



## THE GRADUAL DISAPPEARANCE OF THE PARTICULARITIES OF TRADITIONAL COURTS IN CAMEROON

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During the pre-colonial period, justice in Cameroon was administered by customary authorities, heads of the family, clan, and tribe, as well as religious leaders.<sup>1</sup> During colonialisation, finding themselves unable to immediately abolish the institutions in place, the new rulers of Cameroon created a system of legal and judicial dualism. On the one hand there were traditional tribunals based on customary law for local populations; and on the other, modern courts administering modern Western based law for Europeans and those with a similar status.

Until the advent of independence, this dualist legal system flourished. With the country's accession to international sovereignty and the consequent disappearance of different categories of citizenship, alongside a new necessity to promote social integration through implementation of single institutions, it seemed natural that the judicial system would also be unified. However, the system of judicial and legal dualism was maintained and reorganized.<sup>2</sup>

In effect, the new local authorities chose to maintain the traditional courts temporarily, alongside formal legal structures administering law inherited from the former colonizers. These latter structures were established as common law courts, while the former were classified in the category of 'exceptional tribunals'.<sup>3</sup> As during the period preceding independence, the unique nature of these 'exceptional' courts lies at two levels: first, they are intended only to administer justice to citizens whose education and socio-cultural context resembles that of "natives" and, in administering justice, they must apply the customs of the parties brought before them.

Up until now, the structure and functioning of these traditional courts has seen no changes. And yet, the underlying context that motivated their creation and justified their maintenance has almost completely disappeared. The separation between the traditional courts and those of common law has become increasingly blurred. The characteristics of those who use the traditional courts have changed. The individuals appearing in cases brought before the traditional courts are increasingly legal professionals rather than those with no formal legal training. Furthermore, the customs that were the usual source of settlement of disputes have in practice ceased being applied, while at the same time, law based on western practice is becoming more widely used and rooted in these courts.

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<sup>1</sup> See J.P Nguemegne, *Histoire des institutions et des faits sociaux du Cameroun (des origines à 1800)* (History of institutions and social facts of Cameroon (from origins to 1800)), Volume 1, Dschang, PUD, 1997

<sup>2</sup> In the Francophone part of the country, the traditional courts include as a first resort, the Customary Courts and Courts of First Instance. The Anglophone part of the country includes Customary Courts and the Alkali Courts. The Courts of Appeal and the Supreme Court each comprise a chamber for local law to receive appeals to the First Instance or Appeal judgments. The respective competencies are defined by decree.

<sup>3</sup> Following Article 2 of ordinance n° 72/4 of 26 August 1972 concerning judicial organization.

## **The Growing Presence of Law Professionals**

As ‘exceptional’ institutions, the traditional courts were reserved for those who had not received a sufficiently high level of education to enable them to understand a justice system and legal practice influenced by the West. As such, these courts should have been run by the traditional authorities sitting in judgment only on parties with a low level of education. However, it is evident that this is no longer the case. Those participating in traditional court trials are now the same people as those who are involved in the common law courts, be they judges, the parties to a cause of action or their legal representatives.

### ***The Spread of the Career Magistrate***

Aimed at a population with little education, it was intended that traditional justice be administered by people with life experience comparable to those subject to the court’s jurisdiction. Thus, in order to avoid a situation where they might be tempted to call on some intellectual or professional reflex based on law school techniques and reasoning, the legislature wanted judges in these positions to be laypersons with no legal knowledge. Accordingly, Articles 7 (1) and 8 (1) of the Decree of 1969<sup>4</sup> and Article 3 of the Law of 1979<sup>5</sup> set out the composition of traditional courts as comprising a presiding officer, a civil servant or dignitary with a reasonable knowledge of customary law, and assessors who also have voting powers. The latter are elders who have lived in the area covered by the jurisdiction of the court for a long time and who have been chosen by the Ministry of Justice as among those believed to have both moral integrity and an in-depth knowledge of the customary law they are called upon to represent.

In theory therefore, the management of traditional courts ought not to be influenced by magistrates trained in schools in the West. Article 9 of the Decree of 1969 stated however, that in exceptional cases, the Minister of Justice could, by decree, attach the presidency of a traditional court to that of the Court of the First Instance in the area.<sup>6</sup> In these cases, the president of the modern court also chairs the sessions of the traditional courts within the geographic area of the modern court’s jurisdiction. This measure has been widely applied to the extent that, currently, no first instance courts are administered by a civil servant. Similarly, traditional courts under the presidency of traditional chiefs administering customary law have become very rare.<sup>7</sup> The widespread infiltration of professional magistrates into the traditional justice system has resulted in a change both in the type of people falling within the jurisdiction of the court and in those representing them.

### ***Diligence among Professional Lawyers***

With a view to avoiding the influence of modern law on the evolution of traditional justice, the legislature organized procedural requirements in such a way that the parties were obliged to appear in person and defend themselves. If it so happened that a party was unable to appear

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<sup>4</sup> Decree n° 69/DF/544 of 19 December 1969 appointing the organization and procedure before the traditional courts of Eastern Cameroon, modified by Decree n° 71/DF/607 of 3 December 1971.

<sup>5</sup> Law n° 79/4 of 29 June 1979 attaching the Customary Courts and the Alkali Courts of the former Western Cameroon to the Ministry of Justice.

<sup>6</sup> In addition to the traditional courts, there are courts under modern law, including, as a first resort, the Courts of First Instance established by district and the High Courts instituted by department, with well-defined competencies for each.

<sup>7</sup> Outside of the Alkali courts, only the tribunal courts of the Sultan of Bamoun and those of some Lamibés in Northern Cameroon are cited any longer.

before the judge, he or she could only assert his or her claims by means of an intervention through a representative with power of attorney. This representative should, like the represented party, be a layperson. To confirm the representative's lay status, he or she had to receive approval from the court's president before any action could be taken by him in relation to the case.<sup>8</sup> Thus, the presence of professional lawyers was in principle proscribed. They could only be appointed in exceptional cases for a limited number of tasks: advice as to the conduct of the trial and drafting of procedural rules.<sup>9</sup>

However, these rules were no longer applied when the presidency of the traditional court was attached to that of the Court of First Instance. Article 43 (a) of the Decree of 1969 expressly provides that in such cases, "*by way of exception to Article 15 (2), defence lawyers will be authorized to assist or represent the parties.*" As noted above, it is rare to find traditional courts which remain the responsibility of ordinary civil servants or customary chiefs and elders. When almost all of the traditional courts were put under the control of career magistrates, those people due to be tried were given the opportunity of being represented by a proxy attorney or by professional lawyers. Today the practice is so widespread that traditional hearings in large cities are systematically monopolized by lawyers. Naturally, the presence of both career magistrates and professional lawyers in traditional trials has diminished the specific nature of the traditional trial and in particular, purely customary rules have been substituted by law based on the legal system of the former colonial power.

### **The Decline of Custom as the Source of Law of Primary Application**

Since 1927,<sup>10</sup> traditional courts have been confined to civil and commercial procedures that the regulations in force do not specifically reserve for courts of modern law. In these matters, they "*exclusively apply the custom of the parties.*" Despite the unambiguous character of this provision, the policy of "assimilation" pursued by the colonizers only inspired continual contempt and hostility towards custom. This justified the policy of giving "natives" the option of allowing them to relinquish their local civil status in order to be definitively bestowed with European status. This had the effect of permanently subjecting them to the imported law and rendering them subject to the jurisdiction of courts for the whites. The post-colonial legislature continued the policy of destroying custom. It facilitated the suppression of custom, while simultaneously permitting an extension in the domain of competence of traditional courts in matters not recognized by customary African law.

### ***Suppression of the Customary System***

At independence, the national legislature wanted to unify the legal and judicial frameworks in favor of the former colonizers' system. But sustained resistance led to the government keeping essential aspects of the former system and, in particular maintaining legal and judicial dualism as part of a transitional phase. In the meantime, magistrates had to compensate for legislative deficiencies and promote a system strongly based on the West.<sup>11</sup>

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<sup>8</sup> Article 15 (1) of the aforementioned decree.

<sup>9</sup> Article 15 (2) of the aforementioned decree.

<sup>10</sup> Decree of 31 July 1927 concerning reorganization of customary justice.

<sup>11</sup> S. Melone, *Du bon usage du pluralisme judiciaire en Afrique* (On the proper use of judicial pluralism in Africa), RCD n° 31-32, 1987, p. 5 s.

In the Anglophone part of the country, the Customary Courts Ordinance which is still in force indicates in Article 18 (1a) that customary law would be applicable only in “*so far as it is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by natural implication with any written law for the time being in force.*” In the Francophone area of the country, the Decree of 1969 subordinates the competence of traditional courts to the acceptance of all parties, and in particular, the defendant.<sup>12</sup> These small legislative openings allowed judges to discard customs for unspecified reasons. However, the final blow came in 1972 from the Supreme Court, which established the conditions customary law needed to satisfy in order to be applicable: it must exist, be clear and precise and above all conform to public order and good morals.<sup>13</sup> These criteria are purely subjective and escape all objective application. Where customary law does not satisfy all of these conditions, whether it is silent on a matter or a meaning is obscure or contrary to public order and good morals, the judge is empowered to resort to the imported law, whether in the form of judgments<sup>14</sup> or as borrowed legislation.<sup>15</sup>

Whilst we know that lawyers and magistrates follow techniques and reasoning from the Western school, it is easy to understand how their presence in traditional trials only leads to transform a debate intended for laypersons into one between sparring legal technicians to the detriment of custom. Finally, the cases are judged according to rules whose contents correspond either to the rule of common law or the civil code. With such an evolution, matters once reserved for the modern courts are brought before traditional judges.

### ***Expanding Competence beyond Customary Matters***

Charged with the responsibility of applying local custom, traditional courts were only competent to judge matters related to tradition. This is why Article 2 (2) of the Decree of 1969 specifies that traditional courts are competent to take cognizance of those civil and commercial procedures that current rules do not reserve for courts of modern law. Given this policy, all procedures relating to civil and commercial matters—for which no customary law exists—should be outside of the competence of traditional courts. However, strangely enough, the list of matters able to be brought before these courts found at Article 4 of the Decree of 1969 includes real estate matters as well as actions for the recovery of civil and commercial debts and other contractual and tortuous claims.

It is established that the customary African context used to ignore the civil state system.<sup>16</sup> However, the traditional courts have now become the preferred framework for resolution of civil disputes. The speed, simplicity and low costs of the proceedings attract all types of litigation, from debt recovery for a bad cheque, to a claim for damages resulting from a traffic accident, though the car as much as the current transportation system are the

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<sup>12</sup> Article 2 (3).

<sup>13</sup> See for example, Judgment n° 10/L of 7 December 1972, RCD, n° 6, p. 173; Judgement n° 74/L of 14 July 1983, RCD, n° 25, p. 72; Judgment n° 15/L of 12 April 1990, Juridis Infos, n° 22, p. 62.

<sup>14</sup> See CS, Judgment n° 14/L of 4 January 1966, Bull, 1966, p.1293; CS, Judgment n° 53/L of 3 May 1966, Bull 1966, p. 1324.

<sup>15</sup> CS, Judgment n° 74/L of 14 July 1983, aforementioned.

<sup>16</sup> See particularly C. Youego, *Etude critique de la loi du 11 juin 1968 relative à l'organisation de l'état civil au Cameroun* (Critical study of the Law of 11 June 1968 relative to the organization of the civil state in Cameroon), Master's Degree Thesis, Yaoundé, 1979.



inheritance of colonization. From now on, nothing prevents a traditional court sitting in judgment on any matter that at first glance would be attributed to the modern courts.<sup>17</sup>

One could justifiably wonder therefore whether judicial dualism still makes sense, and whether it is not time to simply do away with traditional courts and allow modern law to take its place. In any case, for a country with recurrent budgetary difficulties, it would be legitimate to think that merging the two judicial court systems would at least contribute to a reduction in state expenditure.

Translation by Louise Griffin

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<sup>17</sup> For more details, see DZEUKOU (G.B), *Réflexions sur l'évolution de la compétence des juridictions traditionnelles* (Reflections on the evolution and competence of the traditional courts, Annales FSJP/UDS, Volume 8, 2004, p. 271 s.