



Thesis

By

Sone Patience Munge

**UNIVERSITY OF BUEA
FACULTY OF SOCIAL
AND MANAGEMENT
SCIENCES
DEPARTMENT OF LAW**

**THE CONCEPT OF EQUALITY AND
ACCESS TO LAND: THE CASE OF
THE ANGLOPHONE REGIONS OF
CAMEROON.**

July, 2011

UNIVERSITY OF BUEA

**FACULTY OF SOCIAL
AND MANAGEMENT
SCIENCES**

DEPARTMENT OF LAW

THE CONCEPT OF EQUALITY AND ACCESS TO LAND: THE CASE OF THE ANGLOPHONE REGIONS OF CAMEROON.

By

Sone Patience Munge

LLB, PGD(WGS) and LLM

**A Thesis Submitted to the Department of Law,
Faculty of Social and Management Sciences,
University of Buea in Partial Fulfilment
of the Requirements for the Award
of the Doctor of Philosophy
(PhD) Degree in
Law.**

July, 2011

CODESRIA - LIBRARY

UNIVERSITY OF BUEA

**FACULTY OF SOCIAL
AND MANAGEMENT
SCIENCES**

DEPARTMENT OF LAW

THE CONCEPT OF EQUALITY AND ACCESS TO LAND: THE CASE OF THE ANGLOPHONE REGIONS OF CAMEROON.

By

Sone Patience Munge

LLB, PGD(WGS) and LLM

**A Thesis Submitted to the Department of Law,
Faculty of Social and Management Sciences,
University of Buea in Partial Fulfilment
of the Requirements for the Award
of the Doctor of Philosophy
(PhD) Degree in
Law.**

July, 2011

Dedication

To my dearest daughter Ebude, parents, brothers and sisters.

The Almighty God has done it again for me, Holy is his Name.

CODESRIA - LIBRARY

UNIVERSITY OF BUEA

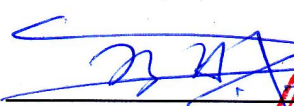
**FACULTY OF SOCIAL AND
MANAGEMENT SCIENCES**

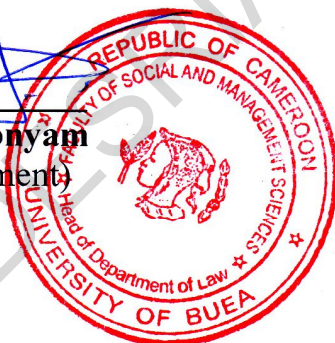
DEPARTMENT OF LAW

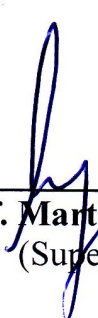
CERTIFICATION


The thesis entitled *The Concept of Equality and Access to Land: The Case of the Anglophone Regions of Cameroon* carried out by **SONE PATIENCE MUNGE (UB017837)** of the Department of Law, Faculty of Social and Management Sciences of the University of Buea, has been read, publicly examined, defended and approved for the award of a degree of Doctor of Law (LLD) in the presence of the following Professors of Law as members of jury:

- Ndiva Kofele Kale (PhD), Chairperson (Professor of Law)
- Ephraim Ngwafor (PhD), Examiner 1 (Professor of Law)
- Samgena Galega (PhD), Examiner 2 (Associate Professor of Law)
- John Dasacko (PhD), Member (Associate Professor of Law)
- Martha Tumnde (PhD), Member (Associate Professor of Law)
- Michael Yanou (PhD), Member (Associate Professor of Law)


Prof. Jonie B. Fonyam
 (Head of Department)




Prof. Martha Tumnde
 (Supervisor)


Prof. Michael Yanou
 (Co-Supervisor)

This thesis has been accepted by the Faculty of Social and Management Sciences.

Date _____

08 DEC 2011


Martha S. Tumnde
 (Dean)



Acknowledgement

I received valuable assistance from many sources in the course of undertaking this study and wish to use this opportunity to extend my profound appreciation to all who contributed to the success of this research. I must first express my gratitude to God Almighty for sustaining me throughout my academic career.

I am indebted to my supervisors Professors Martha S. Tumnde and Michael A. Yanou of the Law Department, University of Buea. Besides their professionalism in supervising this thesis, their humane approach put me in good stead to complete the Ph.D study in record time. I equally thank Prof. Dickerson Claire a visiting Professor of Law from the University of Tulane, for her enormous contributions in adding more meaning to this project.

I greatly appreciate the personnel of the Courts and the Delegations of State Property, Land Tenure in the Anglophone Regions of Cameroon and all the Respondents for the valuable contribution and assistance they rendered during my field work.

My heart goes out to my lecturers: Prof. Jonie Fonyam (HOD), Prof. Kofele-Kale, Dr. Ekome, Dr. Monkare and Dr. Kone. Also, to my classmates and colleagues: Irene Samalang, Lucy Mpey, Richard Mbifi, Tambe-Ebot, Dr. Boma Alvine, Dr. Tamfu, Tambe-Tiku, Lekunze, Roland Djeufack for their support, love and brilliant exchange of ideas.

I should at a personal level thank my family members and friends: the Sone-Ajangs, the Menyolis, the Ngonge-Sones, the Alunges, the Metuges, Ethel, Dodo, Athanasia, Hannah, Ntube, Harriet and my law students for their constant support and encouragement.

I reserve special thanks to the University for Peace in Africa, Addis Ababa-Ethiopia, for the financial and training assistance given me that facilitated the completion of this project.

To God be the Glory

Abstract

In Anglophone Cameroon like elsewhere in Cameroon, women have been oppressed by men in most aspects of life, access to land inclusive. Although the societies from which such patriarchal laws are found have evolved to respond to changing socio-economic and other aspects of life, issues touching on women's equal access to land have more often met with stiff resistance. Access to land has been a contentious and perennial problem in Anglophone Cameroon for women both at the family and community levels. Apparently, access to land use by women poses little or no problem in the country. The problem however is the restriction on women's access to land for ownership which carries with it the legal right to use and control land independently. This has created the problem of a lopsided pattern of access to land which is heavily tilted in favour of males to the disadvantage of women. This inequality carries profound negative consequences on women for the additional reasons that women are more involved in agricultural activities for family sustenance than men. This discrimination is a costly constraint on their productivity and a barrier to equitable growth, peace and sustainable development of the region. Cameroon being a country of law, both the customary and statutory laws play a greater role in regulating equal access to land in the Anglophone region. Nevertheless, the statutory land laws reflect the rules of formal equality in accessing land and this rule has not protected the inherent land rights of majority of the population who are mostly women living in the rural areas. The study finds the rules of formal equality adopted by the statutory rules instead of the rules of substantive equality falling short in the protection of equal access to land for both men and women in the region. This has stimulated the candidate to investigate if there exist some elements of inequality in our statutory land laws that accounts for the restriction of access to land experienced by women or are there some socio-economic challenges faced by women in accessing land in relation to men who are similarly situated as human beings? The study is carried out specifically in the Anglophone Regions of Cameroon and it employs both the primary and secondary sources of information, questionnaires and interview guides to collect data. Findings reveal that less than 10% of women own land in the Anglophone region. Also, it is discovered that although Cameroon is apparently a democratic country upholding the principle of good governance and prioritizing the enforcement of an equitable access to land by everyone in its land laws, the country has not instituted any meaningful machinery to address the difficulties faced by majority of the population in enjoying access to land as a constitutional right. Thus, this study upholds the policy of paying particular attention to the land rights of women in the region. This is because according to the Libertarians, the right to property (land inclusive) to human beings is fundamental on the basis that God gave the earth as a common heritage to his children to be used according to their needs. It is on this premise that the concept of equality which is situated within the natural law theory requires that everyone is bound to respect and recognize the equal right of all no matter the normative set up of any given society. Hence, this study will stimulate positive action in the management of land and to improve the existing machinery for acquiring land on an equal basis. This research will to this extent contribute to the introduction of reforms in the domain of land laws to eradicate the prevalent injustice experienced by women as evidenced by the current uneven distribution of land in the region.

Table of Content

Dedication	-----	i
Certification	-----	ii
Acknowledgement	-----	iii
Abstract	-----	iv
Table of Content	-----	v
Table of Cases	-----	x
Table of Statutes	-----	xv
Table of Abbreviations	-----	xviii
List of Tables	-----	xix

CHAPTER ONE: GENERAL INTRODUCTION

1.1 Introductory Overview of the Study	-----	1
1.2 Statement of the Problem	-----	6
1.3 Objectives to the Study	-----	11
1.4 Hypothesis	-----	12
1.5 Theoretical /Conceptual Frameworks	-----	13
1.5.1 The Human Rights Theory of Libertarianism	-----	13
1.5.2 The Theory of Justice – Egalitarianism	-----	16
1.5.3 The Instrumentalist Model of Law	-----	17
1.5.4 African Ethical System	-----	18
1.5.5 Power Relations based on the Negotiation Theory	-----	19
1.5.6 The Concept of Empowerment	-----	20

1.5.7 The Concept of Women’s Triple Roles-----	22
1.6 Literature Review-----	23
1.7 Justification of the Study -----	24
1.8 Scope of the study-----	24
1.9 Research Methodology -----	26
1.10 Significance of the Study -----	28
1.11 Definition of Key Terms and Conceptual Clarification s-----	31
1.12 Synopsis of the Chapters-----	42

CHAPTER TWO:

THE CONCEPT OF EQUALITY: A LAND PERSPECTIVE

2. Introduction -----	45
2.1 The Concept of Equality: Definition and Analysis -----	45
2.2 History and Contending Arguments on the Notion of Equality -----	51
2.3 Types of Equality -----	57
2.3.1 Formal Equality -----	58
2.3.2 Substantive Equality-----	60
2.4 Worldwide Notion of Equality -----	63
2.5 African/Cameroonian notion of Equality -----	70
2.6 Customary Rules of Access to Land and the Notion of Equality -----	79
2.7 Early forms of Land Acquisition and the notion of Equality-----	84
2.7.1 Land Acquisition through First Settlement and the Concept of Equality-----	85

2.7.2 Land Acquisition through Acts of War or Conquest and the Concept of Equality-----	
-----	87
2.7.3 Land Acquisition through Inheritance and the Concept of Equality-----	88
Conclusion -----	95

CHAPTER THREE:

EQUAL ACCESS TO LAND UNDER THE CAMEROONIAN LEGAL SYSTEMS

3. Introduction -----	96
3.1 Introduction of Colonial regimes and Equal Access to Land-----	96
3.1.1 Access to Land under the German Rule and the Principle of Equality -----	97
3.1.2 Access to Land under the British Rule and the Principle of Equality-----	99
3.1.3 Access to land under the French Rule and the Principle of Equality -----	104
3.2 Post-colonial land legislation and Equal Access to Land -----	109
3.3 Equal Access to Land under the Principle of Land Registration (the 1974 Land Ordinance) -----	112
3.3.1 Procedure for Land Registration -----	114
3.4 Presentation of Findings on Land Acquisition -----	119
3.5 Equal Access to Land as a Human Right -----	145
3.5.1 Equal Access to Land and Ratified Human Rights Instruments -----	156
3.5.2 Equal Access to Land in Cameroon in the Context of the State's Obligation under the Human Rights Instruments -----	160
3.5.3 Duties of the State under the Economic Convention -----	161
3.5.4 'A Minimum Core Obligation' -----	165
Conclusion -----	173

CHAPTER FOUR

CONFLICT ON EQUAL ACCESS TO LAND

4.1 Introduction -----	174
4.2 History of Women and Land Conflicts -----	174
4.3 Gender Conflict on Access to Land and its impact on Women in the Regions -----	177
4.3.1 Inheritance of Family Property, Discrimination and Conflict -----	181
4.3.2 Religion and Women’s Inheritance Rights -----	191
4.3.3 Property Ownership in Marriage, Equality and Conflict-----	197
4.3.4 Customary Guardians of Land, Indigenous Women and Equality of Access-----	206
4.3.5 Indigenous Males, Women and Equality of Access to Land-----	209
4.3.6 Women and Cattle Graziers Land Conflict -----	211
4.4 Conflict of Laws on Equal Access to Land -----	215
4.4.1 Personal Law of Succession -----	218
Conclusion -----	222

CHAPTER FIVE

DISCUSSION, CONCLUSION AND RECOMMENDATIONS

5.1 Discussion -----	223
5.2 Conclusion -----	238
5.3 Recommendations -----	239
Bibliography -----	251
Appendix I (map) -----	270
Appendix II (Questionnaire and Interview Guide) -----	267

Table of Cases

Foreign Cases

<i>Amodu Tijani v Secretary of State for Southern Nigeria</i> (1921) 21 AC. --	206
<i>Ato del Avelland v Peru</i> , HRC1988, UN Doc, CCPR/C/34/D/202/1986.--	65
<i>Bhe v Magistrate</i> , (2005) (1), BCLR 1 (CC).-----	67, 186
<i>Delgamuukw v British Columbia</i> , (1997) 3 S.C.R. 1010. -----	67
<i>Gissing v Gissing</i> (1971) A.C. 886 H.C. -----	208
<i>Ghamson v Wobill</i> , (1947) 12 WACA 181.-----	217
<i>Hoffmann v South African Airways</i> , (2001) 1 SA 1 (CC). -----	67
<i>Magaya v Magaya</i> , SC No. 210-98 (Zimbabwe, February 16, 1999). -----	68
<i>Mthembu v Letsela</i> , 2000 3 SA 867 (SCA). -----	184
<i>Moseneke v The Master</i> , 2001 2 SA 18 (CC) -----	184
<i>Pettitt v Pettitt</i> , (1969) 2AER 385. -----	210
<i>R v Chancellor of the University of Cambridge</i> (1723) 1 str. 567.-----	53
<i>Re Bishop</i> (1965) 1 ALL E.R. 249. -----	199
<i>Shibi v Sithole</i> , (2005) (1), BCLR 1 (CC).-----	70, 184
<i>Stalla Costa v Uruguay</i> , (Communication No . 198/1985). -----	53,69

South Africa Human Rights Commission v President of the Republic of South Africa, (2005) (1), BCLR 1 (CC). -----70, 184

Suberu v Sunmonu 2 FSCS 33, 1950,-----93

Thomas v Thomas (1974) 12 WACA 187 -----38

Unity Dow v Attorney General for Botswana, Botswana High Court 1991. (J Afr Law. 1992; 36(1):91-2).-----69

National Cases

Abi Zacharia v Nji Michael Ojong, BCA/4cc/2000. -----219

Achu v Achu Appeal No. BCA/62/86 (unreported). -----5,8,82

Alice Fodje v Ndansi Kette. Appeal No. BCA/45/1986 (unreported). -----

Body Lawson v Body Lawson, HCE/128MC/86 (unreported) -----207

Catherine Makebe Joke v Chambo nee Wongibe Rosemary Banila, Suit No BCA/10/2001. -----183

Chekeba C. v Divisional Officer of Mezam, (1994) CAJ-CLC 18. -----209

David Tchakokam v Koeu Magdalene, Suit No. HCK/AE/38/97. -----229

Divisional Officer of Ndop v Yenkong, (1994) CAJ-CLC 56. -----209

Efosi Kombe v Lydia Ngale (1980) CASWP/cc/5/79 (unreported). -----93

Enie v Enie, HCSW/65MC/83 (unreported). -----201

<i>Felix Shu v Deborah Suh, Suit No BCA/ICC/2009</i> -----	189
<i>Frida Sirri v John Milla. Appeal No. BCA/25.L/79.</i> -----	40, 42,143
<i>Fomara Regina A. v Fomara Henry N. Appeal No. BCA/11CC/97.</i> -----	8, 68
<i>George Evay v Grace Evay, Suit No CA SWP 38 (1992).</i> -----	188
<i>Halle nee Nzame Cecilia Eloie v Halle Ekane, Suit No.</i> <i>HCK/AE/K36/08/21/08.</i> -----	187
<i>Joseph Tanjang Bamu v Emmanuel Awankem Bamu, (1990) Appeal No.</i> <i>65/86.</i> -----	93
<i>Kang Sume David v Aboh Lucy. Suit No CASWP/1/2003.</i> -----	8, 199
<i>Keyaka Francis v Taah Regina (2000) BCA/10/2000.</i> -----	95
<i>Kumbongsi v Kumbongsi, CASWP/4/84 (unreported).</i> -----	220
<i>Lucas Awah of Mankon v Ndenge of Mankon. Civil Suit No 70.64 of 4.6.64</i> <i>(Unreported).</i> -----	35
<i>Martin Fobuzie v SDO Mezam BCA/2/78 Unreported decision of the</i> <i>Bamenda Court of Appeal.</i> -----	209
<i>Mary Nzube Epie nee Enombe v Ekwakome Epie Godfred, Suit No</i> <i>HCK/AE/K.100/2003.</i> -----	183
<i>Mary Umaru v Asopo Makembe, (1981) CASWP/CC/87/81.</i> -----	182

<i>Mfondi Ousmanou & Max Ntangsi v Col. Pangop Louis</i> , CASWP/11/2002. --	
-----	114
<i>Moussi v Moussi</i> , HCF/115MC/87 (unreported). -----	201
<i>Musa Bi Adamu Sodi v Marience Bi Adamu Shefu</i> , CS/101/184/91	
(unreported) Mbengwi -----	196
<i>Namange Ngombe J. v Molua Simon Mekeve & others</i> . Suit No	
CASWP/44/2004. -----	40, 143
<i>Ndobol v Ndobol</i> , HCF/11MC/90 (unreported) -----	188
<i>Nforba Aloysius and Bongnyisi Elizabeth v Nchari Mary Kinyuy</i> , Suit No.	
AE/06/96/1M/96. -----	194, 187
<i>Ngnietedem Etienne v Tashi Lydia Sinaga</i> . BCA/46/86 (unreported).-----	96
<i>Njim v Njim née Saningong</i> , BCA/22/96 (unreported). -----	200
<i>Noumbissie Nee Wanji Mary v Nganjui John</i> , Suit No CASWP/2/2000---	198
<i>Nsom Fombui Ambrose v Nkuo Kelvine</i> , Suit No. BOHC/PD/LA/02/02-03	
(High Court Boyo Division, North West Region). -----	184
<i>Qualle Saidou v Adamou Mustapha</i> , CS/101/184/01. -----	195
<i>Sarah Afumbe v Johnson Libatu Jasset</i> Suit No CA SWP/17/80. -----	190
<i>The People v Rose Munge Etah</i> , Suit No CFIB/130C/2009 -----	183
<i>Theresia Ngosang Alemkeng v Bezankeng Alemkeng John</i> ,	
HCK/8/94/28M/94 -----	188

Thomas Ngo v Moses Lukong & Another, 13CA/10/75 (unreported) -----38

Zamcho Florence Lum v Chibikom Peter Fru Supreme Court Judgment

No.14/L of 14 February 1997. -----5, 8, 82, 183

CODESRIA - LIBRARY

Table of Statutes and Treaties

A) Statutes

Foreign Statutes

The Administration of Estates Act 1925. -----	237
The Canadian Constitution of 1982. -----	60
The Family Law Reform Act 1969. -----	237
The French Civil Code of 1938 -----	204
The Ghanaian Constitution of 1992. -----	231
The Judicature Act 1925. -----	237
The Married Women's Property Act 1882. -----	209,210,237
The Non Contentious Probate Rules 1954.-----	93,196, 237
The Property and Conveyance Law, Cap. 136 Laws of Bendel State of Nigeria, 1976. Cap Law of Western Nigeria, 1959 -----	34
The South African Constitution of 1996-----	60,231
The Tanzanian Land Act of 1998 -----	259
The Ugandan Constitution of 1995-----	231
The Uganda Land Act of 1998 -----	231
The Wills Act 1837 -----	228, 237

National Statutes

Decree No. 76-166 of 27 April 1976 -----37,119,246

The Cameroon Constitution, Law No 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No 96/6 of 18 January 1996.-----
-----3,11,191,196

Civil Status Registration Ordinance No. 81-2 of 29 June 1981 -----189, 207

Ordinance No. 74-1 of 6th July 1974 on Land Tenure. -----3, 9, 112

The Cameroon Penal Code of 1967. -----50

Southern Cameroon High Court Law 1955 -----8,187

B) Treaties

African Charter on Human and Peoples' Rights. Adopted at the 18th Conference of the Head of States and Government, Nairobi, Kenya on 27 June 1981. Entered into force on 21 October 1986. -----61,157

Convention on the Elimination of all forms of Discrimination Against Women Adopted by General Assembly Resolution 34/180 of 18 December 1979. UN Doc. A/34/46(1979). Entered into force on 3 September 1981. ----
-----5,158

International Covenant on Civil and political Rights. United Nations General Assembly Resolution 2200A (XXI) 16 December 1966. Entered into force 23 March 1970. -----69, 157

International Covenant on Economic, Social and Cultural Rights. Adopted by the General Assembly of the United Nations by its Resolution 2200A (xxx) of 16 December 1966. Entered into force 3 January 1976. -----61, 157

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa', adopted by the Assembly of the African Union 11 July 2003. Entered into force 2005 -----157

The Universal Declaration of Human Rights. Adopted by the General
Assembly of the United Nations by Resolution 217A (III) of 10 December
(1948). -----156, 193

CODESRIA - LIBRARY

Table of Abbreviations

ACAFEJ	-	Association Camerounaise de Femmes Jurist
AfCHPR.	-	The African Charter on Human and Peoples' Rights.
CASWP	-	Court of Appeal of the South West Province
CEDAW	-	Convention on the Elimination of all forms of Discrimination Against Women.
FIDA	-	Association of Female Jurists in Cameroon.
GLTF	-	Gender Land Task Force in Tanzania
HC	-	High Court
ICESCR	-	International Covenant on Economic, Social and Cultural Rights.
ICCPR	-	International Covenant on Civil and Political Rights.
MINPROFF	-	Ministre de Promotion des Femmes et Familles
NGO	-	Non Governmental Organisation
SCHCL	-	Southern Cameroon High Court Law
TWLA	-	Tanzania Women Lawyer's Association
UDHR	-	Universal Declaration of Human Rights.

List of Tables

Total Number of Persons who Applied for and Acquired Land Certificates in the North West Region from January 1980 to June 2010 -----	128
Total Number of Persons who Applied for and Acquired Land Certificates in the South West Region from January 1980 to June 2010 -----	133
Summary of the Total Number of Applications for Land Certificates in the Anglophone Regions from January 1980 –June 2010 -----	141
Summary of the Total Number of Land Certificates Acquired in the Anglophone Regions from January 1980 –June 2010 -----	142

Chapter One

GENERAL INTRODUCTION

1. Introduction

This chapter embodies an introductory overview of the topic – *The concept of equality and access to land: The Case of the Anglophone regions of Cameroon*. The chapter comprises the research problem; objectives; hypothesis; theoretical/conceptual framework of the study; scope of the study; research methodology; significance of the study; definition of terms; and synopsis of the entire study.

1.1 Overview of the Study

Land is a vital resource that human beings need for sustenance.¹ Issues of equal access and control of the resource have been a contentious and perennial problem in Cameroon for vulnerable groups like women both at the family and community levels.² Apparently, access to land use by women particularly for farming usually poses little or no problem in the country. Men are generally willing to give women land for use, because the right to use land and the period of use is controlled and determined by them.³ The problem however is the restriction on women's access to land for absolute ownership which carries with it the legal right to use and control land independently.

¹ S. Moyo, *et al.* 'Land Reform and Changing Social Relations for Farm Workers in Zimbabwe'. (2000) 27 (84), *Review of African Political Economy*, p 190. Here, land can be used for building of houses, farming, leasing just to mention a few.

² C.F. Fisiy, *Power and Privilege in the Administration of Law: Land Law Reforms and Social Differentiation in Cameroon*. Leiden: Africa Studies Centre (1992). p. 1.

³ Kameri-Mbote, P. Gender Issues in Land Tenure under Customary Law. http://www.capri.cgiar.org/wp/..%5Cpdf%5Cbrief_land-05.pdf (accessed on 17/11/09).

In most traditional African societies and in Anglophone Cameroon in particular, land is classified as a communal or village resource and not as an individual's. This collective resource is distributed to individuals as the need arises. With possession, the dominant right to alienate resides with the chief or the family head (who is invariably a male) as a communal entity in this region of Cameroon.⁴ Since men dominate in decision making in customary law and most of the arable land in Cameroon is under customary land tenure system (most of which are typically unregistered), they do take major decisions relating to security of tenure which disfavour the women. The quintessential example is that although, women are often allowed access to use, they cannot own land as men do.⁵

This practice is a function of patriarchy under which woman's access to land is regulated solely by men.⁶ Cameroon's patriarchal approach to land and men's control have become strengthened by the fact that men are in the position to make laws and often the laws are designed to benefit them. Moreover, customarily, women are regarded by men as minors⁷ and thus incapable of controlling or owning land. This notion is at the root of why women do not control land independently and on equal basis with men in the country.

Additionally, despite the fact that the statutory rules for guaranteeing land registration is gender neutral, the actual registration process is managed largely by men.⁸ This state of

⁴T.O.Elias, *Nigerian Land Law* (4th Edition). London: Sweet & Maxwell 1971, pp 16,115.

⁵ J.S. Mbiti *Introduction to African Religion*. London: Heinemann (1997) pp 37-38.

⁶ Fisiy, *op cit* p 26.

⁷E. N. Ngwafor, *Family Law in Anglophone Cameroon*. Canada: University of Regina Press (1993), p 196. This is because bride price was paid on her on marriage. Hence she is regarded as husband's property during and after marriage. See *Tchakokam David v Koeu Magdalene*, HCK/AC/38/97. Her status can only change if the bride price is refunded.

⁸ Based on the investigation carried out, it is discovered that majority of the members of the Land Consultative Board in both regions are made up of men. In the Fako Division, out of the eight members in

affairs which naturally influences access to land by women has stirred up a lot of controversy with regards to questions of equal access to land in the country. Although women's capacity to acquire land was seriously circumscribed by customary law even before the colonial period, the situation of women did not improve during colonialism because the various colonial regimes almost exclusively focused their laws on acquiring indigenous land for their economic use.⁹ The colonialists¹⁰ paid little or no heed to the need to address the problem of unequal access to land bedeviling the country. As a consequence, this research intends to investigate the country's land right paradigm in order to assess how the question of unequal access has been dealt with from colonial period till date.

It may be observed that equality as a substantive concept permeates Cameroonian law. Indeed, both the preambular provisions of the 1996 Constitution¹¹ and the principal land legislation of 1974,¹² make reference to equality as the basis of access to land. Although issues of equality attract different degrees of attention in different states depending on the level of a state's commitment to democratic governance and respect for human rights, the notion of equality and in particular gender equality is of particular significance in Cameroon where statistics show that less than 10% of the land in the Anglophone region is owned by women.¹³ Basically, the concept of equality which focuses on the idea that people should be treated the same regardless of their sex, class, religion, race, language,

the board, seven are men and the secretary is a woman while in Mezam Division, all of the eight members in the board are men.

⁹ The Germans ruled from 1884-1916; The British ruled the English speaking regions from 1914 to 1961; and the French ruled the French speaking regions from 1916-1960. Cameroon had its independence in 1960.

¹⁰ The English, French and Germans.

¹¹ The Preamble of Cameroon Constitution of 1996 as amended by Law No 2008/001 of 14 April 2008.

¹² Article 1 of Ordinance No. 74-1 of 6th July 1974 on Land Tenure.

¹³ This statistics is based on the field study carried out by this researcher in the regions.

origin or other idiosyncratic basis¹⁴ has become a serious concern in Cameroon where access to land has over the years been tilted in favour of males to the disadvantage of women.

Substantive equality essentially involves the treatment of everybody in the same way while at the same time paying particular attention to individuals or persons with peculiar situations.¹⁵ This candidate reviews the concept of equality from the perspective that regards it as a vital tool that contributes to improving access to land. The review is situated in the context of the contention that securing equal access to land will positively impact on the current disadvantaged position of the Cameroonian rural woman, suffering under the burden of the discriminatory rules of customary law.¹⁶ Equal access to land will thus help bring Cameroonians' reality in line with its legal obligation.

This discrimination which often subjugates women in Cameroon by limiting their rights over resources including matrimonial property on divorce has to be examined within the broad spirit of the Convention on the Elimination of all forms of Discrimination Against Women.¹⁷ This treaty specifically establishes a regime that insists on a general and independent protection of discrimination against women in all circumstances. It particularly protects the right to access land and landed property on a non-discriminatory

¹⁴ The Universal Declaration of Human Rights, Adopted by the General Assembly of the United Nations by Resolution 217A (III) of 10 December (1948), Article 2. This type of concept is known as formal equality and is mostly practicable in the Western world.

¹⁵ S. Fredman, *Discrimination Law*. Oxford: Clarendon Press (2002). pp 14-15.

¹⁶ G.Moon and R.Allen, 'Substantive rights and equal treatment in respect of religion or belief: towards a better understanding of the rights, and their implications', (2000) *European Human Rights Law Review*, pp. 580-602.

¹⁷ Convention on the Elimination of all forms of Discrimination Against Women, Adopted by General Assembly Resolution 34/180 of 18 December 1979. UN Doc. A/34/46 (1979). Entered into force on 3 September 1981(CEDAW), Article 2.

basis during and after marriage¹⁸ but has witnessed interesting swings in Cameroon. Indeed the Bamenda Court of Appeal in *Achu v Achu*,¹⁹ Justice Inglis held that the married woman is herself a chattel and so cannot own property on divorce. This was an extreme example where a woman is qualified as property and even as part of an inheritable property in case of death of her husband. This precedent was a powerful blow to both substantive equality and equal access to land in Cameroon even though their right to property was later on safeguarded in other subsequent cases.

In *Zamcho Florence Lum v Chibikom Peter Fru*,²⁰ both the High Court and Court of Appeal in Bamenda held that the plaintiff could not get letters of administration over her father's estate because she was a mere daughter and married into another family. Although the Supreme Court revised these decisions, it is obvious that the formal judicial system was not uniformly committed to improve the situation of women particularly the rural woman in accessing land. Till date, there is no meaningful machinery on ground to administratively address the problem of unequal access to land in the regions. Besides, women who are generally regarded as a vulnerable group²¹ need special attention from the government and community at large in all circumstances in order to bring their status into compliance with the country's own legal obligation.

Based on the above, this research which focuses on access to land in Cameroon, synthesizes firstly, the requirement that people be treated equally. Secondly, the study also

¹⁸Ibid, Articles 14 and 16.

¹⁹ Appeal No. BCA/62/86 (unreported).

²⁰ Appeal No. BCA/9/96.

²¹C. Cheka 'How Law and Custom Serve to Disempower Women in Cameroon'. (1996) Vol. 4 No. 8 *Reproductive Health Matters*,

examines the demand that people with certain peculiarities who have suffered discrimination in the past, such as women, be offered more favourable options for acquiring land. This analysis is situated within the context of a gendered approach which demonstrates that, apart from the biological differences between men and women, women are generally regarded as the vulnerable category of persons who are often discriminated against.²² The study applies the principles of formal and substantive equality in examining the obstacles which the women as the vulnerable group face in accessing land in the country.

1.2 Statement of the Problem.

Questions of unequal access to land are age-old in Cameroon ranging from the pre-colonial period till date. Since no effective mechanism has been instituted to specifically address issues of unequal access to land in the country, local traditions²³ continue to influence land acquisition in the country. This has created the problem of a warped pattern of accessing land resulting in a land distribution pattern heavily tilted in favour of males to the disadvantage of women.²⁴ The present research seeks to investigate this phenomenon with the view of ensuring that discrimination against women with regards to access to land in the country particularly in the Anglophone regions of Cameroon is curtailed in all dimensions.

²² M. Schuller, *Freedom from Violence: Women's strategies Around the World*. New York: UNIFEM, (1992). She points out that women are vulnerable to various forms of discrimination simply by virtue of their sex. Also see M. Bogard, *Feminist Perspective of Son Wife Abuse*. Newbury Park, CA: Sage Publications (1993). He noted that female subordination and male dominance is based on socialization where men turn to exercise unequal gender relations originating from patriarchy, exercise power and control over women.

²³ Tradition is the habits and social practices of a people in a community that is applicable, accepted as binding on them.

²⁴ I. Sama-Lang, 'The Customary land law and Marginalisation of Women: Impediments to the Rural Woman's Access to Land in Anglophone Cameroon'. (2005) Vol. 5 No 1 *The International Journal Series on Tropical Issues*. p.136.

Cameroon is a heterogeneous country with over 250 ethnic groups with their different cultural practices. In spite of these cultural diversities, there is uniformity with regards to issues of women and customary land tenure.²⁵ Under most of these cultures, women are regarded as property with the result that their right to own land is circumscribed. Under these rules women's access to land is only derivative,²⁶ and many share the perception that the country's legislative and administrative practices have legitimated these customary discriminatory rules of land ownership. This problem has been highlighted by the obviously gendered disputes over land at the family and community levels in the Anglophone regions as exemplified in *Achu v Achu*.²⁷ The Achu's case also illustrates another facet of the discrimination problem specifically relating to the fact that some judges regard women as minors and inheritable chattel incapable of owning and controlling property on equal basis with men.²⁸

Certainly, the Supreme Court's decision in the land mark case of *Zamcho Florence Lum v Chibikom Peter Fru*²⁹ charted a new course in the domain of customary law and women's property right in the country. There, the Court held that the customary principle which denies a female the right to inherit her father's property was contrary to the Cameroonian

²⁵ In most Cameroon cultures, a woman cannot own land under customary rules of access to land. Most tribes in the Anglophone regions are patrilineal in property ownership. Even the few matrilineal tribes that exist such as Kom, Aghem, Bafmen, Mbonge are still patriarchal when dealing with women and access to property.

²⁶ Land ownership is strange to many women. This is because she has very little money to afford land. She can only use land got from the father or husband. She is often denied the right to inherit land either in her family or the land that she and her husband buys jointly cannot be divided between her and her husband on divorce. This is because she is considered as being incapable of controlling land on equal basis with the men.

²⁷ Appeal No. BCA/62/86 (unreported).

²⁸ Ngwafor, (1993). *Op cit* pg 196.

²⁹ Appeal No. BCA/9/90 (Unreported). Also see *Fomara Regina A. v Fomara Henry N.* Appeal No. BCA/11CC/97; and *Kang Sume David v Aboh Lucy*. Suit No CASWP/1/2003. Both cases hold the decision that on divorce, women as well as men have a right to own and control landed property.

Constitution which prohibits discrimination in all forms.³⁰ It also held that the idea of restricting a woman's right to property was repugnant to natural justice, equity and good conscience.³¹ Nevertheless, women still have problems exercising control over real property. Significantly, in spite of this decision, there is still the problem of how to get the local population particularly those in rural communities, to implement the principle expounded in the Chibikom decision. The study offers the opportunity to seek answers to whether the above decision, which was not followed by any new administrative structures or affirmative action, could realistically resolve the problem of restricted access to land in the regions.

Although the 1974 Land Ordinance and the Cameroon Constitution of 2008, guarantee all Cameroonians the right to access land, a review of property holdings in Cameroon shows that land is predominantly in the hands of men. This lopsided land distribution in favour of men carries profound negative consequences on women for the additional reasons that women are the ones who as a practical matter need and use land for farming in the country.³² The research also examines this issue of skewed land distribution to the disadvantage of women in relation to the impact on the financial status of women (poverty).

Currently, the 1974 Land Ordinance, one of the main legislations that directly deals with issues relating to land ownership in Cameroon asserts that, 'the state guarantees to all

³⁰ The Preamble of the Cameroon Constitution, Law No 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No 96/6 of 18 January 1996.

³¹ Section 27 of the Southern Cameroon High Court Law 1955.

³² A. Rhoda, *Women and the Environment*. New York: Zed Books (1991) p 59. According to Rhoda, women constitute about 80% of the total population in the Agricultural sector in Cameroon.

natural persons and corporate bodies having landed property the right to freely enjoy and dispose of such lands'.³³ However, in spite of this provision, as has been indicated earlier, the bulk of the land remains in the hands of males. Despite the gender neutrality in the law, land holding is still skewed to the disadvantage of rural women. This issue raises the question whether this apparently gender neutral provision is an appropriate response to the circumstances of people with peculiar difficulties such as women.

Additionally, Cameroon it may be recalled is a country with diverse customs and rules shaping the behaviour of citizens.³⁴ This diversity which affects the understanding of property rights has also created a problem with regard to the systematization of rules regulating ownership of land. The modalities for owning land as set out by the 1974 Ordinance is a source of tension for allowing a situation where a woman who has been using family land for years could be easily dispossessed of the land on the basis of the absence of land title.³⁵ In this light, the research investigates this problem of land dispossession with a view to identifying the distortions inherent in the country's land management policy.

Although Cameroon is apparently moving towards democracy and upholds the principle of good governance and prioritizing the enforcement of an equitable ownership of land by everyone, the country has not put in place any meaningful machinery to address the difficulties over unequal land ownership. A review of the results of the preliminary

³³ The 1974 Land Ordinance represents the first national endeavour to provide an integrated normative and institutional framework for land tenure in Cameroon, Article 1.

³⁴ Samalang, *op cit*.

³⁵ Section 14 (3) of 1974 Ordinance. It states that all unoccupied or occupied lands that are not registered shall be incorporated into a collective pool of "National Lands". Also see Fisiy *op cit* p 41.

research carried out on registration of land shows that land holding is mainly in the hands of men. This issue raises the question of whether the laws are well implemented to ensure an equitable access to land by all in the region.

Moreover, although the issue of equal access to land is guaranteed by the Constitution and the 1974 Land Ordinance as already indicated, there is a 'gap problem' between the law and its practice. This gap problem is further accentuated by the fact that Cameroon is a signatory to a variety of international treaties calling for equal ownership and enjoyment of land as a natural right.³⁶ Since administrators in charge of land registration are mostly men who are strongly attached to their customary practice of not associating women to land ownership, the tendency is that there is often a mix up in the application of the equality principle between the customary and formal land laws which prevents the formal law from being consistently enforced. This study examines whether there are elements in the registration procedure that demonstrate this 'gap problem' and discusses how to resolve the problem.

Based on the above research problems, this study will address the following research questions:

- How is equal access to land construed in Anglophone Cameroon?

³⁶The Universal Declaration of Human Rights (1948), *op. cit* Art. 17; International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations by its resolution 2200 A (XXX) of 16 December 1966. Entered into force 3 January 1976. Art. 25; Convention on the Elimination of all forms of Discrimination Against Women Adopted by General Assembly Resolution 34/180 of 18 December 1979 and entered into force on 3 September 1981. Articles 14 and 16

- Does customary law hinder women from accessing land in the regions under study?
- How effective are the statutory laws in curbing discrimination against women with regards to access to land in the Anglophone region?
- What is the impact of the restriction on women's right to access land on the socio-economic development and peace in the region?
- Apart from legal measures, what other measures can be adopted by the state in order to ameliorate the problem of unequal access to land?

1.3 Objectives of the Study:

General Objective:

The researcher intends to investigate why, in spite of the equality provisions in the country's domestic laws safeguarding non discriminatory access to land, a majority of the population do not own land as a right?

Specific Objectives:

To determine if the 1974 land reform has enhanced a more rational allocation and management of land in Cameroon in general and the Anglophone regions in particular.

To investigate if there are elements of inequality with regard to access to land in the land laws of Cameroon.

To examine the socio-cultural challenges that women face in the domain of land rights and to compare them with those of men who are similarly situated.

To investigate whether the legislator proceeded on the basis that the mere enactment of laws was sufficient to establish equitable access to land even for disadvantaged groups like women.

To ascertain whether there is a link between land related outbursts of violence and the unequal land holding pattern in the Anglophone Regions.

To analyse the country's property model in order to ascertain if the government is living up to its obligation to secure equality of access to land in accordance with the country's international human rights obligation.

To examine the impact of restricted equal access to property on the socio-economic development and peace in the regions.

To make recommendations on how to address the problem of the skewed distribution of land between male and female in the regions.

1.4 Hypothesis

The relevant assumptions to be investigated in the study are:

- Customary land tenure hinders women's right to own land in the regions.
- Local statutes do not specifically safeguards women's right to access land.
- The administrative practices on land registration do not safeguard women's equal access to land.

1.5 Theoretical/Conceptual Frameworks on Equal Access to Land

Proceeding from the theoretical and conceptual standpoints that the whole purpose of equality whether substantive or formal, is the protection of the dignity of the individual, the researcher reviews the critical issue of equal access to land in Cameroon to ascertain to what extent this foundational value plays out with regards to women. This enables the researcher to answer the very vital question of whether the current mechanisms put in place for determining access to land are conducive to the core value of protecting the dignity of the individuals irrespective of sex.

In doing this, the study raises the framework of equality and situates it within the parameters of issues of access to land in Cameroon. Land is a vital resource and access to it is for this reason a source of world wide controversy which has made a thorough analysis of the concept of equality very important. This study covers the important frameworks of human rights, justice, empowerment, the African ethical view on property rights, and the gender power relations model.

1.5.1 The Human Rights Theory of Libertarianism

Although Coke, Voltaire, Locke, Aristotle and Rousseau assert that human rights are derived from natural rights, this study is limited to a review of the analysis of John Locke and Aristotle. John Locke³⁷ argues that equality is a right given to all human beings by nature and that this right should be respected by all. However, Locke admits that in practice once a man enters the society, this natural right of equality is given up by man

³⁷ J.Locke, *The Second Treatise on Civil Government and A Letter of Toleration* (Hollis ed.) [1680]. http://en.wikipedia.org/wiki/Two_Treatise_of_Government. (Accessed on 29/11/09) pp 4-6.

and passed over to the society.³⁸ Applying this analysis to land, Locke argues that although land is a natural resource in the state of nature, its ownership is conventional in any given society.

From the Lockean theoretical perspective, society takes precedence such that human beings are treated not as nature dictates but as society prescribes because society has powers to protect the basic rights of man. Based on this, Locke argues for equal treatment of human beings by society or government because the right to equality is an inalienable right that everyone has to enjoy. It is from Locke's conception of the equality of man that the idea of human rights can rightly be said to have taken form.³⁹

The Lockean view stresses the duty of the state to defend the rights of the citizens. This duty is discharged when the state sets up laws that may safeguard the principle of equality in the society.⁴⁰ Furthermore, the concept of equality as it relates to access to land has been addressed in this study from the Lockean view which contends that, man's right to property (land inclusive) is fundamental on the basis that God had given the earth as a common heritage to the children of men.⁴¹ Locke further noted that God gave all human

³⁸ *Ibid.*

³⁹ *Ibid.* Locke stated that "all men are naturally in a state of perfect freedom to order their actions and dispose of their possessions ... as they think fit within the bounds of the law of nature without asking leave or depend on the will of another man." He attributes this equality and right to possession to the rule of common reason and equity "which is the measure God has set to the actions of men".

⁴⁰ Like Locke, Madison J., in the papers entitled 'Property', National Gazette (March 27, 1792), in 14 The Papers of James Madison 266 (1983) [hereinafter Madison Property] and 'Observation on the "Draught of a Constitution for Virginia" (October 15, 1788) in II the Papers of James Madison (1977) pp 285,287. He argued that the main purpose of the state is to protect property in both the narrow and broad sense of the word. He reiterated his view in 1788 where he wrote that there are 'two cardinal objects of government prior to the drafting of the constitution, the rights of persons and the rights of property'. According to this view, "Government is instituted to protect property of every sort", both in possession and in right generally.

⁴¹ Locke, *op. cit* p 25.

beings “reason to make use of the earth and its resources to the best advantage of life.”⁴² This implies that a human being has the inalienable and equal rights to own, use and enjoy the gift of the earth (land) for the relief of his or her needs. In support of the Lockean tradition, it can be supposed starting from the premise of self-ownership that, an individual can validly derive absolute rights of private ownership of land once it is justly acquired by the law of the society.⁴³

The study is also situated within the broad parameters of Aristotle’s view that equality is a core natural law idea.⁴⁴ The researcher examines the issue of access to land in Cameroon from the perspective that human behaviour is driven by forces which are fundamental, universal and compelling. These forces, according to this concept, are considered as natural rights which though independent of enacted laws and customary beliefs, form the basis of formal rules. They are derived from a divine author, the maker of human nature.⁴⁵ The right to equality which is situated within the natural law theory requires that everyone is bound to respect and recognize the equal right of all no matter the circumstance.⁴⁶ The

⁴² *Ibid.* Also see P. Sieghart, *The Lawful Rights of Mankind. An Introduction to the International Legal Code of Human Rights*. Oxford: Oxford University Press (1985). pp 27-28. This type of thinking according to Sieghart, influenced the reasoning of man during the French and American Revolutions of 1789 and 1791 respectively. He thinks that these revolutions were significant because they produced constitutions that for the first time defined the rights and freedom of persons including the right to own property within the state.

⁴³ R. Nozick, *Anarchy, State, and Utopia*, New York: Basic Books (1974). According to him, once an individual has acquired absolute private property rights justly, the right is as strong and inviolable as his body rights (rights to see, life etc) and such right cannot be interfered with without his/her consent. p 225

⁴⁴ Aristotle, *The Ethics of Aristotle: The Nichomachean Ethics*.

http://en.wikipedia.org/wiki/Nicomachean_Ethics. (Accessed on 29/11/09) 367. Also see Lord Lyold of Homestade et al, *Introduction to Jurisprudence*. London: Stevens and Sons (1979) 964.

⁴⁵ D. Martins & O. Fatuma Hashi, ‘Gender, the Evolution of Legal Institutions, Economic Development in Sub Saharan Africa.’ Working Paper 3. Washington D.C: The World Bank Group (1992).

⁴⁶ Aristotle, *The Politics of Aristotle Book I* translated by J.E.C Welldon Macmillan & Co Ltd London (1912). He holds the view that ‘likes should be treated alike’ in all situations. That is giving each man his due p 4.

study examines Cameroon's unequal land holding pattern and attempts to synthesise this with the above Libertarian theory.

1.5.2 The Theory of Justice - Egalitarianism

The thesis also raises the theory of egalitarianism which proceeds on the idea that all human persons are equal in fundamental worth or moral status and should be treated as equals in all circumstances.⁴⁷ Rawls⁴⁸ argued that equal access to resources (land) should be based on the theory of distributive justice. That is, no individual in the relevant group (be it at the level of the families, community and or other status) should have more or less than others in that group. To Rawls, equal opportunity, coupled with enabling conditions, should be created by the state to allow everyone to fairly have what he or she needs.⁴⁹

According to this view, justice is simply involved with identifying the rules/regulations for structuring and restructuring society aimed at ensuring that the multiple and diverse values, interests and goals of individuals in a society are protected in a manner that will achieve peace, justice and sustainable development.⁵⁰ It is in the context of this conceptualization that the research examines Cameroon's rules for accessing land with the view of determining what restructuring needs to be undertaken to redress the inequality in land holdings in the country.⁵¹

⁴⁷R. Dworkin, *Sovereign Virtue: Equality in Theory and Practice*, Cambridge: Harvard University Press (2000). pp 65-119

⁴⁸J. Rawls, *A Theory of Justice*. Oxford: Oxford University Press. (1999). P. 3; Distributive justice was founded on equality based on things, which though subjective were truly relevant where there were to be a distribution of fluits, the best fluit should be given to the best fluit player. Also see Van der Vyver, 'Ownership in International Law' (1985) 120 *Acta Juridica*.

⁴⁹ *Ibid.*

⁵⁰J. Rawls, *Political Liberalism*. New York: Columbia University Press (1993) p 15.

⁵¹ *Ibid.*

In addition to the theory of justice, Plato⁵² argues that fairness in the distribution of goods void of discrimination invariably requires that individuals should have the right to acquire property and be protected in the enjoyment of this right. Another variant of this postulation contends that where people are unjustly disposed of their right to acquire land or are denied access to their right to property, there is a need for a just land reform to redress the injustice of land distribution resulting from such denial.⁵³ The above contention in the context of Cameroon raises the troubling question of whether the rules of land management are sufficiently amenable to the principles of distributive justice in form and practice. It brings to the fore the question of land reform in the country.

1.5.3 The Instrumentalist Model of Law on Access to Land

The research also examines the issue of unequal access to land by rural women from the theoretical perspective of the instrumentalist model of law that perceives law as a tool for development. It investigates the criticism of legal instrumentalism for creating a 'gap problem'⁵⁴ which arises because the outcomes of most legislative enactments are usually different from the intentions of the law maker.⁵⁵ The intention of the law maker which is the standard on which the law is judged, is often merely imagined or assumed by the law enforcers.⁵⁶ Furthermore, the variance between the intention and the outcomes which the law produces from social interactions can only indicate whether or not the law is effective.

⁵² Plato, *The Republic*. [http://en.wikipedia.org/wiki/The_Republic_\(Plato\)](http://en.wikipedia.org/wiki/The_Republic_(Plato)) (Accessed on 29/11/09). pp 218-9.

⁵³ J. Rawls *op cit* p. 7.

⁵⁴ This functionalist dimension of legislative change has been widely criticized by sociologists and anthropologists of law. See J. Starr, & J.F. Collier, (eds.) (1989). *History and Power in the Study of Law: New Directions in legal Anthropology*, Ithaca: Cornell University Press; Also see Benda- K. Von Beckmann, "Scapegoat and Magic Charm: Law in Development Theory and Practice" (1989) No. 28, *Journal of Legal Pluralism and Unofficial Law*, pp 129-147.

⁵⁵ D. Nelkon, 'The Gap Problem in the Sociology of Law: A Theoretical Review', in Windsor Year Book of Access to Justice, 1981. pp 35-61

⁵⁶ *Ibid*

Since establishing that the law is ineffective, without knowing why it is ineffective, does not conduce to a better knowledge of the working of the law, the research reviews the Cameroonian situation with the view to ensuring adequate knowledge of the dynamics responsible for the inequality of land holdings between men and women. This approach puts the researcher in good stead to make appropriate recommendations for the reform of Cameroon's land model.

1.5.4 African Ethical System on Property Rights

This research is underpinned by the African ethical system regulating property rights under which ownership, control and management of land are clearly defined.⁵⁷ It is plain that since ancient African communities⁵⁸ were not driven by profit, major decisions were based on consensus. These systems of managing public affairs were used in the management of resources such that communal ownership of resources such as land were distributed on the basis of individual needs.⁵⁹ Fisiy observes that an African myth of creation puts man at the centre of the universe.⁶⁰ This has been interpreted to suggest that the universe and its resources (land) are meant for the use of human beings⁶¹ and that a human being has the right to have and make proper use of the resources (land) of the universe to satisfy his/her needs. Therefore, the researcher examines to what extent this ethical value has been incorporated into the country's property model. In so doing, this candidate attempts to investigate if land is, in our context, actually distributed on the basis of individual's need.

⁵⁷ Fisiy, (1992) *op cit* p 1.

⁵⁸ Ibid

⁵⁹ See Yanou *op cit*. who cites indeed, land in traditional African world-view is seen as constituting one of the elements of nature which is open to all members of the community.

⁶⁰ Fisiy, *op cit*

⁶¹ J. S. Mbiti, Introduction to African Religion. London: Heinemann (1997) pp 37-38.

1.5.5 Power Relations based on the Negotiation Theory on Ownership of Land

This theory holds that ownership of land depends on people's ability to negotiate their right to land to manipulate the existing land rules and the to straddle different institutions relating to land acquisition.⁶² Izumi further notes that the ability to negotiate depends mostly on people's socio-economic and political power in any given society based on the domain of gender. According to this view, power relations between women and men help to shape the forms and terms in which negotiation over land ownership can be effected.⁶³

Furthermore, the struggle over property in most African states is essentially related to a struggle over power relations.⁶⁴ In such struggles, some benefit more than others because of their status in the society and more often than not, these are the men who are either the chiefs or family heads. These struggles usually involve the processes of exclusion, deepening social divisions and class formation in the society, thereby acting as a root cause for societal conflicts.⁶⁵ Thus, power relations can be examined through the different ways in which men and women are inequitably treated in terms of land ownership, land use relations and the benefits derived from the productive use of land.⁶⁶ Thus, this study uses land from this analytic view to demonstrate how it plays a role in the wider

⁶² K. Izumi, "Liberalisation, Gender and the Land Question in Sun-Saharan Africa" in Sweetman, C., (ed.). *Women, Land and Agriculture*. London: Oxfam 1999 pp 10-11.

⁶³ Ibid

⁶⁴ C. Lund, 'Questioning some Assumptions about Land Tenure', in Benjaminsen, T. A. and Lund, C., (eds.). *Politics, Property and Production in the West African Sahel*. Uppsala: Nordiska Afrikanstivet 2001 p 11.

⁶⁵ P. Peters, 'Inequality and Social Conflict over Land in Africa'. Vol. 4 (3) (2004) *Journal of Agrarian Change*. pp 269-314. Also see P. Peters, 'The Limits of Negotiability: Security, Equity and Class Formation in Africa's Land Systems', in K. Juul, and C. Lund, (eds.). *Negotiating Property in Africa*. Portsmouth, NH: Heinemann 2002.

⁶⁶ S. Moyo, *African Land Question, the State and Agrarian Transition: Contradictions of Neo-Liberal Land Reforms*. Michigan: University Press 2008. p 86

subordination of women in the patriarchal structures which dominate broader social and production relations.

1.5.6 The Concept of Empowerment

The concept of empowerment is also strongly linked to the notion of equal access to land. Sarah Longwe⁶⁷ uses the empowerment framework to measure the levels to which current land legislations, policies and practices in Cameroon empower women. The framework has developed five levels of empowerment in an increasing order to measure the impact of a development action on the empowerment of women namely welfare, access, conscientisation, participation and finally control of resources such as land in a society.⁶⁸ In this order, the framework depicts that it is not just enough for women to have access to land, but they should have access to land like the men to help improve the women's welfare and that of the family. This equality can be obtained by securing equality of opportunity through the institution of gender sensitive land reforms.

According to this framework, women should actively participate in the decision making process, policy making, planning and administration of land issues on equal basis with the men. Also, important in this framework is conscientisation which holds that women should be aware both individually and collectively of their subordinated position on land issues; they should be aware of the need to own land as a right and how land can be owned in order to improve on their position in the society. Above all, women should have

⁶⁷ S. Longwe, 'The Women's Empowerment Framework'. Women in development, culture and youth: Workshop preparatory readings 1-3 by Longwe, S. & Clarke, R: reading 11.4. (1994).

⁶⁸ M. Karl, Women and Empowerment: Participation and Decision Making. London: Routledge (1995) p 14.

control over land ownership void of any form of restriction.⁶⁹ Control over land is the ultimate level of empowerment. At this level, women can own, control and make decisions over the land and the proceeds from the land. This framework is pertinent in this study because it depicts that from the level of access to the level of control, the woman should be able to ensure both her welfare and that of her family. She should be able with the help of owning land, to generate more income and food to take care of herself, participate in decisions that concern the community and have control over her life.⁷⁰ Besides, empowerment is not characterized as achieving power to dominate others, but rather power to act with others to effect change both at the family and community levels.⁷¹ Hence, this study is advocating that women too should be given the chance or be empowered to own land independently.

Additionally, some proponents of empowerment⁷² hold the view that for a woman to secure an equal position on land matters, she needs to be assertive or empowered (educationally, economically and legally), have a sense of self worth in order to be able to facilitate her respect, productivity, participation in decision making activities and to better negotiate relevant issues within a society.⁷³ This position may help her challenge the unequal gender power relations that often exist within and outside the family circle and allow her to acquire land ownership. Hence, it is believed that women are more likely to

⁶⁹ *Ibid*, p 109

⁷⁰ This is because in most African societies and in the rural setting in particular, the amount of resources or wealth a person has plays a greater role for him/her to be respected and listened to when it comes to decision making in community activities and this wealth is often backed by land ownership.

⁷¹ J. Stein, *Empowerment and Women's Health: Theory, Methods and Practice*. London: Zed Books (1997) p 7.

⁷² B. Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge: University Press (1994). Also see B. Agarwal, 'Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market'. (2003) Vol.3 Nos. 1&2 *Journal of Agrarian Change*, p 178.

⁷³ *Ibid*

exercise greater decision making power in the society when they have control over land. Thus, the study analyses this concept and examines whether the government has created an enabling environment that could permit the vulnerable and in particular women to have control over land in order to live a dignified life in the society.

1.5.7 The Concept of Women's Triple Roles

Certainly, one can fully understand the important role of women and how limited access and restricted control over land affect their productivity only if this is related to the concept of women's triple roles. The women's triple roles framework as designed by Moser⁷⁴ asserts that women operate within the reproductive, productive and community spheres and that unless development policies are designed to meet practical and strategic gender needs, women will under perform in their triple roles. Moser's triple roles framework will help us to analyse the fact that because most developing societies such as Cameroon neglect women's triple roles and recognize only their reproductive role, most of their development policies marginalize women. This study argues that land right is a strategic gender need for women which if achieved through land reforms and other institutional measures that protect their right of tenure, will positively influence their dignified status in the society.

The above frameworks are being employed as important tools to help facilitate the understanding of the diverse perspectives and numerous questions surrounding the issues of equal access to land in Africa and in Anglophone Cameroon in particular.

⁷⁴ C. Moser, *Gender Planning and Development. Theory, Practice and Training*. New York, Routledge (1993).

1.6 Literature Review

After reviewing the works of earlier researchers both from within and outside the country, it is discovered that some studies have been carried out relating to the topic. For instance, Studies on access to land in the Anglophone Region has been done by Cyprian Fisiy, Miriam Goheen etc. Fisiy for example, focused on the various forms of access to land and how land was accessed under the various regimes (from pre-colonial, colonial and post colonial periods) that ruled the regions.⁷⁵

Also, a study has been carried out on the administration of land in Anglophone Cameroon.⁷⁶ In this research emphasis was laid on how the colonial masters (the British Colonial Regime in particular) managed and controlled the indigenous land both in Cameroon and Nigeria. Furthermore in criticizing the land conflicts in North West Region, highlight was based on the strong influence traditional rulers have over the indigenous population and the control of natural resources such as land. The above studies pointed out the socio-economic challenges as the major causes that have led to the unequal distribution of land that exist in Anglophone Cameroon.⁷⁷ In addition, Yanou⁷⁸ carried out a study in this area and dwelled extensively on issues of equality and access to land in the context of South Africa but made very limited references to the Cameroonian situation.

⁷⁵ C. Fisiy, (1992) *op cit.*

⁷⁶ C.K. Meek (1959) *op cit.*

⁷⁷ S. Y. Awasom (2006), *op cit.*

⁷⁸ Yanou, M. *Access to Land in Post-Apartheid South Africa: An African Perspective*. Bamenda: Langaa Books (2009).

1.7 Justification of the Study

It is worth remarking that most of the studies carried in this area, focused on the socio-economic challenges the women faced in accessing land. They also outlined the laws governing access to land in Cameroon but failed to legally address the notion of unequal access to land taking into consideration the status of majority of the population (women in particular) whose land rights have been restricted for the past generations. It is on this basis that this researcher specifically addresses the problem of unequal access to land from a purely legal perspective. This study detailing examines the land laws and issues relating to the application of the laws in Cameroon and how policy recommendations could be used to address the unequal access to land. In this light, particular attention is paid to the peculiar situation of women who have suffered a disadvantaged position in accessing land for ownership for the past generations in the regions.

In addition, this study is carried out because the obvious disparity in land holding between men and women under study is a cause for concern which needs to be resolved for purposes of peace and even development. Also, the existence of plurality of laws regulating land tenure in Cameroon is a worry that needs to be addressed.

1.8 Scope of the Study

This study covers the notion of equality as it relates to access to land in Cameroon with specific reference to the Anglophone regions of Cameroon which comprises specifically the South West and North West Regions. The former region has six divisions (Fako, Kupe/Muanenguba, Lebialem, Manyu, Meme and Ndian) with a surface area of 24,571

km².⁷⁹ While the North West Region has seven divisions (Mezam, Bui, Boyo, Donga/Mantung, Menchum, Momo and Ngoketunjia) with a total surface area of 17,400 km².⁸⁰ The total population of these regions is 3,083,200 inhabitants.⁸¹ Specifically, the population for the South West Region is 1,242,700 and 1,840,500 for the North West Region.⁸² Appendix 1: Map of Cameroon showing the two Anglophone regions which are the focus of this study is illustrative.

The research involves a detailed review of the laws governing access to land in the country and does so in the context of how the idea of equal access to land plays out in practice in the regions under reference. The research in spite of this, is limited to the examination of gender equality as it relates to the gendered application of the laws on access to land in the Anglophone regions. Although land may be typically accessed through gift, inheritance, purchase, and leases, this study is limited to access to land through inheritance and purchase. The study is limited to this extent because access to land through these two forms will enable the researcher to clarify issues on how the notion of equal access to land is practiced in the regions.

The Anglophone regions have been selected for the study because of their peculiarities with regards to women and access to land in Cameroon. For example, apart from inheriting the English Common Law system, these regions were managed under the same

⁷⁹ [http://en.wikipedia.org/wiki/southwest-region-\(Cameroon\)](http://en.wikipedia.org/wiki/southwest-region-(Cameroon)) (2009). (Accessed on 14/01/2010)

⁸⁰ Grassfield Participatory and Decentralised Rural Development Project (GP-DERUDEP). Baseline study of the NW Province, November 2006, p 6.

⁸¹ Available at the Website of the Ministry of Territorial Administration and Decentralisation, 2009: <http://www.mintad.net/en>. (Accessed on 21/04/2010).

⁸² *Ibid*

colonial land tenure law before the enactment of the harmonized land law of 1974. They have very similar customary land laws which are notorious for circumscribing the powers of women to access land. Also, these regions have been experiencing similar crises relating to access to land⁸³ which makes this research particularly timely.

1.9 Research Methodology

Although an essentially legal study, the study also dwells on the enforcement and interaction of the law on land issues. This study involves the content analysis of both the primary and secondary data as sources of information. The existing documentation relating to land use and management include legislation, case laws and policy documents are used as the primary data of the study. These primary data will be reviewed in an in-depth manner in order to better appreciate the dynamics of the rules of equal access to land in the regions under reference.

In addition, the study involves a review of secondary sources such as journals, textbooks, internet sources (such as West Law, J Stor and Google). The review of these secondary data helps to show how the legal system regulating land rights is perceived by other scholars. In deed, it is this approach that stimulates a better understanding of the context of the study and also helps to formulate and guide the analysis. Besides, it is the review of these secondary data that positions the researcher to draw insight from other jurisdictions such as South Africa, Uganda, Kenya, concerning how the problems of unequal access to

⁸³ S. Y. Awasom, 'Righting the Wrong and Writing the Law in Cameroon: Fumbuen Women Against Fon Simon Vugah II', (2006) Nos. 1&2, *CODESRIA Bulletin*, 41-45; Also see Fisiy, *op cit*

land have been addressed. These countries are chosen because they have experienced and responded to problems of unequal access to land similar to those of Cameroon.

Furthermore, to carry out data collection and analysis, instruments such as a structure interview guide, and open and close-ended questionnaires are used to ascertain questions of the application of land laws on equal access to land in the country. Both instruments are used in order to correlate the ideas from the key informants with those from the respondents to achieve a coherent analysis. The targeted or sample populations are women and men from the rural and urban areas, legal practitioners, land experts, Non Governmental Organizations (human rights experts) and traditional rulers. The population is purposively targeted because it is likely that the targeted population is knowledgeable and could easily understand the objectives of the study in order to give reliable and required responses. A total sample population of 800 persons is purposively targeted in the entire study to collect the information. 400 persons are selected from each region to address issues relating to gender equality and land ownership under the 1974 Land Ordinance. Thus, from the above, both the qualitative and quantitative methods are used to collect data on issues related to equal access to land.

With regards to research design, the study involves primarily content analysis as well as description of the data collected. The qualitative data is analysed based on content analysis of the relevant land laws and case law files on equal access to land while the quantitative data is presented and analysed in a tabular form whereby percentages of the number of existing land titles are calculated in relation to gender ratio. These designs are chosen

because they help to add more clarity to the research findings as well as highlight the various perceptions of respondents on some of the key issues and to provide answers to the hypotheses raised in the study.

1.10 Significance of the Study

This study on the concept of equality and access to land in Cameroon is important in that it leads to greater conceptual clarity of equality as well as a better understanding of the dynamics of the rules for accessing land in the country. The research is certain to stimulate positive action in the management of land and to improve on the existing machinery for acquiring land with the view of achieving equality of access for both males and females. The research can to this extent contribute to the introduction of reforms in the domain of land law to reduce the prevalent injustice against women as evidenced by the current uneven distribution of the resource.

The study is particularly important for the additional reason that the last major land reform in the country took place in the mid 1970s during the regime of President Ahmadu Ahidjo. This study which identifies and examines the discriminatory incidents in the country's land right model is particularly relevant for calling attention to the circumscribed access to land by vulnerable groups like women. This is all the more relevant because the existing land laws such as the 1974 Land Ordinance did not specifically address the issue of the skewed land distribution to the disadvantage of women.

A significant value of this research lies in the fact that it makes recommendations consistent with the country's present democratic culture. If as the researcher hopes these

recommendations are adopted in any subsequent land reform, the outcome of the research will have contributed to the elaboration of a new land right paradigm that moves away from discrimination and male dominance, and becomes consistent with currently prevalent world wide trends on democratic governance. The study is vital because it intends to ensure that a new land model is designed to reflect the socio-cultural and economic realities of the majority of the population.⁸⁴

The strength of this research further lies in the fact that it points out that the mere enactment of laws is not sufficient to redress the age-old problems of unequal access to land by women in Cameroon. After drawing insights from other jurisdictions such as South Africa, Kenya and Uganda which have introduced proactive approaches such as affirmative actions, the candidate argues for the introduction of similar mechanisms to attenuate the problems of unequal access to land by disadvantaged groups in Cameroon. This comparative perspective which the research adopts enriches research in the university in particular and the country in general. It is hoped that drawing this kind of inspiration will improve the quality of the research and have a positive impact on efforts in the country to improve on land ownership for a vulnerable group, namely women.

Also, the importance of this research lies in its adoption of a multidisciplinary approach in the study. Although this study is essentially in the domain of land law, it conceptualizes the subject of land ownership from a human rights dimension. It also illuminates issues of gendered land conflict that challenge the peace and development of any given society. The

⁸⁴ Logo, P. B. & Bikie, E. H., Women and Land in Cameroon: Questioning Women's Land Status and Claims for Change, 2003, *Planet Survey*.

research has commendably synthesized this approach in order to enable legal scholars to understand each concept and the relevance of adopting this multidisciplinary approach in future contemporary study.

Dealing with land rights as a human right and situating issues of equal access to land in the context of human rights introduces a new dimension in the conceptualization of land rights in Cameroon. It is apparent that this approach prioritises issues of equal access to land for vulnerable groups (women) in the hope of affecting the lopsided land holding pattern currently operating in the country.

Also, a research on land ownership is profoundly important because land is a basic necessity to ease livelihood for all human beings. In Cameroon, it is impossible for cultural reasons for a landless and homeless individual to live a dignified life since the resource is a pre-requisite for sustenance, stability, justice, peace, security and development. Land is considered a natural, common heritage and an exploitable resource. Land is regarded as a source of finance and power in the society.⁸⁵ Indeed, land is a source of economic empowerment and its acquisition and control enhances one's wellbeing. This researcher's preliminary studies have demonstrated that the commoditization of land has made issues of land ownership contentious and volatile between the women and men in the society. Hence, the research will hopefully encourage Cameroonians to see not just the value of equal access to land but its connection to peace, justice and sustainable development to be adhered to in Cameroon.

⁸⁵Logo, & Bikie, (2003). *Op cit* p.3.

This study will lead to the publication of articles in learned journals both within and outside the country. These publications would be certain to stimulate public opinion on the skewed distribution of land between men and women and to facilitate land reforms in the country. It is hoped that the recommendations made in this study will influence policy makers to enhance a more rational distribution of land that will have positive impact on all the citizens.

In addition, the significance of the study lies in the fact that it collates, synthesizes and makes available case law and statistical data on the state of land law in Anglophone Cameroon. It will in the future act as critical input or body of knowledge for state officials, development planners, policy makers, legal practitioners, judges and scholars. The study is critical because it will act as a source of reference on the state of land law in Cameroon on how equal access to land can be guaranteed in the country.

1.11 Definition of Key Terms and Conceptual Clarifications

1. Equality:

Equality is a moral idea denoting similarity of treatment of people who are similarly situated.⁸⁶ In substance, it requires that where people of the same circumstance have the same capability of enjoying a facility, they should be treated alike void of any form of discrimination. Equality is by and large, synonymous to non-discrimination.⁸⁷ The definition of equality will be treated in detail in chapter 2.

⁸⁶See R. Palmer, *The Age of Democratic Revolution*. Princeton: University of Press (1959). pp 510-511.

⁸⁷N. Lerner, *Group Rights and Discrimination in International Law*. The Hague: Martinus Nijhoff, 1991. p. 25.

2. Land:

Land is one of those concepts with multiple definitions. Land broadly refers to any ground, soil or earth and also to things of a permanent nature found on land.⁸⁸ More specifically, land refers to real estate or real (tangible or immovable) property which may be conveyed by deed.⁸⁹ However, it seems obvious that land in substance refers to the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, and includes free or occupied space for an indefinite distance upwards as well as downwards.⁹⁰ The notion of land is used in this study in accordance with the principles inherited from English Common Law to mean an immovable part of the earth surface which includes every thing permanently affixed on it from “up to the sky and down to the centre of the earth”.⁹¹ It has been observed that in most Cameroonian traditional societies, land is considered as a common heritage, which is, as a physical, cultural collective space inherited from the ancestors and held in trust for descendants.⁹² It is a community resource space transmitted from generation to generation.⁹³

Land under the Cameroonian legal system is one of the major factors of production, an economic asset, a source of wealth and a store of wealth. Ownership of land has in many

⁸⁸ J.A. Mackenzie & M. Phillips, *Land Law* (8th ed). London: Blackstone Press Limited (2000); Also see James R. W. *Modern Land Law of Nigeria*. Ife: University of Ife Press (1971). p 13.

Also see Cf. *Commonwealth v N.S.W. (1923) 33 C.L.R.1.*

⁸⁹ H. Gifis *Steven Law Dictionary* (2nd ed.). New York: Barrons’s Educational Series Inc (1984).

⁹⁰ M.A. Henry Campbell Black, *Black’s Law Dictionary* (5th Edition). Boston: St Paul Minn. West Publishing Co (1979).

⁹¹ The Property and Conveyance Law, Cap. 136 Laws of Bendel State of Nigeria, 1976. Cap Law of Western Nigeria, 1959.

⁹² Logo, B. & Bikie, E. ‘Questioning Women’s Land Status and Claims for Change’.

<http://www.law.emory.edu/wandl/WAI-studies/Cameroon.htm> (accessed on 15/11/09).

⁹³ Ibid

cases been a source of social, political and economic power and great status.⁹⁴ The importance of land in every society is such that learned authors have considered its study indispensable. According to H.T. Kimble, land is for example, considered as an important resource in the hierarchy of African values noting that there is little to compare with land.⁹⁵ It is because of the importance of land to Cameroon that this study points out that its legal protection is imperative.

Under customary law, land is treated like other natural elements such as water, fire, and air which cannot be a subject of individual ownership.⁹⁶ It is for this reason that land is understood to constitute part of the natural heritage of mankind. This view is reflected by the Mankon Customary Court in *Lucas Awah of Mankon v Ndenge of Mankon*.⁹⁷ In this case, the plaintiff sought to have exclusive rights over a stone quarry that was situated on his piece of farmland. The Customary Court rejected this claim, stating that:

Like all other gifts of nature such as land, water sand, stones and air. They are free gift for the use of everybody. We have investigated in this case and have seen that the plaintiff had title over the farmland in dispute ...

⁹⁴M.L. Tarkang, 'Property Acquisition and Ownership Amongst the Bakweri People of Cameroon'. LLM Thesis, University of Ahmadu Bello, Zaria Nigeria 1992 p 10.

⁹⁵ See H.T. Kimble, *Tropical African Vol. I Land and Livelihood*. New York: Anchor Books (1960).

⁹⁶H. Henry, 'The Role of Land law in the Rural Development in Niger, The Ivory Coast, and Nigeria under Development Law Aspects', (1983) Vol. 28 *The State and the Law*, p 71. Also see Fisiy, *op cit* p 236.

⁹⁷ Civil Suit No 70.64 of 4.6.64 (Unreported).

On the strength of this reasoning, community head would hardly refuse to give out land and everything attached to indigenous people since land is seen as a natural gift to the people in a given community. It is worth noting that the term ‘land’ may be used interchangeably with ‘property’, although strictly speaking the latter is conceptually wider than and incorporates the notion of land.⁹⁸

3. Access

Access literally means the opportunity or right to have something for use or own in this case, land.⁹⁹ When applied to land ‘access’ is used in justifying rights to landed property both for agricultural and residual purposes.¹⁰⁰ Access to land occurs in different forms including the right to use, ownership, possession, and inheritance of landed property. Access to land also occurs through succession, purchase, gift and lease.¹⁰¹ The main thrust of this study relates to access to land in the form of land use and ownership which are contentious in the regions.

4. Ownership

The Cameroonian Constitution¹⁰² defines ownership of property (land) in its preamble¹⁰³ as the right guaranteed every person by law to use, enjoy and dispose of the property and no person shall be deprived of such right. The right to own and control property (land) must have legal backing.¹⁰⁴ Ownership guarantees to the owner absolute security and right

⁹⁸ M.A. Black, *Black's Law Dictionary* (5th Edition), (1979). *op cit*.

⁹⁹ Oxford Advance learners Dictionary. New 7th Edition.

¹⁰⁰ A. Kuenyehia et al, *Women and Law in West Africa. Situational Analysis of Some Key Issues Affecting Women*. Accra: Yamens Printing and Packaging Ltd (1998) p 193.

¹⁰¹ *Ibid*.

¹⁰² The Cameroon Constitution, 2008.

¹⁰³ The preamble is now made part and parcel of the constitution by virtue of Article 65 of the Constitution.

¹⁰⁴ F. Pollock, *First Book of Jurisprudence*. Edinburgh: R. and R. Clark Limited (1929) p 172.

to manage and exploit the land and the authority of the owner is final and cannot be challenged.¹⁰⁵

Ownership of property is either absolute or qualified. The ownership of property is absolute when a single person has dominion over it, could use it or dispose of it according to that person's own pleasure subject only to general laws.¹⁰⁶ Ownership conceptually carries the characteristic of being indeterminate in duration.¹⁰⁷ The position of an owner differs from that of a non-owner in possession. The latter's interest is subject to be terminated at some future date whereas the interest of the owner can endure forever.¹⁰⁸

For one who is in possession of property to be considered as owning the property, the possessor must have effective control (*corpus possessionis*) and the intention to hold the property as owner (*animus domini*). The permanent loss of one or the other usually brings possession of the property to an end while the loss of both brings ownership of the property to an end.¹⁰⁹ This denotes that one cannot boast of owning a property when he or she lacks effective control and the intention to hold the property.

¹⁰⁵ A. Utuama, *Nigerian Law of Real Property*. Ibadan: Shaneson C.I. Limited (1989) p. 15.; Also see James, R.W., (1971). *Op cit*, p. 1.

¹⁰⁶ Black, M.A. *Black's Law Dictionary* (5th Edition), (1979) *op cit*.

¹⁰⁷ C.O. Olawaye, *Title to Land in Nigeria*. Ibadan: Evans Brothers Ltd (1981) p 5.

¹⁰⁸ J.W. Salmond 'Jurisprudence', (7th edition). London: Sweet & Maxwell (1924); Also see R.W., Dias, *Jurisprudence* (4th ed.). London: Butterworth (1985). p. 388; Also see J.N. Samba, *Fundamental Concepts of Jurisprudence*. Lagos: Peach Global Publication (2003) p. 190.

¹⁰⁹ Savigny, *Possession* (Translated by Perry, 1848). <http://www.amazon.com/savignys-Treatise-possession-possessions-civil/dp/1584772891> (Accessed on 7/01/2010). In legal terms, possession is the physical control a person exercises over a thing or property independent of the law. This control may arise by virtue of a grant from the owner of the land. Possession may in other words mean a right of occupancy or user of determinable interest and this is the type of right to land that members of a family or community have void of any form of alienation of the land.

However, it has to be stressed that ownership in the traditional context carries a different notion. In customary land law, ownership is a multi-referential word that may constitute absolute ownership. For example ownership under customary law implies that land may be owned through inheritance by the family, not based on any restricted descending order of lineal heirs.¹¹⁰ Once land is transmitted to an heir, he owns it in substance on behalf of the family, void of any form of limitation.¹¹¹ This is so because customary jurisprudence does not know individual land ownership.¹¹² Ownership of land is used in contradistinction to ‘usufructuary right’. The term ‘usufructuary right’ which originates from the Roman legal terminology denotes in customary land tenure the right to use only. ‘Usufructuary right’ is the opposite of absolute ownership.¹¹³ This research which concentrates on access as a form of absolute ownership highlights the marginalization of women in the domain of land in the two English regions. This study recommends that marginalized individuals in the regions be permitted to enjoy equally this right of ownership of land and not only usufruct right as it has been the practice in the region.

¹¹⁰ Olawaye, *op cit*, p 84.

¹¹¹ T.O. Elias, *Nigerian Land Law* (4th Edition). London; Sweet & Maxwell (1971) p 239. Elias states that ownership may be referred to in English land law to mean fee simple absolute. ‘Fee’ means that the land is heritable and it will last until the owner dies intestate and leaves no heir; ‘Simple’ means that the land is capable of descending to collateral, if there are no lineal heirs, i.e it is not restricted to a particular class of heirs; ‘Absolute’ means that the land is disposable absolutely by the tenant (or owner) either inter vivos or by will, and also that it is not subject to any condition or limitation.

¹¹² Per Viscount Haldane in *Amodu Tijani v Secretary of State for Southern Nigeria* (1921) 21 AC, p 339. The notion of individual ownership of land is quite foreign to customary laws. See also, Ekor Tarh J. in *Thomas Ngo v Moses Lukong & Another*. 13CA/10/75 (Unreported). Also see G. Bowman, and A., Kuenyehia, *Women and Law in Sub-Saharan Africa*, Sedco Publishing Limited 2003 p. 137.

¹¹³ R.W., James, *op cit* p 16. In most African traditional societies and Cameroon in particular, absolute ownership lies in the community, the village or the family and individual members of these institutions can only have ‘usufructuary rights’ in the land. That is, right to use and not right to own, to lease out, mortgage, bequeath or sell land and this right is often determinable.

7. Land Registration:

Land registration refers to the keeping of public records of all legal transactions affecting land.¹¹⁴ The practice of land registration has been used to predetermine the content of the property rights being registered. In such a situation, rather than technically mapping or capturing existing legal rights, registration is used to, or results in, a transformation of legal rights.¹¹⁵ Once a property (land) is legally registered, what is given to the owner of the land is known as a legal land title. Once this title is obtained, his right on that land is unchallengeable. Land registration is managed by the Land Consultative Board and the Ministry of State Property and Land Tenure in Cameroon.

8. Land Consultative Board

The Land Consultative Board is an administrative body created by Article 16 of Ordinance No. 74-1 of 6 July 1974 as well as Article 12 of Decree No. 76-166 of 27 April 1976.¹¹⁶ This board which is charged with managing land matters has the responsibility to inspect land for registration, and to resolve land and boundary disputes over unregistered land.¹¹⁷ It is worth mentioning that each division of the regions has a Land Consultative Board. The Board consists of eight members namely: The Divisional Officer as the chairperson; Divisional Chief of Service of Land Certificate as the Secretary; Divisional Chief of Service of Survey as a member; Divisional Chief of Service of Town Planning in the case of an urban project as a member; Divisional Chief of Service of Agriculture in

¹¹⁴ D. Watcher, 7 English, J., 'The World Bank's Experience with Rural Land Titling' (World Bank Environment Department, Divisional Working Paper No. 1992-35, (1992) p 35.

¹¹⁵ Ibid.

¹¹⁶ This Decree establishes the terms and conditions of management of national lands by the appointed Board members.

¹¹⁷ Fisiy, p 117

case of farmland or rural project as a member; the traditional head with two notables from the community where the land is situated as members.

The Board is not a court. The Board by its composition is purely an administrative agency. It is merely a consultative organ set up to give advice to disputing parties on land matters and renders recommendations for the Minister in charge of lands to take a decision if need arises.¹¹⁸ Its conclusions are not decisions but recommendations. The Minister is at liberty to accept or reject recommendations as he pleases. It is worthy of note that any decision that is later taken by the Minister will be an administrative act which can be challenged only before the Administrative Bench of the Supreme Court.¹¹⁹ The above procedure denotes that only the Board and the Minister have jurisdiction over land disputes. Hence, the law gives no other official even the Senior Divisional Officer, the power to determine who is to receive a land certificate over an unregistered land under dispute.¹²⁰ If a party is dissatisfied with the recommendations of the Board, the person to consult or appeal is to the Minister who alone has competence to review the recommendations of the Board.¹²¹

Furthermore, by virtue of the 2005 Decree, issues relating to land disputes are not resolved judicially but administratively. Also section 5(3) of the 1974 Land Ordinance states that all cases dealing with landed property pending in courts and which are introduced outside

¹¹⁸ See the case of *Frida Sirri v John Milla*. Appeal No. BCA/25.L/79. It was held that on the procedure for contesting the decisions of the Board, where a party is dissatisfied with the decision of the Board, the party must petition to the Minister in charge of lands and by reason of section 20 of Decree No. 76/165 of 27/4/76, the Minister acting as a 'Ministerea Juge' would give a decision which could only be appealed against at the Administrative Bench of the Supreme Court.

¹¹⁹ Ordinance No 72/4 of 26/8/72 on Judicial Organisation.

¹²⁰ See *Namange Ngombe J. v Molua Simon Mekeve & Others*. Suit No CASWP/44/2004.

¹²¹ This is clearly stipulated by section 20 (1) of Law No 9 of 26th November 1983 amending Decree No 76/165 of 27/4/76.

the scope of the registration procedure shall fall within the jurisdiction of the Land Consultative Board provided for in Article 16 of the same ordinance. The dossier relating to such cases is to be transferred to the said Board when the Ordinances shall have entered into force. This procedure has been challenged by C.F. Fisiy by stating that:

This provision of the law does not even specify which law is applicable in resolving land disputes. This silence on the part of the 1974 Ordinances permits members of the Consultative Board to resort to local normative systems. This reinforced the argument that land is acquired under customary law and registered under state law.¹²²

The practice of the Board has not helped to improve equal access to land in the society. Instead, it consolidates the customary exclusionary rule of women on land ownership. This notion has caused most litigants (women) not to be satisfied with the decisions of the Board.¹²³ One of the anomalies responsible for some of the poor decisions of the Board has been the fact that Ordinance No 74/1 does not specify which law should be used by the Board with regard to disputes over land use rights. Also, the Board is ineffective because its statutory members lack the necessary legal skills to adjudicate on land matters. Further, there are allegations of corruption and bias which have characterized the working of the Board.¹²⁴ Women who are often faced with financial constraints, lack the means to

¹²² See Fisiy *op cit* p 140.

¹²³ The case of *Frida Sirri v John Milla*. Appeal No. BCA/25.L/79 is illustrative.

¹²⁴ Tiku-Tambe, C. 'Dispossession of Land in the Coastal region of Cameroon and its Effects'. Ph.D class assignment on Contemporary legal problems, 2010.

buy off the members to safeguard their land rights. Hence, they rarely benefit from any favourable decisions taken by the Board.

9. Human Rights:

This refers to the intrinsic attributes which human beings possess by virtue of their humanity. Advocates of human rights assert that they are universal, inalienable and inherent and these rights are aimed at ensuring that the dignity of man is safeguarded.¹²⁵

These advocates further assert that the recognition and protection of human rights is a vital prerequisite for equality, peace and development not only within a given community but in the world.¹²⁶

Others claim that there is as yet no universally accepted definition of human rights. F. Viljoen¹²⁷ has for instance observed that human rights carry two possible connotations. The term according to this writer may be used in an abstract or philosophical sense denoting a special kind of strong moral claim that all human beings may invoke in a society for the simple reasons that they are human beings.¹²⁸ These rights attach to each individual intrinsically distinguish human beings from other living species. A major feature of human rights when viewed from this philosophical dimension is the fact that there are not conferred by any governmental authority.¹²⁹

¹²⁵ Spencer, M. & Spencer, J., (2001). *Human Rights Law in a Nutshell*. London: Sweet & Maxwell, p 5.

¹²⁶ See the Preamble of the Universal Declaration of Human Rights 1948. It was adopted in resolution 217A (III) of the General Assembly of the United Nations on the 10th of December, 1948.

¹²⁷ F. Viljoen, *International Human Rights laws in Africa*. Oxford: University Press, (2007) p 4.

¹²⁸ Ibid; Also see P. Sieghart, *The Lawful Rights of Mankind An Introduction to the International Legal Code of Human Rights*. Oxford: Oxford University Press, (1985) p 1.

¹²⁹ M. Kaur, *Teaching of Human Rights*. A PH Publishing Corporation (2008).

The second way in which human rights may be perceived is a more pragmatic one which regards the notion as the manifestation of these moral claims in positive law.¹³⁰ Here, legislation whether municipal (constitution) or international (convention), is used as an instrument to transform these moral claims into effective laws. When expressed in legislation, human rights according to this view become binding both on governments and individuals. Almost all countries have constitutional provisions guaranteeing foundational human rights values, just as the principle of equality and non-discrimination is enshrined in the preamble of the 1996 Constitution of Cameroon.

It can be argued however that the distinction between these two understandings of human right is artificial.¹³¹ Viljoen has for this reason made a connection between the two when he noted that ‘the first understanding of the term will be referred to as human rights, and the second as human rights law’. Either way one looks at human rights, their core attribute conceptually is their relational character¹³² since they refer to rights to which every person is entitled to as human being living in a human society. Human rights automatically come to play as men and women interact in society.

Also, it is worth remarking that human rights are classified chronologically in terms of their development.¹³³ Thus, human rights first appeared as individual rights from the 17th to 19th centuries (first generation rights – civil and political rights); then as socio-economic and cultural rights in the 19th and 20th centuries (second generation rights) and

¹³⁰ Viljoen, *op cit* p 25.

¹³¹ Ibid

¹³² See M. A. Yanou, *Human Rights Themes and Perspective*. Unpublished Manuscript (2010).

¹³³ Mqeke, R.B., *op cit* at 11

finally as solidarity rights which stress on development and environmental interests (third generation rights).¹³⁴ In this study, focus is on the right to access land which is an aspect of the socio-economic rights (second generational rights).

Human rights also emphasize the respect for the equality in rights and dignity of all people in any given society. Hence, right to land has been derived from a human rights perspective. This is because a human being cannot fully boast of enjoying all his or her inherent rights when he or she is landless in a system where equal rights to land are well implemented. The preamble of the Cameroon Constitution of 2008 and the 1974 Land Ordinance which are the main legal documents governing land reforms, have guaranteed land ownership as an equitable priority and a constitutional right.¹³⁵ Cameroon is a country plagued by numerous normative systems and the aspect of equal ownership of land as a human right has not been realized in the country.

1.11 Synopsis of the Chapters

Chapter 1 gives an introductory overview of the entire study. Chapter 2 will focus on the concept of equality from a land right perspective. The chapter traces in detail the historical evolution of the notion of equality world wide and in Africa (Cameroon). Chapter 2 also highlights the different types of equality as well as the customary rules of access to land in the context of equality.

¹³⁴ Yanou, M., (2009) *op cit* p 11.

¹³⁵ The preamble for example states that 'ownership shall mean the right guaranteed every person by law to use, enjoy and dispose of property ...'

For its part, chapter 3 covers a critical analysis of equal access to land under the different legal regimes in Cameroon (that is the customary land rights and the statutory land rights regimes). To offer relevant context, the chapter reviews the mechanisms for accessing land during the colonial regimes as well as during the post colonial period. This chapter will also shed more light on land registration process under the 1974 Land Ordinance which is the main mechanism for land ownership in Cameroon. The chapter reviews the various instruments on the subject and situates the State's obligation under these instruments with regard to equal access to land in Cameroon.

Chapter 4 investigates the possible conflicts that exist in relation to access to land and how these impact on the capacity of women to acquire land in the regions under reference. It critically discusses conflict in relation to the principle of inheritance of family property; marital conflict over property acquisition; land conflict between customary guardians and the indigenous population; land conflict between farmers and cattle graziers; and the impact of these conflicts on the status of women, to peace and development of the regions.

Finally, chapter 5 dwells on the comprehensive review of the findings made from case-law data, interviews and the content analysis of legislation and secondary documents. In reviewing these data, the author makes her own contribution and comments on how to improve access to land for women specifically and other disadvantaged groups generally. In doing this, the candidate draws examples from appropriate foreign jurisdictions such as Kenya, Uganda and South Africa in order to properly interpret the land legislations as well as to offer an insight on Cameroonian case law. This chapter ends with a conclusion and

recommendations. Although this chapter is a summary of the study, the candidate emphasizes the need for the amendment of land reform in Cameroon taking into account the weaknesses of the relevant existing legislation in safeguarding equal access to land for men and women and the need for peace and sustainable development in the country.

CODESRIA - LIBRARY

Chapter Two

THE CONCEPT OF EQUALITY: A LAND PERSPECTIVE

Introduction

This chapter which deals with the concept of equality begins with a definition and analysis of the notion. After this, the chapter discusses the historical evolution of the notion of equality. Equality as discussed here is situated within a world wide and an African-Cameroonian context. The chapter also critically analyses the customary rules of access to land in the Anglophone regions within the broad parameters of the concept of equality.

2.1 The Concept of Equality: Definition and Analysis

A situation is discriminatory or unequal if like situations are treated differently or different situations are treated similarly.¹³⁶ In substance, equality according to John de Waal¹³⁷ is a moral idea which implies that where people of the same circumstance (human beings) have the same capability of enjoying a facility, they should be treated alike void of any form of discrimination. Equality is by and large, synonymous to non-discrimination.¹³⁸ Although the concepts of equality and discrimination can be differentiated, a careful review of international instruments reveals that the goal of equality is usually achieved in the first instance through a prohibition on discrimination.¹³⁹ According to Black's Law

¹³⁶ K.M. S. Rhona, *International Human Rights* (2nd edition). New York: Oxford University Press, (2005) p 185; Also see W. Currie, *et al*, *The Bill of Rights Handbook* (4th edition). Cape Town: Juta, 2001.

¹³⁷ Johan de Waal; I. Currie and G. Erasmus, *The Bill of Rights Handbook* (4th ed.). Cape Town: Juta, (2001).

¹³⁸ N. Lerner, *Group Rights and Discrimination in International Law*. The Hague: Martinus Nijhoff, 1991. p. 25.

¹³⁹ The Charter of Fundamental Rights of the European Union contains one of the most far reaching provisions on non-discrimination. Its Article 21 prohibits 'discrimination based on any ground such as sex,

Dictionary, the term refers to persons under the same conditions and who are similarly situated.¹⁴⁰

The idea of treating persons as equals is a way of expressing the general features of ethics or moral right. In evaluating our conduct ethically, we need to inquire whether our conduct treats persons in the way we would ourselves, so situated, want to be treated.¹⁴¹

The concept of equality is an important aspect and a core principle in the domain of fundamental human rights. The need to practice and apply equal treatment principles to people who are similarly situated in a society is a core value to human rights.

Equality has acted as a key feature in most national and international laws. At the national level for example, the Preamble¹⁴² of the Cameroon Constitution¹⁴³ protects the equal rights of all citizens by stating that:

all human beings, without distinction as to sex, race, religion, belief, possess inalienable and sacred rights ... all persons shall have equal rights and obligations. The states shall provide all its citizens with the conditions necessary for their development.

race, colour, ethnic or social origin, genetic features, language, religion or belief, property, age, disability or sexual orientation.

¹⁴⁰ M.A. Black, *Black's Law Dictionary* (5th Edition). Boston: St. Paul Minn. West Publishing Co. (1979). It notes that the equal protection clause in the US Constitution refers to equality under the same conditions among people.

¹⁴¹ David, A. J. Richards. *Justice and Equality in 'And Justice For All. New Introductory Essays in Ethics and Public Policy'*. Tom Regan & Donald Van De Veer (eds.) New Jersey: Rowman and Allan Held, (1982) p 246.

¹⁴² By virtue of Article 65 of the Cameroon Constitution, the preamble is considered as part and parcel of the constitution.

¹⁴³ The Cameroon Constitution, Law No 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No 96/6 of 18 January 1996.

This foundational provision of equality is reiterated in Article 1(2) of the Penal Code¹⁴⁴ which states that the equality of all citizens must be ensured before the law. It is obvious from these provisions that the country's legal, administrative success as well as the development of the country is predicated on a foundation of equality. This explains why the current research deals with access to land in the country from a perspective of equality.

With regards to access to land, the concept of equality holds that everyone in the country has the right to use, enjoy and dispose of property and no one shall be deprived of such right.¹⁴⁵ Similarly, the 1974 Land Ordinance affirms the principle of equality by stating that all persons having land have the right to register the land and control the land independently.¹⁴⁶ Hence, these national law provisions embrace and demonstrate the concept of equality as the focal point on which access to land emanates in Cameroon.

Equality of persons before the law and access to land are all cornerstones of democratic states. This is so as the principle of equality invariably constitutes the guiding principle of all human activities and policies in a country.¹⁴⁷ The right to land presents access to land as something the state or any community should promote systematically and land should not be presented as an asset which is based on the initiative, position and strength of

¹⁴⁴ The Cameroonian Penal Code of 1967.

¹⁴⁵ The Preamble of the Cameroon Constitution of 2008.

¹⁴⁶ Article 1 of Ordinance No. 74-1 of 6th July 1974 on Land Tenure. It is worth noting that the words 'all persons' refers to both women and men in the country.

¹⁴⁷ Rhona, *op cit* p185.

individuals. Thus, according to Awasom,¹⁴⁸ the state has as a duty to establish a system of rights that puts land at the reach of the vast majority of people striving to improve their life chances through land acquisition.

In the context of Cameroon, equality precepts is created in a legal and administrative environment to serve everybody's right to access land by all the normal means including through purchase, transmission of land by gift, inheritance. It is equally recognized that the principles of the country's land laws, are based on the idea that anyone who has acquired land legally enjoys the protection of the land rights so acquired. Any restriction on the right to access land for reasons of gender is unconstitutional since the possession of land is a right related to the moral value of human personhood.¹⁴⁹ The obligations of equality imposed on states makes it incumbent on them to create a level ground for all to access land in any of the variety of forms that land is acquired. This means that applying discriminatory practices (either customarily or administratively) that restrict women from accessing land is a violation of the inherent right to access land.

The term equality recognizes that all human beings both men and women, are able to make choices without the limitations set up by stereotypes, rigid gender roles and prejudices.¹⁵⁰ However, a philosophical anarchist, Herbert Read,¹⁵¹ conceded that human

¹⁴⁸S.Y. Awasom, 'Righting the Wrong and Writing the Law in Cameroon: Fumbuen Women Against Fon Simon Vugah II', (2006) Nos. 1&2 *CODESRIA Bulletin*, 41-45: 44.

¹⁴⁹ F. Cheneval, *Property Rights as Human Rights*, Zurich: Ruffer & Rub, (2006) p 13. Also see Wollstonecraft, M., *A Vindication of the Rights of Men*. Oxford: Oxford University Press, (1970). Available at: http://en.wikipedia.org/wiki/international_Covenant_on_Economic,_Social_and_Cultural_rights. (Accessed on 20/01/2010).

¹⁵⁰ Food and Agricultural Organisation of the United nations, *Gender and Access to Land*, FAO Land Tenure Studies No. 4 (FAO: Rome, 2002); Also see C. Deere and M. Leon, *Empowering Women: Land and Property Rights in Latin America*. Pittsburgh: University of Pittsburgh Press (2001).

beings are equal in our total human existence and despite the aberrations of nature or of the law, the doctrine of equality has inspired the best human instincts throughout history. He further notes that, though human beings can prevent one from having more money, land or political power than others, by legislation, they are not legally permitted to prevent anyone from accessing or making a better use of such opportunities.¹⁵² This is because when a human society is endowed with certain gifts, for instance land, the inequality embedded in certain stratified societies such as Cameroon should be counteracted by law. With this, everyone in that society should be given the opportunity to make proper use of that gift void of distinction in order to enable individuals develop their personal abilities in the society.¹⁵³

Although the divergent needs and expectations of women and men need to be considered and met equally, the concept of equality between men and women (gender equality) has faced significant resistance in Cameroon.¹⁵⁴ Primarily because most tribes in the Anglophone regions rely on their traditional, social and family structures, and oppose sameness of treatment between men and women in accessing land. These restrictive structures against women allow them to enjoy only the right to use land under the control of men while preventing them from owning land independently from men.

Despite some apprehension about the import of the term equality, this study serves to demonstrate that recent developments including the Millennium Development Goals

¹⁵¹ H. Read, *Anarchy and Order*. London: A Condor Book, Souvenir Press, 1974, p 88.

¹⁵² E. Burke, *Works*, Vol. 5 (London: 1952) pp 180-81.

¹⁵³ Ibid

¹⁵⁴ Despite the existence of statutory laws embracing gender equality in all the domains of life, women still suffer unlimited restriction on issues relating to land ownership.

(MDGs)¹⁵⁵ and the World Summit Outcome¹⁵⁶ have shown that equality is a contemporary understanding to reinforce women's equal right to property in the world at large and Cameroon in particular. The UN Task Force on gender equality has indeed identified equal property rights as a component of gender equality.¹⁵⁷ It is 'now widely recognized that ownership and control over assets such as land and housing provide economic security, incentives for taking economic risks that lead to growth, and important economic returns including income'.¹⁵⁸

Unlike other aspects of human rights, practicing *de jure* equality will not necessarily result in *de facto* equality. This fact is illustrated by the simple argument that if two people start off in incomparable situations, treating them similarly will merely perpetuate the differences between them. The application of this simple truth has led some to the conclusion that any corrective may have to include affirmative action.¹⁵⁹ This entails the institution of positive discrimination policies legitimising discrimination in favour of the person or group in the disadvantaged position. Practical examples can be seen in certain Scandinavian employment models which favour women, or the access to higher education scheme in Australia which promoted higher education for the previously under-

¹⁵⁵ United Nations Millennium Declaration, adopted as General Assembly Resolution A/55/L.2 on 8 September 2000 paragraph 6. It states that one of the fundamental values considered essential to international relations is gender equality: 'The equal rights and opportunities of women and men must be assured'.

¹⁵⁶ The World Summit Outcome 2005 is a UN agreement document of special significance to women's rights advocates who are out to promote gender equality and to eliminate pervasive gender discrimination. In its paragraph 58 (b) it states that they are out 'to guarantee the free and equal right of women to own and inherit property and ensuring secure tenure of property and housing by women'.

¹⁵⁷ R. Levine *et al* (2003). *Background Paper of the Task Force on Education and Gender Equality, Achieving Universal Primary Education by 2015* (New York: UN).

¹⁵⁸ http://www.unmillenniumproject.org/reports/tf_gender.htm

¹⁵⁹ <http://www.un.org/womenwatch/daw/cedaw-United> Nations' Human Rights Committee on the Elimination of Discrimination against women. (Accessed on 29/04/2010).

represented indigenous peoples.¹⁶⁰ The Human Rights Committee has confirmed that affirmative action policies are compatible with international human rights.¹⁶¹

2.2 The Concept of Equality: History and Contending Arguments

The concept of equality derives its roots from natural law theory.¹⁶² Under this theory it is argued that equality is a natural and inherent right¹⁶³ bestowed on human beings by the Divine Creator by virtue of their humanity.¹⁶⁴ He created and treated all human beings equally and so he expects everyone to treat one another equally and humanely in all circumstances and at all times.¹⁶⁵ It was thus affirmed in the British case of *R v Chancellor*¹⁶⁶ that the right to fair hearing was given by God to Adam and Eve when God asked them whether they had eaten the forbidden fruit in the Garden of Eden. This analysis notes that after hearing them both God punished them void of any form of favouritism. Hence, God puts the principle of equality into practice.

Furthermore, the concept of equality received content from the detailed philosophical analysis and debates of Western philosophers in the 18th and 19th centuries. Libertarians such as John Locke¹⁶⁷ have argued that equality is a natural right given to all human beings by nature and that this right should be recognized, respected and protected by all,

¹⁶⁰ Ibid

¹⁶¹ This is illustrated in *Stalla Costa v Uruguay*, HRC 1987, UN Doc. CCPR/C/30/D/198/1985.

¹⁶² J. Locke, *The Second Treatise on Civil Government and A Letter of Toleration* (eds.) in J. W. Gough Oxford: Basil Blackwell (1948). Also see <http://www.radicalacademy.com/lockebio.htm> Accessed on 16/04/2010.

¹⁶³ Ibid. This means that the concept of equality has a divine origin, it is inherently possessed by man and so no one should be deprived of the enjoyment of this right.

¹⁶⁴ Locke J., (1948) *op cit*.

¹⁶⁵ This can be interpreted based on the provision of Article 1 of The Universal Declaration of Human Rights. Adopted by the General Assembly of the United Nations by Resolution 217A (III) of 10 December (1948). The article highlights on the need for treating everyone equally in any given society.

¹⁶⁶ *R v Chancellor of the University of Cambridge* (1723) 1 str. 567.

¹⁶⁷ See http://en.wikipedia.org/wiki/Two_Treatise_of_Government. (Accessed on 29/04/2010) pp 4-6.

in all circumstances in any given society. In the same vein, Aristotle¹⁶⁸ contends that the right to equality which is situated within the core natural law theory requires that 'likes should be treated alike'. This according to Aristotle means that all human beings should be treated the same without any form of discrimination. This analysis assumes that all actions of human beings must have a direct bearing with the will of God.

For Aristotle who was a student in Plato's academy, justice is a virtue which helps man to be a noble person¹⁶⁹ and to him, justice is intrinsically linked to equality. Here, justice is predicated on the proposition that 'equals are to be treated equally and unequals unequally'.¹⁷⁰ This maxim or proposition is essentially political in tone and substance and it relates to the distribution of honours and other entitlements including access to land in the society.¹⁷¹ To these philosophers, the respect of right especially in the domain of equal access to land which is the main thrust of this study is very important for enhancing peace and cordiality in the treatment of people in the society.

The positivists¹⁷² criticised the ideas of libertarian scholars. Jeremy Bentham¹⁷³ for example, found the principles of equality unworthy of respect as a natural right. Bentham believed that the right of a man should be dictated and controlled by state laws arguing that any contradiction to this phenomenon is a form of destroying societal norms. Laws in

¹⁶⁸ Aristotle, *The Politics of Aristotle Book I* translated by JEC Welldon Macmillan & Co Ltd London (1912) p 4.

¹⁶⁹ Aristotle (1912), *op cit.* p 4

¹⁷⁰ J. M. Kelly, *A Short History of Western Legal Theory*. Oxford: Oxford University Press (1993). p 26.

¹⁷¹ M. Yanou, *Access to Land in Post-Apartheid South Africa; The pay of Just and Equitable Compensation for Dispossessed Land*. Ph.D Thesis. Rhodes University. Online Publication 2004 p 18.

¹⁷² Some of the emergent positivists were Auguste Comte, Jeremy Bentham, Edmund Burke etc

¹⁷³ Auguste Comte 'Discours sur L'esprit positif (1844), vrin, Paris p 49

www.evene.fr.wikipedia.org/wiki/Auguste_Comte.

Bentham's view should be enacted by the state in order to safeguard the maximum happiness and benefit for the greatest number of people in the society¹⁷⁴ and not to benefit all as postulated by the libertarians.

These conflicting ideas over the importance of the principle of equality have existed for ages. Although the positivists' perspective on equality was dominant in most States around the 18th and 19th centuries,¹⁷⁵ it was later realized that their views led to unacceptable levels of discrimination and violence during the Second World War. During this period, States experienced devastating effects based on the positivist perception of equality which includes barbarism that was meted on the Jews and the subordination of women in Europe. The effect of this act led to a shift in preference to the libertarian understanding of the concept of equality.

It may be observed that equality of opportunity theorists argue for individuals to be given a level playing field upon which fair social competition and individual lifestyle choices can be enacted.¹⁷⁶ Certain academics¹⁷⁷ who based their view on the application of full redistributive justice, pointed at the weakness of focusing on equality of results and too much respect for utilitarianism¹⁷⁸ at the expense of other systems of thought.¹⁷⁹ The

¹⁷⁴ Ibid

¹⁷⁵ The ideas of the positivists were very glaring in most African states and Cameroon inclusive during the autocratic regime of the Former President Ahmadu Ahijio.

¹⁷⁶ R. Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press) (2000). Chapters 2 and 4; Also see G.A. Cohen, 'On the Currency of Egalitarian Justice'. (1989) *Ethics* pp 906-944; R. Arneson, 'Equality and Equal Opportunity for Welfare'. (1989). *Philosophical Studies*. Pp 77-93; Rawls J., *op cit*.

¹⁷⁷ See Fredman S. (2002). P 14

¹⁷⁸ Utilitarianism in this sense correlates to a socio-legal concept where the overemphasis on results, and the principle of distributing equal proportions of a resource, can mask the unfairness inherent in the process of achieving these results.

integration of these theoretical perspectives has led to a notion of equality which seeks to equalize the starting points of all individuals irrespective of sex.

From a human rights approach to equality some scholars¹⁸⁰ have suggested that equality as a stand-alone principle has little impact on combating substantive disadvantage. The contemporary approach of bringing the equality and non-discrimination agenda within a human rights framework has the effect of highlighting other conceptions of equality that purely economic integrationist models largely seem to neglect.¹⁸¹ This approach is based on dignity, but dignity in this paradigm is meant to reflect the universality, indivisibility, and inter-relatedness of all human rights, as understood in present-day interpretations.¹⁸²

This approach proffers a theoretical distinction between treating people equally in the distribution of resources and treating them as equals, which suggests a right to equal concern, dignity and respect.¹⁸³ Treatment as equals shifts the focus of analysis, to whether the reasons for deviation between persons are consistent with equal concern and respect. Interpreted in this way, equality offers a range of different conceptions. Equality of dignity, respect or worth as a foundation for equal rights may ensure that equality has universal application. Dworkin further proceeds from the perspective of political morality asserting that government must treat all its citizens with equal concern and respect. To

¹⁷⁹ See S. Fredman (2002). P 14

¹⁸⁰ P. Western, 'The Empty Idea of Equality'. Vol. 95, No.3, (1982). *Harvard Law Review*, p 537.

¹⁸¹ Ibid

¹⁸² Ibid

¹⁸³ R. Dworkin, *Taking Rights Seriously*. London: Duckworth, (1977) p 227.

him, no basis for any valid discourse on rights and claims should exist in the absence of such a premise.¹⁸⁴

The human rights based approach to equality adopts a similar substantive approach to equality as the equality of result model (and to a lesser extent the equality of opportunity model). However, the approach can be distinguished from these two conceptions by the way in which it incorporates a human rights framework within its conceptual core rather than some varying notion of socialism.¹⁸⁵ In this regard, the approach creates the potential for a more purposeful and workable application of law and policy, through correlating the equalities and the human rights agenda and removing any artificial conceptual distinction between them. In addition, the human rights based approach presents a tenable and workable framework to the equality and non-discrimination agenda which has the potential to avoid the political rhetoric which surrounds so much current equality and non-discrimination discourse.¹⁸⁶ With such philosophical basis in place, equality can regain its role as a central pillar of the human rights discourse and break down any artificial barriers to uphold the idea that the right to equality and non-discrimination is anything other than inherent, fundamental and indivisible to human rights.¹⁸⁷

¹⁸⁴ Ibid; Also see J.J. Shestack, 'The Philosophic Foundations of Human Rights, 20 (1998) *Human Rights Quarterly* 210 p 13.

¹⁸⁵ A. Frankovits, Introduction in Empowerment, Participation, Accountability and Non-Discrimination: Operationalising a human rights based approach to development: Human Rights in Development Year book 2002, edited by M. Scheinin and M. Suksi, Dordrecht: Martinus Nijhoff/Nordic Human Rights Publications, (2005). pp 1-14.

¹⁸⁶ *Ibid*

¹⁸⁷ S. Fredman, (2002) *op cit*, p 18

Besides the fact that the above philosophical perspective highlights the history of equality, it also clarifies issues on the importance of the concept to mankind.¹⁸⁸ The idea of Sieghart for example, highlights the importance of the concept of equality which influenced the reasoning of man during the French and American Revolutions in the 18th century. This is illustrated in that, the effects of the revolution imposed or tilted the reasoning of the citizens towards treating each other on equal basis in all the domains of life and equal access to land inclusive. Furthermore, these revolutions were significant because they produced constitutions¹⁸⁹ that were underpinned for the first time by the values of equal rights and freedom of persons including the right to own property within the state.

The concept of equality is specifically underscored in the Universal Declaration of Human Rights (UDHR) which states that ‘... the inherent dignity, equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ...’¹⁹⁰ This human rights instrument which is regarded as the Magna Carta of the world related equality to guarantee freedom, justice and peace in our society and the world at large. The concept of equality and its importance is further reiterated in Article 1 of the UDHR which states that:

¹⁸⁸ P. Sieghart, *The Lawful Rights of Mankind. An Introduction to the International Legal Code of Human Rights*. Oxford: Oxford University Press (1985).pp 27-28.

¹⁸⁹See For example, The American Declaration of Independence of 1776 and The French Declaration of the Rights of Man and Citizens of 1789. The American Declaration for example upholds that ‘man is born free and equal in rights’. This means that the Declaration is buttressed by the values of equal treatment of all human beings in all domains of life.

¹⁹⁰ The Preamble of the Universal Declaration of Human Rights (UDHR) (1948), *op cit*

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.¹⁹¹

This provision defines the right to liberty and equality as a human's birth right which cannot be alienated at will unless prescribed by the law. The provision repudiates the notion of subordination and discrimination in the societies which act as impediments to the enjoyment of the above inherent rights. That is everyone is called upon to treat each other in a spirit of brotherliness or love in all domains of life such as access to land. Due to the significance of the principle of equality as reinforced in the UDHR, subsequent human rights instruments have embraced and elaborated on the concept of equality in relation to access to land.¹⁹² Additionally, most countries nationally and internationally, have enshrined this concept in their constitution and national laws¹⁹³ thus, making the concept of equality a justiciable and a binding right to all human beings in the world.

2.3 Types of Equality

In legal theory and jurisprudence, the concept of equality is generally classified into formal and substantive equality.¹⁹⁴

¹⁹¹ Article 1 of the Universal Declaration of Human Rights (UDHR) 1948.

¹⁹² For example Article 3 of International Covenant on Economic, Social and Cultural Rights, 1966; Articles 3 and 26 of the International Covenant on Civil and Political Rights, 1966; Article 3 of African Charter on Human and Peoples' Rights, 1986; Article 5 of CEDAW etc are illustrative.

¹⁹³ The Canadian Constitution of 1982, the South African Constitution of 1996, the Cameroon Constitution of 2008, just to mention a few. Cameroon for example have preserved the concept of equality in the preamble of the constitution, the Cameroon Penal Code of 1967, the Labour Code of 1992, 1974 Land Ordinance, etc

¹⁹⁴ M. Bell., 'The Rights under Equality and Non Discrimination' in T. Hervey and J. Kenner (eds) *Economic and Social Rights under the European Union Charter of Fundamental Rights – a Legal Perspective* (Hart Publishing, 2003).

2.3.1 Formal Equality

Formal equality has been defined as relating to a situation where everyone is treated the same regardless of individual circumstances or status.¹⁹⁵ Dealing with everyone in the same manner in spite of their individual circumstances with regards to access to resources particularly land, raises significant questions about justice in a situation where access to land is made available or possible only to a particular group or class of people in a society. Formal equality assumes that equality is achieved if the law treats all persons alike but when individuals or groups are not identically situated (for example a rural woman versus a male elite), the formal equality model tends to perpetuate discrimination and inequality, because it will eventually fail to address the pre-existing inequality in the circumstances.¹⁹⁶ It is objectionable because individuals who are alike should be treated alike and the unlike should be treated differently. The concept of formal equality equates those who are alike to be on the same platform.

The approach of formal equality is to ignore the personal characteristics of an individual altogether. For example, with regards to access to land in Cameroon, advocates of formal equality would prescribe a gender blind rather than a gender conscious approach.¹⁹⁷ Whilst the model of consistent treatment has a role in society, the complexity of modern life and modern social relations and the warped land holding pattern in the country makes the application of this approach overly simplistic.¹⁹⁸

¹⁹⁵W. Currie, *et al*, (2001). *The Bill of Rights Handbook* (4th edition). Cape Town: Juta.

¹⁹⁶ S. Day, and , G. Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs*, (March 1998), Chapter 2 'Women's Equality: The Normative Commitment'. Available at : http://www.swc-cfc.gc.ca/pubs/0662267672/index_e.html at p.43 (Accessed on 29/04/2010)

¹⁹⁷ See <http://www.un.org/womenwatch/daw/cedaw/30sess.htm> accessed on 28/04/2010.

¹⁹⁸ The limitations of the formal approach to equality are acknowledged in the interpretation of the idea of non-discrimination provided by the Committee on the Elimination of Discrimination against Women, where

Formal equality also applies to sex-based classifications that discriminate against men, as well as those that discriminate against women.¹⁹⁹ In formal equality terms, the goal is equal treatment for all, not just for women. Extending formal equality principles to rules that discriminate against men, or favour women, might also be justified on certain grounds. This is by virtue of the fact that rules that appear to benefit women instead promote attitudes and expectations about women, including their dependency or status as victims, which disadvantaged them across a wide spectrum of social contexts.²⁰⁰

Those who offer this rationale may favour formal equality as a strategy, provided that their choice of principle is based on its woman-centred outcomes, in which case they already have their foot at the door of substantive equality.²⁰¹ Hence, this ‘neutral’ notion of equality upheld by the underlying principles of formal equality, does not aim at guaranteeing access to land on the basis of need or requiring the state to take positive steps in the provision of access to land for all.²⁰² A shortcoming of this notion is that it may be blind or insensitive in addressing the position of vulnerable or marginalized groups in a society, thereby giving room for the notion of substantive equality to be considered.

the Committee stated that Articles 1 to 5 and 24 together indicate that State parties under CEDAW are required to go beyond a formal interpretation of equal treatment between men and women to counter and improve the de facto situation of women and to address prevailing gender relations and the persistence of gender-based stereotypes that affect women. See General Recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures, 30 January 2004, para. 6.

¹⁹⁹ *Ibid*

²⁰⁰ *Ibid*

²⁰¹ D. Feldman, Civil Liberties and human rights in England and Wales (1993) 901-902; H.T. Engelhardt., ‘Rights to health care: A critical appraisal’ (1979) 4 *Journal of Medicine and Philosophy* 113.

²⁰² *Ibid*

2.3.2 Substantive Equality

Substantive equality involves a situation where everybody is treated the same but particular attention is paid to individuals or persons with peculiar situation such as the vulnerable groups, for example women, poor and children in order to uplift their status in the society.²⁰³ For instance, people with disabilities (extreme poverty for example) are subjected to the economic theory which insists that if access to land is left to the dictates of market forces, the poor will end up being left out since they will be unable to afford land due to their poor status. Or specifically, if access to land is left totally under the control of customary rule, women will be disadvantaged because access to land will be tilted in favour of men. To realize the right to equality of such persons, they need to be accorded particular or special attention by being treated differently from the men. For example they could be provided with some form of state regulations to enable them access land easily on equal basis with others.²⁰⁴ The implication of this is that there will be no socio-cultural, economic or any other form of infringements between individuals or groups of persons in the society. Therefore for this to be realised in the society, the state is required to ensure equality of outcome in all its policies²⁰⁵ since the *raison d'être* of equality including substantive equality is to respect and protect the human dignity of all.²⁰⁶

Substantive equality requires that the roots of inequality be identified, the goal of equality of opportunity be established, and that a legal mechanism be determined that will achieve this goal in a principled way. Under substantive equality, equality of opportunity is

²⁰³ S. Fredman, *Discrimination Law*. Oxford: Clarendon Press, 2002 pp 14-15.

²⁰⁴ Also see G. Moon, and R. Allen, 'Substantive rights and equal treatment in respect of religion or belief: towards a better understanding of the rights, and their implications', (2000), *European Human Rights Law Review*, pp580-602.

²⁰⁵ J. Rawls, *A Theory of Justice*. Oxford: Oxford University Press, (1971).

²⁰⁶ *Ibid*

different from equality of results in that the mechanism for achieving the goal involves removing all the barriers, including custom and poverty associated with the group's special characteristics before equality of result can be secured in any given society.²⁰⁷ The application of the approach of substantive equality provides no guarantee that members of a particular group will achieve equality of results, unless they are provided with equal opportunity.

Equality of opportunity represents a departure from the traditional notion of formal equality or of treating likes alike and unalikes differently. Equality of opportunity is partially based on a redistributive justice model which suggests that measures have to be taken to rectify past discrimination. Failure to do so would leave people and groups at different starting points and thus, different end points.²⁰⁸ In dealing with Cameroon's rules for accessing land, equality of opportunity based on legal mechanisms and policies should be prioritized. This will enable the citizens to use positive actions to address the rural and poor woman whose capacity to access land has been circumscribed by customs, poverty and bureaucratic procedures.²⁰⁹ Equality of opportunity recognizes the shallow nature of formal equality and injects a substantive element into its framework.²¹⁰

On the other hand, equality of both outcome and result is a substantive conception of equality, as it attempts to provide substance to the concept of equality. Unlike formal

²⁰⁷ Ibid at p 2, paras. 4 and 6

²⁰⁸ <http://www.ccppcj.ca/e/rights-charter.shtml>

²⁰⁹ The situation of these vulnerable persons can be addressed by either preventing customary rule from controlling access to land and or compensating the disadvantaged by enabling them own the usufruct land that they have been using.

²¹⁰ C. McCrudden, 'The New Concept of Equality', 2003. Available at www.era.int/web/en/resources/5_1095_2954_file_en.4194.pdf.

equality, which dictates behaviour through applying rules and procedures consistently, equality of results seeks to invest a certain moral principle namely social redistribution of resources (land) into the application of equality.²¹¹ This concept of equality which manifests itself through a spectrum of policies and legal mechanisms in various jurisdictions appears to be lacking in Cameroon. Positive discrimination or affirmative action²¹² as it is alternatively called is imperative in the context of Cameroon.²¹³

A formal rule of equality often does not produce equal results because there are significant differences in the characteristics and circumstances of women and men. Advocates of substantive equality demand that rules take account of these differences in order to avoid gender-related outcomes that are considered unfair. Substantive equality may in the Cameroonian context attempt to remedy the effects of an existing difference or past discrimination that is experienced in the society. For example, women historically have been excluded from having land titles either by law or by gender norms.²¹⁴

Adopting a pro-poor developmental or gender neutral human rights approach often fails to appreciate the particular needs and concerns of women. This is because women are more involved in agricultural activities and hence need land more to sustain and improve their

²¹¹ *Ibid*

²¹² Positive discrimination means explicitly treating people more favourably on the grounds of race, sex, religion or belief, etc by, for example, appointing someone to a job or enabling one to easily have access to land just because they are male or just because they are female, irrespective of merit or right. It is also known as affirmative actions. See Department for Communities and Local Government, 'Discrimination Law Review, A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain, a consultation paper, 2007, p 61

²¹³ Positive action means offering targeted assistance to people, so that they can take full and equal advantage of particular opportunities. It is worth noting that positive discrimination can be succinctly discerned from positive action.

²¹⁴ L. M. Wanyeki, *Women and Land in Africa: Culture, Religion and Realising Women's Rights*. London: Zed Books (2003).

productivity.²¹⁵ Statistics obtained from the field denote that women own less than 10% of land in the regions confirming the fact that women's access to land or property is grossly disproportionate to that enjoyed by men who own over 86% of land.²¹⁶ In many African countries including Cameroon, women due to custom, are systematically denied land ownership rights, inheritance rights as well as adequate housing, and are particularly subjected to total dependence on men.²¹⁷ Besides, women's rights to property face pertinent challenges ranging from the impact of customary laws, traditional practices and religious dogma²¹⁸ to HIV/AIDS.²¹⁹ Due to these adverse effects on the wellbeing of women, this study proposes the dire need for the government to adopt a more substantive approach²²⁰ in order to enable the society to appreciate and rectify the disadvantaged position of women in accessing land in relation to men who are similarly situated.²²¹

2.4 World Wide Notion of Equality

People all over the world believed that only certain people such as men, adults, or landowners, have a right to equality. It is only recently that many people have gained understanding that equality means giving same treatment to everybody. Currently, it is commonplace for written constitutions to contain provisions making sweeping statements

²¹⁵ See Rhoda, 1992 *op cit*

²¹⁶ This statistics of individual land certificate is obtained from the land register of the Regional Delegation of State Property and Land Tenure both in the North West and South West Regions of Cameroon.

²¹⁷ Centre on Housing Rights and Evictions (COHRE). *Bringing Equality Home: Promoting and Protecting Inheritance Rights of Women, A Survey of Law and Practice in Sub-Saharan Africa* (Geneva: COHRE) (2004).

²¹⁸ J. Tilley, 'Cultural Relativism', (2002) 22, *Human Rights Quarterly* pp 501-547.

²¹⁹ R. Strickland, 'To have and to hold: Women's Property and inheritance rights in the context of HIV/AIDS in Sub-Saharan Africa'. (New York: ICRW Working Paper, 2004).

²²⁰ Since societal norms have subjected women to a state of perpetual dependence on men, this study proposes that government should provide credit schemes to women at a reduced interest rate in order to boost up their economic capacity, keep them more aware of the constitutional land rights, educate the traditionalists on adverse effects of restricted access to land set out by the cultural norms on women's wellbeing, etc

²²¹ A. Manji, *Gender and the Politics of the Land Reform Process in Tanzania*, (1998) vol. 36, Issue 4 *Journal of Modern African Studies* pp 645-667.

guaranteeing the right to equal treatment. The oldest and perhaps best known example is the Equal Protection Clause of the Fourteenth Amendment to the American Constitution, enacted in 1868 following the American Civil War and the abolition of slavery. This Clause provides that 'No state shall ... deny to any person within its jurisdiction the equal protection of the laws'. Similarly, Article 40.1 of the Irish Constitution and section 15 of the Canadian Charter of Rights and Freedoms 1982, have recognized the right to equality as an essential feature in the system.

Besides, almost all international human rights treaties contain similar provisions on equality. For example, article 26 of the International Covenant on Civil and Political Rights (ICCPR), and Article 14 of the European Convention on Human Rights of 1958 which is best described as containing a truncated equality right are illustrative. The existence of a general principle of equal treatment is recognized even in legal systems such as the United Kingdom and the European Union which do not have formal written constitutions.²²² The English courts for example, in applying the common law have adopted the view that unequal treatment that cannot be justified may constitute an irrational act by a public authority.²²³ That is why in the case of *Stalla Costa v Uruguay*,²²⁴ preferential treatment in the admission into public service was given to former public officials who had previously been dismissed on ideological, political or trade-union grounds. It was held that there was no violation of Articles 25, 2, 26 of the ICCPR. The Human Rights Committee found the alleged discrimination to be permissible affirmative

²²² For example, in the UK, it might appear apparent that minority ethnic groups should benefit from positive action to redress the severe past disadvantage that many of these groups suffered.

²²³ J. Jowell, 'Is Equality a Constitutional Principle?'.(1994) 47, 1 *Current Legal Problems*.

²²⁴ (Communication No . 198/1985).

action. It was considered as ‘a measure of redress’ to a person who had previously suffered from discrimination. Also, in *Ato del Avelland v Peru*,²²⁵ the Peruvian legislation was considered discriminatory and was criticized by this international body²²⁶ for denying a married woman and not a man, the right or capacity to sue for ownership of matrimonial property during marital turbulence or divorce.

These international equality guarantees have often been applied by courts to protect individuals and groups against discrimination. This guarantee is well illustrated in the Cameroonian case of *Kang Sume David v Aboh Lucy*²²⁷ where Justice Njie in the South West Court of Appeal reversed the decision of the Buea High Court by holding that on divorce, a woman as well as a man should have a share of the landed property jointly acquired and or developed by the joint efforts of the parties in dispute. Also in *Fomara Regina A. v Fomara Henry*,²²⁸ the notion of discrimination on access to land on the grounds of sex was repudiated by Justice Wacka in the North West Court of Appeal. In this vein, judges in the Appeal Courts in the Anglophone Regions warned against discrimination by stating that ‘...A lawyer who should be the one to defend such a proviso should not be heard to perpetrate primitive ideas to wit that a wife (a human being) is part of her husband’s estates’.

²²⁵ HRC1988, UN Doc, CCPR/C/34/D/202/1986.

²²⁶ Specifically, Article 26 of International Covenant on Civil and Political Rights 1996 which states that ‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

²²⁷ Suit No CASWP/1/2003

²²⁸ Appeal No. BCA/11CC/97.

These equality guarantees are essentially interpreted as requiring the elimination of historically-rooted patterns of prejudice, discrimination and disadvantage that contribute to the subordination in society of a particular group of persons, such as women.²²⁹ In some countries such as South Africa, the Property Clause of the new constitutional dispensation²³⁰ marked a welcome departure from the past by re-conceptualising access to land for the previously disadvantaged black women as a human right. This section makes equity and fairness the new spirit that should underpin the rules of accessing land. The non-discrimination prohibition is elaborated in section 9 of the Constitution²³¹ which may be seen as the heart of the constitution and an effective response to the complex customary obstacles militating against the black woman's capacity to own land.²³²

Miller and Pope²³³ have interpreted the inequality prohibition provisions of the South African Constitution as concerned with ensuring that black women are not discriminated against in the reformed new structures of the Constitution. In this regard, the Constitutional Court has taken a stance, and is instrumental in compelling the abolition of discrimination against citizens to own land regardless of their status. For example in *Bhe v Magistrate; Shibi v Sithole; South Africa Human Rights Commission v President of the*

²²⁹ I.M. Young, *Justice and the Politics of Difference*. (Princeton, NJ: Princeton University Press 1990).

²³⁰ Section 25(5) of the South African Constitution of 1996. This section mandates the state to take reasonable legislative and other measures 'to foster conditions which enable citizens to gain access to land on an equitable basis'.

²³¹ Section 9 of the Constitution provides that everyone shall be equal before the law and has the right to equal protection and benefit of the law. This section similarly provides that no one shall be unfairly discriminated against directly or indirectly on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, etc.

²³² M.A. Yanou, 'Access to Land in Post-apartheid South Africa: Implications for the South African Black Woman. (2006) Nos 1 & 2, *CODESRIA Bulletin*, pp 61-65: 62.

²³³ Ibid. Also see D. Miller, and Pope, A., *Land Title in South Africa*, Kenwyn: Juta, 2000 p 475

Republic of South Africa,²³⁴ the court revolutionised the law of the country by rejecting customs which discriminated against black women's inheritance rights. The equality of all citizens embraced by the above Constitution is also illustrated in *Hoffmann v South African Airways*.²³⁵ In the same vein, section 15 of the Canadian Charter of 1982 guarantees equal protection of individuals without discrimination in any domains of life such as access to land.

The provision does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or group.²³⁶ Hence in the Canadian case of *Delgamuukw v British Columbia*,²³⁷ the Canadian Supreme Court upholds the right of the aboriginal claim (ownership) to specific land on equal basis as the sovereigns thereby enforcing the right to equal protection and benefit of the law for all.²³⁸ Hence, both the Canadian Supreme Court and the South African Constitutional Court have interpreted their equality clauses as prohibiting all forms of disadvantage, stereotyping or prejudicial treatment which deny the human dignity of individuals and groups. In concrete doctrinal terms, this means that state action which has an adverse impact upon disadvantaged groups, such as women, poor or persons with disabilities is subject to close scrutiny and must be shown to be clearly necessary and justified.

²³⁴ (2005) (1), BCLR 1 (CC).

²³⁵ *Hoffman v South African Airways* (2001) 1 SA 1 (CC). where the constitutional court criticized and prohibited the discrimination on the employment of a staff on the grounds of his HIV status as being unjustified. By virtue of section 9 of the South African Constitution, discrimination is prohibited in all domains regardless of the status of the individual. Also see COHRE. *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan African* (Geneva: COHRE, 2004).

²³⁶ J. Fudge, 'The Canadian Charter of Rights: recognition, redistribution and the Imperialism of the Courts' in Campbell, T. et al (eds.), *Skeptical Approaches to Human Rights* (OUP 2001) p 336.

²³⁷ (1997) 3 S.C.R. 1010. Also see http://en.wikipedia.org/wiki/Delgamuukw_v_British_columbia. Accessed on 22/06/2010.

²³⁸ The case of *Eldridge v British Columbia* (Attorney General) [1997] 3 SCR. 624 is also illustrative.

However, the overall impact of these various legal expressions of the principle of human equality has been confused. In countries such as South Africa or Canada the constitutional court guarantees the value of the equality clause in relation to access to land. Meanwhile the right to equality has been interpreted by other courts in a narrow and restrained manner. In the Zimbabwean case of *Magaya v Magaya*²³⁹ the Supreme Court expressed the nature of most African societies which dictates that women are not equal to men in the context of access to land and the enjoyment of inheritance rights in particular. In the above case, the notion of equality in the context of Zimbabwe is implemented correctly but if one attempts to interpret it outside the context of Zimbabwe, it will be discovered that the country has failed to meet the basic human rights benchmarks in the domain of guaranteeing equal rights to access land.²⁴⁰

According to O’Cinneide, the South African and Canadian Courts have therefore developed an innovative and rigorous substantive equality jurisprudence so called because it focuses upon the substantive impact of state action upon disadvantaged groups, rather than on the formal classification of groups.²⁴¹ It is therefore now commonplace for national constitutions and international human rights instruments to recognize the importance of equality as a fundamental right. By embedding this right in legal texts, these instruments give concrete legal shape to the philosophical belief, now deeply rooted in political rhetoric and popular feeling that all humans are entitled to a degree of equality of

²³⁹SC No. 210-98 (Zimbabwe, February 16, 1999).

²⁴⁰W. Ncube, ‘Underprivilege and Inequality: The Matrimonial Property Rights of Women in Zimbabwe’ in A. Armstrong and W. Ncube (eds.) *Women and Law in Southern Africa*, (Harare: Zimbabwe Publishing House) (1987).

²⁴¹N. Bamforth, & *et al.*, *Discrimination Law: Theory and Context*. London: Sweet and Maxwell, 2008 chapters 6 & 7.

respect in how they are treated by the state.²⁴² This serves an important symbolic and rhetorical purpose with the inclusion of equality as a fundamental right within their frameworks. National Legal Systems and International Human Rights law reflect the significant value that equality has acquired as a social concept in the world since the French revolution. In addition, a legal right to equality is a useful and progressive tool, as it enables disadvantaged individuals and groups to challenge discriminatory policies and practices. The existence of a guaranteed fundamental right to equality gives victims of discrimination both a legal and political platform from which to push for change.

Interpreting and applying equality tends to be an uncertain and complex process, which often has yielded little tangible protection for aggrieved individuals and groups. Nevertheless, a shift can be detected from formal equality on the one hand to anti-discrimination and substantive equality approaches on the other, in the contemporary case-law of national and international courts as illustrated above. The recognition of this distinction may open up more space for the equality principle in substantive form, to come into play as a source of protection for disadvantage groups such as women against unequal treatment.²⁴³ However, equality jurisprudence is haunted by the uncertain and contested concept of equality. It may be better for judges and lawyers to concentrate less on abstract debates about what equality means and focus more on building a clear idea of what constitutes unacceptable forms of disadvantage, discrimination and inequality.²⁴⁴

²⁴² E. Holmes, 'Anti-discrimination Rights Without Equality' (2005) 68 (2) *Modern Law Review* p 175.

²⁴³ C. McCrudden, 'Equality and Non Discrimination' in David Feldman (ed.), *English Public Law* (OUP 2004) chapter 11.

²⁴⁴ *Ibid.*

2.5 The African/Cameroonian Notion of Equality.

As mentioned earlier, the notion of equality is divided into formal and substantive equality. The former which stems from the libertarian theory of individualism, liberalism and state neutrality as postulated by John Locke²⁴⁵ are common features in the western world. These features underpinned by Western philosophies of individualism are incompatible with and inappropriate to the communal nature of accessing and managing land in African countries such as Cameroon.²⁴⁶ Cobbah captures this view and states thus:

I have attempted to point out that Africans do not espouse a philosophy of human dignity that is derived from a natural rights and individualistic framework. African societies function within a communal structure whereby a person's dignity and honour flow from his or her transcendental role as a cultural being. Within a changing world, we can expect that some specific aspects of African lifestyle will change. It can be shown, however, that basic Afrocentric core values still remain and that these values should be admitted into the international debate on human rights ...²⁴⁷

²⁴⁵ J. Dolhenty, 'John Locke': A Philosophy of Freedom and Natural Rights. Available at <http://www.radicalacademy.com/lockebio.htm>. (Accessed on 29/11/09).

²⁴⁶ A.M. Josiah Cobbah, , 'African Values and the Human Rights Debate: An African Perspective' *Human Rights Quarterly*. (1987) Vol. 9 No. 309. p 30

²⁴⁷ *Ibid*. He criticized the Eurocentric views and perspectives on human rights and argued for an Afrocentric perspective. As a matter of fact, he says, there should be cross-cultural understanding which would add and contribute to the development of international human rights norms.

Many Africans believe that the rights of local people would be protected better where land is communally owned and distribution to individuals is done on the basis of need²⁴⁸ not on abstract principles of equality based on Western notions of individualism and liberalism. Advocates of the communal perspective believe that if society owns property, the benefit of this will trickle down to others in the society which is not necessarily the case if an individual owns it.²⁴⁹ Besides, communal ownership of property is considered in Cameroon as a bourgeois philosophical concept based on benefiting the ruling and compradorial class. This is why in the Cameroonian context, reference is made to the chiefs and leading males who control land in the region.²⁵⁰ More so, reference is made to the fact that the Western ideas of individualism have crept into the country's land management model.

Within the organization of African social life one can discern various organizing principles. As a people, Africans emphasise groupness, sameness, and commonality. Rather than the survival of the fittest and control over nature and its resources. The African view is tempered with the general guiding principle of the survival of the entire community and a sense of co-operation, interdependence, and collective responsibility.²⁵¹ The family unit in African is extended and each family assigns each family member a social role that permits the family to operate as a reproductive, economic and socialization

²⁴⁸ J. M. Elegido, *Jurisprudence*. Ibandan: Spectrum Law Publishing, (1994).p 78. Also see K. Marx, *The Civil War in France* in Selected Works, Vol. II. Available at <http://www.marxists.org/archive/marx/works/sw/progress-publishers/one-volume.htm> (Accessed on 29/11/09).

²⁴⁹ It is worth noting that this Marxian view is highly connected to the communal ownership of property practiced by most African states such as the Anglophone Cameroon.

²⁵⁰ E. B. Pashukanis, *Law and Marxism: A General Theory*. London: Ink/Links, 1978. Also see Shivji, I. G. (1989). *The Concept of Human Rights in Africa*. London: Ryan Print, p 47.

²⁵¹ Cobbah, *op cit* p 35

unit. The role of kinship however, is defined differently than in Western families and the behaviour of a kin towards one another is cordial and different from that which pertains in the West.²⁵²

In many African societies, for example, there is no distinction between a father and an uncle, or a brother and a cousin. Among the Akans of Ghana as is the case with many Cameroonian native language, the English word 'aunt' has an equivalence to mother. To them, all aunts are mothers²⁵³ and there is no equivalence for the English word 'cousin' in the Akan language.²⁵⁴ In Africa, all of these persons are treated the same that is, void of any distinction. The differences that one finds in responsibilities towards different kin people usually revolve around whether the particular society is matrilineal²⁵⁵ or patrilineal.²⁵⁶ The roles assigned to the family members are essentially rights which each kinship member customarily possesses.²⁵⁷ In this setting, the spirit of love and concern exists and hence, with its true equality.

Nevertheless, experience has shown that with communal ownership of property adhered to by most African states such as Cameroon, Nigeria, Uganda, and Kenya discrimination with regards to land ownership is on the increase since the protection of the interest of the

²⁵² Ibid

²⁵³ The Akans of Ghana, all aunts are mothers. That is older mothers and younger mothers.

²⁵⁴ A cousin is simply a brother or a sister.

²⁵⁵ C.O. Olawoye, *Title to Land in Nigeria*. Ibandan: Evans Brothers Limited, 1974 p 85. Matrilineal mode of succession means the property of the deceased devolves to the maternal relatives of the deceased. This is commonly practiced in Boyo and Menchum tribes in the North West Region.

²⁵⁶ *Ibid*. Patrilineal mode of succession means the property of the deceased devolves to the paternal relatives of the deceased. This is commonly practiced in all the tribes in the Anglophone regions but for Boyo and Menchum tribes in the North West Region.

²⁵⁷ Cobbah *op cit* p 36

social class prevails.²⁵⁸ For instance in Anglophone Cameroon, the chiefs and the leading male elites control land and decide who benefits. Most often, women and the poor (vulnerable group) are relegated to the background and only depend on the leading men to access land for farm use. The experience is that with this type of distinction in accessing land, the society is usually intrinsically unstable and cannot boast of justice, peace and sustainable development.²⁵⁹ This is because the vulnerable persons form the majority in terms of population and the need for land.²⁶⁰ Yet, they remain perpetually dependent on the leading men for land. The subjugation cannot last peacefully for ever without inciting conflict between the parties either at the family or community levels. This analysis will be elaborated in chapter 4.

The notion of equality as conceived by the libertarians is a product of Western philosophical ideas. Deriving the concept from the ideals of individualism and freedom has been criticized by Ngangah²⁶¹ on two accounts. Firstly, he argues that this conceptualization results in tension and confrontation between individuals and is inappropriate in African societies since it does disservice to the entire notion of human rights.

Secondly, Ngangah challenges the very claim that true equality is a Western philosophical concept. To support this, he cites an Igbo proverb which says that “let the kite perch and

²⁵⁸ J., Parpart, et al. *Theoretical Perspectives on Gender and Development*. Singapore: International Development Research Centre, (2000).

²⁵⁹ *Ibid*

²⁶⁰ Rhoda 1991 p 59

²⁶¹ C. Ngangah, *The Politics of Human Rights. A View from the Third World*. Kaduna: Klamidas Communications Ltd. (1998) p 25.

let the eagle perch. He who says another should not perch, let hunch back afflict his back”.

²⁶² This means that human rights should be enjoyed by all, be it an eagle or a kite (man, woman, poor or rich). Anyone who discriminates between these persons or refuses the other from enjoying his or her right is liable to be sanctioned, as a deterrent. By this, he implicitly condemns every partiality in the society through the application of the sanction.²⁶³ Hence, Ngangah uses the above allusion to argue that equality and human rights are notions which are also derived from the traditional African thought. Furthermore, he contends that if the right to equality is drawn from the ‘Laws of Nature and of Nature’s God’²⁶⁴ and nature is a global reality, it then means that each nation in the world must have imbibed respect for the right to equality from man’s common nature. This is because if the law of nature can speak to one, it can speak to another and to all.²⁶⁵ In spite of this, the question that remains is to determine the extent to which Cameroon’s land rights model reflects this concept of equality as articulated by Ngangah above.

In the same light, in a publication entitled ‘Women and Colonization’,²⁶⁶ Ngangah pointed out that ‘it is critical to clarify the fact that egalitarian relations between women and men are not an imported Western value and that, instead, the reverse is true. Egalitarian relations or at least mutually respectful relations were a living reality in much of the world

²⁶² This is Ngangah’s translation of a traditional saying of the Igbo people stating that: “Egbe belu, ugo belu; nke s’ibe ya ebena mkpumpku waa ya’.

²⁶³ *Ibid* p 27

²⁶⁴ These words are drawn from the American Declaration of Independence.

²⁶⁵ Ngangah, *op cit* p 27

²⁶⁶ E. Mona and E. Leacock, (eds.). *Women and Colonisation – Anthropological Perspectives*, New York: Bergin Publishers, 1980.

in pre-colonial times, which was far from the case in Western culture' which upholds the spirit of individualism.²⁶⁷

According to Sudarkasa,²⁶⁸ Africans adhere to the principle of respect for one another which is considered as a cardinal guiding principle for behaviour within the family and in the society at large. Although African society is communal, it is hierarchical. Respect governs the behaviour of family members towards the elders in the family.²⁶⁹ He notes that this principle of respect influences how people are treated in the society. The tendency is for elders and males to treat children and women as unequal is a perception that results in setting up rules circumscribing women's rights including the right to access land.²⁷⁰ Indeed, it is because of this inherent idea about the superior status of male elders that women are regarded as minors in most African indigenous legal systems including in Cameroon.²⁷¹

Additionally, Eze²⁷² has questioned the utility of rights of equality in Africa. To him, the question of equality is dependent on the stage of development of a particular society. He argues that it is erroneous to suggest that the catalogue of rights is invariably enjoyed and

²⁶⁷ *Ibid.*

²⁶⁸ N. Sudarkasa, *Exploring the Africa-American Experience* Lincoln University Press (1995). He organized the complexity of rights and duties around four underlying principles: respect, restraint, responsibility, and reciprocity.

²⁶⁹ *Ibid.*

²⁷⁰ C. Heyns, and K. Stefiszyn, *Human Rights, Peace and Justice in Africa: A Reader*. Centre for Human Rights: Pretoria university law Press 2006, p 36.

²⁷¹ Yanou, 2009, *op cit.*

²⁷² O. C. Eze, *Human Rights in Africa: Some Selected Problems* (Lagos: Nigerian Institute of International Affairs & Macmillan Nigeria Publishers Ltd., 1984) chapter 2.

respected by all²⁷³ in the traditional African society. He contends that where society is not developed or kept aware of the importance of the respect of equality, the respect of this right will not be practicalised since people will not understand or be able to appreciate the need to respect the right of one another. Eze in his conclusion insists on the fact that the need to respect the catalogue rights as stated by M'baye²⁷⁴ is an irregular phenomenon to Africans.

An important element of the principle of equality in the African context is that it exists side by side (with the dominant role of Judaeo-Graeco jurisprudence) particularly in the field of family law and property ownership with the application of concepts deriving from customary and Islamic traditions as these existed after the imperial powers' exercise of power and influence.²⁷⁵ Besides the fact that Cameroon's legal tradition accommodates customary principles, the African Charter on Human and Peoples' Rights adopted in 1986 to which the country is a signatory expressly incorporates traditional African values. The Charter in its preamble takes into consideration 'the values of their historical tradition and the values of African civilization'. Eze has observed that this preambular provision has significantly influenced conceptions about the importance of equality in the society, and in African societies in particular, with implications for women's capacity to access land.²⁷⁶

²⁷³ K. M'Baye, and B. Ndiaye, 'The Organisation of African Unity (OAU)'. In Philip Alston, *The International Dimensions of Human Rights* (Westport, Connecticut: Greenwood Press & Paris, - UNESCO, 1982), p 583. He identified a catalogue of rights enjoyed in traditional African society which he says are similar to those found in the West or in the modern conceptions of human rights.

²⁷⁴ *Ibid*

²⁷⁵ The decision of the High Court and Court of Appeal Bamenda in the case of *Lum v Fru* supra, held that a woman cannot own or inherit property. Also see O. C. Eze, 'Human Rights issues and Violations: The African Experience' in G.W. Shepherd, and M. Ankipo, (eds) *Emerging human rights: The African political economy context*. New York: Greenwood Press (1990) p 41.

²⁷⁶ *Ibid*

Furthermore, discrimination which often subjugates women by limiting their constitutional rights over resources including matrimonial property on divorce has been examined and criticized within the framework of the Convention on the Elimination of all forms of Discrimination Against Women.²⁷⁷ This treaty specifically establishes a regime that insists on a general and independent protection of women against discrimination in all circumstances. It particularly protects the right to access land and landed property on the basis of equality during and after marriage.²⁷⁸ Although this treaty was ratified by Cameroon in 1981, the values incorporated in the treaty have not become entrenched in the country's judicial culture. The Bamenda Court of Appeal's decision in *Achu v Achu*²⁷⁹ which held that the married woman is herself a chattel and so cannot own property on divorce was an extreme example of the failure of our courts. They failed to accommodate values of equal access to resources in terms of the treaty provision. *Achu's* case delivered a devastating blow to the issue of both substantive equality and equal access to land and this decision was followed in subsequent cases. In fact, in the case of *Lum v Fru*,²⁸⁰ both the High Court and Court of Appeal in Bamenda held that the plaintiff could not get letters of administration over her father's estate because she was a daughter married to another family. Although the Supreme Court reversed these decisions on appeal, it is obvious that this reversal has not radically improved the situation of women in accessing land, particularly in the rural areas since there are no institutional structures to facilitate their capacity to acquire land. Hence, the respect for equal rights of women in accessing land is

²⁷⁷ Convention on the Elimination of all forms of Discrimination Against Women Adopted by General Assembly Resolution 34/180 of 18 December 1979. UN Doc. A/34/46 (1979). Entered into force on 3 September 1981 (CEDAW), Article 2.

²⁷⁸ *Ibid.*, Articles 14 and 16.

²⁷⁹ Appeal No. BCA/62/86 (unreported).

²⁸⁰ *Supra*

still unrealized in most African states and in the Anglophone regions of Cameroon in particular.

This analysis concedes the existence of cultural differences but contends that it threatens the universality of the principle of equality though such differences ought to be borne in mind when dealing with a particular social environment. This conceptualization is situated in the context of the Vienna Declaration²⁸¹ stating that:

while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect the right to equality as a fundamental concept of human right and freedom'.²⁸²

Although each society has its peculiarities, this does not refute the fact that respect for equal rights of human beings is fundamental, and that societies should be sensitive to that in relation to the exercise of their culture. Although respect for culture is an important aspect in the domain of human rights,²⁸³ its practice should not be used as a tool to violate the fundamental human rights and freedom of human beings.

²⁸¹ Vienna Declaration and Programme of Action, UN Doc. A/CONF 157/24, 25 June 1993.

²⁸² Vienna Declaration and Programme of Action, part II, para. 3.

²⁸³ Section 15 of the International Covenant on Economic, Social and Cultural Rights 1966.

2.6 Customary Rules of Access to Land and the Notion of Equality

Customary law on property has over the years varied from region to region and from tribe to tribe in Cameroon.²⁸⁴ Customary laws which are the unwritten social rules of a community derived from shared values based on tradition have in Cameroon regarded land²⁸⁵ as a resource vested in the community. It is from this context that land is invariably controlled by the chiefs and lineage or household heads of each local community, most of whom are men.²⁸⁶ They distribute land to members of their group for use according to individual needs,²⁸⁷ such as for farming, hunting or building. Under this model, management of land is in the hands of men²⁸⁸ who as producers of marketable crops such as coffee, cocoa, rubber and cotton define needs to suit their large appetite for land. It is apparent that since women specialize in food crop farming, which receives less attention because it is mainly subsistence in status,²⁸⁹ women are regarded as entitled to smaller portion of land. The management process has remained in the hands of men and has largely been conflict free because the community happily deals with the leaders who are

²⁸⁴ P. Kameri-Mbote, Gender Issues in Land Tenure under Customary Law.

http://www.capri.cgiar.org/wp/..%5Cpdf%5Cbrief_land-05.pdf (Accessed on 25/11/2009).

²⁸⁵ *Ibid*

²⁸⁶ E.M. Chilver, 'Native Administration in the West Central Cameroons, 1902-1954', in K. Robinson and F. Madden (eds.), *Essays in Imperial Government*, Oxford, 1963. pp 89-139; This land tenure system does not only exist in the English speaking regions of Cameroon. Also, in Akok tribe in Southern Cameroon, land does not belong to an individual. It belongs to a family (*ndabot*) or lineage (*mvo'o*) who claim historical right over lands and forest. It is only through one's membership in the family or lineage that an individual can have access to land.

²⁸⁷ Land as the most vital resource is considered as belonging to the group with each individual member having access to it according to need. The chief is referred to as the owner of the land and is in this role, responsible for its equitable distribution.

²⁸⁸ I. J. Guyer, *Family and Farm in Southern Cameroon. African research studies N°15*. Boston: Boston University - African Studies Center (1982). Also see

http://www.landcoalition.org/cd_ILC/cd_commons/doc_case/CPR07_Case05_Cameroon_Mala_et_al.pdf.

²⁸⁹ P. B. Logo, & E. H. Bikie, 'Women and Land in Cameroon: Questioning Women's Land Status and Claims for Change' (2003). <http://www.law.emory.edu/wandl/WAI-studies/Cameroon.htm> (accessed on 15/11/09).

regarded as representatives of their ancestors.²⁹⁰ The indigenes are very attached to their land. Its possession and control is inextricably linked to the identity of the community. One feature however common to all African communities is the fact that it is impossible to construe the people without land.²⁹¹ A poem by Chief Maqoma graphically illustrates the link between land and the people thus:²⁹²

We cannot give up, we cannot rest;
without land, we cannot be
from our ancestors, we got the land.

The indigenes attach much value to their land even though the men are in control of the communal land and allocate land to the indigenes (women inclusive) when and where they desire. The men have the right to remove them at will when the need arises. Most often, only a woman in whom a man has interest, benefits in accessing land.²⁹³ The inequality inherent in the customary land model as stated above has made it impossible for land management to be driven by male self interest. This denotes that in the customary context, land was not equally distributed according to individual needs since if a woman is not favoured by the man or she is a title holder in the community, then she is bound to suffer from landlessness. This customary model of land management helps to disempower women in particular on how to assert their right to access land and to have control over it.

²⁹⁰ R.B. Mqoke, *Customary Law and the New Millenium*. Grahamstown:Lovedale Press, Alice (2003) pp 103-4. Also, it is worth remarking that it is contended that this indigenous management of land led to the creation of rights of access to land corresponding to the present human rights conceptualization of property.

²⁹¹ M. Dodson, 'Land Rights and Social Justice', in G. Yunupingu, *Our land is our life:Land rights-Past, Present and Future*. (hereinafter referred to as Dodson M.) Queensland: University of Queensland Press. (1997) p 41.

²⁹² Yanou, (2004) *op cit* p 89; Also see A.T. Moleah, *Colonialism Apartheid and Dispossession*. Wellington: Disa Press (1993).p 152.

²⁹³Kameri-Mbote, *op cit*.

This is more precarious by virtue of the fact that they are more involved in agricultural food crop production than the men and thus have a greater need to access land for mere survival. Statistics show that about 80% of women are involved in the agricultural sector of food crop production in the country but have access to less than 10% of the land.²⁹⁴ Unequal access to land prevents women from having the basis to enhance their productivity and for generating wealth that may help boost their wellbeing and the economy of Cameroon.²⁹⁵

Women are circumscribed from having access to land because land plays much more than a resource role in the traditional African setting controlled by men. Land is seen as a bridge between the living and the ancestral spirits.²⁹⁶ This conceptualization of land translates in practice to inequality since land is in consequence managed by men who play the role of priests and group heads. Under this mode, women's access to land is inevitably derivative.²⁹⁷ A woman under this model gets possession of land through her patrikin or her rights to land are tied to her status as wife which ends upon divorce or the death of her husband.²⁹⁸ This usufructs pattern of access to land granted to her by a man, largely presumes that a woman's right to use land is dependent on the whims and caprices of the males. Even if a woman has right to use land, the right is typically limited since her ability

²⁹⁴ Gender Profile –Cameroon, March 2002. Also see A. Rhoda, *Women and the Environment*. New York: Zed Books 1991 p 59.

²⁹⁵ C. Cheka, 'How Law and Custom Serve to Disempower Women in Cameroon'. *Reproductive Health Matters*, (1996) Vol. 4 No. 8 p 42. Also see F.P. Hosken, 'Women and Property – A Right Denied'. (1984) *12 Development Forum*. p 8

²⁹⁶ M. Yanou, 'Access to Land in Post-Apartheid South Africa; An African Perspective. Bamenda: Langaa Books (2009) p 33.

²⁹⁷ P.M. Kaberry, 'Land Tenure among the Nsaw of the British Cameroon'. (1950) Vol. 20 No. 4 *Afrika*. p 321.

²⁹⁸ I. Samalang, 'The Customary land law and Marginalisation of Women: Impediments to the Rural Woman's Access to Land in Anglophone Cameroon'. (2005) Vol. 5 No 1. *The International Journal Series on Tropical Issues*. p 138.

to transfer, sell, designate an heir for the land, lease the land to other parties or use the land as collateral for a loan from a financial institution is restricted.²⁹⁹ Although women in Cameroon have long had access to land, men and women have rarely if ever had equal claims to land largely because the genders have very different positions within the kinship systems that are the primary organizing order for land access.³⁰⁰ This inequality in the enjoyment of land entitlement in the Anglophone region has negative impact on the wellbeing of women as compared to similarly situated men.

It is worth remarking that customary discrimination against women on access to land is not limited only to the Anglophone regions of Cameroon. In the Beti tradition in the Francophone region, for example, the custom also restricts women's access to land. Once a woman is married, she loses access to the family lands. She may be entitled to use the father's land only when she happens to break her marriage link provided the father agrees.³⁰¹ Nevertheless, marriage provides access to land to women in the rural milieu because the husbands are often ready to provide land to their wives for family sustenance. This privilege has caused inheritance of wives to be considered as a form of old age insurance for women without children. Hence, inheritance of wives in the Beti culture became frequent since marriage acts as a guarantee for a woman to easily access land from her husband.³⁰² Bikie and Bigombe further note that among the Betis, donation and inheritance are the traditional means of land acquisition to which women are rarely

²⁹⁹ Strickland, (2004) *op cit*.

³⁰⁰ A. Whitehead & D. Tsikata, 'Policy Discourse on Women's Land Rights in Sub-Saharan Africa: The Implications of the Return to the Customary'. (2003) 3 (1-2) *Journal of Agrarian Change* pp 67-112.

³⁰¹ P. B. Logo, & E. H., Bikie, Women and Land in Cameroon: Questioning Women's Land Status and Claims for Change, 2003, *Planet Survey*. Also see <http://www.law.emory.edu/wandl/WAL-studies/Cameroon.htm> (accessed on 15/11/09).

³⁰² Logo & Bikie *op cit*. Also see <http://www.everyculture.com/Bo-Co/Cameroon.html> (Accessed on 14/12/2009).

candidates. Where women hold land, they are holding it in trust for their sons who will assume control as soon as they are adults.

The customary rule for accessing land in Anglophone Cameroon assumes that the key to resolving the country's gender-lopsided distribution of land is the undoing of the discrimination by which access to land is rooted. However, the discriminatory practice against women is not given much thought because Anglophone Cameroon is a patriarchal society and women carry a heavier load in production of food crops and reproduction but do not enjoy equal rights in terms of access to resources such as land.³⁰³

Restrictions on women's capacity to access land in the Anglophone regions fall within a wider context of the tendency that regards women as unequal to men. The customary rule of access to land as conceived above has a patriarchal bias because of its entronement of the male head of households as the only true person and holder of family property. This practice has been condemned for its exclusionary elements that restrict women from accessing family property by rendering them legally and socially invisible.³⁰⁴

Official customary law took away the flexibility that should be inherent in the system of access to land, such as the elements that define access to land on the basis of need regardless of sex and status. Small J.³⁰⁵ noted that women in Africa do not have the right to access land in their individual capacity as members of traditional communities

³⁰³ Yanou, 2009 p 82.

³⁰⁴ M. Tumnde, 'The Participation of Women in Politics and Democratisation Process in Cameroon'. (1998) Vol. 1 No. 1 *Journal of Applied Social Sciences* p 43.

³⁰⁵ Small, J., 'Women's Land Rights: A Case Study from the Northern Transvaal'. In Acher, F., and Meer, S. (eds.), *Women, Land and Authority: Perspective for South Africa*, Cape Town: David Phillips (1997) p 46.

regardless of their needs, and that this reality should be understood as an official distortions masquerading as customs.³⁰⁶ The same is true of this researcher's finding that women in the Anglophone region who got land through marriage could be evicted in cases of intestacies if they opted for remarriage outside the husband's original family.

2.7 Early forms of Land Acquisition and the notion of Equality

Acquisition of land has been a matter of controversy in Cameroon from time immemorial. However, problems concerning equal rights to access, modes of allocation and re-allocation of land under the customary rule, were often sorted out by local authorities using the principle of law in force. Hence, in examining the notion of equality under the customary setting, the early pattern of land acquisition is a good window through which to appreciate whether the respect of equal access to land was an issue during pre-colonial Anglophone Cameroon.

Historically, people settled on vacant lands or lands conquered through war from those originally in possession. The early modes of acquiring land raised issues of equality only to a limited extent. Since men often form the bulk of the fighting forces, it inevitably followed that they had the dominant voice on how land as the spoils of war should be managed. It is assumed that because of self interest this management style of land acquired through warfare would be structured to accommodate male members of the early communities to the disadvantage of their female counterparts who played only secondary roles during land wars. Generally, during the early periods land was acquired based on

³⁰⁶ See Yanou, 2009, p 84.

three main patterns namely through first settlement, land acquisition by acts of war (conquest), and land acquisition through inheritance.

2.7.1 Land Acquisition through First Settlement and the Concept of Equality

The earliest settlement on land in the regions under reference took place during the 17th and 18th centuries when the population densities were extremely low, sometimes with less than a person per square kilometer.³⁰⁷ Land availability was not a problem. The important consideration during this period was to claim land in order to carry out food production, building and hunting for family subsistence.³⁰⁸ Land acquisition through first settlement focused on the fact that whoever first settled on a piece of land could claim ownership over it. The ownership right in Anglophone Cameroon is usually conferred on the group or family that first settled on the land and not to an individual.³⁰⁹

Taking the example of Ossing Village in Manyu Division where four brothers and two sisters first settled in the area and developed it to what it is today, sowing seeds of inequality.³¹⁰ The land was regarded as a lineage property, managed by the lineage head for and on behalf of the group. Since the authority of the head over the land was unchallengeable,³¹¹ it is plain that the subsequent distribution must favour the men because of their dominant position. The group considers the land as their god in whom

³⁰⁷ Fisiy 1992, *op cit*, p 58.

³⁰⁸ Ibid

³⁰⁹ See M.T., Aletum & C. F. Fisiy, *Socio-Political Integration and the Nso Institutions*, Yaounde – SOPECAM (1989) pp 61-64.

³¹⁰ Information gotten from respondents from Ossing village in Manyu Division, South West Region.

³¹¹ In cases where such disputes arose, the contesting members of the lineage would generally break off from the main compound and migrate to foreign lands to create a new home. This new home constituted the nucleus of a new lineage, especially if they took along with them certain articles or regalia that were symbols of authority.

they greatly trust and believe for blessings and protection and for the entire community's production and reproduction.³¹² During the first settlement period, women were not associated with land ownership or control to the extent that men were.

It is worth remarking that the first settlement in an area constituted the basic pattern of claiming or acquiring land traditionally in the Anglophone regions of Cameroon. Under this form of land acquisition, the group of persons or family who acquired land through first settlement comprised both men and women. Furthermore, acquiring land through this means is considered by the indigenes as land ownership which is quite different from land use. Land use in this context means having effective possession of the land and enjoying the fruits derived thereof.³¹³ Under the traditional system of land holding, land use took the forms of farm lands, land for hunting, and land for housing. Land for farming is often given out by the chief or family head to the family members.³¹⁴ Women fell within the range of persons who acquired land through this means. They acquire it through the family head or father which they use mostly for subsistence farming until they are married. On marriage, they can acquire land through their husbands. When a woman is traditionally married, her right to land ends on divorce or death of husband. This analysis relates to the fact that women were not treated on the same basis on access to land as the men with whom they jointly acquired the land through this form of first settlement.

³¹² M. Goheen, 'The Earth shall give Judgment: Land Leadership and Political Legitimacy in Highland Cameroon'. Boston University, African Studies Center, Working Paper No. 143, (1989). p 71.

³¹³ M. Goheen, *Men Own the Fields, Women Own the Crops: Gender and Power in the Cameroon Grassfields*. Wisconsin: The University of Wisconsin Press (1996), pp 107-114.

³¹⁴ *Ibid.* Also see Fisiy (1992), *op cit* p 62.

2.7.2 Land Acquisition through Acts of War or Conquest and the Concept of Equality.

As observed in the introductory remarks, land was also acquired through acts of war or conquest. In pre-colonial days, war was used as one of the instruments of using power to acquire land. War thus provoked migration since most warring communities used it as a technique to acquire land.³¹⁵ Most lands in the North West Region were acquired through this means.³¹⁶ The conquering groups such as Bali, Nso and Kom were late settlers in the North West Region and those who were subdued were either absorbed into the dominant group or fled from the area in search of safer grounds.³¹⁷ In such situations, the nature of land ownership and tenure is shared between the initial settlers and the dominant conqueror. In that community, the initial settlers often maintained the spiritual control over the land while the dominant conquest lineage took over the political and the economic control of the land. In most cases, hegemonic warfare often led to long standing animosity and distrust.³¹⁸ This is demonstrated in the lingering hostility between the Bali and the Widekum people where the former captured and seized the latter's land.³¹⁹

However, the major contribution of warfare to the process of State formation in this area was that it led to the creation of alliances and pacts. Lineages that settled like disparate groups were forced to band together for their own protection or to join more dominant

³¹⁵ P.N. Nkwi & P. Warnier, *Elements for a History of the Western Grassfield*. Department of Sociology, Yaounde University, Yaounde, (1982) p 59.

³¹⁶ Fisiy, *op cit* p 59

³¹⁷ The Widekum and Meta people were victims of this process though the people have refused to give up their claims over parts of Bali-Nyonga farmlands that were seized from them.

³¹⁸ This is particularly the situation of the Bali-Widekum wars where some Widekum lands were seized and the first settlers were driven away. The new occupants then claimed ownership and established new links with the gods of the land. See R. Fardon, *Raider and Refugees: Trends in Bali Chamba Political Development, 1750-1950*. Washington: Smithsonian Institute Press, (1988).p 60.

³¹⁹ Ibid

groups for the same purpose. The main conquest chiefdoms of Nso, Kom, and Bali all started as small bands of refugees and then gathered more people and helped to strengthen the group in terms of numbers and powers.³²⁰ Groups of lineages within a given geographical location banded together under the rule of a chief or chiefs to form a village.³²¹ It is in this context that this candidate contends that the land management adopted by chiefs who were in the main male did not prioritise equality of access to land for males and females. This is evident from this fact that during the struggle for the acquisition of the land, men were the forerunners, with women playing a secondary role of supporting and catering to the men. Hence, women did not enjoy equal right to control the acquired land as the men did under this rule of land acquisition through conquest.

It is evident from the above forms of land acquisition that women were totally sidelined by the family heads when it came to land management and control. They enjoyed only usufruct right on the land because, unlike their male counterpart with whom they actively fought for the acquisition of the land, they were seen as playing only peripheral roles.

2.7.3 Land Acquisition through Inheritance and the Concept of Equality

Land Acquisition through inheritance is another form by which indigenes could access or exercise their equal right to land. The acquisition of land through the devolution of the property of the deceased intestate is a significant mode of accessing land in the Anglophone region in particular and Cameroon in general. Generally, property including land devolves in intestacy on the basis of rules of customary law notorious for their

³²⁰Fisiy, *op cit* p 60.

³²¹*Ibid* p 61.

inequality in favouring males as against women. Even the notion of Wills has no impact in the customary setting to derail the customary rule of devolution of property to the males alone. Yanou³²² has observed that, even women groups decried the role of Wills in the distribution of property noting that it is used to deflect the natural course of inheritance to the disadvantage of women.³²³ This is because most testators use the Will to intentionally displace the right of inheritance of women which cannot be contested by the women if he made the will respecting the capacity and formalities of making a valid will.³²⁴

The customary rule governing inheritance takes mainly the patrilineal pattern in most tribes in Cameroon.³²⁵ That is, succession is appointed on the basis of the principle of male primogeniture. In this system of inheritance, the male children are entitled to inherit their father's property as family property and most often, the property is inherited by the first son³²⁶ or the most cherished son of the deceased.³²⁷ In this setting, letters of administration are unnecessary.³²⁸ What the next of kin needs is to get a declaration in the relevant customary court where the deceased was domiciled before applying for letters of

³²²M. Yanou, 'The Making of Valid Wills in Anglophone Cameroon: Problems and Perspectives'. (2002) Vol. 1 No 1, *Private Law Journal of Calabar*, p126.

³²³The tree of succession places a wife as the next of kin to whom letters of administration should be granted. See The Non Contentious Probate Amendment Rules of 1976.

³²⁴See sections 7 and 9 of the Wills Act 1837.

³²⁵This is a lineage system which is traced through the father.

³²⁶See the case of *Efosi Kombe v Lydia Ngale* (1980) CASWP/cc/5/79 cited by Enonchong, N. 'Public Policy and Ordre Public: The Exclusion of Customary Law in Cameroon', (1993) 5(3) *RADIC*, 511.

³²⁷See the case of *Joseph Tanjang Bamu v Emmanuel Awankem Bamu*, (1990) Appeal No. 65/86. Here, one of the witnesses said that 'by our tradition, the eldest child in Mendankwe is not made successor'. Also in *Suberu v Sunmonu* 2 FSCS 33, 1950, it was held that on the death of a parent (father) under the Yoruba customary law, his property devolves on his children as family property.

³²⁸M.G. Yakubu, *Land Law in Nigeria*. London: MacMillam Publishers Limited (1985). p 133
There are many estates that are managed by the next of kin (popularly referred to as 'chop chair') without any judicial intervention.

administration if he so wishes.³²⁹ Besides, the children who inherit property under the patrilineal system (most preferably sons), the deceased brothers, and his brother's children (nephews) can also inherit thus excluding wives, sisters, aunts and all other female relations. Ngwasiri³³⁰ pointed out that women are totally excluded from inheriting land under the customary patrilineal setting. He further stated that 'traditionally, women are men's chattels to be handed over to male inheritors along with other property at the time of husband's death'.³³¹ In families where there are no male relations to inherit land, the rights therein will revert to the community.³³²

E.N. Ngwafor³³³ contends that "if there is any uniform law that runs through all the customary laws of the North West and South West Provinces of Cameroon, it is that a woman cannot own or inherit property". In justifying this inequality, he argues that families are afraid that if a woman inherits or is allowed to own land, on marriage, she will take the property to her marital home where the property would be used to enrich the welfare of her husband's family³³⁴ rather than that of her biological family.

According to this view, the family usually prefers the male child or relative to inherit property because it is customarily believed that he is bound to maintain and uplift the family identity even on marriage. The above customary view of denying a woman the

³²⁹ Yanou, M.A. 'Intestate Succession in Anglophone Cameroon: A Critical Appraisal'. (1999) Vol. IV No. 1 *The Calabar Law Journal* p 61.

³³⁰ C. Ngwasiri, 'Land Tenure practices and their Implications for Natural Resources Management in cameroon'. Paper prepared for a Seminar on Natural Resource Management in Cameroon (PVO-NGO/NEMS Project) at SA'A Cameroon, June 22-25 1995.

³³¹ *Ibid*

³³² Yakubu, *op cit* pp 133-135.

³³³ Ngwafor, *op cit*, p 205

³³⁴ Customarily, it is the man who controls all family property regardless of its period of acquisition (before or during marriage by either of the spouse).

right to inherit property is illustrated in *Sarah Afumbe v Johnson Libatu Jasset*³³⁵ where the Bamboko customary court held that a girl child cannot inherit her father's property. The court preferred the brother of the deceased and granted inheritance rights over the property of the deceased including the deceased's wife and children to him.³³⁶ A detailed analysis of women and inheritance right will be seen in chapter 4.

Additionally, in most tribes in the French speaking regions of Cameroon, customary rule on land inheritance is also authoritarian and patrilineal in nature. For example, according to the Beti custom, women are totally excluded from land inheritance. Land is often transmitted from father to son and if the father has only daughters, the land generally would come back to the deceased's family member, that is to the male relatives and, very exceptionally, to a woman.³³⁷ Also, in Akok tribe in the Southern region, succession rights have a direct link with genealogical rights whereby only the boys are entitled to be heirs to the assets and wealth of their father and the ladies are not.³³⁸ The above customary view of denying a woman the right to inherit property is illustrated in *David Tchakokam v Koeu Magdalene*.³³⁹ Here, the family of the deceased in plain language, described the wife as part of the deceased husband's family property and thus, as being incapable of inheriting the family estate. The family further argued that, according to the customary practice of the Bamilekes in the Western Region of Cameroon, the deceased's brother (David) has the

³³⁵ Suit No CASWP/17/80.

³³⁶ It is worth remarking that this was however overturned by the court of Appeal Buea. See Yanou (1999) *op cit* p 65.

³³⁷ Kameri-Mbote, P. Gender Issues in Land Tenure under Customary Law http://www.capri.cgiar.org/wp/..%5Cpdf%5Cbrief_land-05.pdf (accessed on 17/11/09).

³³⁸ I. J. Guyer, 'Family and farm in Southern Cameroon. African Research Studies No 15. (Boston: Boston University - African Studies Center, 1982) p 7. Also see M.C. Diaw, 'Si, Nda Bot and Ayong: Shifting Cultivation, Land Use property Rights in the South of Cameroon'. Network Paper 21 e. London, ODI Rural Development Forestry Network.

³³⁹ Suit No. HCK/AE/38/97.

right to inherit both the wife and estate of the deceased. It is worth remarking that women's restriction on the right to own property in most of the cultural set ups demonstrate the society's tendency of fostering gender inequality by promoting male domination over ownership of property, land inclusive. This worsens women's status and negatively impacts on their roles in the society.³⁴⁰

Indeed the customary rule of women and inheritance rights is very discriminatory against women. Women are considered under this rule as inanimate objects that cannot inherit property but can be inherited. A woman's right to own property is usually considered as a slap on the face of the custom of Anglophone regions and is often negatively interpreted. A woman who inherits or buys land is seen as having sinister intentions either to run away from her marital home, or to use it as a place to entertain other men.³⁴¹ The threat of women gaining power through property ownership makes society frown upon women who acquire property of their own. This view argues that a proper woman should be satisfied with a man being the provider in her life.³⁴²

According to the views of some proponents of the customary rule restricting a woman's land right, women should not own land because they do not own their children. Also, women do not own land because God created man first and later created women out of the man's rib and so man is supposed to control all valuable resources. By nature, a woman is

³⁴⁰ *Ngnetedem Etienne v Tashi Lydia Sinaga*. BCA/46/86 (unreported). Here, the Court of Appeal saw fit to allow the woman on divorce to gain access to kitchen utensils and some household necessities but was denied the right to own landed property (house).

³⁴¹ G. Mikell, *Cocoa and Chaos in Ghana*. New York: Paragon House, (1989).

³⁴² C., Okali, *Cocoa and Kinsip in Ghana: the Matrilineal Akan of Ghana*. London: Kegan Paul International for International African Institute, (1983).

to be dependent on man in all aspects of life, land use inclusive. A woman cannot own land because she is in transit; she is prone to be walking in and out of a family at will. Hence it is not wise to entrust the control of land on her. Land is for the clan and the clan is headed by the man; if a woman owns land she will grow horns; women who buy land do not marry and so women cannot own land since the culture encourages women to get married.³⁴³ Furthermore, 'The Shufai Wo Baforchu Tobin in Nso', reiterated that in the Nso tradition, a woman may be allowed to plant cash crops such as cola nut trees and palm trees but she cannot own such trees. This is because these are cash crops with special or sacred status meant only for men to control in the Nso tradition. Hence, women in this tribe are prevented from owning land and even from controlling some specially valued cash crops attached to land.

Although discrimination against women and male-dominated land control are common, some opponents of the customary land rules argue that restricting a woman from owning land undermines clan cohesion since there exists no unity or commonality in the management of land in the community.³⁴⁴ Furthermore, though men control decisions related to land use, customary rights have traditionally granted women indirect access through their relationship either by blood ties or marriage.³⁴⁵ Today, both customary and religious laws³⁴⁶ continue to uphold women's subordination to man thus limiting women's direct access to land and reflecting the assumptions that land can only be provided to

³⁴³An interview organized by the Researcher with the Shufai of Ndzeze in Kumbo on the 13/04/2010

³⁴⁴J. Asimwe, and E. Nyakoojo, *Included yet Excluded: A Study of Women's Land Rights in the Districts of Pallis and Kapchorwa*. Kampala: Uganda Land Alliance and Action Aid Uganda, (2001).

³⁴⁵N. Youssef, 'Access to productive resources: The Need for Legal Instruments to Protect Women's Development Rights,' in Julie Peters and Andrea Wolper (eds.). *Women's Rights, Human rights. International Feminist Perspectives*. London: Routledge New York, 1994.

³⁴⁶Women's land status under the religious laws in the region will be discussed in chapter 4.

women by their male kin.³⁴⁷ As land has increased in value as a marketable commodity in itself, women's traditional rights of access to land have only diminished further. Even when kinsmen continue to grant women land to cultivate, the quality and size of plots are reduced.³⁴⁸

Under the customary land tenure, land is perceived as a male asset where the right to manage and control it is vested in the men. This customary discriminatory land right has gender implications because women have to negotiate and bargain with the custodians of land as well as compete for the limited arable land that is available. Given the changing nature of the family, women are increasingly becoming household heads in their own right. If access to land is left only under the control of men who are traditionally considered as household heads, then what will become of those families that are headed by women? Due to this dilemma, the need to control and access land has become equally important for both men and women in order to improve on their individual livelihood.

Besides, Cameroonian customs are more rigid towards women and access to land. Women are marginalized to the benefit of men who are decision makers even when these decisions directly concern women. When talking about land on a traditional or a modern scale in the Anglophone regions, one thinks of the man in the front line. Men rule management of land and most often, they manage it in their own favour.

³⁴⁷F. M. Bettles, 'Women's Access to Agricultural Extension Services in Botswana', paper prepared for the Ford Foundation Workshop on women in Agricultural Production in Eastern and Southern Africa, Nairobi, Kenya, April 9-11, 1980.

³⁴⁸*Ibid.*

Conclusion

It can be seen that although the principle of equality and non-discrimination has been interpreted variously because the scope of possible interpretation of the notion of equality and non-discrimination is undoubtedly vast. Whilst no interpretation can claim to be a categorical truth in the application of the conception of equality or non-discrimination, the human rights based, substantive equality approach of ‘treatment as an equal not equal treatment’³⁴⁹ provides an excellent philosophical maxim by which equality and non-discrimination can be translated into meaningful legal and policy instruments.

³⁴⁹ P. Western, ‘The Empty Idea of Equality’. (1982) Vol. 95, No. 3 *Harvard Law Review*, p 537. The above approach is succinct because if the notion of equal treatment is applauded, then the underlying principle of substantive equality of access to land propagated by this study, will not be attained.

Chapter Three

EQUAL ACCESS TO LAND UNDER THE CAMEROONIAN LEGAL SYSTEMS

3. Introduction

This chapter discusses access to land in Cameroon in detail commencing with the historical evolution of land legislations in the country. The author reviews the various regimes under which land is acquired in the country. It traces land acquisition modes from colonial to the post colonial periods. The discussion which is situated within the broad context of equality also examines land registration from the perspective that it is used to consolidate existing inequality in the distribution of land. Furthermore, relevant issues such as equal access to land as a human right; an analysis of the ratified human rights instruments relating to equal access to land; and the state's obligation in guaranteeing equal access to land under the treaties, are discussed in this chapter.

3.1 Introduction of Colonial Regimes and Equal Access to Land in Cameroon

In Cameroon, colonization favored the penetration and generalization of a westernized right to property. The colonizers showed great determination in the control and management of the lands by implementing a policy of dispossession of the natives of their ancestral land rights. As has been observed, colonizers based this dispossession on the theory of an automatic appropriation of all the lands which they considered as vacant

without master.³⁵⁰ They were preoccupied protecting their interest on the land regardless of securing the interest of the indigenes, let alone securing their equal rights to land.³⁵¹

3.1.1 Access to Land under the German Rule and the Principle of Equality

Access to land under the German regime was governed by the German Crown Lands Act of 1896. The primary aim of this law was to transfer land controlled by the chiefs to the government, that is, German rule.³⁵² The law was used to convert indigenous settlers into wage labourers by depriving them of access to their land, which was transferred into German's agricultural plantations.³⁵³ The law which also aimed at raising capital, resulted in vesting control of all unregistered land to the state³⁵⁴ which according to German thinking was 'ownerless lands' (land without masters) because the lands were not under effective occupation by the natives.³⁵⁵ As such, the lands were owned and managed by the government.³⁵⁶ This sweeping land expropriation naturally caused profound disaffection amongst the local population. The natives' argument was that, by their customary laws, all lands had landlords, even though they might not be effectively occupied.³⁵⁷

³⁵⁰ C. K. Meek, *Land Tenure and Land Administration in Nigeria and the Cameroons*. London: Her Majesty's Stationery Office (1957), p 355.

³⁵¹ Ibid

³⁵² The Buea Archives, File No 145/38, Qf/a1938/2b: Acquisition of Land by Native Administrator 1938.

³⁵³ E. Ardener, et al, *Plantation and Village in the Cameroons: Some Economic and Social Studies*. New York: Oxford University Press, 1960 pp 317; Fisiy, *op cit* p 29; Also see Meek, *op cit* p 355.

³⁵⁴ According to Erik Hallden's study of 'The Cultural Policy of the Basel Mission in the Cameroon, 1886-1905' (1968) p 100, the concept of 'ownerless land' was introduced by Colonial Governor Von Soden in an attempt to convert ownership of land from natives to the government and from the government to plantation companies in exchange for money. They were very much interested in the economic aspect of the land acquisition.

³⁵⁵ The Germans introduced the concept of Herren loss Land as stated in Article 1 of the 1896 Crown Act. By this concept, the Germans owned all unoccupied lands. It is through this concept that the policy of dispossession and expropriation of lands from the indigenes was instituted by the Germans.

³⁵⁶ The Imperial Decree of June 15, 1896 declared that 'All land for which a legally valid purchase contract did not exist has to be considered crown land'. See Tah, Z, N, *op cit* p 71. Also see Fisiy, *op cit* p 29.

³⁵⁷ C.C. Tawah, *Private Land Ownership in Cameroon*. LLB Mémoire, University of Yaoundé, (1977) p 5.

The German land policy had two major elements to it. It involved the dispossession of the indigenous natives from land for plantation agriculture which was one of the Germans' main concerns in the coastal region.³⁵⁸ It also resulted in the creation of reserves where the local people were kept for cheap plantation labour. This phase of the struggle for control witnessed two competing normative systems. Firstly, the Germans were applying the Crown Lands Act of 1896 to legally expropriate a larger proportion of "native lands"³⁵⁹ while the local populations insisted on their customary claims to the land.³⁶⁰ The struggle forced local peoples to carve out family or communal land into allotments making the acquisition of land titles become inevitable. This colonial policy generated land conflicts which persists till date, as Bakweri natives are still pursuing claims to have their "native land" restored by the State.³⁶¹ Besides, this law provided the foundation for land registration in the country which has been adopted by subsequent land regimes.³⁶² The German legal regime provided little or no protection to the property rights of Cameroonians in general and women in particular. During German colonial rule, women could not seek protection either from the customary law or the governing colonial land

³⁵⁸ W.G. Clarence-Smith, 'From Plantation to Peasant Cocoa Production in German Cameroun'. In P. G. Geschiere & P. Konings, (eds.), 1989. Also see V.E. Yenshu, 'The Management of Ethnic Diversity in Cameroon: The Coastal Areas' in E.S.D. Formin and J.W. Forje (eds.). *Central Africa: Crises and Reform*. Dakar: CODESRIA Books pp 41-63: 48.

³⁵⁹ Indeed, when the country was ruled by the Germans, plantation agriculture flourished. By the time the German left in 1914, they had acquired over 300,000 acres of prime agricultural land repartitioned into 58 estates within the present day South West region. Such a massive appropriation of land needed some legal instrument to give the exercise the cover of legitimacy. The German plantations were taken over by the English as ex-enemy property. After some hesitation, the English sold these plantations back to the former German farmers. But with the outbreak of the Second World War in 1939, the plantations were once more confiscated. After the war in 1946, these plantations were incorporated as the Cameroon Development Corporation, (the CDC). The CDC is one of the largest agro-industrial parastatal in Cameroon today.

³⁶⁰ The Buea Archives, File No 2114, Qf/a/1939/1: Land Tenure Cameroon Province. The indigenes insisted on claiming their land because the Germans were first of all considered as intruders and they were unable to accept that their ancestral lands are taken away from them through the introduction of a foreign law into their land system.

³⁶¹ H.N. Molua, *The Bakweri Land Problem 1884-1961: A Case Study*, M.A. Thesis, University of Ibadan (1985).

³⁶² The Germans introduced the 'Grundbuch' which deals with land registration and this paved the way for land registration in Cameroon.

policy. Indeed, the situation of women with regard to access to land deteriorated because the scarcity of communal land made rules of access become tighter to the disadvantage of women in a male dominated society.

3.1.2 Access to Land under the British Rule and the Principle of Equality

The British government which succeeded German rule in the English Speaking Cameroon from 1914–1961, adopted the policy of indirect rule.³⁶³ The general British policy which relates land in the Trust Territories under the Trusteeship Agreement of 1947 was succinctly captured in Article 8 of the Agreement. It states thus:

In framing laws relating to the holding or transfer of land and natural resources, the Administering Authority shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests, both present and future, of the native population. No native land or natural resources may be transferred, except between natives, save with the previous consent of the competent public authority. No real rights over native land or natural resources in favour of non-natives may be created except with the same consent'.³⁶⁴

³⁶³ See Meek, *op cit* p 370. The British Authority did recognize the land rights of natives and they adopted the policy of administering indigenous land through the native chieftains that is the native customary land tenure.

³⁶⁴ See Article 8 of the Trusteeship Agreement as approved by the General Assembly of the united Nations on 13th December 1947.

It is plain that by this rule, very little interference was to be made with the indigenous land tenure system in existence. Specifically, the colonial authorities applied the Land and Native Right Ordinance of Northern Nigeria³⁶⁵ to Southern Cameroon in 1927³⁶⁶ because Southern Cameroon was jointly administered as an integral part of Nigeria. The main core of the Ordinance was stipulated in Section 3 which asserts that all the lands in what the British then called West Cameroon, whether occupied or unoccupied, were declared to be native³⁶⁷ lands used for the common benefit of the people.³⁶⁸ The lands were to be under the control and administration of the Prime Minister (Governor).³⁶⁹ According to the Ordinance,

all native lands and all rights over the land are hereby declared
to be under the control and subject to the disposition of the
Governor and shall be held and administered for the use and

³⁶⁵ In the context of Northern Nigeria, this was Ordinance No. 1 of 1916 which was a revision of the Land and Native Rights Proclamation No. 9 of 1910. This proclamation had been enacted as a result of the 1908 Committee report that investigated native land tenure and practices in Nigeria and India.

³⁶⁶ This was the British Cameroons Administration (Amendment) Ordinance No. 1 of 1927.

³⁶⁷ See Meek, *op cit*, p 371. He stated that the word native is defined by the Ordinance to mean a person whose parents were members of any tribe or tribes indigenous to the Cameroons under British Mandate and the descendants of such persons. This includes a) any person one of whose parents was a member of such tribe, and b) any person who shall have obtained a certificate from the Governor in the form in the second schedule, which certificate the Governor is hereby authorised to grant, at his discretion, to any native of Africa who shall have declared his intention of making the Cameroons under British Mandate his permanent domicile, and who shall have satisfied the Governor that he has obtained the consent of the native authorities concerned. This means that non native is any person who does not fall under the above condition. Today, it is worth noting that under the 1974 Land Ordinance, a native in Cameroon embodies all Cameroonians regardless of the region of origin. p 377

³⁶⁸ The fear of permanent white settlement on the Mandat territory, and the massive alienation of indigenous lands, prompted the League of Nations to include in the Trust Agreement of 1947 under the United Nations, which provides in its Article 8 that 'in framing laws relating to the holding or transfer of land and natural resources, the administering authority shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests, both present and future, of the native population. No native land or natural resource may be transferred, except between natives, save with previous consent of the Governor. No real rights over native land or natural resources may be created except with the same consent'.

³⁶⁹ When the country got its independence in 1961, these rights of land management were taken over by the Prime Minister (P.M.) on behalf of the indigenes. See R.W. James. *Modern Land Law of Nigeria*. Ife: University of Ife Press (1971). p 10

common benefit of the natives, and no title to the occupation and use of such lands shall be valid without the consent of the Governor.³⁷⁰

Besides, the Governor had powers to grant rights of occupancy³⁷¹ to natives and to non-natives, and these rights may be for a definite and indefinite term, provided that they are not inconsistent with the terms of the Ordinance.³⁷²

The outcome of this Ordinance was to divest the indigenous landlords of their absolute ownership rights over land and to turn them into mere occupiers of the land under the Governor's rule³⁷³ although this did not imply that ownership had been transferred to the State. This much was clear from the Inglis Commission of Inquiry, 1967, which stated that:

The vesting of lands in the Governor (P.M.) had not implied a transfer of ownership of the land of the territory to the Governor (P.M.) but had merely conferred on him a power of

³⁷⁰ Section 4 of the Lands and Native Rights Ordinance, 1948 version of the Laws of the Federation of Nigeria. Also see Fisiy *op cit* p 31.

³⁷¹ The term 'right to occupancy' is defined as 'a title to the use and occupation of land. This also includes the title of a native, or a native community, lawfully using or occupying land in accordance with native law and customs, ...' During this rule, there were two kinds of Right of Occupancy: a) a title to the use and occupation of land granted by the Governor, and b) the title of a native or native community lawfully using or occupying land in accordance with native law or custom.

³⁷² Ardener, E *et al op cit* p 317. This denotes that the Governor is empowered to alter, amend, add to, or revoke any regulations made under the Ordinance, as he deems fit provided it is in accordance to the Ordinance.

³⁷³ The Lands and Native Rights Ordinance 1927, section 2.

supreme trusteeship. Nor had it affected native titles, whether community or individual.³⁷⁴

However, under this land right system, the British government treated all indigenous persons as natives void of any formal gender bias in terms of access to land. They dealt with the chiefs whom they met as the head of the natives and applied nominal norms of the land. The problem however, was that all the chiefs were male a fact that had profound effect on the rules for acquiring land. Under this regime of land management, rules of access to land invariably became male friendly. As was the case elsewhere, British policy allowed for the emergence of patriarchal rules for accessing land. It was standard practice for men to be regarded as owners of the land subject to the fact that women were to be allowed usufructuary rights over land. A Cameroonian scholar, due to this British idea, asserted that women were minors and therefore not competent to hold land, arguing that this was in fact a universal principle of law.

Even though the 1927 Ordinance was conceived to protect native lands from alienation,³⁷⁵ the law turned out to be perceived by natives as an obstacle to the full exploitation of the economic potentialities of their land. According to this native view, the land could not be used by the “natives” as a factor of production that could be sold, leased or mortgaged at will unless the owner had a certificate of occupancy as instituted by the 1927 Land

³⁷⁴ See Meek, *op cit* p 371.

³⁷⁵ When the Lands and Native Rights Ordinance was first introduced in 1927, it was clearly stated that one of its primary aims was “to preserve as far as possible the existing native customs with regard to the use and occupation of the land”.

Ordinance. This policy greatly altered the customary law on land matters, which hindered the natives from having access to their land freely.³⁷⁶

The policy of the British on land over all, produced restrictions on the rules for acquiring and controlling land by natives. It invariably resulted in introducing a spirit of land restriction and discrimination among natives. Under it, the lands that the leading males controlled prior to colonization were expropriated by the British. This created extreme scarcity of land stiffened competition for the resource with the result that men were compelled to withdraw land hitherto left for women to use.³⁷⁷ This negatively affected the welfare of natives with women in particular being badly hit. The withdrawal of land left the majority of natives without access to land.

The British made an important contribution to the land history of Cameroon by introducing the legal instrument of certification of entitlement to land as a measure through which alienation of land to non-natives was controlled. It is obvious that the introduction of the certification of entitlement also impacted negatively on women's capacity to acquire land. The rules for certification were strict, formal and expensive, making the process significantly beyond the ability of the bulk of women who at their period were generally poorer than their male folks.

³⁷⁶C.M. Dowell. "An Introduction to the Problem of Ownership of Land in Northern Nigeria". (1965)Vol.1, No.2, *N.L.J.* p 202.

³⁷⁷Ardener *et al op cit* p 318.

3.1.3 Access to Land under the French Rule and the Principle of Equality

Cameroon's land policy under French Colonial Rule (1916-1960) was based on a 1932 Decree on land tenure. Under this Decree, all unoccupied land was 'vacant lands without master'. The French had a policy of taking over control and administration of the indigenous land which in their view was ownerless. In order to avoid animosity with natives who had been resisting the control of the colonial rule over the indigenous population and their resources, the French formally adopted the approach of acquiring land by concession between indigenes and the government.³⁷⁸ Such lands were subsequently placed under the management and control of colonial authorities on behalf of the population but without alienating their right to the land.³⁷⁹

French land policy can be interpreted as a colonial manoeuvre to take over control of land management pursuant to the French assumption that taking over the land would invariably lead to control of the population.³⁸⁰ This notion of controlling the 'unoccupied land' gave rise to protest from some local chiefs and landlords who were committed to defending their ancestral lands. The 1932 Decree was reaffirmed by subsequent land laws such as Law No 66-307 of 25 September 1966. This law emphasized on the registration of all lands irrespective of the form of tenure (private or corporate interest in land). This policy

³⁷⁸ See Fisiy, p34.

³⁷⁹ This means that despite the fact that the French intended to adopt the system of land acquisition by concession from the indigenes, the application of the 1932 Law proved the contrary. Instead the French were out to divest the indigenes of their land right.

³⁸⁰ Fisiy, p 35.

was not welcomed by natives who did not find the foundation of *terra nullus* upon which it was based just and acceptable.³⁸¹

The French colonial rule is very important in this study because the French policy was the last colonial policy on land in Cameroon and paved the way for the institution of the 1974 Land Ordinances which is the main legislation governing land law in the country. Besides, the French stressed a common policy of land acquisition through registration of land in the French Speaking Cameroon.³⁸² French law to this extent strengthened patriarchal rules of access to land as enshrined under customary law. Most women were poor, illiterate and could not satisfy the registration procedure of acquiring land set up by the French rule.

Cameroon has lived through the multiple systems of land tenures of the different colonial regimes that administered the country with each maintaining the notion of converting the so called “ownerless land” to national land. The colonialists were all determined to weaken the powers of traditional rulers over natives thereby depriving them of their claims over their lands. The colonial land laws were technically gender neutral because they were focused only on protecting colonial interests against the interests of the natives.³⁸³ Moreover, the colonial land policies helped to alter the customary rule where the indigenous land was solely controlled by the family heads who were only men, and the

³⁸¹ Tjouen, A-D. (1981). *Droits Domaniaux et Techniques Foncières en Droit Camerounais*, Paris: Edition Economica. P. 93.

³⁸² This policy favoured mostly the rich. They used their wealth to amass land and registered it in order to be considered as the effective and rightful occupant of the land. The policy deprived the poor and women inclusively from having access to land. Also see Tah, Z. N., *op cit* p 74.

³⁸³ The colonialists were more focused on appropriating land to foster their economic interest by expropriating vast lands to establish their agricultural plantations. They used their policy of converting all masterless or ownerless land to the national pool. For example, the German rule was particularly focused on this aspect.

rest of the family members especially women, depended on the heads to get farmland to use for family sustenance.³⁸⁴

It is worth noting that before the arrival of the colonial regime in Cameroon, Cameroonians did not attach much value to land. They regarded land equally as the earth, air and water which man could use freely without restriction or alienation.³⁸⁵ This perspective to land is evident in the illuminating arguments put forward by some African feminist scholars³⁸⁶ who state that pre-colonial African women had better access to land than colonial or post colonial African women. For example, Goheen³⁸⁷ noted that during the pre-colonial period, women had vast land at their disposal to farm on and the issue of sale or alienation of land was not feasible as it is the case today. Land was a communal resource and it was found in abundance. Since women were more involved in farming activities than men, they had abundant farm land to live on with little or no restriction.³⁸⁸ In situations where the men removed women from their farmlands, women could still easily access other farmlands since land was in abundance.³⁸⁹

French colonial rule helped to intensify discriminatory practices with regards to access to land in the country. It worsened the position of women who depended on the men for land.

³⁸⁴ Fisiy, op cit p 29.

³⁸⁵ H. Henry, (1983). 'The Role of Land Law in Rural Development in Niger, The Ivory Coast, and Nigeria under Development Law Aspects', *The State and the Law*, Vol. 28.

³⁸⁶ M. Tumnde, 'The Participation of Women in Politics and Democratisation Process in Cameroon'. (1998) Vol. 1 No. 1 *Journal of Applied Social Sciences*, p 43. She stated that before colonial rule, women had more powers to access land than the men under the Bamileki customary law since they were more involved in farming activities.

³⁸⁷ M. Goheen, *Men Own the Field, Women Own the Crops: Gender and Power in the Cameroon Grassfields*. Wisconsin Press (1996). pp 107-114. She noted that though men controlled the field, women were at ease to use as much land as they could for farming without restriction.

³⁸⁸ *Ibid.* Also see The Buea Archive, File No 2114, Qf/a1939/1: The Land Tenure in Cameroon.

³⁸⁹ Henry op cit.

This was because once natives were dispossessed of their communal land, men who controlled the land, were compelled to evict women who had acquired and used farm land through them. This situation caused a lot of hardship on women and the family as a whole. The negative impact of the colonial policies on women's capacity to access land as indicated here consolidated and worsened the restrictive rules for accessing land under customary laws. French colonialism was no different from German and British rule under which women's right to land were lessened, authority decreased and capabilities for economic and social advancements impeded.³⁹⁰

Furthermore, apart from the fact that French colonial laws were silent on the customary discrimination women experienced with regards to land, the laws further helped to limit women's land right. The introduction of a policy of sale and alienation of land after registration intrinsically did not favour the traditional woman.³⁹¹ First of all, apart from her comparatively limited exposure and education, she lacked the financial resources to compete for the purchase of land. This was all the more so as the cost of land was left to be determined exclusively by market forces. Further, the technicalities involved in the registration process, made the process users hostile with the rural women suffering the greatest impact.

The monetization of land made the resource highly valuable and thus influenced the leading males in the society to consider land as an important source of power and wealth. This increased the tendency of men to withdraw family land from the hands of women

³⁹⁰ N.D. Hahn. 'Women's Access to Land', Land Reform – Land Settlement and Cooperatives 1982 – No.1/2. Food and Agriculture Organisation of the United Nations Rome 1982, 1-11:1.

³⁹¹ The Buea Archive, File No 145/38, Qf/a1938/2b: Acquisition of Land by Native Administrator 1938.

members of the family for sale. This attitude of the men kept women in perpetual conflict with the men, and even with the buyers (owners) of the land who usually brandish the land certificate to authenticate their control or right over the land which the women were using.

It is from the above analysis obvious that Gershon Feder³⁹² was certainly right when he postulated that uncertainty on women's right to use land tends to increase as land commercialization increases and as new technology increases the land's income potentials. According to this view, with the advent of commoditization of land, conflict is bound to arise among family members and the community at large with women at a disadvantage. Due to the quest for wealth and power, some individuals are tempted to expropriate land and even sell what does not belong to them. Furthermore, Adri van Berg³⁹³ noted that the indiscreet commercialization of land in the Anglophone regions, and in the North West Region in particular, has given rise to the numerous land disputes in the region. The tendency is that each member of the family is attempting to grab as much family land as possible for subsequent sale.³⁹⁴ In the process, women lose their usufructs right on family land resulting in limited access to land which constrains them to walk increasingly long distances in search of farmland.³⁹⁵

³⁹²Geshon Feder. 'Land Ownership Security and Farm Productivity: Evidence from Thailand', (1988) *The Journal of Development Studies*. p 18.

³⁹³ Van Den Berg, A., (1993). *Women in Bamenda: Survival Strategies and Access to Land*. Leiden: African Studies Centre. This remark was made following her field research on land acquisition carried out in the Mankon Urban area of Bamenda in that year.

³⁹⁴ Ibid.

³⁹⁵ Miriam Goheen reports that in Kumbo Town, Bui Division, women often walk 15-20 kms to find land to farm. This is common because of land scarcity and women were often checked out of their family land.

3.2 Post Colonial Land Legislation and Equal Access to Land

When the colonial rule started waning, land issues in Cameroon became highly politicized. Land was used as an instrument for independence, to win the support of the customary authorities and the population and also, to gain control over other resources.³⁹⁶

It was during this period that the supremacy of customary rights over land tenure was reestablished. It is therefore no surprise that by virtue of the 1959 law,³⁹⁷ all land came under customary jurisdiction except for those tracts of land that had been expressly recognized as public and private lands. Although the latter was subject to rules of registration and technically under the control of administrative officials, it is worth noting that people did not respect the land right model.³⁹⁸ People were not respecting the law especially the peasants. Since nothing in the law was threatening their interests in land except the state itself, people preferred to stick to their customary rights to land in preference to using the land registration to acquire what was in their opinion already theirs.

Post colonial land legislations still reflected some of the principles of the colonial land model in which land was under the command of the state government.³⁹⁹ The set of legislative and regulatory texts adopted between 1963 and 1970⁴⁰⁰ preserved the State's

³⁹⁶ Fisiy p 36.

³⁹⁷ See Law No 59-47 of 17 June 1959. This law reestablished the importance of customary rights over land tenure.

³⁹⁸ The 1938 Decree was enacted six years after amending the 1932 Decree that instituted land registration under the French Rule. This rule is still applicable in the country even after the French colonial masters had left.

³⁹⁹ P. B. Logo & E. H. Bikie (2003), *op cit* p 33

⁴⁰⁰ See Fisiy *op cit* p 37. It is stated that the Presidentialist Constitution of 1961 motivated by the French Constitution of the 5th Republic of 1958, gave the Executive President Powers to legislate by decree in certain specified domains. There were domains reserved for the national Assembly but which could be vested on the President by a delegation of legislative powers. Laws enacted under such powers were called 'Dècret-Lois'. Land law reforms came under such powers.

land monopoly in contrast to the customary land rights model. In Former West Cameroon, three abortive attempts were made to introduce a new law repealing the Land and Native Rights Ordinance of 1927 introduced by the British colonial rule.⁴⁰¹ During this period of post colonial rule, the pre-occupation of the administrators and policy makers in Former West Cameroon was to introduce the registration of freehold titles. This was also the case in Former East Cameroon where the various bills which were presented for this purpose were all rejected.⁴⁰² At independence and before the harmonization of land law in Cameroon, English Speaking Cameroon applied a policy of certificate of occupancy instituted by the British while the French land law focused on registration of land as applied in Former East Cameroon by the French. Despite the colonial connotation of the land policies, the paramount concern of the newly independent State was to have total control over the population and the natural resources.⁴⁰³

Although Cameroon's independence apparently meant the end of the European land tenure system, their land policies still had great influence on land matters after independence. After independence and unification, the new state made a bold move to harmonise the land laws of the two regions. The President at the time made this move by enacting the 1974 Land Ordinance otherwise known as Ordinance No. 74-1 of 6 July 1974. Though the

⁴⁰¹ See Tjouen, A-D, *Droits Domaniaux et Techniques Foncières en Droit Camerounais*, Paris: Edition Economica 1981, p 93.

⁴⁰² C.N. Ngwasiri. 'The impact of the present land tenure reforms in Cameroon on the Former West Cameroon'. (1984) No. 28, *Revue Camerounaise de Droit*, 75-83: 79. It is worth remarking that the 1963 Decree or law expressly refused to use the term 'ownership' when referring to the customary rights over land. Customary leaders were variously described as 'holders', 'in possession', or 'in occupation' of their ancestral lands. Hence, the driving force behind the 1963 law was the state's overriding quest to take over land administration whereby land be it public or private could only be acquired through land registration.

⁴⁰³ It should be borne in mind that the path to independence was quite a difficult one as the first nationalist party, the Union des Peuples Camerounais (UPC), was outlawed in 1955. It resorted to armed rebellion in order to achieve its goal which in public declarations was immediate independence.

country was independent, it is worth noting that the 1974 Land Ordinance was modeled on the 1896 Crown Act and the French civil law of land ownership based on land registration. While setting the stage for land registration, the Ordinance provided the same economic arguments of certainty of title, promotion of plantation agriculture and the possibility of raising capital through land, thus reflecting the central themes of the country's 1974 land reforms.

This law did legislate the spirit of gender neutrality in land ownership in the country. The law states that the State shall guarantee all natural persons and corporate bodies the right to own, enjoy and dispose of land.⁴⁰⁴ The Cameroon Constitution consolidates the gender neutral provision of the 1974 Land Ordinance by stating that everyone has the right to settle anywhere in the country subject to statutory provision.⁴⁰⁵ Furthermore, the preamble of the constitution holds that 'all persons shall have equal rights and obligations, noting that the State shall provide all its citizens with the conditions necessary for their development'. This can be in the form of setting favourable conditions to ease access to land for all in order to enhance human development. While applauding these express legislative references to equality with regards to land ownership in the country, this researcher argues that it is wrong to assume that these would automatically transform to equality of access for male and female void of discrimination in practice. The inequality in the distribution of land as alluded to already, is a demonstration that legal provisions alone cannot be expected to change the discriminatory practices under customary law

⁴⁰⁴ Ibid, Article 1. This provision can be interpreted to having instituted equal access to land in the country since it refers to all natural and corporate bodies void of any form of idiosyncratic basis.

⁴⁰⁵ The Preamble of the Cameroon Constitution of 2008. This means that once anyone fulfils the statutory provision of land acquisition, he/she is free to settle wherever he/she desires.

consolidated by colonial policies which have for decades circumscribed women's access to land. Since the state has as yet not specifically established administrative structures and economic policies to address the recurrent problem of unequal access to land between male and female, the reform introduced under the 1974 Ordinance with its multiple revisions has left this problem untouched.

3.3 Equal Access under the Principle of Land Registration (1974 Land Ordinance)

It is necessary to analyse the 1974 Land Ordinance in detail within the context of equality of access to land in Cameroon. When the 1974 Ordinance was introduced, it distinguished between registered land and non-registered land. According to the Ordinance, any land that is not registered under this law is considered as national land.⁴⁰⁶ It is worth noting that the State's attempt to control land was not a new phenomenon in Cameroon. There has been a long history of struggle for control or ownership of land running from the colonial land laws to post colonial land enactments. To halt this struggle, the 1974 Ordinance has laid emphasis on the need to register land. A major strategy of the State was to use land registration as the only means of securing one's absolute right over a piece of land.⁴⁰⁷

Under the Ordinance, unregistered land included land acquired under colonial rule; land registered under the transcription system; and those lands that were covered by a final

⁴⁰⁶ That is all land acquired before 5th August 1974, the land holders are given a time frame of ten years from 5th August 1974 to convert their previous interests in land into land certificates under the new law (1974 Land Ordinance). See Fisiy, *op cit*, p 41.

⁴⁰⁷ Fisiy, *op cit*. p 26

concession.⁴⁰⁸ For these specie of documentary titles in land, a time frame of ten years, starting from 5th August 1974,⁴⁰⁹ was provided for holders to convert these old deeds into the new regime of registration. When the period elapsed, land not properly registered would be forfeited and revert to a common pool of 'National Lands'.⁴¹⁰ The vast majority of citizens without any State recognized document of title had their lands absorbed by this all embracing notion of "National Lands". Land owners who could prove that they were in occupation of the land before 5 August 1974 were given a ten-year period within which they could register the land.⁴¹¹ In principle, no registration of unoccupied land could take place under Decree No. 76-165, even if the land was claimed by individuals or a customary community.

There are only two patterns through which national lands could be converted into private property through registration and by concession. But the land registration is the paramount pattern because although land is acquired through concession, such land must be registered in order to consolidate ownership. A summary of the procedure of land acquisition through registration as prescribed by the 1974 Land Ordinance is analysed in this study with a view to ascertaining the result it has produced between sexes, thus putting the question of inequality of access in very clear perspective.

⁴⁰⁸ In other words, these were lands already registered under the preceding state land administration systems, or for which the procedure for state protection had been initiated.

⁴⁰⁹ Note that 5 August 1974 is the date of publication of Ordinance No. 74-1 of 6 July 1974 which establishes rules governing land tenure.

⁴¹⁰ See Section 15 of the 1974 Land Ordinance. It states that all unoccupied or occupied lands that are not registered are incorporated into a collective pool of 'National Lands'.

⁴¹¹ See the provisions of Section 13 (2) of Decree 76-165, of 27 April 1976.

3.3.1 Procedure for Land Registration

The Decree of 1976 establishes the conditions for obtaining land certificates in Cameroon. According to the law, persons eligible to apply for a land certificate for the national lands they occupy are the customary community members or any other person of Cameroonian nationality on condition that the occupancy or exploitation of the land predates 5 August 1974.⁴¹²

The Decree of 1976 which establishes the conditions to obtain a land certificate stipulates that a land certificate shall be the official certificate of real property rights.⁴¹³ Also, once a land certificate is obtained, it shall be unassailable, inviolable and final.⁴¹⁴ The land certificate can only be challenged on the condition that there was an error from a government service in the course of the registration procedure of the certificate or if the sale of such land is cancelled. Any of these occurrences may necessitate the withdrawal of the certificate by the Ministry of Lands. It is plain that except for the above, Article 2 of Decree No 76-165 of 27/4/1976 and the South West Court of Appeal decision in *Mfoundi Ousmanou & Max Ntangsi v Col. Pangop Louis*,⁴¹⁵ the land certificate is unimpeachable with the effect that title over landed property is vested in the person who presents a valid land certificate.

⁴¹² Decree No. 76-165 of 27 April 1976, Article 9.

⁴¹³ Article 1 of 1976 Decree.

⁴¹⁴ Article 2 of 1976 Decree.

⁴¹⁵ CASWP/11/2002. In this case, Ntangsi bought a house from Mfoundi Ousmanou and had a land certificate for the property. Mr. Ousmanou had a verbal agreement for the sale of the house with Col, Pangop who paid for the house after a contract had been concluded with the former buyer. Though the second buyer is presently living in the house, the case was decided in favour of Ntangsi who had a land certificate for the property.

It is worth mentioning that though the 1976 Decree establishes the guiding conditions for land registration in the country, it has failed to meet the demands of most Cameroonians seeking land certificates. This is because although the procedure to acquire a land certificate is supposed to be very flexible to enable both men and women to easily claim ownership over property, it has on the contrary turned out to be very rigid. Bedeviled by unwarranted bureaucracy, the certification procedure has become discriminatory against women who, unlike men often lack the financial means, time and human favour to easily overcome the hurdles accompanying the registration procedure. These setbacks led to the amendment of the 1976 Decree ameliorating the procedure to obtain a land certificate.⁴¹⁶ The 2005 Decree was enacted with the intention of improving on the registration procedure in order to accommodate the equality principle. Under it, any person eligible to apply for a land certificate for national lands shall prepare an application in four copies, the original of which shall be stamped, stating the full name, parentage, domicile, profession, form of marriage, nationality of the applicant, and the name in which the property is to be registered. A description of the property (situation, area, nature of occupancy or exploitation, estimated value, details of liabilities with which it is encumbered)⁴¹⁷ should be made available in the application file.

After that, the file shall be lodged with the District Head or the Sub-Divisional Officer (SDO) of the area where the property is situated. Also, as soon as the file has been received, the SDO shall deliver a receipt to the address indicated on it within 72 hours. Then the SDO shall transmit the file to the Divisional Delegate of Land Tenure within 8

⁴¹⁶ Decree No. 2005/481 of 16 December 2005 to amend and supplement some provisions of Decree No. 76/165 of 27 April 1976 to establish the conditions for obtaining land certificate.

⁴¹⁷ This is stipulated in Article 11 of Decree No. 2005/481 of 16 December 2005.

days. This section addresses the issue of time factor which rendered the procedure of land registration under the 1976 Decree ineffective.⁴¹⁸

Upon receiving the file, the Divisional Delegate of Land Tenure shall, within the next 15 days, ask the Head of the Divisional Delegation of Land Tenure Service to publish a summary of the application, posting it at the offices of the Divisional Officer, the District, the City Hall or the palace of the village concerned. Furthermore, on the proposal of the Head of the Divisional Land Tenure Service, the competent Divisional Officer or District Head - Chairperson of the Land Consultative Board, shall issue a decision fixing a date for the establishment of the right of occupancy or exploitation of the said land.⁴¹⁹

Also, where there are many applications, the head of the Divisional Land Tenure Service shall publish every month, upon the decision of the Sub-Divisional Officer or the District Head concerned, a schedule of the Land Consultative Board's activities. Pursuant to article 16 of Ordinance No. 74/1 of 6 July 1974 to establish land tenure, only the Land Consultative Board shall be competent to assess the occupancy or exploitation of national land of first category in view of obtaining a land certificate.⁴²⁰

When the property to be registered concerns many administrative units, all the Land Consultative Boards concerned shall meet jointly. They should be convened by the unit

⁴¹⁸ Ibid, Article 12.

⁴¹⁹ Ibid, Article 13(1, 2).

⁴²⁰ Ibid, Article 13 (3, 4). Land of 1st category are those unoccupied indigenous land that were acquired, converted and controlled by the State as national land before 5th August 1974. With this type of land, land certificate can be acquired by individuals through direct matriculation with the government. While 2nd category of State lands are those lands that could be acquired and developed by an individual from the state after 1974 through indirect matriculation.

that has the file in its keeping.⁴²¹ In case of effective occupancy or exploitation, the Board shall immediately have the property demarcated by the sworn Surveyor of the Surveys Service in the presence of neighbours of the land. Cost of demarcation shall be met by the applicant.⁴²² When demarcation cannot be entirely carried out in the presence of all members of the Land Consultative Board, the President of the said Board shall monitor the demarcation work till its completion.⁴²³

On completion of the demarcation, a plan and detailed report shall be drawn up by the Surveyor. The plan shall be signed by the Surveyor. The detailed report of the demarcation shall be signed by the Surveyor, the Chairperson of the Land Consultative Board, the Head of the Divisional Land Tenure Service, the village Chief concerned and the neighbours, stating: the full names of the parties concerned; a description of the recognized boundaries, and the length of the sides shall be included in the report.⁴²⁴

Thirty days after the meeting of the Land Consultative Board and the Divisional Delegate of Land Tenure shall transmit the file (containing the documents enumerated in article 11 of this decree, together with the detailed report of the Land Consultative Board, 5 (five) copies of the plan, and the detailed report of the demarcation of the property) to the Regional Delegate of Land Tenure.

⁴²¹ Ibid, Article 13 (5)

⁴²² Ibid, Article 13 (6)

⁴²³ Ibid, Article 13 (7)

⁴²⁴ Ibid, Article 14 (1, 2).

Furthermore, the Head of the Regional Land Tenure Service shall register the land certificate application in the regional land registry book and a notice of final demarcation shall be published in the Land Notice Bulletin.⁴²⁵ Also, if it has been approved, the file shall be transmitted to the Land Registry for further proceedings or it will be transmitted to the Divisional Delegate of Land Tenure for Corrections. Each Regional Delegation of the Ministry in charge of State Property and Land Tenure shall publish a Land Notice Bulletin.⁴²⁶

From the day the application for registration is lodged at the District or Sub-Divisional office, until the expiry of a period of 30 days from the day of publication in the Land Notices Bulletin of the notice of final demarcation, any interested party may intervene either: with an objection, where there is a dispute concerning the person responsible for the development of the land, or with an application for registration, in the event of a claim being based on the existence of a real right or of an encumbrance liable to be entered in the certificate under preparation.⁴²⁷

Where there is no objection, no opposition, no previous application for registration or no withdrawal, the Land Conservator shall enter the property in the land register and establish a land certificate.⁴²⁸ The land certificate shall contain the description of the property with details of its composition, contents, situation, boundaries and adjacent areas. It will also contain details of owner's civil status; the existing real rights on the property and

⁴²⁵ Ibid, Article 15 (1, 2).

⁴²⁶ Ibid, Article 15 (3, 4).

⁴²⁷ Ibid, Article 16 (1).

⁴²⁸ Ibid, Article 19

encumbrances attached to it; a serial number and specific name; the situation plan of the property duly signed by a sworn Surveyor and countersigned by the Head of the Divisional Surveys Service in whose area the property is situated.⁴²⁹

The innovations introduced by the 2005 Decree for processing a land certificate applies to all who intend to acquire a legal right over land. The certificate can now be obtained at the Regional level and not from the national level as in the old. The stated time limit for the process of a land certificate has made the Ministry of State Property and Land Tenure to be applauded for instituting not only the procedural but also institutional innovations through the 2005 Decree. Nevertheless, based on the investigation carried out, the 2005 Decree is not favourable to all. Despite the registration relief introduced by the 2005 Decree, land acquisition is still very worrisome in the Anglophone regions of Cameroon. Women at the urban centres and rural centres in particular do not find it easy to acquire land through registration. This explains why only a handful of women are able to acquire land through the registration process. From the empirical study carried out disproportionately, more land certificates or land holdings are in men's names.⁴³⁰

3.4 Presentation of Findings on Land Acquisition

The analysis that is tabulated below which deals with the number of persons who applied and acquired land certificates is divided into three main groups (from 1980-1990; 1991-2000; 2001-2010) in each region (North and South West). Region A specifically focuses on the North West region and Region B focuses on the South West Region. The analysis

⁴²⁹ Ibid, Article 35

⁴³⁰ This disparity is evident from the data gathered from the field as it will be tabulated later.

of each region is divided into three phases from 1980-1990; 1991-2000; 2001-2010 as indicated above. Each set of the tables show an analysis of the total number of applications received by the Land Registry within each period and the total number of land certificates issued to the applicants as beneficiaries. Although, the analyses stresses the area of origin and gender of all the applicants and beneficiaries (from rural or urban areas), this statistical analysis is rather significant in supporting this candidate's central argument that the law and structures in place have substantially led to the unequal distribution of land between men and women to the profound disadvantage of the latter. It also demonstrates the candidate's further contention that the 2005 amendment introducing a simplified method for applying for land certificate has only superficially affected the inequality in land holdings between men and women in the region of study. Consequently, the statistics underscore the need to set up new structures to address the perennial problem of inequality in land distribution between men and women in the country.

A) Total number of persons who applied for and acquired land certificates in the North West Region from January 1980 - June 2010.⁴³¹

a i) From January 1980 – December 1990: Total Number of Persons who Applied for Land Certificates.

Applicants	Area		Total Number of Persons who Applied for Land Certificates
	Urban	Rural	
Men	860	120	980
Women	92	3	95
Joint Ownership	7	0	7
Total	959	123	1082

a ii) From January 1980 – December 1990: Total Number of Land Certificates Acquired.

Beneficiaries	Area		Total Number of Persons who Acquired Land Certificates
	Urban	Rural	
Men	860	118	978
Women	65	0	65
Joint Ownership	5	0	5
Total	930	118	1048

The above tables (a i & ii) demonstrate that from January 1980 to December 1990, a total of 980 applications for land certificates were received from the men. 860 applications came from men from urban areas while 120 came from men from the rural areas. Of these

⁴³¹ Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the North West Region. Accessed on the 30/5/2010.

980 applications, 978 land certificates were granted by the Land Registry to the applicants. 860 were issued to men from urban areas and 118 for men from the rural areas.

On the other hand, 95 women applied for land certificates and of this number, 92 applications were received from women from the urban areas while 3 were received from women from the rural areas. Of these 95 women who applied, a total of 65 land certificates were received only by women from the urban areas. Also during this period, other persons applied for land certificates in the form of joint ownership. These applications came from spouses as well as institutions. Out of the 7 applications received, all came from urban areas and only 5 of the applications were granted land certificates. Hence, from 1980 to 1990, out of the total number of 1082 applications received, 1048 land certificates were granted. 978 were in men's name and only 65 were in women's name.

b i) From January 1991 – December 2000: Total Number of Persons who Applied for Land Certificates.⁴³²

Applicants	Area		Total Number of Persons who Applied for Land Certificates
	Urban	Rural	
Men	1550	145	1695
Women	120	7	127
Joint Ownership	50	6	56
Total	1720	1878	1878

⁴³² Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the North West Region. Accessed on the 30/5/2010.

ii) From January 1991 – December 2000: Total Number of Land Certificates Acquired.

Beneficiaries	Area		Total Number of Persons who Acquired Land Certificates
	Urban	Rural	
Men	1549	143	1691
Women	90	7	97
Joint Ownership	51	0	51
Total	1690	150	1839

The above tables (b i & ii) demonstrate that from January 1991 to December 2000, 1878 applications for land certificates were received by the department of land registry. Out of this number, 1550 applications came from men from urban areas and 145 from men from the rural areas. This gives a total of 1695 applications received from the male from both urban and rural areas. Of these applications, 1691 land certificates were granted. 1549 land certificates were granted to men from the urban areas and 143 to men from the rural areas.

Also, out of the 127 applications received from the women, a total of 97 certificates were issued of which 90 of the certificates were granted to women from the urban areas and 7 to women from the rural areas. Furthermore, within this period, 56 applications came into the land registry for joint ownership. 50 of such applications came from the urban areas and 6 from the rural areas. Of the 56 application received, 51 land certificates were granted to this group of persons all of who resided in the urban areas. Hence, from January 1991 to

December 2000, out of the 1878 applications for land certificates received by the Land registry, 1839 land certificates were granted. Of these number of land certificates, 1691 were issued to men and 97 to women.

c i) From January 2001 – December 2010 Total Number of Persons

who Applied for Land Certificates.⁴³³

Applicants	Area		Total Number of Persons who Applied for Land Certificates
	Urban	Rural	
Men	3320	640	3960
Women	312	38	350
Joint Ownership	156	14	170
Total	3788	692	4480

ii) From January 2001 – December 2010- Total Number of Land Certificates Acquired.

Beneficiaries	Area		Total Number of Persons who Acquired Land Certificates
	Urban	Rural	
Men	3320	640	3960
Women	298	11	309
Joint Ownership	152	12	164
Total	3770	663	4433

⁴³³ Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the North West Region. Accessed on the 30/7/2010.

The tables above (c i & ii) reveal that from January 2001 to December 2010, a total of 4480 applications were received of which a total of 3960 applications were received from men. Of this number, 3320 of the applications came from men from urban areas and 640 applications came from men from rural areas. It is worth remarking that of the 3960 applications received from the men, all were granted while on the other hand, of the 350 women who applied for land certificates (312 applications came from women from the urban areas) and (28 from those of the rural areas) only 309 certificates were granted. 298 of them were granted to women from the urban areas and 11 to women from the rural areas. Also, 170 applications were received for joint ownership of which 156 of the applications came from urban areas and 14 from the rural areas. Of the 170 applications received, 164 land certificates were granted. 152 certificates were granted to those from the urban areas and 12 to those from the rural areas. Hence, from the 4480 total applications received, 4433 land certificates were issued to the applicants. Of these number 4433 certificates, 3960 certificates were in men's name while 309 were in women's name.

Summary of total number of Applicants for land certificate from January 1980 – June 2010 in the North West Region⁴³⁴

Applicants	Area		Total Number of Persons who Applied for Land Certificates	Percentage of Applicants in their Areas of Origin
	Urban	Rural		
Men	5730	905	6635	89.2
Women	524	48	572	7.7
Joint Ownership	213	20	233	3.1
Total	6467	973	7440	100

In summary, from January 1980 to June 2010, a total number of 7440 applications for land certificates were received. 6635 were in men's names giving a total percentage of 89.2 of males as applicants while 572 applications were in women's name giving a total percentage of 7.7 of females as applicants. Also 233 applications were received for joint ownership giving a total percentage of 3.1.

⁴³⁴ Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the North West Region. Accessed on the 30/7/2010.

Summary of total number of Beneficiaries of land certificate from January 1980 – June 2010 in the North West Region.⁴³⁵

Beneficiaries	Area		Total Number of Persons who Acquired Land Certificates	Percentage of Beneficiaries in their Areas of Origin
	Urban	Rural		
Men	5729	901	6630	90.6
Women	453	18	471	6.4
Joint Ownership	208	12	220	3
Total	6390	931	7321	100

Hence, out of the total number of 7440 applications received from January 1980 to June 2010 in the North West Region, a total number of 7321 land certificates were granted. Of this number, 6630 land certificates were in men's name giving a total percentage of 90.6 for the men while 471 land certificates were in women's name giving a total percentage of 6.4 for the women and 220 land certificates were issued as joint ownership giving a total percentage of 3 for joint owners.

⁴³⁵ Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the North West Region. Accessed on the 30/7/2010.

B). Total number of persons who applied for and acquired land certificates in the South West Region from January 1980 – June 2010.⁴³⁶

a i) From January 1980 – December 1990: Total Number of Persons who Applied for Land Certificates

Applicants	Area		Total Number of Persons who Applied for Land Certificates
	Urban	Rural	
Men	580	122	702
Women	72	14	86
Joint Ownership	32	24	56
Total	684	160	844

a ii) From January 1980 – December 1990: Total Number of Persons who Acquired Land Certificates

Beneficiaries	Area		Total Number of Persons who Acquired Land Certificates
	Urban	Rural	
Men	580	120	700
Women	70	10	80
Joint Ownership	32	24	56
Total	682	154	836

The above tables (i a & ii) shows that in the South West region from January 1980 to December 1990, a total of 844 applications for land certificates were received by the Department of Land Registry. Of this number, a total of 702 applications came from men.

⁴³⁶ Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the South West Region. Accessed on the 17/4/2010.

580 applications were received from men from urban areas and 122 from men from rural areas. Also, a total of 86 applications were received from the women. 72 applications came from women from urban area and 14 from women from rural areas while 56 applications were received for joint ownership of which 32 came from urban areas and 24 from rural areas.

It is worth noting that of the 844 applications received, a total number of 836 applications for land certificates were granted. A total of 700 of the certificates were in men's name. Specifically, 580 of the land certificates were issued to men from the urban areas and 120 certificates issued to men from the rural areas. Also, of the 836 land certificates issued, a total of 80 of them were in women's name. 70 of the certificates were issued to women from the urban areas and 10 to women from the rural areas. In addition, of the 56 land certificates granted to the applicants as joint ownership, 32 of the certificates were granted to applicants from the urban areas and 24 to those from the rural areas.

**b i) From January 1991 – December 2000: Total Number of
Persons who Applied and Acquired Land Certificates.⁴³⁷**

Applicants	Area		Total Number of Persons who Applied for Land Certificates
	Urban	Rural	
Men	711	221	932
Women	102	55	157
Joint Ownership	41	16	57
Total	854	292	1146

**a ii) From 1991 – 2000: Total Number of Persons who Acquired Land
Certificates**

Beneficiaries	Area		Total Number of Persons who Acquired Land Certificates
	Urban	Rural	
Men	710	218	928
Women	121	29	150
Joint Ownership	32	24	56
Total	863	271	1134

The above tables (b i & ii) illustrate that from January 1991 to December 2000, a total of 1146 applications for land certificates were received. Of this number, a total of 932 applications came from men. 711 applications were from men from urban areas and 221 came from men from the rural areas. Also, of the 157 applications received from women, 102 came from women from the urban areas and 55 came from women from the rural

⁴³⁷ Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the North West Region. Accessed on the 17/4/2010.

areas. Furthermore, of the 57 applications received for joint ownership, 41 came from urban areas and 16 from rural areas.

It is imperative to note that of the 1146 applications received, a total of 1134 land certificates were granted. From this number, a total of 928 land certificate were issued to men. 710 certificates were granted to men from the urban areas and 218 to men from the rural areas. Also, a total of 150 land certificates were issued to women of which 121 were granted to women from urban areas and 29 to women from rural areas. Additionally, of the 56 land certificates granted for joint ownership, 32 were granted to applicants from urban areas and 24 to those from rural areas. Hence, from the above analysis, it is evident that out of the 1146 applications received, a total of 1134 land certificates were granted and, 928 land certificates were in men's name while 150 were in women's name.

c i) **From January 2001 – June 2010: Total Number of Persons who**

Applied for Land Certificates.⁴³⁸

Applicants	Area		Total Number of Persons who Applied for Land Certificates
	Urban	Rural	
Men	1620	338	1958
Women	312	138	450
Joint Ownership	83	37	120
Total	2015	513	2528

⁴³⁸ Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the North West Region. Accessed on the 17/04/2010.

c ii) **From January 2001 – June 2010: Total Number of Persons who Acquired Land Certificates**

Beneficiaries	Area		Total Number of Persons who Acquired Land Certificates
	Urban	Rural	
Men	1620	338	1958
Women	302	125	427
Joint Ownership	83	37	120
Total	2005	500	2505

The tables above (c i & ii) show that from January 2001 to June 2010, a total number of 2528 applications for land certificates were received. Of this number, a total of 1958 applications came from the men. Specifically, 1620 applications came from men from the urban areas and 338 applications from men from rural areas. Also, a total number of 450 applications were received from women and of this number, 312 came from women from urban areas and 138 from women from the rural areas. Additionally, a total of 120 applications were received for joint ownership and of this, 83 applications came from urban areas and 37 from rural areas.

On the other hand, of the 2528 applications received by the department of Land Registry, a total number of 2505 land certificates were granted to the applicants. Of this number, a total of 1958 land certificates were granted to men. 1620 certificates were issued to men from urban areas and 338 granted to men from the rural areas. Also, a total of 427 land certificates were issued to women of whom 302 of the certificates were issued to women

from urban areas and 125 to women from the rural areas. Meanwhile, of a total of 120 land certificates issued as joint ownership, 83 of the certificates were issued to applicants from urban areas and 37 to those of the rural areas. Hence, from the total number of 2528 applications received, a total of 2505 land certificates were granted. Of this number, 1958 of the certificates were in men's name and 427 were in women's name.

Therefore, from January 2001 to June 2010, a total number of 4784 applications for land certificates were received and of this total, 3692 came from men giving a percentage of 77.1 applications from men only. Also, a total number of 859 applications were made by women giving a percentage of 18 applications from women only and, a total number of 233 applications were received for joint ownership giving a percentage of 4.9. Furthermore, of the 4784 applications received, 4489 land certificates were granted. 3589 land certificates were in men's name giving a percentage of 80 land certificates owned by men and 668 land certificates issued to women giving a percentage of 15 land certificates owned by women. Also, a total of 232 land certificates were issued as joint ownership giving a percentage of 5 land certificates owned either by couple or institutions.

Summary of total number of Applicants for land certificates from January 1980 – June 2010 in the South West Region.⁴³⁹

Applicants	Area		Total Number of Persons who Applied for Land Certificates	Percentage of Applicants in their Areas of Origin
	Urban	Rural		
Men	3011	681	3692	77.1
Women	486	373	859	18
Joint Ownership	156	77	233	4.9
Total	3653	1131	4784	100

The tables above represent that of a total number of 4784 applications received in the region, 3692 applications came from men giving a percentage of 77.1 applications from men. Also, a total number of 859 applications were received from the women giving a percentage of 18 applications while 233 applications were received from joint ownership giving a percentage of 4.9.

⁴³⁹ Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the North West Region. Accessed on the 20/7/2010.

Summary of total number of Beneficiaries of land certificates from January 1980 – June 2010 in the South West Region.⁴⁴⁰

Beneficiaries	Area		Total Number of Persons who Acquired Land Certificates	Percentage of Beneficiaries in their Areas of Origin
	Urban	Rural		
Men	2910	676	3586	80.1
Women	493	164	657	14.7
Joint Ownership	147	85	232	5.2
Total	3550	925	4475	100

The above analyses reveals that of the total number of 4475 land certificates granted by the Delegation of State Property and Land Tenure in the South West Region from January 1980 to June 2010, a total number of 3586 land certificates were granted to men giving a percentage of 80.1 land holdings by men. Also, a total of 657 land certificates were granted to women giving a percentage of 14.7 land holding by women while 232 land certificates were issued as joint ownership, giving a percentage of 5.2 of land titles in this category.

⁴⁴⁰ Information on the tables is derived from the land register of the Regional Delegation of State Property and Land Tenure in the North West Region. Accessed on the 20/7/2010.

Summary of the total percentage number of applications for land certificates in the Anglophone regions from January 1980 – June 2010.⁴⁴¹

Applicants	Number of Applicants for Land Certificates from each region		Total number of Applicant in the Anglophone Regions	Percentage
	North West Region	South West Region		
Men	6635	3692	10327	84.5
Women	572	859	1431	11.7
Joint Ownership	233	233	466	3.8
Total	7440	4784	12224	100

From the statistics gathered from the Regional Delegation of State Property and Land Tenure, out of the total number of 12,224 applications received for land certificates in the Anglophone regions, a total of 10,327 came from the men both from urban and rural areas giving a percentage of 84.5. Also, from the above total of 12,224 applications, 1431 came from women both from rural and urban areas giving a percentage of 11.7 while 466 were received from applicants who applied for joint ownership giving a percentage of 3.8.

⁴⁴¹ Information derived from land registers of both the North West and South West Regional Delegations of State Property and Land Tenure. Accessed on 5/08/2010.

Summary of the total percentage number of land certificates acquired in the Anglophone regions from January 1980 – June 2010.⁴⁴²

Beneficiaries	Total Number of Acquired Land Certificates from each region		Total number of beneficiaries in the Anglophone regions	Percentage
	North West Region	South West Region		
Men	6630	3586	10216	86.6
Women	471	657	1128	9.6
Joint Ownership	220	232	452	3.8
Total	7321	4475	11796	100

The above table reveals that, out of a general total of 11,796 land certificates issued in the Anglophone regions from January 1980 – June 2010 a total of 10,216 land certificates were issued in men's name denoting a percentage of 86.6 land certificates controlled by men in the regions. Also, of the general total of 11,796 land certificates granted, 1,128 of the land certificates were issued in women's name giving a percentage of 9.6 land certificates controlled by women. While a total of 452 land certificates were issued as joint ownership to the applicants giving a total of 3.8% land certificates controlled by the applicants. The present analysis is a clear demonstration that inequality of access to land is still deeply entrenched in the Anglophone regions. Indeed, women presently own less than 10% of the total number of land certificates existing in the regions in spite of the fact that they are more involved in agricultural activities. Quite apart from graphically demonstrating the profound challenges women face in land ownership, the statistics confirm that the apparent gender neutrality of our land laws do not protect women

⁴⁴² Information derived from land register of both the North West and South West Regional Delegations of State Property and Land Tenure. Accessed on 5/08/2010.

adequately as they allow customary practices to determine rules of access to the land to the disadvantage of women.

In the North West Region for instance, out of the 394 respondents contacted on the challenges women face in acquiring land in their names, 80% of the female respondents were of the opinion that women cannot have control over land because custom does not allow women to own or control land. Women and property such as land are under custom seen as 'valuable things' to be controlled by men with custom insisting that women should not be allowed to compete or to have things that are meant for men. Based on the interview conducted by this researcher with some women in the region,⁴⁴³ it became obvious that custom is still a very big hindrance to the self development of women. Even if a woman has money and is aware of the importance of buying land in her name, custom does not permit women no matter her economic and social status to own land in her name especially in the rural settings. Most of the hard core traditional families in the tribe are very firm on this aspect.

In the North West region, a senior Nso traditional notable 'The Shufai Wo Baforchu Tobin' added his voice to this by affirming that a pure traditional man from Nso cannot accept a woman who is not a title holder or notable⁴⁴⁴ to own land. According to this notable, inequality of access to land is so well entrenched that most traditional Nso women do not even complain of the restriction. They find it very normal that women and land are to be controlled by men. Custom according to this view has made women very

⁴⁴³ The president of Kongadzem women (Banso women association) Fako chapter on the 5th of June 2010.

⁴⁴⁴ Examples are the Ya'ahs, Shungais who are considered as 'woman man' (strong or influential woman) and are greatly respected and active in traditional activities in the community.

ignorant of their right to access land as the men do. On the other hand, the Shufai acknowledged that due to the increasing level of literacy and Christianity existing in some families in Nso, a few families have started allowing their women to own land and even so, they hold the land in trust for their male children. Such families are regarded as civilized families in the tribe.

About 70% of women interviewed in Mezam Division in the North West region declared being aware of the existence of land laws and also said that besides custom, neither the government nor the law protects them directly against the discriminatory customary practices that prevent women from accessing land in their name. The women complain that they are caught between the forces of government laws and custom and find it difficult to acquire land rights on their own. Furthermore, 65% of men interviewed in the region state that family land is meant for the males and also agreed that most women are sidelined when family land is shared among the family members. This view was affirmed by the Chief of Bwiteva village in Fako Division who declared that the Cameroon Development Corporation (CDC) lands restituted by the government to natives are distributed amongst men principally and senior females who showed interest and whom the men respect in the family. This, the chief noted was done based on customary practices and because the government has not prescribed rules guiding the redistribution of such restored land. Hence, for a woman to gain access to such land her right must be backed by her seniority and interest to have the family land also.

Poverty is another major obstacle to women's access to land. About 70% of those interviewed acknowledged that most women lack the financial means to access land. This is because women are mostly involved in the farming of food crops meant for family sustenance. The situation is compounded because only very little portion of overwhelmingly arable land is made available to them. This researcher discovered that around the foot of Mountains Fako and Kupe where the soil is volcanic and fertile, the land has been occupied by men who farm cash crops such as palm trees, rubber, banana. It is also during the course of the research that it was discovered that women are only left with the backyards of their houses where they carry out small scale farming on worn out or arid soil. The gender neutrality of the country's land law rules have made it possible for customary rules of access to land to become the basis for land management and distribution in mostly rural communities. This helps to limit the quantity and quality of food crops grown in the area.

Additionally, since the farming carried out by women is meant for family sustenance, very little or no income is earned from the sale of the crop. Out of the handful of female non agricultural workers in the region, most are involved only in low scale salary jobs such as secretaries, teachers, cleaners or clerks. With these low income earnings, women cannot afford to purchase land in their name. This causes women to remain poor and unable to afford land even if they have the interest of buying land in their names. (A poor person is one who cannot afford for his or her basic needs. This places one in a state of poverty and destitution and this causes him or her to be subjected to marginalization, exclusion and

iniquity in the enjoyment of resources such as access to land).⁴⁴⁵ Often, land is expensively priced and the respondents assume that this is intentionally done in order to discourage or dissuade the low income earners such as women from purchasing land independently. The Chief of Bamali in Ngoketunjia Division in the North West Region pointed out that women in his tribe do not own land because most women are literate. They lack knowledge of the importance of owning land independently and do not know the right procedure to follow in order to obtain land. To him, some of these reasons, together with custom, cause most women to abdicate their land rights for the benefit of men.

Furthermore, the president of FAWODA women⁴⁴⁶ from the South West Region agreed that women face similar challenges in accessing land independently, such as restrictions related to customary practice and poverty. They emphasized also hindrances such as lack of information or education by stating that lack of knowledge of the existing land laws and their importance prevents most women in the region and Fako women in particular from understanding the need to register land in their names. This advancement causes most women to remain dependent on men for sustenance and not to seek formal access to land. Men use this advantage to exploit all opportunities related to access to land. Hence, one can conclude that the above challenges such as custom, poverty, and lack of information have contributed a great deal to preventing women from applying for land certificates. This is evident in the statistics registered on the application for land certificate in the

⁴⁴⁵ D.B. Kamgnia and J.P. Timnou, *The Determinants of Poverty in Cameroon in developing a Sustainable economy in Cameroon*, A.A. Amin (Ed.) Dakar: CODESRIA.

⁴⁴⁶ This is an association of Fako women in Cameroon.

Anglophone regions from January 1980 to June 2010. Out of the 12,224 applications registered in the region, only 11.7% of the applications came from women.

Further still in the South West Region, the president of NIWODA Buea branch⁴⁴⁷ stated that custom has brainwashed most Bakossi people especially in the rural areas into believing that it is a taboo for a woman to own land independently from men. Women are considered as property which is meant for the man. This is why in most villages in the Bakossi tribe, levirate marriage is frequent. This occurs when the deceased male relative inherits the widow and all the property left by the deceased. Women are not allowed to control property (land inclusive). Custom has also brainwashed even the educated people of Bakossi ancestry into believing that women cannot own property. This is evident in the administrative and legislative practices existing in the region.

The Land Consultative Board which is the main governing body on land registration and resolution of land disputes in the regions consist mostly of men who show little sensitivity to the need for equality of access to land for men and women. The gender representation of the Board members appointed by the State is an issue of concern. In the North West region, out of the 8 statutory members that make up the Board, all are men. Also in the South West region, 7 are men and only 1 woman who acts as the secretary is represented in the Board. 80% of the female respondents in both regions are of the opinion that the Board members rarely apply the statutory laws guaranteeing equal right of all in accessing land. Rather, they apply the customary law which hinder women from owning land. Nevertheless, if there is a land dispute that involves a man and woman, the matter is often

⁴⁴⁷ This is an association of Bakossi Nninong women in Cameroon.

manipulated in favour of the man or the procedure for resolving the matter is prolonged with the tendency of discouraging the woman from pursuing the matter to the end.⁴⁴⁸

Furthermore, the statistics for land acquisition tabulated above denotes that women face a lot of discrimination from the Board in accessing land. Most applications from females were rejected both from the urban and rural areas. This is why out of the 11,796 land certificates issued from January 1980 to June 2010, women succeeded in having only 9.6%. In an interview conducted by the researcher with the Regional Delegation of State Property and Land tenure in the North West Region, the Delegate declared that the percentage of land acquisition by women in the region is low because apart from hindrances such as illiteracy and poverty, most women are willing to have land certificates in their names but they face a lot of challenges from their husbands. Most husbands get upset when they discover that a woman is trying to acquire land without their consent and this takes a heavy toll on marriage stability. Hence according to the Delegate who is a male, the consent of the husband is a critical factor for a married woman to acquire land in her name. For fear of divorce, women who are wealthy use their money to acquire land for the family and certify such as joint ownership of property.

He also stated that women face the challenge of lack of assertiveness or the unwillingness to bear risk in the process of acquiring land independently. In case of dispute over a piece of land in which a woman has an interest she often fails to register because she is unable to follow up the matter either at the land registry or legal procedure. This inability can be

⁴⁴⁸ The cases of *Frida Sirri v John Milla*. Appeal No. BCA/25.L/79 and *Namange Ngombe J. v Molua Simon Mekeve & Others*. Suit No CASWP/44/2004 are illustrative.

due to financial difficulties or fear of the unknown. Furthermore, the financial implications and the administrative bottlenecks accompanying the procedure of acquiring a land certificate dissuade women from owning land independently. He concluded by acknowledging that a lot needs to be done by the members setting up rules and applying the rules for land acquisition in order to ensure equal access to land between males and females in the regions under study.

Besides the socio-economic and cultural challenges, about 80% of women particularly single mothers state that they face some institutional hindrance in acquiring land. These include the lack of positive law relating to women's land status as well as fear of justice. Most women are afraid to face justice because they are unable to defend their rights in court and some women dread justice because they lack confidence in the institution due to the corrupt practices involved. Moreover, they are afraid to embark on the judicial proceedings to seek justice because they fear the retaliation of hatred and witchcraft they may be subjected to by their families or villages. Thus, most women result in adopting though not favourable to them, the attitude of resignation or compromise in any land dispute.

Additionally, the above statistics over the years indicate that more people apply and register for land certificate in the urban centers than in rural centers. This is because traditionally, access to land depends more on the content of the beneficial interest solicited. For example, access to land for food crops is easier to acquire than access to land for housing or for the cultivation of permanent cash crops. Once access to land has

been obtained, stability of tenure in rural areas is fairly guaranteed. Hence, there is no urge to register land under statutory law especially when the procedure is fraught with excessive bottlenecks. Consequently, rural population reaction to land law reforms has been marginal. They claim that the law is not for them.⁴⁴⁹

Besides, women have reacted differentially to land law reforms. With increasing access to cash flow and the labour markets, a handful of women transcend cultural barriers based on gender which hold that women cannot own land. Some women now own land and have registered it especially in the urban areas. Nevertheless, the unintended outcome of such female assertiveness is the emergence of mothers who are either wage-earners, business women, or employed in the informal sector of the economy.⁴⁵⁰

3.5 Equal Access to Land as a Human Right

Equality is at the core of international human rights. Both the American Declaration of Independence in 1776 and French Declaration of the Rights of Man and Citizens in 1789, recognised by many as providing the immediate inspiration for the 19th century resurgence of human rights culminating in the formation of the United Nations in 1945 made reference to the inherent equality of all men. The American Declaration of Independence proceeded on the basis that it is self evident that all men are equal. The United Nations Charter 1945, which was formed in response to the violations of human rights during the course of the World Wars places equality at the centre of international human rights law. Equality or non-discrimination appears generally to be the animating spirit of the

⁴⁴⁹ Fisiy, *op cit* p 256

⁴⁵⁰ *Ibid.*

organization as Article 1(3) and 55 of the Charter both make reference to the notion of equality as an inherent attribute of human rights.

Indeed, Article 55 of the UN Charter enjoins universal respect for and observance of human rights and fundamental freedoms ‘for all without distinction as to race, sex, language or religion’. This provision stresses the foundational value of equality in international human rights law by emphasizing that the existence of stability and well being as well as the presence of friendly relations in the world based on the ‘respect of equal rights...’ The gender disparity with regards to access to land in Cameroon as demonstrated statistically in the study raises concerns about the legality of the country’s land rights model.

In spite of this, it would seem at first sight that land law and human rights are not natural bedfellows.⁴⁵¹ Yanou⁴⁵² has identified some reasons for their apparent difference. Firstly citing Gray, he states that human rights are based on the idea of the intrinsic worth or dignity of an individual. This idea stresses concern for the other person and is therefore antithetical to popular ideas of property. The latter has as a key element, the idea of personal appropriation with its inherent tendency of the exclusion of the other.

Secondly, human rights belong to the public law domain while property law belongs to the private law domain. This divide appears to make each seem distinct with distinct

⁴⁵¹ Yanou, *op cit.* p 87

⁴⁵² *Ibid.*

intellectual incidents.⁴⁵³ Finally, he observed that in most tribes in Anglophone Cameroon, access to land is clearly based on inheritance and distribution of land to the natives according to individual needs and are seldom seen as raising human right issues. However, claims that land is inequitably distributed between men and women and that the rules for registration of land are deliberately made to disfavour women as appears to be the case in Cameroon certainly raises significant human rights considerations.

The right to access land is a critical factor in determining the social status, economic wellbeing and political empowerment of human beings.⁴⁵⁴ Although the right to land has not yet found direct expression in international law as human rights, international law is presently grappling with major crises in Darfur which have their origin in the struggle by communities over access to land and its resources like water and crude oil. In a strict legal sense, however, equitable management and distribution of natural resources has given rise to a wide range of human rights issues such as right to access land, housing or landed properties.⁴⁵⁵

It is worth noting that just and secure access to land is affected by a whole array of civil and political, social and economic as well as solidarity rights. The civil and political rights include the rights to decision making and protection of property by individuals within a state. The social, cultural and economic rights include the right to an adequate living

⁴⁵³ Gray, K. (2002). 'Land Law and Human Rights', in Tee, L. *Land Law: Issues, Debates, Policy*, Devon William Publishing, p 211.

⁴⁵⁴ FIDA, (2007). Policy Brief, Women Land Rights in Proposed Land Policy Reforms (Unpublished).

⁴⁵⁵ I. Ikdahl, *et al.* 'Human Rights, Formalization and Women's Land Rights in Southern and Eastern Africa'. Studies in Women's Law No. 57. Institute of Women's Law, University of Oslo. Revised version of Norafric Report No 26, Norwegian University of Life Sciences, (2005) p 18.

standard.⁴⁵⁶ These socio-economic rights require that every one enjoys the necessary subsistence rights that are relevant to access and protection of land.⁴⁵⁷ Furthermore, related to access to land is the right to livelihood which is inextricably linked to the right to development and the right to environment.⁴⁵⁸ It is in the context of the above that this candidate considers the issue of equality of access an important corrective to the existing limitations on women's capacity to own land, which in their turn remain a significant constrain on women's livelihood and the country's development.

This inequality of access has made the question of non-discrimination a paramount importance in the attempt to set standards for land reform in the country.⁴⁵⁹ Non discrimination is a fundamental aspect of a State's obligation under a variety of international human rights instruments. This principle of non discrimination in its implementation emphasizes the fact that everyone is entitled to the enjoyment of human rights irrespective of sex, religion, or other status. The Cameroon Constitution, too, states that the right to own, manage and dispose of land is an inherent right to be enjoyed by all human beings, by virtue of their humanity and no one should be deprived of this right.⁴⁶⁰ Land right is a general right related to the moral value of human personhood.⁴⁶¹ Ideally, everybody should have access to land in a country like Cameroon with such institutional

⁴⁵⁶The International Covenant on Economic, Social and Cultural Rights, Article 11; Also see the Universal Declaration of Human Rights, Article 25.

⁴⁵⁷A. Eide, *Economic, Social and Cultural Rights as Human Rights, in Economic, Social and Cultural Rights*, (edited by Eide, A., Krause, C., and Rosas, A.,). Dordrecht/Boston/London: Martinus Nijhoff (2001) pp 21-41.

⁴⁵⁸ The rights to development and environment are known as Solidarity and Development Rights which falls under the Third Generational Rights.

⁴⁵⁹ Available at <http://www.jus.uio.no/ior/kvretten/english/index.html>. (Accessed on 11/01/2010).

⁴⁶⁰ Preamble of Cameroon Constitution 2008.

⁴⁶¹ F. Cheneval, *Property Rights as Human Rights*. Zurich: Ruffer & Rub, (2006) p 13.

philosophical underpinnings, yet the restriction on women both by custom or discriminatory administrative practices continue in the country.⁴⁶²

The right to land is understood as a direct consequence of the human person's need and ability to provide for his or her subsistence and entertainment.⁴⁶³ According to Wollstonecraft,⁴⁶⁴ the body itself is the first property or need of a human person. The respect for a person's property is thus related to the respect of the integrity of the body. Every human person has to be considered proprietor of his or her body as well as his or her property. Hence, the denial of property rights as human rights opens the door to slavery, dependence and grave forms of exploitation.⁴⁶⁵ This is because restricting one's right over property or the body means you cannot use your body or property freely as a natural gift. According to this view the absence of the capacity and autonomy to access land is tantamount to a violation of human rights.

The right to property (land) is everybody's special right and, in that sense, a general right. The right to land constitutes a duty of legal recognition of the factual ownership of the body of all persons and the belongings they accumulate in their activities. To this effect, land right is thus a universal special right imperative for the legal empowerment of everybody.⁴⁶⁶ Moreover, the ICESCR of 1966⁴⁶⁷ regards land ownership as a basic

⁴⁶² Ibid

⁴⁶³ M. Wollstonecraft, *A Vindication of the Rights of Men*. Oxford: Oxford University Press (1970).

Available at

http://en.wikipedia.org/wiki/international_Covenant_on_Economic,_Social_and_Cultural_rights. (Accessed on 20/01/2010).

⁴⁶⁴ Ibid

⁴⁶⁵ Cheneval, F., *op cit*, p11

⁴⁶⁶ Property Rights as Human Rights, available at

http://en.wikipedia.org/wiki/Human_rights_in_switzerland. (Accessed on 20/01/2010)

concept which may be deployed to safeguard some of the fundamental rules attached to it. For example according to Article 33 of the Convention, ownership of land expresses the idea of allocating an asset to a person according to the rule granting a specific person the final decision on when and how the asset can be owned within the prescription of the law. The Article has been construed as guaranteeing basic ownership and disapproving expropriation of land in the name of common interest without strict procedural justice.⁴⁶⁸ It is in this candidate's opinion obvious that the spirit of this Convention demands that every human being be entitled to the guarantee of ownership according to its basic meaning contrary to what obtains here where as the statistics have shown that less than 10% of women have access to land ownership in the region.

The right to land is a human right embedded in all human beings void of any form of discrimination. Everyone is entitled to have and enjoy equal access to land and productive resources in order to live a fulfilling and dignified life. The right to equal access to land for men and women as enshrined in the preamble of the Cameroon Constitution and the 1974 Land Ordinance indicating a commitment to the principle of gender equality has however to be followed with solid administrative structures and practices that will in practice, produce increased access by the hitherto disfavoured and vulnerable groups such as women. In addition, the government upholds the principle of equal access to land and

⁴⁶⁷ International Covenant on Economic, Social and Cultural Rights. Adopted by the General Assembly of the United Nations by its Resolution 2200A (xxx) of 16 December 1966. Entered into force 3 January 1976.

⁴⁶⁸ Ibid, p 15

has ratified numerous international human rights instruments that spell out provisions guaranteeing the enjoyment of this fundamental right by all.⁴⁶⁹

This study agrees with some authors⁴⁷⁰ who have argued that discrimination against women is a function of greed and corruption and not genuine custom. In doing so, the researcher notes that the protection of communal interest to land from a chief who mismanages land is not limited to the fear of ancestral spiritual sanctions. Although this plays an important role in the claim that respect for human rights was foreign to pre-colonial Africa is not correct. It is evident from the beliefs, attitudes and institutions of indigenous people that in the context of land, the chief's decision and actions were contingent on various factors.⁴⁷¹ According to Yanou,⁴⁷² the chief has to proffer convincing justification for his actions to his subjects who have practical methods of dealing with a deviant chief who violates the land rights of his subjects.⁴⁷³ The Anglophone conception of land rights is similar to that of Islam. In Islamic jurisprudence, God is the owner of land and grants the right to use it to humans. A principal element of this notion of land is the implication that an individual should only hold as much land as his actual needs prescribe. Central to Islamic theology on land is the need for moderation. This requirement for moderation makes it obligatory for the State to manage land so as to ensure that all have access on the basis of their needs.⁴⁷⁴

⁴⁶⁹ Such as, the International Covenant on Economic, Social and Cultural Rights 1966, The African Charter 1986, the Convention on the Elimination on all Forms of Discrimination Against Women 1979, etc

⁴⁷⁰ See Moyo, op cit p 92.

⁴⁷¹ Yanou, op cit p 89

⁴⁷² Ibid.

⁴⁷³ The incidence between the indigenes and the Fon of Big Babanki who violated the land rights of his subjects is illustrative.

⁴⁷⁴ A. Said, 'Human rights in Islamic Perspective' in Admantia Pollis et al, *Human Rights: Cultural and Ideological Perspective*. New York: Praegar Publishers (1979) p 88.

Scriptural conceptions of property including land have also been analysed as having a human rights roots. God's creation of Adam and Eve and subsequent declaration that they should have dominion over the earth and the resource is the origin of equal right to land by all human beings.⁴⁷⁵ St Augustine's theological theory which postulates that the world belongs to God who has given it to the sons of men, has been cited as providing the foundation of all rights.⁴⁷⁶ Land, according to this view, is a grant from God and its possession by all is in line with the divine will that human beings should have access to it. Hence, being a divine injunction, it is natural and cannot be contradicted by contrary practice or law.⁴⁷⁷

St Augustine further contended that the right to own property was a human right.⁴⁷⁸ He, however, attributed the source of this right to the kings who, in his view, received it from God. Although he went about it in a rather circuitous manner, St Augustine ultimately arrived at the same conclusion that the right to access land is a fundamental right to all human beings. It may be assumed that the Scriptural conception of rights relates to the idea of men using the world and its resources as a common heritage.⁴⁷⁹ Additionally, the early church in the New Testament thus pulled its resources together for common usage. Schlatter used the Biblical story of Naboth whose land King Ahab coveted to demonstrate that men owned land in their individual capacity. According to him, God recognized and protected this form of ownership. Jesus Christ in a parable seemingly supported the notion

⁴⁷⁵ Genesis Chapter 1 verse 17 and 18.

⁴⁷⁶ R. Schatter, *Private Property: The History of an Idea*. London: George Atlens and Unwia Ltd, (1951). p 62. .

⁴⁷⁷ Ibid.

⁴⁷⁸ Yanou 2009, *op cit*, p 91.

⁴⁷⁹ E.J.H. Scharge, 'Ius in corporali perfecte disponendi: property from Bartolus to the New Dutch Code of 1992'. In Maaneen *et al*, *Property Law on the Threshold of the 21st Century*. Tilburg MAKLU: Uitgevers Antwerpen-Apeldoorn, (1996). p 35. Hereinafter referred to as Shrage.

of individual rights to land when he asked ‘is it not lawful to do what I will with my own?’⁴⁸⁰

There is a controversial relationship between the theological basis of property and natural law and how these affect human rights. Ordinarily, it must be logically supposed that natural law is a product of the author of nature, God himself. From this viewpoint, it makes no difference whether the human rights foundation of land is attributed to God or natural law. Indeed amongst protestant theological scholars like John Ponet, natural law is identified with the law of God in the Bible.⁴⁸¹ Thus from the above biblical perspective, an individual right to access land is a natural right.

However, Hobbes⁴⁸² and Rousseau⁴⁸³ developed a theoretical construct which when applied to land, leads to the conclusion that land is not a human right. According to Rousseau,⁴⁸⁴ the desire for private property is at the root of societal evil. This is because every individual is yearning to acquire more than the other. Acquisition of property will be based on the struggle of survival of the fittest. This notion often deprives those individuals who cannot fight on the same basis with the others of the right to access property. It is important to mention that Rousseau’s thinking is not in line with the fact that an individual’s access to land is a fundamental right. This conclusion is a logical one although Rousseau did not explicitly address the issue of land specifically in his analysis.

⁴⁸⁰ Found in the book of Mathew chapter 24.

⁴⁸¹ Yanou, *op cit* p 92.

⁴⁸² See The correspondence of Thomas Hobbes 1651, 2 vol., www.evene.fr.wikipedia.org/wiki/Thomas_Hobbes . Also see http://www.en.wikipedia.org/wiki/Social_Contract. (Accessed on 10/07/2010)

⁴⁸³ Jean Jacque Rousseau 1778, http://en.wikipedia.org/wiki/Jean_Jacques_Rousseau. (accessed on 10/07/2010).

⁴⁸⁴ See chapter 1.

Hobbes was absolutist in his notions about property. He asserted a post social contract view of property. He regarded all property as divided by the state which has unlimited powers of control over it after the social contract.⁴⁸⁵ With regards to land, Hobbes wrote in the Leviathan that the first function of the State is to arbitrarily distribute 'land among the subjects thereby creating property rights.'⁴⁸⁶ Civil law in his view was a mechanism for the creation and maintenance of this distribution. It is obvious that access to land cannot be regarded as a fundamental right from the perspective of this Hobbesian autocratic conception. Hobbes in fact propounded a theory of commutative justice as the foundation of property rights. According to this theory, property rights, including rights in land, are mainly a function of contract. Commutative justice 'is the justice of the contractor' and concerns performance of covenants mutually undertaken.⁴⁸⁷ Shapiro explains the values of commutative justice in that: 'in such transactions, the value of things contracted for is measured by the appetite of the contractor, and therefore the just value is that which they be contended to give'.⁴⁸⁸

Clearly, Hobbes'⁴⁸⁹ refusal to recognize property rights against the State further serves to confirm this candidate's conclusion. However, it will be unfair to condemn Hobbes for insisting on a strong State because he was writing in a volatile political and legal context. There is an obvious difference in the perception of land between socialists like (Rousseau, Hobbes) on the one hand and naturalists like (St Augustine, Locke) on the other. The

⁴⁸⁵ Yanou. 2009, *op cit* p 93.

⁴⁸⁶ I. Shapiro, *The Evolution of Rights in Liberal Theory*. Cambridge: Cambridge University Press, (1986) p 29.

⁴⁸⁷ Shapiro, *op cit* p 80

⁴⁸⁸ Ibid.

⁴⁸⁹ Hobbes, *op cit*.

divergent themes that emerge are that the former regard access to land as a basic right while the latter philosophers contend that no right to private ownership of land is tenable. The latter philosophers assert that no right to private ownership of land existed in a natural state of affairs.⁴⁹⁰ It does appear from the practical statistics which show the uneven distribution of land in the country that Cameroon in reality pursues the Hobbesian view of property (land).

Although it is difficult to resolve this controversy decisively in favour of one side or the other, it is necessary to make certain comments about the controversy here. Generally, most property theories on human rights represent an attempt to synthesise these contending arguments. The synthesise seeks to establish a balance between protecting individual rights to land and the need to ensure geometric equality in the distribution of land.⁴⁹¹ The 1974 Land Ordinance reflects this attempt at synthesizing the contending theoretical positions.

From whatever angle the land issue is approached, on the analytical plane, it may necessarily be conceded that land is a common heritage of humanity. Both proponents of man's natural right to property and those who see the accumulation of property as at the root of societal evil believe in land as a common heritage of humanity. The former argue that it was granted by nature hence, an individual's right to access land is a natural right. The Socialists view of regulating land distribution by the State is not agreeable to the

⁴⁹⁰ Van der Vyver 'Property in International Human Rights Law' in G E Van Maneen *et al*, *Property Law on the Threshold of the 21st Century*. Tilburg MAKLU: Uitgevers Antwerpen-Apeldoorn, Hereinafter referred to as Van der Vyver, (1996). Cited in M.A. Yanou 'Access to Land in Post-Apartheid South Africa; An African Perspective. Bamenda: Langaa Books (2009) p 106.

⁴⁹¹ Ibid

principle of acquisition of property as stated by the 1974 Land Ordinance. Hence, this distribution must be regulated to ensure that an individual's propensity to accumulate without regard for the entitlements of others such as women is eliminated. The idea of an insensitive propensity to acquire private property being the root of societal evil rests on the assumption that land is the common heritage of humanity, although not expressly articulated. The present submission that land is a common heritage of humanity is a conclusion arrived at because all the theories of property rights in one form or another point to the idea of securing all individual's entitlement to land as a human right.

3.5.1 Equal Access to Land and the Ratified Human Rights

Instruments

Cameroon has ratified a variety of international human rights instruments securing in the process to its citizens and resident aliens the right to access land void of discrimination. Under this right, divergent needs for land by women and men need to be considered and met equally as a human right.⁴⁹² The principle of non discrimination with regards to access to land is contained in all the main human right instruments applicable in Cameroon. The Universal Declaration of Human Rights (UDHR) 1948⁴⁹³ affirms that everyone is entitled to all the rights and freedoms set forth in the declaration, without distinction of any kind, including distinctions as to sex, among other characteristics.⁴⁹⁴ The declaration in particular safeguards women's right to access property (land) void of

⁴⁹² C. Deere, and M. Leon, *Empowering Women: Land and Property rights in Latin America* (Pittsburg: University of Pittsburgh Press, 2001). P15

⁴⁹³ Supra

⁴⁹⁴ The Universal Declaration of Human Rights, op cit. Article 2.

discrimination when it insists that ‘everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of this right.’⁴⁹⁵

Besides, the Covenant on Civil and Political Rights (ICCPR) 1966⁴⁹⁶ guarantees to all the prohibition from all forms of discriminations among human beings regardless of their status.⁴⁹⁷ It is worth emphasizing that Article 26 of the ICCPR apart from establishing a general and independent protection against discrimination specifically protects women’s rights to land and property on a non-discriminatory basis. The Covenant on the Economic, Social and Cultural Rights (ICESCR) 1966⁴⁹⁸ protects equal right to access land by stating that States Parties should undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.⁴⁹⁹ More specifically, it states that ‘nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources’ such as land.⁵⁰⁰ The right to equality of access to resources (land) is also safeguarded by the African Charter on Human and Peoples’ Rights (AfCHPR). The Charter stipulates that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction on the basis of sex.⁵⁰¹ It more specifically insists that the right to property shall be guaranteed to all by

⁴⁹⁵ Ibid, Article 17.

⁴⁹⁶ The International Covenant on Civil and Political Right of 1966 (ICCPR) was ratified in 1984.

⁴⁹⁷ The International Covenant on Civil and Political Right, op cit. Article 26.

⁴⁹⁸ The International Covenant on Economic Social and Cultural Rights of 1966 (ICESCR) was ratified on 27 June 1984.

⁴⁹⁹ The International Covenant on Economic Social and Cultural Rights, op cit. Article 3.

⁵⁰⁰ Ibid, Article 25.

⁵⁰¹ The African Charter on Human and Peoples’ Rights, adopted 27 June 1981, entered into force on 21 October 1986. OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 2.

noting that 'it may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws'.⁵⁰²

The Convention on the Elimination of all forms of Discrimination Against Women 1979⁵⁰³ calls on all States Parties to embody the principle of the equality of men and women in their domestic laws.⁵⁰⁴ Under the Convention, 'State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes'.⁵⁰⁵ The CEDAW committee stresses the fact that rights to property are critical for women's 'ability to earn a livelihood and provide adequate housing and nutrition for herself and for her family'.⁵⁰⁶ Based on this, CEDAW obliges state parties to establish equal property rights for women noting in particular that 'equality with regards to land rights should apply in the ownership, management and disposition of property between spouses' as well.⁵⁰⁷ It is plain from all these provisions that Cameroon ought to have ensured that it creates an enabling environment on ground that discourages the kind of lopsided land holding pattern to the profound disadvantage of women that the statistics on land distribution in the regions demonstrates. Where as in this country, the law in theory says one thing but produces in practice inequality of access to land. This raises very significant

⁵⁰² Ibid, Article 14.

⁵⁰³ The Convention on the Elimination of all forms of Discrimination against Women of 1979 (CEDAW) was ratified on 6 June 1983.

⁵⁰⁴ The Convention on the Elimination of all forms of Discrimination against Women, Article 2

⁵⁰⁵ Ibid, Article 14 (2) (g).

⁵⁰⁶ General Recommendation No. 21 from the CEDAW committee (1994), 'Equality in marriage and family relations' (1994), A/49/38 paragraph 26.

⁵⁰⁷ Article 16 of CEDAW.

questions about the country's political willingness to respect its international human rights obligations.

The country's inaction that has allowed the inequality of access alluded to is all the more serious because the African Protocol on the Rights of Women⁵⁰⁸ in further substantiating the principle of non discrimination in relation to land demands state parties to 'promote women's access to control over productive resources such as land and guarantee their right to property',⁵⁰⁹ insisting on the right of the widow/widower to inherit the deceased spouse's property.⁵¹⁰

The inequality of access to land for women in Cameroon has gained visibility in development discourse, has been on the agenda of international conferences for decades and is highlighted for example, at the UN Women's Conference in Copenhagen in 1980. In this conference, it was purported that women owned only one per cent of the world's resources (land) while constituting more than 50 per cent of the world's population.⁵¹¹ The exclusion of women from the ownership of land both in Cameroon and globally has thereafter remained on the global agenda, especially with the strengthening of women's movements all over the world during the UN Women Decade (1975-85). The state's commitments on safeguarding women's equal rights to land by institutions such as CEDAW, The Protocol to the African Charter on Women's Rights, the UN Women's

⁵⁰⁸ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa', adopted by the Assembly of the African Union 11 July 2003.

⁵⁰⁹ Ibid, Article 19.

⁵¹⁰ Ibid, Article 16.

⁵¹¹ N. Rao, Women's Rights to land and other Productive Assets: Its impact on gender relations and increased productivity. Working Paper 4, IFAD-UNIFEM Gender Mainstreaming Programme in Asia. UNIFEM New Delhi, (2006) p 2.

Conferences and Movements, has reiterated the equal right of women to own property at all major international summits thereafter – the Beijing Platform for Action 1995, the Istanbul Declaration and Habitat Agenda 1996, the 2005 World Summit Outcome, and several others. These institutions have asserted the vitality of land as an economic asset which should be equally owned and disposed of indiscriminately by both sexes. Thus, this candidate argues that given the significance of equal access to land for men and women, there is need for a radical overhaul of law to ensure that the current inequality of access to land between men and women are addressed.

Understanding access to land as human rights helps to improve on the responsibility of governments to install functioning land rights systems that promote reliable and fair access to land for every human being. Furthermore, access to land is a socio-economic right and Cameroon has ratified numerous human rights treaties including the Economic Convention guaranteeing the full enjoyment of its citizens of this right. To this effect, the government of Cameroon is obliged to live up to the expectation of the ratified Covenant.

3.5.2 Equal Access to Land in Cameroon in the Context of the State's Obligation under International Human Rights

The legal obligations of the Government concerning the right to land consist of the duties expressed in a Covenant;⁵¹² and the more specific obligations to recognize, respect, protect and fulfill this right to land and other socio-economic rights. By virtue of Article 2.1 of the ICESCR for example it states that;

⁵¹²For example in the Economic Convention, the duties of the states parties are expressed in Article 21 of the Covenant.

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 2.1 of the Covenant is of central importance for determining what the Government of Cameroon must and must not do in the process of individuals' enjoyment of the rights to land found in the Covenant.

3.5.3 Duties of the State under the Economic Convention

Article 2.1 of the Covenant stresses three important phrases or elements for understanding the obligations of Government that is signatory to the treaty Article 2.1 demands that States Parties 'undertake to take steps by all appropriate means'; 'to the maximum of its available resources', and 'to achieve progressively', the full realization of the rights enshrined in the treaty. It is for this reason that this candidate discusses here these principal elements within the broad parameters of equal access to land in Cameroon.

These include the State's role to:

a) ‘Undertakes to take steps... by all appropriate means’

For a State to fully realize the rights to land of its citizens, the State is obliged to immediately take appropriate steps directly upon ratification of the Covenant to meet up with the attainment of the rights to land. One of the first appropriate steps for the State to follow is to undertake a comprehensive review of all relevant legislation with a view to making national laws, administrative and customary practices on access to land fully compatible with international legal obligations. The Committee on Economic, Social and Cultural rights has recognized that in many instances, legislation is highly desirable and in some cases, indispensable for the fulfillment of the rights to land found in the Covenant.⁵¹³ At the same time, however, the Committee has emphasized that the adoption of legislative measures alone or the existence of legislative compatibility is not enough for a State party to fulfill its obligations under the Covenant. Thus, in addition to legislative measures, other measures such as the administrative, judicial and educational steps must also be applied in the country in order to facilitate equality of access to resources including land.

b) ‘to the maximum of its available resources’

Although admittedly a State’s efforts ought to depend on its resources, the CESCR developed the idea of minimum core obligations to refute the argument that lack of resources should hinder the fulfillment of this obligation. The committee has observed that every Member State has a minimum core obligation to satisfy minimum essential levels of the rights to land found in the Covenant. It has clarified this by stating that:

⁵¹³ By virtue of Article 11.1 of the Covenant, an obligation is imposed on states parties ‘to take appropriate steps to ensure the realization of socioeconomic rights’ such as right to access land. This reveals that the provisions is not intended as serving merely to exhort states parties and provide international legitimacy for socio-economic policies. This policy is meant to lay down a duty under international law which may be enforceable through local courts of member states in appropriate circumstances.

a state party in which any significant number of individuals is deprived of essential foodstuff, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is prima facie failing to discharge its obligations under the Covenant ... In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.⁵¹⁴

This means that both the resources within a State and those provided by other States or the international community must be deployed towards the fulfillment of these rights including that relating to access to land as a landless woman who seek but cannot acquire access cannot reasonably say her rights are respected. Even when available resources are demonstrably inadequate, State parties must still strive to ensure the widest possible enjoyment of the rights to land under the prevailing circumstances.⁵¹⁵ Although the alleged lack of resources is often used to justify non-fulfillment of certain rights, the Committee on Economic, Social and Cultural Rights has emphasized that even in times of severe economic contraction and the undertaking of measures of structural adjustment within a state, vulnerable members of society such as women, can and indeed must be

⁵¹⁴ CESCR, General Comment 3, *The Nature of State Parties obligations*. Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 (1994), para 10. By virtue of this provision, it is apparent that socioeconomic rights contain a minimum core obligation below which no state will be permitted to ordinarily fall.

⁵¹⁵ CESCR, General comment 3, *The Nature of State Parties obligations* (Article 2, para. 1 of the Covenant).

protected by the adoption of relatively low-cost, targeted programmes.⁵¹⁶ This can be in the form of creating an enabling environment or affirmative action by the Government that can facilitate easy access to land by all in the country.

If a State claims that it is unable to meet even its minimum obligations because of lack of resources, it must at least be able to demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. However, the lack of resources can never be used to justify failure of a State to fulfill its obligation to monitor non-enjoyment of the rights to land found in the Covenant. In essence, the obligation of states is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right to land for every individual in the shortest possible time using the maximum available resources.

c) ‘To achieve progressively’

This obligation imposes on states to move as quickly and effectively as possible towards the goal of realizing fully the rights to land found in the Covenant. Both the adoption of legislation relating to the non discrimination clauses of the Covenant and monitoring of the status of realization of the rights to land must occur immediately following ratification. This obligation ‘to achieve progressively’ must be interpreted according to article 11.1 of the Covenant, in particular the reference to the right to the ‘continuous improvement of living conditions’ of the citizens. The committee has stated that ‘any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the

⁵¹⁶ Ibid, para.12

Covenant and in the context of the full use of the maximum available resources.⁵¹⁷ In effect, it requires the effective use of the available resources to ensure equal access to land that may improve on the standard of living of the citizens in the country. Besides the above obligation, the state is equally obliged to meet up with its minimum core obligation under the Covenant to provide equal access to land to its citizens.

3.5.4 ‘A Minimum Core Obligation’

Under the ICESCR, Cameroon as a State Party is under a minimum core obligation to ensure the satisfaction of the very minimum essential levels of each of the rights found in this instrument when it addresses the right to access land. The ICESCR reveals that international law is interested in the creation of a universal humane property regime in all its States Parties. According to the Covenant, a State Party in which a significant number of individuals is deprived of the basic rights to access land as is the case in Cameroon, where about 90% of women do not own land when in fact they are the ones who farm on the land, is in violation of its treaty obligation. It is for this reason that under this treaty, states are under a duty to recognize, respect, protect and fulfill the rights contained therein.

a) ‘The Duty to Recognise’

The duty or obligation of States to recognize the right to land manifests itself in several key areas. Firstly, all countries including Cameroon must recognize the human rights dimensions of land and ensure that no measures of any kind are taken with the intention of eroding the legal status of this right. Secondly, legislative measures, coupled with

⁵¹⁷ Ibid para. 9

appropriate policies geared towards the progressive realization of the right to land, form part of the obligation 'to recognise' the importance of equal access to land by the government. Practices such as the fact that the Land Consultative Board relies on customary law is clearly a violation of the obligation to recognize. Although the government of Cameroon recognizes this right of equal access to land when it states in the preamble of the Constitution that, 'the state shall provide to all its citizens with the conditions necessary for their development'. It nevertheless in the opinion of this researcher remains in violation for failing to concretely ensure that the inequality of access statistically revealed in this research is curbed.

Another dimension of the duty to recognize this right to land can be expressed in terms of policy. Issues on right to land should specifically be incorporated into the overall development objectives of the State. This is because once this right is incorporated as such, the Government has to see the need or importance of guaranteeing equal access to land in the country. In addition, a national strategy aimed at progressively realizing the right to land for all through the establishment of specific targets should be adopted. Thirdly, the recognition of the rights to land means that measures must be undertaken by the government of Cameroon to assess the degree to which this right is already enjoyed by the population at the time of ratification. More importantly, a genuine attempt must be made by the State to determine the degree to which this right is put in place, and to target land policies and laws towards attaining this right for everyone in the shortest possible time. In this respect, the government of Cameroon must give due priority to those social groups such as the women living in unfavorable conditions by according them particular

consideration such as instituting some affirmative actions to easily access land in the country.

b) ‘The Duty to Respect’

The duty to respect the right to access land means that the Government of Cameroon should refrain from any action which may directly prevent people from enjoying their right to access land in the country. In particular, the responsibility of respecting the right to land means that States must abstain from carrying out or encouraging discriminatory practices for accessing land as is the case, as documented by the statistics analysed in this study. States should respect people’s rights to own land in a manner that suit their needs and wishes. This is quite evident in the preamble of the Constitution where it is stated that ‘no person may be compelled to do what the law does not prescribe’. By this provision, the state is structured at sanctioning any one, whether a state agent or customary representative who discriminates or prevents any citizen such as a woman from enjoying her right to access land. Also, honouring the right to equality of treatment, the right to dignity and other relevant rights form part of the State’s duty to respect the right to land. Respecting this right may often require the Government’s commitment to facilitate the ‘self-help’ initiatives of the affected group of persons (women) in the society.

c) ‘The Duty to Protect’

To protect effectively the right to access land in Cameroon, the Government is duty bound to prevent any possible violation of the right by a third party, whether the customary courts, the Delegation of State Property and Land Tenure, or the Land Consultative Board is prevented. Where such infringements do occur, the relevant public authorities should

act to prevent any further deprivation and should guarantee to the affected persons, access to legal remedies and other appropriate redress.

In order to protect the rights of citizens from acts such as lack of access to land, in the society, the Government should take immediate measures aimed at conferring an equal opportunity of legal security of tenure upon all persons and land in the society that currently lacks such protection. In addition, access to land should be protected, by legislation and other effective measures from discrimination. For instance, the State should ensure the creation of judicial, administrative or political enforcement mechanisms capable of providing redress to victims of infringement of the right to access land. It is not enough that the courts in the decisions in *Lum v Fru*⁵¹⁸ as well as in *Sarah Afumbe's*⁵¹⁹ case had held that women should not be discriminated against with regards to inheritance of their father's estate on intestacy and any rule which decides differently is acting contrary to the preambular provision of the Cameroon Constitution which prohibits discrimination against women in all forms.

d) 'The Duty to Fulfill'

The duty to fulfill means the Government of Cameroon is obliged to institute all necessary positive measures be they financial, administrative or legislative, to fully realize equal access to land in the country. In comparison with the duties to recognize, respect and to protect, the obligation of a State to fulfill the right to land is both positive and interventionary. It is in this category, in particular, that modalities for restitution of land

⁵¹⁸ Supra

⁵¹⁹ Supra

by the government to the indigenous community, government regulation guiding the activities of the Land Consultative Board, the provision of instituting effective implementation of land policy and related infrastructure, the redistribution of income and other positive obligations to guarantee equal access to land emerges. The Committee on Economic, Social and Cultural Rights has asserted that identifiable governmental strategies aimed at securing the right of all persons to live in peace and dignity should be developed. Access to land as an entitlement should be included in such strategies. The Committee has stated further that any of the measures required to satisfy the right to land be they financial, administrative and legislative to satisfy the right to land will involve resource allocation on the part of the State to access land. As proclaimed in the Limburg Principles⁵²⁰ on the Implementation of the Covenant on Economic, Social and Cultural Rights, and reiterated subsequently by the Committee, due priority shall be given, in the use of all available resources, to the realization of the rights to land recognized in the Covenant.

Nevertheless, the study highlights the need of the state to respect and protect the property rights of all its citizens. It has also emphasized in previous chapters the importance of substantive equality which should be exercised on the state of affairs of women who have suffered from restricted land rights in the past. Proponents⁵²¹ of substantive equality recognize that patterns of oppression exist in the society and consequently, that law makers and government officials are obligated to take this reality into account when

⁵²⁰ Maastricht Guidelines on Violation of Economic, Social and Cultural Rights, Maastricht, January 22-26 1997. Also see <http://www.umni.edu/humanrts/instree/maastrichtguidelines.html>. (Accessed on 20/06/2010).

⁵²¹ S. Freedman, 'Affirmative Action and the Court of Justice: A Critical Analysis' in Shaw, J., (ed), *Social Law and Policy in an Evolving European Union*. Oxford: Hart Publishing 2000 p 175.

instituting land policies intended to dissuade discrimination that majority of the population suffer on land matters in the region.⁵²²

Substantive equality highlights the need for 'equal opportunity' to be granted to all the necessary stakeholders in the society. It is argued that this can be made possible by first of all identifying the obstacles faced by individuals and groups competing on the same terms as others. This may in turn lead to the need to remove such barriers or at least institute compensatory measures designed to neutralize the impact of the obstacles on them.⁵²³ For example, if poverty is one of the key factors that prevent women from gaining equal access to land in the past, then it may be necessary for the government to develop targeted business schemes and opportunities for women to generate income and capital as a means to address this legacy.

This is because substantive equality implicates the need to ensure equality of results or outcomes and, thus, there is a need to provide fair (proportionate) participation for all relevant groups and also to take positive actions to realize the above goal⁵²⁴ in order to enhance justice and the personal autonomy of all. Under these conditions, the state is duty bound under the ratified international human rights convention, to take all positive measures be they administrative, budgetary or legislative to reverse the lopsided access to land that the statistics has shown exist in Cameroon.

⁵²² <http://www.ccppcj.ca.e.rights.rights-charter.shtml>: Rights Our Equality Rights in the Charter. (Last accessed 02/06/2009).

⁵²³ Ibid.

⁵²⁴ C. Barnard, 'The Changing Scope of the Fundamental Principle of Equality?' (2001) 46 *McGill Law Journal* pp 955- 976.

The Committee on Economic, Social and Cultural Rights after examining the human rights activities of the Cameroon government with the view of ascertaining if she is living up to its obligation to safeguard equal land ownership in the country, acknowledged that unequal access to land still exist in the country.⁵²⁵ To promote equal access to land, the Committee recommended that the Government of Cameroon should take more active and positive steps to address the discriminations against women in Cameroon, in law and fact.⁵²⁶ Apart from urging the State to repeal all provisions of the laws that discriminate against women,⁵²⁷ the Committee further urged the Government of Cameroon to prohibit customary practices that violate the rights of women and to take active measures to combat such practices and beliefs by all means, including educational programmes.⁵²⁸ The importance attached to the concept of equal access to land as a human right by the United Nations was affirmed when the UN High Commission decided to consider the issue of women's equal ownership of, access to and control over land and the equal rights to own property as one of the aspects to be discussed at its sixty-first session under the agenda

⁵²⁵ See Concluding Observations of the Committee on Economic, Social and Cultural Rights” Cameroon, 08/12/1999. E/C.12/1/Add.40. (Concluding Observations/Comments). This remark is based on the reports submitted by States Parties as demanded by articles 16 and 17 of the Covenant. Based on the report received by the Committee from the Government of Cameroon, the Committee expresses deep concern and disappointment on the fact that the Government of Cameroon has not showed enough commitment or willingness to live up to the expectation of the principles of the Covenant. The Committee expressed that the government has not yet embarked on the necessary law reform to repeal laws which maintain the unequal legal status of women, particularly in aspects of the Civil Code and the Commercial Code relating to, inter alia, the right to own property and the laws regarding credit and bankruptcy, which restrict women’s access to the means of production. They are in flagrant violation of the non-discrimination and equal treatment provisions of the Covenant and are inconsistent with the recently amended Constitution of Cameroon which upholds the equal rights of all citizens of Cameroon. Also, the Committee deplores the lack of progress made by the Government in combating the continuing discriminatory practices against women and girls which impedes the enjoyment of their rights under the Covenant.

⁵²⁶ Ibid

⁵²⁷ J. H. Hay & S. Stichter, *African Women South of the Sahara*. New York: Longman Group Ltd (1984) pp 1-18.

⁵²⁸ Concluding Observations of the Committee on economic, Social and Cultural Rights: Cameroon. 08/12/99. E/C.12/1/Add.40. (Concluding Observations/Comments), No. 32 & 33 under Suggestions and Recommendations.

item entitled "Economic, Social and Cultural Rights".⁵²⁹ The Committee also makes clear that increasing access to land by landless or impoverished segments of society should constitute a central policy goal. Access to land was described by the committee as an entitlement which must be owned and controlled by all human beings in any given society.

Furthermore, based on a report submitted to the Human Rights Committee of ICCPR, in its General Comment No 28 on the equality of rights between men and women, the Committee asserts that States parties are required to take steps to remove obstacles to the equal enjoyment of such rights, to educate the population and state officials, and to adjust domestic legislation. According to the Committee, protective legal measures alone set up by the Cameroon government are not enough: the State needs to adopt more positive measures 'so as to achieve the effective and equal empowerment of women'. The Committee notes that inequality in the enjoyment of rights by women is often deeply embedded in tradition, culture and religion. It further emphasized that:

States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's rights to equality before the law and to equal enjoyment of all Covenant rights.

This aspect instead helped to restrict women from enjoying equal right to access land on the same pedestal with men. The right to everyone to be recognized everywhere as a

⁵²⁹ United Nations High Commission on Human Rights Resolution 2003/22.

person before the law implies that: The capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. This implies that women should not be treated as objects to be given together with the property of the deceased husband to the deceased family male relatives.

Conclusion

Unequal gender based rights in land are understood to exist in the region in a context of discrimination and exploitation of women. They exist through the instrumentalisation of land tenure regimes that work against women's land rights particularly, the manipulation of the means and structures in charge of concerning acquisition of land. The process of acquisition of land instead tends to marginalize women from the benefits of the control of land in the Anglophone regions.

Chapter Four

CONFLICT ON EQUAL ACCESS TO LAND

4.1 Introduction

This chapter deals with conflicts relating to access to land. It begins with a brief history of conflicts over land ownership in Africa in general and Anglophone Cameroon in particular. The chapter specifically discusses family conflicts over property rights in the context of succession as well as marital conflicts with regards to ownership of property. This chapter also involves a critical analysis of the various types of land-related conflicts stressing their gender perspective. In so doing, it reviews the land ownership crises that often arise between customary guardians and the indigenous women, and land conflict between the indigenous elites and the rural women as well as conflicts between farmers and graziers. The discussion highlights the impact of these conflicts on women in the Anglophone regions of Cameroon. Finally, this chapter examines the effect of the application of conflicting laws on land ownership within the broad parameter of the concept of equality.

4.2 History of Women and Land Conflicts

Land conflicts involving women have been a perennial problem in Africa in general and Cameroon in particular. The Ibo women in Nigeria organized a riot over land often referred to as the 'Aba Women's Riot' of December 1928. The women were protesting against the various restrictions women faced in the enjoyment of their rights in the society.

They identified the unequal acquisition of land by women in the South Eastern part of Nigeria as resulting from policies perpetrated by the British colonial officials.⁵³⁰ Similarly, in Uganda, the Zapatista women rigorously fought the government over the latter's reluctance to recognize that the women were deprived of their land rights. This struggle acted as a catalyst for a critical re-evaluation of customary practices in the course of challenging the rationale of tradition and of the state in continuing to maintain rules for accessing land that discriminated against women in the country.⁵³¹

Access to land in Cameroon is a traditionally complex and problematic issue which has in a dynamic and fluctuating manner influenced by the quest for political power and social status. The situation of women has not been static and has evolved as the country develops socio-economically.⁵³² Although Cameroonian women have not yet acquired the same socio-economic status as men, they are considered as the heart of development in spite of their marginalized status in the society.⁵³³ They are considered as the backbone of the agricultural activities and family well-being in the Anglophone regions.

Women are in the course of their contribution to the development of the region engaged in activities such as farming which invariably expose them to land ownership crises that stir up gender animosity. In the 1950s, the women's group called Anlu in the North West Region mounted pressure on the administration, traditional leaders and cattle graziers over

⁵³⁰ J.A. Allen, 'Aba Riots' or 'Women's War': British Ideology and Eastern Nigeria Women's Political Activism. (Waltham, MA: African Studies Association, 1971). Also see <http://www.blackpastorg/?q=gah/aba-womens-riots-november-december-1929>.

⁵³¹ United Nations Research Institute for Social Development, 'Democracy, Governance and Human Rights Programme' Paper No 10, January 2003 p 29.

⁵³² Logo Patrice *op cit*, p 35.

⁵³³ Ibid.

deprivation of land-ownership rights, encroachment and crop destruction by graziers. Subsequently, a similar conflict led to the loss of life of some natives in Wum in Menchum Division, and in Big Babanki in Ngoketunja Division.⁵³⁴ These conflicts between farmers and graziers have become widespread even in the area around Muanenguba twin lakes in Kupe Muanenguba Division where the pastoralists trespassed into farm lands owned by women and destroyed their crops.

Recently, the Fumbuen Women's Association stands out as an example of a women's movement that serves as an important component of the new civil society in the global age. The Association may be seen to be new catalysts of change concerning women's land rights, integration of women in the political field and development of the community.⁵³⁵ This is because it is engaged in persistent contestations in order to survive patriarchy or primitive masculinity. Increasingly, women have realized that the brunt of domestic upkeep falls squarely on them and men often take unilateral decisions on sensitive issues like land without their consent.⁵³⁶ The agitation of these women's movements is concrete evidence of the fact that gender inequality persists in Cameroon with respect to women's land rights.⁵³⁷ Hence, women are reluctant to allow men to monopolise decision-making over major issues of land on which the life of the rural people hinges. They are therefore bent on righting obvious wrongs relating to unequal access to land in the society.

⁵³⁴ Fisiy, *op cit* p 250.

⁵³⁵ Aicha Tambara Diawara, *AAWORD Newsletter*, No. 9 June 2002 p 6.

⁵³⁶ D. Henson, 'Women are Weak when they are among Men', Occasional Papers, Pretoria, Human Sciences Research Council, (2002). He note that despite the above phrase, within these exclusively female organizations, women prove to be a force to reckon with to the extent of effecting change of their wellbeing.

⁵³⁷ S. Awasom, 'Through the Prism of Octogenarian Political Activism in Cameroon: A Critical Survey of the Adoption of Traditional Female Political institutions to the Exigencies of Modern Politics in Cameroon', in Olufemi Vaughan, (ed.), *Indigenous Structures and Governance in Africa*, Lagos: Sefer Press (2003).

4.3 Gender Conflict on Access to Land and its impact on Women in the Regions

Land is a very strategic socio-economic asset. Competition over its acquisition is often vigorous almost every where in sub-Sahara Africa, particularly in the Anglophone regions of Cameroon.⁵³⁸ This is so because wealth and survival are measured by ownership of land.⁵³⁹ Since land is a resource of limited quantity and one of the most basic aspects of subsistence for the people in the region, rules regulating access to it is a focal point of attention as well as the basis for conflict both at individual and community levels.⁵⁴⁰ The vulnerable groups in society including women contest the rules for accessing land, challenging their lopsidedness in favour of men.

Furthermore, gender discrimination with regards to access to land is one of the main factors responsible for land conflict in the Anglophone regions because it constrains sustainable use of land. These constrains have meant that women have access only to family land but lack control and ownership of the land. This often prohibits them from using land as a form of collateral to have access to other resources. The absence of ownership right restricts them from accessing land certificates which by the 1974 Land Ordinance,⁵⁴¹ is the only authentic proof of a private property. Wamai⁵⁴² has rightly decried this state of affairs which undermines women and keeps them in poverty.

⁵³⁸ M. Wanyeki, (ed.). *Women and Land in Africa Culture, Religion and Realising Women's Rights*. (London: Zed Book Ltd, 2003). p 48

⁵³⁹ L. Sakah, Gender Conflicts and Natural Resources on the Kumbo Plateau, North West Regions of Cameroon. A paper presented in a seminar on Conflict Prevention, Management and Resolution, II PGS Buea, (2009). p 171.

⁵⁴⁰ Ibid, p 172

⁵⁴¹ See the provision of article 2 of the 1974 Land Ordinance.

⁵⁴² N. E. Wamai, 'Women and Poverty (Land rights and Ownership): A Policy Brief on the Kenyan Situation Prepared for the African Women's Rights Observatory', (AWRO, 2003).

As Wamai has observed, banks accept only land certificates as collateral security for loans has intensified the struggle over land in the country. Since the struggle is naturally not confined to only rural populations but extends to aliens regardless of sex and location, it has increased the potential for conflict in the region. Although these conflicts take a variety of forms, the tussle over land and houses particularly during proceedings for the dissolution of marriage is a very common example. In the case of *Felix Shu v Deborah Shu*,⁵⁴³ both parties are claiming ownership of the matrimonial home in a divorce petition which after going through the customary court Bafut to the Court of Appeal Bamenda, had to be commenced anew at the High Court in Buea. In *The People v Rose Munge Etah*,⁵⁴⁴ the conflict which has often resulted in threats of violence involves land. The accused on the death of her brother, the complainant's husband purported to sell the land and house. The accused claims that she is now owner of the property and the wife is regarded as a stranger.

This last case demonstrates how the socio-economic importance of land and the political status of the resource have increased the potential for conflict over the resource on gender lines. In the latter case, although the accused is a female, she was claiming through the father, which reveals that social and ethnic conflicts are rampant in the region.⁵⁴⁵ The social and ethnic conflicts over power and dominance in the region are structured by the unequal control over land.⁵⁴⁶ Land also acts as a terrain for socioeconomic and political

⁵⁴³ Suit No. BCA/ICC/2009

⁵⁴⁴ Suit No. CFIB/130C/2009

⁵⁴⁵ K. Havnevik, *et al*, *African Agriculture and the World Bank Development or Impoverishment?* (Uppsala: Nordiska Afrikainstitutat, 2007) p 33.

⁵⁴⁶ S. Moyo, 'African Land Questions, Agrarian Transitions and the State Contradictions of Neo-Liberal Land Reforms'. CODESRIA Working Paper Series, (2008) p 26.

contest between social classes or groupings of people such as landlords, peasants, bureaucrats, men and women, ethnic groups and other social categories.

The importance of land for the social reproduction of mainly peasant female households, through subsistence from land and related income generation, has led to generational implications in the Anglophone regions.⁵⁴⁷ Women who are the least resourced in land find it difficult to operate within the contemporary structures of political and economic power relations. This is because these relations were affected negatively by the status derived from the hoarding of massive tracts of land by men in the region. The land expropriations which occurred at a large scale mainly during the colonial period further compounded these emerging contradictory property relations and struggles in the society.⁵⁴⁸

The contemporary land tenure systems in Cameroon founded as they are on customary systems of regulation (in law or administration) and statutory formal systems are embedded in these unequal and discriminatory power structures and procedures. These land tenure systems in Cameroon as noted earlier, tend to allocate land unequally on the basis of gender difference. This unequal land allocation experienced for the past decades has tended to provoke land conflicts and struggles in the Anglophone regions such as the killing of Fon Vugah of Big Babanki clearly demonstrates.

⁵⁴⁷ *Ibid*

⁵⁴⁸ *Ibid*, p 27

This study demonstrates that women's access to land has significantly become more precarious⁵⁴⁹ as the protections of equal access to land traditionally ensured by the communal land system have been peeled away.⁵⁵⁰ In recent years, increased commercialization of land has led to problems of land scarcity in the society. This increased commercialization coupled with land scarcity, has increased pressure on the local male leaders who have the task of protecting the communal land system. This pressure on the leaders has caused them to place greater constraints on women's capacity to access land to the advantage of men. The high economic value presently placed on land, has invariably increased the resource's attraction and men's propensity to grab land. Gray and Keyane⁵⁵¹ have shown that women are increasingly being driven out of family land they had peacefully acquired for farm use and family sustenance.⁵⁵² This problem has stirred up a perennial family and community struggle over land, creating conflict and violence with devastating effect on women in the Anglophone regions.⁵⁵³

⁵⁴⁹ It was in the past possible for women to have better access to land. Yanou has noted that elders could not deny women property rights for fear of retribution from ancestral spirit who were regarded as co-owners of the land.

⁵⁵⁰ Also see Tumnde *op cit*

⁵⁵¹ L. Gray, and M. Kevane. "Diminished Access, Diverted Exclusion: Women and Land Tenure in Sub-Saharan Africa." (1999) 42(2) *African Studies Review*, 15-39.

⁵⁵² *Ibid.*

⁵⁵³ See *Ndobol v Ndobol*, HCF/11 MC/90 (unreported) where the husband constantly beat and urinate on the wife. Also in *Theresia Ngosong Alemkeng v Bezankeng Alemkeng John*, HCK/8/94/28M/94. Here, the husband was stopped from quitting the wife from the matrimonial home which she contributed money for the building of the house.

4.3.1 Inheritance of Family Property, Discrimination and Conflict

Inheritance of property is one of the main sources of conflict in families in the Anglophone Cameroon. Adam H. Bakari,⁵⁵⁴ defines inheritance as entailing ‘the devolution of property from the deceased person to the members of his family who have been dependent on him or her.’ He argues that ‘the purpose of inheritance is to provide a guarantee of both social and economic security to the survivors, and secondly to safeguard or provide unity among family members against disorganization, disintegration and destitution for lack of social and economic security’. Inheritance at law may be testate or intestate.⁵⁵⁵ Testate inheritance refers to property which devolves to others in accordance with the direction contained in a ‘Will’ left by the deceased person. Intestate inheritance on the other hand means property which devolves not in accordance with a Will left by the deceased but by operation of the law be it customary, statutory or Islamic.⁵⁵⁶

Inheritance is one of the most common ways for women to access land. Given the weak financial base of most Cameroonian women, they are generally less likely to purchase property.⁵⁵⁷ In most cases, a woman could become a land owner by inheriting land from her husband on his death.⁵⁵⁸ However, there are a range of cultural, social, political and

⁵⁵⁴ See Adam H. Bakari, ‘The legal status of a widow under family and social security laws in relation to succession and inheritance’ (1997). Available at www.giga_hamburg.de/openaccess/_/1997_3_sappel.pdf. (Accessed on 17/9/2010).

⁵⁵⁵ M.A. Yanou, ‘Intestate Succession in Anglophone Cameroon: A Critical Appraisal’. (1999) Vol. 4 No.1 *The Calabar Law Journal*, pp 57-77.

⁵⁵⁶ Ibid

⁵⁵⁷ D. Tsikata, ‘Securing women’s Interests within Land Tenure Reforms: Recent Debates in Tanzania’ (2003) 3(1-2) *Journal of Agrarian Change*, pp 149-83.

⁵⁵⁸ UN-HABITAT, ‘Policymakers’ Guide to Women’s Land, Property and Housing Rights Across the World’ (Nairobi: UN-HABITAT, 2006).

legal factors limiting a woman's capacity to access land through this means.⁵⁵⁹ In Anglophone Cameroon, women are culturally constrained from enjoying inheritance rights either as daughters or wives. It is often believed that women are unreliable successors since upon marriage for example, their loyalties become divided between the biological and marital families.⁵⁶⁰ Naturally, loyalty to the marital family is stronger because the woman's children are part of that family. It is feared that a married woman might take away the property to her husband's family. In the case of land, the fear may be justified because there is evidence that some married women register their family land in their marital names. The case of *Fru v Lum*⁵⁶¹ is a perfect example after being named administratrix of her late father's estate, the respondent, a married woman, did register some of the family land in her marital name. This was in spite of the prohibition enshrined in section 10 of the 1976 Decree governing land registration which states that, 'trustees of an inheritance may not obtain land certificates for the properties in their own name'.⁵⁶² Furthermore, to justify women's exclusion, the customary law insists that because women are destined for marriage and procreation, they are themselves 'property' liable to be passed to the successor.⁵⁶³ This conceptualization appears underpinned by the payment of the bride price which is considered to be the purchase price for the woman.⁵⁶⁴

⁵⁵⁹ L. M. Wanyeki, *Women and Land in Africa-Culture, Religion and Realising Women's Rights*, London: Zed Books (2003).

⁵⁶⁰ See Ngassa *op cit* p 81.

⁵⁶¹ (1997) 1 C.C.L.R. 212.

⁵⁶² Decree No. 76-165 of 27 April, 1976. Unfortunately the judge defended the action of the respondent on the ground that as administrator the estate is vested in her and that it was the duty of the government department responsible for land registration to mention that she registered the land in her capacity as administrator.

⁵⁶³ See *Mary Umaru v Asopo Makembe*, CASWP/CC/87/81 (unreported). This is cited by Enonchong, N., 'Public Policy and Ordre Public: The exclusion of customary law in Cameroon', (1993) 5(3) *RADIC*, 503-525:512.

⁵⁶⁴ Nzalie, *op cit* p197

It is this line of reasoning that led to the kind of actions and conflicts seen in *The People v M Eka & Others*.⁵⁶⁵ Indeed, the candidate's study showed that the *Fru v Lum's*⁵⁶⁶ case was based on this type of reasoning. The latter has generated so much tension and conflict between the two families with the result that the otherwise existing family ties which exist between them has become permanently destroyed. It has been observed that in spite of these, the courts have continued to pursue a non discriminatory jurisprudential approach to allow access to land through inheritance for the spouse in an intestate situation.

This view is true in a number of recently decided cases. In *Mary Nzube Epie nee Enombe v Ekwakome Epie Godfred*,⁵⁶⁷ the deceased's nephew opposed the application of the surviving spouse for letters of administration and claimed to be the rightful person to inherit the property of the brother. Justice Abednego of the High Court in Kumba, rejected this claim and granted the letters of administration over the property of the deceased husband to the deceased's spouse. The decision was based on Article 21 of the Non-contentious Probate rule under which the surviving spouse takes preference over the rest of the survivors in the administration of the deceased property. The case of *Catherine Makebe Joke v Chambo nee Wongibe Rosemary Banila*⁵⁶⁸ is also illustrative.

The customary notion of regarding a woman as property has hindered women from inheriting property as a right. This is confirmed by the field study carried out whereby

⁵⁶⁵ Suit No CFIB/130C/2009.

⁵⁶⁶ *Supra*. Here, the kind of actions and conflicts involved in this case was also that of tension between family members on management of family property. This tension still persists till date in that family.

⁵⁶⁷ Suit No HCK/AE/K.100/2003/48/04.

⁵⁶⁸ Suit No BCA/10/2001. Here, the property of the widow was respected since she was granted the right of preference to succeed the husband than the other relatives.

report from the respondents testified that about 85% of property in the region is inherited by the men in the region. Inheritance of property is a male's sphere especially in the rural setting and most women are conscious of and have accepted the fact. This implies that more women will remain without access to land especially in areas where customary practices on land inheritance are more rigid for women. In addition, women's economic status limits their ability to purchase land. This situation is even more complicated when one considers the fact that in most patrilineal societies in Cameroon, succession or inheritance follows the male line.⁵⁶⁹ Even when it is matrilineal succession, it is still inheritance by a man's nephew and not his niece. Very few women stand to benefit from land acquisition on intestacy.

It may be observed that amongst the Kom, Wum and Mbonge tribes in the regions, where matrilineal succession is practiced, it is the nephew of the deceased who inherits the property and not even the sister of the deceased although under these rules, property devolves through the line of the sister of the deceased. It is obvious that under this mode of matrilineal succession, women's right over property are still restricted. In the case of *Nsom Fombui Ambrose v Nkuo Kelvine*,⁵⁷⁰ the extreme effect of this discriminatory system was exhibited. Here, the widow was sent out of the matrimonial home by the deceased's relative (nephew). The nephew of the deceased was, however, held to have erred in sending the widow and children out from the compound and installing himself therein. But rather than reinstating the widow and children to their home, the succession was transferred to a different nephew, leaving the widow who had worked tirelessly with

⁵⁶⁹ Bikie and Logo, (2003) op cit p 15.

⁵⁷⁰ Suit No. BOHC/PD/LA/02/02-03 (High Court Boyo Division, North West Region).

her late husband to acquire the property a mere adjunct of the man's nephew. Also, the financial resources which the deceased was entitled to were transferred under the control of the successor to be used for the well-being of the family.

The situation of women is worse off under the patrilineal mode of succession which deals with the devolution of property through the paternal line. Women are not associated with succession of property under this pattern. Besides, it is worth remarking that whether property is acquired in the regions through matrilineal or patrilineal form of succession, they are all patriarchal in nature. N. D. Abang⁵⁷¹ has contended that the notion of inheriting property under customary settings is tilted to the advantage of men, noting that women are considered and treated as legal minors entitled only to unequal inheritance shares. Since this approach negatively impacts women's ability to acquire, enjoy, transfer and manage their inheritance rights,⁵⁷² it tends to generate conflict.

As discussed in chapter 2, recent scholars have criticized the customary position of male preference in the inheritance of land as erroneous.⁵⁷³ Yanou argues that custom in every modern society should not be static but dynamic. He cites and supports the succession case of the Supreme Court of Appeal and the Constitutional Court of South Africa in *Mthembu v Letsela*⁵⁷⁴ and *Moseneke v The Master*⁵⁷⁵ for this contention. The Constitutional Courts finds that: 'Succession as it is understood ... is the replacing of the

⁵⁷¹ N. D. Abang, *The Kom Succession Question*. (Bamenda: ANUCAM Educational Books plc, 2009) p 45.

⁵⁷² United Nations Development Fund for Women, *Women's Land and Property Rights in Situations of conflict and reconstruction: A Reader Based in the 1998 Inter-regional Consultation in Kigali, Rwanda* (Kigali: UNIFEM, 2001).

⁵⁷³ Yanou, (1999) *op cit* p 64

⁵⁷⁴ 2000 3 SA 867 (SCA).

⁵⁷⁵ 2001 2 SA 18 (CC)

old order with the new ...' is to him a solid reason why the customary law rule of primogeniture should be viewed as being in violation of the rights of equality affirmed by section 9 (1) – (3) and section 28 (2) of the South African Constitution of 1996.⁵⁷⁶ Male inheritance subject to the support of the widow and her children is no longer suitable in the present sophisticated urban age where the widow is no longer expected to live with the male heir. The heir would nowadays be an urban dweller living with his wife and children in his own apartment.⁵⁷⁷ This highlighted the fact that the old rules of customary inheritance which favour the males have undergone tremendous modifications by embracing the concept of equal right to inherit. The case of *Bhe v Magistrate; Shibi v Sithole; South African Human Rights Commission v President of the Republic of South Africa*,⁵⁷⁸ where the Constitutional Court sidelined the customary law that discriminated against the inheritance rights of black South African women, was based on this new realisation.

Previous inhibitive rules were accepted by natives because in the distant past, it was thought unwise to allow land to devolve on females since land played ritualistic roles which made it imperative for it to be controlled by men. Land has become an indispensable factor of production for all and its assumed marketability whereby he or she who has the financial means is free to access it. Hence, the ownership of land either directly or by devolution on inheritance cannot be left in the hands of men alone.⁵⁷⁹ For

⁵⁷⁶ M. Matshilane, "The Impact of the Constitution of the Republic of South Africa on Certain Selected aspects of Customary law of Succession". (2002) (1)58 *Speculum Juris*, at 72.

⁵⁷⁷ In the past, it was possible since the male heir will stay in the deceased homestead and take care of all his wives and children.

⁵⁷⁸ *Supra* (see chapter 2).

⁵⁷⁹ *Ibid*

this reason, this study is advocating that equal access to property (land) should exist in every evolutionary society such as Cameroon and the Anglophone regions in particular.

Cameroonian courts have like their South African counterparts increasingly become aware of the importance to curb discrimination against women in inheritance matters. The cases of *Nforba Aloysius and Bongnyisi Elizabeth v Nchari Mary Kinyuy*⁵⁸⁰ as well as *Mrs Halle nee Nzame Cecilia Eloé v Dr. Halle Ekane*⁵⁸¹ are excellent illustrations of this judicial attitude in Cameroon. In both cases, the widows of the deceased husbands successfully challenged the rights of the deceased's relatives for applying for letters of administration over their husbands' estate.

The court decisions in the above cases are based on sections 15 and 27 of Southern Cameroon High Court Law (SCHCL) 1955 which vest powers of jurisdiction to handle matters of inheritance or administration of estate on intestacy in the high court. Section 15 of the Southern Cameroon High Court Law is the specific provision that grants jurisdiction to the court and section 27 (1) expressly provides particularly that:

the High Court shall observe, and enforce the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience nor incompatible with any law for the time being in force in England.

⁵⁸⁰ Suit No. AE/06/96/1M/96.

⁵⁸¹ Suit No. HCK/AE/K36/08/21/08.

Based on the above provisions, customary practices and rules of access to land through inheritance is regulated not only by customary law but by rules deriving from any other law in force for the time being in England. Assuming that Cameroon's formal laws would not be repugnant, this rule denotes that any customary court decision that is contrary in a 'repugnant' way to statutory norms concerning control of property will be overruled and repudiated by the statutory courts in order to enforce equity, natural justice and good conscience in the society. This candidate interprets this provision as incorporating principles of equality of access to resources pursuant to the Preambular provisions of the Constitution. Discriminatory rules of access to land are incompatible with the express provisions of not only the Constitution but as earlier noted, the obligations assumed by the country under international laws following the ratification of the treaties as alluded to above.⁵⁸²

In *George Evay v Grace Evay*,⁵⁸³ the Buea Court of Appeal following the present contention rejected an attempt by the respondent the brother of the deceased to stop the deceased's daughter from inheriting the land and other estate of her father. The respondent argued that the daughter could not under the Bakweri customary law inherit the land and other assets of the father. Justice Bawak rejected this argument as being repugnant to natural justice as well as violating Constitutional provisions guaranteeing the principle of equality.

⁵⁸² See chapter 3 pp 130-136

⁵⁸³ Suit No CA SWP 38 (1992).

In *Noumbissie Nee Wanji Mary v Nganjui John*,⁵⁸⁴ Mr. Noumbissie Albert Fange died intestate living behind two widows and six children. The respondent who was the paternal uncle of the deceased, applied for letters of administration in his name to administer the property and family of the deceased. The Appellant first widow opposed the application at the High Court of Kumba but the Respondent succeeded in having the letters of administration. However on appeal, the Court of Appeal taking into cognizance the provision of section 21 of the Non-Contentious Probate Rules of 1976,⁵⁸⁵ reversed the decision of the High Court of Kumba in favour of the surviving wife. From the above, it is obvious that the judge in arriving at the above decision took into consideration the preambular provisions of the 1996 Constitution prohibiting discrimination against females on grounds of sex with respect to inheritance of property. In addition to the preamble of the Constitution which states that: 'all human persons without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights, it also notes that all persons shall have equal rights and obligations ...'

Furthermore, section 77(2) of the Civil Status Registration Ordinance states that;

In the event of death of the husband, his heirs shall have no right over the widow, nor over her freedom or the share of property belonging to her. She may, provided that she observes the period of widowhood of 180 days from the date of the death

⁵⁸⁴ Suit No CA SWP/2/2000.

⁵⁸⁵ By virtue of Section 21 of the Non Contentious Probate Amendment Rules of 1976 , there is no distinction between male and female for the purpose of inheritance. This Rule states that the estate of the decease on intestacy devolves on the survivors according to the following order of priority: surviving spouse of the deceased; biological children of the deceased; parents of the deceased; brothers and sisters of the whole blood; brothers and sisters of half blood; grand parents of the deceased; uncles and aunts; and finally cousins. Thus, from this line of survivors, the surviving spouse has priority over the others.

of her husband, freely remarry without anyone laying claim whatsoever to any compensation or material benefit for dowry or otherwise, received either at the time of engagement, during marriage or after marriage.

These decisions are clearly consistent with the above statutory injunctions against restricting access by widows to their husband's landed property. In-deed, in *Sarah Afumbe v Johnson Libatu Jasset*,⁵⁸⁶ the same Appellate Court in Buea reversed the decision of the Bamboko customary court which had held that the deceased's Uncle could inherit the deceased's property including the deceased's wife and children.

The *locus classicus* on this issue draws its inspiration from the equality provisions of the constitution. In the famous land mark case of *Lum v Fru*,⁵⁸⁷ Lum, a married woman applied for letters of administration for her late father's estate in the Mankon Customary Court. Her brother Fru and four others challenged the application because according to them, she is married and so belongs to a different family from the one she was born into. This view was upheld by the Mankon customary court on the basis of which it excluded her from inheriting her father's property. Although the Court of Appeal of Bamenda, affirmed the Mankon customary court decision, the Supreme Court overturned the decision limiting customary rule for women as being contrary to natural justice, equity and good conscience.⁵⁸⁸ This Court further held that the customary principle which denies a

⁵⁸⁶ Suit No CASWP/17/80

⁵⁸⁷ See chapter I p 6.

⁵⁸⁸ Section 27 of the Southern Cameroon High Court Law 1955.

female the right to either inherit her father's property or be declared next of kin was contrary to the Constitutional provisions prohibiting discrimination in all forms.⁵⁸⁹

In spite of the decision of the Supreme Court, the Anglophone Cameroonian man continue to believe in the sanctity of patriarchal rules of inheritance which prohibit women from accessing property on the death of their parents and husbands. The life of Lum is threatened on a daily basis by the brother who is interfering in her effort to function as the sole administrator of the estate. The brother who describes himself as the legitimate administrator under customary law has repeatedly threatened the legally recognized administrator for the exclusive reason that she is a female. Although in *Zamcho Florence Lum and the Administrator General, High Court of Bamenda v Chibikom Richard Fru*,⁵⁹⁰ the brother subsequently unsuccessfully prayed the High Court to revoke the right granted to Lum to administer the Estate of the deceased father, this has not deterred him.

4.3.2 Religion and Women's Inheritance Rights

Anglophone Cameroonians are deeply religious, with the bulk of them adhering to a Christian faith.⁵⁹¹ Women's land status in Christianity is determined by the foundation of Christianity upon a basic belief in the equality of individuals, no matter their gender. The equality that Christianity advocates insist that all individuals regardless of gender should have the same rights and obligations with regards to property. Christianity acknowledges

⁵⁸⁹ The Preamble of the Cameroon Constitution, Law No 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No 96/6 of 18 January 1996 as well as the Economic Convention, 1966 and Women's Convention 1981.

⁵⁹⁰ See Suit No HCB/PD/LA.112m/05-06.

⁵⁹¹ The majority of them who live in the rural areas claim adherence to Christianity while at the same time practice the traditional religion that believes in ancestral spirit with powers to control the affairs of the living. The ancestors are also regarded as co-owners of the land not the living.

the same land rights to both man and woman.⁵⁹² The latter has the right to inherit from the father, for she is first of all a daughter before being a wife.⁵⁹³

In his pastoral message to the people of the Yaounde Archdiocese, the Catholic Archbishop Jean Zoa in 1998 says,

Women and men in so far as they are descending from a divine creator must communicate everything in the same impulse, for God our father loves his children on equal footing. That's the reason why he wishes that all his children should have a considerable share of his heritage We too have to love our children on equal footing and share to them what we have without any difference.

This message may not have made direct reference to land, yet it is significant here for the stress it places on equality of sharing God's heritage which definitely includes land.

However, Christian beliefs are often superficial since they are often underpinned by deeply rooted beliefs in traditional religion. The Anglophone region, particularly the North West region, also has sizeable Islamic adherents. Both animist traditional views and Islamic religious beliefs have thus influenced rules of access to land in the region

⁵⁹² See Genesis Chapter 1:27-28. It states that God created male and female out of his image and likeness and gave them dominion over the earth. This right over the earth is not given to man alone but to both of them. Also see Romans Chapter 2:9-11.

⁵⁹³ *Ibid*

significantly.⁵⁹⁴ Muslim women have always had very specific legal rights to property. Muslim women are constrained from carrying out economic roles because of other legal, as well as cultural, components of Muslim female status.⁵⁹⁵ Limitations on Muslim women's legal access to property and their actual control over property stem from other components of their female status. In the Anglophone region, Muslim women are often times protected persons constrained from engaging in activities taking place in the public domain of society and forced to play out their economic roles largely through men who have the rights and responsibilities to protect women and their property.⁵⁹⁶ Many Muslim reformers have pleaded for the improvement of women's condition.⁵⁹⁷

Islam as earlier observed, recognizes the importance of women's right to land. It has categorically accorded them specific portions of inheritance from the estates of their deceased husbands, parents, brothers, sisters, daughters and other relations. A married woman under Islamic law can acquire property and deal with it in the way she likes without the consent of the husband. However, there is the disturbing aspect that the share of property for a female under Islamic Law is normally half of whatever the male gets as inheritance.⁵⁹⁸ One may consider this aspect as being discriminatory against the female since by virtue of Article 1 of UDHR, all human beings are equal in right and dignity. Yet it must be admitted that the position of a Muslim woman with regards to the right to inherit property is better than that of a customary law woman.

⁵⁹⁴ See M.G. Yakubu, *op cit* p 141. It is observed that the traditional custom of the Hausa did not allow women to inherit, but under Islamic law among the Hausa today, women do inherit rights in land.

⁵⁹⁵ Logo Patrice *op cit* p 33.

⁵⁹⁶ M. P. Carroll, *Women in the Muslim World*. (Cambridge: Harvard University Press 1980) pp 435-437.

⁵⁹⁷ G. Conac et A. Amor, 'Islam et Droits de l'homme. Préface de Ibrahima Fall', Paris, Economica, 1994.

⁵⁹⁸ C.G. Bowman, and A. Kuenyehia, *Women and Law in Sub-Saharan Africa*. Ghana: Sedco Publishing Ltd, 2003 p 132. Also see M. Ayua, Land and Property Rights of Women in the Northern States of Nigeria, in *Women and Law in West Africa: Situational Analysis of Some Key Issues Affecting Women* (1998).

The Qu'ran has laid down the priority order of succession which according to the Muslims is paramount. The categories of those who are entitled to inherit as heirs are under this dispensation thirteen in number. It is happily noted that there are five male and eight female categories.⁵⁹⁹ The males are sons, father, grandfather, full brothers and husband. The females are daughters, wives, son's daughters, full sisters, mother and grandmother. The heirs who shall never be excluded are sons, father, daughter, wife, husband and mother. In the case of land, no matter how small the portion, all those who cannot be excluded must have their appropriate share to inherit.⁶⁰⁰ The land is usually partitioned so that every person gets his or her share. Joint succession is generally discouraged. This is so in order to avoid confusion and ensure that justice and equity takes their course.

The inheritance rights under Islamic law as indicated above clearly guarantee women's property rights through the injunction that on no account should daughters, wives or mothers be excluded from succession.⁶⁰¹ This Islamic law provision is admirable for adhering to the fact that female Muslims should be left destitute. For instance, during inheritance, daughters are entitled to half the share of what male children have from their father's estate. Where the deceased is survived by an only daughter, she would take half the net estate.⁶⁰² The widow is allowed a quarter of her husband's estate, the mother and even grandmother have their own percentages. Islam also recognizes that men and women

⁵⁹⁹ M. Tilly-Gyado, 'Inheritance and Administration of Estates – Northern Nigeria', in *Women and Law in West Africa. Situational Analysis of Some Key Issues Affecting Women*, (1998).

⁶⁰⁰ Ibid

⁶⁰¹ See the "verse of Inheritance" in Qu'ran 4: v. 11. Also see Yahaya Muhammead, "The Legal Status of Muslim Women in the Northern States of Nigeria." (1987) *Journal of Centre of Islamic Legal Studies, ABU, Zaria* p 19.

⁶⁰² Note however that an only son takes the entire estate.

have rights to inherit what they acquire jointly with their spouses.⁶⁰³ However, in spite of all these provisions, Yahaya Muhammed⁶⁰⁴ decries the real practice on ground thus:

It has however been noted that due to ignorance and lack of education some Moslem women are, in practice, being denied their inheritance rights or given shares less than what they should take.

Although it is highly commendable that the position of a Muslim woman with regards to inheritance is better off, this candidate nevertheless condemns the discriminatory rule that limits her to half of the estate that the brother gets. It is clearly a violation of Cameroon's preambular Constitutional provision prohibiting discrimination on the grounds of sex amongst others. Besides, it runs counter to the very categorical decision of the Supreme Court in *Fru v Lum*. This discriminatory practice or exclusion of members of the family for the purpose of the devolution of property on intestacy which is an essential element of local Islamic law of succession has created two contradictory regions of rules in the same region.⁶⁰⁵ In *Qualle Saidou v Adamou Mustapha* in the North West region,⁶⁰⁶ it was held that the plaintiff (the descendant's daughter) under Islamic law was entitled to only half of what her brother could get from their deceased father's estate. It is interesting to see how

⁶⁰³T. Ige, *Women and Inheritance Law in Nigeria*. Lagos: Legal Research and Resource Development Centre, (1993) p 11.

⁶⁰⁴M. Yahaya, 'The Legal Status of Muslim Women. In the Northern States of Nigeria'. (1987) *Journal of the Centre of Islamic Legal Studies*. Ahmadu Bello University, Zaria. P 1

⁶⁰⁵ Yanou, *op cit* p 68

⁶⁰⁶CS/101/184/01.

the Supreme Court will deal with these discriminatory Muslim law rules on the devolution of property on intestacy when they eventually come before it. Although Muslims do accept these rules as binding, superior courts may be inclined to strike them down for offending against the Constitutional guarantees of non-discrimination on the basis of sex.⁶⁰⁷

Though each of the above listed family members is entitled to a share of the deceased's estate,⁶⁰⁸ the deceased family is by local customary understanding categorized not as indicated above but more broadly as including the immediate and extended family members. In *Musa Bi Adamu Sodi v Marience Bi Adamu Shefu*,⁶⁰⁹ an Alkali court⁶¹⁰ in Mbengwi in the same North West acknowledged the classification of the family into the immediate and extended family members. It held that the immediate family members take precedence over the extended family members in matters of succession of a deceased's property. That is why in the above case, the plaintiff (the daughter of the deceased), successfully sued his uncle (deceased's brother) for meddling with the deceased's estate. The Alkali court was emphatic that the plaintiff's rights were superior to those of the descendant's brother and that the reverse can never be true.

⁶⁰⁷ Preamble of the 2008 Constitution. The decision in *Fru v Lum* is illustrative.

⁶⁰⁸ T. Bankole, 'Internal Conflict in Marriage and Inheritance Laws in Sierra Leone: Some Anachronism'. (1989) Vol. 1*AJICL* p 397

⁶⁰⁹ CS/101/184/91 (unreported) Mbengwi

⁶¹⁰ Is the court that tries cases involving Muslims.

4.3.3 Property Ownership in Marriage, Equality and Conflict

Under the traditional African settings in Anglophone Cameroon, a married woman does not own property during marriage. Ngassa has rightly noted that a woman's property even that which she acquired before marriage is under the sole control of her husband.⁶¹¹ Although the wife has the right to use the property, this right is according to this view exercised based on her husband's consent. The control exercised by women during marriage over land is limited to use rather than ownership of the land. This subordination of women reduces their dignity socially and renders them economically less competitive under the current socio-economic structuring of the society.⁶¹²

The intensity and regularity of gender based land conflict in this region depends on the type and form of marriage contract chosen by the couple in the marriage certificate.⁶¹³ Conflict in polygamous marriages⁶¹⁴ over land ownership is common both between women and the man and among the women themselves. In polygamous unions, although the couple often acquires family property with the financial and moral support of the women, the property is usually controlled and owned by the man. This approach to family property is to the disadvantage of the women who are under this arrangement subjected to perpetual dependence on the man for survival.⁶¹⁵ Under polygamous regimes, women hardly have a say in property acquired in a polygamous union. As a practical matter when

⁶¹¹ Ngassa, *op cit* p 46.

⁶¹² P. Kameri-Mbote, Gender Issues in Land Tenure under Customary Law. http://www.capri.cgiar.org/wp/..%5Cpdf%5Cbrief_land-05.pdf (accessed on 17/11/09).

⁶¹³ Section 49 (g &h) of Civil Status Registration Ordinance No 81-2 of 29 June 1981. It states that the marriage certificate must specify the type of marriage (monogamy or polygamy). Also, it should specify the marriage contract (joint or separation of property) opted for by the parties.

⁶¹⁴ According to Justice Nganjie in *Motanga v Motanga*, Suit No. HCB/2/76 (unreported), a polygamous marriage is a union between a man and one or more women to the exclusion of other men.

⁶¹⁵ A. Evans, 'Gender Issues in Household Rural Economics', (1991) 22(1) *IDS Bulletin*, pp 51-59.

the husband dies, and as the women contest amongst themselves over who is the rightful controller of the property, the deceased husband's relatives take advantage of the dispute to control their deceased brother's property.⁶¹⁶ In *Noumbissie Nee Wanji Mary v Nganjui John*⁶¹⁷ it was while the deceased's wives were quarreling that the respondent who was the paternal uncle of the deceased, applied for letters of administration in his name to administer the property and family of the deceased.

Although in most polygamous marriages, a woman can claim real ownership of a property only if he or she buys or registers a property in his or her name, exceptionally under the Nso culture the senior wife in certain lineages has the right to allocate land to the other wives. On a careful review this candidate discovered that even so, the senior wife acts apparently as an agent of the male head of the lineage.⁶¹⁸ The practice remains discriminatory since the senior wife cannot act or manage land on her own.

On the other hand, the situation of land ownership is different in a monogamous marriage. Under this marriage regime, where there is community of property, there is observable less gender-based conflict over property ownership.⁶¹⁹ This is so here since any piece of land bought by either the husband or the wife belongs to both of them and devolves on the death of the other to the surviving spouse. This is so only if the parties opted for joint

⁶¹⁶ V. Ngassa, *Gender Approach to Court Actions*. Cameroon: Friedrich –Ebert- Stiftung Foundation, (1999).

⁶¹⁷ Suit No CA SWP/2/2000.

⁶¹⁸ C. K. Meek, *Land Tenure and Land Administration in Nigeria and the Cameroons*. London: Her Majesty's Stationery Office, (1957) p 39.

⁶¹⁹ Ngassa, *op cit* p 73.

property.⁶²⁰ Both parties are entitled to equal share of the property in the event of divorce.⁶²¹ Where one of the spouses claims to have spent more than the other in the acquisition of the property, the court insists on not allowing the other party to go without getting something. Ngassa⁶²² a female Judge, notes that in such situations the wife or husband is entitled to a value proportionate to the direct or indirect contribution made with regards to the acquisition of the property in dispute.⁶²³ It is often assumed that even if she was not working outside the home, the wife's domestic functions at home are service that is convertible as family income. This was illustrated in the case of *Kang Nsume David v Aboh Lucy Kang Nsume*.⁶²⁴ Here, her Lordship Justice Njie reversed the decisions of the lower courts which failed to recognize the woman's right to property. Here, the wife's domestic duty was considered as a major contribution to the acquisition of the family properties. The Judge ordered the lone house to be sold and a 2/5 share of the sale given to the wife while the husband kept 3/5 of the rest of the value of the sale. This case is significant for consolidating the principle of equality over the ownership of matrimonial property.

English Speaking Cameroonians sometimes ignored property regimes in their marriage certificates. Where this is the case, the courts tend to import section 17 of the Married Women's Property Act 1882 to determine the rights over matrimonial property. The provision states that:

⁶²⁰ The English case of *Jones v Maynard* (1951) 1 ALL E.R. 802 as well as *Re Bishop* (1965) 1 ALL E.R. 249 are illustrative.

⁶²¹ *Body Lawson v Body Lawson*, HCE/128MC/86. The High Court in Buea held that each spouse should have ownership of property purchased in their names. Where the names of the two spouses appear on the title deed, effect will normally be given to their joint interest.

⁶²² Ngassa, (1999). *Op cit* p 76

⁶²³ *Ibid*

⁶²⁴ Suit No CASWP/1/2003.

In any question between husband and wife as to the title to or possession of property, either of them may apply for an order to the high court or to a County court and the judge may make such order with respect to the property in dispute ... as he thinks fit.

This gender neutral provision does not admit any interpretation that will restrict the property rights of women. Indeed, the courts have held while interpreting this provision that it does not give the courts the liberty to vary existing titles to property.⁶²⁵

Where community of property is the chosen property regime in the marriage certificate, the courts respect the rule governing community of property. In such cases conflicts between the spouses over ownership of the property are resolved by equally distributing the property between the spouses. As a general practice the courts shall where no property regime has been chosen the court shall resort to its discretion guided by principles of equity and fairness. An illustrative example is presented in *Njim v Njim née Saningong*.⁶²⁶ Here, there was no marriage contract between the parties but the Bamenda High Court relied on its discretion to presume community of property between the couples. It seems obvious that when a spouse buys property with money provided from his personal savings, such property belongs to him exclusively. So where a husband saves money in a bank

⁶²⁵ *Gissing v Gissing* (1971) A.C. 886 H.C.

⁶²⁶ BCA/22/96.

from which he later on buys the matrimonial home, the whole beneficial interest will be vested in him.⁶²⁷

Under the regime of separation of property, a piece of land bought or acquired by either spouse belongs to him or her. This principle was graphically illustrated in *Enie v Enie*⁶²⁸ where the Buea High Courts held that on divorce, all the property acquired by a wife from her separate funds who was married pursuant to the separation of property regime belongs to her exclusively. The court actually gives to each party (husband or wife) what he or she owns.⁶²⁹ The common law courts guarantee of the equal right to own property by a woman is a direct function of the provision of the Married Women's property Act 1882 by stating that:

a married woman shall ... be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *femme sole*, without the intervention of any trustee.⁶³⁰

It is worth noting that in spite of the above statutory provision, customary rule on property ownership still disrupts property rights of married women regardless of the form of marital property regime they are involved in. In an interview conducted with one of the female respondents in Kumba, she revealed that women face a lot of marital conflict

⁶²⁷ *Re Sims Question* (1946) 2 All E. R. 138.

⁶²⁸ HCSW/65MC/83 (unreported). Also see *Moussi v Moussi*, HCF/115MC/87 (unreported).

⁶²⁹ Ngassa, *op cit* pg 77

⁶³⁰ See section 1(1) of the Married Women's Property Act 1882.

inspired by their attempt to control property independently which tends to inhibit their quest and right to acquire land outside their marital union.

She explained that as a civil servant, married under community of property with the husband, she bought and registered land in her maiden name in a bid to safeguard property for her family without the husband's consent. However, she lamented that when the husband discovered her actions, he felt deeply betrayed by his wife who could do such things without his consent. Arguing that it is impossible to live with a woman who is trying to compete with him, the man initiated divorce proceedings citing her actions as amounting to grave and weighty misconduct resulting in the breakdown of the marriage. This candidate interprets the action of the husband in seeking a divorce as a demonstration of how entrenched in the region is the idea of inequality between couples. Most men in fact consider it reckless to marry a woman who has material welfare and economic muscle for fear that she is free to opt out of the union without undue hardship. This case also indicates that although women may desire to own land independently while in marriage, the fear of violence or threat of divorce from husbands are major contributors to the inequality in land holding in the region.

Additionally, though statutory laws do not bar women from owning property, the reality within which they live effectively denies them this right.⁶³¹ There are many socio-cultural practices that encourage enforcement of discriminatory statutory land laws and that discourage women from owning land or sanctions them for it. Foremost, among these is

⁶³¹ G. Gopal, 'Gender-Related Legal Reform and Access to Economic Resources in Eastern Africa', 10 (World Bank Discussion Paper No. 405, 1999).

the high value placed on marriage. Cameroonian women are socialized to perceive marriage as a principal life goal and their ownership of land as incompatible with a happy marriage.⁶³² Owning land brings power, and the fact of women having power according to the customary notion, disturbs social order, stability and tranquility. Cameroonians, mostly men, have argued that women who own land are 'big headed' and that the only way to restore them to their proper size is to take away their land.⁶³³ This customary notion of restricting women from owning land greatly challenges the African ethical system of resource management on the basis of individual needs. God gave man land to be freely used but the restriction placed on the majority of the population (women) from enjoying their land rights based on their needs for the land, has to be addressed in order to enhance justice, cordiality and good conscience in the society.

The French Civil Code⁶³⁴ which is a major legislation in French Speaking regions of Cameroon governing matrimonial matters also accords more property rights to the husband than the women. The Code which enforces prenuptial agreements invariably accords more powers to the husband over the management of any property held in the common interest of both spouses.⁶³⁵ Under the Civil Code, the husband has the power to sell or mortgage property that is held in common ownership by both spouses without the

⁶³² R. Giovarelli, 'Women and Land, in Legal Impediments to Effective Rural Land relations in Eastern Europe and Central Asia, 252, 259, World Bank Technical Paper No. 436, Roy Prosterman & Tim Hanstad (eds.), 1999.

⁶³³ See http://www.napoleon-series.org/research/government/code/e_code2.html (Accessed on 13/05/2010).

⁶³⁴ This is the received law from the French Colonial Rule that is applicable in the French Speaking Regions of Cameroon since independence in addition to the uniform national laws.

⁶³⁵ Article 1395 of the French Civil Code 1938, deals with the non transferability of rights created by matrimonial agreement. The husband by this law, acquire wide powers to manage real property held in the common ownership of both spouses. This covers prenuptial agreements.

prior opinion or consent of the wife.⁶³⁶ Similarly, the husband alone manages all that has to do with the wife's interests in real property such as land. The Code further prevents the wife from using land as collateral security for a bank loan, thus negatively affecting her economic activities in the society.⁶³⁷

The French Code must be criticized for being predominantly discriminatory with particular reference to a wife's capacity to access land. Although the Code admittedly has no application to the English speaking regions it does contribute to the uneven access to land between men and women in the Anglophone regions. Final appeals in cases involving property disputes go to the Supreme Court. This court sits in Yaounde and has a predominance of French judges which carry their discriminatory Civil Code mindset which do not favour women's property rights in cases they do.⁶³⁸ The application of discriminatory laws (both customary and statutory) over women on property ownership in the Anglophone regions as well as in the Francophone regions of Cameroon helps to reveal the absurd and unequal status of women in Cameroon. Hence, these statutory provisions in the Francophone region act as an impetus on the researcher to advocate for a unified land reform that will specifically address the discriminatory practices on property ownership that women have been subjected to for past generations in Cameroon.

The marital turbulence that women often face with regards to access to land, caused CEDAW's monitoring body on women's rights to conclude contracts to observe that:

⁶³⁶ See Article 1421 of the French Civil Code.

⁶³⁷ In spite of the existing French law of 1938 that permits a wife to exercise commercial activity.

⁶³⁸ The Supreme Court is classified into common law and civil, matters relating to common law are directed to common law judges and vice versa. In cases where civil law judges take part in common law cases, their civil law ideas influences their decision.

When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner ... such restriction seriously limits the woman's ability to provide for herself and her dependents.⁶³⁹

The Committee also confirms that the right to own, manage, enjoy and dispose of property is essential to women's right to enjoy financial independence. Although the above recommendations were not done with Cameroon in mind, they perfectly capture the situation in the Anglophone regions. The CEDAW's declaration with regards to the distribution of property upon the dissolution of a marriage or the death of a family relative further reinforces the importance of equality by stating that:

Any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.⁶⁴⁰

⁶³⁹ The Committee on the Elimination of Discrimination Against Women, issued General Recommendation No. 21 (para. 7) on Equality in Marriage and Family Relations in 1994

⁶⁴⁰ General Recommendation No 21, para 27

This summary perfectly captures the situation in the regions under reference and is an additional impetus for a serious review of the rules of access to land from the perspective of equality.

4.3.4 Customary Guardians of Land, Indigenous Women and Equality of Access

Land is under customary law basically a collective resource held by the elders considered here as customary guardians. The elders hold the land under customary in trust for the entire community including women such that any indiscriminate alienation of the resource with reference to a particular segment of the community is certain to lead to tension and conflict.⁶⁴¹ This concept of inalienability of land received judicial approval in The Privy Council decision of *Amodu Tijani v Secretary of Southern Nigeria*.⁶⁴² In this case, Lord Haldane stated that:

The next fact which is important to bear in mind in order to understand the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to a community, the village or the family, never to the individual. All members of the community, village or family have an equal right to land, but in every case, the chief or headman of the community or village, or head of the family, has charge of the land and in a loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee and as such holds the land for the use of the

⁶⁴¹ Meek, *op cit* p 243. Also see P.M. Kaberry, 'Some Problems of Land Tenure in Nsaw', (1960) Vol. 21, No. 1 *Journal of African Administration*, pp 21-28.

⁶⁴² (1921) 2AC 339 Privy Council.

community or the family. He has control of it, and any member who wants a piece of it to cultivate or build upon goes to him for it. He cannot make any important disposition of the land without consulting the elders of the community or the family and their consent must in all be given before grant can be made to a stranger.⁶⁴³

Lord Haldane's Western mind which made the above conceptualization of land from an entirely non-discriminatory dimension possible is in fact a good starting point and is appropriate for a community entirely dependent on agriculture for subsistence. However, as society evolved and land became commodified, the situation changed. Men elders abused their roles and used land as a means of raising income and of grabbing social prestige and political influence. The 1974 Land Ordinance was manipulated by males to guarantee alienation for those who own landed property and not those who merely have right to use land.⁶⁴⁴ The above 1974 provision coupled with the new socio-economic and cultural factors such as the introduction of a market economy operating on the basis of monetary exchange, cash crop cultivation, and the growing local interest in exotic products have changed the lifestyle of the natives. These factors have led to the growing temptation to alienate land for money since money has now become the new measure of social differentiation. Hence, most customary guardians or the local communities now alienate land through sale and also through inheritance, mortgage, pledge, or gift.

⁶⁴³ Cited from Rayner C.J.'s Report on Land Tenure in West Africa (1898). Also see Elias, T.O. Nigerian Land Law. (London: Sweet & Maxwell 1971) p 72.

⁶⁴⁴ Section 1 of Ordinance No 74-01 of 5 August 1974.

In any event, this right of alienation often stir up conflicts among the indigenes because the customary guardian tend to monopolise the family land, or sell it for his personal interest void of the consent of the other family members. The influence of economic power deprives the indigenous women from having access to land to use for farming. Since they lack money to purchase land in a monetarized economic system like this, women resort to violent struggle over land with family and community heads. The land conflict in Big Babanki village in the North West Region where the natives mounted pressure on the Fon (chief) because of the latter's selfish and unscrupulous attitude of systematically selling community land to the rich Fulani graziers is illustrative. This struggle against the Fon took on strong gender coloration because of the fact that rural women traditionally dominate farming⁶⁴⁵ with the result that any measure that touches on land automatically affects their interest the most.⁶⁴⁶

The village had a perennial complaint about the Fulani graziers trespassing and destroying the food crops of the women but this aspect typically was amicably resolved by the Fon, indigenes and the graziers. However, when the commodification of land became significant in the region, the Fon indulged in dispossessing villagers and selling the farm lands of villagers to the rich Fulani businessmen for his personal benefit. This act provoked the villagers and the Fumbuen women in particular who with the support of their sons staged a rebellion against the Fon in 2004 since they could not access their sold land for family sustenance. The nature of the conflict makes it clear that within the village arena, the women in practice had a lot of power to deploy in order to protect their rights.

⁶⁴⁵ According to Rhoda (1991), women constitute about 80% of the total population in the Agricultural sector in Cameroon.

⁶⁴⁶ *Ibid.*

The conflict mounted on the Fon of Kedjom Keku (Big Bibanki village) is striking for illustrating the inequality on access to land in the community.⁶⁴⁷ The attitude of the Fumbuen women was to right the wrong belief and practice of the Fon and male elites that land management was the exclusive sphere of men. The violent killing of the chief should in the opinion of this candidate be interpreted as a clarion call for the need to revisit the rules of accessing land from a perspective of equality.

4.3.5 Indigenous Male, Women and Equality of Access to Land

Conflict over land ownership usually occurs when there is unequal land holding based on socially differentiated classes. This is so in our context where the indigenous male elites win relatively large pieces of land as compared to the vulnerable women who lack land.⁶⁴⁸ The struggle over land acquisition is often between the ‘elites son of the soil’ or bureaucrats⁶⁴⁹ and the peasant women.⁶⁵⁰ In most parts of the Anglophone regions including the Buea environs, Meme, Mezam Divisions etc, indigenous elites who occupy senior positions in government and the rich in society use their influence and wealth to amass large portions of indigenous land which they use to build estates and plantations.⁶⁵¹ These unscrupulous acts of state officials usually exacerbate tension over land and increase land crises in the society.⁶⁵² They also inhibit the productive potential of women

⁶⁴⁷ Awasom, *op cit*, (2006) p 41.

⁶⁴⁸ *Ibid*, p 29

⁶⁴⁹ Bureaucrats are responsible for the implementation of government policies at the divisional level.

⁶⁵⁰ One of the basic goals of the 1974 land ordinances was to allow Cameroonians of any origin, creed, or colour to settle in any part of the country they chose. Access to land was to be facilitated by removing all cultural barriers to land ownership. Consequently, Cameroonians were to consider themselves as being Cameroonians first, before identifying themselves with given language or ethnic groups.

⁶⁵¹ *Divisional Officer of Ndop v Yenkong*, (1994) CAJ-CLC 56; *C. Chekeba v Divisional Officer of Mezam*, (1994) CAJ-CLC 18. (1994) CAJ-CLC 18. Also see *Martin Fobuzie v SDO Mezam* BCA/2/78 Unreported decision of the Bamenda Court of Appeal.

⁶⁵² See The Post Newspaper, March 26, 2007.

who are involved in subsistence farming with adverse consequences for the whole economy.

Depriving the vulnerable of access to land takes place in spite of the fact that women account for 80% of the total population in the agricultural sector in these regions.⁶⁵³ Given the fact that the bulk of rural women's life hinges on farming, this deprivation invariably creates tension and conflict since it renders her incapable of sustaining her family.⁶⁵⁴ This attitude of the male elites is an additional factor responsible for the massive inequality access to land because it prevents women from living a dignified life. It deprives women of the right to participate in the development of the community in terms of decision-making.

The government is currently involved in privatizing plantations to private individuals. The Tole and Ndu Tea Estates and the community lands have been privatised to male elites. This privatization of communal and government lands are often disadvantageous to women who are the primary producers of food crops and are in constant need of more land to increase food production.⁶⁵⁵ This privatization has deprived them from having access to the government and communal lands which they were using for food crop production.

The limited restitution of dispossessed land in Fako Division by the Cameroon Development Corporation and the government has been effected in an unambiguously

⁶⁵³Rhoda, 1991, *op cit*; Also see Van Den Berg, A., *Women in Bamenda: Survival Strategies and Access to Land*. Leiden: African Studies Centre. Research Report No 50, (1993) pp 50-55.

⁶⁵⁴ *Ibid.*

⁶⁵⁵S. Lastarria-Cornhiel, "Impact of Privatisation on Gender and Property Rights in Africa." (1997) 25(8)*World Development* pp 1317-1333.

discriminatory manner.⁶⁵⁶ Most often, the village heads and the male elders have taken advantage of their position to distribute and sell off restituted lands to the highest bidders. This practice has prevented women from having access to land to even carry out farming activities.⁶⁵⁷ Women's hardship with regards to accessing land is further deepened because access to private land titles depends on the availability of money, on understanding the bureaucratic system and on interpersonal connections with the people responsible for the issuance of private land titles.⁶⁵⁸ The above context makes it impossible for a rural woman to benefit from the process. These difficulties often stir up squabbles in the community between the women who need land and the key players of privatization; these women violently challenged the privatization of Tole Tea Estate to prominent wealthy male elites.

4.3.6 Women and Cattle Graziers Land Conflicts

When Fulani cattle rearing was introduced in the Anglophone region in 1919,⁶⁵⁹ the local chiefs immediately welcomed the Fulani nomadic graziers. They saw them as useful clients who were very willing to pay taxes in cows and cash which benefited the local economy. However, some anthropologists⁶⁶⁰ who studied this phenomenon in the North West Region discovered that those who bore the cost of this Fulani cattle grazing were the

⁶⁵⁶ Section 14(3) of 1974 Ordinance. It states that all unoccupied or occupied lands that are not registered shall be incorporated into a collective pool of "National Lands". Also see Fisiy *op cit* p 41.

⁶⁵⁷ See <http://www.everyculture.com/Bo-Co/Cameroon.html> (accessed on 14/12/2009).

⁶⁵⁸ Ibid.

⁶⁵⁹ M. Njeuma, & N. Awasom, 'The Fulani and the Political Economy of the Bamenda Grasslands: Opportunity and Conflict, 1940-1960', (1989) *Paideuma*. p 459

⁶⁶⁰ Kaberry, P.M. "Report on Farmer-Grazier Relations and the Changing Pattern of Agriculture in Nsaw", Report of 17 April 1959 in Buea Archives File No. Ab 17(10). Here, Kaberry reported that when she visited the North West province between the periods 1945-1948 and 1958-59, she actually saw, felt and understood the plight that women were experiencing with the cattle graziers in the region.

women cultivators. The women had to compete with graziers for the same fertile lands that had abundant pastures for the feeding of cattle.⁶⁶¹ This situation placed women in a difficult situation because as they were tilling the soil and planting crops for family sustenance, the cattle were pasturing in the same fields and feeding on their crops without compensation.

The potential of this situation to create conflict was significant. Women could not rely neither on their husbands and local chiefs who had in the first place offered the land to the graziers nor on the male-dominated institutional mechanisms for settling land disputes. Hence, they were compelled to adopt confrontational tactics against graziers. Often supported by their adolescent children, the women resorted to violence whenever cattle destroyed their crops. In 1951, inhabitants of Mezam Division who experienced serious farmer-grazier disputes⁶⁶² had to rely on the cattle control officer in Bamenda to pacify a crowd of angry women.⁶⁶³ The cattle control clerk who had been dispatched by the administration to assess the damage of the cattle, caused outrage when he assessed the damage by cattle and loss of two children at twenty-five pounds. The attitude of this officer should be situated within a context of a civil service dominated by male elites who were committed to the idea that woman should not access land on equal terms with men.⁶⁶⁴ It was no surprise that women felt that the administration was colluding with the Fulani-Graziers to chase them (the women cultivators) away from their fertile lands.

⁶⁶¹ Ibid. Kaberry was not a scaremonger, she identified a genuine problem suffered by women in the area such as the financial (taxes) and economic considerations militated against the women.

⁶⁶² See Buea Archives File No. Qg 1951/2. Stating the report on the Bambuluwe farmer-grazier dispute and settlement thereof, June 1951.

⁶⁶³ The women were about 200 in number ready to confront the cattle graziers.

⁶⁶⁴ Fisiy, *op cit* p 249

With such a negative assessment of the situation, women had to devise alternative strategies to maintain control over their usufructs. Since they could not find speedy justice within State institutions, they took matters into their hands and resorted to further their land. Furthermore, to channel their energies into more purposeful action, they employed the Anlu,⁶⁶⁵ a powerful female association in the North West region to specifically protect their interest in Kom. Also in 1981, women from Wum organized themselves and attacked the Fulani graziers. The Fulanis were accused of conniving with the administration to use their wealth to amass large portions of fertile indigenous land thereby depriving indigenous women of the right to access land for farm use. The women who did not want the graziers any where near the land they were using for farming which resulted in serious violence involving the burning down of Fulani huts. In response to this act, the administration sent police and gendarmes to the area who opened fire and killed a number of women.⁶⁶⁶ In a study carried out in the Kom area, a female party leader in the area bitterly denounced the handling of farmer-grazier disputes by the administration.⁶⁶⁷ The administrators were accused of discrimination by favouring the cattle graziers because the latter was male and wealthy.⁶⁶⁸

⁶⁶⁵ Anlu was a women's uprising in Kom formed in 1958 to forestall new farming techniques imposed by agricultural officers. Later, it championed all women's collective grievances, including farmer/grazer problems. This group remained as an appropriate female unifying factor for handling collective social issues in the North West Region. For a more detailed analysis of the Anlu group, see Nkwain, F., 'Some Reflections on the Anlu organized by the Kom Women in 1958', Buea Discussion Group Papers, 1963.

⁶⁶⁶ See P. N.Nkwi, 'Traditional Female Militancy in a Modern Context' in J.C. Barbier (ed.) *Femmes du Cameroun: Meres Pacifiques Femme Rebelles*, Paris: ORSTOM/KARTHALA, 1985; Also see Chilver, 1989, p 402.

⁶⁶⁷ Ngam-Chia, E. 1988 p 474.

⁶⁶⁸ The cattle graziers used their wealth to buy and register land in the area at the expense of the indigenous women who merely had usufructs right over the land as indigenes. This incident brings into play land conflict between the poor and the rich on land ownership.

Additionally, these land use conflicts between farmers and the cattle graziers are further complicated by the fact that a class of local cattle breeders have emerged. These are indigenous sons of the land who use their wealth and political positions to amass land to breed cattle and are adopting Fulani grazing practices. But unlike the Fulanis, who buy land, these indigenous sons tend to seize the best land tracts from the women by asserting their family claims on the lands. They push them to the outskirts to look for farmland thereby, marginalizing the women who are also family members. Most often, women are left with only arid land which hinders their food productivity and livelihood.

As always, these groups claim the land as predicated on the belief that they are male family members having the priority to access family land. They are confident in making these claims because of a deep rooted conviction that their elite male colleagues who sit in the farmer grazier commission will support them. Indeed, as earlier noted, the commissions always rely on 'customary law' with its predominantly patriarchal rules for the resolution of these disputes. Inequality which is by all intent and purposes strongly entrenched in the land rights model in the country is expressed in different ways. It is for this reason that this candidate argues for a revision of the 1974 Land Ordinance to introduce a specific provision allowing women to register in their names the farmland on which they have enjoyed usufruct rights before and after 1974. The 1974 Ordinance's silence on the cultural aspect in a region that grants women only land-use rights is condemned by this candidate for offering clear support to discrimination on the basis of sex.

The foregoing analysis indicates that women have been caught between cultural restrictions that do not allow them to own or have access to land and the inability to have access to land under the procedure stated by the 1974 Land Ordinance. This gap helps to emphasize the problems that exist under the customary and statutory laws and their application. It is, in the opinion of this candidate, clear that this gap encourages land conflicts in the regions.

4.4 Conflict of Laws on Equal Access to Land

The contemporary land tenure regimes generally include a mix of customary, statutory and religious legal arrangements. They have their origins in the pre or early colonial periods during which the colonialists left family and community concerns such as access to land under the jurisdiction of customary law and customary courts.⁶⁶⁹ While under customary laws land matters are dealt with as custom dictates but with the institution of statutory laws there is often a clash resulting from the mix between these two sets of laws.

Access to land in many African countries including Cameroon is thus in essence governed by a dual system of laws since customary and statutory laws apply alongside each other. This mix often creates difficulties in the understanding of the relevant land laws to be applied as well as general confusion in the implementation of the laws.⁶⁷⁰ Fisiy⁶⁷¹ stated that under customary law, women are not supposed to acquire rights in land even by

⁶⁶⁹ A.M. Tripp, 'Women's Movements, Customary Law and Land Rights in Africa: The Case of Uganda'. (2004) 7, 4 *African Studies Quarterly*, pp 1-29.

⁶⁷⁰ Bowman, C.G. & Kuenyehia, A. *Women and Law in Sub Saharan Africa*. Ghana: Sedco publishing limited (2003), p129.

⁶⁷¹ Supra

inheritance. Justice Inglis' judgments in *Achu v Achu*⁶⁷² pushed this view to extreme dimensions. His Lordship stated in plain language that a woman is property and inheritable and hence, cannot own property either upon divorce or death of the father. E.N. Ngwafor,⁶⁷³ a strong proponent of this view positively agreed with Justice Inglis by stating that, if there is any uniform customary law that runs through in the region, it is that women cannot own property.⁶⁷⁴ This conceptualization is based on inequality and has been heavily criticized by this candidate. It is a source of tension giving rise to violence. The old rules of customary inheritance have undergone significant modification through legal evolution. Statutory rules have set in with principles of promoting equal rights to property among citizens regardless of sex or status. The juxtaposition of both the customary law based on discrimination and statutory laws inspired by equality ethos has inevitably led to confusion, tension and violence.⁶⁷⁵ The inheritance of property as illustrated in the above two cases stirred up a lot of conflict in the application of the laws by the judges.

Further, there are conflicts between different customary laws within the Anglophone regions. It is worth noting that Cameroon has about 250 ethnic groups with different

⁶⁷² *Supra*

⁶⁷³ Ngwafor *op cit* p 205

⁶⁷⁴ *Ibid*

⁶⁷⁵ Conflict of laws on matters of access to land is not only limited to the application of customary and statutory laws. For example, the Civil Law which applies in French Speaking Cameroon on matrimonial matters bestows more property rights on the man than the woman unlike the English common law that upholds equality in property ownership between spouses. Section 17 of the Married Women Property Act 1882; section 77 (2) of the Civil Status Registration Ordinance 1981 etc. On the other hand by virtue of Article 1395 of the Civil Law, the husband enjoys wider powers to manage real property held in the common ownership of both spouses. These powers to manage then become non-transferable rights arising from matrimonial agreement. The French Civil Code places severe limitations on the powers of the wife. The discrepancy that exist in the provisions of both laws on the basis of equal access to land in the country raises alot of conflict especially to Judges when caught in the application of laws of equal access to land in Cameroon.

norms and customs and all the tribes hold firm in restricting women's rights to own property independently. This is very common in tribes that practice the patrilineal system of succession of property including land.⁶⁷⁶ There are some tribes in the region that practice matrilineal system of succession whereby property devolves on death through the deceased's mother's line.⁶⁷⁷ Although these customary practices of patrilineal and matrilineal systems exist, John Anthony Howard prefers to call the matrilineal system 'a patrilineal system of succession with a matrilineal emphasis'.⁶⁷⁸ This is because though the successor usually comes from the mother's pedigree, it is typically a male who is chosen to inherit the property, thereby circumvent the property rights of women in both systems.

The rules for resolving internal conflicts differ from the rules of private international law which since the decision in *Ghamson v Wobill*,⁶⁷⁹ has held that rules of private international law are not applicable in the resolution of internal conflicts. Rules of private international law are evolved to resolve conflicts between different legal systems operating in different territories and are therefore unsuited to the problems of internal conflicts. This statement would need qualification in the case of Cameroon where no local rules exist to govern conflict between the common and civil law or customary and statutory laws.⁶⁸⁰ The variegated nature of conflict of laws therefore makes impossible the

⁶⁷⁶ Tribes such as Bakossi, Bakweri, Bayangi, Bangwa etc in the South West Region and Bali, Bansa, Bafut, Mankon, Nkambe, Metta etc in the North West Region practice patrilineal succession.

⁶⁷⁷ Tribes such as Mbonge, Bakundu, Balue in the South West Region and Kom, Aghem, Bafmen and Buh in the North West Region practice matrilineal succession.

⁶⁷⁸ J. A. Howard, 'Customary Law of Marriage and Succession among the Kom of Cameroon'. Ph.D Thesis, University of London, 1972 (Unpublished)

⁶⁷⁹ (1947) 12 WACA 181.

⁶⁸⁰ Nzalie, J. E. 'The Structure of Succession Law in Cameroon: Finding a Balance Between the Needs and Interests of Different Family Members'. Ph.D Thesis in the University of Birmingham October 2008 p 233.

uniform application of a single set of laws. Thus, to better understand the various laws, it is proper to examine what personal law of succession entails and how it is applicable in the different courts in the regions.

4.4.1 Personal Law of Succession

As earlier mentioned in the previous chapters, Anglophone Cameroon has diverse customary laws on succession but it has adopted a uniform statutory law of succession. Also, the questions relating to intestacy and Wills are governed by one single law – the personal law of the deceased irrespective of the subject matter while immovable properties are governed by the *lex situs*.⁶⁸¹ The personal law is acquired by birth or descent. This is also considered as the law of the person's domicile.⁶⁸² In other words, personal law is the customary law of a person. It is based on the conception of a man as a social being, so that those transactions of his daily life which affect him personally such as marriage, divorce, legitimacy, succession of property may be governed by the law deemed to be most suitable and adequate for the purpose.⁶⁸³

Personal law could be replaced by statute if the statute supplants other laws. Since Cameroon is relying on received laws of succession,⁶⁸⁴ what constitutes personal law will certainly vary depending on whether the deceased from an Anglophone region was subject to customary law or common law. The variation of personal law as such raises questions

⁶⁸¹ C. A. Nsalar, 'Conflict of Laws in the Law of Succession, the Case of Cameroon'. LLB Long Essay, Department of law, University of Buea (2010), p 18

⁶⁸² J.G. Collier, *Conflict of Laws*. (Cambridge: University of Cambridge Press, 2001).

⁶⁸³ R.H. Graveson. *Conflict of Laws*. (London: Sweet and Maxwell, 1974) p 188.

⁶⁸⁴ For example, the Wills Act 1837, the Non Contentious Probate Rule 1954 etc.

of conflict of laws on succession for property in Cameroon.⁶⁸⁵ The question of conflict does not arise if a person lived, married and died in his or her place of origin. Conflicts are however made possible because of the disappearance of rigid geographical divisions between tribes, because of inter-marriages, and because of generally the increased mobility of the population, for various economic and social reasons. When a settler dies in a tribe where he resides, and neither the received nor local statutory law is applicable, the local customary court has jurisdiction and has to decide based on the applicable customary law of the deceased.⁶⁸⁶

However, the personal law of the deceased is presumed to have changed if he leaves a Will in the modern form or contracts a monogamous marriage or renounces the jurisdiction of the customary courts. This is because customary courts know nothing about written will and monogamous marriages. Therefore, by the deceased's actions, his personal law presumably changes from customary law to modern law since the act does not fall within the jurisdiction of the customary courts. It is worth remarking here that the High Courts have jurisdiction to apply customary as well as statutory laws. They are empowered to observe and enforce the observation of customary law which are not repugnant to natural justice, equity and good conscience⁶⁸⁷ In *Abi Zacharia v Nji Michael Ojong*,⁶⁸⁸ the court held that generally speaking, matters of succession fall within the jurisdiction of the High Court. This does not however mean that the jurisdiction of the customary court is ousted. The wide jurisdiction given to the high court to apply both

⁶⁸⁵ Nsalar, *op cit* p 19.

⁶⁸⁶ Nzalie *op cit* p 225.

⁶⁸⁷ See Section 27, Southern Cameroon High Court Law 1955.

⁶⁸⁸ BCA/4cc/2000

modern and customary laws inevitably puts the courts at times in a predicament of choosing the law suitable for a case at hand.

Although there is a presumption in favour of the modern law as the applicable law in cases where the deceased made a will or contracted a monogamous marriage, the modern law does not automatically come into force. Those who stand to benefit from the estate of the deceased if the customary law is applied will always contest the application of the modern law. This is already a conflict of law situation as the court will have to choose between the customary law of the deceased and the modern law that is applicable.

Another problem likely to raise choice of law questions concerns customary marriages purportedly converted into monogamous marriage. Section 48 of the Civil Status Registration Ordinance of 1981 provides that 'marriages shall be celebrated in the civil status registers of the place of birth or residence of one of the spouses'. It seems doubtful that this is sufficient to be a conversion, giving the marriage validity independent of the previous customary marriage. The better legal analysis is that the process serves only to provide evidence of an existing customary marriage.⁶⁸⁹

However, nothing in the law prevents the spouses of a potentially polygamous marriage from going through a fresh marriage ceremony which would effect changes to their personal law if they choose monogamy and the appropriate system of property rights. The case of *Kumbongsi v Kumbongsi*⁶⁹⁰ appears to have excluded the possibility for such

⁶⁸⁹ E. N. Ngwafor, Family law in Anglophone Cameroon, supra, p 37.

⁶⁹⁰ Suit No. CASWP/4/84 (unreported).

conversion. In that case, the plaintiff was already married with three wives under customary law. For the purpose of obtaining family allowance, he decided with the respondent, the first wife to have their marriage registered and as it was before the 1981 Ordinance, which could be effected only through a court judgment. The court declaration resulted in a marriage certificate containing the phrase 'monogamy with common property'. This was subsequently disclaimed by the plaintiff and led to a decision of the Court of Appeal ordering the rectification of the marriage certificate. This was only normal, given that the plaintiff, already polygamously married could no longer change his personal law. The decision would certainly not have been the same if he had been only potentially polygamously married.

The 'inherent incident' theory has been adopted in Cameroon in the often quoted dictum of Epuli, J. in *Nforba v Nchari*.⁶⁹¹ It was held here that where a married Cameroon man or woman domiciled in Anglophone Cameroon dies intestate, the rule of succession applicable to his estate will depend on whether the marriage was monogamous or polygamous. In the light of section 15 as with section 9(b) and section 27 of the Southern Cameroon High court Law 1955, as well as section 3, 16 and 34 of Ordinance No. 72/4 of 26 August 1972, as amended, on Judicial Organisation, where the marriage was monogamous, the rules applicable will be those in force in England. Where the marriage was polygamous the rules would be those of the relevant native law and custom provided they are not repugnant to natural justice, equity and good conscience would apply.⁶⁹²

⁶⁹¹ Suit No. AE/06/96/1M/96.

⁶⁹² The case of *Tufon v Tufon*, No. HCB/59mc/83 (unreported) is illustrated.

Conclusion

Land conflicts involving women has been a perennial issue in the Anglophone region. Cameroon being a country of law, the statutory laws provides that, any tradition or custom that is repugnant to natural justice, equity and good conscience shall be abrogated. This presupposes that when it is proven that a custom or tradition (such as the patrilineal or matrilineal mode of succession) practiced in the Anglophone regions no longer serves the values that people stand for it shall be abrogated.⁶⁹³ Hence, this study is advocating that equal access to property and in particular land should exist in Anglophone Cameroon in order to avoid conflict of laws, conflict between persons and to maintain peace in the region.

⁶⁹³Yenshu, V.E. 'Matriliney and Patriliney between Cohabitation Equilibrium and Modernity in the Cameroon Grassfields'. (2005) 26(3) *Africa Study Monograph* pp145-182.

Chapter 5

DISCUSSION, CONCLUSION AND RECOMMENDATIONS

5.1 Discussion

This study which raises the central issue of equality in relation to access to land focuses on the pervasive denial of a woman's right to own land in Anglophone Cameroon. It reviews the traditional land rights model in the region noting how land use as well as land transfers are regulated by customary law, which largely excludes women from property ownership and inheritance. This study argues that this traditional land right model limits the capacity of women to access land after the death of their parents and spouses. This disinheritance and landlessness seriously undermines women's economic security and independence. This study agrees with Richardson⁶⁹⁴ that women's landlessness and inheritance contribute to the feminization of poverty and stunted economic development in the country. The study demonstrates that women have less access to land than do men although women form majority of the population and are more involved in agricultural activities than men. This situation in the opinion of the researcher, affects the women's wellbeing, that of the family and the country's economic development.⁶⁹⁵

The limited access to land by women coupled with their weaker economic stand consolidates poverty amongst women in rural areas in the regions. It was observed that the significant limitation on women from having access to land prevents them from obtaining

⁶⁹⁴ A. M. Richardson, 'Women's Inheritance Rights in Africa: The Need to Integrate Cultural Understanding and Legal Reform'. (2004) 11 No 2 *Human Rights Brief* 19, pp 1-19:1

⁶⁹⁵ Ibid.

loans from financial institutions, and from selling, leasing, mortgaging land or otherwise generating income for their well-being. It was shown that the high level of illiteracy, lack of information about the availability of land, lack of money to purchase land in their names, the unwillingness of many husbands and families to allow women access land on the same footing with men are at the root of the unequal distribution of land in the region in particular and the country in general.⁶⁹⁶ Based on the above, the candidate contends that the land deprivation suffered by women needs to be addressed in order to facilitate their participation in community-based activities.

It has been noted that besides the customary position of restricting women's property rights, the conflict between the statutory and customary laws in the country restricts women from getting land. While statutory law provides greater protection for women allowing for female inheritance and land ownership, customary law does not. Although statute trumps customary law in theory, as a practical matter statutory law is less utilized than customary law in accessing land.⁶⁹⁷ Indeed, often in rural communities little is known about the statutory provisions relating to land. Even structures such as the Land Consultative Board⁶⁹⁸ which is the basic institution that deals with land registration in the country, apply customary rules of practice. This is because the Board heavily relies on the traditional notables who are also members of the Board, to testify if the applicant for land certificate has actually acquired land in their community. Here, it is worth remarking that

⁶⁹⁶ N.H. Youssef, 'Women's Access to productive resources: The Need for legal Instruments to Protect Women's Development Rights', in Julie Peters and Andrea Wolper (eds.). *Women's Rights, Human rights. International Feminist Perspectives*. (London: Routledge New York 1994) pp 283-4

⁶⁹⁷ J. Asiimwe, 'Making Women's Land Rights a reality in Uganda: Advocacy for Co-ownership by Spouses'. (2001) 171 *Yale Human Rights and Development law Journal*, pp 65-83:67

⁶⁹⁸ This organ comes into being by virtue of article 16 of the 1974 Land Ordinance to regulate land registration procedure in the country.

the traditional rulers are the voice of the customary laws that often discriminate against women with regard to land ownership. This practice denotes that land is acquired under customary laws and registered under statutory laws. It is in this light that this researcher contends that government should introduce more efficient mechanisms such as involving both men and women in the Board in order that the land interests of women will also be secured.

The above contention assumes that land is a fundamental asset for the economic empowerment of women since women's right to access land is a fundamental human rights. The government should, as a result ensure that attempts to encourage gender parity do not remain at the level of policy levels and legal concepts as it is the case today. The current land distribution between male and female poses a lot of difficulties, and is symptomatic of discrimination. It is impossible for sustainable development to exist for women as long as they are unable to be financially independent. This makes issues of access to land crucial.

The idea that women should not exert rights of ownership over land has remained orthodox while the practices associated with land-use have become increasingly heterodox.⁶⁹⁹ The marginalization of women's land-right has not gone unnoticed by women, who have consistently protested the abuse of their land-rights by men.⁷⁰⁰ Given the importance of gender, the centrality of restricting women's rights to land in sustaining current hierarchies of power, and the history of women's protests, it is rather surprising

⁶⁹⁹ Goheen, *op cit* p 139.

⁷⁰⁰ *Ibid*, p 231. Also see S. Diduk, 'Women's Agricultural Production and Political Action in the Cameroon Grassfields', (1989) 59, No. 3 *Africa*, pp 338-356.

that more attention has not been focused on gender equality as a political issue in Cameroon. The inequality suffered by women in accessing land has greatly challenged the principles of rational management of land in the country.

Since land remains a critical factor of production, women are often increasingly expected to play a crucial role in the fight against poverty in their families, communities and the country as a whole. This has made the question of unequal access to land important in the country because the notion of gender neutral laws which is very prevalent in Cameroon tends to affect women's rights to land particularly in patriarchal societies like the Anglophone Cameroon. The situation of women's land right in this region is made worse because, customary and statutory laws do not only abuse their rights but also conflict with each other⁷⁰¹ which deprives them of the right to inherit or access land. .

Human rights actors⁷⁰² consider gender hierarchy in property relations a component of sex discrimination and challenge such discrimination by arguing that it is inconsistent with national and international laws guaranteeing equality of access to land. The argument assumes greater significance in Cameroon where human rights activists⁷⁰³ have contended that the principle of non-discrimination in the CEDAW⁷⁰⁴ document which contains provisions rejecting property discrimination is part of Cameroonian law.⁷⁰⁵ The

⁷⁰¹ Land in Cameroon is accessed through customary and statutory laws and these laws influences the judiciary in applying laws on equal access to land.

⁷⁰² J. Davison, *Land and Women's Agricultural Production: The Context, Agriculture, Women and Land: The African Experience*. (Boulder: West View Press, 1988)

⁷⁰³ Such as FIDA, ACAFEJ etc all found in Cameroon.

⁷⁰⁴ It is considered by the United Nations General Assembly as the International Bill of rights for women.

⁷⁰⁵ The specific articles are: Article 2 (f) which calls upon the government to abolish or modify laws and customs that discriminate against women; Article 16(h) which calls on the government to ensure the same rights for both spouses in the ownership, acquisition, management, administration, enjoyment and

government of Cameroon is by this contention duty-bound to respect, protect and fulfill the obligations of enhancing equal access to land as enunciated by this international human rights instrument.

The researcher has argued that by virtue of Article 45 of the Constitution, duly ratified treaties take precedence over local laws in the event of inconsistency, the rules denying women the right to access land in spite of the role of women as the primary users of land and producers in the agricultural sector are unconstitutional. It is therefore constitutionally required that all cultural biases that prevent women from controlling land be totally eliminated. This constitutional mandate would, in the opinion of the candidate, be necessary for sustainable development. Since as noted here, the restricted access to land limits women's participation in economic development and undermines, the economic goals of the country. The present researcher identifies culture as the problem and recommends the application of remedial legal provisions to address this perennial problem.

The researcher's above recommendation has to be situated within the broad parameters of the country's law that as already indicated involves the existence of two distinct regimes of law viz statutory and customary laws. The later is strategic because of the culturally pluralistic nature of the country. The strength of this recommendation lies in the fact that, formal laws addressing issues of land ownership do not overtly discriminate against women, but customary law, which has a more immediate impact at the grassroots level,

disposition of property; and Article 14(g) which requires states to guarantee rural women equal access to agricultural credit and equal treatment in land and agrarian reform and in land resettlement schemes.

does discriminate against women. This analysis compels the conclusion that culture and its influence on legal minds and mindset of some men are the primary triggers of unequal access to land in the region.

Furthermore, Cameroon has embraced a plurality of laws regulating access to land. That is customary laws, statutes including the ratified international treaties. This variety of laws impact on the ideas of equality and the rules of access to land differently and this often leads to confusion as to the applicable rules of access to land in our context. Formal law is not directly the problem but the inculcation of cultural ideas in the implementation of the formal laws has disrupted the political goal of the government in respecting its obligation under the numerous ratified human rights instruments guaranteeing equal access to land in the country.

The study contends that formal laws and cultural norms are modes of social control that play an important role in constructing social arrangements in the region of study. The government appears to avoid addressing inequalities by claiming that it is powerless to alter social structures within the cultural sphere. The candidate here criticizes the country's current framework adopted by the Constitution of Cameroon for over-accommodating cultural and religious pluralism. The recommendation that the law be revised to curtail this excessive incorporation of custom will improve women's equality of access to land.

Apart from the Cameroonian Constitution which embraces too many customary and religious practices into ownership of land issues and personal law matters, there is a major anti-equality concept in the country's notion of marriage. The government has allowed the payment of bride price for marriage in the country. This has had very significant implications on the equality of access to land by women. The payment of bride price for a woman makes the woman to be considered as property who by this reasoning should not inherit property on the death of her parent or husband. The case of *David Tchakokam v Koeu Magdalene*⁷⁰⁶ for example, illustrates this rule. According to customary practice of the Bamilekes, the payment of bride price on a woman converts her to a family property that can be transferred from one male relative to another upon the death of the husband.

In property relations, formal law and policy goals interact with perceived cultural norms to produce gender inequality in Cameroon. As earlier noted, official land holding by women as individual owners, does not exceed 10% number of titles because of cultural attitudes. The formal registration of title has, however, blurred the distinction among culture, formal law and policy, rendering any argument that places responsibility for such gender disparity on either culture *per se* or formal law *per se* incoherent. Land policy that mirrors cultural practice by registering male heads of households as title holders has played a significant role in defining cultural norms and in shaping the social meaning of ownership in a manner that disregard women's land interests.

⁷⁰⁶ Suit No. HCK/AE/38/97.

The candidate admits that in a plural setting, proponents of gender equality of access to land must balance idealistic aspirations with a pragmatic realization that different contexts may call for diverse sets of tools. Nevertheless, she still argues that a critical pragmatic approach challenging the present land right model for shielding customary and religious laws is the right thing to do. Devolution of property is one of the key elements for defining and reconstituting property rights for women and children whose access to economic resources heavily depends on relationships to fathers or husbands.⁷⁰⁷ The absence of constitutional protection for women's rights to own property has contributed to the current social context that makes it easy for opportunistic individuals to justify (on the basis of custom) negative treatment of widows or divorced women. This situation makes a compelling case for the amendment of the constitutional provisions on property. This amendment should clearly and positively protect women's right to access land by inheritance after the death of their spouse or parent.

Critics may contend that altering the constitutional framework reduces protection for personal laws and takes away an existing right of land ownership. This is not the case in some African countries such as South Africa and Uganda. Their experiences demonstrate that it is possible to establish a constitutional framework that achieves more balance between gender equality with particular stress on access to land and the recognition of cultural and religious identity. The South African Constitution for example, recognizes the validity of the rights of the traditional authorities to enjoy and practice their culture but the

⁷⁰⁷ C. Nyamu, 'How Should Human Rights and Development respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?' (2000) 41 *Harvard International Law Journal* 381-417.

practice should be subjected to the norms of the Constitution.⁷⁰⁸ Also the Constitution of Ghana employs a similar model of recognizing one's right to practice culture but the Constitution prohibits customary practices that dehumanize or injure the physical or mental well-being of another person.⁷⁰⁹ Furthermore, the Ugandan Constitution strikes a balance from the above laws by explicitly addressing the tension between women's rights and the right to practice culture.⁷¹⁰ It does this by prohibiting all the laws, cultures, customs or traditions which undermine the dignity, welfare, status or interest of women's land rights.⁷¹¹

This study argues that Cameroon should adopt the above constitutional model and specifically incorporate women's right to access land on intestacy in the Constitution. The amendment should also be supported with administrative structures and good practices to remedy the decades of discrimination which has culminated in the present lopsided land distribution between men and women as illustrated in chapter 3. This recommendation conform to international norms as it recognizes and reinstates women's land rights through gender mainstreaming in a manner consistent with the United Nations Millennium Development Goals. If adopted, the recommendation will help women to achieve a higher standard of living in a predominantly agrarian economy like Cameroon. Indeed, given the centrality of land for development, gender mainstreaming in land reforms should be a priority policy option for Cameroon.

⁷⁰⁸ See The South African Constitution 1996, section 211(1) (3). This section state that ' the institution, status and role of traditional leadership according to customary law, are recognized, subject to the Constitution'.

⁷⁰⁹ See Ghanaian Constitution of 1992, article 26.

⁷¹⁰ See Articles 33 and 37 of the Ugandan Constitution of 1995.

⁷¹¹ See Article 33(6) of the Ugandan Constitution of 1995.

There is little doubt that the application of the 1974 Land Ordinance as modified by the 1983 and 2005 amendments with regard to land registration process has brought about major shifts in women's property rights in land in the Anglophone region. Admittedly, the increasing level of education, accommodative land registration procedure, access to salarised employment in Cameroon has improved the financial autonomy of women and enables more of them to purchase land as a resource. Furthermore, with the rapid emergence of single mothers, more women are acquiring primary interests in land, either to build a home or as an investment. Although this development of long-term allocation of property rights in land to single mothers is a significant change, this in itself will not remedy the present massive inequality much of which occurred as a result of the optically non-gendered complementation of this Ordinance. The Ordinance will also require a major review to address the problem of unequal access. This is because in spite of the fact that the Ordinance was intended to abolish indigenous land tenure which was hostile to women through the nationalization of all unoccupied and unregistered land,⁷¹² its implementation has resulted in the excessive commoditization of land in the region which is also hostile to the women.⁷¹³

The above 1974 Land Ordinance coupled with its amendments is in need of a major review. It has failed to provide explicit provisions specifically addressing the issue of women and equality of access to land. Section 1 (1), of the Ordinance states that 'the state guarantees to all natural persons and corporate bodies having landed property the right to

⁷¹² S. Mope, 'Gender Agro-Pastoral Production and Class Information in Bamunka, North Western Cameroon', Ph.D Thesis No. 4 School of Development Studies, University of East Anglia (UEA) Norwich, Britain (1992).

⁷¹³ M. B. Ufon, 'Gender and the Land Question in the Cameroon Grasslands (2006). Available at <http://africafiles.org/article.asp?ID=12408>.

freely enjoy and dispose of such lands'. This provision may be legitimately queried for two principal reasons. To guarantee to 'all natural persons ... having landed property the right to freely enjoy and dispose of such lands' clearly consolidate the unequal distribution of land between men and women which was inherited from customary law. Although the provision appears gender neutral, it is in practice pro-male since men own the bulk of the land in the region before and after the institution of the 1974 Land Ordinance. In deed, the provision shows that the State does not encourage and guarantee the equal right of all to 'acquire' land as well as to enjoy and freely dispose of it. Instead, the law should read thus; 'the State guarantees to all natural persons and corporate bodies the right to acquire, enjoy and dispose of land and landed property'.

In addition, Decree No. 76-165 of April 27 1976 establishing conditions for obtaining land certificates states in Article 9 that persons eligible to apply for land certificates for national lands which they occupy or develop are:

- a) the customary community members or any other person of Cameroonian nationality on condition that the occupancy or the exploitation predates 5th August 1974 and
- b) persons who have forfeited their rights as a result of application of Article 4, 5 and 6 of the above mentioned Ordinance of 1974.

This article is problematic in the sense that it consolidates the position of men in the acquisition of land certificates in the same way as section 1(1) above does. Since both before and after 5th August 1974, most of the land was either occupied or exploited by men with the active support of women, there should be a third sub title included to this article. The sub title may read as thus; any other person having fulfilled the customary requirements for the occupation and exploitation of land' could apply for land certificate. The revision of the Ordinance to incorporate this clause introduces real gender equality with regards to access to land because of its express reference to those who occupy land without being regarded as 'owners' which as this study has shown are mostly women in rural areas.

Article 12 of the 1976 Decree appointing the officials of the Land Consultative Board requires a major review as well. Although the Board is the principal administrative structure that implements the country's land legislations and grants land ownership, it is observed that the appointment of the Board members is not gender sensitive. In the North West region, members in all the divisions are males while in the South West region, it is only in Fako Division that a female is appointed as the secretary of the Board.⁷¹⁴ The predominance of males in these boards clearly impacts on the quality of decisions of the Board in granting land certificate to men and women and in resolving land disputes between men and women. This researcher contends that this provision should be revised to include both men and women in the Board in order to safeguard the policy of equal access to land in the region. Gender sensitivity is primordial in addressing perennial issues

⁷¹⁴ Information is based on findings from the land registers of the Regional Delegation of State Property and Land Tenure in Anglophone Regions in July 2010.

such as unequal access to land. According to the Beijing Platform of Action, any existing organ without gender-aware officials on issues dealing with land ownership for example, a male bias among these officials is likely to continue to prevent women's land rights.⁷¹⁵ Moreover, inclusion of women in decision making and policy formulation processes on land matters is crucial, especially among vulnerable groups such as women.⁷¹⁶

Law is of fundamental importance to development practitioners, but most often it is generally ignored, poorly implemented, misconstrued or taken for granted.⁷¹⁷ Most land reform in Africa and Cameroon in particular, does not directly protect the interest of women thus, keeping a majority of the women in marginal positions. Prior to the institution of the 1974 Land Ordinance for example, it had been observed that only the ruling class women could own or purchase land thus, restricting the rights of majority of the women.

The Preamble of the Constitution states that:

'ownership shall mean the right guaranteed every person by law to use, enjoy and dispose of property. No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law' and also, 'the right of ownership may not be exercised in violation of the public

⁷¹⁵ Beijing + 5, 'Political Declaration and Initiatives to Implement the Beijing Declaration and Platform for Action', June 2000;

⁷¹⁶ See COHRE, 'Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women', 2004, Geneva.

⁷¹⁷ D.N. Smith and R. F. Meagher, *Law and the Development Practitioner*. USAID. December 1974, p 3.

interest or in such a way as to be prejudicial to the security, freedom, existence or property of other persons’.

These provisions reveal that the Constitution protects private property regardless of how it is acquired thus, leading to increased exclusion and poverty of women in a patriarchal society like Anglophone Cameroon.

Although as has been indicated earlier, the land laws in Cameroon are optically gender neutral, improved policies needs to be instituted by the government and the civil society to effectively enforce the equality provisions of these laws in practice. It is only by so doing that the intention of the law makers to guarantee equal access to land in the region can easily be achieved. This view is consistent with that of Ngassa⁷¹⁸ who argued that if a State or legal framework or policy wants to support directly, women’s land rights, it must directly mention or focus its programs, policies, regulations and laws on women’s plights.

Cameroon needs to emulate the land laws of other sister African countries whose land laws specifically address the plight of women with regard to access to land. This researcher in this regard commends to Cameroon, the Ugandan Land Act that specifically protects the land rights of women. The Act provides that ‘... a decision which denies women or children or persons with disability, access to ownership, occupation or use of any land, or imposes conditions which violates articles 33, 34 and 35 of the Constitution

⁷¹⁸ This observation was registered during an interview conducted with Justice Ngassa Vera, a renowned feminist Jurist on 4th May 2010.

on any ownership, occupation or use of any land shall be null and void'.⁷¹⁹ This is because such decision will be considered as a bulwark against inequality with regards to access to land. It is hoped that a similar provision should be instituted specifically in Cameroon to curtail arbitrariness and rectify the current uneven distribution of land between the powerful and vulnerable including men and women.

There is no coherent domestic legislation regulating issues of succession in Cameroon. The current study shows that in the Anglophone region, all the laws on succession are borrowed from the received English Common Law. Although these received laws are applicable in the Anglophone regions by virtue of sections 11, 15 and 27 of the Southern Cameroon High Court Laws 1955,⁷²⁰ yet there is a need to revisit this area of the country's laws. Although these laws are gender neutral, there is a need to enact local laws that will take account of local specificities. It is worth mentioning that the intentions of the law makers to ensure equality between men and women hardly ties with the outcome of the law since the pre-independence law makers were foreign. It is contended that the enactment of a domestic law of succession that is comprehensible, harmonized and appreciated by majority of the citizens as indigenous to them is less likely to face the kind of difficulties of implementation as the foreign laws of succession currently in effect.

⁷¹⁹ J.T. Mutagambwa, *Source of Book of Uganda Land Law*. (Kampala: Fountain Publishers Ltd, 2002) p 82.

⁷²⁰ Examples of such received laws are: the Wills Act 1837; the Married Women's Property Act 1882; the Judicature Act 1925; the Administration of Estates Act 1925; the Non Contentious Probate Rules 1954; the Family law Reform Act 1969 etc.

5.2 Conclusion

Although land remains a critical factor of production, the structure of the laws governing land in Cameroon, prevents women from accessing land on equal bases with men. The study demonstrates that the country's land right model which is predicated on the 1974 Land Ordinance is incapable of securing equal access to land. Quite apart from that, the structure of the composition of the Board is such that those who sit in the Board are invariably men who protect their land interest sidelining that of women.

This is because the land registration process by these Board members has created the uneven land distribution between men and women as statistically revealed in this study

Although Cameroonian laws appear gender neutral, the implementation of the laws can not achieve gender neutral results because the laws are instituted in a patriarchal setting. Besides this, the government has not instituted any meaningful machinery to address the problems of unequal access to land that exist in the Country and that will suit the land aspiration of majority of the population.

August Comte a legal sociologist,⁷²¹ argues that the purpose of the law is to protect and promote the development of the society and that this development cannot be achieved if the existing law does not reflect the aspirations of the society. Law ought to evolve as society evolves.⁷²² Cameroon is moving from an autocratic to a democratic society; is also moving from a communal system to an individualistic system of land ownership. Consistent with Comte's perspective, the views suggested in this study will democratize the country's land laws particularly with regard to equality of access to land in order to

⁷²¹ http://en.wikipedia.org/wiki/Auguste_comte

⁷²² *Ibid*

reflect the realities of majority of Cameroonians. Indeed, the recommendation for reform flows from the fact that 85% of the respondents of this research accepted that the country's land law was in need of profound reform.

It would not be useful to propose a single list of recommendations for the reform of existing land laws, not only because of the heterogeneity of conditions but also because the application of some suggestions might raise the need for others. Overall, it is necessary to find common points between land reform legislation and civil/religious inheritance and property laws. Land reform presumably can be more easily effected than changes needed in civil/religious inheritance and property laws. However, such reforms can be effective only if coupled with legislation and effective enforcement procedures stemming from the executive, legislative and the judicial branches.⁷²³ To abolish the issue of unequal access to land in the Anglophone region, the following recommendations are imperative.

5.3 Recommendations

There should be a comprehensive land legislation structured to achieve the following: to eliminate the plurality of laws regulating access to land in Cameroon; to define detailed rules for accessing land which eliminates the barriers and obstacles against women; to set a machinery for positive discrimination in favour of women in the land acquisition process and the new law should restructure the Land Consultative Board incorporating women in

⁷²³ For an excellent review of the legal aspects of women's restricted access to land, see L. Bennet, 'Legal Status of Rural Women: A Review of those Aspects of Legal Status Which Limit the Economic Participation of Women in Rural Development', Food and Agricultural Organisation, Human Resource Institutions and Agrarian Reform Division, Rome (1979).

the Board in order to reflect and protect women's land interests on the basis with their male counterpart..

The Cameroonian government has instituted the Constitution and the 1974 Land Ordinance as the main governing land laws and these have expressed the principle of gender neutrality in access to land in the country. Nevertheless, experience and the statistics analysed in chapter 3 have shown that mere enactment of laws has not safeguarded women's equal access to land in the region. Hence, this study is proposing that some affirmative actions be instituted in addition a reform of laws in order to remedy the historical legacy of women's unequal access to land in Cameroon.

Awareness Creation on Women's Land Rights

Government should conduct and support a sustained advocacy on land rights in an attempt to address the negative cultural practices and attitudes that marginalize women and their rights to own land on equal basis with men. Women should be educated on their constitutional rights to access land and the importance of owning a land certificate. This is because in both men and women, there is still a lack of gender and human rights awareness of the serious repercussions that the denial of women's rights have on the human and economic development of the state. Inadequate laws and systems of enforcement are often accompanied by lack of awareness of the existing laws, insufficient understanding of options for legal redress and the resolution of disputes on access to land.

This education should take the form of sensitization campaigns to draw the attention of the whole society to the negative effects of unjust customary practices towards women. Men

should constitute one of the principal target groups in this education process. Wafis Sadik⁷²⁴ notes that, ‘no fundamental change in favour of women is possible without a massive change in male attitudes’. This is because men control the legal, administrative and financial systems which effectively deny a large number of women the right to have access to or own land, inherit property, and to enjoy other socio-economic rights.

Institutional and Legal Reform:

The government should by its land policies and laws embrace alternative dispute resolution on conflicts relating to equal land ownership which would be a faster and more pragmatic way of accessing justice for women who are largely poor and illiterate. The institutions managing land conflicts in Cameroon are patriarchal, and are many, varied, inaccessible to the poor, very complex and expensive. They also have poor information systems (for example, information from the national and regional radio stations are inaccessible to most rural areas in the regions). Hence, alternate means of resolving conflicts such as reconciliation, mediation, conciliation should be encouraged in our families and communities in order to build a culture of everlasting peace among people. A greater effort should be made to educate both men and women on women’s rights. Furthermore, the existing land laws should be made more accessible to everybody. The gaps between statutory and customary law and practice must be bridged in a conciliatory process. In this way the statutory law could serve as a bridgehead to transform customary law and practice.

⁷²⁴ Wafis Sadik is the Special Rapporteur for HIV/AIDS in Asia since 2002 till date. This comment was made in his report for possible recommendations to curb HIV/AIDS in 2006.

To prevent conflict of law on land matters, stakeholders should understand the values of both customary and statutory laws, and apply them when appropriate. Furthermore, in a situation where there is marital or family conflict on land ownership, parties are recommended to employ the policy of dialogue, cordiality and mediation to resolve and manage the conflict. These methods are more appropriate than court actions which from past experience failed to lead to lasting solution of conflicts in the society. The perennial family conflict over the administration of the Estate of Chibikom is an example of a conflict that has failed to employ the above methods of conflict resolution.

In addition, the State should institute a Land Fund to assist people, particularly women, to acquire a registrable interest in land and to facilitate the government's resettlement of landless people. For these initiatives to succeed, there should be a Land Sector Strategic Plan which will undertake the systemic demarcation a technical approach for demarcating all land rights within selected administrative areas. The advantages of this proposed approach is that it is cheaper and more cost effective than accessing land on demand on the basis of market forces. It is also more pro-poor in that once an area is selected all rights, including those of people (women inclusive) who would not normally be able to afford the service, are dealt with comprehensively such that all those having irregular interest in land will have their interest regularized through the issuance of land certificates. Such a collective approach encourages transparency and accountability. Anyone who is unfairly treated will have the right to contest any discriminatory decisions of the adjudication team with the added advantage that the contender receives the support of others involved in the process.

In order to help the women know their land rights, it is important to hold training and sensitization sessions in the region and the villages in particular. Similarly in the media, the women's associations such as FIDA, ACAFEG, MINPROFF have to take the relay by providing explanations to women in local languages, to enable them understand that the law equally protects all the citizens and to assert their rights. Moreover, these women's institutions should revamp their legal clinics instituted to work towards curing and preventing the discrimination suffered by women. The clinics need to employ qualified staff who are willing and committed to be permanently stable to attend effectively to the plight of women in the region.

To help improve on equal access to land in the country, government's support for paralegal services to enable women pursue cases, support for strategic litigation that can establish legal precedents, specific training for lawyers, judges, registrars and police in women's rights, advocacy with traditional leaders is necessary. Also, financial support for community and women's organizations and networks to provide advice, emergency assistance, documentation and dissemination of best practices on land ownership are crucial in the region. In addition, the existing civil societies on women's rights should endeavour to be more active in promoting the rights of women.

Women should be encouraged to set up small business units which may enable them cope with the cost and procedure for obtaining a land certificate. For instance, government may encourage income generating activities by reducing taxes on businesses, and giving out loans with low interest rates especially to the disadvantage in the society such as women

to enable them set up small business schemes. Government can also encourage the private sectors to indulge in loan scheme; subsidize prices of fertilizers to encourage production of cash and food crops; and create more accessible farm-to-market roads. All of these activities are geared to ease the raising and sale of produce which can enable women to generate income that can be used to buy land in their names.

Measures such as education, financial and legal reforms need to be instituted by the government in order to empower women in the domain of access to land. The concept of empowerment is crucial because based on the preliminary studies carried out, it stands at the pivot of land ownership in the regions. One cannot easily access land when he or she is not empowered to do that. The amendments and empowerment suggested here is not meant to achieve power to dominate others, but rather to use power to act with others to effect change.⁷²⁵ This candidate argues that where everyone in the society is empowered to equally access land, they will collectively work for the interest and development of the society. The strong insistence on equality of access to land which has been the theme of this study is commended to the government since it will facilitate the woman's capacity to perform her triple roles of reproduction, production and participation in decision-making activities in the society.⁷²⁶

⁷²⁵J. Stein, *Empowerment and Women's Health: Theory, Methods and Practice*. London: Zed Books (1997) p 7.

⁷²⁶N. Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought*. Great Britain: Briddles Ltd (1997) p 224. Also see B. Agarwal, 'A Field of One's Own: Gender and Land Rights in South Asia'. Cited in Agarwal, B., 'Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market'. Vol.3 Nos. 1&2, (2003) *Journal of Agrarian Change* p 178. She noted that for a woman to secure equal position on land matters, she needs to be empowered (conscientiously, economically, legally etc).

Gender mainstreaming in land reforms should be an important intervention by the government for land redistribution. Gueorguiva,⁷²⁷ in this light notes that such reforms that take into consideration the status of women alongside other reform programs which provide security tenure to farmers, have far-reaching direct and indirect benefits to the development of the state. This reform will require modifying customary and traditional practices so that they are not only repugnant to natural justice and are favourable to national development. Re-writing formal statutory laws to reflect gender equality of land rights is not enough as long as discriminatory customary practices continue to exist. Traditional and administrative authorities that interpret and implement the law must themselves be influenced to change their attitudes and perception of women. This can be by organizing gender training workshops at top levels that focus on gender inclusive strategies of national development.

Co-ownership of land by spouses and the concept of Family Land

Although there are no statutory laws preventing women from owning land in Cameroon, the custom of male control of land has resulted in the vast majority of women being excluded from land ownership. Whilst women do most of the agricultural work, it has been shown in this study that women own less than ten percent of the land. To counter this trend and curb the widespread dispossession of wives and widows, this candidate recommends specific reform of our land laws to provide spouses with the possibility of controlling property as co-owners of 'family land'. The co-owned land should be the place of residence, or the principal source of income or sustenance for the family.

⁷²⁷ A. Gueorguiva, 'A Critical Review of the Literature on Structural Adjustments and the Environment'. Environment Department Working Paper- The World Bank (2000).

Co-ownership of property may to an extent, help the women have the opportunity to access land that may give them some measure of independence and financial backing to ensure family sustainability. Appropriate and specific legal measures should be taken to ensure that men and women have equal rights to land before marriage, during marriage and during its dissolution. This would ensure security of tenure for women and as a result lead to increased investment in land and decreased poverty for women.

Some African countries with similar land crises like that of Anglophone Cameroon have successfully enacted and implemented laws on co-ownership to address the unequal access to land that existed between men and women. For instance, The Recognition of Customary Marriages Act of 1998 in South Africa was instituted.⁷²⁸ Section 7 of the Act, specifically safeguards the right to create community of property regime by South African spouses unless the spouses mutually agree differently. Also, Section 161 of the Tanzanian Land Act of 1998 explicitly affirms the equality of men's and women's land rights and spousal co-ownership of family land. This specific policy is highly commended to be implanted in the Cameroonian land laws. The insistence on the co-ownership clause to be included in our land legislation stems from the fact that current legislation, with the existence of customary practices, provides limited possibilities for women to own land.

Registration of customary marriages:

All marriages in Cameroon including customary marriages should be registered. The Cameroonian legal system governing land ownership such as the Constitution, the 1974

⁷²⁸ The South African Recognition of Customary Marriages Act of 1998 repealed section 11(3) of the Black Administration Act of 1927 whereby customary wives were considered as minors subject to the guardianship of their husbands.

Land Ordinance, the Civil Status Registration Ordinance, should specifically encourage the registration of customary marriages. Registration of marriages will help to ascertain who is entitled to a particular matrimonial property at the time of divorce, separation and succession. Also, this policy is paramount in promoting the issue of co-ownership of matrimonial property and will particularly safeguard women's right to access land.

The land laws and institutions implementing the laws should be gender and human rights sensitive in order to promote equal access to land in the region. It is worth noting that in Cameroon as elsewhere in Africa, land is still very much regarded as a 'man's thing'. That is why land management is significantly kept in the hands of men. Since customary law is basically *oralité juridique*,⁷²⁹ the male dominated government organ often manipulate the laws to suit their patriarchal interest and to justify the distinctions maintained between men and women over management of land issues.⁷³⁰ Women understand the effects of patriarchy and are more likely to encourage social transformation of the status quo. Thus, to ensure that women have a representation in the management and administration of land, the government of Cameroon should adopt some affirmative actions, such as specifying the number of female representatives to serve in any commission set up for land management and administration within the state. This measure is imperative because women's right to land is a critical factor in social status, economic well-being and empowerment.

⁷²⁹This denotes that customary law is basically not written.

⁷³⁰S. Zziwa, 'Gender Perspectives on Land Ownership and Inheritance in Uganda'. Access to Land and Other National Resources in Uganda: Research and Development Project, Research Paper 16, Makerere Institute of Social Research, Makerere University, Kampala and the Land Tenure Center, University of Wisconsin, Madison 1995:5.

In developing countries such as Cameroon where large sections of the population are governed by customary law, governments ought to have carried out investigations on the degree of protection or oppression and the amount of discrimination experienced by women under customary law. This would have determined whether it is appropriate either to incorporate or reject such practices into the statutory legislation at an appropriate time.⁷³¹ In considering women's legal capabilities and statutory changes, one must also deal with attitudinal barriers, cultural stereotypes and long established opinions about women's place and responsibilities in the society.

To strengthen women's right to land in a context of an unequal power relation as it is experienced in Anglophone Cameroon, the way forward is to vest land rights in people who have been occupying and using land rather than making land rights possible only to groups and institutions who are financially and politically empowered. Government should grant land certificates to those who have been enjoying usufruct rights over land for long but lack the finances to register such land. Also, the rights to land of single women, that is, the divorced, separated and widowed women, needs to be ensured, both through sensitive legislation and the delegitimization of relevant discriminatory customary practices. Another major recommendation is to ensure inclusion of women in decision-making bodies, including the customary ones so that customary law can also be interpreted with a gender sensitive lens.

⁷³¹ United Nations, 'Programme of Action – Second Half of the UN Decade for Women: Equality, Development and Peace', 1980 p 18.

In addition, once land is restituted to the community as it is commonly done in Fako, a transparent and an accountable commission should be set up by the government to monitor the effective management and equal distribution of land to the indigenes. The government should come up with a policy document to be handed to the head of the local community whenever land is restituted to them. This document should contain directives on how the land should be distributed in the community under the custody of the chief. Protection of the equal need and interest of all the indigenes in accessing land should be primordial. This will help to prevent the indigenous policy often embraced by the chiefs and leading men whereby such land or family land is distributed based on personal relationship or interest portrayed by the indigenes. Experience gathered from the field reported that a village head incharged of the distribution of land often assumes that women are not supposed either to own land independently or to manifest interest in owning community land. Hence, the leading males in the family tend to confiscate the restituted land for their personal interest. Instead land should be equitably distributed to all as an inherent right based on the principle of substantive equality. This study is requesting an efficient follow up on the distribution among the indigenes by the government in order to ensure that land is equally distributed. This will restrict custom's ability to overrule the statutory law.

This study also recommends that people should be encouraged to write Wills. This is because with the existence of a Will in any given family, there is usually little or no contention among the family members with regard to who owns or has to inherit a family property.

Furthermore, the population should be sensitized on the importance of writing a Will. This is because when a testator writes a Will in a sound and disposing mind, the family left behind will face little or no dispute on property distribution because the testator had freely distributed his property to his beneficiaries as he deems necessary.

Finally, it is important to reiterate that women should not be considered as victims but rather, as active social and political subjects and agents of change. Inequitable power relations often make women fearful of claiming their rights lest they be subject to violence, ostracized or lose social support. It is important then to revise the laws as stated in this study and set up institutional mechanisms that can support women in their struggles to gain a fair share of resources such as land because land is a very important resource and form of wealth in Cameroon. Indeed, the social and economic status of an individual is closely related to land ownership⁷³² and because of this, it is difficult to see how those who are landless live a dignified life. Based on this perspective, Kelly a legal scholar,⁷³³ pointed out that John Locke⁷³⁴ treats proprietary interest in land as coming from the same normative source as the right to life.

⁷³² C.G. Bowman, & A. Kuenyehia, *Women and Law in Sub Saharan Africa*. Ghana: Sedco publishing limited (2003) p 131.

⁷³³ See J. M. Kelly, *A Short History of Western Legal Theory*. Oxford: Oxford University Press (1993) p 269.

⁷³⁴ A Libertarian, see chapter 1.

BIBLIOGRAPHY

Books

- Abang, N. *The Kom Succession Question*. Bamenda: ANUCAM Educational Books plc (2009).
- Ardener, E. et al, *Plantation and Village in the Cameroons: Some Economic and Social Studies*. New York: Oxford University Press, 1960.
- Agarwal, B. *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge: University Press (1994).
- Ajjola, A.D. *Introduction to Islamic Law*. New Delhi: International Islamic Publishers, 1989.
- Aletum M.T., & Fisiy, C. F. *Socio-Political Integration and the Nso Institutions*, Yaounde –SOPECAM (1989).
- Allen, J.A. 'Aba Riots' or 'Women's War': British Ideology and Eastern Nigeria Women's Political Activism. (Waltham, MA: African Studies Association, 1971).
- Aristotle, *The Politics of Aristotle Book I* translated by JEC Welldon Macmillan & Co Ltd London (1912).
- Aristotle, *The Ethics of Aristotle: The Nichomachean Ethics*. Translated by Tredennick, H., Harmondsworth: Penguin Books; Penguin Classics (1976).
- Asiimwe, J. and Nyakoojo, E., *Included yet Excluded: A Study of Women's Land Rights in the Districts of Pallis and Kapchorwa*. Kampala: Uganda Land Alliance and Action Aid Uganda, (2001).
- Bamforth, N., Malik, M. and O'Conneide, C., *Discrimination Law: Theory and Context*. London: Sweet and Maxwell, 2008.
- Bell M., 'The Rights under Equality and Non Discrimination' in T. Hervey and J. Kenner (eds) *Economic and Social Rights under the EU Charter of Fundamental Rights – a Legal Perspective* (Hart Publishing, 2003).
- Bogard, M. *Feminist Perspective of Son Wife Abuse*. Newbury Park, CA: Sage Publications (1993).
- Bowman, C.G. & Kuenyehia, A. *Women and Law in Sub Saharan Africa*. Ghana: Sedco publishing limited (2003).
- Carroll, M.P., *Women in the Muslim World*. (Cambridge: Harvard University Press, 1980).
- Cheneval, F. *Property Rights as Human Rights*. Zurich: Ruffer & Rub (2006).

Clarence-Smith, W.G., 'From Plantation to Peasant Cocoa Production in German Cameroun'. In Geschiere, P. G., & Konings, P. (eds.), *Conference on the Political Economy of Cameroon. Historical Perspectives*, African Studies Centre, Leiden, Research Report No. 35, 1989.

COHRE. *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan African* (Geneva: COHRE, 2004).
Collier, J.G. *Conflict of Laws*. (Cambridge: University of Cambridge Press, 2001).

Currie, W. et al, *The Bill of Rights Handbook* (4th edition). Cape Town: Juta.

Davison, J. *Land and Women's Agricultural Production: The Context, Agriculture, Women and Land: The African Experience*. (Boulder: WestView Press, 1988).

Dias, R.W., (1985). *Jurisprudence* (4th ed.). London: Butterworth (2001).

Deere, C. and Leon, M. *Empowering Women: Land and Property rights in Latin America* (Pittsburg: University of Pittsburgh Press, 2001).

Dworkin, R., *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press) (2000).

Dworkin, R., *Taking Rights Seriously*. London: Duckworth, (1977)

Eide, A. *Economic, Social and Cultural Rights as Human Rights, in Economic, Social and Cultural Rights*, (edited by Eide, A., Krause, C., and Rosas, A.,).
Dordrecht/Boston/London: Martinus Nijhoff (2001).

Elegido, J.M. *Jurisprudence*. Ibandan: Spectrum Law Publishing (1994).

Elias, T.O., *Nigerian Land Law* (4th Edition). London: Sweet & Maxwell 1971.

Eze, O. C., *Human Rights in Africa: Some Selected Problems* (Lagos: Nigerian Institute of International Affairs & Macmillan Nigeria Publishers Ltd., 1984).

Eze, O.C., 'Human Rights issues and Violations: The African Experience' in Shepherd, G.W and Ankipo, M. (eds) *Emerging human rights: The African political economy context*. New York: Greenwood Press (1990).

Fardon, R., *Raider and Refugees: Trends in Bali Chamba Political Development, 1750-1950*. Washington: Smithsonian Institute Press (1988).

Freedman, S. 'Affirmative Action and the Court of Justice: A Critical Analysis' in Shaw, J., (ed), *Social Law and Policy in an Evolving European Union*. Oxford: Hart Publishing (2000).

Fredman, S., *Discrimination Law*. Oxford: Clarendon Press, 2002.

- Fredman, S., 'The Age of Equality' in Fredman S. and Spencer S. (eds), *Age as an Equality Issue* (Hart Publishing, 2003).
- Freeman, M. 'The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention', in Julie Peters and Andrea Wolper (eds.). *Women's Rights, Human rights. International Feminist Perspectives*. London: Routledge New York, 1994
- Fisiy, C.F., *Power and Privilege in the Administration of Law, Land Law Reforms and Social Differentiation in Cameroon*. Leiden: African Studies Center 1992.
- Fudge, J., 'The Canadian Charter of Rights: recognition, redistribution and the Imperialism of the Courts' in Campbell, T. et al (eds.), *Skeptical Approaches to Human Rights* (OUP 2001).
- Graveson, R.H. *Conflict of Laws*. (London: Sweet and Maxwell, 1974)
- Goheen, M. *Men Own the Fields, Women Own the Crops: Gender and Power in the Cameroon Grassfields*. Wisconsin: The University of Wisconsin (1996).
- Guyer, I. J. *Family and farm in Southern Cameroon. African research studies N°15*. Boston: Boston University - African Studies Center (1982).
- Havnevik, K. *et al*, *African Agriculture and the World Bank Development or Impoverishment?* Uppsala: Nordiska Afrikainstitutat (2007).
- Hay, J. H., & Stichter, S. *African Women South of the Sahara*. New York: Longman Group Ltd (1984).
- Heyns, C. and Stefiszyn, K., *Human Rights, Peace and Justice in Africa: A Reader*. Centre for Human Rights: Pretoria university law Press 2006.
- Ige, T. *Women and Inheritance Law in Nigeria*. Lagos: Legal Research and Resource Development Centre (1993).
- James, R.W., *Modern Land Law of Nigeria*. Ife: University of Ife Press 1971.
- Kabeer, N. *Reversed Realities: Gender Hierarchies in Development Thought*. Great Britain: Briddles Ltd (1997).
- Kamgnia, D.B. & Timnou, J.P. *The Determinants of Poverty in Cameroon in developing a Sustainable economy in Cameroon*, Amin, A.A. (ed.) Dakar: CODESRIA.
- Karl, M. *Women and Empowerment: Participation and Decision Making*. London: Routledge (1995).
- Kelly, J.M. *A Short History of Western Legal Theory*. Oxford: Oxford University Press (1993).

Kimble, H.T. *Tropical African Vol. I Land and Livelihood*. New York: Anchor Books (1960).

Kuenyehia A. et al. *Women and Law in West Africa. Situational Analysis of Some Key Issues Affecting Women*. Accra: Yamens Printing and Packaging Ltd (1998).

Levine, R. et al. *Background Paper of the Task Force on Education and Gender Equality, Achieving Universal Primary Education by 2015* (New York: UN) (2003).

Lerner, N., *Group Rights and Discrimination in International Law*. The Hague: Martinus Nijhoff 1991.

Locke J., *The Second Treatise on Civil Government and A Letter of Toleration* (eds.) in J. W. Gough Oxford: Basil Blackwell (1948).

Lord Lyold of Homestade et al, *Introduction to Jurisprudence*. London: Stevens and Sons (1979).

Lund, C., 'Questioning some Assumptions about Land Tenure', in Benjaminsen, T. A. and Lund, C., (eds.). *Politics, Property and Production in the West African Sahel*. Uppsala: Nordiska Afrikanstitet 2001.

Maaneen et al. *Property Law on the Threshold of the 21st Century*. Tilburg MAKLU: Uitgevers Antwerpen-Apeldoorn (1996).

Mackensie, J.A., & Phillips, M. *Land Law* (8th ed). London: Blackstone Press Limited (2000).

Martins D. & Fatuma Hashi O., *Gender, the Evolution of Legal Institutions, Economic Development in Sub Saharan Africa*. Working Paper 3. Washington D.C: The World Bank Group (1992).

Mbiti, J.S., *Introduction to African Religion*. London: Heinemann 1997.

Meek, C. K. *Land Tenure and Land Administration in Nigeria and the Cameroons*. London: Her Majesty's Stationery Office (1957).

Mikell, G., *Cocoa and Chaos in Ghana*. New York: Paragon House, (1989).

Miller, D., and Pope, A., *Land Title in South Africa*, Kenwyn: Juta , 2000.

Mqeke, R.B. *Customary Law and the New Millenium*. Grahamstown: Lovedale Press, Alice (2003).

Molokomme, A., *Women and Law in Southern Africa*. Harare:Zimbabwe Publishing House, 1987.

Moleah, A.T. *Colonialism Apartheid and Dispossession*. Wellington: Disa Press (1993).

- Mona, E. and Leacock, E. (eds.). *Women and Colonisation – Anthropological Perspectives*, New York: Bergin Publishers, 1980.
- Moore, S.F. *Law as Process: An Anthropological Approach*, London: Routledge and Kegan Paul (1978).
- Moser, C. (1993). *Gender Planning and Development. Theory, Practice and Training*. New York, Routledge.
- Mutagambwa, J.T. *Source of Book of Uganda Land Law*. (Kampala: Fountain Publishers Ltd, 2002).
- Nachmias, D. & Nachmias, C. *Research Methods in the Social Sciences*, New York: St. Martin's Press (1996).
- Ncube, W. 'Underprivilege and Inequality: The Matrimonial Property Rights of Women in Zimbabwe' in A. Armstrong and W. Ncube (eds.) *Women and Law in Southern Africa*, (Harare: Zimbabwe Publishing House) (1987).
- Ngangah, C. *The Politics of Human Rights. A View from the Third World*. Kaduna: Klamidas Communications Ltd (1998).
- Ngassa, V., *Gender Approach to Court Actions*. Cameroon: Friedrich –Ebert- Stiftung Foundation, 1999.
- Ngwafor, E. N. *Family Law in Anglophone Cameroon*. Canada: University of Regina Press (1993).
- Nkwi, P.N., & Warnier, P. *Elements for a History of the Western Grassfield*. Department of Sociology, Yaounde University, Yaounde (1982).
- Nozick, R. *Anarchy, State, and Utopia*, New York: Basic Books (1974).
- Okali, C., *Cocoa and Kinsip in Ghana: the Matrilineal Akan of Ghana*. London: Kegan Paul International for International African Institute, (1983).
- Palmer, R. *The Age of Democratic Revolution*. Princeton: University of Press (1959).
- Pashukanis, E. B., *Law and Marxism: A General Theory*. London: Ink/Links, 1978.
- Peters, P. 'The Limits of Negotiability: Security, Equity and Class Formation in Africa's Land Systems', in Juul, K. and Lund, C., (eds.). *Negotiating Property in Africa*. Portsmouth, NH: Heinemann (2002).
- Pollock, F. *First Book of Jurisprudence*. Edinburgh: R. and R. Clark Limited (1929).
- Rawls, J., *A Theory of Justice* (revised edition, Oxford: OUP, 1999).

- Read, H. *Anarchy and Order*. London: A Condor Book, Souvenir Press, 1974.
- Rhona, K.M. Smith. *International Human Rights* (2nd edition). New York: Oxford University Press (2005).
- Rhoda, A., *Women and the Environment*. New York: Zed Books 1991.
- Said, A. 'Human rights in Islamic Perspective' in Admantia Pollis et al, *Human Rights: Cultural and Ideological Perspective*. New York: Praegar Publishers (1979).
- Samba, J.N. *Fundamental Concepts of Jurisprudence*. Lagos: Peach Global Publication (2003).
- Salmond J.W., 'Jurisprudence', (7th edition). London: Sweet & Maxwell
- Scharge, E.J.H. 'Ius in corporali perfecte disponendi: property from Bartolus to the New Dutch Code of 1992'. In Maaneen *et al* , *Property Law on the Threshold of the 21st Century*. Tilburg MAKLU: Uitgevers Antwerpen-Apeldoorn, (1996). p 35. Hereinafter referred to as Shrage.
- Schatter, R. *Private Property: The History of an Idea*. London: George Atlens and Unwia Ltd (1951).
- Schuller, M. *Freedom from Violence: Women's strategies Around the World*. New York: UNIFEM (1992).
- Sen, A. *Development as Freedom*. Oxford: Oxford University Press (1999).
- Shapiro, I. *The Evolution of Rights in Liberal Theory*. Cambridge: Cambridge University Press (1986).
- Sheperd, G. W. and Anikpo, M.O., *Emerging Human Rights: The African Political Economy Context*. London: Greenwood Press 1990.
- Shivji, I. G. *The Concept of Human Rights in Africa*. London: Ryan Print (1989).
- Sieghart, P. *The Lawful Rights of Mankind. An Introduction to the International Legal Code of Human Rights*. Oxford: Oxford University (1985).
- Spencer, M. & Spencer, J. *Human Rights Law in a Nutshell*. London: Sweet & Maxwell (2001).
- Starr, J. & Collier, J.F. (eds.) *History and Power in the Study of Law: New Directions in legal Anthropology*, Ithaca: Cornell University Press (1989).
- Stein, J. *Empowerment and Women's Health: Theory, Methods and Practice*. London: Zed Books (1997).

Sweetman, C. *Women, Land and Agriculture*. London: Oxfam (1999).

Tjouen, A-D, *Droits Domaniaux et Techniques Foncières en Droit Camerounais*, Paris: Edition Economica 1981.

Ututama, A. *Nigerian Law of Real Property*. Ibadan: Shaneson C.I. Limited (1989).

Van Den Berg, A. *Women in Bamenda: Survival Strategies and Access to Land*. Leiden: African Studies Centre (1993).

Wanyeki, M., (ed.). *Women and Land in Africa Culture, Religion and Realising Women's Rights*. London: Zed Book Ltd (2003).

Wollstonecraft, M 'A Vindication of the Rights of Men'. Oxford: Oxford University Press (1970).

Yanou, M. *Access to Land in Post-Apartheid South Africa; An African Perspective*. Bamenda: Langaa Books (2009).

Yakubu, M.G. *Land Law in Nigeria*. London: MacMillan Publishers Limited (1985).

Young, I. M. *Justice and the Politics of Difference*. (Princeton, NJ: Princeton University Press 1990).

Youssef, N., *Access to productive resources: The Need for Legal Instruments to Protect Women's Development Rights*, in Julie Peters and Andrea Wolper (eds.). *Women's Rights, Human rights. International Feminist Perspectives*. London: Routledge New York, 1994.

Yudelman, M. *Africans on the Land*. Cambridge: Harvard University Press (1964).

Yunupingu, G. *Our land is our life: Land Rights-Past, Present and Future*. Queensland: University of Queensland Press (1997).

Articles

Agarwal, B. 'Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market'. (2003) Vol.3 Nos. 1&2, *Journal of Agrarian Change*.

Agbede, I.O. 'Application of Islamic Law in Nigeria'. (1971) 5 *N.I.J* pp 119-128.

Arneson, R. 'Equality and Equal Opportunity for Welfare'. (1989) *Philosophical Studies*. pp 77-93.

Asiimwe, J. 'Making Women's Land Rights a reality in Uganda: Advocacy for Co-ownership by Spouses'. (2001) 171 *Yale Human Rights and Development law Journal*, pp 65-83.

Awasom, S.Y., 'Righting the Wrong and Writing the Law in Cameroon: Fumbuen Women Against Fon Simon Vugah II', (2006) Nos. 1&2, *CODESRIA Bulletin*, 41-45.

- Barnard, C. 'The Changing Scope of the Fundamental Principle of Equality?' (2001) 46. *McGill Law Journal*.
- Bankole, T., 'Internal Conflict in Marriage and Inheritance Laws in Sierra Leone: Some Anachronism'. (1989) Vol. 1. *AJICL*.
- Benda-Beckmann, K. Von, "Scapegoat and Magic Charm: Law in Development Theory and Practice." (1989) No. 28 *Journal of Legal Pluralism and Unofficial Law*, pp129-147.
- Brook, D. 'Abie Sachs on Human Rights in South Africa', (1990)Vol. 6. *South African Journal on Human Rights*.
- Burge, p. L. 'Triple roles of Appalachian Farm Women: household, Farm, and Wage Earning'. (1983) Vol. 2, No. 2. *Research in Rural Education*.
- Cheka, C., 'How Law and Custom Serve to Disempower Women in Cameroon'. (1996) Vol. 4 No. 8. *Reproductive Health Matters*.
- Cobbah, A.M. Josiah, 'African values and the Human Rights Debate: An African Perspective' (1987) Vol. 9 No. 3. *Human Rights Quarterly*.
- Diduk, S. 'Women's Agricultural Production and political Action in the Cameroon Grassfields', (1989) 59, No. 3 *Africa*, pp 338-356.
- Dowell, C.M., "An Introduction to the Problem of Ownership of Land in Northern Nigeria". Vol.1, No.2, (1965) *N.L.J.*
- Enonchong, N. 'Public Policy and Ordre Public: The Exclusion of Customary Law in Cameroon', (1993) 5(3) *RADIC*, 503-525.
- Engelhardt, H.T. 'Rights to health care: A critical appraisal' (1979) 4 *Journal of Medicine and Philosophy* 113.
- Fisiy, F.C. (1986). 'The Juridical Nature of Native Land Rights and Responses to the 1974 Land Ordinances in Cameroon'. *Science and Technology Review Social Science Series* Vol. IV No 3-4.
- Feder, G. 'Land Ownership Security and Farm Productivity: Evidence from Thailand', (1988) *The Journal of Development Studies*.
- Gray, L. and M. Kevane "Diminished Access, Diverted Exclusion: Women and Land Tenure in Sub-Saharan Africa". (1999) 42(2) *African Studies Review*.
- Cohen, G.A. 'On the Currency of Egalitarian Justice'. (1989) *Ethics* pp 906-944

- Henry, H. 'The Role of Land law in the Rural Development in Niger, The Ivory Coast, and Nigeria under Development Law Aspects'. (1983) Vol. 28 *The State and the Law*.
- Holmes, E., 'Anti-discrimination Rights Without Equality' (2005) 68 (2) *Modern Law Review*.
- Hosken, F.P. Women and Property – A Right Denied. (1984) 12 *Development Forum*.
- Jowell, J., 'Is Equality a Constitutional Principle?'. (1994) 47, 1 *Current Legal Problems*.
- Kaberry, P.M. 'Land Tenure among the Nsaw of the British Cameroon'. (1950) Vol. 20, No. 4 *Afrika*.
- Kaberry, P.M. 'Some Problems of Land Tenure in Nsaw', (1960) Vol. 21, No. 1. *Journal of African Administration*.
- Kofele-Kale, N. 'Asserting Permanent Sovereignty over Ancestral Lands: The Bakweri Land Litigation Against Cameroon'. (2007)13, 103 *Annual Survey of International and Comparative Law* pp 1-44.
- Lastarria-Cornhiel, S. "Impact of Privatisation on Gender and Property Rights in Africa'. (1997) 25(8) *World Development*.
- Manji, A., Gender and the Politics of the Land Reform Process in Tanzania, (1998) vol. 36, Issue 4 *Journal of Modern African Studies* pp 645-667.
- Matshilane M. "The Impact of the Constitution of the Republic of South Africa on Certain Selected aspects of Customary law of Succession". (2002) (1)58 *Speculum Juris*.
- Moon, G. and Allen, R., 'Substantive rights and equal treatment in respect of religion or belief: towards a better understanding of the rights, and their implications', (2000), *European Human Rights Law Review*.
- Moyo, S., 'African Land Questions, Agrarian Transitions and the State Contradictions of Neo-Liberal Land Reforms'. CODESRIA Working Paper Series, 2008
- Ngwasiri, C.N., The impact of the present land tenure reforms in Cameroon on the Former West Cameroon. (1984) No. 28, *Revue Camerounaise de Droit*, 73-85.
- Njuema, M.Z and Awasom, N.F., 'The Fulani and the Political Economy of the Bamenda Grasslands 1940-1960', (1990) 36 *Paideuma*,
- Nyamu, C. 'How Should Human Rights and Development respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?' (2000) 41 *Harvard International Law Journal* 381-417.
- Peters, P., 'Inequality and Social Conflict over Land in Africa'.

(2004) Vol. 4 (3) *Journal of Agrarian Change*.

Richardson, A. M. 'Women's Inheritance Rights in Africa: The Need to Integrate Cultural Understanding and Legal Reform'. (2004) 11 No 2 *Human Rights Brief* pp 1-19.

Sama-Lang, I. 'The Customary land law and Marginalisation of Women: Impediments to the Rural Woman's Access to Land in Anglophone Cameroon'. (2005) Vol. 5 No 1. *The International Journal Series on Tropical Issues*.

Shestack, J.J., 'The Philosophic Foundations of Human Rights, (1998) Vol. 20, 210 *Human Rights Quarterly*.

Tilley, J., 'Cultural Relativism', (2002) 22, *Human Rights Quarterly* pp 501-547.

Tripp, A.M. 'Women's Movements, Customary Law and Land Rights in Africa: The Case of Uganda'. (2004) (7) 4 *African Studies Quarterly*, pp 1-29.

Tumnde, M.S. 'The Participation of Women in Politics and Democratisation Process in Cameroon'. (1998) Vol. 1 No. 1 *Journal of Arts and Social Sciences*, pp 43-58.

Tsikata, D. 'Securing women's Interests within Land Tenure reforms: Recent Debates in Tanzania' (2003) 3(1-2) *Journal of Agrarian Change*, pp 149-83.

Western, P., 'The Empty Idea of Equality'. (1982) Vol. 95, No. 3 *Harvard Law Review*.

White, C.M.N. 'A Survey of African Land Tenure in Northern Rhodesia,' (1959) Vol. 11 No. 4 *Journal of African Administration*.

Whitehead A. & Tsikata, D. 'Policy Discourse on Women's Land Rights in Sub-Saharan Africa: The Implications of the Return to the Customary'. (2003) 3 (1-2) *Journal of Agrarian Change* pp 67-112.

Yahaya Muhammead, "The Legal Status of Muslim Women in the Northern States of Nigeria." (1987) *Journal of Centre of Islamic Legal Studies, ABU, Zaria*.

Yanou, M., 'Interstate Succession in Anglophone Cameroon; Problems and Prospects'. (1999) Vol. 4 No.1, *The Calabar Law Journal*.

Yanou, M., 'The Making of Valid Wills in Anglophone Cameroon: Problems and Perspectives'. (2002) Vol. 1 No 1, *Private Law Journal*

Yanou, M., 'The 1913 Cut-off Date for Restitution of Dispossessed Land in South Africa: A Critical Appraisal'. (2006) Vol.XXX1, No.3, *African Development*.

Yanou, M., 'Access to Land in Post-Apartheid South Africa: Implications for the South African Black Women'. (2006) Nos 1 & 2, *CODESRIA Bulletin* pp 61-65.

Yenshu, V.E. 'The Management of Ethnic Diversity in Cameroon: The Coastal Areas' in Formin, E.S.D. and Forje, J.W. (eds.). *Central Africa: Crises and Reform*. Dakar: CODESRIA Books pp 41-63:

Yenshu, V.E. 'Matriliney and Patriliney between Cohabitation Equilibrium and Modernity in the Cameroon Grassfields'. (2005) 26(3) *Africa Study Monograph* pp145-182.

Reports

Ayua, M. Land and Property Rights of Women in the Northern States of Nigeria, in *Women and Law in West Africa: Situational Analysis of Some Key Issues Affecting Women* (1998).

Bastiaensen, J. *et al*, Political Arena around Access to Land: A Diagnosis of Property Rights Practices in the Nicaraguan Interior. Discussion Paper 2006- 08, Institute of Development Policy and Management, University of Antwerp.

Beijing + 5, 'Political Declaration and Initiatives to Implement the Beijing Declaration and Platform for Action', June 2000.

Bettles, F.M., 'Women's Access to agricultural Extension Services in Botswana', paper prepared for the Ford Foundation Workshop on Women in Agricultural Production in Eastern and Southern Africa, Nairobi, Kenya, April 9-11, 1980.

Bennet, L., 'Legal Status of Rural Women: A Review of those Aspects of Legal Status Which Limit the Economic Participation of Women in Rural Development', Food and Agricultural Organisation, Human Resource institutions and Agrarian Reform Division, Rome (1979).

Bruce, John W. *Review of tenure terminology*. Madison: Land Tenure Center, University of Wisconsin. (Tenure brief; no. 1) (1998).

Conac, G. et Amor, A., 'Islam et Droit de l'homme. Préface de Ibrahim Fall', paris, Economica, 1994.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Cameroon. 08/12/99. E/C.12/1/Add.40. (Concluding Observations/Comments).

Diaw, M.C. 'Si, Nda Bot and Ayong: Shifting Cultivation, Land Use property Rights in the South of Cameroon'. Network Paper 21 e. London, ODI Rural Development Forestry Network.

ICESCR, General Comment 3, *The Nature of State parties obligations*. Compilation of general Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 (1994), para 11.

FIDA, Policy Brief, Women Land Rights in Proposed Land Policy Reforms (Unpublished) (2007).

Fonchingong, C., *et al.* "The World of Women's Social Protest Movements in Cameroon: A situational Analysis" in Yenshu, V., (ed) Civil Society and the Search for Development Alternatives in Cameroon: Empirical Studies and Thematic Reflections. Council for the Development of Social Science Research in Africa (CODESRIA, 2005).

General Recommendation No. 21 from the CEDAW committee (1994), 'Equality in marriage and family relations' (1994), A/49/38 paragraph 26.

Giovarelli, R. 'Women and Land, in Legal Impediments to Effective Rural Land relations in eastern Europe and Central Asia, 252, 259 (World Bank Technical Paper No. 436, Roy Prosterman & Tim Hanstad eds., 1999).

Goheen, M. 'The Earth shall give Judgment: Land Leadership and Political Legitimacy in Highland Cameroon'. Boston University, African Studies Center, Working Paper No. 143 (1989).

Gopal, G. 'Gender-Related Legal Reform and Access to Economic Resources in Eastern Africa', 10 (World Bank Discussion Paper No. 405, 1999).

Grassfield Participatory and Decentralised Rural Development Project (GP-DERUDEP). Baseline study of the NW Province, November 2006.

Hahn, N. D., 'Women's Access to Land', Land Reform – Land Settlement and Cooperatives 1982 – No.1/2. Food and Agriculture Organisation of the United Nations Rome 1982, 1-11.

Human Rights Resource Center, Module 9 Training Programme on Obligations of States and Non state Actors.

Ikdahl, I. *et al.* Human Rights, Formalization and Women's Land Rights in Southern and Eastern Africa. Studies in Women's Law No. 57. Institute of Women's Law, University of Oslo. Revised version of Noragric Report No 26, Norwegian University of Life Sciences (2005).

Kajoba, G.M., "Changing Perceptions on Agricultural Land Tenure under Commercialization among Small-Scale Farmers: the case of Chinena Village in Chibombo District (Kabwe Rural), Central Zambia," in The Science Reports of the Tohoku University, 7th Series (Geography), Vol. 44, No. 1. (1994).

Land Update, a Publication of the National Land Committee, No 61, August 1997, Rural Women, Making Gender Equality a Reality.

Logo, P. B. & Bikie, E. H., Women and Land in Cameroon: Questioning Women's Land Status and Claims for Change, 2003, *Planet Survey*.

Longwe, S. 'The Women's Empowerment Framework'. Women in development, culture and youth: Workshop preparatory readings 1-3 by Longwe, S. & Clarke, R: Reading 11.4 (1994).

National Commission on Human Rights and Freedom Bilingual Magazine, 'Born Free'. No. 015, January-March 2009.

Ngwasiri, C. 'Land Tenure Practices and their Implications for Natural Resources Management in Cameroon'. Paper prepared for a Seminar on Natural Resource Management in Cameroon (PVO-NGO/NEMS Project) at SA'A Cameroon, June 22-25 1995.

Rao, N. Women's Rights to land and other Productive Assets: Its impact on gender relations and increased productivity. Working Paper 4, IFAD-UNIFEM Gender Mainstreaming Programme in Asia. Unifem New Delhi (2006).

Serageldin, I., (1989). *Poverty, Adjustment and growth in Africa*. World Bank. A World Profile of the Status of Women. UN World Conference for Women, Copenhagen 1980.

Smith, D.N. & Meagher, R. F., *Law and the Development Practitioner*. USAID. December 1974.

Strickland, R.S. "To Have and to Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa." Working paper, International Center for Research on Women (2004).

The Buea Archive, File No 2114, QF/a1939/1: The Land Tenure in Cameroon.

The Buea Archive, File No 145/38, Qf/a1938/2b: Acquisition of Land by Native Administrator 1938.

The Buea Archive, File No 796/1922, Qf/a1922/1: Registration of Land Occupied by Native Aliens before the Native Courts 1922.

Tilly-Gyado, M., 'Inheritance and Administration of Estates – Northern Nigeria', in Women and Law in West Africa. Situational Analysis of Some Key Issues Affecting Women (1998).

United Nations Development Fund for Women, *Women's Land and Property Rights in Situations of conflict and reconstruction: A Reader Based in the 1998 Inter-regional Consultation in Kigali, Rwanda* (Kigali: UNIFEM, 2001).

United Nations, 'Programme of Action – Second Half of the UN Decade for Women: Equality, Development and Peace', 1980.

United Nations Research Institute for Social Development, 'Democracy, Governance and Human Rights Programme' Paper No 10, January 2003.

Wamai, N.E. 'Women and Poverty (Land rights and Ownership): A Policy Brief on the Kenyan Situation Prepared for the African Women's Rights Observatory', (AWRO, 2003).

Watchter, D. 7 English, J., 'The World Bank's Experience with Rural Land Titling' (World Bank Environment Department, Divisional Working Paper No. 1992-35, (1992).

World Bank, *World Development Report 2006: Equity and Development* (New York: World Bank and Oxford University Press, 2005).

Zziwa, S. 'Gender Perspectives on Land Ownership and Inheritance in Uganda'. Access to land and Other national resources in Uganda: Research and Development project, Research, Makerere University Kampala and the Land Tenure Center, University of Wisconsin, Madison.

Thesis and Dissertation

Howard, J. A. 'Customary law of Marriage and Succession among the Kom of Cameroon'. Ph.D Thesis, University of London, 1972 (Unpublished)

Molua, H.N., *The Bakweri Land Problem 1884-1961: A Case Study*, M.A. Thesis, University of Ibadan (1985).

Mope, S. 'Gender Agro-Pastoral Production and Class Information in Bamunka, North Western Cameroon' Ph.D Thesis No. 4 School of Development Studies, University of East Anglia (UEA) Norwich, Britain (1992).

Tah, Z. N., *The Effects of the Cameroon 1974 Land Ordinances*. Ph.D Thesis, The American University Washington D.C. 1980.

Tarkang, M.L., 'Property Acquisition and Ownership Amongst the Bakweri People of Cameroon'. LLM Thesis, University of Ahmadu Bello, Zaria Nigeria 1992.

Nzalie, J. E. 'The Structure of Succession Law in Cameroon: Finding a Balance Between the Needs and Interests of Different Family Members'. Ph.D Thesis in the University of Birmingham October 2008.

Tawah, C.C., 'Private Land Ownership in Cameroon'. LLB Mèmoire, University of Yaounde, (1977).

Ufon, B., (2004) 'Farmer-Grazier Conflict and Womens Agricultural Productivity in Cameroon grasslands: Case of Wum, Menchum Division, Northwest Province. Postgraduate Diploma dissertation, Dept.of Women and Gender Studies, University of Buea Cameroon (Unpublished)

Internet Sources

Adam H. Bakari, 'The legal status of a widow under family and social security laws in relation to succession and inheritance' (1997). Available at www.giga_hamburg.de/openaccess/.../1997_3/giga_as_1997_3_sappel.pdf. (Accessed on 17/9/2010).

Bartlett, K. T. and Harris, A. 'Gender and Law: Theory, Doctrine, Commentary, 101-1-2 Unit 2-Formal equality (1998)'. Available at www.academic.udayton.edu/Gender/02Unit/index.htm (Accessed on 29/04/2010).

Dolhenty, J., 'John Locke': A Philosophy of Freedom and Natural Rights. Available at <<http://www.radicalacademy.com/lockebio.htm>>. (Accessed on 29/11/09).

Locke, J. *The Second Treatise on Civil Government and A Letter of Toleration* (Hollis ed.) [1680]. Available at http://en.wikipedia.org/wiki/Two_Treatise_of_Government. (Accessed on 29/11/09)

Logo, B. & Bikie, E. 'Questioning Women's Land Status and Claims for Change'. <http://www.law.emory.edu/wandl/WAI-studies/Cameroon.htm> (Accessed on 15/11/09).

Marx, K., *The Civil War in France in Selected Works, Vol. II*. Available at <http://www.marxists.org/archive/marx/works/sw/progress-publishers/one-volume.htm> (Accessed on 29/11/09).

Karl Marx and Frederick Engels, (1848). 'The Theory on Law and Social Class Interest', Available at http://en.wikipedia.org/wiki/class_struggle. (Accessed on 17/12/2009).

[http://en.wikipedia.org/wiki/southwest-region-\(Cameroon\)](http://en.wikipedia.org/wiki/southwest-region-(Cameroon)). (Accessed on 14/01/2010)

<http://www.ccppcj.ca.e.rights.rights-charter.shtml>: Rights Our Equality Rights in the Charter. (Accessed 02/06/2009).

Savigny, *Possession* (Translated by Perry, 1848). <http://www.amazon.com/savignys-Treatise-possession-possession-civil/dp/1584772891> (Accessed on 7/01/2010).

Kameri-Mbote, P. Gender Issues in Land Tenure under Customary Law. http://www.capri.cgiar.org/wp/..%5Cpdf%5Cbrief_land-05.pdf (Accessed on 25/11/2009).

Ufon, M. B. 'Gender and the Land Question in the Cameroon Grasslands (2006). Available at <http://africafiles.org/article.asp?ID=12408>.

http://www.landcoalition.org/cd_ILC/cd_commons/doc_case/CPR07_Case05_Cameroon_Mala_et_al.pdf.

<http://www.law.emory.edu/wandl/WAI-studies/Cameroon.htm> (Accessed on 15/11/09).

<http://www.everyculture.com/Bo-Co/Cameroon.html> (Accessed on 14/12/2009).

<http://www.jus.uio.no/ior/kvretten/english/index.html>. (Accessed on 11/01/2010)

Human Rights, Formalization and Women's Land Rights in Africa. Available at <http://www.jus.uio.no/ior/kvretten/english/index.html>. (Accessed on 11/01/2010).

http://en.wikipedia.org/wiki/international_Covenant_on_Economic,_Social_and_Cultural_rights. (Accessed on 20/01/2010).

Property Rights as Human Rights, available at http://en.wikipedia.org/wiki/Human_rights_in_switzerland.

<http://www.un.org/womenwatch/daw/cedaw/30sess.htm> accessed on 28/04/2010.

www.academic.udayton.edu/Gender/02Unit/index.htm (Accessed on 29/04/2010)

www.evene.fr.wikipedia.org/wiki/Auguste_Comte.

<http://www.ccppcj.ca/e/rights-charter.shtml>

<http://www.blackpastorg/?q=gah/aba-womens-riots-november-december-1929>.

CODESRIA LIBRARY

Appendix II

QUESTIONNAIRES

Dear Respondents,

I am a Ph.D student in Law at the University of Buea carrying out research on the topic *The Concept of Equality and Access to Land: The Case of the Anglophone Regions of Cameroon*. In this regard, I will be grateful if you kindly assist me in this task by responding to these questions. The responses which shall be treated as confidential are to be used exclusively for academic purpose.

Section A: Demographic Information.

Please tick (x) on the right answer in the boxes provided.

1. What is your sex: Male Female.
2. Age Group: 20-29, 30-39 40-49 50 and above.
3. Marital status: Married, Single, Widow, Divorce, Separated.
- 4.. State your Division and Region of Origin:a) Division_____ b) Region _____
5. What is your occupation: _____

Section B: Access to Land

- 1) Why do people need land? _____

- 2a.) In your area, who makes use of the land most: men women
- b.) Why? _____

- 3a) Who access land most: Men Women
- b) Why? _____

4) How was your village land acquired? By: Conquest First Settlement
 Inheritance Land Restitution.

5 a) Did both men and women participate in the acquisition? Yes No

b) Why? _____

6a) What form of access to land predominates in your area Individual
 Communal

b) Why? _____

Section C: Access to Land and Conflicts in the Regions

1a) Is there a link between the conflict over access to land and previous dispossession of indigenous peoples? Yes No

b) Why: _____

c) How: _____

2) Explain if there are any elements in those conflicts relating to women?

3) What is the impact of land conflict on women?

4) Give some examples of conflict on access to land in:

a) South West Region: _____

b) North West Region: _____

5) Do women report these conflicts over access to land? Yes No

6a) If women do, to who do they usually take their complaints to (tick 2) Chief D.O Court Police

b) Are their complaints taken seriously by these authorities Yes No
Explain _____

c) If women do not report these cases, why do you think they do not?

7) What possible solutions can be adopted to prevent marital conflict over property ownership? _____

8a) Apart from the laws, what other mechanisms are set up by the government in resolving land dispute _____

b) How effective are these mechanisms _____

D) Access to Land under Customary Law

1) Are there any discriminatory gender elements with regards to access to land under customary law? _____

2a) Who inherits land in your area men women

b) Why _____

3) What are some of the impact of discriminatory rules for accessing land in your region? _____

- 4a) Who will you prefer to inherit your land? son daughter
 both

b) Why _____

E) Access to Land under Statutory Law

1a) What is land registration _____

b) What is the importance of land registration _____

c) Have you registered land in your name? Yes No

2) Mention some of those restrictions people face in registering land in their names

3a) Does education play a role in access to land Yes No

b) How? _____

4) Does the perception of poverty in your area have any link to landlessness?

5a) Which group of women register land most Urban women rural women

b) Why is it this group? _____

6) Why is land registration by women stringent? _____

7) How effective is the 1974 Land Ordinance in safeguarding equal access to land in your area _____

8) Does Cameroon law allow married women to access land without the husband's consent Yes No

- 9a) Which regime of property ownership do you prefer Joint ownership
 Separate
- b) Why? _____

- 10) What problem do women face in accessing land under statutory law

- 11a) Should women and men have equal rights to access land Yes No
- b) Why? _____

- 12) How does restricted access to land affect the status of women in the society?
- a) Economically: _____

- b) Socio-culturally _____

- c) Politically _____

- 13) What can the woman do to improve on her rights to access land?
- a) Women: _____

- b) Men: _____

- 14) What institutional measures do you propose the government to use to better safeguard equal access to land in the regions. _____

Thank You
Sone Patience

Interview Guide

- How is equal access to land construed in Anglophone Cameroon?
- How many women and men have acquired land in your region from January 1980 to June 2010.
- What are those challenges that women face in accessing land (through purchase and inheritance) in your tribe or region?
- How effective are the statutory laws in curbing discrimination against women with regards to access to land in the country?
- What is the impact of the restriction on women's right to access land on the socio-economic development and peace in the region?
- Apart from legal measures, what other measures can be adopted by the state in order to ameliorate the problem of unequal access to land?