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Customary Courts' System in West Cameroon: Reforms and Conflict with the Federal Administration

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Abstract

This article discussed the customary courts' system in West Cameroon from 1961 to 1968. It argued that these institutions or system of justice was inherited from the British colonial authorities in 1961 by the Federal government of Cameroon. It further held that it continued without any interference from the Federal Government in West Cameroon until 1966, when the former favoured reforms that could reduce their authority (Customary Courts). It called for the reduction of their powers and a transfer of the control of these institutions from West Cameroon Ministry of Local Governments to the Federal Ministry of Justice. This was rejected by the West Cameroon Government which instead instituted reforms that were to make them more productive. It was due to these efforts by the West Cameroon Government that these institutions survived and were not infiltrated by the Federal Administration until the unification of Cameroon in 1972.

Key Words: Conflict, Customary Courts, Federal Government, Reforms and West Cameroon

Introduction

Colonialism in Africa saw the importation of Western laws and judiciary systems into Africa. This was necessitated by the increased number of Europeans and interactions with Africans and the need to ensure that peace and tranquillity reigned in order for Europeans to better exploit the trading opportunities that were found in the continent. In this regard, the British Consul in the Bight of Biafra favoured the institution of the Courts of Equity and Justice in Victoria and Douala (coastal area of Cameroon) respectively but these were closed down by the Germans when they colonised the area in 1884. The presence of the Germans in the territory did not disregard the indigenous methods of justice as they maintained and used the Native Courts and their judges (Chiefs or Traditional Rulers) in the administration of justice. Their ousting from the territory by the British and the French after World War I and the division of the territory between these two powers in 1916 saw the British introducing its Indirect Rule policy in its own sphere (area of study).

In line with this policy, Native Courts were upheld and just like the case of the Germans, local judges and the customs and traditions of the people were used in the administration of justice. Upon independence and the reunification of Cameroon in 1961 and the establishment of the Cameroon Federation, the Government of West Cameroon had to continue with this system of justice in their area of command. Moves were made to reform the sector to suit local realities on the ground or adapt to changes witnessed over time and make them (these institutions) more effective. In spite of these efforts, the Federal Government disfavoured the powers enjoyed by these institutions and favoured reforms that could reduce their authority. Such moves met with resistance from the West Cameroon Government and these institutions have survived till today, even though much interference in their activities set in after 1972. It is because of the fruitless attempt by the Federal Administration in suppressing the authority enjoyed by these institutions and resistance put up by the Government of the State of West Cameroon that this study discusses the reforms instituted by the former and how they survived before the unification of the two Cameroons in 1972.

West Cameroon is the territory that makes up present day North and South West Regions of Cameroon. It is part of the former British Cameroons that was known as Southern Cameroons and attached to the Eastern Region of Nigeria for administrative purposes and upon independence, it was renamed West Cameroon as it became one of the two Federated States of the Federal Republic of Cameroon. When the British ousted Germany from Cameroon after World War One, the former German colony was divided into two and the British were given the mandate to administer this part of the territory by the Mandate Commission of the League of Nations. The other section of Cameroon that became East Cameroon after Independence was administered

by the French. Though they reunified in 1961, each section or State maintained the administrative systems they inherited from these two colonial Masters and it is because of this that the West Cameroon Government maintained and reformed the Native Court system that they inherited from the British.

Antecedents of Customary Courts' System

In Cameroon, the first attempt at establishing these institutions was in the middle of the 19th Century. This was done by the British that had enormous influence on the coastal area of pre – colonial Cameroon and dominated in the trade activities of the area as they established the Court of Justice in Douala. This Court was under the Consul general of the Bight of Biafra and regulated trade relations or problems between the people of Cameroon and Europeans and among Europeans. This was equally true for the Court of Equity established by the Baptist Missionaries that were active in the Vicinity of Victoria and just like the Court of Justice, regulated affairs between the people of the area and European traders.

However, the annexation of the territory by the Germans in 1884 led to the disbanding of these Courts and the checking or reduction of British influence on these coastal people of Cameroon. Immediately, they introduced their own system of justice. They did not disregard the traditional system of administration they met on the ground and African customary laws functioned side by side with European law, if and only if the later was not repugnant to natural justice. In this direction, they used chiefs or traditional rulers as judges in Native Courts and had to manage the judiciary system based on the customs and tradition of African societies (Ngoh, 1988, p.76). In short, they kept the peace and maintained law and order. However, their judgements were based on European judgements. What is clear is that, the Germans hardly interfered in the administration of justice as chiefs dispensed it and they acted as supervisory authorities. They came visiting the chiefs' compounds on monthly bases where cases were heard. In this exercise, they sat side by side with German officials who consulted them before any matter could be adjusted, passed or amended (NAB, Ad (1922)4, No. 277/27, An Assessment Report on the Bum, 1922, p.11). It was therefore their policy to strive as much as possible not to interfere with Native Courts and respect the customs and traditions governing the people and their institutions.

The departure of the Germans in 1916 after their ousting from the territory by the British and French and subsequent division of the territory by the two victorious powers brought an end to these developments in the territory. The British immediately introduced the Indirect Rule policy in her own portion of the territory which is our focus and immediately it became the guiding principles of the Colonial Administration. The British policy of Indirect Rule was guided by three cardinal principles, the Native Authority, Native Court and Revenue Ordinances. The Native courts that became

Customary Courts in 1962 were introduced by the British and became an indispensable part of the Native Administration (Chiabi, Cited in Njeuma, 1989). This was in line with the 1914 Native Court Ordinance that was operational in Nigeria in 1914 and transferred to the Cameroons by the 10 of June 1916. This Ordinance spelled out clearly that chiefs or traditional rulers were to serve as judges in these institutions and local native laws and customs were to be the guiding principles in the execution of justice in these tribunals.

They were not only to arbitrate but could also arrest those who fomented trouble, an indication that the duties of Native Courts extended to the maintenance of order (NAB, Ja/a(1917)1, Memo No. 9 NAB, Ja/a(1917)1. Memo No. 9. 1917. Native Administration in Nigeria). Where offences were brought against native law and customs, Native Courts tried such cases in accordance to native laws and customs. If such also constituted an offence against both criminal and native law, punishment imposed had to be within the limit prescribed by the criminal code or enacted (Annual Volumes of the Laws of Nigeria, 1956). Such courts were set up by the resident and local realities and needs were taken into consideration and approved by the Lieutenant Governor (Colonial Office, 1925).

The 1916 Ordinance defines the Native Tribunal as "...a judicial council or Native Courts established under the Native Court Ordinance, 1914" (NAB, Ja/a(1916)1, An Ordinance to prescribe the Powers and Duties of Native Authorities, p.2). Section V of the 1916 law went further in line with the 1914 Ordinance as it stated clearly that all Native Authorities were to maintain order in their respective areas of appointments and each had to exercise the powers of this Ordinance which was conferred over all natives residing or living within such areas (NAB, Ja/a (1916)1, An Ordinance to prescribe the Powers and Duties of Native Authorities, p.2). These courts were graded into four categories, A, B, C, and D. The grade 'A' court had full jurisdiction over civil and criminal matters but death sentences could only be approved or sanctioned by the Governor. The grade 'B' court had powers over criminal and civil matters where the demands, claims, debts or damages could not exceed fifty pounds and criminal cases where imprisonment could not go beyond two years. In criminal cases where lashing was the punishment, this was limited to twenty-four lashes (Ngoh, 1990). Grade 'C' courts handled civil matters where claims could not be above ten pounds and criminal cases that could be punished by an imprisonment of six months or in the case of theft of farm produce or livestock for twelve months or in cases that warranted lashing, twenty-four lashes was the limit (Colonial Office, 1956). The grade 'D' court had jurisdiction on cases where demand or fines could not go above five pounds, three months' imprisonment and twelve lashes.

This system of Justice remained in force until 1934 when the Native Court Law was modified in Nigeria with little effect on the organisation and functioning of the system in Southern Cameroons. Other modifications came in but what is clear is that the 1914 Native Ordinance remained the bases for Native Courts and legal instrument in the administration of justice in the Southern Cameroons. (NAB, Jb/a(1967)1, CI.1088, Review of the Development Local Government, 1967, p.14). This was to remain operational until 1st October 1954. In this respect, a Commission was put in place to review the laws and functioning of Native Courts in the Eastern Province of Nigeria. It also had to give proposals for the establishment of a new law (Che – Mfombong, 1980). This was the Brook’s Commission. However, this Commission’s report was full of shortcomings as it relied on written evidences which did not reflect what was actually on the ground.

In this direction, the shortcomings of the report necessitated the formation of another Commission, the Native Court Commission. It was charged with the responsibility of visiting all the Divisions in the Cameroons Provinces (Southern Cameroons), concert with the people and get first hand information on the functioning of Native Courts as well as proposals for changes from the people. This Commission was manned by Brayne Baker (Chairman), John Ngu Foncha and F. N. Mbwaye (Members or Commissioners) and by May 1952, its report was presented to the colonial authorities. This was a thorough review on and recommendations on the administration of Native Courts in the Bamenda and Cameroons Province in view of reforming the Native Court Law.

Worthy to note is the fact that, it called for the separation of the Judiciary and Legislature. Hence Councillors were not to be members of the Courts’ Benches. The report was also very critical of the presence of natural rulers in the Benches or as judges. However, if they were qualified or capable of doing so, they should be allowed, it corroborated. This was in great contradiction to the Brooke’s Commission which held that time was not yet ripe for this separation. Though problems were bound in relation to the presence of natural rulers in Courts and their performance questionable, they could not be ignored as noted by the Resident for the Bamenda Province in 1951 who opined that;

One of the major faults of the courts lies in the fact that they are a bolstering system which, if not actually opposed to, is certainly suspicious of progress and that members, belonging to the traditional class of rulers jealously guard their privileges. Yet, it is the traditional background which not only causes them to be recognised by the people but gives them their greatest quality as judges. The members understand the working of the litigants’ minds and if on some

occasion it appears from the records that a case has been decided with insufficient evidence, this is often due to this knowledge rather than bias. This is too valuable a quality to lose and our aim must therefore be to blend the old with the new idea rather than replace one by the other (NAB, Cb(1951)1. Annual Report, 1951, Bamenda Province, p.6)

He thus welcomed the presence of natural or traditional rulers in the Courts but this was to be spiced with educated or progressive elements. Meeting on 21st December 1955 and 13th January 1956, a Committee to consider the report of the Commission of Inquiry agreed *inter alia* that Native Authorities continue paying the salaries of Court staff and sitting fees of Court Members. To ensure efficiency, the salaries or sitting fees of Court members had to increase. Native Courts were to take the appellate Customary Courts as requested by the Brooke's Commission. A quorum of Judges was to be five of which a President and his Vice was to be appointed (Committee to Consider the Report of the Native Courts (Cameroons and Bamenda Province) Commission of Inquiry, in NAB, Ma/a(1961)1, LB. Native Courts, 1961, p.2). These were the major changes that ushered in the Customary Court Law of 1956. However, this only went operational in 1961. What is clear is that the Native Authority remained the sponsoring institution of Native Courts as before.

The Secretary of State for Local Government, J. Thrup, argued that this was to be implemented gradually and in 1958, the Native Courts took the appellate, Customary Courts. Though it could only be put into practice in its entirety after 1960, some transitional measures were put in place. In this direction, members of the Court Bench who were also Councillors were to hold both offices till the next legislative elections. If they were successful, they were to choose whether to quit the Bench and remain Legislators and the reverse was true. Hence the office of Councillor and Judge became incompatible officially (NAB, Ma/a(1955)4, No. LGP 164, Native Court Service Fees, 1958, p.18).

1962 West Cameroon Customary Courts' Law and modifications

After Independence, the 1956 law was repealed and the West Cameroon Customary Courts' Law replaced it in 1962 (NAB, Ma/a(1955)5, No. C2 704 Vol. 1, Customary Court Ordinance, 1955, p.72). Due to intense criticisms of the Native Court System in West Cameroon, there was the need for a complete overhaul of the old and enactment of a new law. In line with this, the Ministry of Local Government in consultation with local authorities could establish a court wherever necessary. Of great concern was the establishment of the Customary Court Commission in 1962. It supervised the Customary Courts and recommended the appointment of judges. The Commission could also dismiss any of the judges if they abused their office or

functions. The Commission was made up of independent personalities who were appointed by the Premiere of West Cameroon (NAB, Jb/a(1967)1, No. CI. 1088, Review of Local, 1948 – 1967, pp.14 – 15).

By this law, Court panels were reviewed and this was not to be less than five and not more than ten. The nomenclature was to be in consonance with the population of court areas. As such, wards were created and they became units for the selection of Judges for the Customary Courts. Besides all Courts in the territory were to be of Grade, 'A' and 'B' only (NAB, Ma/a(1962)1, No. LG/962, Reorganisation of Customary Courts, 1962, p.5). The increase in the powers of the courts was necessitated by the many changes that had taken place in the territory. This can be substantiated with the arguments raised by the Divisional Officer for Wum who insinuated that, the existing law no longer sufficed. According to him, the value of money had changed but the law remained the same and consequently outlived its usefulness. Besides, the Magistrate's Court was overloaded with cases and speedy trial of these cases was a problem. Again, issues that dealt with customs and whose values were more than that stated by the law laid with the Magistrate's Court though not within its competence. With these, there was the need to increase the powers of the Customary Courts (NAB, Ma/a(1955)5, No. C2 704 Vol. 1, Customary Court Ordinance, 1955, p.10).

With the change of the status of the Courts, the Divisional Officers were called upon to provide information to the Customary Court Commission in relation to the selection of judges pending the approval of the Secretary of State for Local Government. As such the areas had to be carved out into wards with each entitled to a seat in the respective Courts of their areas. However, in 1968, the Ward system had given way to the random selection of judges from villages instead of wards. Appointments were made from the recommendations of Village Councils. Where Village Councils were absent, traditional authorities were called upon to do so. Each Village Council or traditional authority, nominated three persons and their names forwarded to the Customary Court Commission and one was selected. Even though permanent Presidents were appointed by the Customary Court Commission in 1966, this was revoked in 1968 and each quorum appointed had to designate its President.

Customary Courts of Appeal were also created and District Officers chaired the Courts of Appeal and appeals could be made from Customary Courts to him. Where litigants were not satisfied with the decisions of the District Officers, appeals could further be made to the Senior Divisional Officers. The presence of administrators in the set up was necessitated by the fear of injustices perpetuated by some members of the Courts, especially in Divisions or Court areas where differences were bound in terms of customs and traditions which could easily influence Judges in favouring litigants from their backgrounds (NAB, Ma/a(1962)2, No. L.5/2/4, (A) Customary Courts West

Cameroon, (B) Appeal Courts, (C) Amendment of Native Court Ordinance (Cap.142, 1962, pp.112 – 120). Worthy to note is the fact that the names of Courts in West Cameroon were also changed as each had to carry or bear the names of their respective towns.

Customary Courts' Pitfalls and Conflicts between the State and Federal Administration

The powers granted to Customary Courts in West Cameroon were frowned upon by the Federal Authorities as the Minister of Justice noted in 1966;

Several People in Bamenda criticise the power granted to Native Courts in West Cameroon. According to them, the Native Courts of which the chief is the President is an organisation full of injustice, where corruption reigns; the reason being almost always attributed to the party that bribes the chiefs or assessors. ... The people suspect that sentences given by these jurisdictions are automatically executory, because they say, men sentence to prison for several years by these courts are seen to pass directly to the Head of Public Prisons.... Rare, they say, are occasions where the Prefect can intervene by requesting the examination of procedure. Concluding, they imply much work is still required of the Federal Government for the standardisation of things, seeing that in East Cameroon, the traditional chiefs do not have the same authority (NAB, Ma/a(1961)3, LB. 391, Native Courts, 1961, p.61).

As a result of these setbacks, the Minister favoured a situation whereby chief will have no say in the Customary Court system and also a transfer of the control and supervision of the Courts to the Federal Ministry of Justice. He also wanted to relieve the Councils or Local Governments of their control over staff and Court members or Judges. The Court was not also to have anything to do with the handling of criminal cases. In short, he preferred the harmonisation of the system in the territory.

However, such a move was not welcome by the Government of West Cameroon as its Attorney General downplayed these accusations. Though he agreed that corruption loomed, if one had to go by the qualification and calibre of judges as well as types of cases judged, then the Court members had to be praised, he intimated. Such accusations were grossly exaggerated upon and it was not surprising that such should come from convicted litigants (NAB, Ma/a(1961)3, LB. 391, Native Courts, 1961, p.62). There were no proves that such malpractices were taking place and until proven, the Customary Courts in West Cameroon were faring on well, the Attorney General concluded.

Chiefs were not usually the Presidents and not all members were Chiefs. The Presence of the Divisional Officers in the Courts of Appeals, the existence of Magistrates' and High Courts, which were ever ready to receive Appeals from these Courts, were there to check their excesses. Customary Courts were therefore veritable institutions of justice as it was cheap to manage, easily accessible and were doing a great job. About twenty one thousand cases were heard annually and so instead of calling for a disruption of the system, it should be praised and encouraged, the Attorney General argued (NAB, Ma/a(1961)3, LB. 391, Native Courts, 1961, p.63). However, such an accusation was not totally unfounded but not so serious to warrant a complete reorganisation of the system. The shortcomings were there as many cases were outstanding. In 1967, M. F. Takere, the Officer in charge of the Ministry of Interior, Nkambe, argued that this was caused by the quality of judges, inadequate moral education and very poor remuneration for judges (NAB, Ma/a(1967)2, No. LGB 24, Customary Courts, 1967, p.47).

In order to solve these problems, moves were made in increasing the amount of remuneration of judges. This was based on the total number of cases handled by each court per annum. This was divided into the twelve months of the year and multiplied by daily rates received. However, total amount paid out by Councils or Local Governments were not to be more than half of the total revenue derived from the Court concerned. Sitting fees could not be more than two pounds ten shillings per member in the West Cameroon (NAB, Ma/a(1967)1, No. OC/CC 8, Customary Courts, 1967, p.6). To further minimise corruption in Courts, the Prime Minister cancelled the warrant of Customary Courts in the territory in 1968. To him, they had failed in the execution of justice and these Law Courts had turned into "houses of commerce where justice is meted out only with material considerations" (NAB, Ma/a(1967)3, AG. 65 Vol. 1, Commission, Customary Court, 1967, p.64; Supplement to West Cameroon Gazette, No. 38, Vol. 8, 24 August 1968, Part B, P.62). These Courts were again reconstituted and new Court members appointed. They were to serve for a period of one year and their term renewed if and only if they proved efficient and upright in the administration of justice.

Conclusion

The foregoing discussion focused on the reforms that were carried out by the West Cameroon Government in the Customary Courts' Sector upon independence and problems encountered with the Federal administration. It contends that this Customary Courts' System which was inherited from the British Colonial Administration underwent some changes or reforms that were to make them more productive and efficient. In this direction, the Colonial Law that regulated the system was repealed and a new one enacted in its state by the State Government of West Cameroon. With this,

the Customary Court Commission was instituted and had to supervise and regulate the functioning of Customary Courts in this State of the Cameroon Federation. Court panels were reviewed and the number of judges ranged from five to ten in each of the Courts. The Ward system was also introduced in the selection of judges. The powers of these Courts also increased and all of them in the territory were graded 'A' and 'B'. Customary Courts of Appeal also saw the light of day and received appeals from the later. Furthermore, the procedure in the naming of Courts also changed as each Court took the appellation of the town where it was situated and not that of the Local Government or Council Area that it represented.

In spite of all these changes and the smooth functioning of the Courts in this part of the territory, the federal authorities were not at ease with the system. They accused it of corruption and frowned at the privileges enjoyed by these institutions in this part of the territory. They thus called for the disbandment of Chiefs as members of the Bench. They also called for the transfer of authority and supervision of these institutions to the Federal Ministry of Justice. However, this move was resisted by the West Cameroon Government which postulated that, these institutions were doing a commendable job and needed to be encouraged. Such allegations from the Federal Ministry of Justice had no *locus stadi* as there was no prove and other higher Courts in the territory were there to check their excesses. To offset the fears of the Federal Administration, the West Cameroon Government instead carried out some readjustments in the system further as the warrants of the existing Courts were cancelled, new ones created and they were given a one-year period in office. The Prime Minister of West Cameroon made it clear that if the appointed members did not show proof of efficiency, they were to be removed from office. With these, the Customary Court System survived without any interference up to 1972 when Cameroon became a United Republic and the autonomy (Customary Courts) enjoyed by the State of West Cameroon disappeared.

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