

Large Scale Land Acquisition and the Violation of Local Communities' Substantive Rights in Cameroon: The Need for a Rights-Based Approach to Land Governance

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Abstract: The Violation of human Rights as a result of Large-scale land Acquisition practice in Africa and Cameroon in particular is a perennial concern for local communities. This article explores the human rights impacts of large-scale land acquisition on Local Communities' Substantive Rights in Cameroon and discusses ways of ameliorating its effects. The article begins by examining substantive rights relevant to the practice of large-scale land acquisition at stake and demonstrates how large scale land acquisition practice in the country undermines substantive rights of rural communities, including land right, right to food and environmental rights in Cameroon based on published materials such as reports, textbooks thesis and journal articles. Next, the article stresses the need for the proper implementation of the procedural rights aspect of a rights-based approach to large-scale land investment governance in the country to achieve a win-win outcome. The last section dwells on conclusion and recommendation.

Keywords: Large Scale Land Acquisition, Rights- Based Approach, Governance, Cameroon.

1. Introduction

The late 2000s have witnessed a surge of foreign direct investments in the agricultural sector of developing countries.¹ The main driver of this surge is diverse and complex, but it can be linked to the rise in commodity prices between 2007 and 2008.² This rise in food prices prompted countries that are heavily dependent on food imports such as China, United Arab Emirate and Saudi Arabia, to invest in countries where land and other natural resources were 'abundant' with a view of securing their future food supply.³ Coupled with high energy prices and the move to renewable sources of energy, this has triggered an increase in foreign investment in the production of feedstock crops for biofuels.⁴ Other drivers of this surge in investment in the agricultural sector include the continuing rise in global population with a Population prediction of 9 billion by 2050,⁵ expectations of future rising prices, increase of consumption rates and demand patterns for food, biofuels, and raw materials.⁶ Cameroon has been chosen for these large-scale deals considering availability of cheap labor and arable land, and the government's support of such investments. The Cameroonian government has welcomed these large-scale investments with the expectation that it would boost productivity, provide job

¹ Food and Agriculture Organization of the United Nation (FAO). Trends and Impacts of Foreign Investment in Developing Country Agriculture: Evidence from Case Studies. Rome (2013) P 1-378 P 3 available at <https://www.ask.com/web?qo=extentionSearchBox&o=1474130&ad=semA&q=FAO+the+trends+and+impacts+of+foreign+investment+in+developing+country+agriculture.accessed> 21/09/2021

² Mewanu JMN Who is Not at the Table: Land Deal Negotiations in Southwestern Cameroon PhD dissertation, Iowa State University Capstones. (2016). p 8

³ Cotula, L. The Great African Land Grab? Agricultural Investments and the Global Food System. New York: Zed books 2013. p 1-238 p 8

⁴ *ibid*

⁵ Food and Agriculture Organization of the United Nation (FAO). Trends and Impacts of Foreign Investment in Developing Country Agriculture: Evidence from Case Studies. Rome (2013) P 1-378 P 3 available at <https://www.ask.com/web?qo=extentionSearchBox&o=1474130&ad=semA&q=FAO+the+trends+and+impacts+of+foreign+investment+in+developing+country+agriculture.accessed> 21/09/2021

⁶ *ibid*

opportunities and transfer technologies to local farmers.⁷ However, critics are more concerned about human rights impacts of such investments on local community substantive and procedural rights. For the sake of brevity this article examines just relevant substantive rights at stake notably the right to land, right to food and environmental rights.

2. Substantive Rights Relevant to the Practice of Large-Scale land Acquisition at Stake

2.1 The Right to Land

Despite the misconception that no international human right law recognizes the right to land, it is acknowledged under several international and regional human rights instruments as an implied right.⁸ The right to land features prominently in the Declaration on rights of indigenous people in its article 10.⁹ At the regional level, the right is guaranteed under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa¹⁰ in article 19.¹¹ Collectively, these provisions reinforce people's right to land and bestow an obligation on state parties, including the government of Cameroon, to ensure that the right to land is guaranteed. In Cameroon, although the constitution lacks clear provision on right to land, the right could be enforced implicitly as part of other rights protected by the constitution¹² and other enabling land legislations like Ordinance No. 74-1 of 6th July 1974,¹³ Ordinance No. 74-2 of 6th July 1974¹⁴ and Ordinance No. 74-3 of 6th July 1974,¹⁵ This right to land includes right to acquire land without payment, right to not be evicted from possessions, right to use land for agricultural production without time limitation, the right to transfer their land use rights to family members through inheritance or donation, and the right to rent up to half of their land holding to other persons.¹⁶ Against these constitutional and international frameworks on right to land, the practice of large-scale land acquisition seriously undermines land right of local community and indigenous people in Cameroon. To illustrate, it has been reported that large-scale land acquisition has led "to forceful displacement."¹⁷ In Pendamboko for example, most natives complained that they could barely have land to grow any crop as CDC plantations have taken over most lands.¹⁸ The Chief of Pendamboko affirmed the problem of land scarcity pointing out that there is no land left to farm, build, and expand or even to bury their dead as everywhere is covered with rubber trees and only the swampy areas are left for the women to cultivate. Generally, the marginal land left for women did not prove to be sufficient in sustaining their families and communities, forcing some villagers in Talangaye to abandon the villages because of landlessness and poverty also it is reported that Hundreds of natives in Malende-Fako have also been forced to illegally occupy CDC land in their quest for farmland. Unfortunately, they are always driven out by the CDC surveillance Committee fighting against illegal occupation of CDC land.¹⁹

⁷ Njeng C.D rights based approach to large scale land acquisition and its implications on rural communities in Cameroon: the case of Cameroon Tea Estate Ndu. PHD dissertation university of Buea 2021.P 2

⁸ Tura, H.A "Land rights and land grabbing in Oromia, Ethiopia" land use policy, vol 70.(2018) p247- 255, p255.

⁹ Cameroon like the vast majority of African countries voted in favour of the adoption of the Declaration on right of indigenous peoples.

¹⁰ Signed by Cameroon on 25 July 2006

¹¹ See art. 19 (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,

¹² Paragraph 19 states that ownership shall mean the right guaranteed every person by law to use, enjoy and dispose of property (land). No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law

¹³ To Establish Rules Governing Land Tenure

¹⁴ To Establish Rules Governing State Lands

¹⁵ To Establish procedure Governing expropriation of lands for public purpose, that has been repealed by Law No. 85/09 of 4/7/1985 to lay down the procedure governing expropriation for public purpose and the conditions for compensation.

¹⁶ See section 2 of Ord. No.74-1/74 (All private titled land; that is land with land certificates which are equivalent to freehold lands).

¹⁷ Fonjong, L., Sama-lang, I., Fombe, L. and Abonge, C. Interrogating large scale land acquisition and its implications for women's land rights in Cameroon. Final Technical Report, Project No. 107590-001, University of Buea. (2017) p 105

¹⁸ *ibid*

¹⁹ *ibid*

2. 2. The Right to Food

The right to food is clearly recognized as a human right under various international instruments ratified by Cameroon.²⁰ At the regional level, the right to food is guaranteed under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa²¹ within the context of women's right to nutritious and adequate food.²² Collectively, these provisions reinforce people's right to food and bestow an obligation on state parties, including the government of Cameroon, to ensure that the right to food is guaranteed. In Cameroon, although the constitution also lacks clear provision on right to food, the right could be enforced implicitly through the instrumentality of international human right instruments ratified by the country²³ such as the ICESCR.²⁴ This suggests that one could rely on these international and domestic instruments to assert one's right to food. Against these legal frameworks, it is reported that large-scale land transfer in Cameroon displaces poor and vulnerable populations, which in turn exacerbate poverty and food insecurity, it snatches away fertile land ideal for cultivation from the farmers and curtails their ability to feed themselves.²⁵ Moreover, forest clearing for agricultural purposes has further undermined food security as resources like nuts; seeds, fruits, and wildlife provide sources of food when harvests fail.²⁶ To illustrate, it has been reported that the acquisition of land by SG-SOC²⁷, CDC²⁸, PHP²⁹ and PAMOL³⁰ in Kupe Muanengouba, Ndian, Mungo and Fako Divisions, particular, has led to Loss of livelihood. Before the acquisition, the harvesting of local products such as bush mango, eru, ngabi oil, njansa etc was the main livelihood activity carried out on the land acquired for these plantations.³¹

2.3 Environmental Rights

Despite the absence of an international human rights treaty proclaiming right to clean and healthy environment,³² the right is clearly recognized under the Declaration of Right of Peasants.³³ At the regional level, environmental rights are guaranteed under the African charter on human and people's rights of 1981.³⁴ In Cameroon, the constitution guarantees every person a right to a healthy environment³⁵ as well as Law No 96/12 of 5 August 1996 Relating to Environmental Management.³⁶ However, large scale land investment has seriously affected the environmental rights of local communities in Cameroon. To illustrate there have been reports about the potential environmental damage resulting from large-scale land investment in the PHP Penja which includes destruction of soil fertility, loss of biodiversity and draining of wetlands, air and water pollution, spread of invasive alien species, and toxic wastes.³⁷ Aggressive use of fertilizers and other chemicals by large-scale agricultural investors are reported to also effects on the environment.

²⁰See UDHR, art 25; ISECR, art 11

²¹ Signed by Cameroon on 25 July 2006

²² See art. 15 (a) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

²³ para 5 of the Constitution "affirms the country's attachment to the fundamental rights and freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights, and all ratified international conventions relating thereto"

²⁴ Cameroon adhered on the 27 June 1984.

²⁵ Fonjong et al *op- cit* note 26 p 104.

²⁶ Oakland Institute (n.13). available at <https://www.oaklandinstitute.org/> accessed 21/08/2020

²⁷ Sithe Global Sustainable Oil Cameroon

²⁸ Cameroon Development Corporation

²⁹ Plantation de Haut Penja

³⁰ Plantation Pamol du Cameroun

³¹ Fonjong et al *op- cit* note 26 p 104.

³² Dabala A.B large scale land acquisition and human rights at the cross road: quest for a rights based approach to land to land administration in Ethiopia. Journal of Sust. Dev. Law and Policy vol. 10: no 1&2(2019) p 185- 206. P196.

³³ See Article 18 of the Declaration of Right of Peasants

³⁴ see article 16 and 24 of the African Charter on Human and Peoples Rights

³⁵ See para 21 of the 1972 constitution of Cameroon.

³⁶ Law No 96/12) was enacted specifically to regulate environmental protection.

³⁷ Fonjong et al *op-cit* note 65 p 108

2.3 The relevance of implementing the Procedural aspects of a rights based approach(RBA) to Large Scale Land Acquisition(LSLA) Governance in Cameroon

Given the existing human right impacts of large-scale land investment local communities' substantive rights in the country as discussed above, it is extremely useful and workable to properly implement the procedural aspects of a rights-based approach to large-scale land investment governance in the country. This is because adherence to an effective implementation of procedural right to public participation, prior informed consent, access to information and justice as well as effective remedy for violations of rights in the course of large scale land deals are at the heart of rights-based approach to large-scale land investment governance.³⁸ Effective implementation of these procedural rights is important not only as an end in themselves but also as a means to safeguard substantive rights of affected communities. For instance, adherence to a the procedural aspects of a RBA to LSLA, expressed in the guise of the right to access to information, could significantly contribute to guiding the laws, policies and processes of LSLA land deals in Cameroon through measures that compel the government to ensure that the public has access to contractual information about land deals.³⁹ This is motivated by the consideration that people need a thorough understanding of all proposed LSLA activities, which they can gain from receiving relevant information from the state at the time a deal is being negotiated; this is necessary if they are to be able to identify threats by themselves in those proposals, and propose changes that would need to be made in the deals so that they are not to be prejudiced by them.⁴⁰

This requires the government of Cameroon to inform the public periodically about such deals and their potential impact on local communities' rights and freedoms, to establish and publicize through the media a database for LSLA land deals in an official government website, and to create an appropriate platform and mechanisms to promote and enhance public awareness among local communities about proposed LSLA land deals.⁴¹ This could require and possibly compel the government of Cameroon to provide a platform that permits and encourages local communities and other interested and affected parties to articulate their interests, with the ultimate aim of seeking their protection during the decision-making processes of LSLA land deals,⁴² and to create both formal and informal institutions responsible for ensuring, promoting and enforcing transparent and accountable LSLA decision-making processes through effective public participation. Conversely, without strict adherence to an RBA to LSLA, where local communities are provided with an opportunity to make informed decisions on an activity that has a direct bearing on their rights and freedoms, these rights and freedom cannot be properly respected, protected and fulfilled when LSLA occurs.⁴³

2.6 Conclusion

From the analysis of the relevant international, regional and domestic instruments, the Government of Cameroon has an obligation to respect, protect and fulfill local communities' rights generally and particularly, within the context of large-scale land acquisition. So, it is appropriate for the government of Cameroon to ensure that the regulation and implementation of large-scale land acquisition follows the precepts of international human rights instruments to the letter, in order to ensure that the rights of local communities are respected, protected and fulfilled as they should be. Yet this article confirms that large-scale land investment in Cameroon operates at the expense of the local community's substantive rights, including land right, right to food and environmental rights. From the discussion in this article, it appears that Cameroon's legal

³⁸ Dabala A.B *op-cit* note 32 at p 202

³⁹ Ashukem JNC A Rights-Based Approach to Foreign Agro-Investment in Cameroon: Enhancing the Protection of Local Communities' Rights. *Journal of African Law* Vol 63 issue 2, (2019) p 163-191at p 178

⁴⁰ *ibid*

⁴¹ Ashukem JCN "Included or excluded? An analysis of the application of the free, prior and informed consent principle in land grabbing cases in Cameroon" *Potchefstroom Electronic Law Journal* vol 19 n. 1(2016) 12-39 p 22

⁴² Mope JAS "Land grabbing and social peace-building issues in Cameroon: Case study of the role of elites in land deals and commoditisation in the northwest region" paper presented at the international conference on global land grabbing(2011)available at <https://www.future-agricultures.org/news/land-grabbing-governance-and-social-peace-building-issues-in-cameroon-case-study-of-the-roles/> Accessed25/09/2021.

⁴³ Ashukem JNC *op-cit* note 144 at p 179

framework does not sufficiently provide for proper enforcements of substantive rights and implementation seems to be a major concern. In this light the following recommendations can be advanced.

2.7 Recommendations

- The government should put in place laws, regulations, directives or clauses in lease agreement addressing large-scale land investor's obligation regarding environmental standards, and human rights obligation in general.
- The government should facilitate effective monitoring and dispute resolution mechanisms and empower local community and other stakeholders to safeguard the rights of affected community members.
- The Free, Prior, Informed Consent (FPIC) must also be implemented in particular in cases involving the acquisition of the land of rural communities.

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