

REVISITING BRITISH AND FRENCH INFLUENCE: UNIFICATION OF CAMEROONS' LEGAL SYSTEM AND A COMMITMENT TO HUMAN RIGHTS

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Abstract

This paper analyses the role of France and Britain in the formation of the bijural state of Cameroon after independence in 1960. An assessment is done of the 1961 constitution, the 1972 Constitution, as well as the 1996 Constitution of Cameroon. It is established that the country has been confused, running back and forth with a bijural system, thus a perpetual state of chaos. This contribution looks at the failed fusion of Cameroon's judicial system and argues for another attempt. Proposals are made for the institutions of customary law to be strengthened, as well as the need for constitutional changes on appointments in the judiciary. A proposal is equally made of a revisit of the principle of democracy and the independence of the judiciary in Cameroon. The paper adds that Cameroon needs to have a firmer grip on the African human rights system and adopt her own institutional model rather than copying entirely from the French and British model of institutional change; for Cameroon has her own realities.

Keywords: bijural, independence, democracy, human-rights.

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1. Introduction

The then Federal Republic of Cameroon situated at the frontier between West and Central Africa was created in 1961 from two territories formerly under trusteeship: the territory administered by France became the Federated State of East Cameroon and the Southern Cameroons administered by Great Britain became the Federated State of West Cameroon. Both English and French Cameroon inherited the English and French style of governance, adopting the *modus operandi* of the executive, the legislative, and judiciary of these countries. For instance, the former British Cameroon was endowed with a government, a two Chamber Assembly, a police force and a public service. It was a Parliamentary system with a government that was accountable to the Assembly, and Ministers, referred to as Secretaries of State in the Federal States.¹

2. Constitutional Confusion in Cameroon since Independence

Many jurists recognize the complex nature of flexible possibilities challenges offered by Federal Constitutions.² As a pre-condition for the autonomy of a federated State, jurists also state that it must be endowed with a sufficient number of domains and organs.³ Sir Ivor Jennings and C.M Young point out that the Federative form is excessive and less efficient.⁴ In the case of Cameroon, the Federal system of government adopted by this newly independent country proved to be expensive and ineffective.⁵

In 1972 the country became the United Republic of Cameroon with the elimination of the post of Vice Presidents of the federated states, and in their place, a single position of Prime Minister. This transition also saw the birth of the

¹ Jacques Benjamin. *Les Camerounais Occidentaux: La Minorité dans un État Bicommunautaire* (1972), p. 3. Montréal: Les Presses de l'Université de Montréal.

² Anthony H. Birch. "Opportunities and Problems of Federation" in Leys and Robson (eds) *Federalism in East Africa* (1965), p. 7. Nairobi: Oxford University Press.

³ Charles Durand, *Confédération d'Etats Fédéral Réalisations Acquisées et Perspectives Nouvelles* (1995), p 34. Paris: M.Rivière.

⁴ Ivor W Jennings and C.M Young, *Constitutional Laws of the Commonwealth* (1952), p 343. London: Oxford University Press

⁵ Ibid.

1972 Constitution.⁶ Mr. Paul Biya was appointed Prime Minister of the new United Republic and later became President of the country on the 6th of November 1982. After political turmoil and the Tripartite Conference in 1991, the President thought there was need for a constitutional change.⁷ By the end of 1996, the country had yet a new constitution. The 1996 Constitution was intended to amend the Constitution of 1972. Many argue that this purpose was defeated for the country now runs on two constitutions; the 1972 Constitution and the 1996 Constitution.⁸

The constitutional changes highlighted above are clear proof of a country operating in confusion since independence. The contention on both sides of the argument as to whether Cameroon operates on the 1972 or the 1996 Constitution or both has further exacerbated the confusion.⁹ It can be asserted that this mixture of affairs is a direct consequence of a country finding its own path within the influence of Britain and France, Cameroon's former colonial masters. Meanwhile, the outcome of the various constitutional transmutations has led to an increasingly centralized system of governance leading to complete control by the executive over the management and running of state institutions, including the judiciary.

3. The Effects of French and British Institutions over the Cameroonian Judicial System

Cameroon after independence was most certainly not the only African State where several legal systems were used side by side.¹⁰ In French and British

⁶ See "The 1972 Constitution of Cameroon"

<http://www.asqp.info/Resources/Data/Documents/HPMOEWVPHSZPHGXVHYOUSSTWPSYJWI.pdf>, accessed in August 2008.

⁷ See the Constitutional change after 1991 www.postwatchmagazine.com/2007/07/no-joining-inva.html, accessed July 2008.

⁸ Magloire Ondo, "La Constitution Duale: Recherches sur les dispositions constitutionnelles transitoire au Cameroun", *Revue Africaine des Sciences Juridiques* vol 1(2000), pp.20-56.

⁹ Ephraim Ngwafor, "The Law Across the Bridge: Twenty Years (1972-1992) of Confusion", *Revue Générale de Droit* vol. 26 (1995), p 69.

¹⁰ Pierre François Gonidec, *Les Droits Africains*, (1968), p 211. Paris : Lebrairie Générale de Droit et la Jurisprudence.

colonies such as Morocco and Nigeria, the French and British legal systems were introduced alongside customary law, and in some cases, Islamic law.¹¹ Countries in Africa with inherited legal systems such as Nigeria and Morocco have equally suffered the same faith of conflict of laws.¹² So the subject of legal confusion is not peculiar to Cameroon. In Cameroon, the East Cameroon legal system was modelled after French tradition and practice¹³ while the legal system of West Cameroon was operated in accordance with British common law and Nigerian statutes.¹⁴

In 1969, the Ministry of Justice presented the government of Cameroon with a proposal to unify the two legal systems via a document known as “the Counte-Quinn Pre-Pilot study”.¹⁵ These changes seemed to put West Cameroon (British Cameroon) on the disadvantage because much of British common law was not codified, for these laws were drawn from so many sources. Also, the absence of frequent contacts between officials charged with handling the harmonization on behalf of the Federal Government of Cameroon, and the legal advisers of West Cameroon prevented both sides from finding a head way.

Further, there were fundamental differences between the two legal systems which were to be merged. The then West Cameroon had a firmer grip on customary law than East Cameroon in 1961. P.F Gonidec contends that in East Cameroon, ‘traditional law’ was the concern of the federal government whereas in West Cameroon, the *Customary Court of First Instance* fell under the jurisdiction of the Federated State.¹⁶ Customary law in the French tradition had a

¹¹ Ibid.

¹² Sandra Fullerton Joireman, “Inherited legal systems and effective rule of law: Africa and the colonial legacy”, *The Journal of Modern African Studies* (2001), p 28. Cambridge: University Press

¹³ Jacques Benjamin, *West Cameroonians: The Minority in a Bi-cultural State* (1972), pp159 -162 Canada: Les Presses de L’Université de Montréal.

¹⁴ Ibid.

¹⁵ The Ministry of Justice (Dept. of Legislative Matters) File No. 3 DL 1304/DL, circular No 30023 C/MJ, 30 December 1968, Mimeo

¹⁶ Pierre François Gonidec, *Les Droits Africains*, (1968), p 213-276. Paris : Lebrairie Générale de Droit et la Jurisprudence.

direct influence on the post-reunification judicial system. This is a clear link between Cameroon' constitutional evolution and the British and French legacy. The constitutional text of 1961 gave such powers to West Cameroon making it possible for every ethnic group as well as every clan to have its own laws and customary courts. The rule of Chiefs was seen in the local councils and in the House of Chiefs.¹⁷ One of the major differences between the two Cameroons, inherited from colonisation resides in the concept of decentralisation of the local level. Today the rule of chiefs is fading away.

It can therefore be contended that colonial legacy had and continues to have an influence on the Cameroonian constitutionalism post-1972 'reunification' as well as on the confusion following the co-existence of the 1972 and 1996 constitutions. There is therefore need for the Cameroonian authorities to revisit the possibility of a fusion of the bijural system in Cameroon as well as give customary courts more powers as before. There is no sense trying to adopt the French or British legal system when in actual fact there remains a lacuna in applicability. From all indications, most of the judicial institutions enshrined in the 1996 constitution have not gone operational.¹⁸ This is a porous way of giving credence to our colonial masters, credence which only comes back to generate conflict of laws as well as delay in justice.

4. The Need for Constitutional Changes on the Independence of the Judiciary in Cameroon

Judicial powers and the administration of justice in Cameroon are dealt with under Part V of the 1996 Constitution of Cameroon. Article 37(1) state that

¹⁷ Article 38 of the Federal Constitution of 1961 acknowledged the existence of the House of Chiefs. This House considered itself the West Cameroon equivalent of the House of Lords in Great Britain as asserted by the then Prime Minister, S.T Muna. Budget Session of the House of Assembly, Buea 8 /7/1968, *No 9, Cameroon Express*, 3rd August 1968, p 5.

¹⁸ The 1996 Constitution makes mention of a Constitutional Council in articles 46 to 52; but this council has never gone operational. Instead the Supreme Court usually sits in for the Constitutional Council especially on matters of electoral contestation. A Court of Impeachment is also mentioned in article 53(1) of the 1996 Constitution, having powers to impeach the President, Prime minister as well as other top ranking officials in case of treason and gross mismanagement of public funds. This court has not gone operational.

“justice shall be administered in the territory of the Republic in the name of the people of Cameroon, while article 37(2) provides that judicial power shall be exercised by the Supreme Court, Courts of Appeal and Tribunals. This subsection also stipulates that Judicial Power shall be independent of the Executive and Legislative Powers, and that Magistrates of the bench shall, in the discharge of their duties, be governed only by the law and their conscience.

However, article 37(3) immediately takes away the independence of the judiciary proclaimed above. It grants extensive powers to the executive arm of government over the judiciary in Cameroon, by subjecting the process of appointment, dismissal, and management of the judiciary like an integral part of the executive. It states that:

“The President of the Republic shall guarantee the independence of the Judicial Power. He shall appoint members of the bench and of the legal department. He shall be assisted in this task by the Higher Judicial Council which shall give him its opinion on all nominations for the bench and on disciplinary action against judicial and legal officers....”

Most recently, the Secretary of State for Justice in Britain presented three consultation papers to Parliament in October 2007, on the ‘Governance of Britain’.¹⁹ Proposals were made on creating a judicial appointments commission for the first time in Britain, in order to remove the residual role of the executive in appointments and to create a role for Parliament in the process. This is a very important step for the independence of the Judiciary in Britain, which Cameroon can begin to consider. Divorcing from British or French influence with respect to institutional changes is necessary, but when it comes to concrete reforms that will guarantee the independence of the judiciary, Cameroon must learn and adopt such democratic and transparent processes. It is in this regard that judicial reforms in other countries, including Britain and France can still be important.

¹⁹ See “Consultation Papers to Parliament in October 2007, on the ‘Governance of Britain’ <http://www.justice.gov.uk/publications/cp2507.htm>, accessed in June 2008.

For instance the creation of an independent judicial appointment commission will be most welcome in Cameroon. Members of such a commission should be selected from law professors and political scientists with a mastery of the history, geography of Cameroon, and legal culture of the country. Other members of such a commission could include Parliamentarians with a solid legal background, traditional authorities that master customary law as well as legal practitioners with a proven successful record of Cameroonian legal practice. In the selection criteria, consideration should equally be given to those with a mastery of the African human rights system. Though the idea of a judicial appointments commission is welcomed, a mastery of the cultural realities of Cameroon as well as a high sense of judgement should be conditions for selection of members of such a commission.

A lot was debated in favour and against the amendment of the 1996 Constitution. Despite these debates, the constitutional amendment was passed by the National Assembly and promulgation into law by the President on the 14th of April 2008.²⁰ Debates on constitutional amendment received mixed feelings at home and abroad. Many were of the view that it was not yet time for an amendment of the 1996 Constitution for most of the articles have not been implemented,²¹ while others were of the view that the country needed to amend the constitution for purposes of a smooth transition of power as well as checks and balances in corrupt practices by government officials.²²

Whatever the lingering contentions, there was a need for a constitutional amendment with regards to the principle of democracy, independence of the judiciary, and accountability. However, the constitutional modification that was adopted in Cameroon woefully failed to incorporate these aspects. The Republic

²⁰ See I. Chmielewski, "Cameroon: Democratic Dictatorship?" <http://www.ijid.org/022208Cameroon.html>, accessed in September 2008.

²¹ See note 18 above.

²² There was a lot said on an amendment of article 6 of the 1996 Constitution, which stated that in a case of death or incapacity, the president of the Senate assumes power. Forty days are then given for the organisation of elections, which was virtually impossible.

of South Africa is a country, which has gone a long way in the guarantee of the principle of democracy. Some of the most important provisions flowing from the principle of accountability are found in the Bill of Rights of the South African constitution of 1996.²³ With respect to separation of powers and checks and balances, the executive is directly answerable to the elected legislature.²⁴ This is an example, which Cameroon needs to emulate.

5. Strengthening Ties with the African Human Rights System

The African human rights system was established with the adoption of the African Charter on Human and Peoples' Rights (African Charter).²⁵ However, the hopes of this regional system seem to be slowly slipping away. One of the reasons why African States including Cameroon continue to follow institutional changes awkwardly from France and Britain is because of lack of confidence in the African Human Rights System. Gino Naldi contends that the adoption of the African Charter on Human and Peoples' Rights²⁶ has largely proved to be a false dawn for the promotion and protection of human rights in Africa.²⁷

The African Commission on Human and Peoples' Rights (the African Commission) has also been confronted with a situation where the national legislations, including constitutions of state parties have been at variance with the express provisions of the African Charter.²⁸ Nevertheless the creation of the African Court on Human and Peoples' Rights (the African Court) has as specific

²³ Johan De Wall, Ian Currie & Gerhard Erasmus, *The Bill of Rights Hand Book* (Juta & Co Ltd. 2001), p.19.

²⁴ Ex parte Chairperson of the Constitutional Assembly: in re-certification of the Constitution of the Republic of South Africa 1996 (First Certification Judgment) 1996(4) SA 744(CC) para 13.

²⁵ Adopted by the OAU Assembly of Heads of States and Governments in 17 July 1981, and came into force on 21 October 1986.

²⁶ Adopted by the 18th Assembly of Heads of State and Government of the Organisation of African Unity (OAU) at Nairobi in July 1981, entered into force on 21st October 1986, ILM 21(1982) 58

²⁷ Gino J Naldi, "Future trends in human rights in Africa" in Malcolm Evans & Rachel Murray, *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*, (Cambridge University Press, 2002), p. 5.

²⁸ N. B Pityana, "The challenge of culture for human rights in Africa" in Malcolm Evans & Rachel Murray, *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*(Cambridge University Press, 2002), p. 234-235.

task the reinforcement of the role of the African Commission.²⁹ As many African countries continue to adapt to the provisions of the African Charter, it is hoped that national courts will continue their role in incorporating international standards to national practice.

Although many authors have criticised the applicability of the African Charter and its institutions, African states and most including Cameroon must remain optimistic about the influence it will have on shaping the domestic institutions on the continent, rather than a complete reliance on British and French institutional models. This in no way castigates the fact that the recent proposals in France and Britain are useless. There is need to inculcate more trust in the African human rights system for a more independent Africa. Most African states are in the process of reshaping their judicial systems because of the influence of the African human rights system, and although the African Charter may be too general as a useful guide to detailed judicial reforms at the domestic level, state parties like Cameroon must continue to improve their justice system.

6. Conclusion

This contribution did not set out to undermine the importance of institutional changes in Britain and France to Africa and Cameroon in particular, for these countries may still have much to offer. Neither did it set out to underestimate the importance of globalisation to Cameroon. This paper simply demonstrated the level of confusion Cameroon experiences because of blind credence and adoption of French and British systems of governance to the detriment of Cameroonians. As a solution to this melee an independent commission for the appointment of judges is suggested. A legal system with a strong customary law foundation will equally be ideal. This will make the traditional rulers who are closest to the people to play an active role in judicial matters. The paper

²⁹ Article 2 of the Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples Rights adopted by the OAU Assembly of Heads of State and Government at its 34th Ordinary Session in Ouagadougou in 1998, RADIC 9 (1997) 953.

therefore advocates for a unified legal system in Cameroon while encouraging the government of Cameroon to assist in the evolution of the African human rights system. It is important to note that Cameroon can still give credence to Britain and France without necessarily copying entirely from these countries.

Though the phenomenon of adapting to the French and British system is a major handicap to the system of governance in Cameroon, public authorities seem too blind to notice this reality. This attitude is not only common in Cameroon but on the entire Africa. It is clear that because of such perpetual confusion sweeping over the continent, room is created everyday for violent conflicts. Having said that, there need for Africa to adopt institutions of governance that reflect her own cultures and realities and not British and French ones. The House of Chiefs underscored by Article 38 of the Federal Constitution of 1961 should be reintroduced. The executive of such a body should include both chiefs from former West Cameroon and East Cameroon. It is important for Cameroon to work together with the African Union as well as the institutions of the African system such as the African Commission and the African Court so as to adapt her institutions according to African values.