

The Right Honorable President of Senate,

The Right Honorable Speaker of the National Assembly,

The President of the Economic and Social Council,

The Prime Minister, Head of Government,

The Minister of State, Minister of Justice, Keeper of the Seals,

Members of Government here present,

The Dean of the Diplomatic Corps,

The Interim President of the Cameroon Bar Association,

The President of the National Chamber of Sheriff-Bailiffs,

The President of the National Chamber of Notaries Public,

The city Mayor of Yaounde,

Ladies and gentlemen,

Members of the Supreme Court, through my modest voice, appreciate your presence at this Solemn re-opening Session of the Supreme Court, despite your very busy schedules. You are warmly welcome.

This year, on the occasion of the solemn re-opening of the Supreme Court, we have chosen, to share with you a theme pre occupying our citizens, economic operators, financial institutions and investors:

It consists of : The **Diminishing value of land certificates in Cameroon.**

A decade ago, the Procureur General Martin RISSOUK A MOULONG, an icon of Cameroonian Magistracy, during a similar occasion in 2012, focused attention on the consecration of land tenure rights in Cameroon ⁽¹⁾. He foreshadowed, the impending doubt on the possible strength of the certificate enshrining the ownership of real estate in Cameroon.

Today, we are right to question if land certificates are still an indisputable proof of real estate ownership in Cameroon ⁽²⁾?

In their research in the domain of landed property, Professors **Stanislas Melone⁽³⁾**, **Paul Gérard Pougoue⁽⁴⁾** and **Dieudonné Alexandre Tjouen⁽⁵⁾**, prolific authors in this domain, when criticising the Torrens system inherited from the colonial era, magnified the value of land certificates, as a legal instrument consecrating real property ownership.

They rightly handed down to generations of students in our universities the definition of land certificate as: **“the official certification of real property rights; it is unassailable, inviolable, and final”**.

This definition is in line with the law.

In its preamble, the revised constitution of 18 January 1996 consecrates among others, real property rights when it provides:

1) RISSOUK A MOULONG (M), Consecration of tenure rights in Cameroon, Solemn reopening 2012.

(2) TADJUGE Willy, The demystification for obtaining land certificates in Cameroon. March 2008

(3) MELONE (Stanislas), *La parenté et la terre dans la stratégie de développement au Cameroun*, Paris 1972

(4) POUGOUE Paul-Gérard : *La famille et la terre*, Essai de systématisation du Droit privé au Cameroun. Doctorate thesis, Bordeaux 1977.

(5) Tjouen Alexandre Dieudonné, *Droits domaniaux et techniques foncières en Droit camerounais*, Economica Paris 1982.

“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”.

Section 1 of **Decree No. 76/165 of 27 April 1976** to lay down the conditions for obtaining land certificates, amended and supplemented by **Decree No.2005/481 of 16 December 2005** provides that **“The land certificate is the official certification of real property rights.”**

Subject to the provisions of Section 2 (3) and 24 of this Decree, land certificates shall be unassailable, inviolable and final” ⁽⁶⁾.

From these provisions of the law, arise the three fundamental characteristics of a land certificate:

- Unassailable: it cannot be contested, once it is issued;
- Inviolable: it cannot be modified , except in the event of rectification;
- Final: It is issued once on the land concerned, it cannot be subjected to prescription and does not accept competing titles.

These provisions of the law give strong value to land certificates. It is required not only *ad probationem*, meaning to be proof ownership of the

(6) – Article 2 paragraph 3: “However, the minister of Land affairs may, in the case of fault of the administration , particularly due to irregularity in the procedure for obtaining land title, and in view of authentic products process withdrawal of land titles issued irregularly.”

--Article 24 of the Decree cited: “the resolution of the sale of a building involves the transfer of title issued to the purchaser on behalf of the original owner. The action is brought before the civil court of the location of the building.

property, but also *ad validitatem*, meaning to render its ownership right indisputable to all.

Obtaining a land certificate for a piece of land, is a major event in life and even in the family of the beneficiary of this “treasure”.

The holder of the land certificate was, to borrow from an author, compared to “**amini absolute monarch in his kingdom**”.

For some years now, the land certificate is losing its value and is subject to unjustified trivialisation.

We have tried to decipher factors favouring such decay in value, before envisaging in a prospective vision, the means and ways of redeeming the land certificate to its initial value.

Your Excellencies, Ladies and Gentlemen

What are the main factors that diminish the value of land certificates in Cameroon?

Multiple factors weaken the sanctity of land certificates. We shall be limiting ourselves only to the most reoccurring factors.

Primo, the diminishing factors relating to registration procedures.

In Cameroon, land certificates are obtained for pieces of land on national land, either by direct registration, or by indirect registration,⁽⁷⁾.

(7) – Direct registration is carried out when we are in the presence of national domains of the first category (land occupied and exploited).

- indirect registration is carried out when we are in the presence of second degree national domains (large unoccupied pieces of land)

In either case, the procedures could be rigged with irregularities: of fraud and forgery in complicity with administrative servants in charge of registration.

We sometimes witness the refusal to make good usage of computerisation and the Global Positioning System (GPS) ⁽⁸⁾, the issuing of two, or even three land certificates on the same piece of land and in the manipulation of cadastral data by surveyors though sworn-in.

The uncoordinated attributions of state land to private individuals and the uncontrolled sale of state buildings diminish the private property of the state. These mishaps here are likely to constitute the offence of misappropriation of public property.

We can also note the horrible cacophony in the rhythm of withdrawal of land certificates. A land certificate is withdrawn, then re-established, then withdrawn once more, then re-established a second time, withdrawn a third time and re-established a third time. Don't we often say the administration should not contradict itself?

No human work is perfect. Mistakes are thus human. But persistence in error is diabolic. « Errare humanum est, perseverare diabolicum ». These blunders by the administration cause enormous hardship to citizens.

(8) Global Positioning System – Système Mondial de Positionnement satellitaire.

Land certificates established under these conditions have very limited life spans. We can even say that these land certificates are often “**Still-born**” ⁽⁹⁾

It is the same for expropriations destined for public purposes without prior compensation. This often traumatises citizens who were assured in the land certificate of their property rights. Law No. 85-09 of 4 July 1985 to lay down the procedure governing the expropriation for public purposes and conditions for compensation, prescribes the principle of prior compensation, except in cases of extreme emergency.

Deuxio, Courts also play an important role in diminishing the value of land certificates. The settlement of land disputes is divided between administrative authorities under the control of Administrative Courts and ordinary law courts.

We shall start with Administrative Courts which were created by **Law No 2006/022 of 29 December 2006** in each region of Cameroon, with the objective of bringing justice closer to litigants.

The abovementioned law grants jurisdiction to Administrative Courts to sanction the faults of administrative officials during the registration procedure. We are referring to faults of the administration committed via administrative officials. These acts carried out constitute unilateral administrative faults as was held in the case of **Ngongang Njanke**

(9) They will surely be withdrawn or cancelled. From the beginning they already carry the germs of their destruction.

Martin against the State of Cameroon ⁽¹⁰⁾. This is true for direct and indirect registration ⁽¹¹⁾.

In the management of cases relating to land certificates, Administrative Courts generally perform this task with dexterity and insight. Consequently, the Supreme Court is no longer choked with land cases.

We however observe some excesses from Administrative Courts. We can cite the example of annulment of land certificates issued from private property sales established by notarial deeds.

It is true that the land registry intervenes in the case of transfer of land certificates or the partitioning of land certificates and in so doing can make mistakes.

In such a case, the annulment of the land certificate does not lead ipso facto to the cancellation of the notarial deed of sale, which is still valid and can only be cancelled before the ordinary law court.

We can equally mention the annulment of collective customary land certificates due to a member's lack of capacity and the replacement of the disqualified member.

Should we be reminded here that after the annulment of a land certificate issued after direct registration, the piece of land is reinstated into national land; the land certificate cannot be rectified by the substitution of name, or be partial revived. The procedure needs to be recommenced for a new land certificate to be issued.

(10) Ruling N°20 of 20 mars 1968, in this ruling, the Full assembly of the Federal of justice gives the following definition of the unilateral administrative act : « The unilateral administrative act is used by an administrative authority in the course of using an administrative power and creating rights and obligations for individuals ».

(11) In the case of a grant, the administration can also make errors.

We can equally mention, the invalidity of land certificates issued more than 50 years ago by Administrative Courts on fallacious grounds or the Administrative Court passes an injunction order to stop work on such a piece of land whose land certificate is disputed.

What will be the fate of a foreign investor who would have accepted such a land certificate as contribution from a Cameroonian in the creation of his business in Cameroon. After the suspension or annulment of the land certificate, what becomes of the mortgage that was given to the bank to guarantee a loan? These are cases of judicial insecurity.

Furthermore, Administrative Courts systematically extend the cancellation of the main land certificate, to the derived land certificates. This is not always a logical reflex. Derived land certificates have been obtained from the main land certificate after notarial sales and their validity is not tarnished with any irregularity. This automatic nullity extension needs some reflection. This annulment generally leads to third party opposition procedures.

It should be noted that, poor judgments of ordinary law courts have an impact on land certificates.

The same is true of the bizarre role of court rulings that prescribe the registration of judicial pre-notation orders on the land certificate or other court rulings prescribing the sales of joint properties outside the framework of their partitioning provided by **Sections 1886 and following of the Civil Code**. One can also mention the proliferation of applications for the issuance of duplicate land certificates.

Some civil courts annul notarial deeds of sales of immovable property, as well as land certificates, without considering the fact that the notarial deed is valid until registration of forgery. Even if the deed of sale is annulled, the role of the civil judge is not to cancel land certificates.

Diminishing value of a land certificate is also caused by the poor management of mortgages by financial institutions.

Many microfinance institutions grant loans to their clients, without a mortgage agreement drawn up by the notary public. They merely collect the land certificate of the debtor and keep as collateral for the loan. It could equally be the land certificate of a relative or a friend of the debtor. This practice is not in accordance with the OHADA Uniform Act on Securities. We do not know how they succeed in selling these properties used as collateral. This can only be possible with the use of fraud.

For classical banks, the termination of mortgages agreement using foreclosure affects the land certificates of the mortgagors.

It could happen that only a spouse signs the mortgage agreement concerning a joint property. Section 250 of the Uniform Act organizing simplified recovery procedures states that: «The ***forceful sale of joint real property shall be pursued against both spouses.*** »The consequence should be the possible annulment of the agreement.

Sometimes, the land certificate is not given back to the mortgagee after the repayment of the entire loan ⁽¹²⁾.

There is equally abusive foreclosure of the mortgage when the bank proceeds with the seizure of the property of the mortgagor that it sells at 100.000.000 FCFA for the refund of a loan worth 6.000.000 FCFA while the above mentioned property fetches rents of 500.000 FCFA per months ⁽¹³⁾. Article 265 of the Uniform Act organizing simplified recovery procedures in this case provides that the mortgagee creditor should recover his debt by receiving the rents.

The bank loan should not become a real trap to the borrower mortgagor. The objective of the bank should be the recovery of its debt and not the fore closure of the mortgage, at all cost.

Apart from the aforementioned factors, other causes that diminish the value of land certificates are made up of legislative and regulatory shortcomings.

Looking at the procedure of direct registration of land, the use or exploitation of land by the applicant before 5 August 1974 is a legal anachronism. In basic terms, nowadays, the applicant for direct registration should be between the ages of 70 and 75 years, and its occupation should exist since 48 years. The applicants are obliged to use as nominees their aunties, uncles, fathers, mothers, grand-mothers,

(12) Owners of land titles apply to courts to ask for penalties to be pronounced against the creditor after every lateness in the restitution. They can also apply to the penal judge for retention without any right on someone's property.

(13) Article 265 of the uniform act organizing simplified recovery procedures says to the debtor that he can recover his debt by collecting rents during two years.

grand-fathers to pretend they abide with the law. This practice is fraudulent.

Still in the domain of direct registration, **Section 2 of Decree No. 76/165 of 27 April 1976** amended and supplemented by **Decree No 2005/481 of 16 December 2005** in paragraph 6 states:

"Where several land titles are issued on the same land, in which case they are declared null and void, and procedures are reviewed to determine the rightful owner; a new land certificate is then drawn up in favor of the latter. "

Is it necessary to annul all the land certificates? Moreover, can the administration annul its own act? The withdrawal of the land certificate seems a better option than the annulment that should come from the administrative judge. In addition, the second land certificate can only be issued in the case of a fault of the administration. And this fault will be sanctioned by the withdrawal of the said land certificate. That is why an author wrote: ***"The fault of the administration undermines the value of this precious document named the land certificate»*** ⁽¹⁴⁾.

Article 2 of the aforementioned decree in its paragraphs 1 and 2 equally provides:

"(1) Any person whose rights have been encroached upon in consequence of a registration shall have no claim on the property; in the sole event of fraud, he shall take Personal action for damages

(14) The failure of the administration in the matter of land in Cameroun. 2008 D.E.A thesis, University of Yaounde.

against the perpetrator thereof. (2) The action shall be brought before the civil court of the area where the property is situated."

This legal provision, allows an expropriation in favor of a private individual and a simple compensation in terms of damages. It is the promotion of private justice.

It is clear from the causes that devalue land certificates that the ownership of property has been practically stripped of its characteristics. It is now attackable, violable, modifiable and precarious.

What can be done to give back to the land certificate its authenticity as a guarantee of real estate in Cameroon?

Your Excellencies, Ladies and Gentlemen

To rehabilitate the land certificate in Cameroon it would be necessary to neutralize all the factors that diminish the value of land certificates as seen above:

It is urgent to rid the registration procedure of all the obstacles that undermine it. A properly established land certificate has all the assurances of its credibility and is worth its weight in gold.

To achieve this, the staff of The Ministry of State Property, Surveys and Land Tenure must be better equipped. There is even a need to rebuild the capacities of this personnel and to train specific senior staff in land matters.

A rigorous supervision by the administrative authorities of the Land Consultative Board should be considered. These commissions must,

now more than ever, lay solid foundations in the process of land registration in Cameroon.

Disciplinary and even criminal sanctions should be meted against dishonest public officials.

In the case of forgery of public and authentic documents, the criminal sanctions provided for by Section 205 of the Penal Code must be applied. It is necessary, to speak as Professor **Stanislas Melone**: “**to unleash *the anger of repression***”. For it is the assurance of impunity that encourages carelessness and the manipulation of documents in land matters in Cameroon.

For the withdrawal of land certificates, expropriation for public purposes, and the reallocation of land to communities when the purpose of the expropriation has not been achieved, there should be a certain stringency in the decisions. The principle of continuity of public service must be preserved. The change of administrative authorities must not result in cancellation of the predecessors good and commendable decisions.

For a better management of land certificate litigations, Administrative Courts must render justice in accordance with the law and limit themselves to their field of competence. They should not encroach on the jurisdiction of the ordinary law courts.

The Administrative Bench of the Supreme Court as well as its Joint Divisions, and if necessary, the Joint Benches, must establish constant

case law to guide the Administrative Courts, especially in the face of laws which may lead to ambiguous interpretations.

The Judicial Bench of the Supreme Court and the Courts of Appeal must ensure the quality of decisions relating to land certificates, rendered by trial courts in civil matters. The Presidents of Courts must responsibly issue orders for judicial pre-notation, or the establishment of duplicates of land certificates and for the sale of joint landed property or in the event of its partitioning.

Micro financial institutions and banks must be sensitised on the good use of land certificates as a reliable collateral for loans. Whatever they may say, the land certificate remains the best security for loans.

Notaries public should be held responsible for their negligent actions before the competent courts. The modification of land certificates is largely attributable to the gross negligence of certain notaries public.

It is urgent for the legislator to review several laws of difficult application on land matters. Decree No. 76/165 of 27 April 1976 to lay down the conditions for obtaining a land certificate, modified and completed by decree n°2005/481 of 16 December 2005 on the condition of occupation and exploitation of land before 05 August 1974, should be revisited and direct registration should be abolished in order to maintain only registration by concession which seems more adequate to the current requirements of our society.

Our registration system no longer meets the requirements of our society because it is obsolete and Cameroonians are attached to their land. There is a real need for legislative reform in the area of land tenure.⁽¹⁵⁾

In short, it is necessary to give back to the land certificate all its sacredness as a guarantee of real property rights in Cameroon.

This requires the intervention of the legislator, an awareness of the personnel of land administration, and also the intervention of administrative¹⁶ and ordinary law courts.

Was it not necessary to provoke this reflection on the current state of land certificates as an official certification of real property rights in Cameroon and to question the various actors involved in its establishment, existence and eventual demise?

The land certificate issued today is no longer credible and we must combine our efforts to restore its sanctity. It is only in this way that we can bring back the sacredness of the land certificate and to consecrate and secure land ownership in Cameroon.¹⁷ This will reassure our fellow citizens, financial institutions, economic operators and investors.

(15) TCHATCHOU (H), *Droit du contentieux foncier au Cameroun*, l'Harmattan 2018

¹⁶ MPÉSSA Aloys, *Le titre foncier devant le juge administratif camerounais : les difficultés d'adaptation du système Torrens au Cameroun* 2014.

¹⁷ The Torrens system, inherited from colonization, is based on the registration of real rights in a ledger