



Civil Society Proposals for Land Reform in Cameroon

Assessment of the existing legislation

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EXECUTIVE SUMMARY

Cameroon has embarked on a land reform announced in January 2011 by the Head of State, initially to facilitate investors' access to land, in order to develop so-called "*second generation*" agriculture. The Government decided to broaden the reform process by inviting civil society to provide inputs, and the latter made several proposals, albeit in an isolated or coordinated manner. Historically, land management has been marked by conflicts between traditional rights and state law, which diverge on the issues of recognition of customary land ownership. Since the colonial period, state law has thus considerably reduced the scope and substance of communities' rights over land, and the ongoing reform provides an opportunity to review this mechanism. Current land tenure laws present a number of shortcomings that are largely due to the fact that their main structure was designed 45 years ago, when the last in-depth reform on these issues was carried out. These shortcomings relate to the recognition of land rights, the effective recognition and enforcement of procedural rights (consultation, public participation, access to justice) and key issues such as compensation and sharing of benefits arising from land resource management. There are also inconsistencies between the various laws relating to the management of natural resources (forests, land, mines and the environment).

An analysis of civil society proposals highlights its attention for issues relating to the reform process (inclusiveness, transparency), the recognition of land rights (collective rights of rural communities, individual rights of community members, rights of marginalised groups: nomadic and indigenous herders of the forest, especially women and the youth), the simplification of land procedures and the improvement of government services. The main proposals made concern the expected outcome of the reform (a land policy blueprint as well as legislative and regulatory texts) and the content of the new law, which should simplify individuals' access to land ownership, as well as protect populations against customary lands acquisitions. There are also proposals to strengthen land governance institutions and to protect people against unlawful expropriation, to recognise and protect individual and collective customary land rights, secure the land rights of marginalised groups and improve the management of land-related conflicts.

Due to a lack of coordination between the drafters of the various proposals, there are inconsistencies between them and some issues are left out, despite their relevance for the reform in the Cameroonian context. The LandCam project is an opportunity to render the proposals more consistent and supplement them to cover all the issues that would allow an in-depth land reform, as the one envisaged in Cameroon. Recommendations are made for the project to test the main proposals in order to secure the recognition and protection of community land rights, and to have the new consolidated proposals brought forward by a broad coalition of civil society stakeholders.

INTRODUCTION

The land reform was ordered by the President of the Republic on the occasion of the Ebolowa agro-pastoral show in January 2011. Initially, it was intended to promote investors' access to land, for the development of so-called "second generation" mechanised and intensive agriculture, requiring large areas of land.

The review process gave rise to numerous public debates, organised on the initiative of the Government, the Parliament, traditional authorities, universities or civil society (national and international). The discussions resulted in an assessment of the land tenure situation in the country, and the capacity of existing legislation to respond to current land challenges. On this basis, proposals were made to inform the reform. These took several forms:

- Structured proposals prepared in the context of technical and/or financial support provided to local actors by some institutions. Such is the case of the Rights and Resources Initiative (RRI) coalition and the EU-funded Civil Society Support Program (CSSP) project;
- Institutional reports;
- Individual proposals from individual organisations;
- Studies by individual researchers on topics relevant to the reform.

The objective of this study is to compile and analyse civil society proposals for land reform in order to:

- a. identify and list proposals, issues covered, and issues that are relevant but not (sufficiently) covered;
- b. analyse the content of proposals to assess their ability to respond to all challenges, and their coherence;
- c. make recommendations and propose strategies for the LandCam project to support consideration of the proposals.

METHODOLOGY

The methodology comprised the following steps: (1) collection and analysis of proposals made by civil society organisations between 2012 (date of earliest proposals) and 2018; (2) identification of issues likely to be addressed in the land reform; (3) identification of important issues in the context of Cameroon but not considered in the proposals. Some of the issues stemmed from the international commitments of the state.

This report will analyse the proposals in order to assess the scope of the topics they cover (1); their consistency (internal consistency and consistency between proposals made by the various actors) (2); and identify issues relevant to the land reform in Cameroon, but not covered (3). The report concludes with a series of recommendations for the LandCam project (4).

1

A BRIEF HISTORICAL OVERVIEW OF THE LEGAL FRAMEWORK OF LAND TENURE IN CAMEROON¹

In Cameroon, colonisation led to a disruption of lifestyles and to the regulation of people's relations to land and resources. At the signing of the July 1884 Germano-Duala Treaty, the Douala kings of the Cameroonian coast tried to maintain control over their territorial land and resources in their relations with the German administration. Conscious of the key role of land in safeguarding social cohesion and their authority, and probably in order to prevent the consequences of this disruption in land tenure, coastal chiefs expressed their wish to maintain control over land management. According to Article 3 of the Treaty: *"The land cultivated by us now and the places, the towns they are built on shall be property of present owners and their successors"*. Once the agreement was ratified by the German Crown, it served as a pretext for the annexation of the hinterland in accordance with the findings of the Berlin Treaty of 1885.

Perceived by Germany as a productive colony that could accommodate many settlers, Cameroon could hardly escape the in-depth overhaul of the rules governing the management of land and natural resources. The new colonial administration was therefore quick to legislate land.

The outcome was a significant reduction of the rights of communities over land and resources, which worsened after independence.

The land rights of the local communities were thus undermined, both in their substance and across the lands on which they were exercised. The use of the notion of "terra nullius" (vacant and ownerless land) showed the limited understanding of communities' land use patterns by the colonial administration: the administration only considered land used for agricultural purposes to be owned, neglecting all other non-agricultural uses, and especially the areas of collective ownership (hunting areas, ritual and cult sites, collection areas for forestry projects of all kinds, etc.). Such restrictive conception of community land ownership contributed to the reduction of a significant proportion of communities' lands and placed them under the control of the colonial administration, which could transfer them to foreign operators.

In this context, customary property persists and is recognised by Article 1 of the 1896 Decree, which excludes from the category of "vacant and ownerless" lands those on which *"individuals or legal persons, chiefs or indigenous communities, may eventually claim ownership rights or other real rights..."*. The article provided for the possession of land deemed vacant and ownerless on the territory, and simultaneously established the recognition of customary land ownership by "chiefs or native communities". Rights recognised as such can only exist under customary law, and the 1896 Decree was the first written text to regulate land across the territory of Cameroon. The nature of the rights in question was specified: ownership rights and other real rights.

1 Based on Samuel Nguiffo, Pierre-Etienne Kenfack, Nadine Mbella, «L'incidence des lois foncières historiques et modernes sur les droits fonciers des communautés locales et autochtones du Cameroun», Forest Peoples Program, 2009

This recognition of customary land rights persisted under colonial law in Cameroon, and was reiterated in Section 3 of the Law of 17 June 1959 on the organisation of state property and land tenure, which stated that:

“The customary rights exercised collectively or individually on all lands except those that are part of the public and private domains (...) and those that are appropriated under the rules of the Civil Code or the registration system (...) are confirmed. No community or individual may be forced to surrender their rights except for purposes of public utility and against a fair compensation.

When Cameroon gained independence, the ambition of the country’s leaders was to change the existing land tenure system, which combined traditional and modern law, to adopt a new one, taking into account development and nation building imperatives.

Since the country was made up of two federal states, the issue was crucial only for French-speaking “East Cameroon”. Indeed in the English-speaking part, the “Land Native Right Ordinance” in force in Nigeria, whose enforcement extended to Cameroon under British administration, was aligned with the intentions of the authorities of the country. It made local and indigenous populations simply usufructuaries of the lands they developed.

The reunification of the two states in 1972 gave the leaders of the unitary state the opportunity to adopt a single state property and land tenure regime for the entire territory. This was done through three broad ordinances signed on 6 July 1974, supplemented by subsequent texts.

The ambition of the reformers was undoubtedly to design a modern land reform with a view to promote national integration and the development of the country. Eventually, the outcome proved disastrous for local and indigenous populations, who were almost entirely stripped of their land rights because post-independence law abolished the notion of customary ownership, and rendered easier the expropriation of local and indigenous people who had been able to become owners.

The Law of 17 June 1959 on the organisation of state property and land tenure had previously strengthened the rights of local and indigenous peoples on their lands by removing the notion of vacant and ownerless land and by creating the concept of customary land ownership.

This customary ownership, which operated alongside “modern” ownership drawn from the registration regime, and which allowed local and indigenous peoples to manage and derive all the potential benefits from their land - and even through alienation - was abolished after independence by a state concerned with the use of land as a political and development instrument.²

From 1974, registration became the exclusive method to access land ownership. Any procedure for registering a building ends with the issuance of a land title, which consists of an official certification of ownership”. The Cameroonian legislator further stated that: *“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”.*

Registration has the advantage of facilitating land identification and proof of ownership. In Cameroon, direct land registration is subject to pre-development, either by occupation or by usage.³ The procedure remains long and costly, despite the simplification efforts made by the administration.

² The suppression of customary ownership was the outcome of Ordinance No. 74/1 of 6 July 1974 to establish rules governing land tenure, which made registration the exclusive method of access to land ownership and placed all unregistered land under state control

³ Land is occupied when buildings, dwellings and outbuildings, sheds and other structures have been built on it. Land use is when field crops, plantations or areas of breeding and rangeland have been realised.

In the specific case of indigenous peoples, registration remains a challenge, because their semi-nomadic way of life, as well as their very environmentally-friendly modes of production, do not fit understandings of land development as described by the laws in force.⁴ It therefore seems important to define other mechanisms to take into account the rights not recognised by the existing legislation.

⁴ According to Decree No. 76/165 of 27 April 1976 to establish the conditions of obtaining land certificates, as amended by Decree No. 2005/481 of 16 December 2005, any local or indigenous community (or member thereof) willing to transform their former customary property into state-recognised property must compile a file containing information relating to the civil status, residence and occupation of the requestor and the description of the land (surface area, nature of occupation or use, estimated value, etc.).

2

A BRIEF ASSESSMENT OF THE STRENGTHS AND WEAKNESSES OF THE LAWS⁵ IN FORCE

The assessment proposed below is made on the basis of the criteria set out in the terms of reference of the study.

2.1. The recognition of rights, consultation, compensation, benefit sharing, remedies

The legislation in force guarantees land rights to citizens (including local communities and natives), which can be divided into three categories: (1) the right to own land; (2) the right to use land without enjoying ownership; (3) the right to participate in land management.

a. The right to own land

Land ownership is a right recognised for all citizens. Since the German era, “natives” were granted ownership of the land on which they enjoyed customary private ownership. This situation persisted under the mandate and trusteeship, with various levels of recognition of customary ownership. Through Ordinance No. 74-1 of 6 July 1974, the Cameroonian legislature placed customs at the same level as land registration under the German, French and English administrations of Cameroon: land held under the regime of uncontested individual customary ownership may lead to issuance of a land title in the name of the owner.

Strengths:

1. The possibility of gaining ownership is widely open, even to the holders of customary rights;
2. The 1974 text unified the existing systems in the two Federated states of Cameroon;
3. The procedures for access to land ownership were simple and well described.

Weaknesses:

1. The registration provisions became discriminatory over time: one had to prove effective development prior to 6 July 1974. Today, some 45 years later, this measure is a serious impediment to the right of the overwhelming majority of the population to directly register their customary lands;
2. Communities whose way of life is different from the dominant sedentary lifestyle are finding it hard to get their land rights recognised under the current system. These include the indigenous (semi-) nomadic populations in the forest (“Pygmies”) or herders (Mbor

⁵ Culled from Samuel Nguiffo, Pierre-Etienne Kenfack, Nadine Mballa, «L'incidence des lois foncières historiques et modernes sur les droits fonciers des communautés locales et autochtones du Cameroun», Forest Peoples Program, 2009.

oros). Moreover, the notion of development, fundamental to the registration process, bases the proof of rights and usage on “*occupation [which] results in an obvious dominance of man on the land*”. This restrictive criterion deprives indigenous communities of the possibility to claim rights on many sites, due to the absence of lasting traces of their uses. They are thus, in a way, penalised because of the durable nature of their uses of spaces and resources;

3. Collective land ownership is not recognised, despite being one of the pillars of rural land management in Cameroon.

b. The right to use land

On state estate, communities enjoy the right to use land, although they are not granted ownership of the space. There are no title deeds for National lands. Article 15 of Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure considers national lands (category 1) to be “*lands occupied with houses, farms, plantations, grazing lands, etc.*” Similarly, Article 17 authorises customary communities, their members and any other person of Cameroonian nationality who occupies or peacefully manages category 1 land, to continue to occupy or develop it. These Articles confirm the existence of a right to use land. This right is accompanied by a right to use natural resources on the national state estate and on some portions of forest belonging to private state lands.

Strengths:

1. The existing laws seem to suggest that anyone is able to use land, even if they do not own it;
2. The existing laws are concerned with the continuity of the peaceful use of space by customary communities and citizens in general; the legislation retains a large area of land over which no right of ownership is recognised, which is used by rural communities and administered by the state, responsible for its rational use. This situation has the merit of avoiding massive land grabbing to the detriment of rural communities, which the state is supposed to protect.

Weaknesses:

1. Customary law, which sets the rules for land ownership and land use across all cultural areas of Cameroon, does not enable customary rights holders to have their property recognised by state law. This situation can be a source of land insecurity for most of rural populations, whose only reference is often customary law;
2. In the event that the land used by communities is solicited for projects, compensation for unregistered land is not provided, which results in the impoverishment of customary land rights holders;
3. The current laws have failed to optimise recognition of the land rights of social groups whose way of life does not conform to that of the dominant groups. Such is the case of (semi-) nomadic herders and forest natives, who are wrongly referred to by the pejorative term “pygmies”. In a context marked by the sedentarisation of the overwhelming majority of the population, their user rights are not always recognised, and they are penalised by the fact that their activities leave little (if any) visible mark on the natural environment. The law proposes very few tools to manage the movement of livestock and the sometimes-difficult cohabitation between farmers and herders.

c. The right to participate in land management

Communities have the right to participate in land management, especially under state estate, where they are granted user rights. The existing legislation provides for two main conditions to participate in the management of national lands: (1) consultation at the time of transfer of rights on these areas (registration, contribution or classification of forests leading to the establishment of a land title). This implies that information is made available to the communities, particularly on what is to be transferred (nature of land, scale, beneficiary, etc.). Participation takes the form of consultation with neighbours and traditional authorities (for direct registration) or villages, through the advisory commission (for concessions); (2) participation in the financial benefits derived from concessions in the state estate. Article 17 of Decree No. 76/166 of 27 April 1976 to establish the terms and conditions for the management of national lands stipulates that: *“The income generated by the allocation of national lands, whether held by grant or on lease, shall be apportioned 40% to the state, 40% to the municipality of the area, and 20% to the village community to be used in the public interest”*.

Strengths:

1. Information is provided to the community for the management of state land;
2. Communities have the right to express their views, particularly through the advisory commission, to ensure protection of their customary rights.

Weaknesses:

1. There is no process to ensure that communities are effectively consulted, and that the positions taken by village chiefs reflect the opinions of the majority of villagers;
2. Village representatives are a minority on the advisory commission, which is mainly composed of local civil servants;
3. The advisory commission only expresses an opinion, which the land tenure administration is not obliged to take into account in its final decision.

d. Remedies

Communities have the possibility to seek redress for land disputes in which they are involved. There are four possible scenarios: (1) the conflict opposes two members of a community on unregistered lands. In this case, they can resort to the traditional rules of conflict management (neighbourhood leader or village chief), or resort to the advisory commission; (2) the dispute entails challenging a registration or an assignment of rights (concession, for example): the community can resort to the judge, or seize the land tenure administration; (3) the dispute relates to registered land: in this case, the judge with jurisdiction or the land tenure administration may be seized; (4) in case of violation of uses (e.g. compensation) or property rights (expropriation and compensation), the judge with jurisdiction or the relevant government service may be seized.

Strengths:

1. There are possibilities of remedy for all cases.

Weaknesses:

1. Procedures are complex;
2. Procedures are expensive;

3. In some cases, the administration is both judge and interested party: it assesses the damage, makes the payments and manages disputes at first instance. The judge may be seized in case of disagreement, but the litigation is not suspensive of the contested work, which has the immediate effect of preventing any counter-evaluation due to the destruction of the disputed property.

2.2. Inconsistencies between the land tenure regime and other natural resource regimes

An analysis of laws on land tenure and other natural resources reveals inconsistencies and/or a lack of coherence. Such a situation limits the effectiveness of the legal regime of land tenure in Cameroon. The ongoing reform of land and forest regimes, which comes after the revision of the mining regime, should be an opportunity to improve consistency between these laws. The following examples may be cited by way of illustration:

- With regard to concession granting, it transpires that the transfer of logging or mining rights, all of which result in restrictions of land rights, follow processes that do not involve the communities. The location of forest concessions is determined by the state, based on the value of the area in wood resources. It is thus established, for example, that: *“the boundaries and characteristics of the different categories of forest that make up the permanent forest estate shall be specified after division and consultation with the populations”*.⁶ In practice, zoning, which was meant to be indicative, seems to be considered as final, and determination of the final boundaries of the forest concessions (forest management units - FMUs) depends more on criteria extraneous to the local communities than on the demands of the populations. The location of mining concessions also depends on the richness of the subsoil in mineral resources, and the concession holder solely is responsible for choosing the site. Section 16(1) of the Mining Code of 14 December 2016 thus states that: *“the Mining Titles Registry shall receive and examine all mining title or exploration permit applications and forward (...) within 15 working days (...) a draft instrument granting the mining title, the exploration permit or the transaction agreement”*. The communities are not consulted for the location of concessions or for the selection of concession holders. In the case of forests, the state selects the concession holder through a public call for tenders, or in some cases, the concession holder selects the site, depending on the presence of ores, determined during the exploration phase. The signing of an exploration permit implies the signing of a mining permit, if the holder so requests. Regarding land tenure, the transfer of a land concession goes through a process involving the advisory commission, during which the community representatives express their view on the appropriateness of the land transfer, on the size and location of the concession.
- Regarding compensation, for example, mining law provides for the compensation of customary land rights holders, including for the loss of land use. Section 120 of Law No. 2016/17 of 14 December 2016 to establish the Mining Code provides that *“the land owner or the member of a traditional council or the traditional council shall be entitled to an allowance*

⁶ Article 6(1) of Decree No. 95/678/PM of 18 December 1995 establishing an indicative framework for land use in the southern forest area. Emphasis added

for the occupation of their land by the holder of a mining title". Owners of customary land rights are therefore eligible for compensation for the loss of land use rights. Yet, land tenure and forestry regimes provide for compensation for land only for land title holders, while customary landowners only receive compensation for on-land development.

- On the system of participatory taxation, the royalties provided for are not always the same: (1) a proportion of forest royalties is paid to neighbouring councils and communities of the mining site; (2) a proportion of mining royalties is earmarked for the councils and communities bordering the mining site; (3) a proportion of land royalties is paid to councils and communities bordering the mining site; (4) the communities living near an oil exploitation site do not receive any royalty. In recent years, Cameroon has been granting on-shore oil licenses. It should also be noted that the sharing of land royalty is provided only for concessions located in the national domain; for concessions located in the private state estate, the entire land royalty is intended for the Treasury. However, forest concessions located in permanent forests, part of private state lands, effectively result in forest royalties being shared among the state, the councils and communities

3

OVERVIEW OF THE DIVERSITY OF ISSUES COVERED

In the course of the reform, the Ministry of State Property, Survey and Land Tenure (MINDCAF) accepted proposals from various actors. It is in this context that the Network of Parliamentarians for the Sustainable Management of Forest Ecosystems in Central Africa (REPAR), the Network of Traditional Leaders for the Sustainable Management of Forest Ecosystems in Central Africa (RECTRAD) and the Cameroon Coalition of the Rights and Resources Initiative (RRI) published their own proposals. The private sector also made proposals, which were unfortunately not accessible, even though their content was presented to us. They consisted essentially of a request for enhanced security of land rights as a way to strengthen the business climate and boost investment. Numerous and recurrent disputes about titles and rights (land titles and land concessions) made available to companies for their investments led to conflicts that slowed down investments.

Alongside these position papers, it is also worthy to mention studies carried out in academic or institutional settings⁷.

The topics covered are as follows:

1. **Concerns about the reform process** - The main issues raised are:
 - a. The necessary inclusion of all actors;
 - b. Consistency of land law with policies (National Strategy of the Rural Sector) and with the laws in force or under preparation (laws on forestry and mining, guideline law on town planning, law on pastoralism, etc.);
 - c. The local anchoring of the new land law through solutions to safeguard land rights based on traditional practices.
2. **The form of instruments to guide the land reform.** The current legislation is dispersed, split between a variety of instruments of different natures (laws, ordinances, decrees and other regulatory instruments). There exists no land policy document, and elements indicating the main guidelines for government action on land tenure remain implicit in various documents.
3. **Difficulties in recognising land ownership.** The simplification of land ownership procedures for individuals. The proposed measures include, among others, the reduction

⁷ Liz Alden Wily, *A qui appartient cette terre ? Le statut de la propriété foncière coutumière au Cameroun*, (study conducted in 2011 on behalf of CED, FERN and Rainforest Foundation).

Guy-Patrice Dkamela, *La terre des communautés « autochtones » du Cameroun : une analyse socio-anthropologique et juridique à partir du Cas des Baka, Bagyeli et Mbororo, en vue d'une recherche d'approches de gestion inclusive du foncier*, Yaounde, World Bank, 2017;

Talla Marius and Abel Bove, *Les défis de l'accès des communautés autochtones à la propriété foncière et aux ressources naturelles au Cameroun. Document de plaidoyer en vue de l'amélioration de la gouvernance foncière au Cameroun*, Yaounde, World Bank, 2017;

Samuel Nguiffo, Pierre-Etienne Kenfack and Nadine Mballa, *L'incidence des lois foncières historiques et modernes sur les droits fonciers des communautés locales et autochtones du Cameroun*, FPP, 2009;

CED, ACDIC, FFE, *Framework Document on Large-Scale Land Acquisitions in Central Africa*;

World Bank, *Framework for Analysis of Land Governance*.

of the procedure costs, the establishment of a one-stop shop for all the land registration procedures, and free land title for the disadvantaged.

A solution for the formalisation of customary land rights.

The recognition of formal property rights to untitled occupants of national lands, including the possibility of becoming owner by undisputed long-term possession.

4. **Clear definition of land management concepts.** These include the following notions: neighbouring populations, living space, indigenous communities, land manifesting human presence and development.
5. **Difficulties in recognising customary property,** particularly the fact that customary land rights are essentially considered as user rights, characterised by great uncertainties.
6. **Difficulties in recognising collective ownership,** including through the recognition of villages' ownership of their land, without prior formality. It is proposed that each village should have a reserved area to guarantee its subsistence. Proposals vary from the recognition of village land ownership to the recognition and protection of a living space, or of a community area for housing, agriculture or other livelihood activities.
7. **The absence of known village boundaries,** which has often led to sometimes violent land conflicts between them.
8. **Conflicts between herders and farmers,** owing to difficulties in organising the cohabitation between these two land users, in many regions of Cameroon.
9. **Expropriation, compensation and reparation.** The proposals relate to the definition of the criteria of 'declaration of public utility', in the absence of a clear definition of this notion. Proposed changes to the procedure are also made to enable faster payments and ensure that the payments are made before the start of work. Declaration of public utility should have a limited duration in time and become obsolete if the project is not implemented. The proposals also concern the rates of compensations and wish them to reflect the long-term value of the land. Lastly, it is proposed that victims of expropriations/evictions should be resettled as much as possible on land of equivalent nature, size and value.
10. **Public participation in land management.** The main concerns are:
 - a. Generating information (land tenure information system based on cartography, remote sensing and geographic information systems) to provide a reliable database on the status of surface areas, owners and occupants; the development of a land use plan;
 - b. Disseminating to the public all information relating to land management, including the publication of available land offers prior to allocation.

Issues on consulting the general public and residents of the sites subject to land management operations (registration, concessions, expropriations, evictions) have been left out.

- 11. Land rights of marginalised segments of society.** The findings reveal that the land rights of marginalised groups are generally poorly defined, and highly dependent on the will of the majority groups. These include women and youth, indigenous communities and nomadic herders. Two categories of problems and proposed solutions were identified:
 - a. Barriers and difficulties in access to land and recognition of land ownership, common to women, indigenous forest dwellers, nomadic herders, youth and minorities. The main difficulty identified here was customary law, which favours majority communities to the detriment of minorities and indigenous peoples, and is favourable to male adults, to the detriment of young people and women.
 - b. Barriers and difficulties specific to either of the groups considered. (1) The specific land use method of indigenous forest communities or nomadic herders, which penalises them because it is recognised neither by customary rights nor by existing instruments governing land tenure; (2) the requirement of a minimum age for direct land registration under the 1974 Ordonnance on land tenure.
- 12. Land administration.** The administration system is still too far removed from rural areas, despite decentralisation efforts. Civil society suggests a reinforced decentralisation of the administration (which, for the moment, is still at divisional level), without however giving clear indications on the actions to carry out.
- 13. Involvement of local and indigenous populations in land governance.** Involvement of communities and civil society in land management is hindered by limited access to information on the subject, including issues relating to land transactions. In addition, there is no institutional framework for involving citizens in land management, including local elected officials. The advisory commission does not provide room for them, and currently, only chiefs, notables and civil servants are members.
- 14. The absence of local councils in land management,** despite the push for decentralisation.
- 15. Land litigation.** Land conflicts are persistent and intense; meanwhile, the mechanisms for resolving these disputes do not seem to be very effective. The institutions closest to the places of occurrence of conflicts are not always formally used, owing to the legal void concerning them. These institutions consist of neighbourhood leaders, or platforms for dialogue for farmers and herders to resolve conflicts among them.
- 16. Corruption.** Corruption often comes up as a concern of the authors of the proposals, who believe that it is prevalent in processes of registration, granting of concessions, compensation, and land dispute management. According to them, it is practiced by Government, the justice system and traditional authorities. Impunity for civil servants also continues to be an issue, and does not dissuade the practice within the administration system.

4 SUMMARY OF PROPOSALS

1. **On the nature of the land reform. The proposal is to put in place a process that is:**
 - a. **Inclusive**, that mobilises and considers the needs, expectations, aspirations and concerns of all components of the national community;
 - b. **Pluralistic**, by reconciling the land laws and regulations of the French- and English-speaking parts of the country, customary land rights and written law;
 - c. **Consistent** with the policies and legislation governing the management of other natural resources, so as to avoid the conflicts and overlaps observed so far in the instruments governing land, the environment, forests and extractive industries.
2. **Formalisation of a land policy and adoption of a single law governing the sector in Cameroon:** This entails having a single document, instead of dispersed legislation as is the case today.
3. **Simplification of the individualisation of land:** This is an omnipresent request in the proposals, and it takes several forms:
 - a. Institutionalising forms of titles and land registration tailored to the needs and capacities of local and indigenous populations;
 - b. Simplifying, streamlining and shortening procedures and deadlines, as well as reducing the costs of access to land ownership;
 - c. Avoiding pegging ownership rights to the development requirement, and instead grounding ownership on customary law.
4. **Protection of communities against the acquisition of their customary lands:**
 - a. Limiting to 10 ha the maximum area of land eligible for direct registration for the benefit of a single individual in the national domain throughout the national territory;
 - b. Enshrining consultation and free, prior and informed consent (FPIC) of local and indigenous communities in large-scale land transfers;
 - c. Organising access to information for local and indigenous people and civil society organisations by publishing information on land deals within communities;
 - d. Imposing the use of participatory mapping to identify the rights of communities, with a view to securing them.
5. **Strengthening land governance institutions:**
 - a. Involving citizens elected at local level in the advisory commission, as members;
 - b. Allocating logistical and financial resources to advisory commissions, and increasing the responsibilities of traditional leaders who are members thereof, to strengthen the role of the advisory commissions in land dispute settlement;

- c. Set up a national land governance consultation and regulation council, with local branches;
- d. Instituting an independent local land management observatory;
- e. Clearly define the place and role of traditional rulers in land and resource management and administration.

6. Recognition of customary, individual and collective land rights:

- a. Establishing a village community land estate or rural land estate, consisting of plots of the two existing components of national lands, which will be recognised as customary land and governed by new provisions of the land law in preparation. The new law would give current customary owners ten years to apply for full customary ownership, which would confirm the presumption of customary ownership that they enjoy today;
- b. Setting village boundaries based on colonial boundaries and subsequent modifications;
- c. Designating the village as the lowest level of administrative organization in Cameroon. This proposal is intended to ensure that the village is recognised as a legal entity that can enjoy land ownership. For now, the village does not have a legal personality, and can enjoy rights only if such rights have been registered in a form recognised by law;
- d. Granting the village a collective property right on its traditional lands, without any prior formalities. Such lands would be untransferable, with boundaries set in a participatory manner, involving members of the community, and should correspond as much as possible to the village's customary territory;
- e. Recognising the validity of customary law in the management of village lands;
- f. Issuing a collective land title to each village. The proposal is to legalise traditional customary practices of collective ownership of village land, which is considered community property. Currently, by law, these lands belong to the national state estate on which communities exercise rights of use, but not of ownership. The proposal assumes that the collective land title is established for the entire territory, including the portions that are not developed. The proposal is similar to that of setting up a living space for each village;
- g. Ensuring the intangibility of the village space as well as that of the state and councils, with the exception of renting spaces.

7. Protecting the victims of expropriations

- a. Introducing a transitional period for the eviction of spontaneous occupations of the public or the private state estate. This period would be used to help victims find a resettlement site;
- b. Instituting the principle of prior payment and resettlement of victims before the execution of any decision of expropriation for reasons of public utility, or any eviction from land occupied peacefully, in accordance with customary rules.

8. Protecting the rights of marginalised groups

- a. Recognising and enshrine access rights to land for women, young people and indigenous forest communities and nomadic herders;
- b. Enforcing the law without discrimination, particularly with regard to women, the youth and indigenous peoples.

9. Dispute management

- a. Introducing free referral to the advisory commission and services thereof;
- b. Establishing dialogue platforms at sub-divisional level to hear disputes between farmers and herders, with the involvement of local representatives of the ministries in charge of these two sectors;
- c. Establishing two lower levels of dispute management for customary land ownership prior to referral to the advisory commission: the neighbourhood council and the village council.

5 OVERLOOKED ISSUES

An analysis of the proposals made reveals that some additional issues would have deserved the attention of civil society and other non-governmental actors. The selection of these issues is part of the logic that we thought we perceived beyond the proposals, namely a special attention for the creation, recognition and/or consolidation of the rights of rural populations (individual or collective rights) on the land. The themes reviewed below aim directly or indirectly to seek clarification.

1. Recognition and protection of the customary land rights of rural communities.

According to the law, registration is the method of recognition of land ownership. For customary land, it is important to provide evidence of development of the land on which one has customary rights. The development must be dated prior to July 1974. Where the development was initiated after this date, the procedure available is to demand the status of concession, which can be followed, after evaluation, by the establishment of a land title. The procedures remain complex, despite the decentralisation and simplification efforts introduced by the 2005 legal texts. And in the current context of competition for access to land (population growth, urban expansion, large-scale investments, etc.), unsecured land is easily lost by the people who depend most on it. What could be the tools and mechanisms for recognising and protecting these rights?

2. The issue of collective ownership of land.

The existing land laws recognise the possibility for customary communities to obtain land ownership through registration. However, it is necessary to have legal personality to be able to own, which obliges the members of communities either to obtain legalisation in a form recognised by law, or to register the names of each member of the community, which does not correspond exactly to collective ownership as recognised by communities in Cameroon. It is important to propose a repeal of these provisions and return to a formula more in line with the management methods traditionally used by the communities. It would also be important to allow communities to have recognised rights to undeveloped lands, to ensure that they can secure their ownership on the natural areas they need.

3. Extension of the definition of “development”.

The concept of development is at the core of direct registration of land in Cameroon and of compensation processes in the case of evictions. However, there is no precise definition of the notion of development. Can amenities, such as the construction of a road crossing a land estate for example, be considered as development? Or forest land development in the context of community forestry? So far, only constructions in permanent materials and plantations have been considered as developments. Clarifying this concept, by extending its contours, or abandoning it to give free rein to the general regime of liability (Section 1382 of the Civil Code), will allow communities to receive a fair and proportional compensation for the damage suffered each time they are victims of expropriation or eviction.

4. **Management of the public domain.** Communities use significant proportions of the public domain, which they consider as an integral part of their customary land. The existing texts describe the public domain of the state, but not its management procedures. In a context marked by demographic and investment pressure, the public state estate is equally eyed by land users. The state should urgently lay down conditions for the management (and protection) of public state land, in order to avoid its increasing privatisation. Any de facto privatisation of public land could deprive communities of their current uses.
5. **Direct registration, the preferred mode of access to land ownership, excludes the youth.** Their customary rights, inherited from their parents, are no longer eligible for direct registration, because they consist of post-July 1974 development. The youth are therefore forced to go through the pathway of concession registration, which is a longer, more expensive and more restrictive procedure: you have to place a request for land, obtain a temporary concession, provide proof of development, before eventually requesting a land title. This procedure entails undertaking at least three visits to the administration site, which is both time- and money-consuming, and with an uncertain outcome. It is imperative to find an easier mode of access to land ownership, no longer based on the conditions of the July 1974 Ordinance. Land that was customarily passed on after 1974 may continue to be considered customary land, which could lead to direct registration. The lack of a clear process of recognising community land rights, together with the rapidly growing demand for land for large-scale investments, could lead to conflicts between the state and rightsholders on the one hand, and the communities thus dispossessed of their customary rights, on the other hand.
6. **Spatial planning issues.** Pressure on land associated with large-scale land-grabbing projects, urban growth and rapid population growth is exposing communities to the loss of their land rights. One way to ensure that community lands are identified and preserved is to establish a legal obligation to consider them in spatial planning and zoning.
7. **Management of pastoralism.** This entails promoting the efficient development of livestock activities in a context marked by the high prevalence of farming and by recurring conflicts between these two activities. There are at least two situations in Cameroon: (1) cohabitation between semi-nomadic herders claiming localised land rights near land occupied by farmers; (2) the situation of nomadic herders, transhumming sometimes over very long distances. Both categories of herders present similarities and differences: in both cases, the issue is about managing the cohabitation of two seemingly contradictory activities within the same space, sometimes carried out by different communities and thus exposing them to the risk of conflict between them. In some cases, herders and farmers are part of the same environment and claim land rights in the same area (especially in the North-West, West and parts of northern regions of the country). In other cases, herders do ask to be granted ownership rights on the land, but wish to have access and routes to water and to designated and secured pastures along their route. No group of herders seems to claim exclusive rights over the rangelands or developments set up on their transhumance itinerary. Responses to both situations will therefore include common elements and specific provisions, consistent with the particularities of the groups considered.

8. **Consistency between the laws governing natural resources and land.** The laws governing land and resources are not always consistent, and this may penalise communities. For example, the laws governing forestry and those on land do not always concur. Thus, while communal forests, for example, devolve the allocation of land rights to the council, community forests do not guarantee the same effects on land. These laws should be reviewed to harmonise practices.
9. **Protecting the rights of communities in relation to various types of land-related operations,** particularly large-scale land acquisitions and all other investments involving changes in land use or land rights transfers. Transferred lands are located on significant portions of the traditional lands of communities. Advisory commissions should be reformed, with more detailed definitions of the conditions of representation of the community components of the commission, of consultation of neighbouring villages, of decision-making, etc. The objective of protecting the rights of communities, contained in the July 1974 Ordinance and in the April 1976 Decree, does not come through in the enforcement of these laws and subsequent ones relating to land management. The same precautions should be adopted with regards to consultation to determine areas requested within the framework of expropriation for reasons of public utility, and for environmental and social impact studies.
10. **Decentralisation and land management,** especially with the announced creation of regions. The proposals made concern the involvement of mayors in land management, but do not state a possible role to be played by regional executives. How far should the decentralisation of land management go? What will the powers held by the state at central level look like? There remains at least one omission: the inclusion of the municipal council in the land management. The 1974 Ordinances were passed at a time when council authorities were responsible for both representing the central administration locally and managing the council. With the separation of the two functions, (appointed) sub-divisional officers kept their land-related functions, while (elected) mayors were not involved at all. However it would be useful to involve them in the management of local land.
11. **Relieving congestion in courts.** Land disputes represent a significant proportion of cases before national courts. CSOs diagnosed this, but made no proposals. It could be possible, for instance, to set up mechanisms for addressing land disputes prior to referring them to courts, so that only those that could not be resolved should be brought to the courtroom. Traditional authorities could consist of the first institution involved for settling land disputes.
12. **The issue of women's land rights,** although mentioned several times in the proposals, seems to be approached superficially. The proposals sometimes suggest that a reference to gender in legislation should be introduced through a feminisation of functions and references to beneficiaries. Discrimination against women is not always narrowly defined. Women can obtain fragmented plots or private sales or concessions in their name. All these options can lead to the establishment of a land title for women, without any discrimination. The points of discrimination are direct registrations (from undisputed customary ownership) or inheritance. The issue of women's land rights should therefore

focus on the nature and protection of their customary rights, and on securing their equitable access to land inheritance.

13. **The issue of land rights for young people.** Young people, regardless of gender, face discrimination in access to land. Although they can, like women, carry out all the operations giving right to the establishment of a land title in their name, direct registration remains difficult when the administration observes a strict implementation of the law: only land that was developed by its customary owners prior to adoption of the 1974 Ordinances may be registered. Development must thus be 45 years old, and if it is presumed that the developer is in their late teens, then at least 60 years of age would be required to consider direct registration on national lands. This discrimination against young people is simply the result of the tardy land reform and will probably be corrected with the adoption of the new law.
14. **Indigenous communities.** It is interesting to note that the situation of indigenous communities' land rights is reflected in at least three scenarios:
 - a. **Nomadic herders settled on the same land as the native communities of these areas.** In such cases, the demand of nomadic herders concerns the recognition of individual property rights over the lands they occupy, and recognition of collective rights over pastures;
 - b. **Nomadic herders in transhumance over long distances.** They do not claim individual land rights, but wish to have secure access to transhumance corridors with water points and pastures;
 - c. **Indigenous forest dwellers,** who are in the overwhelming majority semi-nomads, settled on the land of their Bantu neighbours, and who carry out activities on the land of their neighbours and on spaces on which they were once settled. They usually do not have customary land rights along the tracks where they are very often settled. And where they do have customary land rights in the forest, the state holds rights to land and resources (private domain of the state for lands, and permanent forest estate for resources). In either case, it is important to recognise and secure the land rights of indigenous communities.
15. **Large-scale land acquisitions, with various proposals.** One of the proposals is to impose a ceiling (10 hectares) for land transfers to one person, without specifying whether this restriction will also apply to legal persons. Another proposal is to revisit the process of land concession granting to improve transparency, consultation with neighbouring communities (customary owners of designated land) and their involvement in the process, as well as to optimise the efficient use of the lands and their profitability for the state, councils and communities. A proposal was also made to improve the standards imposed on companies for their operations, in order to guarantee the respect of local cultures, of the environment and of all the international commitments of the state.

6 ISSUES YET TO BE RESOLVED

The analysis of the proposals made begs a number of comments:

- 1. The proposals focus on a small number of issues.** The vast majority of proposals revolve around the recognition and protection of communities' land rights, whether in terms of ownership or usage. There is a strong demand for a reform of the land titling system, including to simplify administrative formalities for obtaining it and to reduce costs to make it accessible to the greatest number. Concern for protecting the rights of the poorest also justifies the request for a restriction to 10 hectares for areas to be registered in the name of a sole individual. Although this limit can easily be circumvented, its wording expresses a desire to control land grabbing by local elites.

The proposals on land tenure administration aim to improve the functioning thereof and curb corruption, and are also intended indirectly to secure the rights of communities.
- 2. Some proposals are contradictory.** For example, there is a high demand for the simplification of land registration procedures in the national domain or, more specifically, a clear demand for the simplification of land individualisation. At the same time, there are several proposals for the recognition of communities' collective ownership of their lands. While the two categories of proposals are not necessarily mutually exclusive, they can lead to competition for land access between individual and collective rights, and thus require a very meticulous articulation between the two.
- 3. Many proposals make suggestions for the reform, but do not explain how these solutions could be implemented.** It is quite common for the proposals to express a position without assessing its feasibility or indicating the stages and conditions of its implementation.
- 4. Some of the proposals are difficult to implement or cannot be considered as solutions at the national level.** These include proposals to change customary rights that are not easy to achieve, especially since these rights do not depend on the state and cannot be implemented as part of the land reform.
- 5. Lastly, some of the proposed solutions do not seem to be most effective.** For example, the proposal to limit to 10 hectares the area allocated for individual ownership is difficult to implement because of the possibility of resorting to figureheads. The use of taxation as a regulatory tool seems to provide a more effective way, which has not been explored by the authors of the proposal.

CONCLUSION AND RECOMMENDATIONS

The proposals made by civil society actors can be particularly difficult to incorporate for end users. It may be necessary to spare them the trouble of reading voluminous documents in which the analysis and proposals are not clearly separated.

The proposals made concern diverse levels, some on broad policy guidelines, while others deal with very specific details; some relate to a review of the legal framework for land, while others are concerned with substantive rights, etc. Despite the high number of proposals, which attests to the great dynamism of organisations active on land issues in Cameroon, they do not however address all the dimensions of land governance. We also note that the proposals reflect a perspective centred on land ownership for housing and farmland (and not enough on pastoralism or the status of indigenous forest rights). They are also ultimately too insensitive to the land rights of women and young people.

Recommendations

1. The proposals made by the various institutions in the years following the land reform announcement were not coordinated. It is therefore normal that they appear to be inconsistent and not always complementary. Coming after the publication of these documents, the LandCam project could work to consolidate, supplement and harmonise them. It will also be necessary to clarify those proposals that remain too imprecise. The LandCam project could make proposals covering the entire land reform in Cameroon, revisiting the proposals already made and supplementing them. The project could also form a broad coalition of non-state actors to advocate on issues that may be considered as neglected by the authors of the reform proposals, in addition to all others. This approach will help formulate an overview of proposals for policy-makers, to help them avoid addressing these issues in a dispersed manner, but rather with a comprehensive and coherent set of solutions to govern the entire field of land tenure in Cameroon. Such an approach could also inspire other countries that might undertake a land reform.
2. The LandCam project could carry out two additional categories of actions in the field, in addition to those already conducted so far. The aim would be to identify actions likely to secure the land rights of communities, as well as flagship proposals for the land reform, and to test, as far as possible, those likely to have the most impact if implemented and incorporated into the land reform. Such actions could include: supplementing the work initiated by CED and its partners for the recognition of the land rights of indigenous communities, in discussion with the Bantu; refining a framework for dialogue between herders and farmers, based on the analysis of experiences in various contexts across the country; developing a case of community forest through the restoration of forest landscape, in order to solicit land ownership rights, through concession; identifying a methodology for determining village boundaries, to be proposed to the relevant government services; determining rules for organising cohabitation between various actors in the same areas (indigenous forest dwellers and the Bantu, herders and farmers,

migrants and/or internally displaced persons and local communities); identifying simple rules for the recognition and protection of legitimate land rights, including the rights of young people and women; proposing a mechanism for the identification and protection of the living space of each village, in order to prevent conflicts with possible investments on land within their territory; improving consistency between the new law on land tenure and laws governing the management of other natural resources (forests, extractive resources and water, for example).

3. The project could proceed by publishing a series of short notes on each of these thematic issues, articulating the terms of each problem and its proposed solutions, then proposing a series of points for advocacy to introduce the proposed solutions into the reform debate.

About the project

LandCam : Securing land and resource rights and improving governance in the Cameroon

Timeline: February 2017 - January 2022

The LandCam project aims to develop innovative approaches to facilitate inclusive dialogue at the national level, based on lessons learned from past experiences, to improve land governance.

LandCam promotes learning, throughout the ongoing reform of Cameroon's land legislation and will contribute to building the capacity of actors at the local, regional and national levels. LandCam works with key stakeholders across Cameroon to improve customary and formal rights to land and natural resources by piloting innovations in land governance at the local level and contributing to sustainable policy reforms. New spaces will be created for more informed, effective and inclusive dialogue and analysis, with the participation of stakeholders. LandCam will monitor changes on the ground, monitor legal reforms and share lessons learned nationally and internationally.

Who we are

IIED, CED and RELUFA are the organisations implementing the LandCam project, working closely with a wide range of partners in Cameroon and internationally.



International Institute for Environment and Development (IIED)

IIED promotes sustainable development by linking local priorities to global challenges. IIED supports some of the world's most vulnerable populations to make their voices heard in decision-making.



Centre for Environment and Development (CED)

CED is an independent organisation working to promote environmental justice and protect the rights, interests, culture and aspirations of local and indigenous communities in Central Africa. As an active member of several networks, the CED has succeeded over the years to mobilise allies to influence positively legal frameworks, monitor natural resource exploitation activities, sustainably build the capacities of dozens of local communities, and produce important scientific and advocacy documentation.



Réseau de Lutte contre la Faim (RELUFa)

RELUFa (Network For the Fight Against Hunger) is a platform of civil society and grassroots community actors created in 2001, which aims to address systemic problems that lead to poverty, hunger and social, economic and environmental injustices in Cameroon. The RELUFa's work is based on three programs: Equity in Extractive Industries; Land and Resource Justice; and Food and Commercial Justice.

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Civil Society Proposals for Land Reform in Cameroon:

Assessment of the existing legislation

The land reform was ordered by the President of the Republic on the occasion of the Ebolowa agro-pastoral show in January 2011. Initially, it was intended to facilitate investors' access to land, for the development of so-called "second generation" mechanised and intensive agriculture, requiring large areas of land.

The Government decided to broaden the reform process by inviting civil society to provide inputs, and the latter made several proposals, albeit in an isolated or coordinated manner. An analysis of these proposals highlights civil society's interest in issues relating to the reform process, the recognition of land rights (collective rights for rural communities, individual rights for their members, and rights of marginalised groups). However, there are inconsistencies among the proposals, owing to the lack of coordination between the various drafters.

The LandCam project provides an opportunity to enhance the coherence of these proposals and to reinforce them to cover all the relevant issues that would enable an in-depth land reform, such as the one envisaged in Cameroon. This study aims to compile and analyse civil society's proposals to guide the land reform.

The methodology first consisted of collecting and analysing the proposals made by civil society organisations between 2012 and 2018. Then we proceeded to identifying which issues could be addressed in the context of a land reform. Lastly, we also identified issues relevant to the Cameroonian context that were not considered in the proposals.



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