SECTION 13

CUSTOMARY LAW AND THE ENVIRONMENT

LE DROIT COUTUMIER ET L'ENVIRONNEMENT

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CHAPTER 41: THE SIGNIFICANCE OF CUSTOMARY LAW FOR ENVIRONMENTAL CONSERVATION IN CAMEROON

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1 Introduction[1]

Cameroon's diversity has given reason to call it 'Africa in one country' or 'Africa in miniature'. And it is true; Cameroon largely reflects the continent's ecosystems: coast, mountains, desert, savannah, and rainforest. In terms of forests, Cameroon – like the Democratic Republic of Congo, the Republic of Congo, the Central African Republic, Equatorial Guinea and Gabon – makes up the important Congo Basin. Forests build an extremely important part of Cameroon's landscape. Deforestation is, at the same time, still a challenge.

Natural physical characteristics contribute to significant geographical differences between on the one hand the Sahel and the Northern parts (i.e. the Far North, North and Adamaoua regions), the tropical, well-wooded regions in the South (Eastern, Southern and Central regions) on the other regions. But also the linguistic difference, for instance, between the Anglophone (North and South West regions) and the mainly French-speaking regions mark significant cultural differences. Beyond its official languages, English and French, Cameroon's populations speak more than 250 local languages, likewise marking enormous cultural and ethnic differences.

Beside the Christian majority, Cameroon is also home to millions of Muslims (24% of the population), and there are also many people believing in so-called Animist faiths.

Considering today's customary law, the country provides striking cases for the significance of land use rules in the context of the environment. Land matters in general, and especially for indigenous people like the so-called Pygmies or the Mbororo minorities. On the ground, resilience cannot be built if local communities are not strengthened in their management of resources, which depends to a major degree on customary rules and regulations. Beside of forest, forest animals, fishes, water man-

1 The author likes to thank the experts interviewed and especially Samuel Nguiffo for his valuable advice in preparing this chapter.

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agement are also referred to when discussing the environmental relevance of customary law[2] in Cameroon.

The present article proceeds in two steps: firstly, the country's living customary law is presented by identifying some core elements of the system and the dynamic of its practice. Secondly, Cameroon's customary law is discussed from an environmental governance point of view. An increasing relevance of customary rules in recent environmental policies as well as in ongoing legal review has been observed during the course of this research.

2 Customary law in Cameroon

The country's diversity is mirrored in its plurality of law. Common law jurisdiction, on the one hand, civil law on the other, make Cameroon's legal system a bijural one. It comprises both the modern positive law as well as customary law, including Muslim law, thus being better characterised as a plural system.[3]

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2 Customary law, according to the Central African Network of Traditional Leaders, (ReCTrad), is composed of the "standards regulating life in a community. It includes, subject to other rules of law, the right to property, processing and marketing of natural resources, the right of access and residence in their land, as well as the right to carry out any activity in connection with the custom under the authority of traditional rulers, including cults and rites practiced in natural forests and ecosystems." (ReCTrad (2014)). In other, more universal terms, *« les lois coutumières sont un aspect essentiel de l'identité même des peuples autochtones et des communautés locales. Elles définissent les droits, les obligations et les responsabilités des membres sur des aspects importants de leur vie, de leur culture et de leur conception du monde : utilisation des ressources naturelles et accès à celles-ci ; droits et obligations en matière foncière, d'héritage et de biens ; conduite de la vie spirituelle ; entretien du patrimoine culturel et des systèmes de connaissances ; et bien d'autres questions. (...) Le droit coutumier se compose d'un ensemble de coutumes, d'usages et de croyances qui sont acceptés comme des règles de conduite obligatoires par les peuples autochtones et les communautés locales. Il fait partie intégrante de leurs systèmes socioéconomiques et de leur mode de vie. Ce qui caractérise le droit coutumier est précisément le fait qu'il se compose d'un ensemble de coutumes qui sont reconnues et partagées collectivement par une communauté, un peuple, une tribu, un groupe ethnique ou religieux, contrairement au droit écrit émanant d'une autorité politique constituée, dont l'application est entre les mains de cette autorité, généralement l'État. »* (OMPI (2016:63)).

3 Cameroon's legal system might be characterised as dual or plural : *« En matière de tenure, c'est la rencontre et la cohabitation de plusieurs régimes de tenure (i.e. le régime moderne et le régime de tenure coutumier, explication d'auteur). Ce qui fait deux ou plusieurs régimes, d'où le dualisme ou le pluralisme. Ce dualisme/pluralisme est légal parce que chacun des régimes est fondé sur une base juridique qui lui est propre. »* (Oyono (2009:3)). Although outside of our article's focus, we might hint at the problem, how to assure peaceful coexistence between the positive and customary law. The complex relationship becomes evident, when for example looking at the legal provision on how to 'translate' marriage by custom into marriage according to positive law: *« ... les mariages coutumiers doivent être transcrits dans les regis-*

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With about 85% of land under customary law governance, following an estimation by major national think tanks working on land right issues[4], customary law is still of great significance in contemporary Cameroon. It has proven wrong believes that its coexistence would only be a temporary arrangement, as once planned in several countries.[5] On the contrary, custom as a source of law seems to be a stable reality in Cameroon.[6]

Again, there is diversity within customary law. From an anthropologically analytical point of view, it might be said that there are as many customary regimes as peoples or ethnic groups, thus about 250 different ones.[7] Consequently, the differences within the customary system are also an obstacle.[8] Even traditional chiefs themselves realise challenges due to the differences within customary regimes in Cameroon and respond to them by means of implementing their project of a national inventory of customary rules.[9]

When mapping customary rules in Cameroon, one can, however, also identify similarities in customary regimes without wrongly generalising, notwithstanding significant differences in the way and degree in which customary law is practiced in various parts of the country. The differences in the power and competences of traditional rulers are not identic with the division into either Anglophone (South Western and North Western) or Francophone regions (all the other eight regions), though it

tres d'état civil du lieu de naissance ou de résidence de l'un des époux », mais « toutefois, le Président de la République peut, par décret, interdire sur tout ou partie du territoire, la célébration des mariages coutumiers » (l'ordonnance du 29 juin 1981, titre VII), Bokalli (1997). For the coexistence between modern and customary law see Mvondo (2013:35).

4 IIED et al. (2017).

5 *« Quelques etats (i.e. francophones d'Afrique Noire, explication d'auteur) ont maintenu, á titre transitoire le système de la dualité de juridictioins et de ce fait ils ont accordé un sursis aux tribunaux traditionnels. Ce sont : le Cameroun, Congo, Benin, Gabon, Niger, RDC, Tchad, Congo-Kinshasa, Mauritanie, Burkina Faso, Togo. »,* Melone (1986:328).

6 "Hence, instead of destroying customary laws, it would be judicious and a welcomed measure to promote a kind of complementarity which would result in a symbiosis of the two. Customs, notwithstanding its limitations, remain a concept to be discovered." Bokalli (1997:37).

7 Téodyl Nkuintchua Tchoudjen says *« Si on parle d'un système coutumier, c'est un abus de langage, parce qu'il a plusieurs systèmes. Au Cameroun nous comptons plus de 250 groupes ethniques, et chaque groupe a des particularismes »* Kahler (2017b).

8 « Cette diversité des coutumes fragilise le droit qui en résulte et le rend par conséquent difficilement applicable par les tribunaux, d'autant plus qu'il n'est pas écrit. C'est pour pallier cet inconvénient que des tentatives ont été faites en vue de consigner certaines coutumes dans des documents. »; Bokalli (1997:66).

9 On occassion of the issue of womens' land rights, the National Council of Traditional Chiefs in Cameroon confesses not being aware of all regional differences in customary law: *« La situation pourrait être différente dans d'autres régions du Cameroun, et le Conseil National des Chefs Traditionnels envisage de poursuivre le dialogue avec des femmes des autres régions du Cameroun dans le but d'approfondir son diagnostic de la situation ...»,* CNCTC (2013:6).

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stands for two distinct legal systems, either common law or civil law.[10] But the authority of traditional chiefs and their practising of customary law depend on the respective historic political context of the place.

Moreover, structural differences between customary regimes in certain places are reflected in the difference of the positions local chiefs hold. Thus, a chief's relationship with local administration representatives, e.g. the prefect, varies according to the place. And in some places chiefs have many subjects, in others few.

Both comprise strongholds of traditional chiefdoms, the so-called Great North (*les régions septentrionales*) as well as Grassland (Western and North-western region), despite all their contrasts. In the Great North, covering the three regions of Adamawa, North and Far North, chiefdoms resemble ancient kingdoms and are traditionally strongholds of customary law. A chief's power over land is as strong as his authority over his subjects. The chief rules local conflicts. Many traditional rulers in the Great North and its 'Northern' system are Muslim, called Lamido (plural: Lamibe). Here traditional Sharia law also has its influence in those parts of the country. But there are also Animist or Christian chiefs.

In the Southern, Eastern and Central regions, traditional chiefs are less powerful, as most chiefdoms have been created by the public administration. In the three remaining regions, South Western, North Western and Littoral, again other particularities are notable, especially the high relevance of symbolic power. The competence of the chief concerning land is stronger than his power over his subjects when it comes to other legal matters.[11]

Notwithstanding local differences, chiefs generally still play an important role, and so does customary law. Traditional leaders act as custodians, exercising legal customary authority. The State assures legal unity within the customary system since customary institutions are "chiefdoms, recognised by Territorial Administration".[12] The Ministry of Territorial Administration and Decentralisation keeps the national chiefdoms record, i.e. the directory of traditional chiefdoms.[13]

10 "The Customary courts ordinance cap 142 of 1948 applicable to Anglophone Cameroon defines customary law as 'the native law and custom prevailing in the area of the jurisdiction of the court so far as it is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by natural implication with the written law for the time being in force'. The Southern Cameroons High Court Law of 1955 directs the High Court (and, a fortiori, inferior courts) to observe and enforce the observance of customary law. The interpretation section of this law provides that 'native law and custom' includes 'Moslem Law'"; Baaboh (undated).

11 Following Tchoudjen, Kahler (2017b).

12 RecTRad (2014:Section 10/1)).

13 The directory is available online at http://minatd.cm/gov/site/en/intranet2/annuaire2/annuaire-des-chefferies-traditionnelles, accessed 21 February 2018.

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Customary courts serve as a first instance jurisdiction for settling domestic cases. They are not without alternative: In principle, customary courts may exercise jurisdiction only with the consent of both parties. So, either party has the right to have a case heard by a statutory court and can appeal an adverse decision to the statutory courts. Yet, countless citizens are ignorant of their rights under statutory law and believe that they must abide to customary law.

The crucial reference for the work of traditional organs and rulers is decree No. 77/245 of 15 July 1977, which deals with the organisation of traditional chiefdoms. It states that the *collectivités traditionnelles* are organised as chiefdoms according to territorial and hierarchic principles. So, there are chiefdoms and chiefs of three different levels, each implying other competences. The decree also provides for a chief's job description (§§ 19 – 21): Auxiliaries of public administration, chiefs are supposed to assist state authorities and, specifically, they are responsible to communicate orders by state authorities to their subjects and to supervise the execution of them. Moreover, the decree tasks them to uphold the public order, to contribute to economic, social and cultural development in all regions, and to assist in tax collection or to carry out any other special mission as requested by a competent public authority. Finally, in a more traditional way, according to § 21:

> *Les chefs traditionnels peuvent, conformément à la coutume et lorsque les lois et règlements n'en disposent pas autrement, procéder à des conciliations ou attributions ou arbitrages entre leurs administrés.*

It is remarkable that this task, which might be considered as the core responsibility of chiefs, is only granted as a further option, which shows a certain bias towards traditional governance. The way how traditional ruling is recognised or not respected has been subject to various debates.[14]

Essential competencies concern land rights. When land disputes are to be settled, even local government representatives like the sub-prefect must not act without advice and backing of the customary authorities.[15]

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14 Subsequent decrees have since than updated some provisions, however not the highlighted essential points, but mainly rules on the allowances payed to traditional rulers. *Le Président de la République, Chef de l'État, Son Excellence Paul BIYA a signé le décret n° 2013/332 du 13 septembre 2013 modifiant et complétant certaines dispositions du décret n° 77/245 du 15 juillet 1977 portant organisation des Chefferies traditionnelles, 16 septembre 2013*.

15 *« Il faut souligner que les chefs traditionnels et leurs notables de toutes les Régions du Cameroun sont impliqués dans les Commissions administratives de gestion des affaires foncières au Cameroun »*, according to Chinmoun, Kahler (2017). Ordinnance 74/1 of 6 July 1974 (Part III, Article 16) states that traditional chiefs belong to the consultative bodies managing public lands.

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In accordance, not only with its historic meaning, but also regarding its current function, most research and critical debate on customary law in Cameroon deals with land rights.[16]

Historically, that is before colonial rule imposed administrative land titles and other instruments under positive law, the customary tenure system ruled the land, and its passing over from one generation to another. Much literature deals with the modalities of the handing over of land, e.g. according to *le droit de hache*, i.e. being the very first occupant, but not in an individualistic sense:[17]

> *Seules les autorités traditionnelles étaient compétentes pour connaitre des litiges sur la base du postulat selon lequel la terre appartient aux premiers occupants qui en ont fait la mise en valeur à travers les cultures vivrières et les cultures de rente. Dans le but de vivre de manière paisible, ce droit d'occupation non écrit était transmis de génération en génération, avec les chefs traditionnels comme garants.*[18]

Then, German, British and French colonialism disempowered customary regimes when occupying the territory and attempting "to abolish these customary laws by replacing them with imported law".[19] We can, for the sake of illustration and argument, refer to the German Emperor's Order concerning the legal affairs in the Protectorates of Cameroon and Togo (*Verordnung, betreffend die Rechtsverhältnisse in den Schutzgebieten von Kamerun und Togo*) from July 1888, where § 21 regulates among others the occupation (*Besitzergreifung*) of unoccupied/vacant land (*von herrenlosem Land*),[20] despite the known fact that customary ruled land was rarely unoccupied/vacant. The introduction of the German land register (*Grundbuch*) was one

16 *« Au Cameroun, le 'droit' foncier coutumier fait référence aux règles et aux procédures (généralement non écrites) par le biais desquelles une communauté rurale réglemente les relations foncières entre ses membres, ainsi qu'avec les communautés voisines ou associées. Ces règles et procédures, ainsi que leurs effets, ont marqué les communautés utilisant d'autres systèmes de régimes fonciers coutumiers sur l'ensemble du continent africain, et même au-delà »,* Wily (2011:45).

17 "…African customary law is originally communal or 'usufructuary', meaning that land rights are not rested in any individuum but in some corporate group such as a clan, community or family. …One belongs to a group, one belongs to the land, the land belongs to us. …You must belong to the land if you want the land to become a little bit yours", Mvondo (2013:31). The reference to an 'ancestral origin' justifying quasi genuine ownership is clearly analysed among others by Peter (2014).

18 According to Salomon Chimoun, Kahler (2017a).

19 Bokalli (1997).

20 *Verordnung, betreffend die Rechtsverhältnisse in den Schutzgebieten von Kamerun und Togo*, in: *Dt. Reichsgesetzblatt Bd.* 1888, No. 31, 211-215 (Version 2 July 1888), compare Oyono (2009:11*): « ... les autorités coloniales ont trouvé que les vastes terres et forêts conquises etaient vacantes et sans maître. »*

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means (in the interest of the colonial regime), which disempowered customary law and contributed to changes of the political position of traditional leaders.[21]

It is worth noting that in the Germano-Douala Treaty of 12 July 1884, the Chiefs of the Cameroonian coast clearly expressed, among other things, vital concerns.[22] Since the Chiefs wanted to keep control on their land, clearly associated to their livelihood, the Treaty states: "Our cultivated ground must not be taken from us". It is important to remind that during pre-colonial Cameroon, access to and management of land were solely governed by customary laws. However, the German colonial administration, followed by the British and the French embedded selective compliance with their contractual commitments: they decided to modify the rules governing land management, while allowing the coexistence of a dual system for issues not related to land and natural resources (e.g. marriage). Later, the German administration changed the rules for land allocation and property, only recognising customary property on a limited size of land to native individuals (decree of 15 June 1896).

After the colonial times, customary land rights remained abolished during the land reforms in 1974 and 1976:[23]

> *Cette réforme, qui reconduit d'ailleurs pour l'essentiel le droit colonial, se caractérise par l'accaparement juridique systématique des espaces vacants et sans maîtres .... Par ailleurs, le droit de propriété privé des biens immobiliers n'est désormais établi que par un titre foncier d'immatriculation minutieusement réglementée. Ceci pose en fait le principe de la négation de toute valeur au mode coutumier d'acquisition de la propriété immobilière, en l'occurrence la possession ou l'usucapion. ... Seule l'immatriculation confère le droit de propriété. ... Il ne possède donc sur la terre qu'il occupe qu'un simple droit d'usage et de jouissance qu'il ne peut céder parce que n'étant pas propriétaire. ...Le propriétaire coutumier, c'est-à-dire en fait la quasi- totalité de nos paysans qui occupent ou exploitent des terres sur lesquelles il n'existe pas de titre de propriété au sens de la réforme foncière de 1974, se trouve dans une situation précaire.*

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21 It is striking how the land administrative order 74/1 of 6 July 1974 (Part II Article 2) lists various legal categories under private property following the three former Colonial legal sources, French, English and German: « les terres immatriculées ; les freehold lands ; …les terres consignées au *Grundbuch* ». We need to be aware that the notion of customary law itself has not been present before colonial times: "The inception of colonial rule in Africa introduced the notion of customary law and tenure system and this brought about changes in power relations as local chiefs were bestowed with the rights to control land. Customary land tenure did not only emerge through the economic changes brought about by the colonial system, but also through the political alliances." Peter (2014:50).

22 Sandjè (2016).

23 Bokalli (1997:46f.). The 1974 land reform act, again, abolished customary tenure systems, transferring land allocation competences at the subdivision level, with the sous-prefets (compare Peter (2014:75)). When customary rights are recognised as use rights, but not as granting property per se, the legal bias against traditional community rights continues. To convert customary regulated land into property through the establishment of a land title requires complicated, costly procedures.

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Practically speaking, customary practices have graduately been marginalised, equally as some minorities.[24] Evidence for the marginalisation of minorities is provided by many reports, for instance by the UN Human Rights Council's expert on minority issues, who has been witnessing minorities' discrimination in terms of land rights:[25]

> Land issues were frequently cited as being a core concern of minority and indigenous peoples that have extremely strong and long-standing connections to land and territory, which they occupy and govern according to their customary practices, culture and traditions. Consequently, issues relating to access to and the use, occupation or ownership of land and displacement from lands featured prominently in consultations with the Independent Expert. The right to land is fundamental to the preservation of the identity, lifestyles, livelihoods and well-being of many minority and indigenous communities and to the enjoyment of a wide range of other human rights.

Not surprisingly, a good portion of research has been devoted to the land problem of local communities, indigenous, particularly autochthone minorities like 'the forest peoples'.[26] Case studies[27] have been carried out to examine minorities' exclusion and deprivation due to land rights mechanisms.[28] Advocating for customary law means defending the interests and rights of minority groups.

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24 *« Les lois du Cameroun apportent une certaine sécurité d'occupation aux fermes et parcelles non enregistrées, mais seulement dans la mesure où une indemnité (limitée) est versée afin de compenser la perte permanente de récoltes ou d'infrastructures lorsque le gouvernement réquisitionne ces terres à d'autres fins. Ces terres non enregistrées (ce qui est le cas de la plupart des terres du Cameroun) peuvent notamment être cédées en pleine propriété, à bail, ou dans le cadre de licences d'occupation exclusives au profit de bûcherons, de mineurs, de propriétaires de ranch, d'entrepreneurs dans le secteur des biocarburants ou des aliments, ou au profit du gouvernement (sous la forme de forêts domaniales) »,* Wily (2011:11). According to the author, limits to acknowledge customary land-holding, as well as the difficulty for customary landowners to formally register their holdings to secure their property, has rendered rural Cameroonians' access to land insecure.

25 UN (2014:6).

26 For the question of the status of autochthone peoples, compare for instance IPCC 2014, 5th Assessment Report: They not only live in the most vulnerable territories, but depend also much more than other social groups on the natural resources and their environment. Another reference is the UN Declaration on the Rights of Indigenous Peoples, Articles 27 and 32.2. For the Cameroonian and central African region, the 2004 guidelines by COMIFAC are especially relevant: *Directives sur le participation des peuples autochtones à la gestion durable des forêts d'Afrique centrale*.

27 E.g. Oyono (2009).

28 Oyono carried out an action research in the customary forest domains within the protected forest zones of Bambuko, Mbalmayo, Ottotomo et Deng-Deng: *« confirment l'antériorité des territoires claniques par rapport au classement des massifs forestiers en réserves »*, Oyono (2009:11). *« La question de la dépossession des terres claniques et de la disqualification aveugle de la propriété et de la classification domaniale coutumières est reconnue comme étant le facteur catalyseur du conflit des droits et du conflit de langage sur la propriété des massifs forestiers ... »*, Oyono (2009:15).

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3 Revival of customary law?

The call for more recognition of customary governance has been recognised in Cameroon and the central African region. Favourable to customary law's revival is the willingness to involve stakeholders from marginalised groups. The regional Commission of Central African Forests (COMIFAC) serves as an example. Its guidelines on the participation of local communities and indigenous peoples from 2010 recognise customary ownership as a means to determine who has access rights and the right to regulate internal use patterns within forests. It also provides for a right to customary preference clause.[29] Observers have pointed out that the COMIFAC guidelines must be better applied by means of strengthening participatory planning and monitoring.[30] Herein one can observe a revival of the customary law regime.

However, it is also unavoidable to mention some negative features. Where customary rule violates human rights, it cannot remain ignored and must be corrected. Treatment of witchcraft allegations, for example, might be a point to be questioned; illegal arrests if they happen, are not acceptable.[31] Same applies for any discriminatory customary practices against women.[32]

The revival of customary law can only sustain if the traditional leaders, hand in hand with the other legislative instances respond to the momentum by updating the traditional law. Two examples might illustrate the potential for advancement; one dealing with gender and the initiative for a national codification. The critical gender aspect seems to be under review, which is important, since, according to customs, land is passed mainly from father to son, women do not own land, although they might cultivate their husband's land for instance.[33] However, the national traditional

29 Mvondo (2013:30).

30 Joiris et al. (2014); Mvondo (2013:34).

31 Still, some rulers are said to run private prisons though not in accordance with standards of rule of law (https://www.state.gov/j/drl/rls/hrrpt/2010/af/154335.htm). The last annual report on the state of human rights by the National Human Rights Commission highlights that the prohibition of torture also applies to traditional leaders (CNDHL (2017:20)), but does not comment on specific cases or observations.

32 See for instance Ruppel (2008).

33 Tonyei et al. (1993:153-160). Discrimination against women by traditional systems is generally noted in Africa (compare AU et al. (2010:14)). For the case of Cameroon: « *Une observation attentive des coutumes camerounaises permet de mettre en évidence que certains droits fondamentaux ...ne sont pas toujours pris en considération. ... S'agissant du sexe, le droit coutumier pose comme principe l'inégalité entre l'homme et la femme. Le premier a toujours été considéré comme étant supérieur à la seconde. La femme est en fait prise comme une donnée négligeable....Ceci, à l'évidence, est contraire aux principes fondamentaux inscrits dans la Déclaration universelle des Droits de l'homme et la Charte des Nations Unies et réaffirmés dans toutes les constitutions successivement adoptées par le Cameroun depuis son accession à la souveraineté internationale.* » Bokalli (1997:57).

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chiefs' committee (CNCTC) acknowledged the need for review when it comes to women's land rights. In their view, the inacceptable discrimination has to do with an application problem, but does not correspond to the customs *per se*: « *Les coutumes originelles dans les zones forestières du Cameroun sont protectrices des droits des femmes* ». Even if their view might be questioned, the chiefs reflect readiness to review existing customary realities in order to find a remedy to gender-based rights violations.[34]

So far, only one exception to the oral nature of customary law can be found in Cameroon, namely in the Kingdom Bamoun. In 1895 Sultan Njoya not only created his own alphabet and dictionary but also transcripted and codified the legal rules of his kingdom. The Sultan also built a printing press and a royal library with legal documents. Both will soon be displayed in the new Bamoun Museum in Foumban.[35] At the national level, a codification initiative has started in early 2017. Traditional leaders, associated as National Council, decided to advance a national codification of customary laws, taking all necessary steps to draft the planned customary code inventory, the so-called 'Customary Rule Book'.[36]

4 Customary law and the environment

Evidently, research on customary law in Cameroon paid much more attention to questions of access to land than on the conservation of natural resources.[37] It has to be born in mind, however, that environmental politics is a rather recent practice in Cameroon.[38] Yet, summarising recent critical research confirms the new accent on local community rights:[39]

> … [t]hese articles have questioned how the legal and normative framework of public participation in environmental decision-making in Cameroon as informed by international law can be adjusted to provide tribal and indigenous peoples with the ability to meaningfully participate in decision-making that affects their lives.

From the available research, it can also be concluded that the environmental relevance of customary law in Cameroon is most adequately understood in terms of

34 CNCTC (2013:6th Element); the revision of customary law will be discussed below.
35 According to Chinmoun, Kahler (2017b).
36 See Hayatou (2017).
37 Kahler (2017b); see for instance Freudenthal et al. (2009).
38 Cameroon's law on forestry, wildlife and fisheries was adopted in 1994 (Law No. 94/01 of 20 January 1994), and its law referring to environmental management in 1996 (Law No. 96/12 of 5 August 1996).
39 (Sama 2014:3).

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(subsidiary) land governance.[40] Traditional rights on land (traditionally, *droit d'usufruit*, right of usufruct) are most instrumental when it comes to environmental protection.[41] In this light, customary law does not deal with ecological conservation as an isolated venture for its own sake, but it implies that the protection of nature is intrinsic in the sense that it ensures sustainable local livelihoods.

4.1 Environmental law and customary rules

At the international level, the UN Rio Earth Summit has firmly defined the critical link between environment and development in 1992. Guided by the idea and goal of sustainable development,[42] the international community, including Cameroon, agreed to the terms of the Rio Declaration and the Rio Conventions. According to the concept "economics and ecology interact", the awareness has grown since 1992, also in local contexts.[43] The concept of sustainable development articulates different levels implied in the relevant processes; from the global down to the local level of action (Agenda 21). In line with the spatial dimension, local, indigenous communities and their customary rules or regimes are also addressed therein. The UN action plan Agenda 21*,* which has been reasserted by the UN Sustainable Development Summit in 2015, places special emphasis on the local level with the prominent role of indigenous peoples and their communities. This is equally reflected in Principle 22 of the Rio Declaration: [44]

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40 "Land governance refers to the processes by which decisions regarding access to, and use of, land are made, the manner in which those decisions are implemented, and the way in with conflicting interests in land are resolved or reconciled. Land governance is thus a techno-legal, procedural and political exercise." AU et al. (2010:20).

41 I.e. use of forest products by the forest peoples living inside or next to the forests for the purpose of subsistence, to satisfy their needs, without any further commercialisation by the users is the customary use concept which entered legislation, i.e. *décret d'application du regime des forêts au Cameroun de 1995,* Article 26 (2), Tchomnou (2006).

42 Sustainable development: development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

43 This point is already made in the expert commission's report establishing the theoretical and conceptual base of the Rio Conventions, WCED (1987).

44 "Tribal and indigenous peoples will need special attention as the forces of economic development disrupt their traditional life-styles - life-styles that can offer modern societies many lessons in the management of resources in complex forest, mountain, and dryland ecosystems. Some are threatened with virtual extinction by insensitive development over which they have no control. Their traditional rights should be recognized and they should be given a decisive voice in formulating policies about resource development in their areas." WCED (1987:§46.) The UN Convention on Biodiversity (CBD) claims to protect customary management of natural resources and has been signed by Cameroon in 2004 (compare Wily (2011:178)).

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> Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Reclaiming recognition of customary law facilitates to take action for sustainable development, for it includes at local level the otherwise marginalised and repositions them as responsible actors. Local communities, for instance, the so-called forest peoples in the Centre, Southern and Eastern Region of Cameroon, are most dependent on and exposed to their natural environment. The connection with 'their' natural environment fosters their vulnerability towards damages like deforestation or the degradation of soil. In fact, they reflect the two sides of the same coin.

Cameroon has established the National Plan for Environmental Management, which is considered as a national action plan for sustainable development. With this environmental framework law of 1996, Cameroon does justice to the local level and its customary law in terms of the principle of subsidiarity:[45]

> *Selon lequel, en l'absence d'une règle de droit écrit, générale ou spéciale en matière de protection de l'environnement, la norme coutumière identifiée d'un terroir donné et avérée plus efficace pour la protection de l'environnement s'applique.*

This law formally recognises the function of customary rules in the management of the environment and natural resources, as it gives effect to the principle of subsidiarity. Customary norms of a given location apply when offering a more effective protection to the environment. At the same time, the framework law does not further specify the extent or character of the role customary rules play, leaving space for case by case interpretation.

Similarly, the forestry law (No. 94/01 of 20 January 1994), undergoing review for some years, grants a place to customary law, though confusing it with use rights (*droits d'usage*). Because the law's recognition of forest communities and their customary rules remain without any further formality or precision, a Ministry's draft points out new specifications.[46] Such states Article 17 (2) of the Ordinance No. 74/1 of 6 July 1974, allowing to establish rules governing land tenure states:

> Provided that customary communities members thereof, and any other person of Cameroonian nationality, peacefully occupying or using land (…) shall continue to occupy or use the said lands (…).

45 Environmental Framework Law, Article 9.

46 Especially the draft modifications of Articles 8 and 10 are worth noting, since participatory rights of local communities in the management of natural resources and environment are bound to their current customary laws (Ministry of Forestry and Wildlife's draft law of 13 December 2012).

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Additionally, Article 17 (3) confirms that hunting and fruit picking rights are also recognised to communities on land with no evidence of development until such land is allocated to any legal entity under positive law.

Communities' customary uses of the land are therefore recognised and protected, and the law provides for the possibility of acquiring property rights on land, even if the process is perceived expensive and cumbersome by the communities, as mentioned above.

It has been suggested to take advantage of the current forest and land law revision.[47] Presenting examples of communal forests or community protected forests it is argued that customary rights need to be better protected since sustainable governance must not depend on ownership established through the exploitation of natural resources alone.

4.2 Environmental aspects of customary law: taking communities' rights serious

Henceforward, two examples on how customary law appears in current regulations and ongoing political debates will be discussed. In the first case, the way environmental management involves customary law is going to be analysed. In the second case, two recent advocacy papers by Cameroon's traditional leaders, revisioning national policies in the light of customary law are being presented. However, beforehand, a short preliminary remark situating the author's perspective on traditional law and the environment is to be made.

Though ecological benefits of customary rules are probably substantial, there is little evidence from research in view of contemporary Cameroon. Therefore one needs to be careful not to romanticise the reality, as if the heritage of the forest peoples' supposed harmony with their environment automatically provided good governance over natural resources. Where the collective existence is still bound to 'its' nature as it seems to be true for many indigenous communities, a traditional connectivity with nature might still be intact, while traditional chiefs still adhere to the narrative of an original unity between man and nature.[48] And, according to customs, i.e.

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47 Wily (2011:107).

48 Majesty Essounga N Auguste, a village chief in Ngwei, Littoral, adheres to it, saying: « *La communion entre l'homme et la nature, c'est Dieu!* », Kahler (2017c); In the context of the so called forest people or Pygmees, Baka, the affiliation with the land and forest is religiously affiliated with their god *Kel Koumba* according to Nkuintchua, Kahler (2017b). Compare also Peter (2014) about the ancient customary concept of land: "Land was therefore seen not just as a resource for the cultivation of crops but also as a natural gift and asset created by God and put at the disposal of the community.…It is still considered as something given by God to the people to use, keep and pass it onto future generations. Land comprised not only the soil but all that which is found in the biosphere (water, forest, animals, etc.)", Peter (2014:30).

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heritage, specific spatial adherence and particularities of the local institutions, many traditional relationships between humans and forests are still determined by the principle of holy places and holy trees.[49] In Cameroon, one can, for instance, identify six types of holy woods, e.g. the Baobab with the Bandjoun people in the Western region.

But one must be careful in generalising and idealising the situation on the ground.[50] For the practising of the customary rule in certain places certainly relies on factual dependencies, socioeconomic conditions, practical conduct and institutional capacities. No doubt, traditional rule itself does not guarantee perfect – sustainable – harmony between man and nature. From an anthropological point of view, one must distinguish between the counterfactual « *vision romantique qui dit que toutes les populations autochtones ne sont que respectueuses de l'environment* » and existing spiritual or social connections with the environment due to which bare destruction of environment might be more unlikely.[51]

4.2.1 Natural resource management: the Campo Ma'an National Park

In the realm of natural resources management, one can witness the involvement of a variety of non-local actors in Cameroon. Historically, the colonial arrival was one of the main reasons for the gradual replacement of customary laws by state law. Ironically, international voluntary norms nowadays tend to insist on compliance with customary norms as best practices in natural resources management. Several international processes involving such voluntary norms can be mentioned in this regard.[52]

« *Depuis des temps immémoriaux, ces droits ont été régis par des coutumes, pratiques et traditions bien développées. À la base de leur existence, les peuples autochtones ont entretenu une relation particulière à leurs terres. Ils sont donc attachés à des terres traditionnelles particulières et non à des morceaux de n'importe quelle terre. Celles où ils vivent depuis des générations et auxquelles ils sont attachés ont un sens spirituel et culturel*. », Wachira (2012).

49 Logo (2012:2-29).

50 Illustration provides this case from Latin America, see Dahl & Rose (2012): *« Très récemment, des collectivités et communautés autochtones ont fait revivre le concept de 'Terre Mère'. Celui-ci, venu des autochtones des Amériques, contient des éléments religieux mais, d'abord et avant tout, il représente des valeurs culturelles et un désir de prendre en charge les générations futures. Lui est liée la notion du 'Vivre Bien' qui exprime l'étroite relation des êtres vivants avec la nature et se relie au passé de l'autodétermination autochtone, avant l'invasion et la conquête. La notion de 'Vivre bien' est à l'opposé de l'exploitation des ressources, de la commercialisation et de l'oppression, elle donne la priorité à la subsistance, à l'usage renouvelable et durable de la nature. Elle représente une forme alternative et autochtone de développement face au développement capitaliste occidental dominant. »*

51 According to Nkuintchua, Kahler (2017b).

52 For example, the REDD+ process or the Round Table for Sustainable Palm Oil.

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Like other countries of the Congo Basin, Cameroon faces the threat of deforestation and poaching, and these are threats not only for the existence of the rainforest but also its residents. Therefore, indigenous groups are increasingly included into community-based resource management, although protected areas have equally been perceived as threatening these communities:[53]

> In Cameroon, the incentive for creating protected areas has been the goal of covering 30 per cent of national territory by protected areas by 2010. This represents a specific threat for indigenous peoples.

A key point has been the missing free, prior and informed consent of indigenous people, for instance in the creation of the Campo Ma'an National Park. The park management attracted public criticism especially because of access and hunting restrictions:[54]

> *Mais ce nouveau statut de parc national veut dire que les communautés Bagyeli de chasseurs-cueilleurs qui habitent cette région depuis des temps immémoriaux peuvent être poursuivies si elles continuent à profiter de la forêt, leur seul moyen de vie.*

The development of the Campo-Ma'an National Park's management was instructive, for it represents an appealing case of how public discourse and critical monitoring can stimulate policy advancement. The formerly so-called *reserve de faune de Campo* and *site prioritaire* has been transformed into a National Park, where the park management tries at the same time to conserve biodiversity and to include the indigenous Pygmées people called Bagyéli. The park's development plan (from 14 September 2006) counts as « *une innovation majeure dans les politiques et pratiques de gestion des aires protégées au Cameroun et en Afrique centrale* » because one respects « *la nécessité de reconnaître le droit des peoples autochtontes à continuer de jouir de certaines ressources naturelles* ».[55]

Under the Memorandum of Understanding between the autochthone communities and the government, signed in November 2011, the government and state recognises that the customary way of land and resource use by the Bagyéli has always been a matter of survival and never threatening nature's biodiversity of Campo-Ma'an.[56]

4.2.2 Two collective chiefs' papers

Since 2008, there is a reform process going on regarding legislation over natural resource governance (land, minerals, forest, environment). This process provides op-

53 As stated in an important CSO alliance in May 2010, see CED et al. (2010:23).
54 Mouvement Mondial pour les Forêts Tropicales (2005:40).
55 Logo (2012:2-48).
56 (ibid.).

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portunities for input by various stakeholders, among them traditional authorities and community leaders. Key references are the 1994 land and forest laws.

Cameroon does not have a constitutional national or regional body of traditional rulers, apart from those represented in the Senate and the Council of Traditional Leaders. Traditional chiefs usually find different ways of gathering for political and deliberative reasons. Altogether it can be said, however, that chiefs' networks like the Council of Traditional Rulers in Cameroon or the regional Central African network of Traditional Rulers for the Conservation of Biodiversity and the Sustainable Management of Forest Ecosystems within the Congo Basin (ReCTrad) are of specific relevance. This is particularly true with regards to their commitment to both internal review of customary codes and to national legislative processes.

4.2.2.1 NCTRC / CNCTC paper on land law reforms (2013)

In its paper, which appears to be the first chiefs' policy statement of its kind in Cameroon, the National Council of Traditional Rulers in Cameroon[57] engages the government to review the country's legal land regime by strengthening the implication of customary law. Herein, the traditional chiefs advocate for « *la validité du droit coutumier* » in land management. The key idea of the proposal is the recognition of the social entity of the village as collective land owner, beside of the three other levels of the municipality, region and state; an element which might be considered part and parcel of the country's decentralisation process.

What is remarkable about the traditional chiefs' proposal, are two points: firstly, it articulates their intention to reform traditional law. Secondly, it reflects a limited awareness of environmental concerns. Sustainable development is widely perceived as the state's responsibility, as if land use at the village level could be reformed apart and independent from an overall long-term development policy. When they account for their understanding of land use, the traditional rulers value the role of the land in « *la stabilisation sociale, la preservation de la paix et l'impulsion du développement local et national* », yet, they do not reflect on its ecological sustainability aspect. If the customary rule is meant to become sustainable it must, among other aspects, also imply sustainable land management, conserving e.g. soil quality. But does customary law imply a soil-sustainable land use?[58]

57 National Council of Traditional Rulers in Cameroon (2013).

58 One could suppose that the weakness of environmental policy reflection is due to the fact that we also cannot find any ecological aspect within the chiefs' official, i.e. public job description (see above).

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4.2.2.2 ReCTrad paper on forest law reforms (2014)

Another, perhaps even more substantial advocacy paper has been published by ReCTrad, under the title: Why should the draft law on forestry and wildlife regulations be adopted?[59] ReCTrad's paper on forest reforms follows up on the CNCTC position on land tenure reforms.

The common ground of the two chiefs' papers is clear and distinct; calling for recognition of village ownership and a return to customary rights systems. And the ReCTrad group of traditional chiefs situates its proposal on how to revise the 1994 forestry law within the law reform processes since 2008. Therein the chiefs state as their environmental motif:

> We are guided by a sole concern: the effective efficient and sustainable management of the forest and its resources, so that development does not destroy the forest.

In the first place, the chiefs acknowledge the achievements by the draft forest law of 2008: it allowed to manage community lands according to customary law, to own "land and resources within permanent forest domains of State land", and it provided, for instance, for the possibility to create community protected areas over community customary land, managed in compliance with local customs.

In the following, the chiefs advocate for further changes of the forest law. Among others they claim:

- to widen the scope of the right to community forests to all regions in Cameroon;
- to grant land title deeds to communities all over;
- to recognise the execution of customary law where land titles are given;
- to prohibit selling or donation of village lands;
- to specify minority rights (i.e. of the Mbororo and the Pygmies);
- to assure consistency between forest law and other regulations; and
- to enhance land use and resources management in favour of community rights to facilitate land use balancing commercial, conservation and community interests.

In response to ReCTrad, an *ad hoc* commission has been installed by the Premier Ministre on 8 January 2015 (arrêté No. 001/PM) in order to assess the chiefs' reform proposals, involving all concerned ministries.[60]

Both aforementioned interventions by traditional leaders in Cameroon provide evidence on the dynamics in today's customary rule, as traditional leaders make input to emerging national legislation while revisiting 'their' existing customary law.

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59 ReCTrad (2014).
60 Tchiako (2015).

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5 Outlook

Customary law in Cameroon is alive. Modern and imported law has never completely replaced it. And despite recurrent predictions of its "death", one can even witness elements of revival. The practising of traditional law is evolving, since customary law is neither static nor homogenous. No doubt, referring to the customary rules alone cannot ensure good governance of the environment and natural resources. Among the prerequisites is the integrity of traditional leadership, and how compliant they are with customary rules. When traditional chiefs or communities' members nowadays tend to privatise and sell portions of land for their own profit, one finds frequent contradictions with the customary rules. Changes in the context, like an increase in demand for land and in the value of resources in many areas of Cameroon, cannot go without effect on practising customs and traditional ruling, yet requiring a certain degree of revision.

In the end, the author notes some desiderata, as crucial questions still require more research. The domain of customary law in Cameroon is not profoundly analysed, especially regarding environmental concerns. As said in the beginning, the country's diversity is also reflected in its legal affairs. Perhaps one interesting approach would comprise a comparative assessment or ascertainment of concurrent national customary regimes. Missing is a mapping of customary law in praxis, demonstrating to which extent it facilitates sustainable behaviour promoting environmental protection.

So far, we still know little about the evolution of customary law in Cameroon. Thus, empirical studies should investigate its diachronic changes. We do not know whether such hermeneutic research can reconstruct any 'original' principles guiding traditional regimes concerning, for example, gender issues or land use. But, what surely can be identified are at least some driving factors for changes in customary regimes; for instance, in the allocation of land or other resources due to increased scarcity or due to local population growth. Ultimately, while being ambiguous regarding sustainability or human rights, environmental governance in Cameroon cannot ignore living customary regimes.

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