



**HAL**  
open science

# Reflections on the Continuous Application of “Foreign Law” in Former West Cameroon

Pierrette Essama-Mekongo

► **To cite this version:**

Pierrette Essama-Mekongo. Reflections on the Continuous Application of “Foreign Law” in Former West Cameroon. *Revue Africaine des Réflexions juridiques et politiques*, 2024, 3 (2), pp.34-62. hal-04487505

**HAL Id: hal-04487505**

**<https://hal.science/hal-04487505>**

Submitted on 7 Mar 2024

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

*Reflexions*

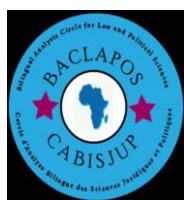
Revue  
Africaine  
des



Juridiques et  
Politiques

REVUE AFRICAINE DES RÉFLEXIONS JURIDIQUES ET POLITIQUES  
AFRICAN JOURNAL OF LAW AND POLITICAL REFLEXIONS  
MENSTRUUM LEGEM – RARJP - AJLPR

RARJP, Vol 3 -N°2 – Février 2024



## **DIRECTION SCIENTIFIQUE**

### **EL HADJ MBODJ**

*Agrégé des Facultés de droit, Professeur  
Titulaire,  
Université Cheikh Anta Diop (UCAD)-  
Sénégal*

### **MFEGUE SHE ODILE**

**EMMANUELLE epse MBATONGA,**  
*Maître de conférences,  
Université de Yaoundé II – Cameroun*

### **ERIC DEWEDI**

*Agrégé de droit privé,  
Doyen honoraire, Université de Parakou –  
Bénin*

### **PIERRE FELIX KANDOLO**

*Professeur des Universités,  
Avocat au barreau du Haut-Katanga,  
Conseil à la CPI et la Cour Africaine des  
Droits  
de l'Homme et des Peuples (CADHP),  
Université de LIKASI - RDC*

### **MEDOU NGOA FRED JÉRÉMIE**

*Maître de Conférences en Science  
politique,  
Faculté des Sciences Juridiques et  
Politiques,  
Université de Douala - Cameroun*

### **YAV JOSEPH KATSHUNG**

*Professeur, avocat, consultant,  
Université de LUBUMBASHI - RDC*

### **PIERRE DJONGA**

*Maître de Conférences,  
Faculté des Sciences Juridiques et  
Politiques,  
Université de Bertoua – Cameroun*

### **KACI SI YOUCEF**

*Professeur de droit, Université Bouira  
chez  
Université de Bouira, Université d'Alger-  
Algérie*

### **STEVE THIERY BILOUNGA**

*Professeur Titulaire des Universités,  
Université d'Ebolowa - Cameroun*

### **SELMA EL HASSANI SBAI**

*Professeur Universitaire (HDR) en droit  
privé, FSJES Agdal-Rabat,  
Université Mohammed V - Rabat-Maroc*

### **FRANÇOIS- XAVIER ROUX – DEMARE,**

*Professeur,  
Université Jean Moulin (Lyon III)  
Bayonne, Nouvelle-Aquitaine- France*

### **HOUNBARA KAOSSIRI LEON**

*Agrégé des Facultés de Droit,  
Maître de Conférences,  
Université de Garoua - Cameroun*

### **DESIRE EBELE ONANA**

*Maitre de Conférences à la Faculté des  
Sciences Juridiques et Politiques de  
l'Université d'Ebolowa - Cameroun*

### **HABIS AL FAWARA**

*Assistant Professor,  
Al GHURAIR University,  
Université de POITIERS*

### **MEHDI ZAKERIAN**

*Professeur, Faculty of Law and Political  
Sciences, Islamic Azad University*

### **WENDKOUNI JUDICAEEL**

**DJIGUEMDE,**  
*Agrégé des Facultés de droit,  
Maitre de Conférences,  
Université Thomas Sankara, Burkina Faso*

### **DIKA ELOKAN PIERRE PAUL**

*Maître de Conférences en droit public,  
Université de Ngaoundéré - Cameroun*

## **DIRECTION DE REDACTION**

**Dir.A. Dr. ABOUKAR B. AGLA**

**REDACTEUR EN CHEF**  
DOUZANE YADIA,  
*Enseignant à la Faculté de Droit de l'Université  
de MOUNDOU*

**REDACTEURS EN CHEF ADJOINT**  
Mlle Charlotte ONGUEPSI,  
Dr. DOMBA Bienvenu  
Dr. Cheick Ibrahim Deguia

**SECRETAIRE DE REDACTION**  
Dr. Elie SAPITODEN,

**COORDONNATRICE ADMINISTRATIVE**  
Dr. Linda DJARSOUMNA,

DEDJINGAR MBAILEDE Alain  
*Docteur / Ph.D*

BAMANGA DAGA GUIDAKRE  
*Docteur / Ph.D*

Fidel NGAYA DAIROU  
*Docteur /Ph.D*

MBACK TINA GEORGES  
*Docteur /Ph.D*

FABILOU,  
*Docteur /Ph.D*

SALEH ABAKAR SALEH  
*Doctorant*

BABBA AYOUBA  
*Doctorant*

Léon LEWA  
*Docteur / Ph.D*

Alfred LEKACHANG LIBENANG  
*Docteur/Ph.D*

SALIF CISSE  
*Docteur / Ph.D*

TAFON AROUNA  
*Docteur / Ph.D*

Josué DIGUERA  
*Docteur / Ph.D*

DIDEGOMI  
*Docteur / Ph.D*

ABDEL NASSER ISSA PAVE  
*Docteur / Ph.D*

Bienvenu TONHOUL  
*Docteur / Ph.D*

BALLA MOUSSA  
*Docteur / Ph.D*

AMADOU BOUBA  
*Docteur/Ph.D*

Justin BLAMBAYAOLA KALNIGA  
*Doctorant*

BOLNDO JOSUE Eric  
*Docteur / Ph.D*

WANGBA JOSEPH JOSEPH  
*Docteur / Ph.D*

DOURYANG RESSONG ELEAZAR  
*Doctorant*

SALAHADDINE OUMAROU  
*Docteur/Ph.D*

ADAM MAHAMAT  
*Docteur/Ph.D*

## **POLITIQUE DE REDACTION**

Les auteurs qui soumettent leurs contributions à la Revue Africaine des Réflexions Juridiques et Politiques doivent se conformer aux directives suivantes :

- Toute proposition d'article doit être rédigée en français ou en anglais, en format Microsoft Word, en police *Times New Roman*, caractère 12, et en interligne 1,5. Elle comportera un résumé en français et en anglais, des mots clés en français et en anglais, une introduction, un développement contenant un plan à deux parties et une conclusion. L'ensemble de la contribution doit tenir sur trente (30) pages au maximum.
- Chaque proposition d'article doit débiter, juste après l'intitulé de la contribution qui doit être en français et en anglais, par une brève notice biographique précisant l'identité du (des) auteur(s) : Noms et prénoms, titre ou grade universitaire ou profession pour les praticiens non universitaires, l'affiliation institutionnelle ;

Les références doivent être présentées en bas de page selon le style suivant :

- Pour les monographies et traités : auteur (initiale du prénom et nom), titre (en italique), lieu et année de publication, page. L'indication additionnelle de la maison d'édition est optionnelle, mais si elle est donnée, elle doit être donnée de façon systématique ;
- Pour les œuvres collectives et livres édités : l'auteur et le titre (entre guillemets) de la contribution à laquelle il est fait référence, les auteurs ou les éditeurs de l'œuvre ou du livre et le titre de l'œuvre ou du livre suivant le mode indiqué pour les monographies ;
- Pour les articles de revue : auteur (initiale du prénom et nom), titre de la contribution (entre guillemets), nom de la revue (en italique), volume (si possible et usuel), année de parution (plus, si besoin en est, numéro ou date du cahier), page ;
- Pour les textes de loi : titre, numéro, date suivant le style le plus détaillé usuel dans le pays de référence et source de publication (à l'exception des textes qui sont généralement connus tels le code civil ou le code de commerce) ;
- Pour les comptes rendus de livre : nom et prénom de l'auteur du livre, titre et éventuellement sous-titre, lieu de publication et maison d'édition, année de parution, nombre de pages.

- Pour un document internet, auteur doit le citer selon le modèle suivant: FILIU (J-P.), « Quand la France cohabitait avec les mercenaires russes du groupe Wagner en Lybie », Chronique internationale, *Le Monde* (en ligne), publiée le 10 avril 2022, consulté le 04 aout 2022 sur [www.lemonde.fr](http://www.lemonde.fr)
- Pour les thèses et mémoires, il faut indiquer le nom en majuscule et le (s) prénom (s) de l'auteur entre parenthèses, mettre l'intitulé exclusivement en italique, mentionner la nature du travail (mémoire ou thèse), l'université dans laquelle le travail a été soutenu, l'année de soutenance, la ou les page (s) exploité (es).

Les propositions d'articles doivent être soumises par courrier électronique à l'adresse électronique suivante : [revuerarjp@gmail.com](mailto:revuerarjp@gmail.com)

## **SOMMAIRE**

**- DOCTRINE -**

### **Sciences Juridiques**

Lumières sur la petite et moyenne entreprise en Afrique : les spécificités de quelques législateurs.....1

ENOGA Laurent François

Reflections on the Continuous Application of “Foreign Law” in Former West Cameroon.....34

Pierrette ESSAMA-MEKONGO

La problématique de la répression des infractions commises par les entreprises multinationales en droit pénal congolais.....63

BETU KUMESO Jenny

La protection du droit à la santé des agents publics au Cameroun.....90

ADAM Mahamat

L'exécution des décisions de justice au Cameroun : une mise en œuvre laborieuse ?.....114

ABENI Benjamin Yaou

Analyse critique du traitement du mineur condamné à une peine privative de liberté en droit camerounais.....138

DELI Marcel

Réflexion critique sur la poursuite des atteintes à l'environnement en droit international humanitaire.....173

WADEBE AGNES JULIA

L'autonomie financière des organes de régulation économique en droit camerounais.....204

CHINYERE MINKADA Stella

Les collectifs budgétaires en droit public financier camerounais.....233

MANGA Jérôme Manfred

### **Science Politique**

Domestication of the African Continental Free Area Trade(AfCFTA) among member States: An  
Assessment of its implementation in perspectives in Cameroon.....271

ABANG Calistus MVO

La résilience du Sultanat de Goulfey face à la secte Boko Haram : analyse d'une stratégie locale de  
sécurité dans l'Extrême-Nord du Cameroun.....289

VAHINDI GABRIEL



**- DOCTRINE -**

**SCIENCES JURIDIQUES**

## **Reflections on the Continuous Application of “Foreign Law” in Former West Cameroon**

Réflexions sur l’application continue du « droit étranger » dans l’Ex-Cameroun Occidental

**Pierrette ESSAMA-MEKONGO, Ph.D.,**

*Senior Lecturer in Law, Faculty of Laws and Political Science,*

*University of Yaounde II – Cameroon*

*essamapierrette@yahoo.com*

**Abstract:** Cameroon is a decentralised unitary State under legal federalism with several systems of laws applying. Among which are the Common Law and the Civil Law systems, derived from England and France, and applied in two separate portions of the territory: Former West and Former East Cameroon. While in Former East Cameroon, reception of French law froze upon independence, in Former West Cameroon, an enabling instrument warrants the continuous reception and application of English laws as soon as they are enacted in England so long as Cameroonian Parliament has not legislated on the issues. Its implementation raises questions as to its conformity with the Cameroonian Constitution. This paper aims at clarifying the grounds for the continuous reception and application of foreign laws in Former West Cameroon, the challenges posed and the possible alternatives to such a state of affairs.

**Key words:** Applicable Law, Foreign Law, Colonial Law, Cameroonian Law, Legal Federalism

**Résumé:** Le Cameroun est un Etat unitaire décentralisé sous fédéralisme juridique avec plusieurs systèmes juridiques. Parmi ceux-ci, le droit civil et la « Common Law » provenant de la France et de l'Angleterre qui s'appliquent sur deux parties différentes du territoire : l'Ex-Cameroun Oriental et l'Ex-Cameroun Occidental. Alors que dans l'Ex-Cameroun Oriental la réception du droit français fut gelée dès l'indépendance, dans l'Ex-Cameroun Occidental, un texte permet la réception et l'application continues de lois anglaises dès lors qu'elles sont adoptées en Angleterre tant que le parlement camerounais n'a pas légiféré sur la question. La conformité de ce texte avec la constitution camerounaise pose débat. Cet article vise à apporter des clarifications sur les bases de la réception et de l'application continues du droit étranger dans l'Ex-Cameroun Occidental, les défis que cela pose et les alternatives possibles.

**Mots clés :** Droit applicable, Droit étranger, Droit colonial , Droit camerounais, Fédéralisme juridique

## Introduction

“Foreign law” is defined as “the law of another country”<sup>1</sup>. Applying foreign laws is the situation in many countries in Africa, Asia and the Americas as a result of colonisation. In Africa, many of these former colonies have enacted their own laws which, though still deriving from the laws of former colonial masters, have taken stock of changing times as well as African customs and traditions<sup>2</sup>. In Cameroon, however, more than 60 years after independence, private law has barely changed since colonial days. In fact, there has only been two legislative attempts by the national Parliament in the area of the law of persons<sup>3</sup>. Therefore, whether it be in Former West Cameroon or in Former East Cameroon<sup>4</sup>, outdated foreign laws are applied which often leaves a sense of injustice as philosophies, policies and circumstances have drastically changed in about two centuries of the enactment of these laws. Some judges in Former West Cameroon apply the most recent of some “foreign laws” when deciding cases. While both the intention and the objective may be noble, that is, rendering justice, it remains that the legal rules so applied are the result of the legislative activity of a country other than Cameroon. This naturally leads to the question as to how legal and constitutional it is for courts in Former West Cameroon to continue to apply “foreign laws” to local cases and, most specifically, Post-1900 English Laws of General Application and Post-1972 Laws on Divorce, Probate and Matrimonial Causes and Proceedings? To the least, this practice, *prima facie*, questions the principle of autonomy of a sovereign State such as Cameroon. In order to tackle this issue, this paper shall revisit the bulk of foreign laws applicable in Former West Cameroon and the grounds upon which they are applicable. Then, it shall discuss the status of foreign law before and after Former West Cameroon was freed from foreign rule. The current practice of courts in Former West Cameroon shall then be analysed to ascertain the state of affairs

---

<sup>1</sup> Bryan A. Garner (ed.), *Black's Law Dictionary*, 10th Edition, St Paul, Thomson Reuter, 2014, p. 763.

<sup>2</sup> Examples include Nigeria or Gabon for example which has regulated the payment of brideprice in its enactment of the Civil Code from the one inherited from France during colonisation. In Former East Cameroon, the Civil Code inherited before independence still applies.

<sup>3</sup> In private law there have been only two attempts in family matters with a Law on Civil Status Registration enacted in 1968 which was repealed by Ordinance N 81/002 of 29th June 1981 as amended in 2011.

<sup>4</sup> As far as its legal system is concerned, Cameroon, though a unitary State, operates in a form of legal federalism with one system applying in one part of the country and another in the other part of the country: the Common law system in the two English speaking regions, and the Romano-Dutch system in the eight French speaking regions. This results from the fact that Cameroon was partitioned and administered by England and France for over 45 years before gaining independence as will be discussed with more details below.

and determine whether it conforms to legal and constitutional tenets. Lastly, this paper shall explore the avenues to render justice that would not submit the grounds for judgment to criticism nor question the autonomy of a sovereign State.

## **I- Foreign Law Applicable in Former West Cameroon**

It is necessary to determine which foreign law is applied to Cameroon in terms of the countries from which it originates and, then, its status as per the relevant enabling instruments.

### **A- Determination of the foreign law applicable in Former West Cameroon**

Cameroon was annexed by Germany<sup>5</sup>. Following the latter's defeat in the First World War (WWI), the country was placed under the mandate and, later, trusteeship of allied forces England and France. This led to laws of England and Nigeria to apply in Former West Cameroon<sup>6</sup>.

#### **1- English Law**

As already mentioned, Cameroon was divided into two between France and England following the so-called "Simon – Milner line"<sup>7</sup> during WWI<sup>8</sup>. France inherited Former East Cameroon and England inherited Former West Cameroon which was then made up of Southern Cameroons and Northern Cameroons<sup>9</sup>. This partitioning was confirmed by the League of Nations

---

<sup>5</sup> Cameroon was "discovered" in 1472 by Portuguese who identified the adjacent river that flows to the Atlantic Ocean as the river of shrimps, "rio dos camaroes", from which the name Kamerun (German) or Cameroon (English) is derived. Yet, Cameroon was annexed by Germany which asserted dominion over the land in 1884 from the Littoral coastal area. Germans ruled the territory and applied their laws to it. German law influence was mostly felt in land management. However, with the partitioning of the country between France and England in 1918, French and English Laws replaced this first foreign law that was applied in Cameroon. Allied forces which won the war got Germany to sign the Treaty of Versailles where it was stipulated that Germany will pay reparations by relinquishing all its overseas African territories including: Cameroon, Togo, Tanzania, etc... Unlike the last two countries which were given as single units to either country, the territory of Cameroon was divided between Britain and France: article 119 of the Treaty of Versailles of 28th June, 1919. See generally: Ngoh Julius Victor, *The Political Evolution of Cameroon, 1884-1961*, Dissertations and Theses Paper 2929, 1979, at <https://doi.org/10.15760/etd.2924>; Harry R. Rudin, *Germans in the Cameroons 1884-1914, A Case Study in Modern Imperialism*, Archon Books, 1968.

<sup>6</sup> The laws of France were applied in Former East Cameroon known as French Cameroons where France had dominion. As Former East Cameroon is not the subject-matter of this paper, this aspect shall not be discussed.

<sup>7</sup> Of the names of the representatives of France and England in charge of carrying out the partitioning, respectively Henri Simon and Lord Milner.

<sup>8</sup> See generally: Lovett Z. Elango, "Anglo-French Negotiations Concerning Cameroon during World War I, 1914-1916: Occupation, 'Condominium' and Partition", *Journal of Global Initiatives*, Vol. 9, No. 2, 2014, pp. 109-128.

<sup>9</sup> As per the United Nations Visiting Mission to the Trust Territories of the Cameroons under British Administration and the Cameroons under French Administration, *1955 Report on The Cameroons Under British Administration Together with Related Documents Trusteeship Council Official Records: Seventeenth Session* (7 February - 6 April

in 1922 and later by the United Nations<sup>10</sup>. English Law is thus applied in Former West Cameroon by virtue of Article 9 the English and French Mandate Agreement of 20<sup>th</sup> July 1922 as approved by the League of Nations<sup>11</sup> which gave it power to administer the portion of Cameroon she chose as a British territory thus:

The Mandatory shall have full powers of Administration and Legislation in the area subject to the mandate. The area shall be administered in accordance with the laws of the Mandatory as an integral part of His territory... The mandatory shall therefore be at liberty to apply His laws to the territory under the Mandate subject to the modifications required by local conditions..., and to constitute the territory into customs, fiscal or administrative union or federation with adjacent territories under His sovereignty or control...<sup>12</sup>

The body of English Law applicable in Former West Cameroon is contained in the Southern Cameroons High Court Law 1955 which was enacted while the territory was still administered as a union with the Nigerian territory, the most significant provisions being sections 10, 11, 15 discussed lengthily below.

As Southern Cameroons was administered as a union with the adjacent territory of Nigeria, laws enacted in Nigeria were naturally applied there as part of that territory under the same administration.

---

1956) Supplement No. 3 New York, 1956 at p. 7, British Cameroons was made up of Southern Cameroons and Northern Cameroons. During the referendum to reunite Former West and Former East Cameroon in 1961, Northern Cameroons decided to stay with Nigeria while Southern Cameroons chose to be reunited with Former East Cameroon.

<sup>10</sup> Under the League of Nations, the territory was under Mandate and under the United Nations Organisation, it was placed under the Trusteeship of England and France. This was just a change of name as the way these two Allied powers governed their respective territories remained the same. In fact, the Preamble of the Nigeria (Protectorate and Cameroons) Order-in-Council, 1946 which replaced the Cameroons under British Mandate Order-in-Council, 1923 as amended by the Cameroons under British Mandate Order, 1932 provided that: "And whereas the intention has been expressed that, notwithstanding the termination of the existence of the League of Nations, the Cameroons shall continue to be administered in accordance with the obligations of the said Mandate until other arrangements have been agreed between the Mandatory Power and the United Nations."

<sup>11</sup> It came into force on 29th September 1923.

<sup>12</sup> As cited in Neville Rubin, *Cameroon, An African Federation*, London, Pall Mall Press, 1971, pp. 202-2023.

## **2- Nigerian Law**

Former West Cameroon was attached to and administered as an integral part of Nigeria in accordance with Article 9 of the 1922 League of Nations Mandate Agreement<sup>13</sup>. The laws of Nigeria were thus applied to Former West Cameroon by extension as per Proclamation N°1 of 1916<sup>14</sup> pursuant to the English Foreign Jurisdiction Act, 1890 that rendered English laws applicable in foreign territories. Therefore, up till 1961 when Nigeria gained independence, the designation “Nigeria” included the Cameroonian territory under British Mandate/trusteeship. In fact, several laws enacted in Nigeria designated the territory as encompassing British Cameroons. Examples include Section 1 (1) of the Nigeria Letters Patent, 1946 amending the Letters Patent, 1922 and 1935 which defined “Nigeria” as :

the colony [Lagos[, the protectorate [the rest of Nigeria[ and the Cameroons [under British mandate[“; section 1 (1) of the Nigeria (Protectorate and Cameroon) Order in Council 1946 and section 3B of the interpretation Ordinance, cap. 94 of the 1948 Laws.

Therefore, it may rightly be held that Nigerian Laws were in fact local laws of Former West Cameroon as it was part of the territory and citing them as foreign laws is quite a misnomer. In fact, if Southern Cameroons had chosen to stay in the Federation of Nigeria in the same way that Northern Cameroons did, the issue would not even have been raised. It was thus necessary to mention Nigerian Law under this heading as, nevertheless, these statutes were passed by Nigerian Parliament and their status needs to be clearly established.

Having identified the specific foreign law applied in Former West Cameroon, it remains to determine its status.

---

<sup>13</sup> *Supra*.

<sup>14</sup> This Proclamation was made after the territory was partitioned on 4th March 1916 but came into force retrospectively from 24th January 1916.

## **B- Status of Foreign Law in Former West Cameroon**

The status of foreign law, that is, English law, in Former West Cameroon has not been the same from when it was held as a mandate territory, through trusteeship until present date with the turning point being the reunification of Former West Cameroon with Former East Cameroon.

### **1- Before Reunification**

As already mentioned, since 1916, Former West Cameroon became a British territory administered as a union with the adjacent territory of Nigeria. In conformity with the Nigerian Proclamation of 1961, the British Foreign Jurisdiction Act, 1890, and article 9 of the League of Nations Mandate Agreement, the Southern Cameroons High Court Law, 1955 provides for English Law to be applicable in Former West Cameroon, the most relevant sections being sections 11, 10 and 15. This is the sole legal instrument that established the High court in Southern Cameroons and specifically determined the law applicable therein. As part of a territory administered under British rule and as provided by the relevant enabling instrument of the League of Nations and the British government itself, it was all but normal that English laws would be applied in Former West Cameroon.

In this regard, section 11 of the Southern Cameroons High Court Law, 1955 provides that:

Subject to the provisions of any written law and, in particular, of this section and of sections 10, 15 and 22 of this law:

- a) The common law;
- b) The doctrines of equity; and
- c) The laws of general application which were in force in England on the 1<sup>st</sup> of January 1900, shall, in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force within the jurisdiction of the court.



The “Common law”, as imbedded in that provision, stands for the law developed by judges in England since the 11<sup>th</sup> Century, that is, the first source of English law, while “the doctrines of equity” refer to the body of law that was developed by the Chancery courts to supplement the common law when the latter was harsh and strict and could not find solutions to a pending litigation. “Statutes of general application”, on their part would refer to any law that applies to the whole territory and to all the members of the territory<sup>15</sup>.

Section 10 provides on its part that:

The jurisdiction vested in the High Court shall, so far as practice and procedure are concerned, be exercised in the manner provided by this Law or any other written law, or by such rules and orders in court as may be made pursuant to this Law or any other written law, and in the absence thereof in substantial conformity with the practice and procedure for the time being of Her Majesty’s High Court of Justice in England.

Section 15 provides further that:

The jurisdiction of the High Court in probate, divorce and matrimonial causes and proceedings may, subject to the provisions of this Law and in particular, section 27, and to rules of court, be exercised by the court in conformity with the law and practice for the time being in force in England.

Thus, until 1961, it was lawful for the courts in Former West Cameroon to apply specific English Laws directly; as regards the common law and doctrines of equity, there was no limitation of time. For statutes of general application, only those that were in force in England on 1<sup>st</sup> January, 1900; as for procedure, probate, divorce and matrimonial causes and proceedings, English statutes apply as soon as they are enacted by the Parliament in England for as long as the Cameroonian Parliament has not, in the exercise powers conferred on it by article 26(2)(b) of the Constitution,

---

<sup>15</sup> This shall be discussed in more details in II.A.1 below.

enacted domestic legislation in the domain<sup>16</sup>. This ensured continuous reception of any changes in the law in England.

If the application of English law went without question while Former West Cameroon was still under foreign administration, this is not the same once circumstances changed with reunification with Former East Cameroon.

## **2- After Reunification**

Former West Cameroon and Former East Cameroon reunited in 1961, after 45 years of being administered apart by England and France. This reunification came as a result of a plebiscite whereby British Cameroons were asked to join Former East Cameroon which gained independence on 1<sup>st</sup> January, 1960 or to stay with the Federation of Nigeria. As British Cameroons was made up of Southern Cameroons and Northern Cameroons, the latter opted to remain with Nigeria, while the former decided to join French Cameroons (Former East Cameroon). The referendum took place on 11<sup>th</sup> February 1961. Former East Cameroon was already independent<sup>17</sup> while Former West Cameroon might be said to have gained its independence by joining her. This process led to the creation of a Federal State made up of two Federated States: Former West Cameroon (Southern Cameroons) and Former East Cameroon. The Federal Constitution<sup>18</sup> provided in article 46 that “previous legislation of the Federated States shall remain in force in so far as it does not conflict with the provisions of this Constitution.”

Clearly, the Federal Constitution of Cameroon provided for the continuous application of received foreign laws in both Federated States as long as they did not conflict with the Constitution. In civil matters, this warranted the application of the Civil Code for example in Former East Cameroon and of several English statutes in Former West Cameroon. Eleven years after reunification, there was a presidential move towards unification which occurred on 20<sup>th</sup> May 1972

---

<sup>16</sup>Section 26(2)(b) of the 1996 Constitution enacted as Law N°96/06 of 18<sup>th</sup> January 1996 revising the Constitution of 2<sup>nd</sup> June 1972 as amended by Law N 2008/001 of 4<sup>th</sup> April 2008 provides that the following matters shall be reserved to the Legislative Power: (b) the status of persons and property ownership system: 1. nationality, status of persons, matrimonial system, succession and gifts; 2. rules governing civil and commercial obligations; 3. movable and immovable property ownership system.

<sup>17</sup> The independence of Former East Cameroon was proclaimed on 1st January, 1960.

<sup>18</sup> Voted by the National Assembly of Cameroon on 14th August 1961, promulgated on 1<sup>st</sup> September, 1961 and entered into force on 1<sup>st</sup> October, 1961.

along with the enactment of a new Constitution that ended federalism and made Cameroon a decentralised unitary State<sup>19</sup>.

As far as the applicable law is concerned, article 38 of the 1972 Constitution<sup>20</sup> provided that:

the legislation applicable in the Federal State of Cameroon and in the Federated States on the date of entry into force of this Constitution shall remain in force insofar as it is not repugnant to this Constitution, and as long as it is not amended by subsequent laws and regulations.

This reiterated what was contained in article 46 of the 1961 Constitution thereby guaranteeing the continuous application of received foreign law. The 1972 Constitution thus perpetuated legal federalism in Cameroon while establishing a political unification. After reunification and through unification, the Constitution was then, and, is still, clear that Former West Cameroon and Former East Cameroon are to continue to apply the laws that they were applicable before reunification until the Parliament of the Republic enacts new laws. In effect, article 68 of the 1996 Constitution is *mutatis mutandi* the same provision found in the 1972 Constitution. One may question the continued reference to the Federal State when a unitary form of State had already been established by the 1972 Constitution. A reference to ex-Federated States territories would have made more sense.

Some scholars, mostly from Former East Cameroon, that is, from Former French Cameroons with the Civil Law/Romano-Dutch legal system tradition, hold that reception of foreign law should have ended at reunification, that is, in 1961, and that the applicable law as recognised only includes foreign enactments that were received on that date<sup>21</sup> and not after<sup>22</sup>. If we were to

---

<sup>19</sup> Article 1 (2) of the 1972 constitution as amended.

<sup>20</sup> Enacted on 2th June 1972.

<sup>21</sup> Whether it be 1st September 1961 as date of enactment or 1st October 1961 as date of entry into force of the Federal Constitution.

<sup>22</sup> Dominique Zambo Zambo, *Le Droit applicable au Cameroun, Essai sur les conflits de lois dans le temps et dans l'espace*, Ph.D. Thesis, University of Yaounde II, 2009, pp. 205 ss; M. Nkouendjin Yotnda, *Le Cameroun à la recherche de son droit de la famille*, Ph.D. thesis, Paris, L.G.D.J., 1975, p. 34, footnote 18; Boniface Banamba, *Les conflits de Droits et de Lois dans le Système Juridique Camerounais*, Ph.D. thesis, University of Paris II, Volume 1, 1993, pp. 116-117; Béatrice Djuidje, *Pluralisme Législatif Camerounais et Droit International Privé*, Ph.D. thesis, Paris, L'Harmattan, 1999, N° 6 ss; Moïse Timtchoueng, *Le Droit Camerounais de la Famille Entre son Passé et son*

admit that strand of reasoning, it would lead to the conclusion that receiving and applying any post-1961 foreign/English law is inadmissible<sup>23</sup>, heretic<sup>24</sup>, illegal and unconstitutional<sup>25</sup>. Some authors hold that, since article 5 of the 1961 Constitution, entrusts matters relating to the status of persons, obligations and contracts and judicial organisation to federal authorities, the relevant provisions of the Southern Cameroons High Court Law 1955 that referred the matter to a foreign lawmaking body thereupon became contrary to the Constitution<sup>26</sup>. It is to be noted that this position might stem from the fact that since its independence on 1st January 1960, no subsequent French law was received in Former East Cameroon by virtue of article 51 of the 1960 Constitution<sup>27</sup> which provides that:

The body of law resulting from laws, decrees and regulations applicable in Cameroon at the coming into force of this constitution shall remain in force in all its provisions that are not contrary to it, for the time being, until they are amended by law or regulations adopted by the government in its area of competence.

It is on this ground that Former East Cameroon scholars expect that the situation should be the same in Former West Cameroon. To the effect that, once the power to legislate is clearly entrusted to the national Parliament, it goes without question that no foreign law may thereafter be received nor applied in the country as it will violate the Constitution.

---

*Avenir*, thèse 3ème Cycle, University of Yaoundé II, 2000, N° 3 ss; Thérèse Atangana-Malongue, “Le principe de l’égalité en droit camerounais de la famille”, *Revue Africaine des Sciences Juridiques*, Vol. 1 (3), 2003, p. 166 ft 19; Paul Gérard Pougoue and François Anoukaha, “Régimes Matrimoniaux, Successions, Droit des Conflits”, *Jurisclasseur*, Fasc. 3., 1996, N° 51.

<sup>23</sup> Zambo Zambo, op. cit., p. 208.

<sup>24</sup> Ibid., p. 210.

<sup>25</sup> Magloire Ondo, “Le droit administratif français en Afrique francophone: Contribution à l’étude de la réception des droits étrangers en droit interne”, *Revue Juridique et Politique Indépendance et Coopération*, 2002, pp. 298-300.

<sup>26</sup> Ibid. and Zambo Zambo, op. cit., pp. 209-210.

<sup>27</sup> Enacted on 4th March, 1960.

At the same time, judges<sup>28</sup> and scholars<sup>29</sup> schooled in the Common Law system hold a contrary view<sup>30</sup>. In effect, they hold that as per the Southern Cameroons High Court Law in its sections 10, 11 and 15: only English statutes of general application have a limitation date, that is, 1st January, 1900. As for common law and doctrines of equity, there is no time limitation in accordance with section 11. The same goes for procedure: section 10; and matters relating to probate, divorce and matrimonial causes and proceedings, as per section 15.

However, the bewilderment of Civil Law jurists towards this position is understandable. In effect, the situation is quite unusual and, even contrary to the principle of State sovereignty, in as much as it leads to the internal laws of a foreign country, as soon as they are adopted by that country's parliament, to be applied without more to another sovereign country: Cameroon, and most specifically, Former West Cameroon. Thus, rightly, the question as to whether courts in Former West Cameroon should continue receiving and applying English law under the cover of sections 10 and 15 of the Southern Cameroons High Court Law 1955.

Since its adoption in 1973 for example, all Former West Cameroon court decisions in divorce cases are based on the Matrimonial Proceedings Act, 1973 which is a post-1961 English statute. The advantages of applying that piece of legislation, over and above mere compliance with section 15 of the Southern Cameroons High Court Law, 1955, are to allow litigants benefit from modern rules that take societal developments into account. Examples abound. One is the change of denomination that was provided to one of the five indicators of the irretrievable breakdown of marriage. In effect, the "cruelty" indicator that existed in the Matrimonial Causes Act, 1969 was replaced by the "behaviour" indicator in the Matrimonial Causes Act, 1973. The new wording of the second indicator of irretrievable breakdown of marriage completely removed the term "cruelty" and instead used "behaviour". This helps cover situations that would not have otherwise amounted

---

<sup>28</sup> In rendering their decisions as shall be discussed below.

<sup>29</sup> Carlson Anyangwe, *The Cameroonian Judicial System*, Yaoundé, CEPER, 1987, p. 223; Ngwafor Ephraim Ndeh, *Family Law in Anglophone Cameroon*, Saskatchewan, The University of Regina Press, 1993, pp. 1-5.

<sup>30</sup> It should be noted that some Civil Law schooled scholars also espouse this stand. They include: Banamba, who, though expressing surprise to the fact that 30 years after independence, 10 years after unification, foreign law, English Law, is still being received, does not find any legal impediment to its application, op. cit., pp. 118-120; Timtchueng, op. Cit., N° 31 and Djuidje, who thinks that the reception of post-1960 laws is inexplicable, yet, opines they are nevertheless applicable, op. cit., N°10 ft 2 and N° 112 ss.

to “cruelty” but which may, nevertheless, direct the court to find that there is irretrievable breakdown of marriage warranting a decree of divorce.

The continuous reception and application of English law in Former West Cameroon has been reaffirmed by the Supreme Court in 1981 when it declared, relating to section 10 of the Southern Cameroons High Court Law 1955 on procedure, that<sup>31</sup> :

Mindful of the absence of local legislation governing procedure in any given matter, or when the existing local rules are not sufficiently clear, a High Court being seized of a civil matter in Former West Cameroon should have recourse to the rules of procedure of the High Court in England.

It should, however, be noted that, as concerns section 10 of the Southern Cameroons High Court Law 1955, the South West Court of Appeal sitting in Buea erred in law when it reversed the High Court decision in *Fonlon V. Fonlon and 8 Others*<sup>32</sup>. In this case, the applicant sought the application of section 10 of the Southern Cameroons High Court Law 1955 in a procedure for the adoption of his nephews. The High Court judge declined the application of section 10 on the ground that the provision referred to procedure only and not to substantive law and that, there was no adoption law in Former West Cameroon. The case was therefore struck out. On appeal, the judge reversed the decision and held that courts have to apply English law, section 10 to the matter. Yet, as discussed above, section 10 is about procedure and not substantive rules, and the matter was clearly about substantive rules for adoption.

Then, as a sovereign State or part of a sovereign State, should Former West Cameroon keep applying the laws of another sovereign State, as soon as they are enacted without any specific endorsement or appropriation act from its own legislature? The answer would be negative if one were to consider that it undermines State sovereignty as understood in its roots. Yet, courts in

---

<sup>31</sup> CS, 8 January 1981, R.C.D. 1981, N° 21-22, pp. 144 ss. See Zambo Zambo, op. cit., p. 207 ft 777.

<sup>32</sup> Civil Appeal N° BCA/2/75 of 11th November 1975 as cited by Banamba, op. cit., p. 119.

former West Cameroon feel empowered to do so in cases before them up till 2024, a little over 43 years after reunification<sup>33</sup>.

## **II- Application of Foreign Law in Former West Cameroon: Practice and Prospects**

From the foregoing, it is quite evident that courts in Former West Cameroon still apply foreign law, but do they keep within the limits imposed by law? In any case, they have several alternatives that will be less disputed.

### **A- Practice in Former West Cameroon**

Up till date, courts in Former West Cameroon apply post-reunification English laws. These include post-1900 laws of general application and post-1961 laws on probate, divorce and matrimonial causes and proceedings.

#### **1- Application of Post-1900 English Statutes of General Application**

Section 11 of the Southern Cameroons High Court Law provides a time limitation for the reception and application of English “statutes of general application” and that is 1<sup>st</sup> January, 1900. In effect, it states: “statutes of general application *that were in force in England on the 1<sup>st</sup> January, 1900*”<sup>34</sup>. Once laws have been identified to fall under the category “statutes of general application”, it is easy to determine whether or not they are to be applied if enacted after 1<sup>st</sup> January 1900 in England. In the latter case, it would be illegal.

Determining whether a statute is of general application depends on the merits of the statute in question. Besides, acceptance of a statute as being “of general application” in one territory does not necessarily mean that it will be so accepted in another<sup>35</sup>. As to acceptance on grounds of the merits of the statute in question, generality may be construed from the subject-matter of the statute and its geographical scope. Therefore, a statute that relates to only a segment of the population may not be considered a statute of general application. Osborne C.J. held in *Attorney General V. John*

---

<sup>33</sup> For Zambo Zambo, this would mean that Cameroon has alienated part of its sovereignty that it just acquired. It is inexplicable that a foreign parliament be competent to enact laws applicable in another sovereign State, op. cit., p. 209.

<sup>34</sup> Emphasis added.

<sup>35</sup> Daniels E. C. Ekow, *The Common Law in West Africa*, London, Butterworths, 1964, p. 319.

*Holt and Co Ltd*<sup>36</sup> that statutes of general application are statutes that are applied by all civil and criminal courts and bind all citizens. He set the test as consisting in giving a positive answer to any one of these questions:

- (i) By what courts is the statute applied in England?
- (ii) To what classes of the community in England does the Act apply?

A law would therefore not be of general application if its administration is entrusted to specific courts or if its application is limited to a certain category of persons<sup>37</sup>. Hence, the Fatal Accidents Act 1846 and the Fatal Accidents Act, 1864 are considered statutes of general application as they apply to all citizens<sup>38</sup>. Likewise, the West African Court of Appeal held that the Land Transfer Act, 1897 is a statute of general application as it applied to all persons who died after 1st January 1898<sup>39</sup>. Statutes of general application eligible for application by courts in Former West Cameroon must have been in force in England on 1st January, 1900.

Then, as implied by sections 10 and 15 of the Southern Cameroons High Court Law 1955, laws of general application may also be taken to be any laws that do not fall under the exceptions provided therein, viz: procedure, probate, divorce, matrimonial causes and proceedings. In this vein, the English Legitimacy Act, 1976 and Adoption Acts including the latest, the Adoption and Children Act, 2002, are laws of general application that may not be received and applied in Former West Cameroon as being post-1900 Acts.

In succession matters, the bulk of laws that courts in Former West Cameroon apply<sup>40</sup> includes the Wills Act, 1837; the Wills Amendment Act, 1852; the Administration of Estates Act, 1925; the Non-Contentious Probate Rules of 1954; the Trust of Land and Appointment of Trustees Act, 1996; the Inheritance (Provision for Family and Dependants) Act, 1975; the Intestate Estates Act, 1952; the Law Reform (Succession) Act, 1995. Also applied are the Legitimacy Act, 1976;

---

<sup>36</sup> (1910) 2 N.L.R.I.

<sup>37</sup> Joseph Nzalé Ebi, *The Structure of Succession Law in Cameroon*, Ph.D. Thesis, University of Birmingham Law School, 2008, pp. 23-24.

<sup>38</sup> *Lawal V. Younan*, 1961 ANLR 1.

<sup>39</sup> *Young V. Abina*, (1940) 6 W A.C.A. 180

<sup>40</sup> This account is provided by Nzalé Ebi, op. Cit., pp. 46-47.



the Family Law Reform Act, 1987; the Adoption and Children Act, 2002<sup>41</sup> and the Matrimonial Causes Act, 1973 when the case involves the determination of succession rights of legitimated children, adopted children and illegitimate children respectively as well as what may amount to reasonable financial provision for a surviving spouse<sup>42</sup>. In addition, there are Nigerian laws which are, as discussed above, considered as local legislation as they were enacted while Former West Cameroon was still part of the territory called Nigeria<sup>43</sup>. Such Nigerian laws as applied in succession matters include: the Administrator-General Ordinance, Cap 4. of the 1948 Laws of the Federation of Nigeria; Order 48 Rule 1(1) of the Supreme Court (Civil Procedure) Rules Cap. 211 of the 1948 Laws of the Federation of Nigeria and the Evidence Ordinance Cap. 62 of the 1948 Laws of the Federation of Nigeria.

When application of these laws is tested with the provisions of the Southern Cameroons High Court Law, 1955, it appears that, as per section 11, out of twelve English laws, only two pass the test of legality as being pre-1900 laws. These are: the Wills Act, 1837 and the Wills Amendment Act, 1852. The Administration of Estates Act, 1925, the Trust of Land and Appointment of Trustees Act, 1996; the Inheritance (Provision for Family and Dependants) Act, 1975; the Intestate Estates Act, 1952; the Law Reform (Succession) Act, 1995 are post-1900 laws and may not therefore be considered as lawful. The Non-Contentious Probate Rules of 1954, on its part, falls under the exception provided for in section 15 of the Southern Cameroons High Court Law, 1955 which is, as a reminder, that of probate. This is alongside divorce and matrimonial causes and proceedings. In the same vein, the application of the Matrimonial Causes Act, 1973 may be justified. This is not the case with the Legitimacy Act, 1976, the Family Law Reform Act, 1987 and the Adoption and Children Act, 2002 which are clearly post-1900 laws of general application. Yet, these laws are applied by judges on the ground that they relate to family matters.

The reason tendered for the application of post-1900 laws of general application is that these laws bring about rules that are more favourable to parties and more respectful of human rights. For example, the Inheritance (Provision for Family and Dependants) Act, 1975 allows the

---

<sup>41</sup> Enacted on 7th November, 2002 in England.

<sup>42</sup> Nzalie Ebi, *op. cit.*, p. 47.

<sup>43</sup> Above in I.A.2.

deceased's dependants to claim reasonable financial provision out of the estate. The Intestate Estates Act, 1952, on its part, significantly adds to the rights of a surviving spouse. The Law Reform (Succession) Act, 1995 adds to the category of persons that may apply for reasonable financial provision under the 1975 Inheritance (Provision for Family and Dependants) Act<sup>44</sup>. Not applying post-1900 English laws on succession would have resulted in operating a distinction between male and female descendants or having widows inheriting lesser shares from their deceased husbands' estates, etc... Also, as shall be discussed below<sup>45</sup>, these succession laws have been likened to probate causes and proceedings.

In fact, it has been held that strict adherence to the limitation date would mean that "the courts will be applying outdated rules which no longer meet the required standard of justice under English law".<sup>46</sup> If at all, as it were, the idea was to institute an equivalent system of justice, then that objective would be defeated if, the tyranny of statutory provisions would oblige judges to apply laws that have been long abandoned by England herself.<sup>47</sup>

It has also been argued that:

Neither reason nor justice, in the absence of a clear and comprehensive Cameroonian enacted law on the issues compels such rigid interpretation today. The proper approach, it is suggested, must be dictated, if not in fact justified, by rational objective imperatives of justice and fairness with due regard to the present level of our socio-economic development and situated in the general context of our overall objective legal modernisation.<sup>48</sup>

The result of such a line of thinking is that courts in Former West Cameroon have consistently been applying post-1900 English laws of general application keeping pace with any subsequent amendments. An example would be the case of *Awuro Daniel Emene V. Angwah*

---

<sup>44</sup> Nzalie Ebi, op. cit., p.50

<sup>45</sup> Below at II.A.2.

<sup>46</sup> Nzalie Ebi, op. cit., p. 53.

<sup>47</sup> Park A.E.W., *Sources of Nigerian Law*, London, Sweet and Maxwell, 1963, pp. 23-24.

<sup>48</sup> Charles Manga Fombad, "The Scope of Uniformised National Laws in Cameroon", *Revue Juridique Africaine*, 1990, pp. 59-71.

*Shelvin Ajoh and the People of Cameroon* decided on 24<sup>th</sup> September, 2021<sup>49</sup> which applied, among other things, the English Adoption and Children Act, 2002.

If that is the rationale for applying post-1900 laws of general application, it would naturally be the case for laws that fall under the exceptions provided for in sections 10 and 15 of the Southern Cameroons High Court Law 1955.

## **2- Application of Post-1961 English Laws on Matrimonial Causes and Proceedings**

As already mentioned, sections 10 and 15 of the Southern Cameroons High Court Law 1955 provide for the continuous application of the procedure as is applied in the High Court in London and of any laws relating to probate, divorce, matrimonial causes and proceedings as they are applied in England for the time being in force as long as the local Parliament has not legislated in those areas.

As far as matrimonial causes and proceedings are concerned, all decisions are certainly based on post-1961 English enactments with the most prominent being the Matrimonial Causes Act, 1973 but also, since 2020, the Divorce, Dissolution and Separation Act enacted that year. As a matter of fact, all divorce cases are examined and decided as per the recent pieces of legislation relating to divorce and matrimonial causes and proceedings. One of the latest cases is that of *Edetson Justin Millo V. Fondon Ngwo-Zie Yvonn*<sup>50</sup> decided on 6th April 2023 in the High Court of Ndiain Division in the North West Region where Kwei Haliday J.'s judgment reads thus:

This Final Order is predicated upon an application made by Barrister [...], Petitioner's Counsel on his behalf [...]. At the hearing *Counsel submitted that the application is grounded upon the provisions of Section 18 (1) (b) of Law no. 2006/015 of 29 December 2006 to lay down the judicial organization as amended in 2011, the Divorce, Dissolution and Separation Act 2020 and the provisions of the Matrimonial Causes Act 1973.* [...]

---

<sup>49</sup> Suit N° HCN/016/O.M./2021A (Unreported) where the court granted the adoption request of the applicant inter alia, after having "equally considered the oral submission of Counsel for the Applicant and the laws so cited". Among the laws cited was the English Adoption and Children Act, 2002.

<sup>50</sup> Suit N° HCN/05MC/2022 (unreported).

*The Respondent did not file any observation within the 20 weeks period as required by the Divorce, Dissolution and Separation Act 2020. [...]*

*At the hearing counsel of Applicant submitted that the court should consider the recent developments in the law of divorce introduced by the Divorce, Dissolution and Separation Act 2020 and in particular S 1 which removes the requirement to establish facts by merely obliging the Applicant to indicate in his/her application that the marriage has broken down irretrievably. [...]*

Whereas this court has considered the application and the prayers contained therein;

*Whereas this court has equally considered the oral submission of Counsel of Applicant and the pertinent provisions of the Divorce, Dissolution and Separation Act 2020;*

*Whereas, this court is satisfied that the application has been made in accordance with the provisions of Divorce, Dissolution and Separation Act 2020; [...]*

*Whereas, this court takes note that section 1 (3) of the Divorce, Dissolution and Separation Act 2020 stipulates that the court must consider the statement ‘the marriage has broken down irretrievably’ contained in the application to be conclusive evidence that the marriage has broken irretrievably and make a divorce order;*

Whereas, this court notes that the preceding paragraph exempts the Applicant from the requirement to establish facts *thereby making the grounds for divorce under section 1 of the Matrimonial Causes Act of 1973 outmoded; [...]*

In consequence thereof, this court orders as follows:

- 1) That a final order is entered in favour of the Applicant thereby dissolving their union contracted on the 7<sup>th</sup> of March 2014;<sup>51</sup>

This case taken as an example epitomises the phenomenon of continuous reception and application of laws under section 15 of the Southern Cameroons High Court Law 1955 in Former West Cameroon. It appears that as a new law was enacted in 2020 on divorce, judges and lawyers alike have started invoking that piece of legislation which simplifies divorce procedures. In that vein, the judge stated that the new procedure laid down in section 1 (3) of the Divorce, Dissolution and Separation Act, 2020 is “*thereby making the grounds for divorce under section 1 of the Matrimonial Causes Act of 1973 outmoded*”.<sup>52</sup>

As far as probate is concerned, the trend has been to construe probate causes and proceedings to include the administration of estates and the distribution of revenue thus attracting related statutes within the ambit of section 15 of the Southern Cameroons High Court Law 1955 to allow the application of post-1900 statutes. In other countries, such as Sierra Leone which also applies received English Law, attempts to do so have been quashed on appeal<sup>53</sup>. However, in Cameroon, the reason tendered is that unlike in those other countries, there is no local legislation which application would be ousted by such an interpretation of the term “probate”<sup>54</sup>. In effect, in *Godwin V. Crowther*<sup>55</sup>, the court held that upholding the interpretation of the lower court that the phrase “probate causes and proceedings” included the administration of estates and the distribution of residue, would result in the local Ordinance being repealed<sup>56</sup>. Henceforth, scholars<sup>57</sup> and judges<sup>58</sup> alike in Former West Cameroon have concluded that had it not been for the existence of the local law, the Administration of Estates Act, 1925 would have been applied in Sierra Leone using the court’s interpretation of “probate”.

---

<sup>51</sup> Emphasis added.

<sup>52</sup> *Edetson Justin Millo V. Fondon Ngwo-Zie Yvonn*, pp. 2-3.

<sup>53</sup> *Godwin V. Crowther*, 1934, 2 W.A.C.A. 109 and *Taylor V. Taylor*, 1935, 2 W.A.C.A. 348, 349 all of them decided in Sierra Leone.

<sup>54</sup> Nzalie Ebi, op. cit., p. 51

<sup>55</sup> Note 53 supra.

<sup>56</sup> Nzalie Ebi, op. cit., p. 51

<sup>57</sup> Ibid. Nzalie Ebi goes further by justifying the interpretation in Cameroon with the application of interpretation rules, that is, the mischief rule, the golden rule and the *ejusdem generis* rule: pp. 51-53.

<sup>58</sup> This may be seen in the dictum of Epuli J. in the case of *Nforba V Nchari* (1999) G.L.R. 59, 63.

It should be recalled that probate means “the judicial procedure by which a testamentary document is established to be a valid will; the proving of a will to the satisfaction of the court.”<sup>59</sup> It is therefore clear how far-fetched is the interpretation that seeks and succeeds in attracting the administration of estates and the distribution of such estates within the meaning of probate as spelt out in the Southern Cameroons High Court Law, 1955. In *Taylor V. Taylor*<sup>60</sup>, Kingdon C.J. established the test that would help determine whether matters would be considered as probate matters thus: ““would this matter in England be dealt with in the Probate Division or Chancery Division’? If in the former, it is a probate matter, if in the latter, it is not a probate matter”<sup>61</sup>.

Likewise, in Nigeria, in the case of *Idehen V. Idehen*<sup>62</sup>, the court refused to apply foreign law as there was a relevant local law. In that case, the Supreme Court in Nigeria refused to apply the English Wills Act of 1837 which is a statute of general application as there was a local law in force, that is, the Wills Law of Western Nigeria.

The practice of applying post-1900 statutes of general application and post-1961 English laws on procedure, probate, divorce and matrimonial causes and proceedings might go without question if the Southern Cameroons High Court Law is to be construed strictly. Yet, it seems to contradict the principle of State sovereignty and article 26 of the 1996 Constitution that entrusts the competence to legislate on those matters to the National Parliament. Both positions stand on solid grounds. The question then is as to whether judges might render justice by any other means which does not question the sovereignty of Cameroon nor seem unconstitutional. Undoubtedly, there are many avenues to achieve that.

## **B- Other Avenues for Rendering Justice**

It is possible for judges in Former West Cameroon to render justice to parties using mechanisms other than the direct application of post-1900 and post-1961 English laws. Such

---

<sup>59</sup> Garner, op. cit., p. 1395.

<sup>60</sup> Note 53 supra.

<sup>61</sup> Supra, 349.

<sup>62</sup> (1991) 6 NWLR (Pt.198).

mechanisms include: developing internal case law; initiating law reform or relying on international human rights instruments.

### **1- Development of Internal Case Law**

Courts in Former West Cameroon are of the Common Law family, that is to say that they are from a unique tradition where the courts, that is judges, have a residual power to make laws through the judgments they deliver. This is often referred to as judge-made law<sup>63</sup>. This is how the Common Law and Equity developed in England. It will, therefore, not be an aberration for judges of the courts in Former West Cameroon to develop their own case law which serves as guidance for future decisions in application of the doctrines of binding precedent and *stare decisis*. The rule of binding precedent obliges courts to apply principles established in previous decisions of superior courts to matters with similar or identical facts before them to give consistency and certainty to the Law. The rule of binding precedent stands on the principle of hierarchy of courts (*stare decisis* or standing order of courts) which establishes the working of the doctrine of precedent in a practical manner. On the issues at hand, only the High Courts, Courts of Appeal and the Supreme Court (specifically the Common Law Bench of the Supreme Court) can establish binding precedents. The rule of binding precedent requires that only the *ratio decidendi* may be followed by inferior courts in subsequent similar cases. The *ratio decidendi* is one of two things: either the specific rule that has been applied to solve the issue at hand or that specific rule plus the decision that is arrived at in that specific case. Any legal rule or assertion not relating directly to the issue to be solved in any case is considered *obiter dictum* and it is not used as a precedent even if it is considered an authoritative argument in future cases. Superior courts such as the Court of Appeal or the Supreme Court could either confirm or reverse precedents established by High Courts.

Then, even if a precedent is established, there are still ways not to follow it if it does not render justice in the case at hand, to this effect, inferior courts may use “distinguishing” while superior courts would use the technique of “overruling”.

---

<sup>63</sup> In that respect, one might think that courts in Former West Cameroon could simply apply common law rules and doctrines of equity. However, even if there is no limitation of time as concerns reception and application of these two bodies of English Law rules, the same issues as posed above as regards post-1961 statutes arise. Therefore, this does not seem to be a better option.

Principles guiding courts in developing their own internal case laws would be general principles of law under their “inherent power [...] by virtue of their general duty to administer justice”<sup>64</sup>. The courts would use that discretionary power to come up with solutions to render justice to parties. In fact, section 27 (4) of the Southern Cameroons High Court Law 1955 provides that “in cases where no express rule is applicable to a matter in controversy, the court shall be governed by the principles of justice, equity and good conscience”. Although this refers to divergences between customary law and written law<sup>65</sup>, it may well be used by courts to develop rules to decide on issues before them without having recourse to post-1900 and post-1961 English laws.

Courts would then be free to get inspiration from both written laws including human rights instruments, but also from local customs and traditions which might result in a suitable blend of legal rules that are adapted to the African and, most specifically, the Cameroonian context. Courts may also be inspired by the way courts in foreign countries interpret and apply human rights instruments. This is even a well-established practice of regional human rights judicial bodies<sup>66</sup>.

The question that necessarily follows is whether courts in Former West Cameroon can revert to judge-made law where statutes were already enacted and are applied by virtue of the Southern Cameroons High Court Law, 1955 as received and consecrated by the various Constitutions of Cameroon as mentioned above<sup>67</sup>. This is possible when they succeed in proving that the law may not be applied in the present situation and that there are gaps that it did not fill.

In any case, the best solution to avert direct application of English laws in Former West Cameroon is clearly the adoption of new laws through law reform.

---

<sup>64</sup> Anthony Allott, *Essays in African Law: With Special Reference to the Law of Ghana*, London, Butterworths, 1960, p. 25.

<sup>65</sup> In effect, section 27 of the Southern Cameroons High Court Law, 1955 provides for the recognition and application of customary law by the High Court as well as modalities for its application and the course of action where there is a conflict between written law and customary law.

<sup>66</sup> Christopher McCrudden, “A Common Law of Human Rights?: Transnational Judicial Conversations on Constitutional Rights.” *Oxford Journal of Legal Studies*, vol. 20, no. 4, 2000, pp. 499–532. *JSTOR*, <http://www.jstor.org/stable/20468339>. Accessed 27 Feb. 2024; Laurence Burgorgue-Larsen, “‘Decomartmentalization’: The Key Technique for Interpreting Regional Human Rights Treaties”, *I•CON Vol. 16 No. 1*, doi:10.1093/icon/moy010, 2018, 187–213; Mirna E. Adjami, “African Courts, International Law, and Comparative Case Law: Chimera or Emerging Human Rights Jurisprudence?”, *24 MICH. J. INT’L L.* 103, 2002, pp. 103 - 167.

<sup>67</sup> *Supra* at I.B.2.



## 2- Law Reform

Law reform is a permanent function in many countries<sup>68</sup>. In effect, as society evolves, circumstances change, new technologies are developed and laws have to adapt. The need for law reform should be felt with more acuity in ancient colonies which were forced to apply laws of colonial masters designed for foreign people living in different settings. Not only that, such laws as applicable in ancient colonies are outdated as they were designed to meet 19<sup>th</sup> century conditions. This is the case with statutes of general application under section 11 of the Southern Cameroons High Court Law, 1955 for example, that courts in Former West Cameroon are called upon to apply for the time being until the Cameroon Parliament enacts laws in respect of those matters.

Many former colonies in Africa and throughout the world have already gone through deep law reform in order to adapt inherited laws to their societal values and to unescapable technological developments. In Africa for example, in the domain of Matrimonial Causes and proceedings, one can cite, indiscriminately from Romano-Dutch or common law tradition: Nigeria, Uganda, Rwanda, Kenya, Gabon, Senegal and Cote d'Ivoire. Cameroon on its part, more than 63 years after reunification, has only attempted two times to legislate in related matters with a law on Civil Status Registration in 1968 that was abrogated in 1981 by an Ordinance on the same subject-matter. Many areas of family life<sup>69</sup>: probate, divorce and matrimonial causes and proceedings have never been addressed by way of legislation by the Cameroonian Parliament. Consequently, both in Former West Cameroon and in Former East Cameroon, laws that apply are, for the main part, 19<sup>th</sup> and 20<sup>th</sup> centuries' laws as discussed above<sup>70</sup>.

---

<sup>68</sup> Examples abound. In Africa: South Africa, there is the South African Law Reform Commission (SALRC), an independent statutory body, established by the SALRC Act, 1973 (Act 19 of 1973); in Mauritius, the Law Reform commission may be accessed through [https://lrc.govmu.org/lrc/?page\\_id=2226](https://lrc.govmu.org/lrc/?page_id=2226); in Uganda, the Uganda Law Reform Commission is established under Article 248(1) of the Constitution of the Republic of Uganda; in Namibia, by the Namibia Law Reform and Development Commission Act, 1991, Act 29 of 15 July 2004. Out of Africa, there is the Law Reform Commission of Hong Kong established in January 1980; the list of Law Reform Commissions for the United Kingdom and all territories including Australia, Queensland, The Wales, England, etc., is to be found at <https://libguides.library.qut.edu.au/legislation/law-reform>.

<sup>69</sup> But not only, all aspects of private law are concerned including tort law and contract law.

<sup>70</sup> For Former East Cameroon, those matters are governed by the 1804 French Civil Code which was made applicable in French Cameroons upon the country's partitioning.

As already pointed out, continued use of foreign laws has been established by the successive Constitutions of Cameroon as a transitional measure. Therefore, in Former West Cameroon, judges are faced with a dilemma: either they revert to outdated foreign laws, or they keep pace with Law Reform in England with the many questions that arise in such a case as discussed in this paper. Meanwhile, law reform would solve the issue and enable judges to effectively render justice through decisions which grounds may not be questioned either as to their legality or constitutionality.

Unfortunately, law making is not the function of judges. It is a constitutional function of Parliament to enact laws devolved to it by article 26(2) as an application of the much universally acclaimed principle of separation of powers propounded by Montesquieu in his vision of a modern state<sup>71</sup>. Unlike in many other countries where law reform is the mandate of an independent commission<sup>72</sup> created to that effect, in Cameroon, bills are tabled before Parliament directly either by parliamentarians or by the government departments such as the Ministry of Justice or any other relevant Ministry after input has been required and obtained from various stakeholders. It is rather unfortunate that up till 2024, no attempt in enacting the first Cameroonian legal instrument in Family matters has gone through completion despite numerous attempts from various commissions and bodies steered by the Ministry of Justice which steers most law reforms in the country<sup>73</sup> or under the auspices of the Ministry of Women Empowerment and the Family or the Ministry of Social Affairs or non-governmental organisations such as the Association of Cameroonian Female Jurists known by its French acronym ACAFEJ<sup>74</sup>.

Faced with the absence of local legislation, an impediment which is not within their jurisdiction, judges should, maybe, resort to international legal instruments ratified by Cameroon in order to render justice, thereby avoiding recourse to foreign law.

---

<sup>71</sup> Charles Louis de Secondat, Baron of Montesquieu, 1748, *The Spirit of Laws*, Vol. 1 at [https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/837/0171-01\\_Bk.pdf](https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/837/0171-01_Bk.pdf)

<sup>72</sup> Note 68.

<sup>73</sup> There was a project for the drafting and adoption of a uniform Civil Code and Civil Procedure Code in the years 2008-2011 financed by the European Union.

<sup>74</sup> This association was created in 1987 and aims at promoting and safeguarding women's rights. As of 2024, it is the one steering yet another committee for the draft Code for Persons and the Family with the support of UNFAP.

### **3- Reliance on International Human Rights Instruments<sup>75</sup>**

As a sovereign State, Cameroon has ratified nearly all international and regional human rights instruments including those that uphold and protect the rights of women and children such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)<sup>76</sup> and the Convention of the Rights of the Child<sup>77</sup> at the international level; the Maputo Protocol to the African Charter on Human and Peoples' Rights<sup>78</sup> and the African Charter on the Rights of the Child<sup>79</sup> at the regional level. These specific human rights instruments coupled with more general human rights instruments provide sufficient grounds for the promotion and protection of all family members, and in particular, those who were considered dependent in the preceding centuries with corresponding discriminatory laws<sup>80</sup>. This situation, as discussed above, explains why judges in Former West Cameroon resist applying such laws and would rather apply recent enactments with or without legal backing even if this practice is subject to founded critics.

In Cameroon, article 45 of the 1996 Constitution provides that duly approved or ratified treaties and international agreements shall override national laws, provided the other party implements the said treaty or agreement. They thus rank higher than domestic laws but must comply with the Constitution. Cameroon thereby adopted the monist approach<sup>81</sup> to incorporation of international treaties into the internal legal order. Therefore, once international and regional human rights instruments are ratified, they become directly applicable. As such, they constitute part of the body of law that judges in Former West Cameroon have to consider in deciding cases. Yet, two issues may arise: the first is as to the readiness of judges in general to implement

---

<sup>75</sup> International human rights instruments are captioned here as matters that are discussed in this paper are captured by these instruments.

<sup>76</sup> Adopted by the United Nations General Assembly (UNGA) on 18<sup>th</sup> September 1979, signed by Cameroon on 5<sup>th</sup> February 1983 and ratified on 23<sup>th</sup> August 1994.

<sup>77</sup> Adopted by the UNGA on 20<sup>th</sup> November 1989, signed by Cameroon on 24<sup>th</sup> September 1990 and ratified on 11<sup>th</sup> January 1993.

<sup>78</sup> Adopted by the African Union on 11<sup>th</sup> July 2003, signed by Cameroon on 25<sup>th</sup> July 2006 and ratified on 13<sup>th</sup> September 2011.

<sup>79</sup> Adopted by the Organisation of African Unity on 11<sup>th</sup> July 1990, came into force on 29<sup>th</sup> November 1999, signed by Cameroon on 16<sup>th</sup> September 1992 and ratified on 5<sup>th</sup> September 1997.

<sup>80</sup> Such as pre-1900 Wills Acts that did not permit widows to share a significant part of their deceased husbands' estates as discussed above.

<sup>81</sup> See Richard Frimpong Oppong, "Re-Imagining International Law: An Examination of Recent Trends in the Reception of International Law into National Legal Systems in Africa", *Fordham International Law Journal*, Vol 30 (2), 2006.

international human rights instruments in decision-making, the second is as to the level of practicability of human rights proclamations in specific cases before the court.

As far as the readiness of judges to refer to international instruments is concerned, we must say that there is no substantive law or procedural rule that compels judges to consider or cite relevant human rights instruments when rendering judgments. As such, applying international human rights principles depends on the personal idiosyncrasies of judges. This explains why in some decisions, references to international human rights abound<sup>82</sup>, while in others, there is barely any reference to international human rights instruments even if they apply squarely to the case at hand. There are even cases where decisions contradict the standards prescribed in human rights instruments<sup>83</sup>.

Besides, even if all judges were ready and willing to apply international human rights standards laid down in international human rights instruments to cases before them, the issue would be how practicable that is against the backdrop of the generality in which the standards are articulated. In effect, some general statements of rights do not provide practical guidance on how the right may be applied in real life situations. Although General Comments, which explain into details what rights mean and how their objectives may be attained, are often provided by UN bodies such as the Human Rights Commission and dedicated secretariats to each international human

---

<sup>82</sup> Examples of decisions referring to international human rights instruments include *Awuro Daniel Emene V. Angwah Shelvin Ajoh and the People of Cameroon (supra)* where the judge granted an adoption application relying on both national legal instruments, that is, sections 41 and 42 of Ordinance no. 81/02 of 29 June 1981 as amended by Law no. 2011/011 of 6 May 2011 on Civil Status Registration as well as on international human rights instruments, viz: article 3(1) of the United Nations (UN) Convention on the Rights of the Child and article 24 of the African Charter on the Rights and Welfare of the Child.

<sup>83</sup> Concerning the application of discriminatory customary rules, see *Mary Umaru v Asopo Makembe* (1981) CASWP/cc87/81 unreported, where Inglis J. ruled that a deceased husband's estate includes his widow "who under customary law can be regarded as property" or in *Sikibo Derago v Ngaminyem Etim* (1982) BCA/36/81 unreported, where the North West Court of Appeal sitting in Bamenda held that a customary wife can neither inherit nor administer the property of her deceased husband because she is part of the chattels of her deceased husband to be inherited or administered. For the application of discriminatory written laws: *Dame Njomou née Kapawo Jeanne c/ Zebaze Jules Flaubert*, Civil Judgment n°224 of 17 January 2007 of the Mfoundi High Court where the judge held that Cameroon had not yet conformed its internal laws with CEDAW and therefore CEDAW was inapplicable but also the case of *Liman Saibou, Mamoudou Saibou c/ Dame Yonkru née Nsei Christine*, Judgment n° 368/CIV of 27 February 2006 of the Mfoundi High Court where the court refused to apply article 16 of CEDAW raised by the wife which gives husbands and wives the same rights to administer the couple's property but instead applied a contrary provision found in the received French Civil Code. Luckily, the decision was reversed on appeal. A fuller account of such decisions is given by Dorothy L. Acha Morfaw épouse Ghogomu, *The Complexities and Inequalities of the Laws of Divorce in Cameroon and How these Can Be Overcome*, Ph. D. Thesis, University College of London, 2018, pp. 95 et seq.

rights instruments, different interpretations are still possible. More importantly, practical measures and steps might be lacking which might explain why judges would not be comfortable in applying international human rights instruments rather than “foreign law” to domestic cases. In practical terms, it might not be easy from children’ rights proclamations to devise a method of calculation of their share in their parents’ estate upon death. Such matters are to be dealt with by domestic laws to ensure certainty and uniformity in application.

For the time being, despite these challenges, applying international human rights instruments seems to be the best option for judges in Former West Cameroon to render justice in family matters.

### **Conclusion**

This paper has questioned the legality of the continuous reception and application of foreign law in Former West Cameroon when the Constitution and the sovereign status of the State might not warrant such use as being, for all intents and purposes, against the very understanding of what a sovereign State is, as well as of constitutional provisions on the authority empowered to pass laws on such issues. Though inherited laws are authorised to be applied, limits have been set as to the time of reception in the countries of origin. Besides, even if no time limit is given as is the case in some matters, State sovereignty logically stands on the way of direct importation of a State’s internal law to another sovereign State’s internal legal order. Yet, this practice is well established in Former West Cameroon courts as judges strive to effectively render justice to parties. They do not want to let parties go with defective or inappropriate remedies while more recent enactments successfully approach the ideal of justice. However, the status of foreign law in Cameroon as examined before and after reunification is clear that this is not lawful in some cases and, even in those situations where it may seem lawful as backed by an enabling instrument, it appears to be contradicting the Constitution that entrusts the mandate to enact laws to the Parliament<sup>84</sup>. This situation is not inextricable and judges in Former West Cameroon have other means to render justice. They can do so by developing internal case law, benefiting from law reform and relying on international human rights instruments. Each one of these avenues has advantages and limits with

---

<sup>84</sup> Article 26 of the 1996 Constitution as earlier discussed.

the last one presenting more of the former and few of the latter. It is more than urgent that Parliament adopts laws in all those areas of private law where this has not yet been done and more specifically, in the area of personal law. A Law Reform Commission should be established to work systematically on these issues as it builds on the outcomes of past initiatives.

RARJP  
ISSN: 2958-1567  
[www.revuerarjp.com](http://www.revuerarjp.com)  
[revuerarjp@gmail.com](mailto:revuerarjp@gmail.com)