



## SEARCHING FOR WAYS OF SETTLING LAND CONFLICTS BY PEACEFUL MEANS IN CAMEROON: A CRITICAL ANALYSIS OF THE PEACEMAKING ROLE OF THE 'LAND CONSULTATIVE BOARD'

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**ABSTRACT:** *The regulation of Land tenure systems is one of the main sources of conflicts in Africa and one of the continent's most difficult realities to pin down. In its 1974 land reform, the Cameroonian legislature sought to strike a balance between traditional norms and modern instruments, between administrative, judicial and customary authorities, in order to establish an inclusive, democratic and peaceful system of land tenure. The establishment of the Land Consultative Board as the regulatory instrument the state planned to use in land matters was projected as the answer to this quest. While the original intention remains laudable - to enable the state, guarantor of the general interest to acquire a local instrument with the appropriate legitimacy and capable of ensuring the peaceful regulation of land tenure. It has to be said that, almost 50 years later, this ambition has not been achieved. The recurrence of land conflicts and the density of disputes reflect the inadequacy of the rules governing land tenure in Cameroon, depriving the board of any real regulatory authority. The central argument of this paper is that the legislator's ambition was not sincere because of the precedence of the administrative authority to the detriment of other actors. The choice of evaluating this working assumption through the theory of the instrumentation of public action is therefore essential. It makes it possible not only to determine the legislator's intention through textual and contextual analysis, but also to observe the interplay of actors around this regulatory instrument through an interdisciplinary approach. Between its structural inability to acquire real autonomy and the barely concealed desire to downgrade custom, its role has steadily diminished along with its influence, though without disappearing. It remains, however, the institutional relic where the philosophy of the "palaver tree," supported by the practice of non-violence and democratic dialogue, can still survive, as well as the keystone of the entire land tenure system of the country. The analysis of the consultative Board's peacemaking role through its instrumentation (or its instrumentalisation) opens up new perspectives for understanding the regulation of public action in our so-called Southern countries, especially for decision-makers, donors and any actor interested in the thorny issue of land tenure insecurity.*

**KEYWORDS:** Land conflict, Land Consultative Board; land tenure, instrumentation, instrumentalisation, palaver tree, peacemaking.



## INTRODUCTION

"Alongside the eminently political issues at stake, land disputes are one of the greatest concerns of both the people and the public authorities of Cameroon" (Tchapmeni, 2010, p.144).

Some of these conflicts, he argues, are perpetuated over time, without customary communities, their members or the State being able to do anything to settle them definitively. The research perspective that guides our thinking on public action focuses on understanding the regulatory techniques that can promote peaceful land governance. This approach considers that the instruments used are also as decisive as the interests and roles played by the actors. Thus, beyond the official discourse and the many justifications, both technical, regulatory and political, the instruments approach provides a better understanding of the transformations that have taken place within land governance and that keep this sector in conflict. The pioneering work of Christopher Hood (1986), Staffan Linder and Guy Peters (1990) and Michael Howlett (1992) demonstrated the central role of instruments in policy design. Subsequent works have integrated this global governance issue by highlighting the problems posed by the coexistence of instruments within the same policies, often applied haphazardly without rigorous analysis of their determinants. Lascoumes and Le Galès (2004), in their groundbreaking book: *Gouverner par les instruments*, put the question of power and legitimacy back on the agenda, leaving it to reflect on how problems are solved. They observe the interplay of instruments, particularly in the context of the transformation of relations between the governing and the governed, because "*each instrument of public action constitutes a condensed and finalised form of knowledge about social power and the ways in which it is exercised*" (p.27). The assumption in this paper is in line with the arguments of Gardon (2007) who holds that it is possible to describe the instruments of public action, their properties and the processes of instrumentation, and to present them as revealing change by insisting on the dynamics and recompositions that they produce.

On the African continent, recent research has focused on the instrumentation of development projects (Delville, 2015), budget planning (Samuel, 2011), financialisation tools (Ducastel, 2016), AIDS control instruments (Soriât, 2018) and identity documents (Awenengo Dalberto and Banegas, 2018). This research examines institutional arrangements in the sociological sense of the term that create, shape and transform the relationship between those who govern and those who are governed. Together with Delville (2020), they shed important light on the question of the instrumentation of public action, highlighting the political and social nature of the instruments and their links to the ambitions of recomposing politics in Africa. Nguelieutou (2008), in *l'évolution de l'action publique au Cameroun*, examines the role of politics in economic institutions. He argues that there is an urgent need to look more closely at the nature and possible specificity of political regulation. For this author, if the issues of governance in Cameroon are part of an analysis of the restructuring of the state and public action, the regulatory state bears witness to a genuine re-foundation of the Westphalian state. This study is deeply inspired by the internalist approach developed by Lascoumes (2004), but in a context of highly centralised power. It focuses on the technical and political properties of instruments and their ability to generate their own effects, beyond the intentions of decision-makers. Through the analysis of the Land Consultative Board, our aim in this paper is to study the pivot, the keystone of the land tenure system proclaimed by the legislator since 1974.



After a brief presentation of the theoretical and methodological framework of this research, an overview is given of the structural insecurity of the land tenure system in Cameroon. This makes it possible to analyse the limitations of the technical and regulatory approach that has underpinned the instrumentation of the Land Consultative Board, resulting in a perverse operationalisation by the public authorities in charge of land governance in the country.

### **Methodology and Theoretical Framework of Analysis**

This research adopts a qualitative research approach and makes use of both primary data from interviews and secondary data from official documents and reports on land tenure system in Cameroon. Data was collected within a six-month period, August 2023 to February 2024. Drawing on some experience in the field of land tenure in Cameroon, the analysis of this paper is based on the institutional approach to land rights. According to this approach, the empirical identification of rights, their evolution, their holders, their effective implementation and the actors involved is not self-evident, either conceptually or in terms of empirical data collection. The content of rights, the identification of rights holders and the interplay of actors around rights are all considered as objects of research. A careful reading of the literature specialising in the instrumentation of public action helped to define the theoretical framework of analysis used in this paper. The triangulation of information required the authors to interview members of Land Consultative Board as well as officials responsible for land policy development in the central departments of the Ministry in charge of Land Affairs.

### **Overview of land tenure insecurity, conflict and violence in Cameroon**

Land is an important and strategic development issue, which justifies the increasing importance attached to it by donors. At the 2017 edition of the World Bank Conference on Land and Poverty held in Washington DC (20 - 24 March 2017) it was acknowledged that the recognition of land rights is essential to stimulate investment and growth. Ede Ljjasz-Vasquez (2017) points out that *"To build sustainable societies, land issues must be resolved: countries, regions, cities and villages need well-defined property rights, clear borders and accessible land services in order to grow economically"*. For example, in the case of Somaliland, the Food and Agricultural Organization (FAO) identified the following weaknesses: the absence of a comprehensive land policy, disparate and sometimes incoherent legal frameworks and weak institutional governance of the land administration, as well as unclear land ownership in 2013 (FAO 2017, p.1). As one of its recommendations, it advocated *"government recognition of communal land rights and customary rules in national law"* (ibid). This observation and recommendation can be applied to most countries in sub-Saharan Africa. Nearly five decades after the major land reform of 1974, marked by the regulations of 06 July regulations on land tenure in Cameroon, and after a major revision in 2005, the land issue remains at the centre of social conflicts. The insecurity that plagues land management in Cameroon can be seen in the following figures, according to official statistics from 2016: 85% of administrative disputes and 65% of all court cases are related to land, with almost all disputes occurring in rural areas (Minister of State Property and Land Tenure , 2016).

A number of studies on land tenure underpin the issue of its insecurity, hence the research perspective behind this paper. At the continental level, some studies provide information on land governance (Lasserve and Le Roy, 2012), in Central Africa (Ntampaka, 2008). The main objective of these studies was to identify the forces likely to influence the dynamics of land



tenure. Other studies at national level, of a legal nature, deal mainly with the state of land law, land certificates as administrative acts and the guarantees provided by the law. The work on land disputes falls into this category. Following this work, Njiako (2004) presents a critical analysis of the state of Cameroon's land law in the light of changing practices. In a series of studies (2005, 2006, 2007a, 2007b, 2008a, 2008b, 2010), Tchapmegni Robinson provides a framework for his analysis of land ownership disputes in Cameroon, focusing not only on Cameroon's conflict resolution mechanisms but also on solutions aimed at rationalising them. He shows that the study of land dispute resolution mechanisms has revealed the pre-eminence of administrative bodies (Land Consultative Boards, border dispute resolution commissions), and the prominent role of the minister in charge of land affairs. In a highly illuminating multidisciplinary work, Nkankeu and Bryant (2010) argue that land crises reflect the scarcity or hunger for land in certain regions of the country, leading to conflicts, either between the locals themselves, or between natives and non-natives, or on the frontlines, among agribusinesses, natives and former or returning migrants. In a 2014 report, commissioned by the World Bank, Paul Tchawa (national coordinator of the Land Governance Analysis Framework (CAGF)), criticised the "*mechanical reforms*" of recent decades, which have created more problems than solutions by strengthening the role of the state to the detriment of other stakeholders. He advocates "the creation of mechanisms with a scientific component in the social sciences (anthropology, sociology, law, etc.) to find the right approach to take into account the advantages of these two systems (normative and customary) and use them to improve land governance in Cameroon".

According to FAO (2017), land tenure insecurity is characterised by a situation in which users or owners of land, whether rural or urban, feel that their rights to the land are threatened by other actors (lack of protection) and uncertain as to their duration (precariousness). Cameroon's land tenure system is both conflict-ridden and crisis-ridden. The conflict-generating variable of land tenure insecurity refers mainly to micro- and meso-conflicts, understood in the terms of the distinction made by Johan Galtung (2010, p.61-85)<sup>1</sup>. As this type of conflict is confined to the state, it refers respectively to conflicts between individuals in the case of micro-conflicts and between communities in the case of meso-conflicts. The crisisogenic nature of these conflicts can be seen in the violence of all kinds that affects the claim to land security. According to De Sardan (1993)<sup>2</sup>, land tenure is an arena essentially characterised by insecurity, which contains the seeds of a number of various forms of violence:

- Structural violence in its vertical dimension: this is linked to the insecurity of the untitled owner; the Cameroonian legislator has chosen to distinguish between the landowner who holds a land certificate from the untitled owner. Unregistered land in Cameroon belongs to a category of land known as the national lands, which in turn exists alongside other categories made up of the public property, the private property of the State and the private property of individuals. In this way, the legislator has effectively enshrined the "*obsolescence*" of customary land tenure, which remains the most widespread. After the introduction of land certificates under the German protectorate (1896), less than 10% of land in Cameroon was registered, according to

<sup>1</sup> Galtung, Johan: *Transcendence et transformation des conflits; une introduction au métier de médiateur*. PUPA, Yaoundé, 2010, pages 61-85.

<sup>2</sup> *Le développement comme champ politique local*; Bulletin de L'A.P.A.D N°6, 1993.



(Kenfack, Nguiffo & Nkuintchua, 2016<sup>3</sup>). An extrapolation of 12% in 2022 may seem reasonable by using a forward-looking analysis<sup>4</sup>. However, it is important to qualify these figures by taking into account the number of land certificates that have been cancelled or are in the process of being cancelled<sup>5</sup>. This structural violence is exacerbated by the uncertainty surrounding the time and cost of the registration process. To this category, we can add the uncertainty associated with the remoteness of urban centres due to distance or isolation, which makes it difficult to access the land services located in the departmental capitals. For example, Ngambétikar in Mbam & Kim Division is more than two days away from Ntui (the departmental capital), where the departmental land affairs delegation is located and is the only one authorised to initiate a procedure to obtain a land certificate. This category also includes the administrative deserts created by the numerous security crises in the north of the country, such as attacks by the Islamist sect Boko Haram or the proliferation of secessionist groups in the north-west and south-west regions (Ministry of Territorial Administration, 2019).

- Horizontal structural violence, which tends to become cultural, is linked to uncertainty about gender, social status, lifestyle and knowledge of land regulations. Women and young people find it difficult to have access to land ownership. Legislation has not made specific provisions for these vulnerable groups to guarantee their land rights, which are inherently precarious. This is exacerbated by the fact that they are either absent from, or poorly represented in the committees that deal with land issues. A practice that has become widespread since the early 2010s in the cities of Yaoundé and Douala<sup>6</sup> reserves direct registration for natives (thus excluding widows where applicable) and for elderly people born before 05/08/1974, the date on which the regulations governing land tenure in Cameroon came into force.

The other uncertainty raised here relates to the purchasing power. Various studies carried out in sub-Saharan Africa have shown that only the wealthier sections of the population (less than 5%) have access to land ownership, given the cost, time and complexity involved (Lasserve, Le Roy, 2012). This may be compounded by other discriminatory practices related to access to information (availability of local administrative services, awareness raising) and to certain categories of the population. For example, it is difficult for nomadic peoples to have their land rights recognised, because of their way of life. This is the case of the Mbororos and Pygmies. The suspension of land titling procedures in several places in the country also falls into this category<sup>7</sup>. Applicants penalised in this way must submit "special requests" directly to the Minister of Lands at his central offices in the capital, Yaoundé.

- Overt violence seems to be the offspring of horizontal structural violence. It is linked to the uncertainty of the rightful claimants: since property in Africa is collective and ancestral, it is in most cases transmitted by heredity. The identity of legitimate

<sup>3</sup> Pierre-Etienne, Kenfack, Samuel, Nguiffo, Théophile, Nkuintchua, *Investissements fonciers, redevabilité et cadre légal : leçons du Cameroun*, May.1, 2016, pp.6-11.

<sup>4</sup> Our analysis.

<sup>5</sup> July, 10 of 2023 the Minister in charge of land tenure cancelled 127 land certificates in the only area of Lolabe located in Kribithe same day.

<sup>6</sup> Most important cities of the country.

<sup>7</sup> Examples include the East Region, the Mvila department, the sub-divisions of Ngaoundéré 1st, 2nd and Belel in Adamaoua, Douala 5th, Bafia, etc.



successors is not always easy to define precisely, whether at the level of ancestors or siblings. The conflicts here are interpersonal or inter-communal and keep the land in a state of insecurity. The Dôgbwang family of the village of Kiiki in the Mbam and Inoubou Division of the Centre Region (Cameroon) has owned communal plots of land for almost a century; the original distribution of these plots was that part of the land would be allocated as collective property where all the members of the extended family would have equal rights, and the remaining part would be divided between the heirs of the ancestral progenitor who would exercise individual rights (Moudi Cassius, 2020). As the generations passed and urbanisation progressed, disputes arose that degenerated into permanent conflicts, which were successively brought before the traditional, administrative and judicial authorities without a definitive solution being found<sup>8</sup> (ibid).

- Hybrid violence is linked to the insecurity of the title holder: the guarantees enshrined in the land certificate<sup>9</sup> are called into question by the plethora of disputes before the land administration, the administrative courts or supreme court. In many cases, this leads to the cancellation, suspension or correction of the title. Applications to the administrative courts to cancel land certificates account for at least 50%<sup>1</sup> of all cases on their dockets. The only possible reason for cancellation is if the administration is at fault in the process of obtaining the valuable certificate. This insecurity does not spare the state itself with regard to the use of its fully-owned land<sup>1</sup>. In the case of Ntem Valley, the state of Cameroon granted a concession to NEO Industry, which was to set up a large-scale agro-industrial plant. The traditional chiefs of the area denounced the "wild expropriation<sup>1</sup>" of their land. As a<sup>2</sup> result, they have led their people in vehement opposition to a project to create a huge cocoa plantation covering 26,000 hectares, and have led to the total cancellation in 2020 of the land concession granted to the company in 2016<sup>1</sup>. Other issue concerns the clearance of Douala's port and airport zones, etc. Di Roberto (2021) rightly points out that "*ancestry remains a valid argument in the face of paper, which in turn can be undermined by the demonstration of land development*<sup>1</sup>" (p.54).

Land tenure insecurity and its corollary, legal insecurity, have a negative impact on development in terms of loss of business, congestion of courts, discouragement of investment, etc., culminating in some cases to populations' exodus<sup>1</sup>. In view of the above<sup>5</sup> uncertainties, it would be worthwhile to request an econometric study of the real cost of land tenure insecurity to public finances because of the uncertainties listed above. This could help to redirect donor interventions on the African continent in general and in Cameroon in particular.

<sup>8</sup> Interviews with Patriarch Dogwâng Moudi Cassius.

<sup>9</sup> The land certificate is « unattaquable, intangible et définitif » (article 1<sup>er</sup> du décret 76/165 du 27.04.1976).

<sup>1</sup> Fieldwork data.

<sup>1</sup> Register to its name : « Etat du Cameroun »

<sup>1</sup> Cameroon-Info.net : [www.cameroon-info.net](http://www.cameroon-info.net); 28 juillet 2020.

<sup>1</sup> [www.investiraucameroun.cm](http://www.investiraucameroun.cm) mercredi, 12 mai 2021 12 :06.

<sup>1</sup> DI ROBERTO H. (2021) Les conflits fonciers et leur résolution à l'échelle locale dans un contexte de marchandisation de la terre. Une étude de cas dans les Hautes Terres à Madagascar. P. 54. Collection Recherche. Paris, Comité Technique Foncier et Développement (AFD-MEAE).

<sup>1</sup> Land conflict between farmers and herders in Logone Birni in the far north of Cameroon; Ngoma community case (Douala PK24); Héraclès Farm case (south-west), etc.



These many uncertainties are exacerbated by the growing pressure on natural resources, which the solutions inherited from colonisation are struggling to contain. This is because successive legislators, at the cost of expensive reforms, keep coming up against the same obstacle. It is the impossible "*top-down creation of land tenure*", to use Joseph Comby's phrase (2007, p.4)<sup>1</sup>. Between the difficulty<sup>6</sup> of access to land ownership for disadvantaged populations and the attempts to institutionalise land certificates (under pressure from donors, it should be stressed) to promote development, the observation is negative. These reforms have emphasised the legality or credibility of land certificates in order to improve their marketability, to the detriment of the legitimacy and even the appropriateness of this instrument.

For Comby (2007),<sup>1</sup> the key to land tenure<sup>7</sup> insecurity is not so much a lack of technical resources, but the fact that the legal system is ill-suited to the socio-historical situation (p.2). In Cameroon, as in other countries of the South, land is a development issue and therefore a source of covetousness. With its ambitions resolutely focused on the country's development, the young Cameroonian state, inspired by capitalist theories inherited from colonisation, promoted the privatisation of land. In this way, the country adopted a land tenure and ownership system to regulate land issues in Cameroon. Aware of the immense challenge posed by the persistence of ancestral land management based on customary's rules, the legislature in 1974 provided Cameroon's land tenure system with a regulatory instrument with a dual purpose: to enable the state to control the management of the country's land assets and, at the same time, to ensure the preservation of the ancestral land rights of the so-called indigenous populations. This complex task will be entrusted to the Land Consultative Board. The creation of a local instrument is intended to ensure that all local contingencies are taken into account and to promote the peaceful resolution of land conflicts from a bottom-up perspective, whether in a preventive or curative manner.

### **The Land Consultative Board: a technical Instrument and regulatory approach to land conflict management in Cameroon.**

The FAO defines land conflict as a dispute over land that arises when individual or collective interests diverge (ibid). The dispute can be explained both by the general dynamics of neighbourhood relations and by specific land issues. It is a relatively broad and complex concept. It was therefore important for land law makers to devise an instrument capable of defusing land disputes at the root, or at least ensuring that they are dealt with fairly and in advance, so that decisions can be taken promptly and appropriately. The question of the choice of instruments of public action and how they operate is generally presented in a functionalist way, as a matter of simple technical choices. When it is included in the debate, it appears to be a secondary or even marginal issue compared to other variables such as institutions, stakeholders' interests or their beliefs. Lascoumes (2004) defines the instrumentation of public action as a generic technical device that conveys a concrete conception of the relationship between politics and society and is supported by a conception of regulation. In this sense, the Land Consultative Board seems the instrument that the state

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<sup>1</sup> Joseph Comby (2007) : *sécuriser la propriété foncière sans cadastre*. [www.foncier-developpement.fr](http://www.foncier-developpement.fr). mai 2007.

<sup>1</sup> Ibid.



wanted to use to regulate land management, insidiously in its conflictual dimension<sup>1</sup>. This ambition can be seen in its regulatory framework, which is laid down in Cameroon's land tenure system, as can be seen from three main provisions. According to the Article 5 (3-a) of Ordinance no. 74/1 of 06 July 1974, *"the Land Consultative Board shall be responsible for settling the following land-related disputes:*

- (...) *Objections to registration*
- *All claims or disputes concerning the ownership of unregistered land, brought before the courts by communities or individuals".*

Article 16 of the same text further expands the functions of this instrument:

*"National lands shall be administered by the State in such a way as to ensure rational use and development thereof. Consultative Boards presided over by the the administrative authorities and necessarily comprising representatives of the traditional authorities shall be established for this purpose".* It is important to specify here that the following are part of the national lands: residential land, land used for cultivation, planting, grazing and pasturage, whose occupation is evidenced by a clear human hold on the land and proven development (not registered); as well as a land that is free of any real occupation<sup>1</sup>. The size of the national estate<sup>2</sup> gives this instrument of land regulation a strategic dimension. This dimension is reinforced by the procedure for obtaining a land certificate. Article 13 (4) of Decree no. 2005/481 of 16 December 2005 emphasises that *"only the Land Consultative Board is competent to assess the occupancy or exploitation of the national land of first category in view of obtaining land certificate"*. This is therefore an exclusive competence which is clearly established by the provisions of article 14 of Decree no. 76/166 of 27 April 1976 which establishes the procedures for management of the national lands as follows:

*"The consultative board shall:*

- *Make recommendations to the prefectural authority on the allocation of rural areas to agriculture grazing according to the needs of the inhabitants;*
- *Make reasoned recommendations on applications for grants;*
- *Examines and, if necessary, settles disputes submitted to it under the procedure for allocation of land certificates on occupied or exploited national lands;*
- *Selects the lands which are indispensable for village communities;*
- *Note all observations and all information concerning the management of national lands and transmit its recommendations to the Minister in charge of Lands;*
- *Examines and if necessary, settle all landed property disputes referred to it by the courts pursuant to Article 5 of Ordinance no. 74-1 of 6 July 1974;*
- *Assess the development of lands for the issue of land certificate."*

<sup>1</sup> The regulatory architecture in Cameroon does indeed tend to consider the land issue as conflictogenic, in view of the particular interest devoted to it within the various texts: constitution, civil code, penal code, town planning code, land and property regime, etc.

<sup>1</sup> Article 15 of Order 74/1 of 06/07/1974 and subsequent amendments.

<sup>2</sup> National lands covers most of Cameroon's land, at least 80%. The rest is divided between the private domains of the State, individuals and the public domain.



In order to enable it to exercise these important prerogatives impartially, fairly and sensitively, the legislator wanted its composition<sup>2</sup> to be balanced:<sup>1</sup>

- Divisional Officer (sub-Prefect): Chairman ;
- Representative of the Lands Service: secretary ;
- Representative of the Surveys Service: member ;
- Representative of the Ministry of Agriculture and Rural Development<sup>2</sup> : member
- Representative of the Ministry of Town Planning: member
- Chief and two leading members of the village or the community where the land is situated: members.

At first sight, this description seems attractive, without taking into account its operational dimension, which allows us to consider its instrumentation. The instrumentation of public action covers "*all of the problems raised by the choice and use of tools (techniques, means of operation, devices) that make it possible to materialise and operationalise government action*" (Lascoumes et al. 2004b, p.14). In a post-independence context characterised by a high degree of centralisation of power on the African continent, this approach may have seemed revolutionary. The premises of decentralisation can already be discerned, and it is gradually becoming the managerial approach to public action *par excellence*. This can be seen in several ways: the first is its characterisation according to the typology developed by Lascoumes and Le Galès (2004, p. 361). There, the Land Consultative Board appears as an instrument in the "*legislative and regulatory instrument*<sup>2</sup>" category, in which the<sup>3</sup> State is the "*guardian of the social*" with a strong legitimacy. The second element identifies the three main effects of the instrument:

- The aggregation effect: thanks to a heterogeneous composition, different actors agree to work together on a specific issue, which requires reflexive learning. This is what Callon (1984, p.183-184) calls "*les activités de traduction*<sup>2</sup>". The aim of such a composition is to limit or reduce external pressures (subordination, conflicts of interest, political change, etc.). The presence of the traditional authorities alongside the administrative authorities on the board and the fact that its meetings are held in public contribute to this effect;
- The direct cognitive effect: the instrument becomes the producer of a specific representation of the issue deals with and imposes common definitions of social facts based on jointly agreed conventions. This is an assimilation effect. Concepts such as "destruction of property", "land development" and "land purchase" acquire a contextual connotation that is often at odds with the regulation, which is general and impersonal. New norms are thus developed, but without going beyond the internal framework;

<sup>2</sup> Article 12 of decree no. 76/166 of 27/04/1976. It is important to note that there are as many Land Consultative Board as there are sub-divisions in Cameroon, i.e. 366. On the other hand, its composition with regard to representatives of the traditional authority will be modified according to the locality of intervention.

<sup>2</sup> This member has been established in practice, with the 1976 decree referring to a representative of the administration involved in the project.

<sup>2</sup> The most valued.

<sup>2</sup> Michel Callon, 1984, « *Éléments pour une sociologie de la traduction* », *Année sociologique*, vol.XI, p.183-184.



- The indirect cognitive effect: this leads to a particular problematisation of the issue in that it prioritises variables and can go so far as to induce an explanatory system. In this case, the way of thinking (or operating) is transformed in response to the new problem to be addressed. This transformation becomes necessary because the usual (and respective) ways of doing things cannot solve the problem. This is the accommodation effect. In the case of land ownership claims, for example, the committee tends to favour blood rights over land rights or land development<sup>2</sup>.

In terms of its composition and tasks, the Land Consultative Board appears to be the instrument of public action that has sought to safeguard the philosophy of the palaver tree. This philosophy postulates that the mechanisms inherited from traditional African society are better suited to contain social conflicts in Africa than imported solutions that do not reflect the structural challenges faced by African local communities.

The board alone is called upon to perform several functions at once; it acts as a judge of opportunity (for example, validating registration procedures), a judge of judgment (settling land disputes), a mediator, and facilitator and (re) conciliator in other cases of dispute. It is convened by its chairman (divisional officer) either on his own initiative (very rare), or on the initiative of the senior divisional officer, the governor or the minister responsible for land affairs. In the absence of regulations governing the conduct of its work, the Consultative board is constantly torn between assimilation and adaptation, tradition and modernity, customary norms and written rules, in a constant search for a balance that oscillates between two extremes. In this way, it offers the local population an area of land regulation free from the formalism and rigidity that characterise administrative or judicial institutions. The lack of interest in this instrument in the literature, which is nevertheless rich in land tenure issues, reveals the gap that may exist between the authority granted to it by the legislator and its practical recognition as an instrument of regulation, thus calling into question the theoretical framework for analysing the instrumentation of public action in Cameroon.

### **Perverved operationality: from instrumentation to instrumentalisation?**

Was it really realistic to entrust the Land Consultative Board with so many powers as described above? Was the will of the decision-makers sincere? In their eponymous book aforementioned, Lascoumes et al. state that instruments have an autonomous power to act according to their own logic and based on a specific conception of the relationship between the governors and the governed. In the case of Cameroon, and more specifically the Land Consultative Board, the reality is more modest. If, according to Nguelietou (2008), the regulatory state signals the end of the Wesphalian state, in the case of this study the latter has risen like a phoenix, from its ashes. This is the position taken by Ngnemzue (2009) when he states that the Cameroonian state is not dead, it has undergone a transformation, while retaining its interest in the state's governance of social action. It is not ideologically bankrupt, it is the terms of ideology and domination that have changed. The legislator's aim is therefore to limit the instrument of the board in order to limit its autonomy. The first restriction concerns its funding model. In the absence of public funding, its work has to be paid for entirely by the users or claimants<sup>2</sup>, which does not speak<sup>6</sup> in favour of its independence or

<sup>2</sup> Our data are supported by interviews conducted with the divisional officers (D.O) of Bafia and Kiiki on 26/07/2023 and 03/08/2023 respectively.

<sup>2</sup> This also has the merit of reducing or even discouraging potential applicants.



impartiality in dealing with the disputes referred to it and exposes the board to nepotism and corruption. Aware of this impediment, the Prime Minister signed Decree No. 2016/1430/PM of 27 May 2016 establishing the operating procedures of the Land Consultative Board on Land and Property Matters, reaffirming the cardinal function and key role of this instrument. This decree set a ceiling for the meeting expenses<sup>2</sup> of each member and,<sup>7</sup> among other innovations, extended its membership to include the mayor of the municipality (or one of his/her deputies) from among the statutory members. This was seen as an inadequate response to the many complaints levelled against the instrument. The said decree was immediately withdrawn the day after it was signed by the same Prime Minister without any further explanation.

The composition, operation, prerogatives and funding of this body have reinforced the pre-eminence of the administrative authority and seriously compromised its autonomy, as the SWOT analysis of its operation shows.

**Table 1: SWOT analysis of the Land Consultative Board**

	ASSETS	HANDICAPS
The System	<b>Strengths :</b> <ul style="list-style-type: none"> <li>Regulatory body</li> <li>Clearly defined mission</li> <li>Sociological "mix" of members</li> <li>Public nature of the work</li> <li>Flexible application of standards</li> <li>Operational funding provided for by law.</li> </ul>	<b>Weaknesses :</b> <ul style="list-style-type: none"> <li>Statutory appointment of members</li> <li>No decision-making power</li> <li>Impossibility of self-referral</li> <li>Poor representation of women and youth</li> <li>Precedence of administrative authorities over traditional authorities</li> <li>Low visibility of members' roles</li> <li>No public funding</li> <li>Lack of control over their work.</li> </ul>
Environment	<b>Opportunities :</b> <ul style="list-style-type: none"> <li>Legal pluralism</li> <li>Ancestry used to determine land rights</li> <li>Implementation of decentralisation</li> <li>Ongoing land reform.</li> </ul>	<b>Threats :</b> <ul style="list-style-type: none"> <li>Members' sanctity</li> <li>Competition from administrative, customary and judicial institutions</li> <li>Low member commitment</li> <li>Disagreements between members</li> <li>Ignoring the opinion of the board</li> <li>Extorsion and corruption.</li> </ul>

**Source:** Developed by the authors from interviews with stakeholders and direct observation

From the way it is structured, it is clear that the reins are in the hands of the administration, which is over-represented in strategic positions<sup>2</sup>. In practice, this observation is all the more striking because, in the Cameroonian administrative hierarchy, the village head is an auxiliary of the administration, represented at this level by the divisional officer (or sub-prefect), to the

<sup>2</sup> These costs are borne by the applicant.

<sup>2</sup> The functions of chairman and secretary are reserved for the administration, and only 3 of the 8 members come from the traditional authorities.



point where the latter becomes the '*chief of the lands*'. Traditional authority is thus inhibited<sup>2</sup>. In addition, despite the public nature of the meetings, speaking is restricted and decisions are taken in private, often in total secrecy<sup>3</sup>. This raises the very pertinent question of the legal nature of this imprecise instrument: is it a fragmentation of the administration? a public administration? a decentralised structure? an independent body? the aforementioned 2016 decree provides a curious indication, to say the least, on this question. Article 2(1) of the decree describes the Land Consultative Board as "*a collegiate body responsible for assisting the competent authorities in the management of the national lands*". This provision alone would have sounded the death knell for any form of autonomy. Another restriction is that its decisions, which the legislator considers to be "opinions", must be unanimous<sup>3</sup> in order to be valid, with no guarantee that they will not be called at a later date, thus trapping the land dispute in an endless vicious circle.

By relegating the traditional authority to the role of stooge and restricting freedom of expression, Cameroon's land tenure system has (whether intentionally or not) distorted the 'aggregation' effect expected the instrument, with implications for the protective role of the Land Consultative Board. Nkou Mvondo (2000) reveals that "*in Cameroon, when a dispute arises between two people, they go to an administrative authority in a purely informal setting. The authority then sets itself up as a judge to settle a dispute that would normally fall within the jurisdiction of the courts*"<sup>3</sup> (p.490). According to administrative practice, this action is carried out within the framework of the Land Consultative Board, the composition of which can vary<sup>3</sup>. But like the land tenure system as a whole, it seems to be facing an identity crisis. Its pacifying role, through the practice of palaver, is steadily diminishing, as is the influence of traditional authority. Yet this residual instrument of land management, a relic of the palaver tree, should have been consecrated to serve as an inspiration to all the others called upon to regulate public action in the country. We are thus witnessing a gradual slide towards the instrumentalisation of the Board, characteristic of a neo-patrimonial<sup>3</sup> regime that combines political, symbolic and economic monopolies.

In addition to its delicate role, the Consultative Board has to compete with missions, special commissions and ad hoc commissions. These are often set up on the initiative of the Minister of Land Tenure (in the case of land disputes or requests for special permits) or the Minister of Territorial Administration in the case of serious disturbances (or risk of disturbances) to public order<sup>3</sup>, with a clearly defined<sup>5</sup> mandate, which makes it even more vulnerable. This shows that, if there were any doubt, that this body is increasingly relegated to a symbolic

<sup>2</sup> This is a real cause for concern in Cameroon, where divisional officer, as civil administrators, are constantly on the move within the national triangle.

<sup>3</sup> In practice, it is absolutely impossible for a decision to be taken without the consent of the D.O.

<sup>3</sup> The 2016 decree (cancelled)<sup>4</sup> took a step forward by stating in article 5 (1) that recommendations were adopted by a simple majority of members.

<sup>3</sup> Nkou Mvondo, *La situation juridique de l'occupant sans titre d'une parcelle du domaine national*, Laws and politics in Africa, vol 33, N°4 (2000), p.490.

<sup>3</sup> According to our data, the membership of these informal committees is restricted by the chairman, who includes the traditional authority and sometimes the agricultural representative.

<sup>3</sup> Voir en ce sens AWONO Cyprien, in *Le néo-patrimonialisme au Cameroun les leçons sur le mal africain*, université de Sherbrooke, Bibliothèque et Archives Canada, 2011.

<sup>3</sup> A case in point is the peace and security commission set up in the Logone et Chari department in the Far North to address the perennial conflict between herders and farmers, which has already claimed dozens of victims.



role, or at the least downgraded. The number of cancelled or contested land certificates<sup>3</sup> in the context of titling procedures and special permits is sufficient evidence of this decline<sup>3</sup>. What's more, it's easy to see today that within these commissions, palaver (the common name given to the meetings of the various actors) is giving way to "*palavers*", meaning idle disputes and arguments when it is not too much about silences of disapproval in the face of a position adopted by the chairman<sup>3</sup>. It is no longer a place<sup>8</sup> for preventing or resolving land disputes, but rather a place where positions are crystallised or even aggravated<sup>3</sup>.

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However, the data collected in various field studies<sup>4</sup> show that the palaver,<sup>0</sup> thanks to its inclusive approach, is better suited to maintaining peace than vertical decisions taken by the administrative or judicial authorities. It has both curative and preventive therapeutic virtues. This is demonstrated by Dr Ngek Monteh René in his paper on the resolution of the deadly conflict between the Oku and Mbesa communities in the North West Region of Cameroon, which lasted more than 35 years (1982 - 2017).<sup>4</sup> After unsuccessful attempts by the authorities and unsuccessful appeals to the courts, the traditional leaders of the two communities opted for a palaver to reach an agreement on the demarcation of the two territories, thereby putting an end to the killings and restoring social relations. As Diangitukwa (2014) notes, "*Africa has lost its soul by abandoning the organisation of traditional power in favour of modern institutions that are incapable of resolving the social conflicts that African states are experiencing*". In order to rediscover the spirit of the palaver, he proposes the creation of multi-stakeholder and multi-level dialogue forums to re-establish relations between public and private sector actors and associations. In essence, this is the role assigned to the Land Consultative Board, but it was biased from the outset. As early as 1965, Pierre Kanouté prophetically stated that "*only the palaver can save Africa*". Observations show that customary communities that have retained a strong fabric are less prone to land tenure insecurity than those where traditional authority has been extroverted. Whether in the Far North Region of Cameroon, where the lamidos predominate, or in the Bamoun Sultanate, where land management is closely linked to the king, or in the Center Region, where the chief seems to be more commonplace, the palaver has a special connotation. Once its mechanisms are appreciated and accepted by the communities, its decisions are accepted and shared, not only by the protagonists alone, but also by the whole community, which was not only present or represented at the palaver, but also contributed to it. The only winner, to use a popular expression that has gone viral in Cameroon, is "*vivre ensemble*" or living together. A case in point is the management of the lowlands in the Djalingo locality in the Garoua perimeter of

<sup>3</sup> It is the favourable opinion of the board that effectively sets the titling procedure in motion. Cancelling a land certificate is basically tantamount to invalidating the work of the land consultative board, which has exclusive prerogatives under the law. What then would be the legality of such cancellations?

<sup>3</sup> In almost half of Cameroon's departments, registration procedures have been suspended, except for users who obtain special authorisation from the Minister beforehand.

<sup>3</sup> As aforementioned, the position of D.O is adopted in any case.

<sup>3</sup> There are often disagreements, attitudes of mistrust proliferate, bordering on desertion by certain traditional authorities, who are immediately replaced by auxiliaries with no legitimacy or knowledge of the land issue.

<sup>4</sup> See Mbira Cyrille (2020) in *Conception d'un dispositif de formation sur la question foncière au Cameroun : vision partagée avec les acteurs du développement rural*. Liechtenstein, Editions Universitaires Européenne (EUE).

<sup>4</sup> Nonviolence, peace and development since African independences, the PUCA International Colloquium, December 2021.



the North Region. In order to reduce conflicts between the various users of the land (farmers, stockbreeders, fishermen), a permanent consultation framework inspired by the palaver tree was set up between the administrative authorities (divisional officer, agriculture and stockbreeding delegates) and the spiritual authorities (Lamido, clergymen); this has led to peaceful coexistence between the various users, with the administration confined to an "anointing" role. After all, land is a special asset: it cannot be moved or destroyed; it precedes us and will outlive us, passing on with it the legacy of the problems and solutions that have marked each generation. A Cameroonian Beti<sup>4</sup> proverb illustrates this quite well: "*when the earth turns, you turn with it*". It can be said that the aim of the young state after the colonial era, was to replace traditional authority with a body that had the tricks of the trade but no real power. This aim is reinforced by the now official denial of land transactions on customary land, despite the fact that it is the most widespread. As of 2020, a memo from the Minister of Land Affairs prohibits the consideration of sales of customary land sales as part of the dispute resolution procedures within his central departments; Divisional Officers are now also prohibited from providing any guarantee whatsoever for such transactions<sup>4</sup>.

3

The decline of customary law in favour of 'positive' norms, which are incapable of regulating Cameroon's land tenure system, and the hesitation of both legislators and the government, have led to the emergence of a third way, consisting of what anthropologist Olivier de Sardan (2010, p.5-20)<sup>4</sup> has called '*practical norms*', and promoted by new actors from the market economy. This further undermines customary tenure and contributes to the threat of land insecurity in Cameroon. The emergence of the Land Consultative Board was an effective response to the application of concepts such as "participatory democracy" and its many variations, "human rights", "inclusive dialogue", "good governance", etc. By stripping it of its original substance, it has now become an instrument for promoting of the rule of law. By doing this, the legislator, with the support of the state, has rendered it incapable of containing the many land crises that plague Cameroon. Kwame Nkrumah, the author of *Consciencism* (1964), argued that "*the principles of Western capitalism are at odds with the socialist egalitarianism of traditional African society*", and that land regulation should be based on the principles of the palaver. This was the first form of governance to appear on the human scene, and it embodies the authenticity of Africa and even the basis of democracy. Referring to it in his memoirs, Mandela (1996) points out that "*those who wanted to speak did so, it was democracy in its purest form (...) Everyone was free to express their opinions and everyone was equal as a citizen*"<sup>4</sup>. It is still very much in vogue in Africa, where the palaver tree "*acts as a court, a mediator for problems of divorce, adultery, land disputes, theft, etc.*"<sup>4</sup>.

6

According to Robert (2006), the palaver is the essential vehicle for social dialogue, a means of adopting important decisions, of taking important decisions and of resolving conflicts. Bidima (2014) adds that the palaver uses what is true to achieve peace<sup>4</sup>. Ultimately, it seems

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<sup>4</sup> Ethnic community found in central, southern and eastern Cameroon.

<sup>4</sup> There was a quasi-official practice whereby all land transactions on the national lands (especially sales) were subject to the signature of the divisional officer in order to guarantee their effects and avoid any disputes.

<sup>4</sup> Olivier de Sardan : Développement, modes de gouvernance et normes pratiques (une approche socio-anthropologique) – revue canadienne d'études du développement 31, n° 1 – 2 (2010) ; 5-20.

<sup>4</sup> Nelson Mandela, *Un long chemin vers la liberté*, Paris, Librairie générale française, 1996.

<sup>4</sup> Andalou agency : dépêche du 04.05.2015.

<sup>4</sup> Revue gouvernance été 2014.



to be a "logotherapy" aimed at breaking the vicious circle of violence in order to restore harmony and peace.

## CONCLUSION

Because of its many uncertainties, the land sector concentrates most of the violence and represents one of the main threats to peace and social cohesion in African communities. It is the sword of Damocles that threatens community, regional and national development. African regulations, such as those in Cameroon, have ignored the customs inherited from the African conscience, obsessed as they are with the State's stranglehold on the national land heritage. Nnomenko (2021) sums it up when he describes Cameroon's land tenure system as *"the centralised, interventionist and exclusive model of land administration that characterises it, to the great detriment of traditional communities"*<sup>4</sup>. To this end, the government is introducing regulatory instruments that are cloaked in the mantle of authority but lack real transformative power, calling for a (re)contextualisation of the concept of instrumentation of public action in Black Africa, and in Cameroon in particular. As such, the most skilful subterfuges are used to this end, leading Ngnemzué to say that *'today, by prosaic means, the state tries to contain centrifugal tendencies by no longer placing itself at the centre of society, but by regulating the multiple networks of regulation'*. This is true both upstream (limiting the autonomy of the Consultative Board), in position (primacy of the administrative authorities) and downstream (downgrading or subrogation). It is therefore necessary to analyse this instrument in the light of neo-institutionalism and neo-patrimonialism in Africa in general, and Cameroonian neo-patrimonialism in particular. From this perspective, it is illusory to seek change or transformation through instrumentation. Rather, the latter does not serve public action in its political dimension, nor regulation in the sense of the general interest, but rather the regulator, i.e. the state as a legal entity. The instrumentalisation of land tenure regulation thus becomes the control of land management through the instrumentalisation of the Land Consultative Board. This helps to ensure that the latter cannot carry out undesirable transformations that could undermine the dominant political-administrative architecture. However, it would be premature to conclude that the advisory committee is completely neutralised in its operational dimension and has no authority of its own. Firstly, because the sheer number of them – thousands across the tri-border area – makes it impossible.<sup>4</sup> Secondly, because in most cases the administrative authorities are represented, which brings traditional authority back into the limelight and makes the handling of disputes a little fairer. Finally, because there is no institutional alternative to this body as yet.

It is important to point out that people (especially those living in rural areas) do not spontaneously turn to the courts or the authorities in the event of a dispute. The vast majority of land disputes in Cameroon therefore elude the administrative and judicial authorities and are dealt with according to the mechanisms of traditional African society, which was the major inspiration for the creation of Land Consultative Boards. As the *innovAfrica* (2013) promoters rightly point out in their *l'arbre à palabre et le lien social* project, in short, it is the

<sup>4</sup> Nnomenko, Joseph-Eric, 2021. *La problématique du statut de la propriété foncière coutumière au Cameroun*. NGABAN DIBOLEL. *Revue africaine de responsabilité sociale et management durable*, 2(1), 59-83.

<sup>4</sup> It would be pretentious to imagine for a moment that they are all individually under the control of the State.



community and democratic management of the village collectivity that creates and maintains the freshness, shade and humanity, that are sometimes lacking in our urban deserts<sup>5</sup>.

Land regulation through the Land Consultative Board opens up opportunities for consensus building. This instrument offers the possibility of establishing local management of land tenure, encouraged by the participation of stakeholders who are as close as possible to the issues at stake, and who therefore have the legitimacy to define the best determinants of the thorny issue of land governance and its corollary, insecurity. In this respect, the instrumental approach makes it possible to understand the gap between the will captured by the texts and the proven reality of their operationalisation. We conclude with André Teyssier (2004) that '*a renewed land policy, capable of re-legitimising the state through effective and equitable local regulations, would deserve a public debate in the form of consultations at different territorial levels, before devising various technical and legal solutions*' (p.527).<sup>1</sup>

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<sup>5</sup> InnovAfrica is an ambitious project, focusing on sustainable agriculture to improve food and nutritional security in Africa.

<sup>5</sup> Teyssier, André, « La régulation foncière au Cameroun : entre régimes communautaires et aspirations citoyennes. Sociétés, territoires et rôles des politiques publiques », in *Cahiers de l'agriculture/Cirad* 2004.



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