

Property Rights, Land and Territory in the European Overseas Empires

Direitos de Propriedade, Terra e Território nos Impérios
Ultramarinos Europeus

Edited by José Vicente Serrão
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Land law and polygamy in the Bamiléké tribe in Cameroon

Mathurin Clovis Tadonkeng¹

Abstract: One of the peculiarities of the Cameroonian system is the functional and structural institutional blend it has produced since its independence. This combination is the result of a long geostrategic and geopolitical process that developed through the German rule period (1884-1916), the Franco-British period (1916-1959), until the post-independence and current period (1960-present). In the legal framework of this country, “civil law” and “common law” cohabit without completely ban “local customary law”, whose application is limited to some aspects of civil rights, particularly: inheritance, land rights and ownership, property rights, marriage and divorce. The Cameroonian legal system is also conditioned by the prevalence of modern law over local traditional law in the case of conflicts of jurisdiction. In this dual context, the institution of marriage in Cameroon identifies monogamy and polygamy as legal, even if the practice of polygamy is different from one area or tribe to the other. Specifically in the Bamiléké tribe, this practice is rooted not only in the animistic tradition, but also in the original economic system based essentially on agriculture and livestock. According to the customary local law, only the chief of the village should be considered the universal depositary or owner of all the lands of the village. The rule here is that the chief grants the people the usufruct of lands, according to the needs of the families, and their ability to labour the lands. The Bamiléké people are very competitive and conservative, therefore they found in polygamy the best way to combine their needs and abilities, in order to occupy as much land as possible.

Resumo: Uma das peculiaridades do sistema dos Camarões é a mistura funcional e estrutural das instituições que se têm produzido desde a sua independência. Esta combinação resulta de um longo processo geoestratégico e geopolítico, que passou por vários períodos: o período do domínio alemão (1884-1916), o período franco-britânico (1916-1959) e, finalmente, o período posterior à independência (1960 até ao presente). No quadro jurídico deste país coabitam os sistemas de “civil law” e de “common law” sem que tenha sido completamente banido o direito consuetudinário local, cuja aplicação está limitada a alguns aspectos do direito civil, nomeadamente: sucessões, direitos fundiários e posse, direitos de propriedade, casamento e divórcio. O sistema jurídico dos Camarões também está condicionado pela prevalência do direito moderno sobre o direito tradicional local em caso de conflito de jurisdições. Neste contexto dual, o instituto do casamento nos Camarões considera que a monogamia e a poligamia são legais, muito embora a prática da poligamia varie em função da região ou da tribo. Entre a tribo Bamiléké, esta prática deriva não apenas da tradição animista mas também do sistema económico original assente sobretudo na agricultura e no gado. De acordo com o direito consuetudinário local, só o chefe da aldeia pode ser considerado o depositário universal ou proprietário de todas as terras da aldeia. Segundo as normas aplicáveis, o chefe cede às populações o usufruto das terras, em função das necessidades das famílias e da sua capacidade de trabalhar a terra. Os Bamiléké são muito competitivos e conservadores, tendo por isso encontrado na poligamia a melhor maneira de combinar as suas necessidades e as suas capacidades, de forma a ocupar tanta terra quanto possível.

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The name Cameroon is derived from the Portuguese word, “camarões”, meaning shrimps. In 1472, Fernando Pó, a Portuguese navigator and explorer, arrived at the riverside of the “Wouri” in Douala and discovered so many shrimps in the river that he decided to call it Rio dos Camarões (River of Shrimps). During the colonial period, under German domination (1884-1916), Rio dos Camarões became “Kamerun”. It would later be replaced by “Cameroun” or “Cameroon” during the Franco-British period (1916-1959), and it remains “Cameroun” or “Cameroon” until the present day (Mveng 1983: 58-194). Most geographical studies today describe Cameroon as the “*meeting point of Africa*” (Nyongbet Gabsa 2005: 11) because of its cultural and natural diversity. The population of Cameroon contains about 250 ethnic groups speaking about 24 major African languages. This study is focused on the ethnic group known as the Bamiléké.

The study is focused on two elements: land law and polygamy. According to Rochegude (2001: 13-32), beyond the land itself, the concept of land law refers to the land usages and to the resources and products that it incubates. These fruits of the soil represent the key element for the survival of the living species found in this territorial context. The importance of the territory as a living space is highlighted by Professor Pougala (2012: 2) in his definition of geostrategy. Polygamy, on its turn, is defined by the “Le Nouveau Petit Robert de la langue française” (2009: 1957) as a “*social organization recognizing the multiple and simultaneous legitimate unions*”, a definition that also states that the phenomenon sees men and women as protagonists. In Cameroon, the practice of polygamy has men as the protagonists, and while animists and Muslims see it with an intensity that varies across regions and religions, Christians stigmatize it.

The land law and polygamy among the Bamiléké highlight key aspects of the Cameroonian society, thereby presenting the historical evolution of land tenure between positive law and customary local law which characterizes the “*legal and judicial dualism of Cameroon, maintained and reorganized after its independence*” (Timtchueng 2005). The second element highlighted in this study is polygamy, which even though being part of the legal wedding system², is related to traditional land law among the Bamiléké society. The reflexion that emanates from this topic aims at clearing the link between land law and the polygamy phenomena among the Bamiléké, an ethnic group whose dynamism and migration capacity allowed it to invade and occupy lands and habitats of other ethnic groups. Both phenomena ended up creating what has been for long known as the “Bamiléké problem” (Zognong 2002). In order to better understand the relationship between the Bamiléké land law and polygamy, we should first look briefly at the historical evolution of pre and post-colonial land law, focusing on the complex social phenomenon that polygamy is for the Bamiléké.

1. The Bamiléké land

The Bamiléké people have a very controversial origin, but it is certain that the settlement of this tribe in their land is very old in time, as it can be seen from their highly developed social organization, their traditional chiefdoms and their artistic inheritance. Their chiefdom is like a State within a State (Dongmo 1981: 33). Their

² See article 49 law n. 2011/11 of 6 May 2011 amending and supplementing certain of the provisions of the ordinance n. 81/002 of 29 June 1981. This article recognises polygamy and monogamy as legal in Cameroon.

ancestors are the builders of the pyramids of Egypt. According to Ghomsi (1972: 33), the Bamiléké are the descendants of the pharaohs of Egypt and their ancestors were driven out of Egypt by various Indo-European invasions that have occurred in Pharaonic Egypt. The recent origins of this people go back to the Haut-Mbam (Mveng 1983: 111). The Bamiléké are considered to be the largest ethnic group of Cameroon (Debel 2011: 37), and they are based in the current region of western Cameroon, sharing it with the Bamouns who are established in the Noun Department.

The Bamiléké country is an intra-crater space that can be qualified as a “*piece of East Africa lost in the borders of West Africa and Central Africa*” (Dongmo 1981: 45). It is a territory that extends between the 4th and 6th degree of the north latitude, and the 9th and the 11th degree east longitude and covers an area of approximately 6200 km². It mainly consists of an area of rolling plateaus with altitudes ranging from 800 to 1600 metres, including some volcanic mountains such as the Bamboutos mountains, the Mount Nkogam and the Mount Nbam. The general high altitude that tempers the tropical climate, combined with soil fertility due to the extension of volcanism, explain the importance of settlement (15% of the population of Cameroon) and of agricultural development in that region (Olivry 1976: 1-71). According to Fotsing (2003: 133), in the 1987 census the average density of the Bamiléké reached 169 inhabitants per km², while the average density of the Bamoun people was only of 38 inhabitants per km². The Bamiléké are organized into chiefdoms.

The Bamiléké are animists and they practice the worship of the skulls. Their ground is still considered sacred and mystical. The soil appears to be a gift given to mankind by the gods (Binet 1951: 2). Usually, the umbilical cord of the Bamiléké children born out of the chiefdom is kept and buried in what is considered the place where the ancestors rest. The same happens with those who die away from the chiefdom, they should be buried in the family plot to enter into communion with their ancestors. The Bamiléké clearly express the belief in the divine character of the land (Delarosiere 1949: 49). The land affects the formation of the family and it is considered a collective good of the community. It is a sign of wealth, agriculture being a fundamental part of the economic and social system. For these reasons, individuals are engaged in a constant and permanent competition (Fotsing 2003: 138).

2. The rules of traditional land rights in the Bamiléké land

The Bamiléké land law obeys to the rules of local traditional law, which although slowed by the colonial introduction of positive law, was not banished from the Cameroonian judicial system. The work of Tardits and Deschamps (1960), inspired, on its turn, on the works of Kwayeb, Huraults and Delarozière, reveals that the head of the chiefdom or the “Fo” is the theoretical administrator of the land that is the property of the whole community. Tardits and Deschamps’ studies have described what is still practiced today in the Bamiléké land area as follows:

“The land area includes tsafo (land of the Chief) consisting of the land occupied by various buildings of the chiefdom itself, common pastures, vacant land (abandoned or fallen into disuse), tracks, streams and lakes, area where, according Me Kwayeb, the Chief exercises exclusive rights on the land, which land are distributed in neighbourhoods, between lineages that have the possession and the use. The right to distribute of the “fo”(chief) often seems to be theoretical and in fact is exercised by the cast (Deputy Chief) and nkem (Chief’s agents) under the sub-chiefdoms and the neighbourhoods” (Tardits and Deschamps 1960: 69).

Dongmo (1981: 48), on his turn, recognizes the status of landowner to the Bamiléké chief. Either way, theoretically or not, everyone gives the chief the role of land distributor. Tardits and Deschamps (1960: 35-36) believe the chief has supreme authority when it comes to traditional justice. Land is distributed to the heads of the families according to their need and their ability to exploit them. Householders allocate lands to their wives, who have the duty to develop them. We are talking about the right to use the land and not the right to the ownership of the land. The right to use the land is not definite but it is durable. Once householders receive their portion of land, the chief uses his right only in favour of those dissatisfied with the land they occupy; in favour of those whose lands were received from their fathers and are insufficient to meet the needs of their family; or in the benefit of immigrants who need lands where to settle (Tardits and Deschamps 1960: 70). According to Fotsing (2003: 136), non-Bamiléké immigrants and immigrants from other chiefdoms are excluded from land distribution. This right to the land use obeys to a popular proverb that says that “*the land belongs to the first occupant*”, but that he must valorise the land (Tiayon Fouwa 1991: 59-60). This formula would instigate strong competitiveness among the Bamiléké, resulting in mass emigration to the less affluent Mungo, and, subsequently, to the rest of Cameroon.

Another mode of land tenure is linked to the traditional law’s system of inheritance. The successor ensures the continuity of the deceased, a sort of reincarnation of the deceased. In this regard, Mr. Kwayeb, quoted by Claude Tardits and Hubert Jules Deschamps, expresses himself in these terms:

“At the death of the breadwinner, the heritage is not shared between the different members of the family. The survival of the family not being at risk because of the death of its leader, the question is rather who will be the new leader, the new manager. Therefore, only one heir, one of the sons of the deceased has been chosen to continue his person, acquires his titles and functions, so the heir continues to manage all the property in the same manner as the deceased. The other children may not require the sharing of the goods. However, if the deceased leaves many women, the heir must share some between his older brothers [...] Anyway, the mother of the heir must be given to one of his brothers or to one of his paternal uncles. Girls cannot claim anything whatsoever at the death of their father. Instead, at the death of their mother, they inherit all her implements and all her utensils. Because the heir continues the person of its author, he is obliged to pay inheritance debts [...]. The heir is always the heir outright” (Tardits and Deschamps 1960: 25).

This quote presents a situation in which, at his death, the householder, who originally occupied the land, transfers the whole land to one of his male children, including all the widows, considering the woman just a simple element of the man’s heritage or patrimony.

3. Positive law and the limitations of customary law relating to land law

Positive law in Cameroon was introduced by Germany, Britain and France, and perpetuated by the Cameroonian legislator. The act that opens the doors to the German administration in Cameroon is the German-Duala Treaty of 12 July 1884. According to this treaty, the land cultivated by the natives and the locations where there were villages should remain the property of the people who occupied them and of their offspring. The concept of vacant land without master was introduced, in full contrast with the traditional concept of land where the soil had a master, i.e. the village chief. The imperial order (1896), which established the German land policy in Kamerun, attributed the vacant lands to the German State. The decree of 21 November 1902 introduced the use of land registry for the protection of individual land rights. The German defeat in the First World War marked the end of the German colonization in Cameroon, dividing

it between England and France under the League of Nations mandate (Duroselle 1998: 65).

In 1927, the British Cameroon established the land and native rights ordinance, contemplating the right of occupancy and introducing the certificate of occupancy, which was a provisional right. When it concerned the foreigners or immigrants this right was called “statutory right of occupancy”; when it concerned the natives, this right was called “customary right of occupancy”. All these rights could be revoked at any time by the governor. In 1956, the customary collectives regain control of the free hold lands and lease the hold lands (Ebang Mve 2011: 27). In the French Cameroon, where the Bamiléké are, the act of 21 July 1921 introduced the system of transcription, consisting of registration in a special register reserved only for the French and the assimilated. The decree of 21 July 1932 introduced the system of recognition of indigenous land rights on behalf of the authorities, a status that provided the acquisition of a property book to the benefit of the occupants (Ebang Mve 2011: 28). With the ordinance n. 74/1 of 6 July 1974, which fixed the land law of Cameroon, the owners of the land book or certificate of occupancy, would be required to transform the book or the certificate into “title deed”, which would, consequently, be considered as the only act of land ownership from 1974 until today. The “title deed” was successively confirmed by the decree n. 76/165 of 27 April 1976, which laid down the conditions for obtaining a “title deed”, and by the current decree n. 2005/481 of 16 December 2005, which amended and supplemented certain provisions of the precedent decree of April 1974.

After its independence, Cameroon did not completely abolish customary law. Instead, it established a legal pluralism based on contemporary law enforcement of modern and customary law. Note that in Western Cameroon, the legal system is the common law system and the customary courts are two: the Alkali court, (competent for litigation of the Muslims indigenous) and the Customary Court (competent for the non-Muslims natives). Both of these courts still exercise their competence in this part of Cameroon. In East Cameroon, the legal system is the civil law system, and by the decree n. 69/DF/544 of 19 December 1969, which fixed the judicial organization and procedure of the traditional courts of East Cameroon, the legislator has instituted a trial customary court, which is known as “*tribunal coutumier*” in the rural areas and as “*tribunal de premier degré*” in the urban areas. These courts still have jurisdiction over proceedings relating to personal status, marital status, marriage, divorce, parentage, inheritance and real estate rights³.

4. Polygamy as a trick in land law competition until the coffee crisis in Cameroon (1990)

To the Bamiléké, polygamous marriage is the rule since the pre-colonial period. It is among the dignitaries that it assumes proportions sometimes exaggerated, but among common people, it is highly attenuated (Tardits and Deschamps 1960: 19). The custom in this part of Cameroon is very complex and difficult to understand. Being the religious authority, the chief is deemed sacred. Having a marriage relationship with the chief honours the families, who, in consideration of the rules of succession, could guarantee these families to have a son at the head of the chiefdom and therefore a precious access to the control of the land. If in 1938 the head of the Bangang chiefdom had 67 women, (Tardits and Deschamps 1960: 19), nowadays the traditional chiefs continue to marry

³ Article 6, decree n. 69/DF/544, 19 December 1969.

several women in addition to the women received in inheritance from their fathers. In an analysis of Philippe Antoine (2002), one explanation for the phenomenon of polygamy is found in an economic system based on agriculture of some peoples of Africa (as it is the case among the Bamiléké). According to this author, this is “*a subsistence economy poorly mechanized, in which the role of women as producers of food products is important. Polygamy in this context is understood as being inexpensive and profitable for man*”. The author also quotes Jack Goody (1973), who places in West Africa the highest rate of polygamy in relation to East Africa, where women are more active in the fields (Antoine 2002).

When colonization introduced a market economy, it promoted at the same time the explosion of polygamy in the Bamiléké country. In this regard, Sandrine Merlou stated that, “*Coffee [...] economic engine of the region maintained polygamy. Sign of success, it is also a contribution of labour needed to work the plantations*” (Merlou 2002: 7). Kélodjoué (2006: 1071-1084) also points in the same direction, defending that first the practical arrangements for the cultivation of coffee should be made, and only then the level of consecutive life to the cultivation of this plant annuity should be raised. By authorizing the practice of growing coffee to each family that had a large workforce, the colonial authorities unknowingly and unintentionally encouraged polygamy and its corollary: high fertility.

Paradoxically, coffee culture also fostered openness to the emancipation of women. With the continuing literacy and the disclosure help of modern law, families, Cameroonian women and also Bamiléké women began to consider the rights of women to have access to land as men did, even if the areas acquired by women were significantly inferior to those acquired by men (Kaptué 2013: 59-60). In a recent study, 80 women (single, married, widowed and divorced) were interviewed, and it was observed that 23 women received the land from their parents; 3 women were the managers of the land left by their husbands to their minor children; 17 women had received the land as a gift from others; 9 women had received the land directly from their husbands; and 31 women had purchased their own land (Kaptué 2013: 59-60).

As highlighted by Timtchueng (2005), legal dualism in Cameroon is stronger than ever. At the same time, there has been an extension and strengthening of the powers of traditional courts. The latter are increasingly in demand because its trial costs are much lower when compared to modern law courts. By applying the traditional rules, the customary court in French-speaking Cameroon or the “*tribunal de premier degré*”, could be a disadvantage to the Bamiléké women. However, the option of going to court, which allows legislation to be applied to them, would also allow Bamiléké women to assert their rights, and in this particular case, to assert their land rights in courts that applied modern law. In other terms, the jurisdiction of traditional courts is only effective if the parties agree, and the defendant⁴ must declare the incompetence of the court in applying traditional rules “*in limine*”⁵.

The National Institute of Statistics of Cameroon (2012) reveals that the phenomenon of polygamy in Cameroon, in 2011, involved 25% of married women. Among them, 34% lived in rural areas and 16% lived in urban areas. 46% of married women with polygamous husbands are illiterate, 24% had a basic level, and 8% had a secondary

⁴ Article 2(3), decree n. 69/DF/544, 19 December 1969, establishes the organization and proceedings before the traditional jurisdictions of Eastern Cameroon, modified by the decree n. 71/DF/607, 3 December 1971.

⁵ Referring to a motion made before a trial begins.

education or higher. 41% of the women in a polygamous union lived in the poorest households, and only 11% lived in the richest households. The Muslim regions of the Far North broke record, with 42% of women married in polygamous unions. It is followed by the North (41%) and by Adamawa (35%). The West, the territorial base of the Bamiléké recorded a 29% of married women in a polygamous union, but half of this territory is occupied by the Bamouns, who are Muslims. It should be noted that Islam is not totally responsible for the practice of polygamy among Muslim peoples, although this religion sacralises the phenomenon and maintains it, even if with restrictions, i.e., the maximum of four women and unions based in the principle of equality between wives (Antoine 2002).

Conclusion

In Cameroon, the Bamiléké traditional law formula of occupation was based on the needs and the capacity to exploit the land. In this context, the enlargement of the family by means of polygamy and fertility had resulted in the increase and justification of the occupation of land, in order to get reliable and definitive workers and, thus, become rich. Polygamy, which was once more intense among kings and notables, became the easiest way for common men to achieve wealth, while also being considered an important sign of virility since the pre-colonial period, and until the arrival of the coffee crisis in 1990. The traditional system of land tenure did not create polygamy but it encouraged it, under the principle that “*More women means wealth (and honor) ensured*”.

The postcolonial generation, who lived under a salary system, often in urban areas, and who wished to have the polygamy-related honor of the past, went in crisis because they had to meet the needs of wives and children based on their wages; and because easy access to education took several women out of ignorance, teaching them the benefits and advantages of written law, in comparison to traditional law. The new generation of men takes into consideration that the Cameroonian marriage system presents two options, polygamy and monogamy. Nevertheless, much of those who adopt the polygamy system live as monogamous, not taking other women in marriage. The goal of many of these men is to submit their wives, blackmailing them with the hypothetical arrival of a co-wife. It is estimated that, in 2008, 55% of Cameroonian couples have chosen monogamy and this choice is partly the consequence of the proliferation of Christian churches that preach the attachment to one woman and that only bless those spouses who choose monogamy (Nforgan, IPS s/d).

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