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ADVOCACY FOR CUSTOMARY JUSTICE REFORM IN CAMEROON: WHAT IS TO BE DONE WITH CUSTOMARY LAW?

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Abstract

This paper examines the declining fortune of customary justice in Cameroon and advocates measures aimed at reversing the tide. At independence, Cameroon inherited most of the colonial policies in force on customary law. Gradually, and steadily, customary justice has become inconsequential. Awkwardly, modern state courts, essentially applying statutory law, have monopolized the customary jurisdiction, and recourse to customary justice is often made to informal traditional courts now competing for legitimacy with state courts, thereby fragmenting the legal process. This paper challenges the current state of affairs and advocates the strengthening of the customary jurisdiction.

Keywords: Customary Law, Law Reform, Pluralism, Received Laws, Uniform Laws.

Introduction

Successive Cameroonian constitutions and some laws in force have, since independence, reflected the legal traditions that prevailed in the territory before, and those imposed during, colonialism. These traditions, of indigenous and Western origins, account for the birth of pluralism in the territory. Seemingly, undermining this status quo after independence became an option for Cameroon as she attempts to transform its agrarian economy to a capitalist-oriented model. In this context, following re-

LWATI: A Journal of Contemporary Research 2021, 18(3): 97-115
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unification of British and French-administered Cameroons, the emerging elites have backtracked on pluralism in favour of uniform laws.[1]

Legal expediency has provoked a drive towards uniform laws, a policy path that ignores customary law. The vision for uniform laws is pursued vigorously within the domain of received laws of civil and common law orientation. Neither is customary law part of the broader process of law reform nor is the State interested in engaging with customary justice. Unsurprisingly, despite its primacy in society, the role of customary law in the legal system has increasingly dwindled, blamed on a half-hearted approach to reform. Reforms have centred on addressing the less intractable problem (of co-ordinating civil and common laws) and ignoring the most challenging of ascertaining substantive customary law, a prelude to establishing a coherent relationship between customary and received laws. Legal activism on customary law has largely been entrusted to modern state courts which are themselves ill-adapted to apply custom, accelerating its decline.

This article unravels the declining state of customary justice in Cameroon since independence and argues for an approach to customary reform informed by social realities. It partly blames the decline of customary law to the promotion of uniform laws and proposes a new path to reform. Part 1 explores the state of customary law in Cameroon since independence and discusses the devastating consequences of law reform to customary justice. Part 2 proposes measures to consider to secure the future of customary justice.

State of Customary Law in Cameroon since Independence

The state of customary law in Cameroon was influenced by developments during colonialism. Pre-colonial Africa, south of the Sahara, nurtured a fertile ground for the advent of customary law. Alternate values were imposed during colonialism ushering pluralism and marking the systematic decline of customary values. Through

[1] The uniformization of laws started in 1964 when two Federal Law Commissions were created: The Federal Commission for Penal Legislation and the Federal Commission for Civil and Customary Legislation. The former was charged with drawing up a Penal and Criminal Procedure Code, and the latter, a Civil Code, a Code of Civil and Commercial Obligations and a Civil Procedure Code, to replace the divergent elements of law. Since then, several uniform laws have been enacted. See Kiye 2019: 38; Ewang 2007: 18; Fombad 1997: 221-223.

LWATI: A Journal of Contemporary Research 2021, 18(3): 97-115
www.universalacademicservices.org

subsequent laws, the post colonial state replicated the policies of the colonial state, exacerbating the decline of customary justice.

Emergence of Pluralism and the Place of Customary Law in the Legal System

Because of extant literature it is difficult to trace the development of customary law in primitive societies. Nonetheless, the law is often associated with the customs of the people that have been continuously practiced and have acquired the force of law (Anyangwe 1987:139-140; Ngwafor 1993:7-9; Kiye 2007:87). The convenience of the pre-colonial terrain contributed to its growth. Before colonialism, sub-Saharan Africa was dominated by an agrarian economy reliant on subsistence farming and trade by barter. The modes of life exhibited by these communities were best addressed by customary law, which regulated all conceivable social relations and strived under the administration of chiefs.

Imperial rule under French and British tutelage saw the imposition of civil and common laws in French and British-administered Cameroons respectively. The realities of the colonial society were different from the one it preceded. Trade had developed in the territories and the money economy was systematically replacing trade by barter that hitherto existed. Paid employment, regulated under rules of contract, was gaining popularity. The pre-colonial fabric was under strain as alternate legal values, acknowledged to better reflect the new dispensation, had emerged. Customary law was tolerated in the emerging order.

At independence, the status quo was validated by the emerging state. The place of customary law is defined under colonial and post-independent legislation. Several ambiguous constitutional provisions could be interpreted as recognizing customary law. The second paragraph of the Preamble to the 1996 Constitution (hereinafter Constitution) alludes to the enriching multi-cultural composition of the State and its linguistic diversity. Paragraph 8 second indent of the Preamble confers the State the mandate to 'ensure the protection of minorities and…[to] preserve the rights of indigenous populations in accordance with the law.' The closest provision to an unambiguous endorsement of customary law is article 1(2) which authorises the State: '… [to] recognize and protect traditional values that conform to democratic principles, human rights and the law….' According to this

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LWATI: A Jour. of Contemp. Res.
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provision, only a limited quantum of traditional values – those that conform to 'democratic principles, human rights and the law' - are protected under the Constitution. Indeed, some 'traditional values' are denuded of the quality of lawness and therefore cannot be enforced as customary law (Olawale 1966: 29).

The clearest indication of the status of customary law in Anglophone Cameroon is provided under numerous colonial legislation, amongst which are section 31(1) of the Magistrate's Courts (Southern Cameroons) Law 1955, section 27(1) of the Southern Cameroons High Court Law 1955, (SCHL), section 18(1)(a) of the Southern Cameroons Customary Courts Law 1956 (SCCCL), all of which reproduce in almost similar terms section 18(1)(a) of the Customary Court Ordinance Cap. 142 of the revised laws of the Federation of Nigeria 1948. The SCHL legitimises the plurality of laws that obtains in Anglophone Cameroon: while sections 10, 11, and 15 recognizes the application of English law, section 27(1) legitimizes customary law.

Similar to article 1(2) of the Constitution, section 27(1) of the SCHL, alongside section 18(1)(a) of the Customary Court Ordinance and section 18(1)(a) of the SCCCL, establish a hierarchy of norms by subjecting customary law to common law through the doctrines of repugnancy and incompatibility (Kiye 2015: 85-106). These colonial legislations, complemented by article 1(2) of the Constitution, outline a policy that aims at policing customary law.

Shift from Pluralism to Uniform Laws? State Approach towards Customary Justice

Legal developments after independence reveal a policy that merely tolerates pluralism. The desire for legal certainty led to a shift of focus towards uniform laws to replace the divergent elements of laws inherited at independence. Uniform laws have become the cardinal objective of reform and pluralism, a subsidiary goal, was only to be tolerated in the absence of uniform laws. Uniformization of laws is mainly restricted to narrowing the divide existing between common and civil laws which has been criticized for transposing outdated codes, mostly of civil law orientation into the territory disregarding input from common law (Fombad 1997:209-234; 2016:101-119: Kiye 2019: 39). The Penal Code, Labour Code, Criminal Procedure Code, Highway Code, Civil Status Registration Ordinance, Nationality Code, etc., are examples of

LWATI: A Journal of Contemporary Research 2021, 18(3): 97-115
www.universalacademicservices.org

uniform laws enacted. Uniform law is a prelude to establishing a legal order mostly expressive of statutory law of civil law orientation (Kiye 2019: 44).

Customary law is mostly excluded from the process, except in the domain of family law, a confusing signal suggesting dual approach to reform: maintaining a degree of pluralism where customary and received laws operate concurrently in certain domains; and promoting uniform laws where mostly civil and common laws are harmonised. In either option, customary law is inconsequential. The Civil Status Registration Ordinance, 1981, a landmark family law project, is arguably the only uniform law that took input of the various legal traditions in the country even though it addresses customary law in a half-hearted manner. The ordinance reveals its exaggerated reliance on received laws while invalidating numerous customary values. It recognizes polygamous marriages under section 49 but renders inconsequential several practices associated with them, including the institutions of dowry and widow inheritance. Section 70(1) makes the payment of dowry non-obligatory in polygamous marriages and section 70(2) outlaws the consequences associated with its non-payment. In reality, a polygamous marriage is valid only upon the payment of dowry and customary courts often endorse this tradition. Section 72 outlaws a consequence of the non-repayment of dowry by an estranged wife which may lead to the husband, the non-biological father, being conferred right of paternity over any of her children begotten outside wedlock. Section 73 makes the refund of dowry at the dissolution of polygamous marriages non-obligatory. Section 77 prohibits relatives of the deceased husband from laying claims over the widow because of her failure to refund the dowry paid on her behalf during the solemnization of her marriage.

The short tenure of British administration in Anglophone Cameroon saw more meaningful legislation enacted to regulate the customary jurisdiction than thereafter. Complementing the colonial legislation cited above, the Customary Court Manual, an elaborate booklet for guidance detailing applicable rules of procedure is also of great guidance to customary courts. Proceedings in customary courts are still almost exclusively governed by these laws, although some provisions have been repealed by subsequent laws and regulations.

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www.universalacademicservices.org

LWATI: A Jour. of Contemp. Res.
ISSN: 1813-222 ©Sept. 2021
RESEARCH

Simultaneous with the quest for uniform laws were policies adopted to circumvent customary justice. The criminal jurisdiction of customary courts was ousted by section 31 of the Judicial Organization Ordinance 2006 and section 288(2) of the Criminal Procedure Ordinance 2005. Contrarily, during colonialism, by virtue of section 14(1) of the SCCCL 1956, customary courts exercised both civil and criminal jurisdiction. Prior to this law, the Native Court Ordinance 1914 also attributed criminal jurisdiction to native courts.

In the field of land law, customary tenure was abrogated by Ordinance No. 74/1 of 6 July 1974 introducing land titling as the only legal means of holding land rights. In reality, most lands in Cameroon are still held under traditional tenure system. The relatively better treatment accorded customary law under British administration was extended to West (Anglophone) Cameroon after independence. In retrospect, during the subsistence of the Federal Constitution from 1961-1972, the foundations of customary justice were relatively stronger in West Cameroon than in East Cameroon. Reforms adopted in West Cameroon increased the powers of customary courts compared to courts in East Cameroon. The Federal government was uncomfortable with this development and with the coming in force of the Unitary Constitution, and the creation of a single court system, these powers were reduced (See Tem 2016: 235).

The Judicial Organization Ordinance, 2006, produced severe consequences on customary justice. Section 3 list out the courts in decreasing order of hierarchy: Customary courts are at the base whereas the Supreme Court is at the top. Being an inferior trial court, the decisions of customary courts are scrutinized on appeal by the Court of Appeal and, subsequently, the Supreme Court, essentially statute-applying courts. The maximum civil award of customary court is a meagre 69.200 CFA francs. Since most customary claims exceed this financial threshold, they are entertained at the High Court, which is ill-adapted to apply customary law. Nowadays, customary courts are reduced to entertaining only petty civil claims, most of which have no customary foundations.

Compounding the misery of customary courts, the Court of Appeal of the South West Region, Buea, has upheld a controversial position that is inconsistent with established jurisprudence which attributes exclusive competence to customary courts over polygamous

LWATI: A Journal of Contemporary Research 2021, 18(3): 97-115
www.universalacademicservices.org

marriages as provided under section 9(1)(b) of the SCHL 1955. The appellate court opines that, even within its sphere of attributed competence, customary court only exercises non-compulsory jurisdiction which is qualified on the parties voluntarily submitting to it.[2] Where therefore a party objects to its jurisdiction, the customary court must surrender that jurisdiction to the High Court, giving the latter concurrent jurisdiction over customary disputes with the former. This argument questions, as it does, the authority of customary courts and discourages litigants from seeking justice before customary courts as the proceedings could be discontinued merely by a party raising an objection to its jurisdiction. This argument may have been influenced by similar provisions in section 15(1) & (2) of the SCCCL 1956, and sections 2 and 3(1) of Decree No. 69/DF/544 of 9th December 1969 regulating traditional jurisdiction in the former East Cameroon.

The question of concurrent jurisdiction between modern state courts and customary courts over polygamous marriages further arose in *Fomara Regina Akwa v Fomara Henry Che* (Suit No: BCA/11C/97: Reported in CCLR Part 9 (Liberty Publications, 2002 at page 32) before the Court of Appeal of the North West Region. The appellate court noted that since the jurisdiction of customary court is limited to 69.200 CFA francs, a dissatisfied party is not precluded from requesting additional awards before the High Court, giving the latter concurrent jurisdiction with customary court. This reasoning was confirmed by the South West Court of Appeal in *Ajietem Lydia v. Atebia Ncho* (Suit No. CASWP/CC/9/99: unreported), where a customary court failed to address the wife's claim for financial support at the dissolution of her marriage. The appellate court rejected the jurisdiction of customary court over property adjustments and requested the wife to commence a fresh cause of action before the High Court. The reasonings infer that the High Court now complements the limited jurisdiction ascribed to customary court. This suggestion encourages litigants to seise the

[2] See the case of *Christiana Etombi v. Ndive Woka John* (Suit No. CASWP/CC/09/2001: unreported). This reasoning contradicts the conventional position upheld by the Mezam High Court in *Manyi Motanga v. Ngomba Motanga* (Suit No. BCA/22/76: reported in CCLR, part 4 (Liberty publications, 1998) where it declined jurisdiction to dissolve a polygamous marriage stating that such jurisdiction was vested only in customary court.

LWATI: A Journal of Contemporary Research 2021, 18(3): 97-115
www.universalacademicservices.org

jurisdiction of the High Court otherwise the risk of multiplicity of proceedings should they commence with customary court.

The restrictive jurisdiction of customary courts is equalled by the inability of modern state courts to administer customary law. State courts are ill-adapted to efficiently apply customary law. Often, when they intend to enforce customary law, they either reject its application or create a bastardized version that does not reflect social practice (Kiye 2015: 96-98; Woodman 1969:136-139; 1985:147; 1988: 181).

State approach to customary justice leaves much to be desired. The dual policy of reform, consisting of limited pluralism in family law and the promulgation of uniform laws, is dismissive of customary justice. Customary law is blamed to be counterproductive to development as some of its values are inconsistent with Cameroon's constitutional and human rights obligations (Kiye 2015: 84-87). Despite these attributes, customary law remains crucially relevant as it offers protection which are unavailable under other normative systems (Kiye 2015: 86).

1.3. Impact of State Policy on Customary Justice

Law reform in Cameroon reflects a disparity between state policy and social reality. Increasingly, statutory laws are being used to alter the social order, an approach that has alienated the people and fragmented the legal system. Cameroon is predominantly an agrarian society where most of the people live in rural communities and rely on traditional courts for the fulfillment of their justice needs as procedures in state courts, including formal customary courts, are complex to warrant reliance on them. Stifling of customary jurisdiction in the state legal system has circumvented state courts as demands for customary justice are addressed to traditional courts, fragmenting the legal process. A perverted justice system that perceives customary values as foreign and received laws as Cameroonian is operational.

Customary justice in the state justice system is at the verge of capitulation, an outcome that does not reflect its popular appeal in society. In Cameroon, as in much of sub-Saharan Africa, customary

LWATI: A Journal of Contemporary Research 2021, 18(3): 97-115
www.universalacademicservices.org

courts entertain the bulk of disputes (Scharf 2003).[3] Restrictive customary jurisdiction in state customary courts has increased demands on informal traditional courts leading to a circumvention of state justice. Traditional courts address issues which are of paramount concern to poor people and are preferred to state courts for several reasons including accessibility, low cost, speed, and responsiveness to poor peoples concerns (Scharf 2003). They compete with state courts for legitimacy, thus questioning the judicial supremacy of the state.

Cameroon has created a perverted legal order where customary law is equated to a foreign law whereas received law is viewed as Cameroonian law. A party who intends to rely on custom must prove its factual existence as a prelude to establishment, the role of state court reduced to ascertaining its equitability. Shifting this responsibility to a litigant is a herculean task and discourages reliance on non-established customs in judicial proceedings. Judicial establishment is often justified on the non-ascertainment of customary law, further pointing to the legislative ineptitude of the State.

Limited customary jurisdiction is partly blamed for customary courts losing their traditional features. With the exception of the dissolution of polygamous marriages, it is debatable whether customary courts truly apply customary law. Incidental divorce questions, including custody, maintenance, and succession are monopolised by the High Court, reducing customary courts to entertaining only petty civil matters having no customary foundations. On succession, they play the limited role of issuing next-of-kin declarations, precursors to delivering Letters of Administration, the sole prerogative of the High Court. The High Court is not bound by the next-of-kin declaration issued by customary court, rendering inconsequential the opinion of the latter.[4] Next-of-kin

[3] In a survey conducted in Limbe, South West Region of Cameroon, in July 2005, the traditional court of Batoke, a village in the west coast, entertained more disputes than the Court of First Instance Limbe. See Kiye 2007: 3.

[4] See the reasoning in the case of *Nombissie nee Wanji Mary v. Nganjui John* (Suit No. CASWP/2/2000: reported in CCLR part 9, 2002: 1-5) where the South West Court of Appeal held that the High Court was not bound to confer Letters of Administration to a party who had obtained a next-of-kin declaration from the Customary Court. This was confirmed in the Bamenda Court of Appeal judgment in *Nwana Galega Gertrude v. Wayonga Galega Thomas* (BCA/19/93: reported in CCLR part 9: 5). Further, in *Chamju Wembong Joseph v. Chamju Munkam Abel* (Suit No. HCF/AE/77/95:

LWATI: A Journal of Contemporary Research 2021, 18(3): 97-115
www.universalacademicservices.org

declarations are the most frequently sought applications before customary courts and account for over 80% of all actions entertained by these courts (Kiye 2007:126-127). Arguably, the High Court entertains the bulk of customary disputes leaving the customary court a powerless institution. More so, customary courts are only able to enforce their decisions with the aid of the Court of First Instance. State customary courts have changed drastically and the class of people who attend them have, over the years, also changed (Kuruk 2002). The assertion is that by the time British colonialism ended, these courts bore little semblance to the traditional institutions which they gradually replaced (Allott, 1984:58-59). The assumption was that customary court was to be a court for natives. Nowadays, by entertaining mostly non-customary-related disputes, customary court has attracted educated urban elites who have exploited it for their own ends.

Cameroon is yet to create a legal system that adequately reflects its inherited traditions. While acknowledging defects in customary law, this paper provokes the state to proactively engage with customary justice.

Part 2: The Path Forward: What is to be Done with Customary Law in Cameroon?

Meaningful reform is imperative if the survival of customary law is to be secured in Cameroon. A context-based reform process that accommodates social realities should be of paramount consideration. There is the need to initiate a frank policy dialogue on customary law as a prelude to reforms. Customary reforms should address two propositions: strengthening customary justice as parallel form of justice; and professionalizing its delivery.

2.1. Strengthening Customary Justice as parallel form of Justice

The era of British administration of Southern Cameroons saw the existence of a racialized and parallel justice system where natives were amenable to customary law and Europeans (and assimilated natives) to

unreported) the High Court refused to recognize the authority of a next-of-kin declaration granted to the defendant by a customary court and instead proclaimed the plaintiff as administrator over the estate of their deceased father, even without a corresponding next-of-kin declaration.

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LWATI: A Jour. of Contemp. Res.
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RESEARCH

Western law. Semblance of the colonial system remains operational today at the base of the court system. Customary courts are located at the village level, apply customary law, and satisfy the justice needs of mostly rural, and uneducated, dwellers whereas the other constituent courts are found in urban centres, apply customary and statutory laws, and target mainly educated Cameroonians. It is essential to strengthen customary justice within the parallel justice systems at the base of the court system. A reformed court system should ponder on increasing the jurisdiction of customary court on a par with the Court of First Instance; restricting the customary jurisdiction of the High Court; creation of an independent Customary Court of Appeal (or alternatively, reforming the current customary appeal system); and establishing a specialized division for customary appeals at the Supreme Court.

One of the most relevant reform is to increase customary jurisdiction. Customary courts should exercise exclusive civil jurisdiction over polygamous marriages and all related incidences. Its civil jurisdiction should be increased to 10.000,000 CFA francs, on a par with the Court of First Instance, a development that will deflect litigants from seeking customary justice in the High Court. Customary courts should also be attributed limited criminal jurisdiction over simple offences provided under sections 362-370 of the Penal Code, and other petty offences having customary flavour including trespass to farmland, theft of cattle, disturbance of communal peace, and witchcraft-related offenses, which are habitually entertained by traditional courts. Since simple offences are rarely found on the cause list of state courts nor tried at all by these courts, ideally, customary courts should fill the vacuum and be able to impose fines and limited custodial sentences.

Increasing the jurisdiction of customary courts will have a ripple effect on the High Court, which is certain to lose some of its customary jurisdiction. The civil jurisdiction of the High Court pertaining to marriages should be confined to only monogamous marriages, except for incidental questions on polygamous marriages on claims above 10.000,000 CFA francs. And considering the characteristics of those who seek customary justice they are unlikely to use the High Court, for these are mostly poor and uneducated people who live in rural areas.

Major structural innovations are required to strengthen the application of customary law in the system. The Customary Division of the Court of Appeal entertains all appeals from customary courts, an

LWATI: A Journal of Contemporary Research 2021, 18(3): 97-115
www.universalacademicservices.org

unsustainable arrangement given the practices that obtains at the court. Appeals from customary courts are subjected to similar procedural technicalities and rules of evidence as those from modern state courts. Apparently, most customary judgements are overturned on appeal not on their merits but on the failure of the trial court to comply with these rules. For instance, appeals before the Court of Appeal must be founded on well established grounds of appeal, the absence of which may warrant dismissal of the appeal as affirmed in *Akame Green v. H.R.H. Njoke Johnson Njumbe* (Suit No CASWR/CC/08/2012: unreported) where the grounds of appeal were considered vague. Customary litigants are obliged to seek the assistance of lawyers to prepare their appeals because of the technicalities involved. Since lawyers are not present during trials at customary courts, they are rarely acquainted with the facts of the case nor issues raised during the trial to be of much assistance at the appellate court.

It is weird that customary judges are required to comply with the same technical rules as statutory judges, yet they are neither trained in them nor do customs oblige them. This outcome stultifies customary justice as judgments are often rejected on appeal for failing these technical rules. The creation of a separate Court of Appeal to hear customary appeals or reforming the current system is imperative. The separate Customary Court of Appeal, or the reformed Customary Division of the Court of Appeal, should disregard technical procedural rules in customary appeals and concentrate on their merits. The Supreme Court should also have a customary bench, the structure and procedures replicating those at the lower appellate court. These developments will help maintain the sanctity of customary justice and insulate it from unwarranted influences. It will further militate against the distortion of customary law by modern state courts which is recurrent. Moreover, eliminating the use of technical rules in customary appeals will give appellate courts the room to brainstorm on the merits of substantive customary law, thereby assisting in the development of a rich customary jurisprudence.

For customary court to maintain its relevance it should retain its uniqueness in the court system. As customs-applying court, practices at the court should be consistent with the mores of the community. Proceedings should remain summary in nature and devoid of technical procedural rules. Access to the court should remain simple including

cheap fees and associated expenses. Customary judgments should reflect the values of society rather than emulate the coercive character of statutory judgments. Only on the rare occasion of the exercise of its criminal jurisdiction over simple offences, should the court consider custodial sentences. Presently, state customary courts are akin to modern state courts in their organization and judgments. In civil matters, their judgments do not reflect the objective of maintaining community cohesion, ideal that is popular in rural communities and has endeared traditional courts to the people. Refocusing on this objective will increase the appeal of customary courts and deflect interest to them away from traditional courts. Complementing the reform of the court system, the delivery of customary justice should also be professionalized through training of judges and other stake holders.

2.2. Professionalizing the Delivery of Customary Justice

Undoubtedly, professionalism obtains in modern state courts but not in customary courts. Statutory judges are often qualified professionals, having obtained a law degree subsequent to attending professional training at the School of Magistracy in Yaoundé prior to qualifying as judges, the standard procedures for judgeship in Cameroon. In the former West Cameroon, judges were appointed based on their standing as barristers at the Bar, which also required the minimum qualification of a law degree and several distinguished years of legal practice.

Contrarily, customary judges are often laymen, appointed from retired state functionaries. Unlike their statutory counterparts, they have no financial motivations as they often serve without pension. They are assisted by assessors, who are supposed to be notables of their various communities and mostly offer their services voluntarily and on a non-pensionable basis. A similar situation obtains at the Court of Appeal where assessors nominated at the Customary Division of the court are rarely present during trials because their services are offered voluntarily. This worrisome situation demonstrates a lack of engagement with customary justice. Section 7 of the Judicial Organization Ordinance 2006 establishes the procedures for appointment and the competence of appointees to serve on the customary court bench. It states: 'the court of first degree is composed of a president and two assessors entitled to vote. The president is appointed by order of the Minister of Justice from amongst the notables who are functionaries in the service within the area

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LWATI: A Jour. of Contemp. Res.
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RESEARCH

of the court. In the absence or prevention of the president, he shall be replaced by the sub- divisional officer of the seat of the court or by an assistant appointed by the latter.'

The appointment of customary judges should be based on merit and training. Customary judges, be they laymen, should demonstrate proven abilities in traditional justice. Further, they should have obtained some basic legal training in court procedures and in human rights education. These skills are relevant in improving the quality of justice dispensed at the court. It is relevant to create a Customary Court Commission, as was the case in the former West Cameroon, attached to the Ministry of Justice, and empowered with appointing customary judges based on merit and upon consultation with traditional authorities. Moreover, to strengthen professionalism, the renumeration of customary judges should be increased and members should be hired on a full-time pensionable basis.

Conversely, statutory judges should also be trained in customary justice as their lack of knowledge prevents them from efficiently applying it. Unsurprisingly, when they are called upon to apply customary law, they rather dismiss and reject its application. They often reached wrong conclusions as to the substance of customary law creating divergence between the court's customary law and that of society. It is crucial for judges, be they customary or statutory, to be subjected to a minimum standard of customary education. If statutory courts are to efficiently administer customary law, the judges must be provided the tool to do so, the most basic being training on customs.

To improve public awareness of customary law, education should be extended to the wider society and included in law programs in colleges and universities across the country. It is worrisome that despite its primacy in social relations, customary law is excluded from legal education. Unsurprisingly, thousands of law students who graduate on a yearly basis have little or no knowledge of customary law. These graduates, who will serve as judges in the future, will, like their predecessors, be contemptuous of customary law. To deflect research towards customary law, colleges and universities should assume the responsibility of introducing programs on customary law to increase its appeal to the people.

Only through education and research can the true substance of customary law be ascertained. A major huddle initiating meaningful

LWATI: A Journal of Contemporary Research 2021, 18(3): 97-115
www.universalacademicservices.org

customary reforms is attributed to the unwritten and fragmentary nature of customary law, rendering it susceptible to contestations and manipulations. Legislative impotence has drifted the responsibility of identifying custom to modern courts with devastating consequences. In retrospect, it was assumed that the courts would be able to develop a healthy customary jurisprudence that will eventually be transposed to, and complemented by, legislation. Unfortunately, this has not been the case. A collection of the scanty customary jurisprudence of the court reveals an untoward approach to customary law founded on hostility and apathy which have, in turn, been reproduced in legislation. A renewed approach based on ascertaining custom through anthropological research is relevant. Judicial establishment should become a subsidiary method of ascertainment, a last resort, provided a party object to the authenticity of a custom to be relied upon or claims that the said custom has been replaced by a new custom. In this way anthropological compilations of customs are unlikely to render customs inflexible and will act as points of reference for courts.

A professional customary justice system should be able to accommodate the input of lawyers in the adjudication of disputes. Rules and practices at the customary court bar lawyers from participation in court proceedings, a great hindrance to the development of customary law. This is the province of section 26(1) of the SCCCL 1956. In the former East Cameroon, the relevant provision is Section 15(2) of Decree No. 69/DF/544 of 9th December 1969. Consequently, the input of lawyers is not felt in this court and is rarely felt in the delivery of customary justice: at the Customary Division of the Court of Appeal, their input is negligible as appeals are mainly determined on procedural technicalities rather than on substance. Unsurprisingly, customary jurisprudence in Cameroon is weak compared to other legislative sources. Lawyers play an important role in the administration of justice and their militating in customary courts will contribute to the development of customary law and in the delivery of justice.

Conclusion

Customary law has an uncertain future in Cameroon, a future grossly defined by an increasingly uncompromising state policy and equally complemented by a negatively minded judiciary that perceives custom with disdain. Consequently, customary law has, since independence,

been on the back foot of legal developments and has only survived these assaults due to its resilience. Customary law has been reduced to an unenviable status of a foreign law, which has rendered it uncompetitive and unappealing in the state legal system, thus deflecting recourse to customary justice to traditional courts.

Securing the future of customary law in Cameroon requires bold and decisive actions including addressing the structure of the court system and professionalizing the delivery of customary justice. Extensive research should be undertaken to restate customs, which should be readily available as points of reference to state courts to reduce their reliance on judicial establishment which is fraught with difficulties. In the absence of these measures, the future of customary law in Cameroon will remain uncertain, especially in the current era of uniform laws.

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