International Meeting Process for Debate and Proposals on Governance

Central African Perspectives

Yaoundé Meeting, Cameroon

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IN THE SAME COLLECTION

The legitimacy of power in the countries of the North Africa region. International Meeting Process for Debate and Proposals on Governance, North-African Perspectives, Tunis Meeting proceedings, Tunisia, March 2012. (Available in English and in French).

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Foreword

This document brings together the input of all the contributors who took part in the Yaoundé Meeting, Central African Perspectives – the fourth African stage in the international Meeting Process for Debate and Proposals on Governance. To them all, our warmest thanks for their trust and for their ready participation throughout this three-day round of debates.

The analysis set forth in these pages is a transcription of their words, cast in the light of the methodological approach the IRG adopted for this International Meeting Process. This book therefore feeds on their thinking but in order to prioritize the substance of the exchanges and protect the meeting's participants, authorship may not always be acknowledged.

As for every regional stage of the International Meeting Process,[1] the Yaoundé Meeting was held thanks to the support of the French Ministry of Foreign Affairs (MAE) and the Foundation Charles-Léopold Mayer (FPH). Its organization called upon diverse local and international partners: the Alliance for Rebuilding Governance in Africa (ARGA), the Africa Governance Institute (AGI), the Agence Universitaire de la Francophonie (AUF), the Catholic University of Central Africa (CUAC), the University of Columbia and its School of International and Public Affairs, the Institut pour

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1. For a complete list of the International Meeting Process' partners, visit:
http://www.institut-gouvernance.org/governance-meeting-process.html

la gouvernance en Afrique centrale (IGAC),2 Irenees, the association Modus Operandi, the Collaborative Research Center 700 SFB-Berlin and the French embassy in Cameroon. We heartily thank them all. Finally, more thanks go to all who helped draft these proceedings: Elisabeth Dau, Boris Martin, Marion Muller and Thomas Weiss.

Whilst this work relays a collective voice, the IRG alone takes responsibility for its message.

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Director

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INTRODUCTION

The question of legitimacy is fundamental for a state. It is through legitimacy that it becomes acknowledged by its population, who thereby subscribes to it, voluntarily submits to its authority, and accepts the social regulation it produces. However, the mechanisms of power legitimacy are complex. Multiple sources of power legitimacy are at stake and interact in ways specific to the context.

In order to try and grasp this complexity, it helps to start with the societies and their environments, wherein which coexist full ranges of regulations (religious, traditional, economic etc.). In their everyday life, the actors (individuals, civil society organizations, businesses, etc.) relate to these regulations according to their material and symbolic needs. Thus they are subject to multiple loyalties that bare on their worldview, their sense of togetherness and that guide their relation to power and public institutions.

The legitimation of the state depends on the mobilization of these multiple loyalties. Therefore, it does not rest on a single pillar, but arises from a broad range of sources ferried by a society's actors. By taking these diverse sources into account, the state is able to produce a social regulation shared and accepted by a broad spectrum of actors. This is one of the essential conditions for the effectiveness and legitimacy of public policies. It is in order to better understand, in practical terms, this diversity of sources of legitimacy, their interactions, and their relation to the state in varied contexts that the IRG initiated a

project of multi-actor encounters: The International Meeting Process for Debate and Proposals on Governance.

The International Meeting Process

Coordinated by the IRG and supported by the French Ministry of Foreign Affairs and the Foundation Charles-Léopold Mayer, the International Meeting Process for Debates and Proposals on Governance aims to investigate sources of power legitimacy in the different parts of the world in order to gain a better understanding of the particular contexts in which they operate.

The diverse stages of the International Meeting Process have brought out a diversity of situations. At the Bamako Meeting, "tradition" and "modernity" stood out as two important sources of legitimacy in dialectical tension. In Southern Africa, at the Polokwane & Pretoria Meeting, constitutions stood out as the mainstay of power legitimation. In eastern Africa, the Arusha Meeting highlighted the importance of security issues in the legitimation of power. In Andean America, the legitimacy of the region's states henceforward relies on the integration of indigenous communities along with their own traditions and customs. In the same spirit, the object of the Yaoundé Meeting was to analyze the sources of legitimacy at work in the Central African sub-region.

The Yaoundé Meeting

As in the previous stages of the International Meeting Process, the Yaoundé Meeting was conceived as a forum

straddling four dimensions. Firstly, as an intercultural dimension because critical thinking, albeit focused on a particular region, must feed on a cross-fertilization of mind-scapes and representations. Secondly, a debate on governance supposes the participation of all the actors (public authorities, civil society, private sector): the multi-actor dimension is therefore of the essence. Thirdly, the question of power legitimacy stands at the intersection of the social, economic, political, cultural, anthropological and even legal realms and therefore requires a pluri-disciplinary dimension towards developing a broader analytical perspective. Finally, power legitimacy cannot be addressed at a single territorial tier and thus the debates had to take into account the diverse levels of governance, their relations, interactions, and imbrications.

In accordance with this four-dimensional methodology, the Yaoundé Meeting brought together a broad cross-section of actors on the 22nd, 23rd and 24th of November 2010: national or international political leaders, researchers, traditional chiefs, religious leaders, trade unions and NGO representatives, etc. The participants, hailing mostly from Central Africa (Cameroon, Gabon, Central African Republic, Republic of the Congo, democratic Republic of the Congo, Chad) but also from Western Africa, (Senegal, Mali), Southern africa (south Africa, Zimbabwe), Latin America (Colombia), North America (the United States) and Europe (France, Germany), met over three days to take part in the debates.

The meeting ran over three days on the same model as earlier ones. The debates were structured around three lines of enquiry. (i) The identification and analysis of the diverse sources of power legitimacy at work in the region (e.g. legality, international normativity, tradition or even religion). (ii) The analysis of the interactions between these diverse sources of legitimacy. In what way (cohabitation, adjustment, substitution, instrumentalization or confrontation) do these interactions take place? The management of land rights served as a case study in order to understand and give a concrete example of how those diverse sources of legitimacy were called upon and how they interacted in the context of a specific issue. (iii) The analysis of constitutional processes and the way in which they take the plurality of sources of legitimacy into account – or not as the case may be. To which extent do constitutions contribute to the construction of a social regulation that is shared and inclusive, the basis for a true social contract?

The debate's key points

Of the multiple sources of power legitimacy at work in Central Africa, the participants of the Yaoundé Meeting highlighted four: religion, tradition, ethnicity and international recognition. Their development will occupy the first part of these proceeding.

The second part will consider the interactions between sources of legitimacy through the concrete case of the management of land conflicts in the administrative district of Efoulan in Cameroon. The field study organized around

this question helped illustrate the "ineffective legal syncretism" (between religion, tradition, and state law) that the participants had stressed during the debates.

Finally, the third part of the proceedings will focus on constitutions and constitutionalism. Meeting after meeting, constitutions have been pointed our as being a singular object in terms of legitimacy since it is both a source of legitimacy and a legal transcription of a political and social regulation; thereby making it the more or less inclusive integration of diverse sources of legitimacy. In other words, a constitution is not only the legal basis on which a state constructs its operation and its public action, but also the reflection of an intended togetherness, of a social contract. At the Yaoundé Meeting, the debates notably stressed the importance of a greater inclusion of a society's diversity within the constitution.

PART I

Sources of power legitimacy in Central Africa: a "competitive diversity"

As everywhere else, the legitimacy of power in Central Africa presupposes considerable complexities and results from the interaction of many sources. It would be pointless try and list them exhaustively. Nevertheless, the debates highlighted four main sources of legitimacy at work in the sub-region: tradition, religion, ethnicity and international normativity. These sources were shown to work in tension with each other. They coexist, compete, in some cases converge, and in others diverge. The debates offered a wealth of illustrations of those tensions, which, as we shall see more precisely in part II, hinge on each other in different ways. For the present, let us address the constatation of what could be called a "competitive diversity" between the sources of legitimacy singled out.

Tradition: what role for chiefdoms in Central African societies and states?

The Bamako Meeting's debates, which took place in January 2007[2], had highlighted the importance of "tradition" as a source of power legitimacy in Western Africa. The Yaoundé Meeting also cast a light on what made the taking into account of tradition a prerequisite to understanding governance in Central Africa. As shown by examples in Chad and Cameroon, regulation via traditional chiefdom is indeed very dominant in the population's everyday life.

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2. The Bamako Meeting proceedings are available on the IRG's website at:
http://www.institut-gouvernance.org/fr/ouvrage/fiche-ouvrage-28.html>

THE COOPTATION OF TRADITIONAL CHIEFDOMS INTO THE PUBLIC SERVICE IN CAMEROON

In Cameroon, before colonization, the traditional chief was the community's foremost authority. People considered his every word as being an affirmation of tradition and revered his opinion during the palavers organized when conflicts arose. Colonization sought to transform traditional chiefs into colonial administrators – by force if necessary. Independence led to a reorganization of traditional chiefdom as a whole. Thus, the new political regime of Cameroon promulgated on December 19th 1969 a decree whereby the transcripts of traditional chiefs' decisions were given force of law. For example, when a chief handled a dispute between parties, he would settle the matter according to tradition and his decision would henceforth stand in law – although modern law took precedence over customary law since it was possible to appeal before the *sous-préfet* or the courts.

This way, traditional chiefdoms gradually regained some power – to the point that some chiefs felt they could invade a neighboring *département* (county). Consequently, in 1977, in an attempt to contain the chiefs, Cameroon's civil service reorganized by decree the architecture of its chiefdoms. They were divided into three tiers:

1st degree chiefdoms, at the *département* (county)4 level, were to be led by a king, a sultan or a "fons";

2nd degree chiefdoms, the so called *groupement* or *canton* o r *arrondissement* (district) chiefdoms, were to be led by civil service registrar officers with competence to celebrate marriages;

3rd degree chiefdoms at the village or neighborhood level were to be led by 3rd degree chiefs.

The decree of June 15th 1977 restricted these chiefs' powers to their respective constituencies, but not before making them the agents of the administration. In this capacity, with the notable exception of 3rd degree chiefs, they were paid by it. This cooptation of the chiefs into the public service is unlikely to have gone without impacting their own legitimacy.

Indeed, today, traditional chiefs are gradually losing their influence, and the more so since the administration – anxious to keep a check on the morality of the people chosen – intervenes in the selection of the chiefs. This is often used as an argument to accuse them of consorting with politicians and in some cases chiefs have actually been burnt in the past. As for 3rd degree chiefs, they suffer as a result of their lack of financial compensation. In colonial times, they were paid in kind by the population who allotted them a share from their own produce, but the growth of the cities and the loss of bush land mean that people no longer have land to work and thus less produce for the chief. Land registration is another dwindling source of income as a result of the scarcity of available plots in the cities: *"the*

chief goes unnoticed as new owners don't need him." In some regions, some chiefs end up resigning.

However, the situation is not the same in the whole country. The relation to tradition and the power of its exponents varies a great deal. If the degradation we have just mentioned is evident in the center of the country, around the coastal areas, to the South and East, the administration is notoriously proactive. Furthermore, things are quite different in the regions of the so called "great North" or "great West" where chiefdoms are said to be "autonomous" because the administration does not interfere with their internal management.

TRADITIONAL CHIEFDOMS IN CHAD: BETWEEN POWER OF INFLUENCE AND DISPUTED LEGITIMACY

Although Chad experiences today a situation fairly similar to that of Cameroon with regards to its traditional authorities, the evolution they went through proves rather different. Paradoxically, it indicates support from the colonial authorities, followed by the hostility of the independent state's new political authorities.

Before the colonization, Chad was run by traditional authorities the powers of which were proportioned to the importance of their kingdoms. These entities had well managed administrations and diplomatic relations with their neighboring countries, empires, and even European countries. For example, the Kingdom of Kanem had relations with that

of Bornu in Nigeria while the Kingdom of Ouaddaï had even signed a military agreement with the Ottoman Empire.

The efficient organization of these entities led the colonizers to rely on them in order to run the Chadian territory. Thus, its traditional chiefdoms were involved in the development of transport links and their upkeep, the promotion of schooling, the collection of state revenues, the fight against banditry, etc. While the colonial administration appreciated such chiefdom activity, the population was divided. Some people thought that tradition and customs were preserved through the chiefs, while others concluded that traditional chiefdoms had become the instrument of colonization, coercing the people into arduous projects.

With the proclamation of the Republic in 1958 and under pressure from the new generation of politicians, traditional chiefdoms would no longer have the same power and felt abandoned by the administration. Some traditional chiefs were suspended or dismissed. In 1969, a state commissioned project of administrative reform blamed the malfunctioning of the administration on the suppression of traditional chiefs, who it acknowledged are the link between the central power and the populations. Consequently, traditional chiefdoms were reinstated in Chad.

Nowadays, traditional and customary power is organized as follows:

The *sultans* have authority over the sedentary populations in several *sous-préfectures* (district);

T h e *canton chiefs*, manage several villages of sedentary population within one single *sous-préfecture*;

Equal to the *canton chiefs*, the *tribal chiefs* are in charge of several *feriks* of nomadic populations

T h e *groupement chiefs* manage an intermediary entity between the canton and the village whether sedentary or nomadic;

The *village* or *ferik chiefs* manage the smallest communal entities.

As auxiliaries of the administration, traditional and customary authorities have administrative responsibilities (safeguarding the traditional heritage and assisting the administration in its duty of caring for the population, contributing to keeping the peace, maintaining a registry of births, marriages and deaths, taking an active part in population and property census and in awareness campaigns for the schooling of children, especially girls) and judiciary duties (collaborating in the hunt of criminals and handing them over to the administrative and legal authorities). Furthermore, they also exercise conciliation powers in civil and customary legal disputes (after a conflict is settled, a minute signed by both parties and approved by the conciliator is sent to the administrative or legal authority) and authority in economic and financial matters (tax collection, protection of places of worship and of the environment, supervision of the activity of NGOs operating within their territorial remit).

Traditional and customary authorities are chosen among the ranks of the local traditional chiefs. In the event of a death, destitution, physical or mental disability, the title is taken over by someone in his or her lineage, chosen by the family council. As a throwback from the conflict with Chad's political parties, traditional chiefs are subject to an obligation of neutrality. They are barred from political party activities and must resign their functions if they wish to become involved in politics. It is a fact that traditional chiefs come under attack every time multipartism is reinstated, as the political parties accusing them of being subversive to the central government and of being an obstacle to the emergence of opposition parties. The constitution of March 31st 1996, the result of the deliberations of the Sovereign National Conferences, provides for traditional chiefdom activities. A law concerning chiefdom status was only adopted in 2008, twelve years after the constitution – which is symptomatic of the mistrust politicians feel towards traditional chiefs.

Just like in Cameroon, Chad's traditional chiefdoms offer a mitigated review of the effectiveness of their powers: *"what future for traditional chiefdoms?"* a pessimist contributor asked. Others reckoned that if the chiefs are losing their legitimacy, it is because *"they do nothing but prey on the population"*, or because they cultivate a *"taste for modernity. The chiefs prefer large air-conditioned cars to the old tradition of being carried […] the problem is that that sort of thing makes them financially dependent on the political*

power who then takes advantage of them, resulting in their moral authority being diminished".

And yet many participants considered that although diminished, tradition continues to have an important part to play. *"Traditional authorities remain depositaries of authority. Traditional chiefdoms have their place in society. They have the people's ear when the national authorities fail to make decisions."* And there is no want of examples to prove it: *"In Chad, the decentralization process is stuck because the status of traditional authorities has not been defined"*, a participant asserted. Another told of how villagers refused to submit to a diagnosis in the framework of a local development program because their majority did not recognize the chief's legitimacy. *"As long as traditional chiefdoms are not free and truly arising from the populations, it will be difficult to set up development projects as the local people will not follow."* Yet another participant reminded the audience that in the Republic of the Congo, under its Marxist government, the political power, aware of traditional chiefs' importance, upheld the role of tradition within the "*popular courts*", but appointed people who did not have any traditional legitimacy – most often civil servants from the established power. It was a failure. These few examples speak volumes for the populations' attachment to an institution deeply rooted in African culture and which is a source of legitimacy for the political power.

Many speakers endorsed the following statement: *"Because it represents diversity, tradition is a source of legitimacy.*

We erased tradition because of the belief that it conveyed our backwardness and our ineffectiveness, without realizing that ethnic groups are necessary articulations of humanity for all beings. One is born in an ethnic group, in its broadest sense. One is not born an abstract citizen, but is always born in a genealogy-aware community. We must take on the traditions." This said, tradition is never *"fixed or mummified, it is progressive, it takes into account other inputs"*. This was insisted upon by a member of the Catholic Church who was in turned backed by another participant who observed that these days chiefs were given *"interesting work, such as the fight against Aids or mediation in marriages"*.

Decentralization was one of the approaches suggested in order to recreate the linkage between political and traditional powers: *"the next decades will be defined by the local authorities. This is not just about decentralizing the administration but more specifically public management. Institutions and processes need to be re-anchored in the reality of our societies. African people must recover their self-esteem. We will not belong in the world if we do not belong at home and the best way forward is to revert to the local",* a Malian contributor stated. Faced with the crisis of the regulatory mechanisms of African societies, it is important to open a discussion so that traditional chiefs can recover their stabilizing role in society and that their authority be officially reinstated.

The growing political and social influence of religion

Alongside tradition, religion remains a key source of legitimacy in Central Africa. To the regulations ferried by classically "established" religions must now be added those of the increasingly influential new "popular religions" such as the Pentecostal-Charismatic *Églises du réveil*.

Strong in their beliefs and in their values, encouraged by their ability to mobilize and to organize their flock, religions increasingly play a public if not political role. They encourage their followers to seek positions of power in the hope to inject their religious values and convictions into the political sphere. Furthermore, the Church holds that citizens are not obliged to observe civil authorities' prescriptions if they are in conflict with the moral imperatives, fundamental rights, and teachings of the Gospel.

Christian based communities have become places of sharing and of active solidarity, means of mobilization and fund raising via congregational giving. They are gradually becoming centers of civic and electoral education, centers from which a new kind of social leadership can rise, capable of offering an alternative to corrupt local authorities. Some Catholic action movements support the Church's activity and encourage a militant spirituality.

In Central Africa, classically established and strongly hierarchical churches, such as the Catholic Church, enjoy great credibility and act as true counter-powers. Having played

an active role in the fight against the dictatorships, then presiding over the National Sovereign Conferences (Mgr E. Kombo in Brazzaville, Mgr L. Monsengwo in Kinshasa) during the democratic transitions, the Catholic Church is honing new strategies linking prophetic action, awareness techniques, and diacony in order to meet the challenges of peace and governance in Central Africa.

The bishops, gathered in national or regional Episcopal Conferences (viz. the ACEAC5), keep up a steady flow of declarations condemning governmental abuse, Human Rights violations or the ambiguous role played by the international community. Not stopping at denunciations, bishops put forth recommendations and propose solutions so as to help the governments face their challenges. Thus, in the Democratic Republic of the Congo, amidst a war-torn background, the Catholic Church has prioritized the organization and reactivation of its Peace and Justice pastoral activities so as to raise awareness about the population's rights and duties and help them make responsible choices with regards to societal projects that take into account the common good and the respect for human dignity.

However, the Catholic Church's inroads into public space are met with fierce competition from the "popular Evangelical Churches" who through the rhetorical verve, divination practices, and the instrumentalization of Catholic imagery are bringing forth a new type of charismatic legitimacy. For instance, the *Églises du Réveil* have become the places of emergence of a new sociality. "*In the Églises du Réveil,*

even if they are selling dreams, they make people aware that they can succeed, that they are not condemned." All told, these churches advocate a discourse according to which any political or economic awakening is always preceded by a spiritual one. These churches call upon large crowds to abandon 'anti-values' (e.g. polygamy, magic and corruption). They seek to bring out a new conception of power that must rest on a number of values that can be found in traditional society (integrity, good morals, responsible leadership) and which disappeared in the seventies and eighties.

Overall, religion, whether 'classical' or 'popular', is raising its profile in Central Africa. The participants stressed that religion is an active party to changing mindsets and helps mitigate ethnic and/or regional allegiances. Some participants suggested that the state could entrust them with specific missions but our analyses rather favor the idea of a separation between the religious and political powers.

We shall see in greater details in Part II the articulation that takes place between the sources of legitimacy identified here, among which tradition and religion appear to play a major role. But it will have escaped no one that in those very exchanges on tradition and religion, the question of ethnicity was set forth by the participants.

Ethnicity: what role in the construction of citizenship?

The question of ethnicity frequently came up as participants discussed the sources of power legitimacy in Central Africa. The debates sought to steer a path between condemning the manipulations it can lend itself to and finding ways to build it into the concept of citizenship.

ETHNICITY AND THE RISK OF ETHNICIST HIJACKING

Many examples attested to manipulative maneuvers around ethnicity. Concretely speaking, this practice is manifest in strategies deployed in the conquest of political power: *"now days, when campaigning, you go to your home-region to garner votes. As a result, you end up electing not the bearer of a political project but the native of the region. If this continues, it will always be the same regions that will be in power! Those in ethnic minorities are tempted to resort to violence and once they are in power, they don't readily let go of it because they know that going through the normal processes they would not get in."* Again referring to his country, the Republic of the Congo, a participant explained how ethnicity is binded with village solidarity. The community thinks that if it succeeds in getting one of its sons in power, he will be in a position to resolve his home-town's problems as a priority. Likewise, he will work with the village's sons who will not betray him because of

the community's oversight and customary pressures: *"it becomes a vicious circle. Those who do not belong to this community see this as the power of another. This causes a real legitimacy problem."*

While the assembled participants where especially attached to observing the pervasiveness of communal identity, they also, to a lesser extent, addressed the issue of its explanation. Some wondered whether the pursuit of central and local power did not reinforced the feeling of ethnic belonging, obstructing in the process the identity of the political actors. Conversely, others considered that since 1960, the African states had committed to the reconstruction of national identities, which contributed to the crushing of ethnicity. But the debates were essentially focused on finding means to fight ethnicist abuses. However, the point was not about negating, or indeed reneging on ethnicity which is a fully integrated part of Central African culture and diversity. The concept must therefore not be rejected, the challenge for legitimate democratic governance residing precisely in the management of this diversity and its affiliations.

ETHNICITY, KEY CONCEPT FOR AN ADAPTED CITIZENSHIP

Power is legitimate when it takes into account the full range of sources of legitimacy interacting within societies. From the debates, it became apparent that since colonization public management in Central Africa has been

conducted by bypassing the citizens – especially in contexts' of high illiteracy rates and populations that mostly don't speak French. Such situations are fraught with difficulty in countries where the administrations express themselves only in French: "*A villager who does not speak French is not likely to feel involved with an administration with whom he cannot communicate.*" Does it make sense in this context to rush through an abstract model of citizenship inherited from Western democracies? A speaker wondered aloud about "*some ideologies which are not universally embraced in the West but have worked their way here. We copy them without taking our own parameters into account*".

An illustration taken from South America offered an interesting point of comparison. A speaker who is doing research work in Colombia reminded us that the citizenship model inherited from France – the very same it attempted to export to Africa – was brought into question starting in the 1970s. Although *"the intention had been for all citizens to be equal in rights, in practice, it became clear that this social pact was not respected since it ended up creating 'second class citizens', as was the case for the 'indigenous' populations."* As a result, Aboriginal Indian and Afro-Latino-American organizations mobilized in order to bring this model into question and re-position their values at the heart of the debate. This has brought about significant changes over the past twenty years as these associations

moved to shift the universalist citizenship model towards a diversity-aware citizenship model.

Colombia has taken a pioneering role in this matter. Even though its Indian populations are but a minority (4% of the whole population of the country) and a highly diverse one at that (84 ethnic groups and 64 languages), its 1991 constitution expressly recognizes the "value systems specific to these communities". In the process of civil society participation to the constitutional debate, the point for the grassroots organizations was not to shun the state or to dispute its authority but to demand that it took ethnicity into account. Colombia, along with some other Latin American countries, has thus enshrined the idea of a "different citizenship". This represented a major break-through, especially when remembering that the Indians were for a long time legally considered as "savages to be civilized". As of 1991, the Colombian constitution recognizes Indian languages, double nationality in border zones, access to a collective territory, the community's power of jurisdiction over its members, access to some of the nation's resources, etc.

However, the situation is not quite idyllic. After twenty years of constitutional multiculturalism in Colombia, problems do arise. For example, tensions between Indian populations (different groups claiming the same territory), between Indians and other groups that have yet to be recognized by the state, and even issues linked to a form of dependency towards the state (because when conflict arise,

the concerned parties have to turn to state institutions). The constitutional recognition of multiculturalism cannot be an end in itself; the current concern is to strive towards, along the lines of participatory democracy, a new intercultural and multi-actor deliberation forum so as to secure a better articulation between the populations and the state.

This Latin American example provides much food for thought when contemplating a comparable approach for Central Africa so that a somehow "endogenous" form of citizenship may come about. One that would take into account the "value systems specific to the communities" of Central Africa.

Does the states' quest for international legitimacy endanger their internal legitimacy?

As we have seen, Central African states' internal legitimacy is fragile. Indeed, participants talked of "suspended states" busy seeking legitimacy at the international level before all else. This formula describes states vested with legal and formal legitimacy but limited in terms of real capacities. Moreover, fragile states such as the ones in Central Africa, seek elsewhere a legitimacy that they do not develop within their own borders. *"Blighted with an internal legitimacy deficit, Central Africa's diverse state formations have bought into a quest for international legitimacy"* which is

understood as *"the way a state order has itself recognized as credible at the international level"*.

Participants stressed that Central African states *"always refer to a legitimacy coming from without"*, seeking to mobilize it to their advantage. Accordingly, what amounts to *"institutional marketing and postcard diplomacy"* culminates in an *"extroverted management of the state"*. Central African states' quest for international legitimacy started with their joining of forums emblematic of pan-African internationalism. The states in the sub-region concerned here thus systematically joined the strategic-diplomatic frameworks defined by the Organization of African Unity (OAU), which then became the African Union (AU), and its subsidiary institutions (Lagos Plan of Action in 1980, African Charter on Human and Peoples' Rights in 1981, Mechanism for Conflict Prevention, Management and Resolution in Africa in 1993, etc.).

But of course, it is at world level that these state's quest for legitimacy finds its strongest expression, with first and foremost their accession to the United Nations (UN) – which was set as a priority for the new independent states between 1960 and 1975: *"these days, a state gains international credibility only when it joins in that community."* The principle of sovereign equality of states upheld by the UN is in this respect an essential legitimating element for African states, especially for those with less capacity than others.

For all that this quest for international legitimacy is "pretty much an obligation" for any sovereign state, the debates

highlighted the fact that in Central Africa, the problem lies with the states' neglect of their internal legitimacy. Indeed, their strategies rely on the idea of "sovereign domination": *"states with fragile sovereignty claim their international legitimacy the more firmly"* since they have no internal legitimacy. The populations along with traditional chiefs and/or religious representatives feel abandoned. "*Locally rooted policies are overlooked in favor of the implementation of policies devised elsewhere. Traditional and religious authorities are neglected by the state in its search of international legitimacy.*" As a result, problems proliferate. For instance in Chad, the decentralization process has been blocked due to the lack of a definition on the status of traditional authorities. Moreover, the country's family code, its compilation having been "*financed by the international community",* was rejected by country's religious authorities because they were not consulted in its elaboration.

However, as the Chad-Cameroon pipeline project will demonstrate, the preponderance of international legitimacy has its limits. In the framework of this commercial project, which is linked to the exploitation of the Doba oilfields in Southern Chad, an agreement had been passed between the Chadian government, multinational oil companies, and the World Bank. The agreement included clauses that provided for benefits from the operation be accrued by the population via mechanisms for managing and sharing oil resource revenues (notably with the producing region) in order to alleviating poverty.

But a change in the political context brought a change in the balance of power. The 2006 oil price peak, the repeated paramilitary attempts to overturn the Chadian government, and a serious social crisis caused the Chadian government to review these agreements, unilaterally altering the law on the management of oil income in order to divert a part of that income towards the fight against the paramilitary opposition. This lead to a crisis between Chad and the World Bank, to the expulsion of two of the three involved oil companies, and to the withdrawal of the World Bank from the project after the early refunding of the loans it had emitted.

This goes to show how international legitimation can also be a sham: governments pretend to accept commitments *"but they implement sabotage policies"*. This is also the case with the African Charter for Democracy that is having trouble getting under way because the states do not want to commit to its restrictive instruments.

PART II

The articulation of sources of legitimacy

In part I, we surveyed the major sources of power legitimacy in Central Africa as identified in the debates. We now need to understand how those sources articulate with each other towards constructing the political power's internal legitimacy and overcoming governance blockages. To this end, the participants stressed the necessity to conceive Central African societies in all their complexity. It is the very purpose of the present analysis to survey the diverse articulation models the debates brought into light. We will see that they fall into four major trends: adjustment, substitution, instrumentalization, and confrontation. Through a concrete example, the issue of land rights will help illustrate their modalities, and more particularly the confrontational approach.

The different modes of articulation of sources of legitimacy

These four articulation modes (adjustment, substitution, instrumentalization, and confrontation) do not claim to be exhaustive. Brought into light by sifting through the debates they offer insights into the unstable equilibrium, not to say the instability, experienced in the sub-region. They bring forth the reasons for the crisis of politics and for political crises.

ADJUSTMENT, VECTOR OF TENSIONS BETWEEN TRADITION AND MODERNITY

By adjustment we mean the way through which a source of legitimacy is set, whether under duress or by choice, under the domination of another source of legitimacy. This issue notably brought up a discussion on the co-optation of traditional authorities. In the Central African Republic, traditional chiefs, who had full powers (the chiefs "even had the right of life and death on their subjects"), where turned into administrative chiefs by the colonizers. *"The colonial administration appointed village, canton and even province chiefs, paid them and even gave them the possibility to be 1st degree judges. They could collect taxation. They were the administration's auxiliaries."*

This forced adjustment of traditional authorities to colonial needs has all too often been enshrined and maintained by the new independent states. It was thus reminded that the Democratic Republic of the Congo's new constitution stipulates that *"the customary authority be devolved according to local custom in so far as the latter is not opposed to the constitution, law, and public order"*. In the Republic of the Congo, traditional chiefs represented the Marxist-Leninist party until, thirty years later, the national conference reinstated them *"because these sources of legitimacy must be brought in"*. But in reality, today, even though there are traditional rules, it is still *"the power who picks and chooses the chiefs without taking these rules into account: the government 'anoints' the chiefs because with them, it is*

sure to have power under control." Finally, it was mentioned that these days in Central Africa it may happen *"that people conducting initiation rites are jailed even though fetishes are the traditional basis of our culture"*. As many elements which, put together, show that traditional chiefs end up "adjusting", voluntarily or not, to the powers that be in order not to be sidelined, to garner some income, or quite simply to continue to carry out their functions. To a certain extent, instead of "adjustment", it might be more appropriate to speak of "subjection", which would largely account for the tensions between tradition and the state.

THE SUBSTITUTION OF THE STATE BY THE CHURCHES

By "substitution" is meant the instances when, faced with the institutions' inaction or ineffectiveness, other actors fulfill missions falling in principle to these institutions. The Catholic Church is at the forefront of such activities since it benefits from, as explained earlier, a network of faithful, structures, resources, and the support of its hierarchy – beyond the African continent if needs be. Thus, in the Democratic Republic of the Congo, it has deployed a full array of activities in line with its pastoral policies, but which are uncomfortably close to a mobilization of civil society. This approach 'encroaches' on state competences, sometimes in a competing mode. For instance, some of these activities aim to help vulnerable people by training them in peaceful conflict resolution, the promotion of Human Rights, fighting impunity, the reinstatement of

infrastructures, the boosting of the productive capacity of communities, and advocacy for peace in the country and in the Great Lakes sub-region by targeting international, national, and regional leaders. Between 2002 and 2004, in the Democratic Republic of the Congo, the Congolese Episcopate, with the support of its partners, launched two complementary projects of joint training for parish coordinators and local state and peace building agents in order to mitigate the impact of the war. Then, from 2004 to 2006, this same Episcopate busied itself preparing the populations for the elections. It further encourages its lay members to "*embrace a political carrier to fulfill their responsibilities and promote a responsible leadership in the light of the Church's social doctrine*". It would not be overstating the case to say that the Democratic Republic of the Congo's Catholic Church is proving very active, often in a role of quasi-substitution of the state. An activism that has not escaped the latter's notice: "*in the face of multisectoral initiatives arising from diverse churches, the men in power either seek to rally the religions to their cause, check their influence, smother religious leadership head-on, or even they develop benign bypassing strategies.*"

RECIPROCAL INSTRUMENTALIZATION, A MEANS TO ACHIEVE SPECIFIC GOALS

By this we mean a process whereby the bearer of a source of legitimacy uses another source in order to conquer and cling to political power. This is probably where reciprocity is most potent (not that the outcomes are proportional per

say) since instances of reciprocal instrumentalization can be observed using, yet again, tradition, religion and political power.

"Often in Africa, there is a sort of recuperation of the sacred by the leaders, it goes on all the time", a participant stated. *"By allying with traditional chiefs, who have sacred powers, political leaders hope to recover their subjects' favors. The leaders in power self-legitimate thanks to beliefs that hold the chief for sacred, vested with a mission from the ancestors and from God. […] For instance, in Mobutu's days, the resort to authenticity produced an ideologico-religious mix which affirmed a power founded on absolute obedience to the chief. Even in these days of fragile democracies, leaders appeal to notions ferried by traditional religion's belief systems to entrench power on the collective mindset wherein the chief is a man appointed by God and protected by the ancestors, thereby masking the idea of a power arising from the people."*

The "institutional" religions are also instrumentalized by politicians. The perception of religion as a source of theocratic legitimacy, an instrument of power, or at least a reality to be manipulated in support of the government is gathering momentum in Central Africa and all over Africa. Religions offer an alternative when those in power prove unable to satisfy the populations' vital needs. But they too can, in turn, wield political power. In Chad, for instance, they have succeeded in blocking the reform of the family

code, leaving the president powerless to curb their decision.

The case of the national conferences also came under scrutiny. Presented as opportunities for the renewal of governance in many countries, they have often looked more like attempts at re-establishing strong links between politics and religion, between power and the sacred. Indeed, the conferences were frequently presided over by prelates and run on a quasi-religious model: "*in a way, we confessed to past sins before expiating them so as to be able to conceive a new society.*" For one speaker this would be an argument for rebuilding governance "on a religious basis", in the spirit of acting on the renewal of *"a common basis of trust"*. But for another participant – a churchman at that – *"trust symbols are not to be restricted to faith only, a leader who rules society can also be a symbol of trust."*

THE CONFRONTATION AND QUESTIONING OF STATE AUTHORITY

There are cases where a total separation between the different legitimacies can be observed, sometimes even leading to confrontation. Thus, movements of revolt against the established authority have been organized in the name of traditional religious convictions, sometimes framed in ideological, mystical, and syncretic terms. For instance, in 2008 the *Bundu Dia Kongo sect*, in the Low Congo, legitimated their clash with the state through mystico-religious beliefs and practices, inherited from African traditional religions.

But at the heart of the debates stood the issue of land rights, highly sensitive in central Africa because it crystallizes the strongest indicators of confrontation between sources of legitimacy.

Land rights: grounds for discord, insecurity and inequality

The diversity of participants, from many different countries, helped confirm the importance of the land rights issue and its impact on governance in the sub-region. Land rights are at the heart of legitimacy and of the sources thereof in Central Africa. The fact that 80% of court cases pertain to this matter clearly demonstrates this. To stress the importance of this question, the participants were invited to attend a hearing of the *Consultative Multi-Actor Commis-*

sion for Land Disputes. This field trip brought into light the way two confronting sources of legitimacy seek to interact in order to deliver justice (see boxed text). The legislator indeed sought to bring together two sources of law: customary or traditional law, which has ruled social fabric from time immemorial, and modern law.

A hearing of the Consultative multi-actor commission for land disputes

Sous-préfecture of the Efoulan district, Yaoundé – 3rd arrondissement

Under the aegis of the *sous-préfet* of the Yaoundé district, the meeting participants were invited to attend a hearing during which a land dispute was under scrutiny. This long-standing dispute was between a man who thought himself entitled to a land title on a land his ancestors had tiled. He therefore had at his disposal the right arguments that should have enabled him to obtain this title, however, the descendants of the original owner of the plot raised a dispute.

As such, the objection stalled the title issuing procedure, the Consultative Multi-Actor Commission for Land Disputes needing to meet to give a ruling. To that end, its members went to the disputed plot of land to ascertain that it had indeed been developed, that its boundaries were in compliance, that there were no quarrels with neighbors etc.

It must be pointed out that a court to which a land case has been submitted must decline jurisdiction in favor of the multi-actor commission for land disputes whose decisions are valid only if the traditional chief was party to them and if there is no appeal against them.

It is also worth remembering that in Cameroon, the land belongs to the state. The people can only ever have a right to its use baring a proven improvement (done before 1974), which in turn entitles the claimant to ask for a land title.

The relation to land is not just one of appropriation; it is part and parcel of a person or a group's identity. It is therefore a key issue and it is not by accident that in Central Africa, *préfets* or governors bear the symbolic title of 'land chiefs'. "T*he way land is administered is a factor of legitimacy of authority and even of evaluation of the importance and extent of the authority. A chief that is not master of the land is not a chief.*" This assertion from one of the participants echoes with that of another participant who stating that a chief *"can in no way be invested if he does not already own land, land that he himself or an ancestor discovered, or that he has acquired from a father"*.

Land rights issues thus take us back, once again, to tradition. Ethnicity is also a key element at work in land rights for *"a man is identified by the place he comes from".* The case of the Chad-Cameroon oil pipeline mentioned earlier also highlights the importance of land rights as the producing region's populations demanded to draw profit from this agreement. It all goes to explain why, in Central Africa, *"land rights issues are at the crossroads of a set of sectoral governances"* and are grounds for struggles that can flare up into armed conflict.

Indeed, and in the words of a participant from the Democratic Republic of the Congo, land rights issues amount to

an actual security challenge. He used the Great Lakes region as an example to explain that *"conflicts could be tracked back to the issue of land rights which is at the heart of the debate and presents a challenge to reconciliation, sovereignty and legitimacy".* Case in point, the murderous 1993 conflicts in the East of the country between Rwandan, Banyrwandan, Banyamulenge populations, and the local peoples had sprung from land issues. The 2008 national conference in the Democratic Republic of the Congo, which had land rights issues as a backdrop, has yet to resolve them, thus explaining, still according to that participant, why the war still rages on in the East. The activities of international companies or bordering states, seeking to lay their hands on mineral resources clearly do nothing to improve matters. This chronic insecurity causes a grave problem of sovereignty.

Much as oil, along with all the mineral wealth abounding in the African soil, land rights offer a thoroughgoing demonstration of what has been called the "resource curse".

CENTRAL AFRICA: THE RESOURCE CURSE?

Central Africa is first a region dominated by forests and where the pressure on forest resources is huge. States have incidentally favored forest tenure and forestry over pastoral zones, forestalling a proper land policy; in contrast with the observable efforts in Eastern or Western Africa where countries like Mali and Ghana have taken the lead. Past colonizing nations (Belgium in the Democratic Republic of the

Congo, Spain in Equatorial Guinea, Germany, France, the UK in Cameroon, etc.) continue to influence the devising of land instruments. The debates stressed the central role of governance in land rights issues. They brought up the situation of several countries in the sub-region.

In Cameroon, while legislation provides for the compensation of the populations in the event of the exploitation or "protection" of their land, *"in reality, it does not go according to plan".* The REPAR-CEFDHAC (Réseau des parlementaires pour la gestion durable des écosystèmes forestiers d'Afrique Centrale[3]) shows that some Cameroonian municipalities earmarked for compensation received only a part of the sums allocated to them. Likewise, although Cameroon did pioneer a system of calls for tenders allowing access to "logging parcels", transparency is not part of the deal as shown in the instance of community forests. In these forests, the law supposedly allows for the local populations to benefit from the income but *"the elites come back to the villages to handle the projects; the exploitation licenses are rented or passed to city elites who then manage the forests instead of the people".* In this vast sector, neglected by the state, local chiefs, who can be right "potentates", often take it upon themselves to settle land issues instead of the state, often resulting in unfair treatment. Thus the communities, and especially their chiefs,

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3. This structure was created in 2002. One of its objectives is to "encourage the taking into account of the interests of local communities in the development of legislation on the environment in general and forests in particular."
Website: http://www.repar-ac.org

are not always the victims of this system that they them-selves attempt to exploit.

In Chad, customary land rights co-exist with modern law (see boxed text). Even though Chad's modern legislation asserts – like nearly everywhere in Central Africa – that the land belongs to the nation, the rights of rural local authori-ties are theoretically enshrined in customary law that provides that as long as the farmer tills his land, he has nothing to fear from the state. This customary right to a parcel of land, established by ongoing upkeep thereof, can lead to its registration. Plots taken up and exploited may only be reclaimed by the state in the name of public interest and are subject to compensation.

Co-existence of customary and modern law: the example of land tenure in Tupuri country

The Tupuri land as a whole (in Chad and Cameroon) theoretically belongs to the Chief of Doré. But in reality he has only hung on to a few landed estates linked to his priestly functions from which he collects a tithe. He has handed the usage of the rest of village land over to the land chiefs. Broadly speaking, the land belongs to the clan as a whole and the land chief is only its trustee and manager. He is not the village land's absolute owner but the custodian of the communities' rights. Nowadays, land chiefs no longer play an important role. Land matters are taken before the village chief, then the canton chief, usually to end up before the *sous-préfet*.

Traditionally the issue of land is understood in the same way by the Doré Wang (king) as by the Tupuri people. For the Doré Wang, God created the earth, the waters, and the vegetation for man's survival and entrusted the Chief of Doré (the Doré Wang) with the

management of all that He created, enjoining him to make offerings in order to obtain good crops. In short, the Doré Wang considers the earth to be essentially God's property of which he is a mere manager; the people living on the territory that he manages have the right of usufruct. The land belongs to a village community and all the people living in a given village, whatever their origin, are entitled to the same rights. To belong to the village community, one has to have built a hut there and lived in it for a year.

In Tupuri country, the land has been divided a very long time ago. At the onset of French administration in 1900, there were no more unowned and vacant lands as the territory had been shared between the Doré Wang and the land chiefs. All matters relating to natural resources fell within their jurisdiction. However, in the eyes of the current local authorities, any land that has not been registered is deemed unowned and vacant and falls into the state's private ownership. Current *département* authorities therefore represent the last resort in any land conflicts. The Doré Wang's land estates have been turned into agricultural land from which he collects land fees. The use of clan or family land tends to become a family right in the narrowest sense.

At the level of each village, the land chief, originally born of the village's founding clan, manages the territory's natural resources. According to oral tradition, many village chiefs did not always keep land chiefdom in the same clan, this in order to uphold social cohesion in the face of external threats. Land chiefs often left or were expelled in the wake of a scourge affecting the village (famine, epidemic etc.). The reigning land chief has the same prerogatives as the Doré wang but circumscribed to the village area: he makes offerings to the founding ancestors in the sacred wood, presides over rural rites, shows the newcomers the lay of

the land for no fee, settles land disputes, and ensures the observance of the farming calendar. Land chiefs receive land fees ranging between 2 and 10 kilos of grain by family or by field. Animals found ownerless on their territory are handed over to them. In turn, family chiefs fix the distribution of the land between the members of their families. Farmland allocation is revised every time a tenant leaves the village or dies.

All the same, a Chadian participant explained how the legislation in place is not respected by the state and how some traditional chiefs take the liberty to sell land without consulting the people. Likewise, in the towns, notably in N'Djamena, forced evictions are organized resulting in whole families finding themselves homeless *"just because people don't know their rights. Consequently, people are exploited by some public servants and don't know where to turn."* For that speaker, there is no mystery: *"the introduction of a monetary economy has turned the usufruct value of the land into a market exchange value. Demographic pressure on the land has yielded deep changes in the modalities of access to natural resources. Some administrative and military authorities contrive to have enough land. By virtue of having been in high office, generals have hundreds of hectares, ministers thousands of hectares. They find a way to buy land, sometimes entire villages! And foreign companies are in on the deal too."* For want of a land policy, the Chadian state is allowing the long term control of agricultural land belonging to rural communities by Chadian or foreign actors, whereas its exploitation by locals would curb migration towards the cities and lessen

food insecurity: *"all young people today go to N'Djamena for nothing was done to enable them to farm that land. And now, others have all the benefit! We must hang on to our land! [..]The land must be left in the hands of the local communities and land reform must be carried out in order to allow a fair access to the land. Farming and trade policies have got to change and local and regional markets must be supported. Tight regulations should be implemented that limit corporations' access to rich land, coastal boards, meadows, and forests."*

A Gabonese participant enlightened us on the land situation in his country where the picture is different from what is going on in Chad or in Cameroon. In Gabon, just like in these two countries, the land belongs to the state, but customary chiefs *"do not regulate anything, they are there in a symbolic capacity".* As for the village chiefs who now serve as administrative authorities, their powers too are very limited. In Gabon, *"traditional law has been set up as positive law. Our borders are drawn along artificial lines and the Gabonese state is younger than any of the peoples that make it up. It interacted head-on with the populations, respecting where they lived and their lifestyles: property is sacred and is passed on, the state has not changed this practice."* Positive law also operates on the principle of 'occupancy'. A person can settle in a place, build a house without being expelled as long as he or she works the land and no one proves that there was somebody there before him or her. *"In the countryside, you prove it with the trees.*

People know that such and such avocado tree belongs to this or that family." Land disputes between the citizens and the state are apparently less frequent than elsewhere as the rules have been clearly set. In the countryside, it is not possible to obtain land titles but instead 'rural decrees' drawn by *préfets* or governors. In the towns, ownership is usually secured by obtaining land titles but the titles apply neither to what is above or below surface. *"One may own only the surface, what can be seen. If you dig the garden and find gold, it won't be yours."* Thereafter, one cannot be stripped of his or her land without compensations, so much that in towns, the state often finds it difficult to evict people who have built along roads (for example along the major road linking Gabon and Cameroon) *"and it is not unusual for the state to compensate several times, as the eviction order is not always enacted due to the state's inefficiency"*. For this participant, this system, its flaws notwithstanding, has one undisputed merit: *"the state has taken the way people lived before it came about into account."*

For a Congolese participant, his country sees few interactions between political and traditional authorities. One of the recurring problems lies rather with the links between the population as a whole and the indigenous peoples. In this country where land chiefs are in reality the heirs to a plot's first occupants, *"the difference is not great in the constraints or the nature of the spoliation, the difference is in the degree. The indigenous populations are discriminated against."* If this participant is to be believed, a land

title, in the Republic of the Congo, is "*an absurdity. Communities do not grasp that in order to live on the land on which they have lived in peace for the past three centuries they need to have a piece of paper delivered by a state that has not even been about for more than a century.*" This requirement underpins a "policy of securing" and apparently led, by some sort of perversion, to the principle of state ownership of all the land, which is in force in most Central African countries. Consequently, "*communities must follow long and complex procedures even though they need this land for their pharmaceutical, nutritive, or just plain housing needs...*". They even have trouble in obtaining credit since to this end they must produce evidence of their creditworthiness – which they cannot provide without land ownership. In the end, this participant concluded by asking "*can we consider someone who has built his history in a place as a stranger?*". All eyes are on the African Commission in the hope that it will take this reality into account for it has, after all, issued a ruling regarding customary land without legal title. It has ruled that communities' customary property must be considered as identical to that granted legally. This ruling, which concerned Kenya, is meant to be extended to all African countries.

The democratic Republic of the Congo's land laws are quite similar to those of the other countries since the soil also belongs to the state. Private citizens can only obtain concessions, however a distinction exists between

Congolese and foreign concession owners. Only the former are entitled to perpetual concessions. Foreigners on the other hand, have access to temporary 25 year concessions, indefinitely renewable. In other words, a foreigner may legally acquire customary land but to that end he will not deal with the chief but with the state. The land is not deemed to belong to the customary chief but to the community, the chief being only its manager. Furthermore, it would appear that the state conducts a "test of appropriateness". *"A foreigner may have 200 hectares but if the local authority judges that an area is saturated, it may decide to freeze the concession. It must be remembered that in the Republic of the Congo, people practice shifting cultivation, they must therefore be provided room for fallow land."* When there is a concession, since the *chefs-lieux* (administrative centers) is only a moral entity, the benefits from the transaction are earmarked for the development of the chiefdom and the area, *"the population therefore remains interested in such procedures"*.

This tour of Central Africa can be summed up in the words of a participant: *"there is therefore a degree of homogeneity in the land rights of Chad, Cameroon, the Democratic Republic of the Congo and the Republic of the Congo. The state owns the soil. But these states do not have a land policy, essential though it be for the proper management of the land."*

*WHAT ROAD*MAP TO SETTLE THE LAND RIGHTS ISSUE QUAGMIRE?

The participants agreed that the instruments currently in place do not show great foresight and that there is an urgent need for the devising of valid land policies. They also put forward decentralization as an essential device on which to lean on in order to manage land issues – aware nonetheless of the different situations between, say Cameroon where *"decentralization is already history"* and Chad that has just reached the stage of deconcentration of the state. Participants also recognized the need to deploy tools specific to the agro-pastoral areas. This issue resonates particularly strong in Chad where deadly conflicts persist between herdsmen and farmers and where the transhumance corridors created to manage these conflicts no longer correspond to the situation on the ground. Indeed, *"herdsmen are increasingly becoming agro-pastoral smallholders, sedentary, and are starting to speak the village tongue. Some political leaders have themselves become herdsmen and are handing out privately owned weapons to the herdsmen to wage war against the farmers."* Finally, the setting up of evaluation and follow-up tools was held as indispensable. On the one hand, it is the only way to measure the effectiveness of change, and on the other, it will force more transparency.

More broadly, the participants underlined the "ineffective legal syncretism" and pointed out the pernicious articulations between traditional and state authorities. "*It is well*

known that in such regions, when the chief has spoken, the préfet remains silent. One reason for this lies with an unspoken agreements regarding electoral pools: the state looks the other way, relying on the votes thus earned during the next elections." Yet this is perhaps one of the holes in which the establishment of a land policy, beyond the overhaul of the entire governance as a whole, can engage. It is undoubtedly in the reconstruction of virtuous relations between these two actors that the solution lies, at least in part. As was said, *"village communities only acknowledge the political power to the extent that it enables them to secure their rights on their land and resources".* So this is about inventing "*mechanisms wherein modern and customary law coexist*" in order to build a sturdy internal legitimacy and a reconciled governance, a successful hybridization. In the end, it is the state, criticized though it be, that is called upon to acknowledge and engineer the sources of legitimacy that coexist with it. According to a participant, it is necessary to "*accept the state while discussing its legitimacy, its anchoring in society*". With this in mind, the constitution appears as a fundamental instrument, "*a sort of social contract in which the actors state the way they intend to manage themselves*".

Part III

Constitutions and constitutionalism: which process for legitimate governance?

As a source of power, the constitution is unavoidably confronted with issues of legitimacy and legality. It represents what one might call the hinge on which all the diverse sources of legitimacy hang, the keystone of a true social contract. However, in Central Africa, like in most African countries, the rise of constitutionalism brings with it many paradoxes. It may have eased progress in matters of democracy and human rights but its practice has nevertheless contributed to misleading the potentiality of the constitutional texts and has undermined the trust between populations and political leaders. Participants to the meeting accordingly called for a constitutional renewal allowing for constitutions to be able to play their full part towards legitimate governance.

Constitutionalism under fire

In Central Africa, like elsewhere, the existence of a constitution is not enough to make the political power it has yielded legitimate. A participant had no qualms in referring to legitimacy as a *"constitutional taboo vampirized by legality"* whereupon constitutions find themselves devoid of substance and anchorage within their societies, the more so since they refer themselves to "external notions of legitimacy" (such as national interest, the assertion that national sovereignty belongs to the people, universal suffrage or indeed the rule of law) and often draw their provisions from the 1958 French constitution. Such constitutions are no more than a *"façade aimed for the West who is easily satis-*

fied…" but a façade behind which a politico-administrative system, run by a head of state who, relying on a single party, the civil service, the police, and the arm, rules unfettered.

As a participant stressed, in Central Africa, constitutions' loss of substance is also the result of a value crisis which is *"not only owed to colonization but also to single party systems' massive ideological propaganda, which disseminated a number of values, cutting off citizens from their true origins. Thus when the Congolese Party of Labour, the ruling single party, spread among the young the message that 'the pioneer is a conscious and effective militant of the youth' who 'in his every acts follows the example of the immortal Marien N'Gouabi[4] and obeys the party's orders', it was not providing a model, especially since the party's orders were 'protection, discipline, gun' or 'power comes from the end of a gun', etc. This sort of propaganda has shaped people, the emergence of militias after the national conference is hardly a surprise! They spent 30 years hearing this daily on the radio!"*

In the days of single party rule, constitutions served precisely and largely to assert the pre-eminence of the single party, which was to all intents and purposes a "party-state". The denial of fundamental freedoms and Human Rights was openly advocated by a monocratically ran political party. Today, even though they were furnished with a

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4. President of the Republic of Congo – which became the People's Republic of Congo from December 31st 1968 to his death, by assassination, in 1977

constitution, everybody accepts that the political powers born of single parties were not legitimate.

In 1990, with what has been called the "advent of democracy" that followed the national conferences, many Central African citizens hoped for a rupture with the regimes derived from colonization. Constitutions and institutions would henceforward seal the social contract and answer the aspirations of freedom-starved populations. The elaboration of a constitution was thus presented as the renewal of the foundation of the state with the participation of the citizens.

The first post-national conference constitutions sought to achieve these aims. They provided for, notably, the limitation of the number of presidential mandates, which opened the way for possible alternations of power. However, in no time at all they were being unilaterally revised in great haste, the conclusions from the national conferences being declared optional and devoid of compulsory force. Thus, Gabon's first post-national conference constitution, dated March 26th, 1991 was modified in 1994, 1995, 1997, 2000, and 2003 – modifications that all served to reinforce the powers of the chief of the executive. The citizenry was not associated to the constitutional revisions and although the first 'post-national conference' constitution was drafted on the basis of a broad popular consensus, its revision and all the subsequent ones were done by a derived constituent authority, "on the sly".

This pre-eminence of the chief of the executive is also palpable in the marginalization of Parliament in the exercise of power. While all Central African countries recognize, in principle, Parliament's power of control over the executive; in practice, the majority drive ensures executive prevalence in such proportions as to place Parliament *"at the service of the president of the republic in particular and of the government in general, thus reducing the opposition to the role of a powerless witness of the political game".* For this Gabonese participant, who, as we saw earlier, extended his analysis of his country to the whole of the sub-region, "*public authorities do not respect the rules of classical constitutionalism that underpin democratic regimes. Therein lies the whole conundrum of law and legislation. Therefore, in the political regimes of Central African States, the democratic principles of freedom, equality, universality, majority are replaced with the principles of authority, orthodoxy and exclusiveness.*" Furthermore, the weak legitimacy associated to constitutions also results from the fact that they are perceived as an "*instrument that those at the top use to secure their chances to stay in power*". Refusing to acknowledge that "*the reasons for legitimacy have a limited shelf life and that in order to last, they must be anchored into social practices*", those in powers claim nothing but the trappings of constitutions which they somehow consider as an "*eternal legitimacy*" which would have befallen them.

Accordingly, constitutional practice – what with the constitution being perceived as "held hostage" by the party in power – is firmly disputed by the populations who withdraw their trust from such fragile institutions. And yet, this tool still holds promise. The participants continued to see the constitution as the preferred instrument for the recognition and articulation of the diverse sources of legitimacy – however the conditions that would enable it to fully play this role remain to be determined.

The conditions for a constitutional renewal

The participants did not stop at noting the failure of constitutionalism as practiced in Central Africa. They examined the obstacles of its implementation, *"the meaning granted by our peoples to the constitutions supposedly ruling them"*, and the way to *"conciliate legality and legitimacy, and how to reconnect the constitutional norm with the societies".* This debate spanned the Atlantic as a Colombian participant explained how in her country the issue of constitutionalism had been set at the core of the reforms that made it possible to initiate peaceful governance.

Not only is such a comparative approach relevant, but it also serves to underline that the processes at work in Andean America were not all undisturbed harmonious processes. A participant specialized in constitutional issues reminded all *"that it was best not to idealize constitutions too much or imagine that it would all happen in a flash. A*

realistic learning process must be undertaken by asking the question of which elements should be integrated in a constitution."

WHAT CONSTITUENT PROCESSES TO CHECK PRESIDENTIAL EXCESSES?

The case of Cameroon was explored at length in order to unravel the issue of constituent processes. Understanding these processes requires a "*lucid approach*". It is necessary to "*see how the provisions in the constitution are written, how the political actors are mobilized, how the social actors try to be included, what principles are privileged and how do they rate on the community scale, on the consensus scale.*" The need to take the time factor into account in the appreciation of constitutional processes was also stressed: "*there is a need for a pedagogical approach, for a determined and methodical support in order to arrive at a balanced, optimal, and fair societal regulation instrument.*" One participant took the long view: "*for 50 years, in the framework of an independent Cameroon, we have been living through an ongoing constitutional dynamic. 50 years, that's not much set against the whole life of a society.*"

Indeed, during this half century, Cameroon has gone through "*three, maybe four constitutional reforms*", "*fact is we are in a country where even the computation of the reforms has not found a consensus!*" The first constitution of March 4th, 1960 was adopted by referendum. This is highly significant as, outside independent Cameroon's

founding text and the 1972 reform, all of Cameroon's constitutional production was achieved through parliament. As for many French-speaking African states, it was said that this 1960 constitution reproduced an important part of the 1958 French one that served as a reference text. For a participant, "*the mimetic approach should be reset in its context. There was a transfer of constitutional rights rather than a conscious imitation of a constitutional model, and when Cameroonian politicians had the opportunity to create a constitutional norm in 1961, you can see that they promptly ditched what had been given to them or imposed on them.*"

This 1961 text has a lot to teach us on the constitutional process, as it stands today in 2011 and for the future. In the early 1960s, this text first served as a basis for the "reunion" of two formerly British and French parts of pre-independence Cameroon. The aim was then to set the basis of a federal consensus, which was not an easy task for two areas that, within a shared territory, had evolved along the lines of two different political and administrative cultures. The constitutional norm was then used to signpost what was termed the *"return to the common home"*.

With the 1972 reform, there was no more talk of consulta-tion around the constitutional norm. President Ahidjo, in the name of his *"vision for the unity of the nation"*, instead instigated a *"hidden process, surprising the political actors from the English-speaking zone, who had not accepted the shift from a federal to a unitary state"*. Their reservations

would resurface throughout the following decades, discreetly at first during the single party era, then openly at the beginning of the nineties to the point where eminent personalities like John Ngu Foncha or Salomon Tanden Muna incessantly called for the return of the federal state as the basis of a Cameroonian constitutional consensus. This episode also teaches us at least two further points. Firstly, short of consulting all the actors, a constitution will be unable to fulfill its rallying purpose and it will carry the seeds of later dissent. Secondly, transparency and access to information are essential. A participant pointed at the necessary end of "secret constitutions" which have been a constant feature in Central Africa. Another added that "*if our goal is to achieve a transparent, honest, responsible governance; if we want to trust our leaderships and have a trustworthy private sector; then we must fight the withholding of information. Only thus can we back our leaders in the pursuit of their aims.*"

A participant summed up Cameroon's constitutional history as *"the adventure of a presidentialism divided between its still powerful authoritarian inheritance and the necessity of its evolution in a democratic context".* One could say that *"Cameroon's constitutional dilemma is between enlightened authoritarianism and democratic presidentialism".* And for want of making a real choice, this hiatus is reflected in the creation of the norm, in the country's normative and institutional balance, and in institutional praxis. Problems endure and feed into other problems. Thus

in 1961, *"we had a federal constitution and federated constitutions (the constitutions of Eastern, formerly french, Cameroon and of Western, formerly British, Cameroon) with constitutional methodologies and heritages so different you have got to wonder how we managed to fit that lot together, supposing we ever did".* The fact is that Cameroon did not, the halfway option of the "decentralized unitary state" adopted some years later did not work.

In Cameroon, "*a silent confrontation took place between two constitutionalist approaches: a normative constitutionalism structuring power and guaranteeing political agreements (Western Cameroon) and a more instrumental constitutionalism supporting the realization of the chief's own political vision."* In the face of this enduring confrontation, a participant advocated *"finding a balance between the necessary normative dimension required by an evolution towards the rule of law and democracy, and perhaps, an unavoidable, albeit residual, instrumental dimension".*

GUARANTEEING THE RESPECT OF CONSTITUTIONAL PRINCIPLES AND TAKING INTO ACCOUNT THE CONTEXTS SPECIFIC TO AFRICAN SOCIETIES

 Listening closely to the participants, the question of a president's power, a variation of that of the "chief", proves crucial. *"Central Africa is the home of lasting power, almost everlasting"* said one, supported by another who calculated that "*the cumulated longevity of Central African heads of state is in excess of a century: 28 years for Cameroon, 42*

for Gabon before Bongo's death, 20 for the Republic of the Congo, 20 for Chad, 30 for Equatorial Guinea, 7 years for the Central African Republic and on it goes…". He concluded his demonstration by asking "*does not look very serious, does it?*" and by deploring the fact that in Central Africa, power legitimacy seems infinite to the men in power. *"Once you have won it, no more effort is needed to deserve it. We need a legitimometre!"*. Another speaker came to wonder whether *"in the Bantu ethos of power, power is only relevant if it lasts for as long as possible".* In conclusion, the assembly concurred that *"a just measure must be found in order to be able to limit the chief's power, even if the idea of limiting this power may look somewhat bizarre to parts of the population as there sometimes is a contradiction between the chief's power and the power of the constitution".*

The Cameroonian example is enlightening in this respect and takes us further in the exploration of this issue: *"President Biya knew how to take advantage of those who demanded a sovereign national conference so as to accept only the few elements of change that were not liable to challenge his power and to impose a personal interpretation of the constitution."* To a Chadian participant, *"this takes you back to the weight of tradition, the elders, and even of discourse word in Africa. It even raises the anthropological question of power in Africa. Put simply, it was enough for a president like Pascal Lissouba to assert that when you are in power, you can not organize elections that*

you might loose. When Eyadema said that a constitution is neither the Bible nor the Koran, these words were and still are highly significant. In some way, this has been institutionalized and Africa operates much along those lines. Ready to listen to our elders, we no longer even take the official texts into account. What the elders say takes precedence on formalism." This issue of the "chief-president of the republic" is thus unremitting in Africa. For the present, the "chief-president" still is a *"special institution that controls everything, subordinates everything, and answers to nothing or next to nothing".* How then can it be *"turned into a normal institution, one that follows the constitutional order?"*. A participant suggested establishing *"criteria to identify those who may access to state functions"*; while another referred to the necessity of better defining the mandates, an option he links with that of planning: *"a mandate cannot by definition be open-ended and must include objectives and action-plans. Now, our countries barely keep up the five year plan system that had the merit of visibility."*

However, it was the issue of elections that dominated the debate. For a Gabonese participant, the populations' participation to the general decision-making is formally recognized in her country given that, since the nineties, elections have been organized on a regular basis. But it has to be said that the results have not followed: "*the results of the aforesaid consultations are systematically disputed, as the elections are generally thought to have been 'fiddled with'.*

This feeling is firmly rooted at the deepest level of popular feeling." Too often, elections are a gateway for confrontations, as evidenced by events in the Ivory Coast that flared up just as the Yaoundé Meeting was taking place. For a Malian participant, this largely invalidates the electoral process inherited from the Western nation-state model: *"I have observed that each election, by virtue of the fact that it yields a winner and a looser, creates problems as all of us Africans say that we operate by consensus. Why not reclaim the palaver, practice that has many strong points?".* Still according to him, elections corrode governance in Africa, quite simply because *"they just do not work. 'Sharing of public management?', how can we when our constitutions say that the winner takes all? After elections, solutions are sought, 'inclusive governments' are crated when it would have been simpler to anticipate!".*

Finally, for several participants the constitutions' legitimacy should also be derived from their taking of African social realities into account. According to a Malian participant, *"we have constitutions that favor confrontation over conciliation. And, in Africa, we may not know how to handle confrontation, but we do know how to manage conciliation. Is that not what Africa can bring to the rest of the world? If our constitutions are today faced with so many problems, it is because they lack a whole component: tradition. But the tough questions such as ethnic groups and languages for example also have to be addressed."* If for another participant ethnicity must thus be taken into account in African

constitutionalism, another suggests that it is "*a double-edged sword, it can be taken into account but it is very damaging.*" Faced with the lack of a normative framework designed to express respect and to set rules, ethnicity remains unspoken, confined to dealings between certain traditional and political authorities. That is precisely when it is liable to lead to the most serious abuses. How then should ethnicity be taken into account?

In the end, as summed up by a participant, *"it all rests with the capacity of the state's norms, and first among them the constitution, to articulate the diverse sources of legitimacy and thus to make room for tradition [and religion]."*

HOW TO GUARANTEE THAT CONSTITUTIONS MAKE PUBLIC INSTITUTIONS ACCOUNTABLE?

The practice of power in Central Africa shows well enough how it manages to overwhelm and neutralize constitutional texts. In the words of a Zimbabwean participant, "*the constitution is not an end in its self. It is implemented, belongs to the people, but it is just a start*". The constitution must notably be accompanied by institutional reform, control over the power of constitutional revision, and recognition of the independent power of the constitutional judge. The lack of acknowledged institutions in the constitutional text and of adequate protection from the influence of politics risks leaving constitutions at the stage of "empty shells". That is what is meant by a participant when he asserted that in the absence of "*such institutions, you can*

introduce all the legal sophistications you want, but it will all be for not because of the institutional vacuum – or its vapidity – and you will still be living under the 'crippling constitutionalism' we know so well in Africa, a retentive constitutionalism, nay sometimes a perverse constitutionalism."

It is therefore important to ensure institutional equilibrium, notably by taking good care of the balance between central power and local powers but also, within central power, between government and parliament. In order to understand the first strand of this requirement, we must remember that Central African states were founded by unifying frameworks involving both peoples and territories. The populations had a codified life and their own regulations. Few states in Central Africa have taken these realities into account by giving them a political and administrative voice, especially through decentralization. Central Africa's village populations lack relays with an administration that, aggravating factor, all too often only uses French to communicate with its constituents. To quote again an earlier intervention, *"a villager who does not speak French is not likely to feel involved with an administration with which he cannot communicate with"*.

With regard to the second strand of the aforementioned requirement, we have seen how current practice ends up with the chief of the executive as the state's only decisional center. Parliament cannot therefore exercise a *stricto sensu* control over such an executive, especially since a real

control automatically implies sanctions. In reality, parliamentary power is dominated by the executive, the government and its majority also arising from the same source: the head of state. Constitutional control mechanisms are then left out of the equation since majority discipline and loyalty to the leader replace them. As a result, despite the constitutional provisions, the government is less accountable to the nation than, at any moment in time, to the head of state who can reshuffle it at will. Another consequence of this state of affairs is the near impossibility of any alternation. And yet alternation, which is provided for by classical constitutionalism, allows for the necessary political balance for the recognition of the populations. But in Central Africa, the opposition is denied the place that it should have in a democratic regime.

Besides, the reason behind the necessity to set up mechanisms allowing for regular revisions of the constitutions is that because they *"are not tents pitched for sleep or for eternity"*. Taking his country as an example, a Gabonese participant pointed out that *"when you look at the different versions of the constitution passed in Gabon, they prove in keeping with the law but in no way are they legitimate. In reality they obey more to an instrumentalist logic than a democracy one."* Yet in Gabon, it can be seen that the revision process, as provided for in the constitutional text and as practiced, aims at setting up and preserving authoritarian presidentialism.

The constitution revision process is *"closed and restricted to the political institutions"*, excluding *de facto* the people from their right of initiative since only the head of state and parliament find themselves in a position to use the right to initiate a constitutional reform. It must be added that even then, though parliament used its right in 2000 and 2003, these initiatives had in reality been inspired by the head of state who in fact coordinated the project. Likewise, the Gabonese people were asked only once, in 1995, to ratify the Paris accords concluded in the wake of the chaotic 1993 elections. This followed a decision of the constitutional court that considered that in the absence of a sitting upper chamber, the people had to be consulted by referendum. Nevertheless, one participant told us that *"this was not about allowing the people to use their imprescriptible right to change the constitution, but instead a way of legitimating by acclamation a constitutional coup, arming one's own executioner".* In other words, no procedure of this type has any chance of success as long as it is not initiated or accepted by the head of state. The recent history of Gabonese constitutional revisions thus demonstrates the fact that their key objective was to instate and sustain a form of authoritarian presidentialism. In this way, although the 1991 revision did intend to provide the presidential power with a legal framework and to set up a moderate government, the revisions implemented in 1994, 1995, 1997, 2000, 2003, and 2010 swept away democratic considerations. Following an instrumentalist logic, these succes-

sive revisions allowed for the restoration of the head of state's quasi monarchical status, thus reinforcing presidential hegemony. For example, the original five-year presidential mandate was extended to seven years renewable once, and then in 2003 it was made to be renewable *at vitam aeternam*.

With this in mind, a Gabonese participant stressed the necessity of operational and legitimate constitutional revisions and more specifically recommended that the right of initiative on this matter be extended to the citizens. In the model set forth by the June 1991 Burkinabe Constitution, the validity threshold for the people's right of initiative regarding constitutional revision, whether total or partial, is set at 30 000 citizens. However, this participant reckoned that even if the people are at long last involved, unilateralism should no longer prevail: *"other actors should also be involved, such as political parties, civil society organizations, development partners, etc."* It is equally important for a control to be exercised on the contents of the constitutional revision proposals themselves. Indeed, according to a participant, the new authority, derived from the revision, must not be considered autonomous, unconditional or unrestricted as was the original one by which the original constitution was adopted. It must indeed be limited by the principles set forth in the constitution itself in order to allow for the original constituent's work – deemed just, legitimate and balanced – to be *"protected for all time ensuring thereby a measure of stability"*.

A more frequent resort to the referendum process was also put forward by some participants, one of them even suggesting that it *"should become an exclusive means for the adoption of revised constitutional texts".* He quoted the example of Chad where it is provided that no revision can be enshrined without the people's intervention by referendum, whereas in Gabon and Cameroon, parliamentary and popular adoption methods co-exist.

Remains to consider the key role of the constitutional judge. "*A constitution, if we want it to be an integral part of the democratic ethos, must be the object of thorough protection"*, a Cameroonian participant declared. As it happens, Cameroon has no means of constitutionality control, the jurisdiction, provided for on the paper in 1996, has yet to see the light of day. And, if truth be told, Gabon is no different, its constitution states that any constitutional revision project must, following its adoption by the council of ministers, be subjected to the constitutional court's opinion to check whether the text meets 'the right of initiative' condition and if it complies, in essence, with the constitution. However, this control has been described as *"wholly insubstantial".* Indeed, the Gabonese court has never exercised it in a meaningful way given the close links maintained by its members and the executive power who appointed them.

It may be worth turning to the African Charter on Democracy, Elections and Governance (ACDEG), a document adopted under the aegis of the African Union (AU). A

Chadian participant rightly pointed out that the charter already addresses a sizable part of the findings and solutions expressed during the meeting: *"there is good cause to wonder whether this is a problem of text or of will, for there even are provisions to sanction the causes of unconstitutionality. This text goes so far as to provide for mechanisms to set up an African democratic praxis, which should be taken into account when drafting constitutions. All that is needed is for our constitutionalists to have the intellectual honesty, and the courage, to take at their word the heads of State who met-up, drafted and passed that document. It would also be good for governments that have not ratified this text to be made do so."*

Concluding these developments around the theme of constitutions, the participants firmly placed the prospect of their renewal in the hands of civil society and more broadly the populations. A Cameroonian participant proclaimed that "*it is necessary to accompany the process of constitution appropriation by the people*", "*one can not expect a population to be attached to the constitutional norm if this same population has the impression that constitutional debates only take place between political actors; if it has the impression that the constitutional norm does not carry, translate or transcribe their aspirations.*"

Issues regarding tradition, religion, and diversity, what might be called 'sociological pluralism', resurfaced in this debate on constitutions, thus showing conclusively that constitutional renewal will not happen without the popula-

tions. Moreover, a participant did point out that if the Cameroonian population had taken such an interest in the 1995-96 constitutional debates, it was indeed because they had touched upon themes that interested them, such as taking indigenousness into account or the protection of minorities. *"People realized that, for once, here were questions genuinely concerned with social togetherness. Consequently, many persons and social groups attached great importance to the debate."* He beautifully concluded that *"friendly relations between the nation's different groups must be protected by the constitution, they must be achieved with integrity. However, with regards to constitutional culture, it is not the state that is about to drill it into societies, political actors are on the contrary rather keener to instrumentalize the population than to supply it with elements of constitutional culture that could work against them."* To support his conclusion, the speaker related an anecdote he had personally witnessed:

> In his village, in 2008, a member of parliament came to explain to the people the rationale for a revision aiming to suppress the clause limiting presidential mandates. He explained that in Ahidjo's days, nobody said that a president's time in office should be limited. He was therefore surprised that this should today be so for President Biya. Whilst the villagers went, somewhat forcibly along with him, a man spoke up to say: *"If the constitution constrains the presi-*

dent, let him remove it… if this means he can work for the good of the people!"

The participant ended his intervention by saying: *"that is what you get if you leave these processes in the hands of the politicians. It is not towards a constitutional culture, but rather towards the death of constitutionalism that we go to."* He was supported in this by a Zimbabwean participant who insisted that if you wished to give constitutions all their significance and their effectiveness, *"you must go to the people, it is not for the people to come forward. What's more, ordinary people must imperatively be included."* Not forgetting that a constitution is *"the reflection of a social pact at a given time"*, it is also the vector of *"an ideal to respect, to honor"*. It is therefore important to make it the *"vessel of an order of values a given people has chosen for itself, that is to say, a mirror in which its aspirations are projected"*. Capturing the full measure of Central African societies' mindscapes through their constitutions represents a highly likely path towards peaceful and legitimate governance.

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