erode an area of between 90,000 and 150,000 hectares per year, mainly through shifting cultivation, commercial and small-scale logging, fuelwood collection, road construction and increasing urbanisation.⁵ The situation is complex and alarming, and portends social and

economic disaster if sustainable management techniques are not adopted. It is hardly a matter of dispute⁶ that one of the factors militating against sustainable management is the natural resource tenure system. Here then lies the thrust of this paper; to critically assess past and present experiences and policies, evaluate constraints and opportunities, all in an attempt to chart a new path and engender a more autochthonous resource tenure system.

⁴ Environment and Sustainable Development for Cameroon, op.cit., p.18.

⁵ Ibid.

⁶ Almost all the reviews on Cameroon's Natural Resource Management.

Historical Evolution of Cameroon's Resource Tenure Systems

As mentioned earlier, Cameroon is very rich in forest resources. These resources were not scarce for the population of Cameroon in the 19th century and earlier. Traditional methods of resource utilisation were well adapted to conservation. The scale of subsistence agriculture, hunting, trade, mining and quarrying imposed little stress upon the environment. Wild animals and plants were important sources of medicine and food security. These resources were desired solely for their produce. No intrinsic value was then attached to natural resources in the sense that they were not regarded any differently from water, air and light. All rights in the said resources were owned by a subterranean spirit which they believed shepherded the souls of their ancestors, and which granted the living members of the society the conditional right to exploit these resources. In return for the enjoyment of these rights the living had to offer sacrifices to the ancestors. Two West African chiefs from Nigeria and Ghana described the situation graphically when they said that: *"land belongs to a vast family of which many are dead, few are living and countless members are still unborn."*⁷ Forest resources were in abundance and cases of a member encroaching on land already occupied by another were rare. Even where such conflicts arose, they were amicably settled by the elders of the family in the case of a dispute within a family, and by

the village elders and notables in the case of a dispute involving members of two or more families. The decisions of these "courts" were often respected and penalties were always symbolic.⁸

The arrival of European administrators and the attendant introduction of commercial exportation of timber and cash crops which took a longer time to yield, heralded competition for land and forest resources. Price spirals in the international market for these products, the introduction of large-scale commercial logging and agriculture, coupled with population pressure, signalled the beginning of tenure conflicts. The sum total of these developments was that they set in motion an irreversible movement towards the institution of claims on forest resources, both by the European administrators and the indigenous population. This trend has now gathered tremendous momentum and threatens to be unstoppable.

At this juncture I will ask your indulgence to make copious references to legislative enactments in articulating the historical and legal development of natural resource tenure in Cameroon. This historical development is important for two reasons. First, Cameroon has undergone a tripartite colonial domination, namely, the Germans, the British and the French. The laws of

⁷ Egbe, S.E., "Rights of Individuals in Natural Resource Utilisation in Cameroon", paper presented at a seminar organised by WWF in Kribbi on 28-31 May, 1995.

modern Cameroon still reflect this tripartite colonial legacy and policy makers may, from time to time, make recourse to the laws of these countries as they exist now in order to unravel intractable difficulties. Second, the resource tenure systems bequeathed to this nation are the subject of contemporary policy debates and are potentially explosive.⁹

The German Natural Resource Tenure System in Kamerun

What is modern day Cameroon was first ruled by the Germans. The era of German rule started on June 14, 1884, when the Treaty of Annexation between the Duala chiefs on the one hand, and two German firms on the other, was ratified by Nachtigal acting on behalf of the German Chancellor.¹⁰ Twelve years after the signing of this treaty, under which the Germans had undertaken to respect the native rights and customs of the inhabitants, the Germans enacted land legislation for Kamerun.¹¹ The Imperial Land Decree of June 15, 1896, regarded all land in the territory as "*herrenlos* land" (land without a master) and declared all

such land "*kronland*" (crown land) vesting the same in the "Empire". Only two categories of land were exempted, namely, land over which the private property rights of private persons, chiefs or native communities could be substantiated and land in which rights of user had been created by agreement with the German administration.

The effect of the concept of *herrenlos* land was that all the native land in the territory which was not in the effective occupation of the natives, such as fallowland, had become crown land, and the Germans began granting giant concessions to forestry and agricultural companies which ensured a regular supply of raw materials to the German Empire.¹² The decree also provided that sufficient land was to be left for public purposes including forest reserves. The natives were forced into "*reservats*" created by the administration as their settlements were declared crown land, contrary to the provisions of the decree¹³ and the terms of the Annexation Treaty.

The first Imperial Forest Ordinance¹⁴, enacted on April 4, 1900, enjoined the Governor of Kamerun to take necessary

⁹ This could be the payment of a jug of palm wine. Penalties and decisions were respected also because the wrath of the ancestors awaits recalcitrant defaulters.

¹⁰ An example is the Bakweri Land problem, epitomised by Cameroon Development Corporation (CDC), which is of German and British creation. See Consultancy Report for the Mount Cameroon Project, by C.N. Ngwasiri, 1995.

¹¹ For more on this, see V.J. Ngoh, *Cameroon 1884-1985: A Hundred Years of History*, 1987, pp. 28-31.

¹² Although on March 27, 1888, Governor Von Soden signed an order empowering the Governor to validate all agreements by which property rights might be acquired in native lands by giving his consent to such agreements, the Imperial Decree of 1896 remains the most important piece of German land legislation in Kamerun.

¹³ Such as the Wurttemberg Timber Company near Banga, Gesellschaft Sud-Kamerun and Gesellschaft Nord-Kamerun, See Ngoh, *op.cit.*, p.48 et seq.

¹⁴ Which required that crown land should be declared over vacant lands, but see Ngwasiri, *op.cit.*, p.6, who argues that this must have been motivated by the dispersed nature of the villages.

¹⁵ Called "All Highest Ordinance with regard to empowering the Governor of the Kamerun to issue Ordinances for the Protection of the Forest" of the 14th April, 1900, Imperial Gazette No. 108 of May 5, 1900.

legislative measures to ensure that any one who felled timber illegally was obliged to replant the area on which the trees had been harvested. The Ordinance empowered the Governor to take measures to replant the trees at the cost of the defaulter, if possible by distraining his property¹⁵. Not long after this ordinance, a law prohibiting the harvesting of forest produce on both banks of all waterways not large enough for ships or canoes was enacted. A strip of forest 30 metres wide was to be maintained on both banks of such streams. The conservationist ethic in this Ordinance is manifested by the severity of the punishment imposed on offenders. Breaches of the ordinance attracted a fine of up to 1000 marks or imprisonment of up to 3 months. Moreso, the defaulter could be bound to restore the deforested area within a prescribed period or shoulder the cost of reforestation by the government through distraining¹⁶.

The last German Ordinance regulated the taking of forest produce on crown land and native *reservoirs* which were yet to be occupied by the natives. Paragraph 1 of the 1913 Ordinance enunciated that the taking of forest produce on crown land and in those parts of native reserves which are yet to be put at the disposal of the natives, is exercised by the government or those to whom the Governor has given the right. The most logical implication to be drawn here is that the Germans had taken control of all the forest resources in Kamerun since the land the natives occupied at any point in

time was essentially made up of farms and dwellings.

Therefore, it can be concluded that German land and forest tenure policy in Cameroon was essentially "hegemonic" in character; for there was the overriding urge to put all natural resources under the control of the colonial administration, thus guaranteeing a regular supply of agricultural and forest resources to the metropolis. This generated serious conflicts and smouldering antipathy from the natives, as exemplified by the Bakweri land problem, which is a topical issue to this day¹⁷. The resultant social dislocation caused to the Bakweri is succinctly illustrated by this statement from a Memorandum on the Bakweri land problem:

"... there is no doubt that their relegation to reservoirs has to a large extent made them lose interest in life, as is demonstrated by the dilapidated state of their houses and their neglect of most sanitary measures in spite of years of culture contact with Europeans".¹⁸

In as much as German resource tenure policy in Kamerun may generally be condemned, some aspects of it must be commended. A thorough perusal of German Ordinances indicates a preservationist tendency even in an era where forest resource protection was not the holy *ji'ad* it is today. Apart from reforestation, the allocation of land for reserves and the preservation of water courses, a colonial Ordinance of 1913 not only imposed higher fees to halt the

¹⁵ Paragraph 1 of the Imperial Forestry Protection Ordinance.

¹⁶ Ordinance of the Governor Relating to the Protection of Rivers not large enough for ships and canoes of 22nd December, 1900, para. 1,5,6, and 7, Colonial Gazette 1901, p.105.

¹⁷ See C.N. Ngwasi, *op.cit.*

¹⁸ *Ibid.*, p.7.

increasing exploitation of timber but also imposed a minimum felling diameter on coveted species such as ebony. The argument here is that the Germans intended to stay in Kamerun for up to 1,000 years, thus making the territory part of the "Empire".¹⁹ This argument does not, in my view, impeach German conservationist policies. Apart from the fact that it leads to the erroneous and fallacious conclusion that ownership implies preservation, the policies of present day national governments are a blatant display of lack of foresight and perspective in policy orientation.

The British Resource Tenure System in the Cameroons

German rule in Cameroon ended in 1916 following the defeat of Germany during the First World War. Cameroon was then partitioned between Britain and France, and this partition was confirmed by a final agreement signed in London on 10 July, 1919. Five years after the confirmation of British Mandate over the Cameroons, the British in 1927 extended the application of the Land and Native Rights Ordinance (LNRO), which was then in application in Northern Nigeria and the other Northern half of the Cameroons called the Sardauna province, into the Cameroons. The Cameroons thus

became linked to Northern Nigeria with regard to land tenure but the administrative link with the Southern provinces of Nigeria continued²⁰.

The ordinance, which declared all land whether occupied or not to be native land, was also aimed at preserving the existing native customs with regard to the use and occupation of land. Under the LNRO, the highest interest that can be enjoyed in land in the British Cameroon was a "right of occupancy". This was defined as "a title to the use and occupation of land and includes the title of a native or native community lawfully using or occupying land in accordance with native law and custom".²¹ This definition has two dimensions which necessitate discussion; namely, the title of a "non-native" to the use and occupation of land, and that of a native or native community lawfully using or occupying land under customary law. The title of a non-native was evidenced by a certificate of occupancy issued by the Governor, whereas that of a native or native community resided in the lawful enjoyment of land under customary law. It can thus be averred that the right of occupancy equated the title of a native to that of a non-native. This was contrary to the rules of customary law which limited the enjoyment of rights in land by a non-native and maintained a

¹⁹ See for example, S.A. Nguffo, *"Integration du Droit Coutumier à la Gestion des Ressources Forestières Cameroun"*, Mbalmayo, August 1996, pp.3 & 4.

²⁰ Reasons advanced for this action include the need to harmonise land legislation in the two contiguous territories (the Cameroons Province and the Sardauna Province) which made up the British Cameroons. Another reason is that the British realised that it was difficult to reconcile the working of the land legislation of the Southern Provinces of Nigeria with certain conditions which had developed in the Cameroons prior to the advent of the British Administration. The most prominent condition was that by the time the Germans left Cameroon, they had not completed the task of demarcating crown lands, see Ngwasiri, *op.cit.*, p.8.

²¹ Section 2.

type of patron-client relationship. Under the Ordinance, a right of occupancy could be granted for 99 years and was liable to be revoked by the Governor, who had power of control and disposition over all the lands in the territory²². The question here is whether the rights of the native over his ancestral lands were to determine after 99 years. In the light of section 1 of the Ordinance, a right of occupancy did not confer upon a native community any permanent and inalienable title in their ancestral lands, especially as it was not feasible for natives to challenge the Governor in relation to the violation of their customary law rights.

The first British forestry legislation is the Forestry Ordinance of May 4, 1916²³. The Ordinance defined "native lands" as lands declared to be native lands by the Land and Native Rights Ordinance, while "native community" under the Ordinance means any group of persons occupying any lands in accordance with and subject to native law and custom. Section 4 of the Ordinance empowered the Governor to constitute as forest reserves any lands at the disposal of government²⁴, native lands, and lands in respect of which it appears to the Governor that the destruction of forests is diminishing the water supply, or imperilling the continuous supply of forest produce to the village communities

contiguous to such lands²⁵. From the tenor of section 4 of the Ordinance, the Governor had an interest in all the forest resources in the territory²⁶, as he could constitute as reserve, any land he deemed necessary. Individual rights in such reserves may only be alienated with the consent of the Governor, and where the right to take produce or to graze cattle within a forest reserve was not exercised for a period of ten years it was deemed extinguished. Hence native rights in customary fallow land found in reserve were forfeited after ten years. In non-reserve areas, the Governor had power not only to prohibit or regulate the harvesting of forest produce on lands at the disposal of government or on native lands, but he could forbid the sale, purchase and export of forest produce by any classes of persons specified in his regulations.²⁷

In spite of the several amendments the forestry Ordinance underwent both before and after independence,²⁸ there appears to have been no remarkable shift in policy as far as British forest tenure system in Cameroon is concerned. The Governor's²⁹ pivotal and all-embracing powers of disposition and regulation were maintained. However, the rights of the natives over resources, which were held according to and subject to native law and custom were protected under British tenure policy.

²² LNRC, section 4.

²³ Although the mandate had not been confirmed, the Ordinance applies in "Colony and Protectorate". Moreover, the 1927 Forestry Ordinance is not actually an Amendment legislation as the name implies but actually an addendum to the Ordinance.

²⁴ This was certainly crown lands abandoned by the departed Germans.

²⁵ Sections 5 and 6.

²⁶ He can acquire any right by agreement or compulsorily, Section 16.

²⁷ Section 24.

²⁸ 1927, 1937, 1948 and 1965.

²⁹ These powers were vested in the prime minister after 1961.

The puzzling question is under what law does the Governor exercise his power of control and disposal over native forest lands, since as per both the Forestry Ordinance and the Land and Native Rights Ordinance these lands were held under native law and custom. The Governor's powers cannot thus be exercised in any way other than in accordance with the said customary law. It can thus be concluded without much fear of contradiction that the Governor acted in error if he unduly deprived the natives of their resource tenure rights. This argument is buttressed by section 2 of the 1947 Forestry Regulations, which define "owner" in relation to timber or forest produce to include "any member of a native community who is entitled by native law or custom to take such timber or forest produce." Perhaps in recognition of this fact, the British introduced the idea of "petty local trade" in forest produce within the communities²⁰.

In spite of the inconsistencies in the Land and Native Rights Ordinance and the British Forestry Ordinance, both laws recognised the rights of the natives to their ancestral lands and the resources therein. These laws continued to apply to the territory up to 22 May, 1973, when a harmonised forestry law was enacted, and August 5, 1974, following the coming into force of a unified land legislation. The interesting issue to ponder on is why the British, unlike the Germans and the French, continuously recognised customary law, especially as it was fashionable in the

colonial days to effect a wholesale abrogation of customary tenure systems. The answer lies in the British system of colonial administration which cherished indirect administration of the natives. There is no better vehicle of exercising this control through the back door, than by their accepted institutions and beliefs. For example, in a 1917 Forestry Report by the assistant conservator of forests, I.D. Macpherson, mention was made of the fact that he "regretted that under the German regulations the felling fees were entirely devoted to revenue, as payment of a small royalty to the chiefs would make them more willing to assist in the collection."²¹ In advising the British administration to introduce the application of Nigerian Forest laws to the British sphere of the Cameroons, Dr. Unwin cautioned that: "The chiefs are only too willing to assist the Government in any way and welcome anything in the nature of an increase of authority over the people, such as is provided by the forest laws. The payment of royalties to them for trees felled in the native reserves will be quite an inducement to most of them to help carry out any rules sanctioned."²² Without necessarily justifying this British policy, suffice to say here that unlike the Germans and the French, the British did not face incessant protests and revolts by the natives. The Bakweri land shortage problem, though accentuated and exacerbated by the failure of the British to ascertain the validity of German title deeds, can be said to be of German origin.

²⁰ Forestry Regulations, 1947, Sections 2 and 7.

²¹ Report by A.C. of Forests Buca, dated 16/8/1917, File No. Qh/9, 1916/1, National Archives, Buea.

²² Confidential Report on the Forests of British Sphere of the Cameroons, Dr. Unwin's Report 1916, File No. Qh/1, 1916/1, National Archives Buea.

The French Resource Tenure System in Cameroun

As remarked earlier, French and British Mandate for the two Cameroons were confirmed by the Council of the League of Nations on July 20, 1922. The 45 year period of the separation of the two Cameroons ended on October 1, 1961, with the birth of the Federal Republic of Cameroun.

The first French enactment touching resource tenure in Cameroun was passed two years before the confirmation of the French mandate. This was the Decree of August 11, 1920, dealing with the so-called *domaine* lands. The decree on *domaine* lands divided the lands in Cameroon into three categories (lands held under German titles, lands held by natives or native communities, and village lands), and declared any land not included in any of these categories as *terres vacantes et sans maître* (vacant lands without a master). The so-called vacant lands were incorporated into the *domaine* lands and thus vested in the French state. This was a wholesale adoption of the German concept of *herrenlos* land introduced into German Kamerun by the Land Decree of June 15, 1896.

The situation sharply contrasted with that which applied in the British Cameroons where all the lands except those held under German freehold titles were declared native lands and the customary rights of the native inhabitants recognised and preserved. The native inhabitants of French Cameroun protested against the concept of *terres vacantes et sans maître* as they had done against that of *herrenlos* land of the

Germans. The reasons for the protests are understandable: under customary land tenure there was practically no land in Cameroun which was not subject to village or tribal claims.

In 1932, the French enacted another decree which provided a procedure by which the native inhabitants could have their rights recognised in a *livret foncier*. Another decree enabled those native inhabitants who have had their rights recognised to register them. Hence, through a dual process of recording and then registration the natives could obtain certificates of title over their lands. In 1959, the French abolished the controversial notion of *terres vacantes et sans maître*, declaring that there was not an inch of land in Cameroun that answered such description. It did not take a long time, however, for the government of East Cameroun to realise that the local communities were not putting their lands into any productive use and that this was inimical to the economic advancement of the territory.

The Decree-law of 1963 was meant to correct this error. The concept of national lands was one of the innovations of the reforms. According to article 26 of the Decree-law, national lands included all lands in the territory except three categories of land, namely, lands held under customary law, lands covered by certificates of title, and public and private property of the state. The management of national lands was the responsibility of the state to be carried out in accordance with the economic and social objectives of the country.

French Forestry Legislation in Cameroun dates as far back as 1922, when a décret

was promulgated to regulate the exploitation of forests. The most complete piece of legislation was enacted on March 8, 1926. The decree classified all forests "*forêts domaniales*" and put them under the authority of the French Commissioner, who could parcel out as much as 10,000 hectares.

Individuals can exercise on timber and forests belonging to them any rights resulting from such ownership, subject to respect for the provisions dealing with regeneration. The use of the phrase "*titre définitif*" indicates that such individuals must obtain land titles for the land in question.

The indigenous people were accorded the continued enjoyment of their user rights over wood and forest found in the domaine (mining, collection of wood, grazing, hunting and farming). This usage rights excluded any form of industrial or commercial exploitation as it is limited only to the satisfaction of individual or collective needs of the indigenous populations. As an exception to the preceding limitation, palms and other plants which harvesting traditionally belongs to the indigenous populations continued to be susceptible to commercial exploitation by them. Despite the exercise of this right, the harvesting of tree barks for dyeing, gums, rubber, gutta-percha, to name but a few, was required to be done in such a way as not to destroy the producer plants. The French also forbade the felling without special authorisation of certain species of hardwood, notably ebony. These rights can be exercised in all *forêts du domaine*, including those that are the object of

exploitation permits and must be respected by the harvester who is not entitled to any indemnity or compensation.³³

This law, which from all indications, adopted a liberal tone vis-à-vis the local communities, was repealed successfully in 1935, 1946, 1961 and 1968. What is remarkable about this exercise is that it was a progressive but sure institutionalisation of state monopoly in natural resource management and the relegation of the local communities to the background. Under the 1946 Decree, for instance, forests were categorised into two broad groups, *Domaine classé* and *Domaine protégé*. The first category englobes forest reserves wherein the exercise of user-rights was prohibited or at best defined and regulated by the classification enactment.³⁴ Also considered as classified forests were mountainous and littoral zones, as well as areas where regeneration was taking place. The French resorted to definition by exclusion in an attempt to situate the second category of forest; that is, all other forest that had not been the object of a classification instrument.

From the tenor of the 1946 Decree and its instrument of application, all forests and the resources therein belong to the French state. This assertion is confirmed by the wide provisions of article 2 of the Decree which stipulates that "*les forêts vacantes et sans maître*" (forests without masters) as well as fallow land under regeneration belonged to the state. The logical implication is that the indigenous people had no interest in forests for at any point in time the only lands which were not

³³ Décret of 8 March, 1926, Article 15.

³⁴ Décret No. 46-126 of May 3, 1946, Art. 4 and 15.

vacant were their agricultural farms and plantations. The indigenous people had usufruct rights in such *forêts* but this was strictly limited to the satisfaction of individual or collective needs.

The 1946 Decree was repealed in 1961,³⁵ most probably to reflect the new political independence³⁶, but equally to entrench the interest of the state in resource management. Apart from forest which constitutes the object of an individual and definitive title of ownership and which is entered in a land register, all other forests belong to the state. Even a "tree planted by the hand of man is deemed protected" and therefore under the control of the state³⁷. Article 2 of the 1968 law³⁸ even enunciates that the ownership of forests is regulated by the Land Tenure code of 1963, which introduced the fluid concept of "national lands". The term "national lands" was undoubtedly a euphemism for "vacant lands". The modification in terminology was apparently effected by the Cameroonian legislator with the hope of placating the people, since they hated the imported concept of vacant lands.

Consequently, it can be said that by May 20, 1972, when Cameroun became a Unitary State and harmonisation of laws became a primordial matter of statecraft, the stage had been set for the institutionalisation of state hegemony in forest tenure and access to forest resources. Without delving into the

political configuration of Cameroun, it must be pointed out that the British system of recognising customary resource tenure, in spite of its inconsistencies, was to incur an irreversible and total legislative black-out. Again, without necessarily appending value judgement to the two systems of resource tenure, the puzzling question is why was the black-out so complete. The answer perhaps lies in the socio-economic and political context of the 70s, 80s and 90s.

On the eve of independence, African countries³⁹ were so concerned with political rights in the fifties, sixties and the seventies, that not much thought was given to any other right - certainly not what has become known as a right to resource tenure. It was quite easy for people in Africa to conceive of rights solely in terms of the political rights of individuals. Thus conceived, the alleged incompatibility between natural resource tenure and respect for individual rights becomes understandable. If states are unwilling to uphold the civil and political rights of their citizens; how can they be expected to observe what has become the third level of rights, namely, the right to natural resource management. In this case the state proceeds on the basis that there is no infringement, for there is no right to begin with. The denial is not a forfeiture; it does not even need to be excused. This is the most insidious condition of all when the vice of personal deprivation masquerades as national pride.

* Ordinance No. 61-OF-14 of 16 November, 1961.

* French Cameroun became independent in 1960.

* Sections 17 and 18.

* Loi No. 68-1-COR-11 Juillet 1968.

* See T.A. Aguda, *Human Rights and the Right to Development in Africa*, Lecture Series No.55, (Lagos, 1989).

The End of the Bijural State and Beginning of Legislative Harmonisation

After independence, legislative reforms in most African countries in the sixties and seventies show the interest of these regimes to ensure control and management of natural resources⁴⁰. In order to meet its national and international obligations, the government nationalised all forest and land resources purportedly to curb practices inimical to the sustainable management of these resources and to ensure the economic development of the country. The Cameroonian situation in the early seventies is even more peculiar. After the referendum of May 20, 1972, the Federated States of former East Cameroon (French) and former West Cameroon (English) voted to form the United Republic of Cameroon. One of the most urgent tasks that confronted the new nation was the preservation of this hard-won national unity. In all his speeches, both before and after May 20, Ahmadou Ahidjo, the then President of the country, stressed the urgent need for "*la consolidation continue de l'unité nationale*".⁴¹ Launching the promulgation of the 1973 Forestry Law which represented the first national endeavour to provide an integrated normative and institutional framework for forest tenure, Ahidjo had this to say: "*L'avènement de la République Unie du Cameroun nous donne l'occasion de réadapter et d'harmoniser les réglementations forestières, jadis en vigueur dans les Etats fédérés*".

The state in Cameroon perceived law-making as a basic tool to achieve its "hegemonic project", that is, of capturing divergent interests and local communities. This state attempt to exercise legal hegemony implies an instrumental view of law: law is seen as one of the primary instruments for nation building, national integration, and above all, as an instrument for development. For these reasons, the legislator failed to deal with the relationship between these resources and the subsistence needs of peasant farmers whose lives are inextricably linked to the said resources. Forestry management planning in the past, therefore, has generally ignored the existence of the local inhabitants and demotivated many rural people whose energies needed to be mobilised in the management effort.

The genesis of this problem is obvious. Villagers feel that they have lived in these regions for centuries, long before the concept of the nation-state was born. The majority of these individuals have used these resources to sustain themselves and their families for generations. They are astonished that they cannot use their "God-given" or ancestral property, since many of their resource exploitation techniques were made illegal or restricted without any consultation with them. The only reason that could have motivated them to adopt alternative practices is the

⁴⁰ See Breton, J.M., "Le Domaine de l'état", and Latte, B., "Le régime forestier", in *Encyclopédie juridique de l'Afrique: droit des biens*, No.5 (Abidjan, 1982), p.201 and 377.

⁴¹ See Ahmadou Ahidjo, *Anthropologie des Discours: 1957-1979* Tome 3, (1980), p. 1392.

belief that they will benefit from the new management methods. Unfortunately, in some cases there are no benefits to be derived by the local people from preserving these areas and resources.⁴² Hence, while the benefits of exploitation and preservation such as ecological riches accrue at the national and international level, the costs accrue at the local level.

But of late, the stark reality everywhere is that the hope that state control of natural resources would ensure rational management and bring about rapid social and economic development, such as to rid rural masses of poverty and endemic diseases, continues to be nothing but a mirage. The realisation that this instrumentalist view of law always lacks social legitimacy, coupled with pressure from international donor organisations, notably the World Bank⁴³, which is financing and patronising Cameroon's Structural Adjustment Programme (SAP), is giving way to new and more humane approaches. In January 1994, a new Forestry and Wildlife law was promulgated. The Explanatory Statement to the Bill has as one of its primordial objectives, "*the involvement of rural councils and communities in the management and protection of forests.*"

In order to grasp the implications of the new law on forest tenure and management, it appears worthwhile to examine its relevant provisions. Here,

we need again to make references to previous legislative enactments in articulating the historical development of the harmonised law relating to forest tenure and access to forest resources in Cameroon.

Local Community Usufruct Rights/*droit d'usage*

The 1973 Forestry Ordinance, whose promulgation the late President Ahmadou Ahidjo formally announced at the Buea Agricultural Show on the 9th May, 1973, has as one of its objectives, in the words of the late President, "*la rationalisation de nos ressources forestières*". This ordinance recognised customary rights only for the use of "secondary" forest produce such as raphia, palms, bamboos, rattan and edible products. This fragile right to extract secondary forest produce could not be exercised in totally protected areas unless specific provision is made in the enactment creating the protected area⁴⁴. The combined effect of section 20 of the ordinance and sections 18 and 19 of the *Décret d'Application* is that all naturally growing trees belong to the state and could only be harvested (even when they occurred on land legally owned) after due authorisation by the Minister in charge of Agriculture⁴⁵. Even when carboard was to be harvested for personal use such as construction of dwellings, a permit had to be obtained, albeit gratuitously.

Although the 1973 Forestry Law was

⁴² Successive Cameroonian Forestry Laws make provision for the development of social amenities and infrastructures by commercial harvesters in their areas of operation. But due to state indifference and complicity, these laws are respected more in their breach than in their observance.

⁴³ For more see S.A. Nguiffo, op. Cit.

⁴⁴ Sections 10 and 25.

⁴⁵ Until 1992, when the Ministry of Environment and Forestry was created, the Forestry Department was under the Ministry of Agriculture.

repealed and amended by the 1981 Forestry Law and its 1983 Decree of Application, the concept of user rights appears to have suffered no substantial revamping.⁴⁶ Local community user rights were recognised, and like in the previous law, were to be clearly defined and restricted in protected areas depending, of course, on the degree of protection accorded the said zone.

The 1994 Forestry Law, like the 1981 law which it repealed, put all forest resources under the control of the state by classifying them as communal forests, and by nationalising all naturally growing trees. The all-embracing definition of communal forests, contained in section 35 of the 1994 law (which repealed section 21 of the 1981 law) bears testimony to this view. By the stipulations of this section, all forest resources with the exception of local council and private forests, as well as orchards, agricultural plantations, fallow land, wooded land adjoining an agricultural farm, pastoral and agro-forestry facilities were nationalised. Read together with sections 30 and 39 of the same law, the implication is that an individual or local council cannot own forests unless it was planted by him or it. Therefore, an individual can, under no circumstances, own a naturally growing tree, even if this were found on land legally owned by him.

To take the severity of the restriction to the logical extreme, even where such a tree is planted by an individual on land for which he owns a title deed according

to the Land Tenure Code, section 97 of the Decree of Application of the new law intimates that he cannot harvest the tree without prior notification of the Forestry Services and may even have such exploitation suspended, if it is likely to harm the environment. Also, after the reconstitution of the forest cover, former fallow land and agricultural or pastoral land without title deed may be considered as communal forests and managed as such.⁴⁷ This is in direct contradiction with the long standing practice of leaving land fallow for long periods of time, with the objective of fertility regeneration. The legislator also nationalised all the genetic resources of the national heritage, prohibiting their exploitation for scientific, commercial or cultural purposes without prior authorisation. Even forest products such as ebony, ivory, horns of wild animal, as well as certain animal, plant and medicinal species found in natural forests belonging to a private individual became state property⁴⁸.

Therefore, under the new law, the highest interest which the local population can have in forest resources is a customary right which means "the right which is recognised as being that of the local population to harvest all forest, wildlife and fish products freely for their personal use, except the protected species."⁴⁹ Section 4 of the Wildlife Decree specifically excludes the exercise of usage rights in integral ecological reserves, national parks, zoological gardens and game-ranches.

⁴⁶ Ss. 14 and 21 of the Law, and 5.3 of the Decree.

⁴⁷ Section 35(3).

⁴⁸ Section 11.

⁴⁹ Section 8 and 39 (4).

In all fairness, the new law has certainly departed from the previous restricted definition of customary right. Apart from the fact that it must be clearly defined for the different categories of protected forests (section 3), the right can be exercised on all forests, wildlife and fisheries products in unprotected areas, and not only on secondary forest produce, as was the case with the previous laws. Even though this right can be temporarily or definitively suspended for reasons of public interest, such suspension can only be effected after consultation with the said communities and must be done in consonance with the cardinal requirement of expropriation by reason of public interest, that is, compensation (section 8(2)).

Unlike the previous laws, the new forestry law recognises the right of the local population to cut a number of trees to meet their domestic demands for fuelwood and construction in unprotected forests. What the law requires is justification of personal use during control exercises by forestry officials. This provision is a sure source of confrontation between local inhabitants and forestry officials. Apart from failing to state the ways and means by which such justification can be furnished, the period in which such justification is to be furnished remains an enigma. In practice, it appears that the requirement of justification will be satisfied if the customary harvester can show proof of a construction site or materials showing such intention. Also, from a close scrutiny of the tenor of the

section, justification is only provided when forestry officials make field trips for the purposes of inspection. This is certainly a most laudable attempt to check bureaucratic red-tape and the rampant collection of unofficial rents by local forestry officials.

But the question that might puzzle a researcher on Cameroon's natural resource tenure system is whether it was necessary to nationalise forest resources which were actually in occupation by local communities before the coming into force of these regulations. In the first place, it is common knowledge that some of the practices of these communities are inimical to sustainable management of natural resources⁵⁰. In the second place, in a country with enormous unexplored and unexploited forestry resources, the apparent desire of government to ensure economic development and meet its national and international obligations seems to have been the motivating force behind such a policy. The importance of forest to Cameroon's economy has already been highlighted⁵¹. According to statistics of the International Tropical Timber Organisation, Cameroon was classified the sixth producer of tropical timber in the world in 1993. The volume of wood harvested by felling in 1992 was estimated at 2,655,000 cubic metres, out of which 1,183,000 cubic metres was exploited. Of the 300 species commercialised, only about 15 species represent 70% of the total wood production. Seven million hectares of forest land is under exploitation by about 150 forestry companies, one-third

⁵⁰ For more on this, see *infra*.

⁵¹ See introduction, *supra*.

of which are foreign, but represent between 75-80% of national production⁵².

The slump in world oil and cash crop prices has helped to exacerbate and accentuate the state's interest to earn foreign currency through the forest sector. In a letter dated March 23, 1990 and addressed to the Minister of Agriculture⁵³, the Head of State expressed his anger and deplored the handicaps which were hampering the forestry sector from playing "*pleinement le rôle que l'Etat est en droit d'attendre de cette activité.*" Since then, the volume of timber exploited has been on the increase and the forest sector is today involved in some of the most heated and bitter arguments⁵⁴. Commenting on the deplorable situation, the authors of **Cameroon Natural Resources Management Assessment** had this to say:

*"The State's dual political preoccupations of ensuring the support of key elites, including the politicians themselves, officials and key national and international business groups...leads to the exploitation of Cameroon's natural resources base as a major source of revenue for the state and elites. The outcome is an emphasis on the generation of short-term revenue and policies which lack internal coherence and consistency, involve multiple agencies, ministries, councils, etc., which operate without co-ordination or global perspective"*⁵⁵

Therefore, there is ample justification for such resources to be legally protected by the state. This has engineered the increase of the national protected area, which can be the object of exploitation, from 20 to 30% of the national territory.⁵⁶ It must be pointed out, however, that what appears to be most laudable provision of successive Forestry regulations is, paradoxically, the root cause of one of its greatest weaknesses. A poorly conceived tree tenure system is no doubt a major factor which inhibits participation in tree management, agroforestry, reforestation, regeneration programmes, and sustainable natural resource management as a whole. First, the fact that naturally growing trees found on private land belong to the state does not augur well for agro-forestry. Second, trees planted are owned by whoever planted them, but exploitation is under the authorisation and restriction of the government. The logical corollary is that the state has a stake in every tree. This certainly engenders the conviction that to plant or cater for a tree is tantamount to transferring authority and, therefore, some stake in ownership to the state. The fact that the new Forestry Law retained such a situation is very disturbing, in spite of the fact that the explanatory statement to the Bill portrays a swing from the ownership of the total control by the state of what Keynesians call "the commanding heights of the economy" to the equally

⁵² See Nguiffo, *op.cit.*, p.4.

⁵³ Before 1992 when the Ministry of Forestry was created, the Department of Forestry was under the Ministry of Agriculture.

⁵⁴ Even two visiting American Senators, defying diplomatic courtesy, publicly denounced French companies for wantonly exploiting Cameroon's forests, see *The Herald* No. 44, June 30, 1993, p.4.

⁵⁵ International Resources Group, Ltd., *Cameroon Natural Resources Management Assessment*, (Yaounde: USAID Cameroon, 1991), p.16.

⁵⁶ See Section 15 of the 1981 Law and Sections 21 and 22 of the 1994 Law.

emphatic adherence to free market economics. The need to create individualised forms of tree tenure away from state control is a basic tenet of free enterprise culture much espoused by Bretton Woods institutions and national political rhetoric.

Community Forestry

The greatest and most salutary innovations of the January 1994 Forestry Law is the introduction of the nebulous concept of community forestry. This is no doubt one of the impositions of the World Bank which is increasingly interested in forestry projects which are directed towards populations afflicted by social problems and abject poverty. In order to promote community participation in forest resource management, sections 37 and 38 of the new law make provision for "forestry dedication covenants" to be signed with the members of such communities to constitute what is known as Community Forests. What these provisions imply is that the state can destitute itself of its huge forest reserves for the benefit of village communities who must manage it according to a simple management plan previously drawn up at their behest and under the gratuitous supervision of the forestry services. All forest produce resulting from the exploitation of such forest belongs "entirely" to the said community. From the provisions of section 37(7) of the law, the village communities have a right of pre-emption in the case of alienation of natural resources (such as sand and stones) found on their forests. Where the village communities violate the Forestry Law or the special clauses of the agreement, the forestry services

retain the right to either carry out the required works or annul the agreement altogether.

Although it marks a remarkable milestone in our natural resource management history, the state can not hastily assume accomplishment by the dextrous choice of the phrase "foresterie communautaire." First, while the Forestry Decree in its section 27(2) requires that a community forest should be at the periphery of the village(s) and section 27(5) forbids the attribution of forests which are the object of an exploitation title, it regrettably does not prohibit the granting of exploitation titles at the periphery of village settlements and farms. To ensure that potential interested communities are not deprived of reserves, a provision banning the granting of exploitation titles in forests which are 5,000 hectares close to the last farms and plantations of forest communities should have been reasonable. The stipulations of section 27(2) and (5) smack of half-heartedness and a remarkable display of lack of vision in policy orientation.

The procedure to acquire a community forest is very cumbersome and complicated, with a possible corollary being a marginal response from the intended beneficiaries. Other amendments and laws defining the legal framework to be acquired by the communities in order to be entitled to forest management, elaborating both the management convention and simple management plan guidelines have been published. This certainly constitutes a veritable mosaic which may cause even a trained lawyer to sweat in his pants in an attempt to decipher the real intentions

of the legislator. This may act as a tool in the hands of dubious bureaucrats who will prefer unscrupulous interpretations which will give them power, money and prestige. In this delicate area of natural resource management, this is a most regrettable thing. It is strongly advised that all the sections of the relevant laws dealing with community forests should be put together to constitute a "Rural Forestry Law".

What is interesting here is that community forest as conceived by the 1994 legislator is not a wholesale transfer of rights in property but simply a transfer of management, for the state still remains the *de jure* owner of the resources and retains a right of forfeiture in the event of the non-fulfilment of the obligations elaborated therein. Hence community forest, strictly construed, is not property empowerment as is widely believed. First, the management convention is unilaterally drafted by the state, which sounds like standard form contracts, whose cardinal principle is "take it all or leave it". This is a blatant and ridiculous manifestation of the "top-down" management approach. In fact, the use of the words "supervision" in section 38 of the law and "*contrôlée*" in section 31 of the decree point to a

system of planning and control in the hands of the local administrative authorities which makes the *de facto* nationalisation of the resources very evident. Second, section 30 of the Forestry Decree gives one the impression that the rights of the individuals are ephemeral even when they manage the said forest strictly in accordance with the plan. Third, capricious and overzealous forestry officials can arbitrarily suspend the execution of the management convention as no provision for warning and appeal is provided. As these management agreements fall within the realm of administrative contracts, it may be too cumbersome for the rural dwellers to seek redress or remedy from the Administrative Chambers of the Supreme Court.

It must be agreed that in view of the haphazard, half-hearted and sloppily drafted nature of the relevant provisions involved, community forestry will be a welcome development of lasting value only if the state succeeds in finally creating a wholesome piece of legislation. Otherwise, the welcome leaps forward initiated in 1994 may be destined to end up in the graveyard of policy enunciations that have excited natural resource managers in their day, but have not resulted in any change in state behaviour.

The Place of Customary Law in Forest and Natural Resource Tenure

It is not uncommon to read in classical reviews denunciations of customary law as a negative factor in sustainable management of natural resources. This concept posits customary law as inherently bad, an unchanging system with no capacity for growth and adaptation. This rather simplistic analysis is born of two factors. First, while the state has concentrated enormous effort, both human and material, to the study of the so-called modern law, very little or at best scant attention has been paid to customary law. Second, the analysis has persisted because of the somewhat deliberate confusion between customary law and customary practices. Although the latter is a norm generating activity, it does not necessarily imply that it is an integral part of the institutional and legal set up.

The Ambiguous Treatment Accorded to Customary Law

Before proceeding, it is important for us to critically scrutinise the Land Tenure Code, for section 6 of the Forestry Law enunciates that "the ownership of forests shall be determined by the regulations governing land tenure" and the provisions of the forestry law. The forestry law, as already discussed, does not recognise customary resource tenure and this is manifested by the nationalisation of forest resources. The

local communities are granted fragile and revocable user rights, at least theoretically.

The spirit of the present land tenure reforms⁵⁷ in Cameroon is to put all lands, except lands covered by certificates of title, under the control of the state by classifying them as national lands. The all-embracing definitions of sections 14 and 15 of the Ordinance bear testimony to this view. Section 15 of Ordinance No. 74/1, includes in the category of national lands, not only lands free of any effective occupation but also lands occupied with houses, farms, plantations, and grazing lands manifesting human presence and development. Land rights which were held by local communities and their members under customary law, were thus brutally superseded by the 1974 legislation.

Section 17 (2) of the same Ordinance provides that customary communities and their members thereof as well as any person of Cameroonian nationality occupying or exploiting national lands by August 5, 1974, shall continue to do so and may apply for certificates of title over these lands. The implication here is that customary communities and their members were allowed the continued enjoyment of their rights with respect to national lands even after the Ordinance came into force. This provision raises a

⁵⁷ See generally, *Land Tenure and State Lands*, (Yaounde: National Printing Press), particularly Ordinance No. 74-1 of 6 July, 1974.

number of questions, one of which is: to what law are these lands subject since registration of title is not compulsory under the present legislation? Even if customary land tenure no longer exists in Cameroon,⁵⁸ so long as the rights in these lands are not recorded in a land register, statute law cannot apply to them. C.N. Ngwasiri (Land Law, Part II), summarised the situation succinctly when he said that: "since incidents of customary law must necessarily continue to apply to these lands even after registration, the purported abolition of customary tenure seems to be no more than paper legality."

The position from August 5, 1974, was thus that the interests of customary communities and those of their members, in land effectively occupied or exploited by them were reduced to greatly restricted rights of user. To mobilise the village communities and involve them in resource management, they must be given permanent access to land in order to kindle their interests in private forest reserves. With no registered title over the land, the actual laws do not provide an incentive to participate in forest resources management. Not only is the registration procedure cumbersome, expensive and time-consuming⁵⁹, but the requirement of "exploitation and occupation" bars them from registering land which contain natural forest resources.

Those who drafted these ordinances

cannot be blamed for not anticipating the current problem. Apart from the pervading influence of political and socio-economic factors which were discussed earlier, it is only at the beginning of this decade that the concept of sustainability has assumed unparalleled proportions in policy pronouncements. Customary communities have never actually accepted these reforms which to them constitute unwarranted interference with their rights by the government. While it is not uncommon to nationalise lands as the 1974 Ordinances did in Cameroon, the integration of customary tenure into modern state laws after intensive consultation and thorough research, and drastic simplification of registration procedures, appears to be a better solution.

Another factor is that the 1974 Ordinances did not specify the controlling interests of Chiefs and lineage heads in lands. The possible reason for this is that the exercise of this control must have ceased, at least theoretically, when such lands became nationalised in 1974. The government went about this tactfully by issuing Decree No. 77/245 of July 15, 1977, on the organisation of Chieftaincy in which the duties of Chiefs were defined. Nothing was mentioned about their interest in land control. As if to compensate them for this loss, the Decree provides for the payment of salaries and allowances to the chiefs. It must be pointed out, however, that the

⁵⁸ The Minister of Finance stated in his circular No. .../MINFI/DO/AF, addressed to members of the Consultative Boards (the body charged with the management of National lands) throughout the country that: "L'Ordinance No. 74/1 du 6 juillet 1974 a mis fin à l'existence des droits foncier coutumiers en créant le Domaine National et les Commissions Consultative pour son administrations".

⁵⁹ Only 2.3% of rural lands have been titled after more than 22 years' existence of the ordinances.

participation of a Chief and two leading members of his village in the deliberations of the Consultative Board charged with the management of National lands is mandatory;⁶⁰ and that in the procedure for the registration of land, Chiefs and notables are more often than not required to testify that the applicant has been occupying and exploiting the said land on or before August 5, 1974. In what capacity are they performing these duties? It could be concluded that they are acting in their capacity as traditional custodians of the land.

Integration of Customary Law in the Resource Tenure System

An obvious question is: why bother with the integration of customary law when the objective should be to put in place workable laws as soon as possible, an objective easily accomplished by legislation? The answer lies in the current view that natural resource management can be best taken care of through community participation and awareness. There is no better vehicle for the integration of awareness into communities except through accepted beliefs and practices.

First, modern law inspires respect and commands fear because of the presence of *gendarmes*, police and the law court. It is based on the rather ridiculous and unrealistic principle of "no charge, no offence". In Cameroon, it is common knowledge that charges are rarely

brought against offenders, for the simple reason that most offenders are not caught. On the contrary, under customary law the omnipotence and omnipresence of the ancestors commands instant and unflinching respect,⁶¹ thus drastically reducing cases of violations.

Second, so-called modern laws hardly reflect the wishes and aspirations of the people, mainly because the procedure for the elaboration and adoption of legislative texts is always fraught with irrationalities and inconsistencies, due to the presence of national and multi-national pressure groups. The adoption of the 1994 Forestry Law witnessed the most spirited and bitter debates in Cameroon's legislative history. Customary law on the other hand, is the result of ancestral communion whose wisdom is beyond human contemplation.

This is not a wholesale justification of customary practices, but an argument for perspective and balance. Slash-and-burn agriculture, shifting cultivation, hunting with the use of fire and poisonous substances, and the rule that "he who chops down the forest first establishes title", are certainly factors which render customary practices invalid in terms of possible legislation. Cameroon's 234 ethnic groups offer a wide range of cultural values and practices which have been modified to satisfy certain basic needs. They have managed their environment for centuries, long before the concept of nation-state was born. Customary law is

⁶⁰ Sections 12 and 15 of Ordinance No. 76/166 of 27 April 1976.

⁶¹ See S.A. Nguiffo, *op.cit.*, p.5.

thus potentially conservationist for the members pay particular attention to resources upon which their lives are inextricably interwoven. Among the Bakas of the East Province, for example, the hunting of certain animals by the uncircumcised and non-initiated is prohibited while in the Mandara mountains in North Cameroon and some chiefdoms of the North West Province, forests and mountains are perceived as sacred. This character limits their use and exploitation. In ethnic groups with a pyramidal power structure, such as most of the lamidos of the Northern provinces, peasants are discouraged from planting trees because they enjoy only usufruct rights. Consequently, they cannot develop the land on a permanent basis. Efforts should be geared towards encouraging the abandonment, or at least modification of such practices. But a practice by which certain animals enjoy royal status and therefore cannot be killed or hunted could be beneficial for sustainable management. In the centralised systems of the West and North West Provinces, because the

chiefs are the tutelar owner of all land, their authority is respected in all matters pertaining to land. Sustainable management and conservation can be encouraged through such centralised authorities.

In the North West and South West provinces, and dating back to the colonial times, an additional criterion has been imposed on the legal quality of custom: the custom must not be repugnant to natural justice, equity and good conscience.⁶² This repugnancy test has been used to eradicate practices that infringe good conscience. Legislative approval of this decision can be found in section 72 of the 1981 Marriage Ordinance. This is testimony that with adequate research and consultation, customary law could be integrated into modern legislation. To achieve such a change, there is need to sensitise judges and magistrates to the need to include customary resource tenure standards in their conceptions of justice and good conscience. To ignore customary law completely is to create a lop-sided legal system.

⁶² The Southern Cameroons High Court Law, 1955, Section 27(1).

The Place of Women in the Natural Resource Tenure System

In Cameroon, women constitute the backbone and mainstay of the rural economy, through their activities in the agricultural and informal sectors. Theoretically, women are not discriminated against as far as state laws dealing with both forestry and land tenure are concerned. In practice, however, the situation is different. The Consultative Board charged with the management of national lands is male dominated. First, a woman can never chair the Board since women, at least presently, are not being appointed Divisional Officers. In the second place, the land tenure code makes the presence of a Chief and two leading members of the village in the deliberations of the Consultative Board mandatory. In practice, women are not Chiefs, and neither are they leading members of their communities. An improvement would be to make it mandatory that at least one of the two village notables accompanying the chief in the deliberations of the Consultative Board, must be a woman.

One of the greatest weaknesses of customary resource tenure is its discrimination against women. In the West, North West and Northern provinces, male native land control authorities wield excessive powers over land, to the exclusion of women. In the forest region, land is in abundance. Women in these regions have a right to own land as opposed to women in the centralised political systems who enjoy only usufruct rights. In the centralised political systems, therefore, women may have access to land, earn income and resources from it, but they have no power of control or decision-making over such land. With no title over the land, they are often forbidden to plant trees and tree crops that are likely to protect the soil. Tenure deprivation is so trenchant that even at the eve of the 21st century, a 1988 report prepared for the Ministry of Women's Affairs stated: *"Traditionally, women are men's property, to be handed over to male inheritors, along with other property, at the time of a husband's death."*

The Way Forward

A major obstacle to the establishment of an equitable natural resource tenure system in Cameroon is a social structure that engenders oppression and perpetuates a degraded status for local communities. An inept social structure accentuates glaring inequalities in the redistribution of incomes from natural resources, and denigrates the status of rural inhabitants by refusing them permanent property rights in land and forestry resources. Marginalisation, poverty, endemic diseases, and ignorance are the cankerworms plaguing the masses who inhabit our rural natural resource regions. In these circumstances, the state and the institutions it incarnates are simply ignored. After more than 22 years of the existence of the Land Ordinances in Cameroon, only 2.3% of rural lands have been titled as against over 80% in some towns. The principal beneficiaries of registration as well as the exploitation of forestry resources have always been the educated local elites, civil servants, politicians and town dwellers. The forestry law is violated on a daily basis; local people act as if such laws are non-existent.

In the Mount Cameroon and Korup Project areas, as far as resource tenure dispute resolution is concerned, people still have a preference for customary courts. Hence a majority of the tenure cases which go to the state law courts are in the form of appeals from the customary law courts which legally or

from the point of view of state law, do not have the jurisdiction to hear and entertain such matters. It must be submitted here that a law which is respected more in its breach than in its observance is an instrument of anarchy, is positively a detraction from the majesty of the law, and ultimately falls into disuse. In the North West province, for instance, tenure disputes have occasioned unparalleled bloodbaths. The Commission for Boundary Disputes created in 1974 is inefficient and non-functional. The situation is compounded by the fact that traditional authority has romanced with state and political tutelage, thus eroding its traditional attributes of ancestral impartiality, wisdom, and wrath against recalcitrant defaulters.⁶³ It is true that we can by law alter or change the social habits and values of the local communities, but if at least the majority of the people do not perceive this as positive, enforcing such a law will be problematic. From a broader perspective, this implies adopting "green principles" for making tenure decisions, both at the national and local levels; for an otherwise good policy can suffer important setbacks if poorly implemented.

Local Officials

Law is not as abstract as it seems to be in the statute books. The interpretation given by the law enforcers to the letter and spirit of the law is equally important. Most studies seem to suggest that when bureaucrats are enforcing the Forestry

⁶³ For more on this, see J.A.M. Simo, "Land Disputes and the Impact on Disintegration in Contemporary Western Grassfields: Case study of Nilop Plain Chiefdoms," Yaounde, October 1995.

Law, their overriding consideration is to give credibility to an interpretation that would vest both power and privilege with them. As a result, the local population view state law as impersonal, accumulative, arbitrary, oppressive and alien to their customs. This creates a confrontational atmosphere. If local people are involved in the management of forest resources, will such an atmosphere serve the interests of the law-maker? Local foresters may need to abandon their *gendarme*-like style of behaviour, in favour of becoming trained rural animators favouring dialogue and negotiation. From all indications, Cameroon's hitherto instrumentalist view of law has failed and there is need to chart a new path.

It is true that difficulties exist in the application of the law. One example will suffice here. The Forestry Law (section 38) gives the local forestry officials the power to suspend or annul a community forest management convention where the said communities do not strictly abide by the terms of the agreement. Should this therefore be interpreted literally to mean that such suspension or annulment should be effected without prior warning and discussion, since the law does not provide for this? To suggest or conclude that warnings and discussion cannot be effected because the statute book does not provide for this, is to distort the spirit of the law.

Decentralisation of Tenure and Access Management

In the Cameroonian context at this present time, a policy maker faces inevitable difficulty. First, the economy is undergoing structural adjustment in consonance with World Bank prescriptions based on liberalisation and market-oriented economics. Second, politically, there appear to be no settled institutions; a new constitution has been formulated. This indicates that the administrative structure will undergo reform by way of decentralisation involving the devolution of power from the central government to the Regions. While these uncertainties may create problems in the design of legislation, they are a blessing in disguise. They provide an opportunity to put natural resource tenure issues at the centre-stage of the emerging order. Since article 57(3) of the new constitution provides that: "the Regional Bureau shall reflect the sociological components of the Region", tenure rights and access to forestry resources could be devolved to the regional authorities, who can better appreciate and integrate local realities and tendencies. In spite of everything it is sincerely hoped that natural resource tenure issues will dominate contemporary political and economic discourse. Rights, whether political or economic, can have no meaning unless they begin with the right to life itself at a tolerable level of existence.

Forest Tenure and Access to Forest Resources in Cameroon: An Overview

Natural resource tenure and access policies in Cameroon have, since the colonial period, generally ignored the existence of the local populations, done little to strengthen the ability of peasants and their institutions to cope with the brutal nationalisation of the resources upon which their lives are inextricably linked. This unilateral usurpation and top-down approach not only undermined traditional institutions, but demotivated many rural people whose energies needed to be mobilised in the management effort. But of late, the stark reality is that the hope that state control and ownership of natural resources would ensure rational management and bring about rapid social and economic development such as to rid rural masses of poverty, illiteracy and endemic diseases continues to be nothing but a mirage. The realisation that this instrumentalist view of law always lacks social legitimacy is giving way to new and more humane approaches.

When a society undertakes to shape policies to guide behaviour in relation to natural resource tenure, it is limited by the experience and mental capabilities of the policy makers at that particular point in time. It is not possible to think of everything simultaneously, especially when certain dynamic complexities, such as traditional tenure practices and beliefs, are effectively involved. That the 1974 Land Ordinances and the 1994 Forestry Law treat tenure issues fractionally rather than holistically indicates not only a lapse in perception of complex phenomena, but the need for further growth and maturation in the state's perception of its place in the interrelating systems of the society. The thrust of this paper is to examine past experience, and to identify constraints and opportunities all in an attempt to engender a more indigenous resource tenure system in Cameroon.

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