



Access to economic justice in the common law jurisdiction of Cameroon.

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This paper sets out to examine the link between indigenous customary law and common law in the common law jurisdiction of Cameroon, as provided by section 27 of the Southern Cameroons High Court Law of 1955, for the recognition of indigenous customary law and norms. The paper examines the impact of this provision on access to justice for Cameroonian citizens, specifically economic rights tied to land. The paper also touches on the problem of language as a barrier to legal knowledge, and examines the consequences of improper recognition of indigenous customary laws and norms.

Bridging indigenous customary law and common law.

Indigenous customary law or native law is very much alive in Cameroon, reflecting entrenched cultural values. Customary law covers areas including marriage, farming, forestry, hunting, general land use, inheritance and probate issues. Indigenous customary laws have their roots in various tribal customs that pass from one generation to another. They are unwritten. New laws are added by pronouncements of *fons*² or chiefs in conjunction with traditional councils. The *fon* or chief is the traditional custodian of legislative power.

In comparison to customary law, common law in Cameroon is not yet a century old. English common law came to Cameroon in 1919 after the defeat of the Germans during the First World War, when the Southern Cameroons became a League of Nations trustee territory under British rule. Even though common law and statutory law are generally recognised as the main body of law in Cameroon, the majority of people, immersed in indigenous culture, still look to traditional, local customs and norms for the adjudication of their disputes. Almost all divisions or administrative units in the common law jurisdiction of Cameroon also have customary law courts. These courts rank at the level of the magistrate courts, and adjudicate issues according to local customs; in *Kontri fashion*. The customary law courts in the common law jurisdiction of Cameroon are staffed with members who adjudicate disputes. These members are not lawyers with law degrees, but local notables with in-depth knowledge of local customs. A litigant who wishes to appeal a decision of the customary court approaches the High Court for appeal or review. These two types of courts and the law they administer run almost parallel to each other, although common law and statutory law are administratively dominant.

One of the most important pieces of legislation promulgated in the common law jurisdiction is the Southern Cameroons High Court Law of 1955,³ specifically section 27(1):

“The High Court shall observe and enforce the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience nor incompatible with

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² A *Fon* is the royal head of a tribe mostly in the savannah of Cameroon.

³ This law was passed in 1955 when the Southern Cameroons was still a separate British protectorate prior to independence, and is still in force today. This is the main mechanism through which customary Laws and norms can be invoked in Common Law courts at level of the High Courts, Appeal Courts and the Supreme Courts.

any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such native law or custom”.

Section 27(1) of the High Court Law was the first reference in written law to customary law, and is the bridge between indigenous customary law and western imported law. The Southern Cameroon High Court Law was intended to aid the development of common law in Cameroon, by recognising and accepting local reality.⁴ Nevertheless, recognition of local customary law still falls short. The 1996 Constitution⁵ states ‘that the state shall ensure the protection of all minorities and shall preserve the rights of indigenous populations in accordance with the law,’⁶ but the constitution is silent on the use of customary law. It could however be argued that protection of indigenous rights as they exist under indigenous customary law is provided for in terms of this principle. The protection of indigenous rights under customary law as provided for in the Constitution has not yet been tested in the courts.

The language of the law and law-making methodology

In Cameroon, new laws are published in the *Government Gazette*, available in English and French. Occasionally, newspapers may carry information on new laws, also published in English and French. Judges in the courts have access to the gazettes, as do government ministries. However, apart from the select few, there is no communication strategy to disseminate awareness of new laws to citizens. There is a very poor communications network in Cameroon: although some living in urban areas may have access to radio and television, outside of urban areas coverage is extremely limited. Even practising lawyers find this to be a challenge.

Even though the common law jurisdiction of Cameroon is referred to as Anglophone Cameroon, its lingua franca is *Pidgin*, not English. Various tribes use their own indigenous tongues but most often when people from one tribe communicate with one another they use *Pidgin*.⁷ In spite of this, laws legislated in Cameroon are published only in English and French. In reality, the majority of people in the country are not aware of new legislation or case law, since these are promulgated and published in a language that is not used by the masses.

Since they lack knowledge of formal written law, in their daily lives and everyday business most Cameroonians abide by local customs, which are either pre-existing or newly pronounced by the *fons* or local rulers. Their chiefs rule according to laws that relate to issues pertinent in their lives, and in a language they understand; either their local tongue or *Pidgin*. There is a cultural fit between society and law making, and the average *Kontri man* is aware of local customs, laws and norms, as well as the process of law making in his tribe.⁸ On the

⁴ E. Ngwafor, *Family Law in Anglophone Cameroon*, 1993, cites the *Bakweri* customary law whereby divorce proceedings cannot be instituted against a breastfeeding mother, since in the interest of the child, both mother and child need protection. Such proceedings were deemed traumatic to both mother and child. The author cites this custom as having been upheld in the High Court on grounds of section 27 of the southern Cameroons High Court Law ‘on grounds of natural justice, equity and good conscience’.

⁵ Constitution of the Republic of Cameroon, law no. 96-06

⁶ *Ibid.*, second proviso to preamble. Article 65 renders the preamble a part of the constitutional provisions.

⁷ There are over 200 local dialects in Cameroon, with *Pidgin* commonly spoken.

⁸ Professor Francis Nyamnjoh argues powerfully that chieftaincies in Africa, particularly Cameroon are dynamic institutions that are constantly adapting to change in governance structures of our times. For further discussion

other hand, people relate poorly to the legislature based in the capital of Cameroon, Yaoundé. First because its pronouncements come in a language that is not their *lingua franca*. Second, these pronouncements are in any case very poorly communicated through the country, if at all. Third, very often, such laws are often incompatible with local cultural norms or are culturally insensitive.⁹ It frequently seems that the legislature has a Western perspective, with limited regard for the cultural reality of life in Cameroon.

If, as an official policy, the government communicated new laws to local populations through the *fons* or chiefs, it would greatly improve their reach. In addition, the laws would be communicated from a source with cultural weight. Furthermore, bringing traditional leaders into the legislative process, if only as consultants, would also help to ensure new legislation is in step with local realities. Most *fons* today are educated and would have the capacity to manage such tasks¹⁰.

The stigmatisation of customary laws and norms.

Customary laws are usually attacked as unfair and discriminatory against women on issues including marriage and rights over children, inheritance, and property ownership. Some scholars decry the situation as one of an assault on human rights, and accusations of power play are rife.¹¹ It is indeed true that some, though not all, aspects of indigenous customary law are unfair.¹² In these cases, the repugnancy tests provided by section 27 of the Southern Cameroons High Court Law should provide against discriminatory practices in customary law.

Whilst section 27 relates to the administration of customary law in the formal courts, in practice, it could be expected that decisions relating to section 27 regulating discriminatory practices in customary law in the formal courts, would seep down to the customary courts. Yet change has been slow, as even when high-profile litigation is successful in the common law court system, these decisions do not reach local communities. *Fons* or chiefs are not directly informed of such decisions, reporting on case law is very poor,¹³ and the dominant language remains English and French.

see F.B. Nyamnjoh, "Our traditions are modern and our modernities traditional: Chieftaincy and Democracy in Contemporary Africa". www.nyamnjoh.com. Consulted on May 10 2006.

⁹ A classic example is the land registration law in Cameroon. For further discussion, see Tonye J, Meke-Me-Ze, C, Titi-Nwel P "Implications of national land legislation and customary land and tree tenure on the adoption of alley farming," *Agroforestry Systems*, volume 22, no.2 (1993) pp 153-160.

¹⁰ For instance, *Fon* Ganyongha the third of Bali Nyongha, holds a PHD in Anthropology; *Fon* Fobuszi of Chomba holds a PHD in Education.

¹¹ See "Cameroon: Over coming custom, discrimination, and powerlessness," in *Women and Land in Africa: Culture, Religion and Realising Women's Rights* (2003), published by Zed books, London and New York.

¹² A classic example is the case of *Achu v Achu* (unreported) cited by Prof E Ngwafor in his book 'Family Law in Anglophone Cameroon' where a litigant (male) contested in a divorce law suit which marriage had been celebrated under customary law that: 'property (woman) cannot own property (land)'. This position was heavily criticised in academic circles, notably by Professor E Ngwafor, that a reading of section 27 could not allow such a customary law provision to stand. In the case of *David Tchakokam v Koeu Madeleine* (unreported but cited by F.M Ssesekandi in an article entitled "Persuading the government to take more account of women's needs," presented at the conference 'Le processus d'integration du genre dans la nouvelle constitution du Rwanda' (2001)) a similar dispute where a customary law sought to place the woman in the context of property under customary law, the Supreme Court of Cameroon struck down such a custom as being repugnant to natural justice.

¹³ At this writing, the common law jurisdiction of Cameroon does not have up to date law reports.

The fact that pro-feminist academics also continue to avoid dealing with section 27 and the protective measures it affords is demonstrative of the prejudice against customary laws and indigenous institutions that are key to enabling sustainable access to justice. A close reading of the language of section 27 and the decisions emanating from its invocation in the courts suggest that its purpose was to preserve the favourable aspects of customary laws while weeding out the unfavourable.

The failure to look into the reality of the existence of customary law by academics¹⁴ and legislators alike contributes to a disjointed legal system. It is often common for scholars to label anything African that does not fit a Western mould informal.¹⁵ Indigenous customary dispute resolution fora are not recognised or visible as part of the legal system. In this regard, *fons* or chiefs are rarely ever regarded as institutions that make law as legislators or as arbiters of disputes, even though in practice this is a considerable part of their role.

One can go as far as arguing that from a cultural perspective, the former House of Chiefs¹⁶ in the upper chamber of the former West Cameroon House of Assembly may have carried more cultural weight and relevance as a law making institution than the present parliament. The input of people knowledgeable in customary law may have had the effect of its influences trickling into the legislative process. The adaptation of laws to suit local realities in Cameroon has been at best meagre.

Effects of the failure to properly recognise customary laws and norms.

a. Avoidance of local courts.

Transactions for the sale of land, rent or other resources questions, cannot evade the reality of culture, customs and norms of the region or the relationship between people of the region and their lands. If access to economic justice is viewed within the context of Section 27(1) of the Southern Cameroons High Court Law, one could considerably take into account the reality of every day life of the *Kontri* man in the common law jurisdiction of Cameroon. In Cameroon, a complainant in a land claim may approach the High Court for resolution of the dispute, or the Land Consultative Board,¹⁷ or a customary law court.¹⁸ However, three cases demonstrate the distrust Cameroonians have of the justice system.

¹⁴ At this writing the faculties of Law at the Universities of Buea, and Yaoundé which handle Common Law degree programs do not teach customary indigenous law as a course and the same is true for civil law faculties in the rest of the country. Little bits of customary indigenous law are parts of subjects like Family law.

¹⁵ Tripp, AM “Non formal institutions, informal economies and the politics of inclusion”. World Institute for Developing Economies Research (2001), discussion paper no. 2001/108

¹⁶ Chem-Langhee, B, “The origins of the Southern Cameroons House of Chiefs”. *International Journal of African Historical Studies*, vol 16 no. 4(1983) pp 653- 67. The House of Chiefs was disbanded in 1972 when Cameroon became a unitary state with one parliament as opposed to the immediate post colonial arrangement that saw former East Cameroon (La République du Cameroun) and former West Cameroon (Southern Cameroons) each having a separate House of Assembly. Upon being transformed into a unitary state, both houses of the legislature were disbanded and Cameroon later had only one parliament.

¹⁷ The Land Consultative Board is a quasi-judicial body in the line of an administrative tribunal set up to adjudicate land disputes as well as register land titles in Cameroon in terms of the 1974 Land Ordinance in Cameroon. Because it actually hears land disputes as a trier of facts in land cases, it is akin to a court and its rulings are binding. Appeals from it may be contested by way of a *mandamus* at the High Court or in terms of the just administrative action provisions of the Constitution of the Republic of Cameroon, usually at the Administrative Bench of the Supreme Court of Cameroon.

¹⁸ Indigents can approach the customary courts and the Land Consultative Board in person without lawyers.

The privatization of the Cameroon Development Corporation (CDC) and the Société Nationale des Eaux (SNEC) in Cameroon has pitted communities against the state. The CDC is an agricultural enterprise that exists on the ancestral land of the Bakweri community. These lands had been confiscated by the Germans, who passed them on to the British, who in turn passed them on to the Southern Cameroons government at independence, and then to the state of Cameroon. The Bakweris believe they have a claim to their land and want it returned, or failing that, compensation for the seizure of these lands. The government of Cameroon decided to privatise CDC without regard for the ancestral claim of the *Bakweris*, and with little or no attempts at compensation. At this writing, the Bakweri Land Claims Committee (BLCC) is arguing a case before the African Commission on Human and Peoples' Rights (ACHPR) against the government of Cameroon for the return of their lands.¹⁹ They did not take the case first to a Cameroonian court, despite the provisions of section 27(1).

Decisions of the African Commission on Human and Peoples' Rights can only be enforced by a decision of the AU Assembly, so enforcing such a decision against the state of Cameroon would in itself be a legal challenge. Yet the BLCC still chose to present their case in the ACHPR rather than the Cameroonian courts. One can speculate here that a victory in that forum will give them a right to advocate successfully against any external entity that wishes to buy CDC, forcing the government of Cameroon to settle the matter.²⁰

The BLCC however risked the admissibility of its claim as the African Charter on Human and Peoples' Rights requires claimants to first exhaust local remedies before approaching the commission.²¹ This became one of the key defence points in the government's case. The government argued that BLCC could have taken its case to the High Court, a customary court or the Land Consultative Board for the first attempt at adjudication.²²

In effect, the BLCC's hands were in a way tied. If it had to litigate in Cameroon, its claim would have been decided by the Land Consultative Board, a structure created by the 1974 Land Ordinance, several decades after the dispute originally arose. The dispute arose even before the introduction of common law to Cameroon, as it was during German colonial era that the Bakweri lands were confiscated.

The Land Consultative Board consists of the senior divisional officer, the chief of service for lands and the local chief or *fon* and two notables. Both the divisional officer and the chief of

¹⁹ Bakweri Land Claims Committee v Republic of Cameroon. (African Commission on Human and Peoples Rights, Communication No 260/2002).

²⁰ See A published letter by Counsel for BLCC Prof Ndiva K Kale entitled Caveat emptor addressing an interim relief granted by the African commission on Human and Peoples Rights to this effect where the Commission sought to stop the sale of CDC or any transaction on CDC lands pending the resolution of this dispute. See Ref Letter ACHPR/LPROT/COMM 260/CAM/NGL dated 3rd February 2006.

²¹ See Section 56(5) of the African Charter on Human and People's Rights.

²² See also *Free Legal Assistance Group and Others v Zaire* (2000) AHRLR 74 (ACHPR 1995) where the commission held that it is necessary to ensure that a state should be notified and given ample opportunity to remedy such a violation. However it should be noted that over the years, the Bakweris have consistently protested and pressed the government of Cameroon for the return of their lands. It was disingenuous for the government to raise Section 56 of the Charter as a defence. After BLCC had commenced litigation before the Commission and the dispute resolution process had been commenced, the government of Cameroon still tried to sell CDC causing the Commission to intervene again with an interim order restraining the government from proceeding with the sale.

service for lands represent the government, while the *fon* and the notables are present as trustees representing the indigenous population. So in this case, the government of Cameroon and BLCC (which comprises some Bakweri chiefs) would have been sitting as judge and parties in their own case, violating the most basic principle in natural justice that a neutral party adjudicate.

The tendency to avoid Cameroonian courts on substantial cases related to land and economics, in favour of other avenues for dispute resolution has also happened in other cases. Water resource issues are intrinsically tied to land issues. In Bali, Tombel and Kumbo, all medium sized towns in the common law jurisdiction of Cameroon, economic pressure for water has caused communities in the three towns to revolt against SNEC, forcing it out of these localities.²³ In these towns, SNEC had a monopoly on the supply of water, gathering its supplies from local lakes that are part of an indigenous heritage where everyone had the right to gather water, or on dams constructed on indigenous lands that it never bought.. Although there are no tribunals specifically dealing with water resources, the dispute could have been dealt with in a customary law court, by the Land Consultative Board, or even in a High Court. However, local courts were avoided on these issues in favour of mob justice; the local communities literally drove SNEC out of their towns.

One could argue that this trend of indifference to local courts on issues of economic law is a direct result of the government's indifference to cultural contexts and customs, and the insensitive manner in which it has chosen to govern. Another example relates to a land dispute between the Fondom of Ndu and the Cameroon Baptist Convention (CBC) (*the Fon of Ndu case*)²⁴. In this dispute, the Fondom of Ndu had made land available to the CBC for developmental purposes such as the building of schools. The CBC built a school on the land, then later moved the school to Kom (another town) leaving the land vacant. The Fondom decided to reclaim the land it had given out to the CBC, and allow locals to use it as farmland. In this case, the senior divisional officer intervened as head of the Land Consultative Board and ruled in favour of the CBC. The senior divisional officer for Ndu acted alone, without the Land Consultative Board sitting as a board. Although president of the Land Consultative Board, he made his ruling with no reference to his capacity as a commissioner or member of the Land Consultative Board. The *fon* of Ndu and the Ndu people felt deprived of their rights and also humiliated that an officer imposed a decision over their traditional ruler. In light of such insensitive gestures, it can be seen why local communities perceive the courts and legal fora as offering them little in terms of justice. The courts and tribunals such as the LCB are seen as very close to government, and not as impartial arbiters of disputes of this nature.

Most revealing is the procedural functioning of boards of this nature in the common law jurisdiction of Cameroon. There is no recorded dissenting opinion of a board member of the Land Consultative Board sitting as an adjudicatory authority. The president of the Land Consultative Board in the person of a senior divisional officer seems to think as president he embodies the board. Added to that is the fact that the issue of dissenting opinions of board

²³ Page, B. "Accumulation by dispossession: Communities and water privatization in Cameroon". (St Peter's and Mansfield College, Oxford) 2002.

²⁴ See Fisiy, CF "Chieftaincy in the modern state: An institution at the crossroads of democratic change". (Paideuma) The author also reports the complaints of several traditional rulers who decry the seizure of control of traditional lands by the state.

members sitting as commissioners of the board has not registered in the minds of those sitting on it. It will be interesting to see what happens if a board member puts in a dissenting opinion in a ruling of a Land Consultative Board, especially if such a dissenting opinion involves an invocation of Section 27.

b). Misreading of, and transformation of the concept of “ownership”.

The roots of this problem lie in the basic understanding of the concept of ownership of land, which has transformed over time.

Cameroon has maintained a dual system of law in this region, thereby promoting two systems of ownership rights, that according to customary law, and that according to common law. Land was never “owned” per se in indigenous communities, but rather communally held. Custody and control of land is vested in the people through a *fon* as a trustee, who gives out the land for use as needed by the people, for various purposes such as farming, grazing or hunting. Rather than the concept of concrete control of land tenure, a usufructary relationship may be more appropriate in describing this type of land tenure. Land rights as understood in customary or indigenous traditional systems were not meant to be sold or transferred in the same manner that land rights are transferred or conveyed under English common law. However one can notice the handing down of land rights through hereditary routes from generation to generation or passing over on a usufructary basis between friends without any exchange of financial consideration. When a new family arrived into a community, they did not buy land but were given land on which to settle, and live according to the norms and customs of the area, in respect of the local chief.²⁵ Some tribes were semi-nomadic and often moved or were sometimes resettled by war.

The superimposition of a common law understanding of land rights, without cognisance of the indigenous understanding of the issue has had confusing consequences. In the savannah regions, if a woman farms a piece of land but leaves her family, she loses the right to farm that piece of land, since, according to inheritance practices, in most cases, this passes through the male line. However, this does not mean that she will remain without a farm since members of her own family will make land available to her for farming²⁶, or the same family she married into may do so.

Lands given to missionary communities for developmental purposes such as happened in the *Fon of Ndu Case* were never sold but given for the “use” of the missionaries. Hence we can understand why a *fon*, who has given land for a specific “use”, may want it back if it is not being used for what it was intended for. This dispute is an example of the confusion caused by differing concepts of land rights.

An examination of the present situation shows that there is a considerable amount of dispossession of land rights to the disadvantage of women, and also men who are not clan heads when the common law concept of “ownership” is imposed on traditional societies that had controlled their land on a “usufructary basis”. This dispossession takes place when a trustee (the family head) is seen as the owner of property as opposed to a trustee in charge of trust property held on behalf of his family. It would be unheard of in a tribe, for instance in

²⁵ See Fisiy, CF *ibid*. See also Ngome, Ivo. ‘Land Tenure Systems and protected sites in South West Cameroon: Effects on livelihoods and resources,’ *The Courier* (2006).

²⁶ See Ngome, I *op cit*.



Bali, Mankon or Bum, to accept that lands under the control of the palace could be sold by a sitting *fon* as though it were his personal property. It is common knowledge that the *fon* controls the land on behalf of the tribe even though by royal authority, he will say that the lands are his. He sits as an institution, and not in his personal capacity. Each family head is traditionally in the same position of a *fon* vis-à-vis family lands.

Prospecting for Solutions

In order to ease better meet the needs of the *Kontri* man, particularly when his economic rights are threatened, certain basic steps are needed:

- Laws need to be better communicated to local populations, and in a language that they can understand. The continued use of English and French in law mystifies the legal system to the common man. Mob justice will prevail if the public do not feel a connection with the legal system.
- Law reports are a bedrock of the common law legal system, but since the mid-seventies, have ceased being produced. Their absence has stifled legal discourse amongst students, academics and lawyers. One cannot claim to practice common law effectively without information on the decisions of the courts. The visibility of the justice system in operation has been seriously blurred since one does not know what comes from the benches.
- Officials at all levels, especially of the LCB, need to be sensitised with regards to local customs and cultures²⁷. The full impact of the protective nature of Section 27 is not being felt in the area of law relating to property rights. This law can be useful in monitoring the activities of the LCB.
- Law schools should teach customary law as a course, so that a real debate on its norms and procedures can take place. Access to justice depends on knowledge of all laws not just imported norms that mean little to the governed masses.
- The recognition of indigenous customary laws, norms, procedures and institutions must be taken seriously. If we agree that these are institutions that are dynamic and constantly changing, their role, as dispute resolution bodies have to be enhanced and monitored for abuse if that exists. These institutions have to be linked to the rest of the justice system.
- Section 27 of the Southern Cameroons High Court Law should be more frequently invoked, allowing for the application of indigenous customs, and providing room for discriminatory and unjust customs to be weeded out.

²⁷ Fisiy notes that the senior divisional officer in the *Fon of Ndu* case was a Cameroonian from former East Cameroon (the civil law jurisdiction now) that did not appreciate the role of traditional rulers and the cultural weight they carry in the common law jurisdiction of Cameroon.