

# Malleus Maleficarum: Scrutinizing Sorcery in Cameroon

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## Abstract

Drawing on ethnographic research, this article reflects critically on the current involvement of the Cameroonian state in witchcraft accusations. Unlike other African states where witchcraft is connected to religion and culture and as such is far detached from economics and politics, post-colonial Cameroon associates witchcraft and other occult practices with being a major factor in its slow economic development. The state resorted to criminal law in its attempts to eradicate the practice. Its penal code subjects persons accused of witchcraft to imprisonment for up to ten years. This provision has been subject to great criticism, as its application has led to a high conviction rate of indigenous Cameroonians. The aim of this article is not to determine the appropriateness of this approach, but to raise questions and shed light on the various inconsistencies with criminalizing a practice that arguably constitutes an underlying basis of indigenous Cameroonian cultural heritage.

## Keywords

Witchcraft accusations, customary normative systems, Cameroon, indigenous law, cultural reflexivity, cross-cultural jurisprudence

## INTRODUCTION

The practice of witchcraft and its belief system is one that runs across most of sub-Saharan Africa. An overview of literature reveals disparate patterns emerging within witchcraft discourse on the ways in which the state, the law and other institutions become entangled in their attempts at regulation. Drawing on ethnographic work pursued by anthropologists, this article critically reflects on the current involvement of the Cameroonian state in witchcraft accusations. Unlike other African states where witchcraft is strongly connected to religion and culture and is far detached from economics and politics, post-colonial Cameroon strongly associates witchcraft and other occult practices with being a major factor in its slow economic development. The perceived development challenge posed by witchcraft initiated the use of criminal law as an instrument to attempt to eradicate the practice.

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Cameroon's criminal code contains provisions prohibiting the practice of witchcraft, magic or divination, subjecting those convicted to imprisonment for up to ten years. This provision has been subject to great criticism, as its application has led to a high conviction rate of indigenous Cameroonians.

The aim of this article is not to determine the appropriateness of this approach but to raise questions and shed light on the various inconsistencies with criminalizing a practice that arguably constitutes an underlying basis of indigenous Cameroonian cultural heritage. It provides insight on questions including how indigenous society conceptualized witchcraft practice in the past, and how these conceptions changed during the significant transformations of the state and the economy. These broad questions can only be answered with reference to specific historical patterns, the modernizing ambitions of the state and exploration of the specific content of the criminal provision. The article therefore seeks to gain greater understanding of the relationship between the state and villages through witchcraft regulation. It engages in a critical analysis of the various provisions contained in the criminal code relating to this practice, how state courts conduct these judicial proceedings and the forms of evidence used. Taking account of the social and historical context of Cameroonian society, the aim is to determine if criminal regulation is the best approach to regulate witchcraft practice.

## HISTORICAL FOUNDATIONS OF MYSTICISM IN INDIGENOUS CAMEROON

Over the past 20 years, many anthropological and historical studies have helped clarify how Cameroon's pre-colonial societies were composed. It has been established that the nature of indigenous societies in Cameroon reflects a reliance on supernatural forces as an underlying basis for their legitimacy. The normative force and validity of custom was not only derived from the idea that it is ancient, unchanging and has been passed on from generation to generation, but its divine character impelled customary law to address almost all aspects of life and human behaviour, including family, succession, property, obligations and crime.<sup>1</sup> As such, belief in mystical powers formed part of a "functional outlook", encompassing both morals and sanctions for social control, as well as supervisory mechanisms for conflicts and social change.<sup>2</sup> This article offers an appraisal of views that regard mysticism as a core aspect of the religious lives of indigenous African societies.<sup>3</sup>

1 M Ndulo "African customary law, customs and women's rights" (2011) 18 *Indian Journal of Global Legal Studies* 87 at 94.

2 S Mesaki "The evolution and essence of witchcraft in pre-colonial African societies" (1995) 24 *Transafrican Journal of History* 162 at 173.

3 In discussing the nature of witchcraft practice among the Azande community, Evans-Pritchard describes this practice without reference to Azande religious beliefs. As such, any relationship between witchcraft and religion within indigenous

Within indigenous communities, belief in witchcraft is not a superfluous addition or a necessary deviation from the generally accepted body of religious and moral ideas.<sup>4</sup> Instead, it constitutes an intrinsic aspect of them. As in other parts of Africa, witchcraft in Cameroon constituted part and parcel of an entire complex of beliefs. This complex allowed for the possibility that human violation of customary rules may justifiably cause mystical harm as a punishment.<sup>5</sup> The internal organization of indigenous Cameroonian societies was also designed in such a way that a specific class of persons was entrusted with the ability to wield ritual authority.<sup>6</sup> This class includes medicine men, diviners and priests of traditional cults. They acted as mediators of the supernatural forces, as their pronouncements were believed to be derived from supernaturally supported traditions.<sup>7</sup> As such, the occult in general and witchcraft in particular in their various manifestations formed an underlying basis for the customary normative system.<sup>8</sup> It should be noted however that the practice of witchcraft in itself was nevertheless not considered to be part of customary law, but merely regarded as an integral part of custom, regulating and managing the lives of indigenous Cameroonians.

Traditionally, the practice of witchcraft was only condemned or punished when its application resulted in personal harm. To establish this harm, various models were adopted, one of which includes the practice of divination.<sup>9</sup> Divination was seen as a vital pillar of witchcraft practice, as it is by and through divination that a society could ascertain the root of harm inflicted and determine ways of dealing with witches.<sup>10</sup> The punishment in these instances depended on the severity of the witchcraft act and varied from case to case. The imposition of a fine and ostracism were the normal penalty in mild cases, enabling the perpetrator to reform and be re-integrated within

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communities may not be implausible: see E Evans-Pritchard *Witchcraft, Oracles and Magic Among the Azande* (1st ed, 1937, Clarendon Press) at 66. Also see Mesaki, *ibid.*

4 L Maira *Anthropology and Social Change* (1st ed, 1969, Athlone Press) at 190.

5 *Ibid.*

6 CF Fisiy "Colonial and religious influences on customary law: The Cameroonian experience" (1988) 43/2 *Rivista Trimestrale di Studi e Documentazione dell'Istituto Italiano Per l'Africa e l'Oriente* 262 at 264.

7 *Id* at 265.

8 This is also reflected in the fact that the nature of powers ascribed to various traditional authorities had a highly mystical connotation, emanating from a supreme god, and transcending down to the people through the intercession of ancestors. It was believed that a mystical bond existed between the authority exercised and the human agents of such authority. Ruling in this instance derived its legitimacy through ritual rites that were believed to be controlled by forces beyond human control. As such, persons in command or in authority were alleged to be morally and spiritually impaired from manipulating established norms for fear of the wrath of the gods. See Ndulo "African customary law", above at note 1 at 94.

9 Mesaki "The evolution and essence", above at note 2 at 171.

10 *Ibid.*

the community.<sup>11</sup> In extreme cases, the wrongdoer was exposed to harsher punishment, but it was at best limited to being expelled from society.<sup>12</sup> While the use of divination to establish the veracity of these suspicions and accusations varied between different societies in Cameroon, the use of witchdoctors, commonly referred to as the *super sorcier* [great sorcerer], was a general feature.<sup>13</sup> The witchdoctor denoted a “medicine man / woman, herbalist, diviner, or magician”.<sup>14</sup> They played various roles within the indigenous communities but ultimately embraced every aspect of individual, family and community welfare.<sup>15</sup> He or she would detect witches, make charms, prepare and administer herbal medicine, heal, and offer various magical treatments in agriculture, fishing, hunting and trading.<sup>16</sup> Since their activities within these societies were endless, they were described as individuals to whom people turn in every kind of difficulty.<sup>17</sup> Their function was to gratify people’s apprehension and restore the community’s confidence; as such their verdicts were not usually challenged.<sup>18</sup>

It can therefore be said that the effectiveness of the customary normative order rested on its ability to incorporate supernatural elements in regulating all spheres of life. It was used in clarifying the inexplicable and served as a guide to resolve practical problems and situations.<sup>19</sup> This article now shows how the regulation of witchcraft has placed this practice in a different perspective, one that ignores its socially constructed meaning as had been previously understood within indigenous societies. It highlights how the need for state involvement in witchcraft regulation commenced, who took the initiative, which groups play an active role and to what extent the government itself initiated new forms of witch-hunting?<sup>20</sup>

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11 Ibid.

12 Id at 172.

13 Fisiy “Colonial and religious influences”, above at note 6 at 262–75.

14 Mesaki “The evolution and essence”, above at note 2 at 173.

15 M Gelfand *Medicine and Custom in Africa* (1st ed, 1964, E&S Living Stone) at 55.

16 Ibid.

17 In modern times, they would be regarded as “a doctor in sickness, a priest in religious matters, a lawyer in legal issues, a policeman in detection and prevention of crime, a possessor of magical preparations which can increase crops and instil special skills and talents into his clients: he fills a great need in society, his presence gives assurance to the whole community”. See *ibid.*

18 The expansive nature of these powers resulted in parallels being drawn between the witchdoctor and the witch. Indigenous Cameroonians believe that only a stronger witch can have the power to heal another witch. As such, there is a logical validity in placing the witchdoctor as a wielder of power in the same continuum as the witch. This is so because the rationale underlying the belief in the powers of the witchdoctor is the same as that behind the fear of witchcraft. See Mesaki “The evolution and essence”, above at note 2 at 172.

19 Id at 170.

20 Ibid.

## DEVELOPMENT AND STATE REGULATION OF WITCHCRAFT

In the context of Cameroon it is difficult to think of a development that had a more decisive impact on the customary normative order than the establishment of colonial rule at the end of 19th and the beginning of the 20th centuries.<sup>21</sup> This rule not only dissuaded the pre-colonial path highlighted above, but also shaped the nature of post-colonial Cameroonian society and polity in more ways than one.<sup>22</sup> However, although the Cameroonian government experienced profound changes due to the advent of colonialism, independence did not result in an absolute break with the colonial past.<sup>23</sup> Independence brought a new concern for state elites with regard to witchcraft activities. The idea that the dark forces primarily resident in villages were the main barrier to development became a recurring theme in the new government's national campaigns.<sup>24</sup>

In 1985, the government commissioned a study to determine whether witchcraft was a hindrance to its development efforts.<sup>25</sup> The state was convinced that it could not resolve its development issues if it did not have a handle on the mental models that structured the behaviours it perceived as antithetical to its development goals.<sup>26</sup> Witchcraft came high on the government's list of the customary practices it had to repress if its development agenda was to have nationwide impact. As such, in its political propaganda, *la sorcellerie* [witchcraft] was branded a very dangerous form of subversion to its development efforts.<sup>27</sup> The state explained that economic growth was being impeded by witchcraft as, in certain parts of the country, political elites were unable to acquire or develop property in their hometowns or even go back home to visit parents or relations for fear of being eaten by witches.<sup>28</sup> It was believed that the persistence of this fear would undermine existing urban-rural connections that at the time provided the basis for political elites

21 B Zewde Society, *State and Identity in African History* (1st ed, 2008, African Books Collective) at 4.

22 S Hawkins "Disguising chiefs and gods as history: Questions on the Acephalousness of Lodagaa politics and religion" (1996) 66/2 *Journal of International African Institute* 202 at 203.

23 However, in the context of witchcraft practice, although customary courts were completely ousted from exercising criminal jurisdiction, colonial courts consistently refused to admit witchcraft accusations and found such threats non-actionable for lack of proof. As such, a majority of these claims were handled within the customary system by village heads and other traditional authorities. See C Fisiy and P Geschiere "Juges et sorciers, ou comment l'état traite-t-il la sorcellerie: Exemples du Cameroun du sud-est" [Judges and witches, or how does the state deal with witchcraft? Examples from southeast Cameroon] (1990) 30/118 *Cahiers d'Etudes Africaines* 135 at 148.

24 *Ibid.*

25 C Fisiy "Containing occult practices: Witchcraft trials in Cameroon" (1998) 41/3 *African Studies Review* 143 at 145.

26 *Ibid.*

27 *Ibid.*

28 *Ibid.*

to establish a constituency.<sup>29</sup> To maintain the structure of the state and ensure adequate regional representation, it was desirable for political entrepreneurs to have a home base to serve as a platform for their claims to power.<sup>30</sup> As such, in criminalizing witchcraft, the government primarily sought to protect the state's very existence by guarding a specific form of hierarchical structure that could only be fulfilled by protecting its political elites.<sup>31</sup> It was believed that a state structure that was curtailed and reduced purely to an urban expression would be without validity if its urban elite were prevented from returning to their home areas where they had political constituencies.<sup>32</sup>

Although the state claims that criminalization is directly related to economic harm caused by witchcraft practice, evidence reveals that this is not the case. Non-government initiated studies were also conducted during this period to determine and understand the various ramifications of witchcraft practices.<sup>33</sup> These studies show that the economic crisis suffered by Cameroon due to the fall in cash-crop prices occurred after 1987, while witchcraft trials began earlier in 1980.<sup>34</sup> Research reveals that, on the contrary, this was a period of relative prosperity in Cameroon, as the government raised prices for cocoa and coffee, the main cash-crops, which, coupled with the expansion of the oil industry, led to the creation of new job opportunities in the modern sector.<sup>35</sup> Fisiy asserts that growing concern about witchcraft was due to the fact that the relative prosperity in the modern sector heightened the level of inequality within villages.<sup>36</sup> There was a gap between enterprising farmers, families who were able to educate their children so that they could profit from new job opportunities, and the rest of the population.<sup>37</sup> As such, in order to protect their inheritance of cocoa and coffee plantations and limit the spread of wealth to immediate family relations, well-off families were less enthused to adopt poorer relatives.<sup>38</sup> This reinforced the level of inequality within Cameroonian society. An overview of case law jurisprudence also

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29 Id at 146.

30 Politically it had also become an unwritten requirement that eligibility to run for political office was largely dependent on the fact that such elite owned at least a house in his or her area of origin. This was part of the background check carried out before the validation of candidates. See id at 145.

31 The 1985 study also equated witchcraft practice to alcoholism and stressed the need to fight these abuses. It stated that failure to do so would inevitably result in a weakening of moral behaviour, which would slow down provincial development. It also highlighted that indigenous Cameroonians used witchcraft as a weapon to dispel civil servants posted to communities other than their own. See id at 146.

32 Ibid.

33 Ibid.

34 P Geschiere and C Fisiy "Domesticating personal violence: Witchcraft, courts and confessions in Cameroon" (1994) 64/3 *Journal of the International African Institute* 323 at 333.

35 Ibid.

36 Ibid.

37 Ibid.

38 Ibid.

reveals that a majority of the cases brought before courts were triggered by these modern-day elements: that is, wealthy farmers, teachers, municipal councillors and political party officials, who for one reason or the other felt threatened by poorer members of their families.

In light of the above, the next section discusses section 251 of Cameroon's 1967 Penal code (section 251), which was enacted as a result of agitation by state elites about witchcraft. It critically analyses the content of this provision, which lies at the core of all judicial proceedings on witchcraft accusations. It shows that there is good reason to question whether criminal law is the appropriate instrument to use in regulating this practice.

## CRIMINAL LAW IMPLICATIONS

Historically, the consequences arising from the practice of witchcraft fell within the jurisdiction of customary courts and other traditional dispute resolution mechanisms. However, section 27(1) of South Cameroon's High Court Law, 1955, provides that the native law and customs of any ethnic group in Cameroon should be recognized and enforced as the law governing disputes arising from such customs, in so far as those customs are not contrary to standards of "natural justice, equity and good conscience" and are not "incompatible with any law" adopted by legislation. The enactment of this provision resulted in a severe transformation of the nature and structure of customary courts. This was done in order to ensure that the customary normative order was swiftly integrated into Cameroon's new legal order. Therefore, any inquiry into the character of a particular customary practice by state courts always begins with ascertaining the validity of the practice in light of section 27(1). However, since specific legislation has been enacted addressing the practice of witchcraft, courts are generally not required to follow the two prong test contained in this section. This is because, since customary courts have been ousted from exercising criminal jurisdiction, the implication is that, once an accused has been charged with the crime of witchcraft practice, that dispute is automatically taken to state courts, where section 251 becomes applicable.

Section 251 stipulates that "whoever, commits any act of witchcraft, magic or divination liable to disturb public order or tranquillity or to harm another person, property or substance, whether by taking a reward or otherwise, shall be punished with imprisonment between two and ten years, and with a fine of 5,000 to 100,000 francs".<sup>39</sup> The extremely vague nature of this clause has led to

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39 An overview of case law reflects that courts are willing to convict witches if one or more of the following circumstances are present: witchcraft accusations are initiated and supported by the village, especially when evidence of the witchdoctor is tendered in support; witchcraft accusations are followed by a confession of the accused; or witchcraft accusations are supported by overwhelming circumstantial evidence, including hearsay. See Fisyi "Containing occult practices" above at note 25 at 160.

a high conviction rate of indigenous Cameroonians. This provision defines the scope of criminalized activities in an expansive manner to include not only witchcraft but also magic and divination. The provision is wide enough to cover the entire realm of occult powers considered to be a defining aspect of the customary normative order.

An overview of case law reveals a lack of consistency in the judicial process for witchcraft accusations. Each trial adheres to different procedural methods for the admission of evidence.<sup>40</sup> Ultimately, whether or not an alleged witch is convicted is highly dependent on the individual judge.<sup>41</sup> The only element consistently manifested in most cases is the heavy reliance on the testimony of the witchdoctor as an expert witness.<sup>42</sup> This dependence on a witchdoctor's expertise is largely based on a lack of alternative avenues to be used in establishing conclusive proof of witch attacks. However, the role played by the witchdoctors in the judicial process has had confusing implications. On the one hand, it is only through close collaboration with witchdoctors that state courts are able to understand the obscurities of witchcraft practice within indigenous communities. On the other hand, this alliance confers formal legitimacy and recognition on the very act or practice the state seeks to prohibit. This irony is best illustrated in cases where, on the one hand, an accused who admits to being a witch is convicted irrespective of an absence of harm to property or the person as required by legislation. While, on the other, in providing expert testimony, the witchdoctor also commences by admitting to being a witch.<sup>43</sup> However, this admittance by the witchdoctor instead solidifies his expertise in the eyes of the court as an appropriate witness.<sup>44</sup> This raises the question of whether the judicial process distinguishes between bona fide and mala fide witches? If this is the case, what are the criteria used in making this distinction? At the outset, one could assume that the presence of harm is a distinguishing factor but, since most cases reveal an absence of harm, it begs the question as to what then is being criminalized. Is it a belief in witchcraft or the practice? The use of witchdoctors as expert witnesses has resulted in a distorted view of the traditional function of a witchdoctor. Reflecting on the initial role ascribed to witchdoctors within indigenous societies, it becomes apparent that their collaboration with the state's judicial authorities transforms their role as a *guerisseur* [healer] to one of

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40 Ibid.

41 Ibid.

42 See for example *The People v Betta Samuel and Akama Epong* KM/193c/86; *Ministere Public & Mvondo c/N Jacqueline* [1984] 355/COR.

43 In one case, for example, one of the accused confessed to being a witch but insisted that his sorcellerie was only used for hunting purposes and not for killing humans. Within the indigenous society, it is widely believed that the best hunters possess some form of supernatural powers. However, the court in this instance failed to take this factor into account and convicted the accused.

44 Fisiy "Containing occult practices" above at note 25 at 160.



punishment.<sup>45</sup> Fisiy asserts that, within indigenous society, the witchdoctor has adopted a more aggressive role, approaching people on his own initiative, making direct witchcraft accusations, and often encouraging alleged victims to take their cases to court.<sup>46</sup> Therefore the role ascribed to witchdoctors, although somewhat beneficial in the sense that it allows the court to work from within traditions to effect change, also creates additional consequences for the customary normative system.

It can therefore be argued that the present rationality adopted by Cameroonian courts and legislation seems to be one that is out of touch with the current realities of indigenous Cameroonians. An over-reliance on the witchdoctor's testimony by state courts in deciding these disputes reflects a certain lack of zeal to make use of the discretion and liberty afforded to judges in the judicial adjudication.<sup>47</sup> It suggests a lack of expertise in adjudicating customary law disputes and a failure to enhance the judicial and educational obligations of a court. This leads to the deduction that, in the current context of Cameroon, it is not clear that all those entrusted with formal judicial capacity (more often than not trained in foreign universities and certainly far more exposed in terms of professional training and experience) are personally geared to such an undertaking having enormous effects on the customary normative order.<sup>48</sup> The argument here is that, without a commitment to the culture per se, the consequences of judicial intervention could be disastrous.<sup>49</sup>

## POSSIBLE APPROACHES FOR WITCHCRAFT REGULATION

In light of the problems and inconsistencies with the current approach adopted by the Cameroonian government, this section aims to examine possible avenues that could be employed in regulating the practice of witchcraft. As previously highlighted, apprehension over witchcraft practice has proliferated in modern African societies. Consequently, the issue of how African states can address witchcraft practice is one that has become a recurrent theme in African jurisprudence. Various states have adopted disparate mechanisms in their bid to address this issue. These range from the use of legal instruments in the form of legislation or state courts, religious institutions and, in some cases, an outright denial of the existence of witchcraft. This article refers to specific jurisdictions in Africa that face similar problems to determine if their approach can be adopted and modified to suit the context in Cameroon.

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45 Ibid.

46 Geschiere and Fisiy "Domesticating personal violence", above at note 34 at 332.

47 L Shellef *The Future of Tradition: Customary Law, Common Law and Legal Pluralism* (1st ed, 1999, Routledge) at 132.

48 On the failure of the foreign legal systems to do more for African students, see LCB Gower *Independent Africa: The Challenge to the Legal Profession* (1st ed, 1967, Harvard University Press).

49 Shellef *The Future of Tradition*, above at note 47 at 132.

### Religious institutions as a mechanism for regulation

This approach involves the use of recognized religious institutions specifically established within native communities.<sup>50</sup> A major factor that sets these institutions apart from others in the country is that they have specifically developed out of the indigenous African environment. This is the case in Ivory Coast where the government, in its attempts to eradicate the practice of witchcraft, has relied heavily on the institution of the Church, specifically the Harrist group of churches.<sup>51</sup> A common feature that all Harrist churches share, distinguishing them from other orthodox churches in Ivory Coast, is their principal focus on healing and witchcraft eradication.<sup>52</sup> Besides the emphasis placed on witchcraft and healing, church leaders emphasize the fact that the underlying reason for resorting to this specific church is that, at its inception, the Harrist Church was formed and shaped around traditional structures and principles.<sup>53</sup> Therefore, although its ideas and orientation were formed from the Protestant Church, its approaches and style differ greatly from other conventional churches in the country. As such, unlike the western form of Christianity developed by the Protestant and Catholic Churches, this specific institution has adapted fully to the realities and requirements of the African way of life.<sup>54</sup> This specificity led to the continuous growth and stability of this religious institution within the traditional setting.

The existence of witchcraft and its effects form an important reality that the Harrist Church must explain and with which it must come to terms.<sup>55</sup> As such, the institution has mainly focused on various philosophical issues pertaining to witchcraft practice and its implications for the individual and society.<sup>56</sup> An interesting aspect of this religious institution is that, in its attempts to eradicate witchcraft practice, it incorporates persons within indigenous communities born into families of traditional healers and believed to possess healing powers to fight witches.<sup>57</sup> Although not regarded as prophets, these individuals play a very significant role in their function as healers within Harrist churches. They are believed to heal persons suspected of witchcraft regardless of ethnicity or religious denomination.<sup>58</sup> It is only through these traditional functionaries that the Church concerns itself with witchcraft practice in an institutionalized manner, without making it a central concern for

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50 S Walker "Witchcraft and healing in an African Christian church" (1979) 10/2 *Journal of Religion in Africa* 127 at 129.

51 Ibid.

52 Ibid.

53 Ibid.

54 Ibid.

55 Id at 133.

56 J Rouch "Introduction a l'étude de la communauté de Bregu" [Introduction to the study of the Bregu community] (1963) 33/1 *Journal de la Société des Africanistes* 17.

57 In the case of Cameroon, the person believed to have healing powers is a witchdoctor.

58 Walker "Witchcraft and healing", above at note 50 at 136.

the Church.<sup>59</sup> However, as an institution shaped around indigenous beliefs and experiences, it was essential to take the issue of witchcraft into consideration.<sup>60</sup>

The underlying question here is whether this concept can be operationalized in the Cameroonian context. Applying this approach will involve a search for similar religious institutions with specialized branches formed and shaped around important issues underlying traditional societies in Cameroon. Using this mechanism will be valuable, in the sense that it is not disconnected from local understanding of customary practices but involves approaching the issue through informal mechanisms closer to the societies from which those issues arise. As such, it provides an opportunity for the state to present issues perceived to be wrong with witchcraft practice in a way that convincingly relates to the internal experiences and understandings of natives.<sup>61</sup> However, as in Ivory Coast, despite the Church being structured around indigenous principles and beliefs, its goal is systematically to replace one socio-cultural system with another. The aim is that this transformation takes place gradually as new forms and ways of life develop from a combination of both old and new, but in ways that ideally suit the traditional environment.<sup>62</sup> The primary aim and function of the various prophets within this institution is to reveal the Christian God to indigenous Africans. Therefore, although the Harrist Church addresses issues of witchcraft internally, its doctrine emphasizes the importance of placing the entirety of one's faith in God, having no recourse to any other source of spiritual assistance or protection.<sup>63</sup> The problem lies in the fact that the principal idea is to acculturate fully and transform the nature of beliefs underlying the customary normative order. This avenue discourages the idea of diverse religions and beliefs co-existing in a multicultural society. As in Ivory Coast, the natives are required to destroy all material objects, including altars, images and other objects associated with their religious and traditional worship.<sup>64</sup> This could be perceived by indigenous groups as some form of domination or imposition. This is so because the approach involves requiring indigenous Cameroonians to refrain from practising certain rituals and traditional religions in order to worship the Christian God. The use of this technique reveals a state of domination rather than a respect for the beliefs of others, which is more likely to result in the subjugation of a people.<sup>65</sup> Therefore, the homogenizing effect of criminal law, by applying a common frame of reference to all citizens, in this instance takes

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59 Ibid.

60 This is unlike other religious institutions that fail to recognize and deal with the problems of evil as defined in the African context.

61 Walker "Witchcraft and healing", above at note 50 at 128.

62 Ibid.

63 Ibid.

64 Id at 127.

65 M Constable *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law and Knowledge* (1st ed, 1994, University of Chicago Press) at 128.

the form of religion. The epistemological base of Christianity in some ways is at variance with traditional beliefs, because its orientation pursues a social aim that some could construe as being out of sync with customary interpretations.<sup>66</sup> The effect will be the production of a unifying framework for natives, which is more likely to institutionalize and create new instruments and systems of control aimed at subverting the legitimacy of the customary normative order.

Also, in a context like Cameroon where such pre-established institutions do not exist, would the solution be to create them? If so, will this approach be limited to Christian institutions, or can it be applied to other religious denominations? These are additional questions that need to be addressed in considering the appropriateness of this approach in the Cameroonian context.

### **Non-recognition of the existence of witchcraft**

An approach adopted by other jurisdictions in Africa, such as Malawi, consists of an express denial of the existence of witchcraft. This approach negates the validity of witchcraft and in most cases also forecloses all avenues for actionable claims.<sup>67</sup> In the case of Malawi, legislation was enacted prohibiting any form of representation of witchcraft practice or representations expressing belief in having powers associated with witchcraft.<sup>68</sup> Legislation here does not recognize the practice but contains sections penalizing any pretence of witchcraft.<sup>69</sup> Since the Malawian chiefs' court has criminal jurisdiction, a majority of these cases are heard in the customary setting. It allows justice in such cases to come from within the customary system itself. Therefore, although criminal legislation remains applicable, a space has been created where various elements within the customary system can meet and interact in the courts' search for justice. The forms of behaviour established in these societies constitute a key aspect of these customary proceedings, in turn determining the nature of evidence to be considered and the forms of defence or justification that could be raised for such proscribed acts.<sup>70</sup>

In the context of Cameroon, the problem sometimes moves from an ideological issue of turning a formal space into a governable space for adjudicating customary disputes to a more practical issue of the appointment of judges who are not only attune with the realities of the customary normative order but also display an understanding of the cultural framework in which specific acts take place and of the pressures to which such individuals may be

66 Ibid.

67 A Ashforth "Witchcraft, justice and human rights in Africa: Cases from Malawi" (2015) 58/1 *African Studies Review* 5 at 10.

68 Witchcraft Act CAP 7:02 of the Laws of Malawi, sec 6 states: "Any person who by his statements or actions represents himself / herself to be a wizard / witch or as having or exercising the power of witchcraft shall be liable for a fine of 50 pounds and to imprisonment for 10 years."

69 Ashforth "Witchcraft, justice and human rights", above at note 67 at 5.

70 Shellef *The Future of Tradition*, above at note 47 at 262.

subjected.<sup>71</sup> Beyond the facts of a dispute and sometimes the content of a specific cultural norm lie subtle nuances of what could be described as “societal wisdom, the capacity to see beyond consensual norms of conformist behaviour and to understand, perhaps forgive”.<sup>72</sup> In some cases, the specific situational environment is much more complex, which could be a determining factor in how these issues are resolved. From this, it becomes clear that, unlike the case of Malawian chiefs’ courts, given the cultural and societal difference between the numerous tribal societies and the state in Cameroon, these differences (corresponding to both normative beliefs and everyday behaviour) will unavoidably lead to a variation in the application and process of the law as applied in statutory and customary courts.<sup>73</sup>

In the case of Malawi, the outcome will however be different if, despite legislative prohibition, the nature of Malawian customary society is such that it believes in the existence of witchcraft. In such instances, there would be no forum for victims who believe they have been harmed by witchcraft practice. From this, it can be argued that criminalizing pretence at witchcraft does not take account of the plurality of voices within Malawian normative systems. By expressly denying the existence of a phenomenon forming an underlying basis for customary beliefs, the state in turn fails to acknowledge the nature of customary systems. Upon closer analysis, the approach adopted by Malawi has the same effect as that used by the Cameroonian government. By criminalizing witchcraft practice or penalizing any pretence at witchcraft, the outcome in both cases is still the same. On the one hand, the state recognizes its existence but punishes its practice while, on the other, the state penalizes pretences to a practice it ironically does not recognize exists. In one way or the other, the outcome for those within indigenous societies who believe or engage in such practices is long-term imprisonment. The case would have been different if, as in the colonial era, by not recognizing its existence, the state also refrained from punishing belief in it.

## **THEORETICAL DIMENSIONS OF STATE REGULATION OF WITCHCRAFT PRACTICE**

In line with a critique of the general structure and capacity of the state justice system, and its effectiveness and legitimacy in resolving disputes emanating from custom and more specifically regulating the practice of witchcraft, this section assesses the customary adjudication of witchcraft practice by state courts from a different perspective. Within a culture that retains its beliefs in the existence and efficacy of mystical forces, it becomes necessary to explore theories that account for the multiplicity of legal orders within the Cameroonian state.

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71 Id at 269.

72 Id at 262.

73 Ibid.

### Adopting a multivalent approach

The multivalent approach adopted by Glenn seems to be an interesting concept that could be used to advance a theoretical appreciation of the customary normative order. This is welcome in the context of Cameroon, since it describes the hidden reality and encourages wider acknowledgment of various normative orders within the state.<sup>74</sup> This section seeks to understand how the numerous legal traditions in Cameroon can manage their relations with each other, despite their complexities and individual claims of universality.

An analysis of the current relationship between the various traditions in Cameroon reflects what Glenn describes as an attitude of toleration. Toleration applies to that which is “really external, different, strange, or even radically wrong or for some evil”.<sup>75</sup> This idea of toleration is reflected in the current conflict between the customary law system and the state legal system on the issue of witchcraft. Since the state regards this aspect of custom to be fundamentally wrong, primitive and sometimes evil, toleration implies that, although there are reasons for not stamping out the customary normative in its entirety, it is acceptable to eradicate practices it deems primitive.<sup>76</sup> Here, toleration fails to accept, despite differences; instead, it creates a dualistic relationship that condemns and excludes the customary system.<sup>77</sup> The multivalent logic proposed by Glenn seems appropriate to the situation in Cameroon. This logic goes beyond tolerance by proposing acceptance, “despite differences”. It refuses to condemn or exclude, rather it builds real bridges that serve as a middle ground for traditions, which permits an “ongoing reconciliation of its inconsistent poles”.<sup>78</sup> This reflects a form of interdependence of traditions as opposed to the elevation of one belief or tradition to an elite status with the aim of imposing it on others with subordinate status.<sup>79</sup>

The adoption of this approach is somewhat necessary for the survival of customary law in Cameroon. Multivalence would provide general stability for all traditions existing within the state. This approach allows for a dialogue within the legal system, such that disapproval of one aspect of a specific tradition does not automatically discredit the system in its entirety.<sup>80</sup> According to Glenn, multivalent thinking tells us to keep in mind the various ways in which these traditions may conflict, that is the inconsistent principles.<sup>81</sup> It also tells you that these inconsistencies within traditions only “define the

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74 HP Glenn *Legal Traditions of the World, Sustainable Diversity in Law* (5th ed, 2014, Oxford University Press) at 372.

75 Ibid.

76 Ibid.

77 Ibid.

78 Ibid.

79 Id at 375.

80 Ibid.

81 Id at 378.

field of play” by showing how and where to find a middle ground in case of conflict, as there will always be a middle ground.<sup>82</sup>

### A culturally reflexive approach

In line with the multivalent attitude highlighted in the previous section, Howes suggests the adoption of a culturally reflexive approach within the judicial process. Through this approach it is possible to discern the appropriate stance national courts should take in adjudicating witchcraft accusations.<sup>83</sup> It moves beyond sensitivity, which merely acknowledges the cultural aspect of a dispute, to requiring the incorporation of cultural elements and an understanding of law from both sides.<sup>84</sup> The multicultural nature of Cameroonian society makes it increasingly essential to adopt this form of reasoning in the judicial adjudication of disputes arising from custom.

On the one hand, one could argue that the state and courts are, in some ways and to some degree, being culturally sensitive. However, the sensitivity to local culture displayed by the Cameroonian elite when they lobbied to have witchcraft criminalized took more the form of a smokescreen, deflecting attention from their own shortcomings. Also, evidence in the form of case law shows that the approach being adopted by the court, of using witchdoctors as expert evidence, is done merely to acknowledge the existence of various cultural elements that come into play in these cases. This sensitivity to culture needs to be replaced with reflexivity. A culturally reflexive legal reasoning is one that is primarily concerned with acknowledging the interdependence of culture and the law, that is an approach that sees law as a part of culture and not above it.<sup>85</sup> This approach necessitates moving beyond sole reliance on witchdoctors to incorporating other forms of evidence. Another implication of adopting this approach in Cameroon will be that, in the process of determining what aspects of culture should be criminalized or deemed illegal, a “new bar must be set”,<sup>86</sup> that is one that not only considers the voices or opinions of the dominant culture, in this case the political elites, but also takes cognizance of the multicultural nature of Cameroonian society and how those cultures interact.<sup>87</sup>

Judicial adjudication in this way will need to change drastically. In order to achieve justice, judges will need to go beyond a mere cognizance of the various cultural elements at play in each case.<sup>88</sup> The court’s primary aim would be to ensure that both sides grasp the facts, not merely to sentence accused

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82 Ibid.

83 D Howes “Introduction: Culture in the domains of law” (2005) 20/1 *Canadian Journal of Law and Society* 9 at 9.

84 Id at 15.

85 Id at 9.

86 Id at 20.

87 Ibid.

88 Ibid.

witches to imprisonment because legislation stipulates that.<sup>89</sup> Ensuring cross-cultural justice could entail suspending judgment for as long as it takes to ensure a proper representation of the facts in a dispute.<sup>90</sup> However, taking account of the limited resources available in Cameroon, the author is not recommending that cases be suspended or drawn out to ensure a smooth judicial process, but that in the search for justice more effort needs to be placed on the need for more dialogue between culture and the law in court settings and for greater reflexivity on the part of judges in the exercise of their functions. This will necessitate taking account of the historical and social context of indigenous Cameroonians accused of these practices to ensure a culturally diverse judicial process. Adopting this attitude will result in the incorporation of minority cultures into the dominant society rather than their alienation.<sup>91</sup>

### EFFECTING CHANGE WITHIN TRADITIONS

It is important to note that the theoretical framework discussed above for emancipating the customary normative order from the grip of the state legal system is not oblivious to the fact that justifications may exist for current state resistance to witchcraft practice. The argument here is that change through external contact leading to a significant alteration of the entire information base of a tradition will not be received as change, rather as an imposition.<sup>92</sup> As seen in Cameroon, in most cases such modification to custom may not even be acknowledged in any way. Focus should not be placed on trying to oppose or resist the very nature of culture by advancing the state's modernizing ambitions. Instead, effort needs to be placed on trying to adapt customs to ways that correspond to new circumstances when present rationality is applied.<sup>93</sup> In order to achieve this, inquiry needs to be made as to what kind of information is relied upon when there is real opposition to custom.<sup>94</sup> This question is essential because the form of change that needs to be effected within indigenous societies is not only internal to such communities but also specific to a particular tradition within the community.<sup>95</sup> Resistance in such instance is to a particular detail and consequence of a customary practice, for example the harm caused by witchcraft practice. Glenn argues that the tradition itself provides the justification both for opposition and for its defeat or accommodation.<sup>96</sup> Although the specific culture may not expressly state how or when to resist it, in most instances it provides the requisite authority

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89 Ibid.

90 Ibid.

91 Ibid.

92 Howes "Introduction: Culture" above at note 83 at 40.

93 Ibid.

94 Id at 18.

95 Ibid.

96 Ibid.



needed to ensure opposition.<sup>97</sup> The argument here is that, since tradition supplies justifications for resistance, any modification to be made to witchcraft practice must be conducted within the tradition itself, using both its language and its resources.<sup>98</sup> This is likely to impact a change within such communities, as the change will be confined to the context and resources within that tradition.<sup>99</sup>

These ideas are more likely to be easily comprehended once the idea of culture in Cameroon is understood to be merely composed of information carried from the past to the present, with no inherent elites or hierarchy.<sup>100</sup> Understanding tradition in this way emphasizes the fact that, since culture in itself is a vague concept, if there is a conventional way of doing things, the tradition will be in the “way” and not in the “doing”.<sup>101</sup> Once they have taken place, acts or decisions disappear forever if they are not translated into communicable information.<sup>102</sup> Therefore, in the future one may or may not act upon information received from tradition.<sup>103</sup> This highlights the fact that the information base of customs is very significant in effecting change. Also, reinforcing the theory of tradition being a dialogic process, a conversation with other traditions, exposes the inherently unstable nature of custom, its instability arising from both internal and external sources.<sup>104</sup> Therefore, if tradition is constituted as an exchange of information, it is in some ways open to further exchanges of information, notably with the civil and common law traditions that also exist in Cameroon.<sup>105</sup> Once this is done, it will become easier to decouple the idea of culture from stability. In this way, culture will instead be conceived as a resource from which reasons for changing witchcraft practice can originate. Culture, in all its forms, will become a means by which change can be formulated, a “modality of change”,<sup>106</sup> a means by which a community “gradually transforms itself”.<sup>107</sup>

## CONCLUSION

The article has provided a critical reflection on current state involvement in the regulation of witchcraft practice in Cameroon. It has shown that the

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97 Ibid.

98 KA El Fadl *Speaking in God's Name: Islamic Law, Authority and Women* (1st ed, 2001, One World Publications) at 92.

99 S Delany *Counter-Tradition: A Reader in the Literature of Dissent and Alternatives* (1st ed, 1971, Basic Books) at 3.

100 Glenn *Legal Traditions of the World*, above at note 74 at 13.

101 Id at 14.

102 Ibid.

103 Ibid.

104 Ibid.

105 Ibid.

106 MR Waldman “Tradition as modality of change: Islamic examples” (1986) 25/4 *History of Religions* 318 at 326.

107 F Braudel *A History of Civilizations* (1st ed, 1995, Penguin Books) at 30.

present rationality adopted by Cameroonian courts and legislation seems to be one that is out of touch with the current realities of indigenous Cameroonians. An over-reliance on criminalization has led to the repeated incarceration of indigenous Cameroonians. The article also looked at various mechanisms adopted by specific African states in their bid to address this issue. These range from the use of legal instruments in the form of legislation or state courts, religious institutions and in some cases an outright denial of the existence of witchcraft. Reference was made to particular jurisdictions in Africa that face similar problems to determine if their approach can be adopted and modified to suit the context in Cameroon.

In the author's view, there is good reason to question whether the best approach to addressing the problem of witchcraft in Cameroon is through criminalization. This article has shown that criminalization has its dangers. State judicialization of aspects of indigenous practices tends, more often than not, to be counterproductive due to inherent inconsistencies. Criminalization only reinforces the alienation of minority cultures from the dominant state culture. If the state and its political elites deem it necessary to regulate witchcraft practice, alternative avenues will need to be explored.