

## 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”), were 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 multi-sectoral 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 Efulan district, Yaoundé - 3<sup>rd</sup> 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 tilled. 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 barring 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'. *"The 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<sup>3</sup>) 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 themselves 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 authorities 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 chieftdom 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 ROADMAP 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 herdsman 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"*.

