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Decoloniality at the Frontier: Ruptures and Continuities in Forest Land Governance in Congo and Cameroon

Decolonialidade nas fronteiras: Rupturas e Continuidades na Governança das Terras Florestais no Congo e em Camarões

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Resumo

Este artigo examina a decolonialidade como um referencial e uma prática destinada a desmantelar os legados coloniais, com foco na governança da terra e da floresta. Por meio de uma análise comparativa das reformas legais no Congo e em Camarões, explora-se a integração das concepções de propriedade Indígena e Bantu nas estruturas jurídicas modernas eurocêntricas. Com base em um trabalho de campo etnográfico, o artigo argumenta que, apesar da retórica participativa dessas reformas, elas correm o risco de reforçar a dinâmica de poder colonial fundamentada no desenvolvimentismo.

Palavras-chave: Posse da Terra; Governança Florestal; Direito de Propriedade.

Abstract

This paper examines decoloniality as both a framework and practice aimed at dismantling colonial legacies, with a focus on land and forest governance. Through a comparative analy-sis of legal reforms in Congo and Cameroon, it explores the integration of indigenous and Bantu property conceptions into Eurocentric modern legal structures. Drawing on ethno-graphic fieldwork, the paper argues that, despite the participatory rhetoric of these reforms, they risk reinforcing colonial power dynamics grounded in developmentalism.

Keywords: Land Tenure; Forest Governance; Property Law.

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Introduction[1]

Decoloniality is both a critical framework and a practice aimed at dismantling coloniality – the persistence of colonial structures, knowledge systems, and power relations despite formal decolonisation (Maldonado-Torres 2007, 243). It involves decentring "euromodernity"[2] and moving away from Western-imposed models such as state-centrism (Mignolo 2018, 6), racial capitalism (Grosfoguel 2006, 58), and the marginalisation of Indigenous and non-Western ways of knowing (Escobar 2012, xxvi). A key dimension of decoloniality is rethinking humans' relationship with nature, as colonial expansion and empire-building were historically justified through land dispossession, resource extraction, and the imposition of private property on so-called "vacant and without masters lands" (Diaw and Njomkap 1998, 20). Decoloniality thus seeks to dismantle these legacies by fostering alternatives rooted in relationality and non-extractivism. For this reason, decolonial African scholars such as Kenneth Tafira and Sabelo Ndlovu-Ngatsheni call for a return to indigenous African conceptions of property and land tenure, as well as an end to the "coloniality of markets"(2017, 9; Rodney 2018). a system that is characterised by land commodification and dispossession in favour of the global capitalist market.

Over the last two decades, legal reforms that adopt a more participatory and decentralised approach to land and forest governance have been adopted in Central African states, including the Republic of Congo (hereafter referred to as "Congo") and Cameroon. These countries are part of the Congo Basin region, the second-largest tropical forest in the world after the Amazon, which is home to a diverse range of communities with distinct cultural and historical ties to the land. The majority population consists of various Bantu ethnolinguistic groups. National and regional legislation frequently refers to them under the broad category of "local communities," a term that, while administratively convenient, often obscures social, historical, and economic differences. Alongside them are indigenous forest communities, commonly referred to as "Pygmies," a term that has been outlawed in Congo due to its negative connotations.

[1] I am grateful to the colleagues who peer-reviewed this article, as well as to the commentators at the DeCoLa workshop in Brasília, for their incisive and constructive feedback. Their reflections have substantially deepened the analysis presented in this paper and will continue to inform the ongoing development of this research.

[2] Arturo Escobar cited in (Bilgen et al. 2021, 532)

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Traditionally in Central Africa, positive law does not recognise land rights claims based on customary law, and forest lands tend to be appropriated by states and logging corporations (Assembe-Mvondo 2013). However, the current turn towards what one Congolese official called an "inclusive and collegial governance of land and natural resources"(research participant A19, Ministry of land Affairs, Brazzaville, December 2023) raises the question of whether a decolonial property law has been achieved in Congo and Cameroon. While these reforms and their participatory promises seemingly align with decolonial aims, their implementation warrants caution. International financial organisations advocating for market-driven reforms typically promote state withdrawal from redistributive mechanisms. Such reforms can be co-opted to fit this ethos, thereby risking the domestication of radical demands and placing the burden on marginalised actors without confronting long-standing power imbalances. Therefore, the key question is whether these legal reforms truly dismantle colonial property regimes or reframe them under the guise of decentralisation and empowerment.

To investigate this question, this contribution adopts a comparative approach, contrasting European-inspired positive law in Congo and Cameroon with indigenous and Bantu conceptions of property law. This paper focuses on Congo and Cameroon because, despite their geographical proximity and ecological similarities, they employ distinct legal and institutional approaches to integrating Bantu and indigenous conceptions of land ownership and forest governance into positive law. Regarding sustainable forestry schemes and local participation initiatives, Cameroon leads the subregion in sustainable forestry schemes and local participation initiatives, while Congo is celebrated as an African model for its inclusion of indigenous people in positive law. Despite their different paths, Congo and Cameroon remain comparable as both are civil law countries with similar business and legal cultures due to their common French colonial legacy.

Drawing on ethnographic fieldwork conducted in Congo and Cameroon with Indigenous peoples, public servants, NGOs, and representatives of conservation and international organisations,[3] this paper argues that Eurocentric philosophies continue to shape legal imagination in both countries. The essay's opening provides a brief overview of the precolonial, colonial, and postcolonial history of land tenure in Congo and Cameroon. The following section focuses on the effects of the institutional turn in global

[3] Semi-structured interviews, participant observation, and participation in two international conferences bringing together a diverse range of actors from Central Africa and other world regions.

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governance in the two countries, which pushed for local and indigenous communities' participation in natural resources management. Do the legislative reforms adopted in the region in the wake of this shift effectively integrate Bantu and indigenous property conceptions into positive law?

1. The governance of forest lands in Central Africa: a colonial tale, between conquest and economic development

Congo became a French colony in 1882, whilst Cameroon was initially colonised by Germany, becoming a protectorate in 1884. Germany lost its colonial possessions following World War One. The League of Nations divided the territory, assigning mandates to France and the United Kingdom.

All these colonial powers shared the desire to develop their newly acquired lands through the specialisation of their colonial territories in the production of goods and commodities for export, as well as the creation of labour and consumer societies made of colonial subjects capable of both paying taxes and consuming goods imported from the metropole.[4]

That development policy relied on land control and expropriation. For that matter, colonial powers applied the same strategy, denying local conceptions organising land rights and tenure, and applying the doctrine of *terra nullius*, which holds that lands situated in new colonies are lands that are vacant and without a master (Diaw and Njomkap 1998, 22). The United States' continued westward expansion served as a "blueprint"[5] for other colonial nations at the time. Unlike the United States, European nations did not systematically sell land parcels. Instead, they chose to grant leases and concessions to settlers and, most notably, private investors in the case of Central Africa. This concession model enabled the establishment of farms, as well as agricultural, mining, and logging operations (Diaw and Njomkap 1998, 17; Hecketsweiler et al. 1991, 70).

[4] Colonies were considered to be outlets for the surplus of goods produced by the metropole. (Marx 1968, part. C; Moore 2017, 619)

[5] "President Thomas Jefferson, whose blueprint for the expansion of the US involved 'the acquisition of territory, its survey and sale as private property' (…) made possible the westward spread of the new nation. And that blueprint was taken up (…) — for use in the colonial territorial expansion of the British Empire in Australia, Canada, New Zealand, South Africa — before finally returning to Europe. "(Babie 2017, 141).

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These concessions were essential to the gradual expansion of colonial control into the colonies' remote areas and ultimately covered the entire colonial territory.

Historians explain that colonists used land development to justify colonisation, notably through the first occupancy theory. This natural law theory asserts that although lands were once owned in common, the first person to toil on it gains possession (Panesar 2000, 125-26). Therefore, the reasoning goes as follows: since Africans did not work and value the land, they are not entitled to possess it and could not have done so. As a result, their culture is inferior and needs to be elevated to European standards. The imposition of private property, through the 1804 Civil Code's transposition in the French colonies, was therefore justified as a civilising mission (Surkis 2019, 72).

However, it is important to note that this transposition was not a perfect replica of French property law. To facilitate land surveying and capturing, especially in forest regions, civil and common property were developed to adapt to the colonial context (Hardin 2011, 4). The appropriation of vast swathes of land required legal innovations that would enable the establishment of private property and guarantee the certainty of land ownership in a colonial setting. One such innovation is the Torrens Title System, which was introduced in the colony of South Australia in 1870 before making its way to other British colonies (Bhandar 2018, 87). and becoming a model for French colonists in Central Africa (Nongou and Loko-Balossa 2020, 232). Contrary to French property law – where title deeds are not indefeasible, and registration does not provide an absolute guarantee of ownership – Torrens-inspired "modern" property law in Congo and Cameroon treats registration as conclusive of ownership and extinguishes all prior unregistered rights associated with the land. The central land register maintained by the state guarantees the indefeasibility and unchallengeability of registered titles, removing the need for a comprehensive examination of the history and legitimacy of ownership (Nongou and Loko-Balossa 2020, 238; Mpessa 2004, 617, 623).

This had the effect of denying traditional Bantu and indigenous conceptions of land ownership. Colonial authorities thus altered local social organisation structures by enforcing an extractivist economic model based on common or civil law-inspired instruments such as the cadastre, the land registry, or the *Grundbuch* (Mpessa 2004, 617; Nongou and Loko-Balossa 2020, 232)

Both Congo and French Cameroon gained independence in 1960. However, this did not represent a rupture as the newly formed Congolese and Cameroonian modern

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nation-states maintained colonial land tenure systems. Postcolonial elites used a developmentalist and nation-building narrative to justify this continuity (Katz and Nguinguiri 1997, 2). The postcolonial state in both countries even went beyond the colonial state in many cases. Throughout most of the colonisation of Congo and Cameroon, the French authorities generally favoured the establishment of a strong and centralised state that controlled the most crucial aspects of land governance and attribution. However, the last years of French colonisation were synonymous with more leeway and indirect rule.[6] In 1959, one year before independence, the concept of "lands that are vacant and without a master" that had been used to justify land expropriation in French Cameroon was abolished by a colonial land reform (Food and Agriculture Organisation (FAO)). This had the effect of recognising local and indigenous communities' ownership over lands situated on their traditional territories. This measure was overturned after decolonisation.

Ironically, with its quest for centrism, sovereignty, and supremacy, the postcolonial state in both Cameroon and Congo has in a sense returned to the *terra nullius* concept (Assembe-Mvondo 2013, 32). Unregistered lands, which make up most lands in the two countries, especially in rural regions, are considered to be "lands that are vacant and without a master." They then fall into the state's remit, which has control over all unregistered and undeveloped lands.

The Cameroonian and Congolese legal systems guarantee private property rights. Their constitutions, using language similar to that of the French Civil Code, present property to be an inviolable and sacred right (limited by public necessity)[7] and recognise the three attributes of property typically found in civil law countries: the right of use (*usus*), the right to exploit and profit from the fruits generated by the good, land for instance (*fructus*), and the right to dispose of it (*abusus*). This provision is replicated in other laws dealing with ownership, especially land codes.[8] There are still some traces of

[6] This is particularly explained by the fact that after World War Two, the presence of European powers in Africa came under greater scrutiny. In 1958, in order to thwart decolonisation demands and efforts, France attempted to administratively decentralise its colonies by founding the French Community (comprised of all its colonial possessions, except Guinea-Conakry).

[7] "No person shall be deprived thereof [of ownership], save for public purposes and subject to the payment of compensation under conditions determined by law." (Constitution de la République du Congo 2015, 23; Constitution de la République du Cameroun 1996, 3, preamble)

[8] Ordonnance n° 74-1 du 6 juillet 1974 Fixant le régime foncier 1974 [74-] art 1; Loi n°10-2004 du 26 mars 2004 fixant les principes généraux applicables aux régimes domanial et foncier 2004 [10–2004] art; Loi n° 21-2018 du 13 iuin 2018 fixant les règles d'occupation et d'acquisition des terres et terrains 2018 [21–2018] art 17.

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common property law in the Anglophone region of Cameroon, and occasionally there are even some vestiges of German civil law since the *Grundbuch*, the German land registry, is frequently referred to in Cameroonian law (Ordonnance n° 74-1 du 6 juillet 1974 fixant le régime foncier 1974, art. 2; Food and Agriculture Organisation (FAO)).

To support its developmentalist goals, the state must have easy access to land and natural resources without undergoing a lengthy expropriation process. As a result, both Congolese and Cameroonian law classify land not subject to the private property regime as part of the national domain, meaning it is state-owned. Only lands registered with local land registries give rise to private property rights (Loi n° 26-2022 du 25 mai 2022 fixant les règles d'immatriculation de la propriété immobilière 2022, art. 56; Ordonnance n° 74-1 du 6 juillet 1974 fixant le régime foncier 1974, art. 1, 2 and 14). Registering goes hand in hand with enhancement and development.[9] According to Cameroonian law, a person can only qualify for land tenure and private property rights if the land has been enhanced (Décret n° 76-165 fixant les conditions d'obtention du titre foncier 2005, art. 7; Ordonnance n° 74-1 du 6 juillet 1974 fixant le régime foncier 1974, 15; Lado 2017, 39) . Congolese law defines the enhancement of a piece of land in very Lockean terms. For rural lands, enhancement is defined as "carrying out plantations, cultures, elevations, and piscatorial activities, or more generally, [by] engaging in productive tasks characterised by permanent and effective work on the soil"(Loi n°25-2008 du 22 septembre 2008 portant régime agro-foncier 2008, art. 17). So, enhancement appears as a prerequisite to registration. However, people cannot register lands they have enhanced if they have no rights over them.[10] Some lawyers consequently conclude that if a landowner stops developing her land, her property rights may be extinguished as enhancement must be constant (Kinbabele 2020, 2008; Sacco et al. 2009, 258).

The rationale behind the state's developmentalist approach is that, as the representative of the people's sovereignty, it should have control over the territory to facilitate its distribution for national development (Ordonnance n° 74-1 du 6 juillet 1974 fixant le régime foncier 1974, art. 1; Karsenty 1999, 152). As a result, it serves as a custodian and controls the transfer of these lands to persons who can advance the

[9] Enhancement or development come from the rhetoric of "*mise en valeur*" used during colonial times. This expression has an economic and civilising connotation (in terms of progress toward development).

[10] Building something or carrying out an activity on land owned by the state or a private person is not assimilated to enhancement and cannot give rise to property rights. (Ordonnance n° 74-1 du 6 juillet 1974 fixant le régime foncier 1974, art. 8; Arrêté n° 7642 du 8 octobre 2010 portant interdiction des lotissements des terres issues des droits fonciers coutumiers sur toute l'étendue du territoire national, s. d.)

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country's development plan. This is why, except for a few private owners here and there (Karsenty 1999, 152), forests first belong to the state, which can subsequently allocate concessions and titles to conservation initiatives, community representatives, or investors (most notably logging companies). As a result, in most situations, forest communities lack title to their traditional lands (Ott-Duclaux-Monteil 2013, chap. 1).

2. Contradictions with the ontologies of local indigenous communities

James Anaya refers to indigenous peoples' various views of social and legal order – which often stress "shared kinship"(Pereira and Gough, s. d., 19) and "how to live well with the land" – as "post-colonial indigenous legal consciousness"(Henderson 2002, 31-34). For indigenous people subscribing to this, "good" development is thus a model that favours collective rights over private property or ecological integrity over economic growth, for instance.

The indigenous people of the Congo Basin are acephalous, semi-nomadic communities that do not typically have a concept of property for immovable assets, such as land or forests (Diaw and Njomkap 1998, 41). Their relationship with the forest is a major part of their ontology. According to their myth origin stories, they are the forest's custodians because their God entrusted it to them (Diaw and Njomkap 1998, 13). Traditionally, except for hunting or gathering rights, they do not have an extractive relationship with the land or the forest. Those rights are usually claimed in areas surrounding the group's settlement. Historically, indigenous peoples' settlements were located in the forest, but since the 1950s, a state-led settlement process has increasingly led these communities to settle in Bantu-speaking roadside villages (Fa et al. 2021, 249). If more and more indigenous people are now engaging in subsistence agriculture, there is still a reliance on the forest, and they still exercise their hunting rights around their dwellings (Fa et al. 2021, 3). However, hunting and gathering rights are not tied to the concept of land ownership. In general, land and resources are considered communal property, belonging to the community as a whole rather than to individuals (Diaw and Njomkap 1998, 13-14).

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Their Bantu neighbours also explain their claim to the forest lands with ancestral creation myths.[11] It is usually said that an ancestor common to the whole group made a pact with local land deities and natural spirits tied to the area (Mpessa 2004, 620). This explains the collective appropriation of lands and natural resources, as well as the lineage and family-oriented societal organisation found in most areas of Cameroon and Congo December (Etoungou 2003, 23; Katz and Nguinguiri 1997, 4; research participant A17, Ministry of land affairs, Brazzaville, December 2023). This structure does not allow for land to be owned by individuals or sold to foreigners outside of the group's remit (exo-inalienability). It therefore follows that no monetary value is ascribed to land, and fallow lands and non-intensive practices are prominent in agricultural and land tenure customs (Diaw and Njomkap 1998, 19; Kinbabele 2020, 19). Many scholars contend that taboos around sacred forests and prohibitions against the exploitation of some sites because of their sacred character reflected the same principle: sustainable conservation of local forests and resources (Umuziranenge and Ntiranyibagira 2019, 88; Mashingaidze 2016, 30; Andriamarovololona and Jones 2012, 207).

A land chief traditionally oversees land management and allocation. These chiefs usually directly descend from a common ancestor and possess religious and ritualistic duties (Buttoud and Nguinguiri 2016, 51; Katz and Nguinguiri 1997, 5; research participant A27 (phone interview), Kribi, Cameroon , February 2023). Although group members may be allocated land parcels for agricultural or housing purposes, this does not imply that they are the legal owners of the land. They may own the structures they build and gather resources related to their activities on the land or in the forest, but that is the extent of their rights. They possess only the first two attributes of property typically found in civil law theory: *usus* and *fructus* (Assembe-Mvondo 2013, 31).

User rights are thus at the centre of traditional Central African approaches to property. Anthropologists consequently argue that in common and civil law traditions, land property is built on the logic of "*appropriation-attribution*", where a single person has absolute rights over her property because she holds all three property attributes. However, in Central African land tenure traditions, the logic of "*appropriation-*

[11] As mentioned before, Bantu communities are not homogeneous and underscore a variety of different groups with land-use practices and claims that are shaped by distinct social, economic, and historical patterns. While recognising this diversity, this article focuses on the commonalities in their relationship to land and forests.

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affectation"[12] is central since land appropriation is structured on user rights (Le Bris et al. 1991, 11). Consequently, a clash between the two approaches arises from whether the *abusus* attribute is paramount.

It is, however, important to note that some legal historians and anthropologists have questioned the importance of the *abusus* attribute in this debate. For instance, Caroline Plançon, drawing inspiration from Guy-Adjété Kouassigan, disputes the idea that property law did not exist for lands in traditional African legal systems. They both contend that property law was divided into two distinct regimes. The first regime recognised collective property rights that are associated with inalienability clauses and stipulations (Plançon 2009, 843). The opposing regime provided room for individuals to negotiate agreements or allocation contracts, which could take the form of leases for the development or cultivation of the land.

Although both colonial and postcolonial states tried to suppress these traditional conceptions of property, they never completely disappeared. Alongside formal titles issued by the state after registration, local and indigenous communities continue to argue that the legitimacy of their claim to ancestral lands is based on the principle of first occupancy: their ancestors have always lived there, and they have inherited their user rights from them. Many are of the view that state appropriation, or rather expropriation, is illegitimate (focus group A23, Réseau des Populations Autochtones et Locales pour la Gestion des Ecosystèmes Forestiers d'Afrique Centrale (REPALEAC), Brazzaville, December 2023; focus group D1, Assoumindele II (Cameroon), August 2024).

Accordingly, they continue to enjoy their user and access rights while residing in areas already incorporated into the state apparatus. As some still access the forest and maintain semi-nomadic lifestyles, state law does not always govern their daily lives. The concept of folk or people's law can assist us in understanding this occurrence. Folk law is created by a community outside of the state, in accordance with its social organisation norms. For rural and indigenous communities in this case, their understanding of law is not grounded in the state's existence, and they do often do not recognise it.[13] They remain precarious landholders and squatters in the eyes of the law, nevertheless (Ordonnance n°

[12] Related to the assignation of land.

[13] The focus on land registration and securing land does not reflect the lived realities of most Congolese and Cameroonian people. Most lands are unregistered, as is the case in many other Central and West African nations. As such, registered lands only make up 5% of the Cameroonian territory. This low rate is a result of how little land registration has penetrated local habits and customs. 12/16/2025 8:44:00 AM

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74-1 du 6 juillet 1974 fixant le régime foncier 1974, art. 8). They are at the risk of being forced away at any point. The law typically only grants indigenous people usage rights. So, they cannot even rely on the safeguards provided to full landowners by the expropriation laws (Loi nº 85-09 du 4 juillet 1985 relative à l'expropriation pour cause d'utilité publique et aux modalités d'indemnisation 1985; Loi n°11-2004 du 26 mars 2004 portant procédure d'expropriation pour cause d'utilité publique 2004). Therefore, a *de facto* situation of legal pluralism prevails in rural areas.

3. A decolonial Turn? The Reconfiguration of Forest land Governance

The definition of decoloniality that I emphasised highlights the importance of decentralisation and the empowerment of marginalised communities, finally able to speak in their own right (Mignolo 2018, 6). Historically, Cameroon and Congo have been unable to achieve, as, like most postcolonial states in Africa, they have continued to operate within the governance and statehood framework inherited from colonial powers.

The concepts of "development" and "underdevelopment" emerged at the same time as decolonisation(Pahuja 2018, 464). When newly independent states joined the concert of nations, they were deemed to be "developing countries" that needed to catch up with the Western economic model. The evolution of the Western nation-state, as well as its economic and social organisation, were portrayed as desirable for all and a natural progression towards the "march of progress."[14] Control over the land, particularly areas with forest cover,[15] was of the utmost importance for the Cameroonian and Congolese governments since the idea of economic progress was so prevalent. This is why, regardless of the type of government in place – from the socialist regime in Congo[16] to the liberal state in Cameroon[17] – the legislative framework and remedies implemented were

[14] "The West claims to itself the character of the 'universal'". (Pahuja 2018, 461)

[15] Forests have always been an important source of income in countries situated in the Congo Basin. See (Karsenty 1999, 153)

[16] The PCT (Congolese Work Party) presided over Congo from 1968 until 1990. The country was renamed Popular Republic of Congo. The Constitution was changed to reflect the socialist orientation of the country. Following widespread calls for democratisation, the nation established itself as a republic in 1990 and embraced liberalism. (Sacco et al. 2009, 331-32)

[17] After decolonisation, Cameroon officially adopted a politic of non-alignment in the context of the Cold War, but in fact it has always been a close ally of France in the region. Its president Paul Biya is sometimes presented as one of the key figures of *Françafrique* (the French sphere of influence in its former colonies akin to a neocolonial network). As such, the country has always attracted Western foreign direct investment. (Sacco et al. 2009, 314)

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consistently more or less the same.[18] To foster modernisation and economic growth, cadastral rules and private property rights are enforced in lieu of traditional Bantu and indigenous ways of appropriating land. Unregistered lands, which are not subject to private property rights, are vested in the state.

It is therefore not accidental that the legal apparatus mobilised adheres to international standards and is quite similar to the framework used during the colonial era. It is frequently argued that secure private property rights are the ideal companions to economic growth. Until 2020, the World Bank published each year a report titled "Doing Business".[19] Well regarded in business circles, the yearly report assesses and ranks 190 countries according to an "ease of doing business" index. Robust and secure property rights are a key feature of this index. This project aims to identify which economies and institutions are the most favourable to private investors. International financial institutions, such as the World Bank, consistently advocate for laws and policies aimed at securing land rights through the expansion of land registries in developing countries, especially on the African continent (World Bank Group 2023; Dutheuil 2017). Therefore, the strong emphasis on land registration in Central Africa can be understood within this global context and the desire to attract investments for economic development.

The tides, however, changed in the 1990s. In the aftermath of the fall of the Berlin Wall, democratisation became a major trend in international affairs, following what scholars term the institutional turn in global governance. Good governance, the rule of law, legitimacy, and accountability of actors, most notably aid recipient states, became important features in international development (Dann 2013, 11). This institutional turn was also influenced by theories of social justice that favour local and indigenous communities' involvement in nature conservation (Alden Wily 2021, 173). There was now a general agreement among ecologists and anthropologists that indigenous peoples' practices had directly shaped the landscapes and resources found in the Congo Basin forests (Saulieu et al. 2018). This was reflected in one of the main takeaways of the 1992 Rio Summit: beyond being economic goods, forests are important for global ecological

[18] Under the socialist regime, customary and private property rights on land were extinguished. Individuals only had user rights and the right to reap the fruits of development and enhancement works made on the land. (Loi nº 52-83 du 21 avril 1983 portant Code domanial et foncier en République populaire du Congo 1983, art. 2, 3 and 4)

[19] The project is on break because the 2018 and 2020 edition of the report showed data irregularities. The World Bank Group is now conducting audits and reviews to review the methodology of the report. (World Bank Group, s. d.)

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processes and must be sustainably managed with the help of local and indigenous communities. Central African states pledged to implement sustainable management measures for their forests during this conference (Buttoud et Nguinguiri 2016, 23).

For development projects funded by international donors and development actors, such as the World Bank or the FAO, it became quasi-obligatory to include provisions requiring the inclusion of civil society as well as local and marginalised people in decision-making (Buttoud et Nguinguiri 2016, 4). Simultaneously, after the 1980s debt crisis, international financial institutions pushed many African countries to implement structural adjustment measures that would liberalise their natural resource-rich economies and contribute to revenue generation for debt repayment (Lassagne 2005, 68).

The convergence of all these various, at times contradictory, policy orientations resulted in legislative inflation in Central African countries during the 1990s and early 2000s. In 1994, Cameroon was the first country to revise its forest code, with technical assistance from the World Bank and the Canadian International Development Agency (Lassagne 2005, 60). Several Congo Basin countries, like Congo, have also adopted laws regarding community forestry and logging schemes,[20] as well as the consultation of traditional owners before implementing development projects in forest territories (Assembe-Mvondo 2013, 10).

Official discourse in Central Africa continues to portray forest law revisions as a revolution in favour of local stakeholders. The first generation of legislative inflation, which emerged in the 1990s, has now been superseded by a second generation. This is evident in the Congolese forest reform of 2020, which incorporates carbon market issues in light of the enthusiasm generated by REDD+[21] in the early 2010s (Demaze et al. 2020, 258). The question of indigenous people's free, prior, and informed consent in forest development and categorisation efforts also features more prominently in this generation's forest laws (Loi n°33-2020 du 8 juillet 2020 portant Code forestier 2020; Arrêté n°6509/MEF/MATD 2009). After two decades, Cameroon revised its forest legislation in 2024 to better address these concerns.(Loi n°2024/008 du 24 juillet 2024

[20] This includes the possibility for local communities to use pre-emptive rights to claim some forest lands before another economic actor can do so, the possibility of receiving forest royalties for some projects, and the possibility of creating reserved areas for traditional hunting.

[21] "Reducing Emissions from Deforestation and Forest Degradation plus conservation, sustainable management of forests and enhancement of carbon stocks" is a UNFCC-created mechanism for mitigating climate change. Its objective is to encourage developing countries to implement policies and programs to sustainably manage their forests. It does so by assigning a monetary value to the carbon stored in these nations' forests.

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portant régime des forêts et de la faune). The new law recognises the customary and usage rights of local communities, along with their traditional practices and knowledge related to forest and wildlife management. It also specifies that communities will be compensated in the event of the loss of these rights. Furthermore, the law facilitates the establishment of community-managed protected areas within the national domain, empowering local communities to manage conservation efforts in line with their customary governance systems.[22] In this context, the law defines "adjacent communities" as local or indigenous communities.[23] This is an interesting development since, out of all Central African countries, Cameroon is notorious for being averse to granting indigenous people minority status. This is because they would then be entitled to special rights and protection.(Pyhälä 2012, 56)

However, the participation of indigenous peoples in forest-related matters has increasingly become a requirement for international donors and investors, particularly in the context of REDD+. When requesting funding for REDD+-related projects, both Congo and Cameroon were required to submit REDD-readiness reports that specifically address indigenous peoples' rights, in line with World Bank Operational Policy 4.10. This policy mandates an assessment of potential impacts on vulnerable indigenous communities for projects seeking financing.[24] The Cameroonian government – typically reluctant to use the term "indigenous people" in official documentation – began employing this terminology in its reports to the World Bank.

International development and financial institutions have historically played a significant role in shaping new laws in Central African countries through both technical and financial assistance (Burnham 2015, 36). It is therefore worth considering whether this shift reflects a genuine commitment or is primarily driven by external pressures.

These developments have been hailed as revolutionary as indigeneity remains a contentious concept in the region, and Central African states have traditionally adopted a state-centric approach to land control. On paper, this could fit the above-mentioned definition of decoloniality. Still, it is worth asking whether these legal reforms constitute

[22] Article 33.
[23] Article 3.
[24] 'Processus REDD+ En République Du Congo : Cadre de Planification En Faveur Des Peuples Autochtones (CPPA)' (n 88); Ministère de l'Environnement, de la Protection de la Nature et du Développement Durable, Comité de Pilotage REDD+ and Comité de Pilotage REDD+, 'Stratégie Nationale de Réduction Des Emissions Issues de La Déforestation et de La Dégradation Des Forêts, Gestion Durable Des Forêts, Conservation Des Forêts et Augmentation Des Stocks de Carbone (Cameroun)' (Ministère de l'Environnement, de la Protection de la Nature et du Développement Durable 2018).

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"a diverse horizon of liberation for colonial subjects, constructed by the colonial subjects themselves."(Mignolo 2018, 6)

4. Broken promises

In response to criticisms regarding the failure of privatisation schemes and customary rights formalisation in Central Africa, institutions like the World Bank have increasingly been promoting a sort of middle way that blends "traditional" law with "modern" law. In this context, the promotion of collective rights regimes is said to be the panacea that can allow local participation and economic growth to coexist.(Böcker et al. 2009, 29) A look at Congolese and Cameroonian forest and land legislation calls that statement into question.

Following the 2018 land reform in Congo, a customary landowner must initiate a "customary lands recognition procedure" to have her property rights recognised. The state may issue a decree recognising customary lands only after a lengthy and complex administrative procedure, including validation of the minutes of a family meeting before a judge, completion of cadastral and georeferencing steps, and appearance before a national commission.[25] This decree remains, however, a precarious title. The customary owners must still register the lands with the cadastre to become fully-fledged owners. The overall framework still favours formal titling and state control, which can undermine traditional land tenure systems.

This law has been criticised for maintaining strong state control over land administration, thereby limiting the autonomy and decision-making power of local communities and regional authorities. Previously, commissions were established in each department to recognise customary land rights. However, under the new law, only a single national commission remains. It only meets once a year, which makes the process even more inaccessible for many Congolese people.[26] Additionally, the state claims five

[25] This provision has been criticised as an administrative burden inaccessible for most of the population. (research participant A15, WCS Congo, December 2023) This hardly qualifies as a recognition of customary law since the premise is that customary rights do not exist in the absence of this decree.

[26] If land registration is still not common in urban areas, it is even less the case in rural areas. In Congolese and Cameroonian law, it is a long and tedious process that necessitates administrative acuity and familiarity with bureaucratic procedures. This is a concern because there is a high rate of illiteracy among local and indigenous communities. Additionally, there is the issue of cost. Many people have complained that the registration fees are excessive, particularly when contrasted with the average income in the region. Congo's law no. 26-2022 simplifies administrative procedures for indigenous people. Other provisions also state that they are entitled to administrative assistance. They would nevertheless have to be aware of their rights for

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per cent of the land from successful applicants to constitute state reserves. “Families“ are thus required to relinquish a portion of their land to the state in exchange for covering the costs of the registration process.[27] For some, this requirement effectively reduces the land holdings of communities without adequate compensation, as the “price” imposed by the state is perceived to be too high (research participant A10, Congolese Observatory of Human Rights, Brazzaville , December 2023).

According to Article 14 of this law, the state regards customary lands as lands held in joint tenancy by members of the same family represented by an authorised representative. Here, lawmakers chose the figure of “*indivision*”, or joint tenancy, to account for the collective character of customary and traditional property. This is an interesting choice, yet it is a literal transposition of a regime found in the French Civil Code.[28] The framework remains individualistic and Western, and it does not translate well to the situation of indigenous and Bantu communities because their conception of land tenure accepts individuals’ enjoyment rights only within the context of the group’s collective stewardship of natural resources.[29] The Congolese family code has a classic and vague definition of what constitutes a family, referring to a collective of people united through blood, marriage, or adoption (Loi n°073/84 du 17/10/1984 portant Code de la Famille). However, Bantu and indigenous conceptions go beyond the nuclear family to encompass a larger group linked by lineage or village relationships (Lebigre 1973, 242). Although Congo’s law no. 05-2011 recognises the special character of indigenous people’s conceptions of property and social order,[30] the new land code does not refer to their unique situation at any point.

Consequently, codification efforts have so far betrayed the spirit of traditional Bantu and indigenous legal systems because their ontologies differ fundamentally from modern law (Nkankeu and Bryant 2010, 72-73). These are the pitfalls of translation.

this to be possible. Sadly, several studies have revealed that indigenous people often have little knowledge of their legal rights. See (OCDH et al. 2020, 4; *Processus REDD+ en République du Congo : Cadre de Planification en faveur des Peuples Autochtones (CPPA)* 2018, 27; *Cadre de Planification en faveur des Peuples Autochtones (CPPA) au Cameroun* 2020)

[27] Article 16.

[28] Book III, Chapter VII.

[29] Many Congolese NGOs have been criticising the 2018 law for ignoring the specific condition and needs of indigenous people. Although Congo transposed Convention no. 169 in its legislation, implementing regulations for many of the provisions, including those regarding indigenous property rights, have yet to be adopted.

[30] This law recognises indigenous people’s property rights in their collective capacity over the lands they occupy and the natural resources they rely on for subsistence. More than a decade later, implementing regulations for the law have yet to be adopted, and it remains little known outside indigenous rights advocacy circles. The new forest code also makes no reference to it.

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Concepts rooted culturally do not always travel without a scratch from one system to another. In translation, there is always some loss (Le Bris et al. 1991, 22).

Cameroon was the first country to adopt community forest schemes in Central Africa, and the new forest code perpetuates this regime. Andre Hoekema claims that, despite its radical decentralisation promises, the consecration of community forests aligns with a liberal framework (Böcker and al. 2009, 29). This regime allows rural communities to manage their local forests.[31] The soil does not legally belong to them, but the forest products produced by their plantation work and the revenue they generate do.[32] In this regard, the law does not recognise their customary land tenure and instead treats them as usufructuaries. Usufruct is a limited property right found in civil law jurisdictions. Usufructuaries only have the *usus* and *fructus* attributes. Accordingly, they can use the land and enjoy its fruits. The *abusus* right stays with the bare-owner, the state in the case of domanial forests.

Through this reform, the state appears to be clarifying the allocation of forest property rights to provide certainty to investors. By outlining who owns which lands based on a Western positive law understanding of ownership, communities' customary land rights are formally limited, thereby leaving more land for the state to allocate to investors. This argument frequently arose in my conversations with cabinet members at the Ministry of Land Affairs and at the Ministry of Forest Economy. The idea of a significant recognition of customary land tenure triggered fears among my interlocutors that the state's development goals could be hindered.

Many of my research participants – including academics, civil society members, and indigenous and local community actors – expressed the view that the reform has failed to fulfil its intended objectives. If it was initially presented as a participatory model that would integrate local and indigenous aspirations, its formalisation into positive law seems to negate this claim (Oyono 2004). It is an administrative-heavy process for most rural communities. Since many have not been able to join the scheme, their lands are technically considered vacant and can be allocated to economic operators (Milol 2020, paragr. 42). The process requires that prospective community forests prepare a development and management plan. The two main models available to them are either starting their own timber exploitations or opening their lands to logging companies to do

[31] The village community and the public administration sign a management convention that determines the community's forest development plan, including its scope, limits, and duration.
[32] Loi n°2024/008, art 37.

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so. In that regard, Alain Karsenty talks of a process of "collective privatisation" of forest lands"(Karsenty 1999, 153). This scheme is criticised for its opacity and creation of new village elites who are embedded in clientelist networks controlled by local influential stakeholders[33] (Milol 2020, paragr. 34; Etoungou 2003, 5).

This law nonetheless allowed many village communities to be in a favourable position before logging concessionaires and state institutions. This is especially true for indigenous people, who, due to their marginalisation and small numbers, typically have limited political and negotiating power (Böcker and al. 2009, 30; Etoungou 2003, 21). As a result, several revenue-sharing agreements have been concluded between concessionaires and village communities, where the former exploit the community forest of the latter (focus group D1, Assoumindele II (Cameroon), 8 mars 2024). This legislation was later transposed in other Central African countries. In Congo, the Forest Code requires concessionaires to account for local and indigenous peoples' usage rights in their development plans. As such, community forests are located in the concession. So, unlike Cameroon, concessionaires do not have to position themselves with forest communities. This positioning is already mandated by law.[34]

Nevertheless, legal innovations like community forests do not substantially transform institutions like the cadastre, which continue to operate on the basis of civil law's nominal and individual logic. Forest indigenous communities remain conspicuously absent from national legislation and forest governance. During the multi-sectoral negotiation rounds between the state and relevant stakeholders in Cameroon and Congo for the preparation of new forest codes, they were either not present or were involved only symbolically, with their contentions not being seriously considered in the end (Buttoud and Nguinguiri 2016, chap. 9 and 10) .

The question of agency when it comes to indigenous land rights is a double-edged sword. On the one hand, there can be acts of legislation that seldom achieve what they promised to do, but which still risk distorting traditional land tenure to make it fit into liberal and monist systems (Falque and Lamotte 2012; Sieder 2019). On the other hand, local actors are not without agency and can use the law as a strategic tool to make their voices heard at local and regional level (Böcker and al. 2009, 44). In this regard, some indigenous leaders rely on cartographic services to formalise their property rights and

[33] Senior officials, NGOs, corporations, and conservation initiative heads.
[34] Loi 33-2020, arts 15, 78 and 79.

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become full participants in the forest economy (focus group A23, Réseau des Populations Autochtones et Locales pour la Gestion des Ecosystèmes Forestiers d'Afrique Centrale (REPALEAC), Brazzaville, December 2023).

Since the 1990s, there has been a legislative trend in both Congo and Cameroon to incorporate indigenous and Bantu conceptions of forest tenure into forestry laws. However, a closer look at these developments reveals that although the forest legislation in Cameroon and Congo integrates both modern and indigenous Bantu conceptions of property, modern property concepts still tend to dominate indigenous perspectives on forest land relations. State centrism, eurocentrism, and economic objectives remain central to this legislation. The decolonial promise remains unfulfilled.

Conclusion

As the Congolese and Cameroonian examples show us, incorporating features of customary law into formal legal systems does not fundamentally change the meaning of "property". When discussing indigenous people's custodianship of forests, Julia Dehm cautions against this, noting that merging indigenous ontologies, epistemologies, laws, and customs into normative legal frameworks and tools often leads to the global liberal economy encroaching on indigenous people's property rights (Dehm 2021, 314). This case study demonstrates that liberalism, another manifestation of the coloniality of markets, can shapeshift and adopt progressive and liberatory language. However, at its core, the framework remains colonial and Eurocentric.

Law cannot be viewed simply as a linear progression from precolonial to state law. Instead, it is shaped by multiple actors with different interests, each advancing varied claims for various strategic purposes. In the case of forest governance, the state often strives to maintain its monopoly and supremacy, while private actors, such as logging corporations, align themselves with state interests. However, national forest law also incorporates resistance, revealing an ongoing negotiation and contestation. Law, in this sense, is not static but is continuously redefined through these struggles.

The reinvestment of resistance within the lawmaking process challenges the notion of law as something to be imposed top-down. Law is not a fixed entity but a

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dynamic dialogue – simultaneously reflecting its current form and embodying the potential for what it could become.

Ultimately, while the integration of customary rights and the increased participation of local communities in forest governance present opportunities for resistance and reimagining legal systems, such efforts are fraught with the risk of being co-opted into Eurocentric and (neo-)colonial structures. For local and indigenous communities, participating in these processes may offer a strategic opportunity to advance their claims, but always at the risk of being absorbed into existing power structures.

This contribution does not focus on the gender aspects of participation in forest governance, as such issues are not central to forest laws in Congo and Cameroon. However, gender considerations remain critical and warrant attention beyond the scope of this article, representing a potential area for future research.

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